

Paper 6 – Laws and Ethics

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Full Marks: 100

Time allowed: 3 hours

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

This question paper has two sections.

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

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.

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- (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
 - (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**
 - (b) Material Facts
 - (c) All of the above

(b) Fill in the Blanks

[5 Marks]

- (i) Agreements of wagers are **Void**.
- (ii) The unpaid seller has the right of **Lien** on the goods for the price while he is in possession of them.
- (iii) A cheque is a bill of exchange drawn on a specified **banker**, payable on demand.
- (iv) The Limited Liability Partnership Act does not allow the conversion from **Listed company** into LLP

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- (v) The prospectus shall contain a report by a Chartered Accountant upon the profits or losses for each of **five** financial years immediately preceding the date of issue of prospectus.

(c) True or False

[5 Marks]

- (i) As per Section 24 of PFRDA Act, 2013 the aggregate holding of equity shares by a foreign company either by itself or through its subsidiary companies or its nominees or by an individual or by an association of persons, whether registered or not under any law of a country outside India taken in aggregate in the pension fund shall not exceed twenty-six per cent of the paid-up capital.

True

- (ii) A woman employee may be allowed to work between 6 p.m. and 6 a.m.

False

- (iii) The registered office shall be opened within 15 days from the date of incorporation of the company.

True

- (iv) Where a bill is drawn in sets, the acceptance is required to be put on all the parts separately.

False

- (v) Business ethics is not as important to practice good ethical behavior.

False

(d) Match and Pair

[5 Marks]

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

Answer:

	Column I		Column II
1	Designated Partner	D	At least two
2	Business Ethics	C	Stop malpractices
3	Negotiation	E	Transfer

4	Section 68 of Contract Act	B	Claim for necessaries supplied to person incapable of contracting.
5	Section 103 of Companies Act, 2013	A	Quorum for meetings

Section – B

2. Answer any 5 questions:

[5×15 = 75]

- (A) (i) A leaves a cow in the custody of B to be taken care of. The cow has a calf. Explain the provisions of restorations of goods bailed, in light of the above statement.**
- (ii) Z rents out his house situated at Delhi to W for a rent of ₹10,000 per month. A sum of ₹ 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the Corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get the reimbursement of the said amount from Z.**

[10+5 = 15]

Answer:

(A) (i) Restoration of Goods

The bailed goods should be returned after the bailment is over. Section 159 provides for the restoration of goods lent gratuitously and Section 160 provides for return of goods bailed on expiration of time or accomplishment of purpose. Section 161 provides for the responsibility of the bailee when goods are not duly returned.

Section 159 provides that the lender of a thing for use may at any time require its return if the loan was gratuitous, even though he lent it for a specified time or purpose. But if, on the faith of such loan made for a specified time or purpose, the borrower has acted in such a manner that the return of the thing lent before the time agreed upon would cause him loss exceeding the benefit actually derived by him from the loan, the lender must, if he compels the return, indemnify the borrower for the amount in which the loss so occasioned exceeds the benefit so derived.

Section 160 provides that it is the duty of the bailee to return, or deliver, according to the bailor's directions, the goods bailed without demand, as soon as the time for which they were bailed has expired, or for the purpose for which they were bailed has been accomplished.

Non delivery of the goods would amount to breach of contract. This section is silent as to the remedies open to a bailor when the bailee has failed to return the goods on his demand. In 'Dhian Singh Sobha Singh V. Union of India' – AIR 1958 SC 274 the Supreme Court held that a bailor in the event of non delivery of the goods by the bailee on demand made by him in

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that behalf was entitled at his election to sue the bailee either for wrongful conversion of the goods or the wrongful detention thereof.

Section 161 provides that if the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

Section 163 provides that in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions, any increase or profit which may have accrued from the goods bailed.

Section 165 provides that if several joint owners of goods bail them, the bailee may deliver them back to, or according to the directions of, one joint owner without the consent of all, in the absence of any agreement to the contrary.

Section 166 provides that if the bailor has no title to the goods, and the bailee, in good faith, delivers them back to, or according to the directions of, the bailor, the bailee is not responsible to the owner in respect of such delivery.

Hence in the given case A leaves a cow in the custody of B to be taken care of. The cow has a calf. B is bound to deliver the calf as well as the cow to A.

(A) (ii) W is entitled to recover from Z the amount paid to the Municipal Corporation:

- ❖ Since there is a contract between W and Z, viz., quasi contract;
- ❖ Since Z is bound to make the payment of house tax to the Municipal Corporation;
- ❖ Since W is interested in such payment;
- ❖ Since W is not himself liable for such payment.

(B) (i) Limited Liability Partnerships are body corporate. Do you agree? Justify.

(ii) Transfer of title by non-owners State the exceptions to it.

[5+10 = 15]

Answer:

(B) (i) Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:

1. A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
2. A limited liability partnership shall have perpetual succession.
3. Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
4. Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
5. Any individual or body corporate may be a partner in a limited liability

partnership.

(B) (ii) Transfer of title by non-owners - Exceptions

As per section 27 of the Sale of Goods Act 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.

A buyer cannot get good title to the goods unless he purchased the goods from a person who is the owner thereof and sell them under the authority or with the consent of real owner.

The Sale of Goods Act, 1930 provides the following exceptions to this doctrine which seeks to protect the interest of bona fide buyers:

1. Sale by a mercantile agent:

If a mercantile agent is authorized by the owner of the goods sell on his behalf, then such sale shall be valid. In such cases, the buyer can acquire a good title of the goods. This exception will be implemented subject to fulfilment of the following conditions:-

- he person must be in possession of goods or documents of title to the goods in his capacity as a mercantile agent and with the consent of his owner
- The person must sell the goods while acting in the ordinary course of business
- The buyer must act in good faith without having any notice, at the time of contract that the mercantile agent has no authority to sell the goods.

2. Transfer of title by Estoppels

This exception is based on the principle of personal estoppels. Sometime, the real owner may lead the buyers by virtue of his conduct or words or by act to believe that the seller is the owner of the goods or has the authority to sell them. In such case, he may not thereafter deny the seller's authority to sell.

3. Sale by a joint owner

If there are several joint owners of goods, one of them if has sole possession of the goods by permission of the co-owners, then the property in goods is transferred to any person who buys them from such joint owner. In order to apply this exception following conditions must be fulfilled.

- One of the several owners must be in sole possession of the goods.
- The joint owner must have permission of co-owners.
- The buyer must purchase goods in good faith.
- The buyer should not have notice regarding the matter that the seller has no authority to sell.

4. Sale by person in possession under voidable contract

According to the Section 29 a person in possession of goods under a voidable contract which is not rescinded, can transfer a good title to the buyer. The buyer should purchase the goods in good faith and without notice of the seller's defective title.

5. Sale by seller in possession after sale

Under Section 30 (1) it is laid down that where a person has sold goods but he continues in possession of goods or of the documents of title to the goods, he may sell them to a third person and if such person obtains delivery thereof in good faith and without notice of the previous sale, the person can get a good title to them. In order to apply this exception, the seller must be in possession after sale of goods and there must be delivery or transfer of the goods or documents of title by the seller.

6. Sale by buyer in possession after sale

Under Section 30 (2), it is laid down that where a buyer having bought or having agreed to buy goods, obtain with the consent of the seller the possession of the goods or documents of title to the goods can and resells the goods to a bona fide transfer. If at the time of this sale, buyer was not in possession, then this exception will not apply.

7. Sale by an unpaid seller

If the unpaid seller has exercised right of lien or stoppage in transit, resells the goods, then the buyer acquires a good title as against the original buyer, even though the resale is not justified in the circumstances.

8. Exception under other Acts

According to some Acts, a person although he is not the owner of the goods may sell the goods and pass a better title than he himself has. As for example-

- (i) Under Section 169 of the Contract Act, a finder of the goods has the right to sell.
- (ii) Under Section 176 of the Contract Act, a pawnee of goods has the right to sell the goods pawned subject to satisfying some conditions.
- (iii) In certain cases, a special right of sale is given to officers of court, liquidators of the companies, receivers of insolvents estate, custom officers for duties remaining unpaid etc.
- (iv) A person who takes a negotiable instrument in good faith and for value becomes the true owner even if he takes it from a thief or finder.

- (C) (i) Mr. Rahul is the owner of a company and he is in the process of declaring bonus. For the purpose of declaring bonus Mr. Rahul would like to know how the gross profit is being calculated and what are the allowable deductions from it?**
- (ii) Write a note on Central Record Keeping Agency as per Section 21 of PFRDA Act, 2013. [8+7 = 15]**

Answer:

(C) (i) Steps required to be done for the computation of bonus

The following are the steps required to be done for the computation of bonus:

- Computation of gross profits;
- Sums deductible from gross profits;

- Computation of available surplus ;
- Computation of allocable surplus

Computation of gross profit

Section 16 of the Act provides that the gross profit derived by an employer from an establishment in respect of the accounting year shall-

- in the case of banking company, be calculated in the manner as specified in the First Schedule;
- in any other case, be calculated in the manner as specified in the Second Schedule.

Sums deductible from gross profit

Section 6 of the Act provides the following to be deductible from the gross profit -

- depreciation admissible under Section 32 of the Income Tax Act, 1961;
- development rebate or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income Tax Act, 1961;
- any direct tax payable for the accounting year by the employer;
- such other sums as specified in Third Schedule-
 - Company other than banking company – the following are deductible -
 - ❖ Dividends payable on preference share capital;
 - ❖ 8.5% of its paid up equity share capital as the commencement of the accounting year;
 - ❖ 6% of its reserves shown in the balance sheet at the commencement of the accounting year;
 - Foreign company
 - ❖ 8.5% on the aggregate of the value of net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities in India;
 - Banking companies – the following are deductible-
 - ❖ Dividends payable on preference share capital;
 - ❖ 7.5% of its paid up equity share capital as at the commencement of the accounting year;
 - ❖ 5% of its reserves shown in the balance sheet as at the commencement of the accounting year;
 - ❖ Any sum transferred to a reserve fund under Section 17(1) of the Banking Regulation Act, 1949 or to any reserves in India in pursuance of any direction or advice given by RBI;
 - Foreign banking company – the following are deductible-
 - ❖ Dividends payable to its preference shareholders;
 - ❖ 7.5% of its total paid up equity share capital as its total working funds in India bears to its total working funds;
 - ❖ 5% of such amount as bears the same proportion to its total disclosed reserves as its total working funds in India bear to its total working funds;

- ❖ Any sum deposited with RBI under Section 11(2)(b)(ii) of the Banking Regulation Act, 1949 not exceeding the amount required to be deposited;
- Corporation – the following are deductible -
 - ❖ 8.5% of its paid up capital as at the commencement of the accounting year;
 - ❖ 6% of its reserves, if any, shown in its balance sheet as at the commencement of the accounting year;
- Co-operative society – the following are deductible -
 - ❖ 8.5% of the capital invested by such society in its establishment;
 - ❖ Such sum as has been carried forwarded to a reserve fund under any relating to co-operative societies;
- Any other employer not falling under any of the aforesaid categories – the following are deductible-
 - ❖ 8.5% of the capital invested at the commencement of the accounting year;

(C) (ii) Central Recordkeeping Agency [Section 21]

- (1) The Authority shall, by granting a certificate of registration under sub-section (3) of Section 27, appoint a central recordkeeping agency:
Provided that the Authority may, in public interest, appoint more than one central recordkeeping agency.
- (2) The central recordkeeping agency shall be responsible for receiving instructions from subscribers through the points of presence, transmitting such instructions to pension funds, effecting switching instructions received from subscribers and discharging such other duties and functions, as may be assigned to it under the certificate of registration or as may be determined by regulations.
- (3) All the assets and properties owned, leased or developed by the central record-keeping agency, shall constitute regulated assets and upon expiry of certificate of registration or earlier revocation thereof, the Authority shall be entitled to appropriate and take over the regulated assets, either by itself or through an administrator or a person nominated by it in this behalf:

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

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

- (D) (i) List the documents that have to be submitted for incorporation of a company.
(ii) Discuss the procedure of sending notice of meeting by electronic mode as per Companies Act. [8+7 = 15]

Answer:

(D) (i) Incorporation of company

Section 7 of the Companies Act, 2013 provides for the procedure to be followed for of a company. The promoter of the company shall submit the following documents to the registrar of companies, whose jurisdiction the registered office of the company is proposed to be situated for registration.

- (a) Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
- (b) A declaration in the prescribed form by an Advocate, a Chartered Accountant, Cost Accountant or Company Secretary in practice, who is engaged in the formation of the company and by a person named in the articles as a director, manager or secretary of the company;
- (c) An affidavit from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that
 - (1) he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - (2) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years.
 - (3) and that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;
- (d) The address for correspondence till registered office is established;
- (e) All particulars of every subscriber to the memorandum along with the proof of identity;
- (f) The particulars of the persons mentioned in the articles as the first directors of the company;
- (g) The consent to act as directors of company in such form as may be prescribed.

The memorandum of association and articles of association are the basic essential documents of the company.

(D) (ii) Procedure of sending notice of meeting by electronic mode

Rule 18 provides the procedure for issue of notice through electronic mode. The term 'electronic mode' shall mean any communication sent by a company through its authorized

and secured computer program which is capable of producing confirmation and keeping record of such communication addressed to the person entitled to receive such communication at the last electronic mail address provided by the member.

The procedure of sending notice through electronic mode is discussed as detailed below:

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

(E) (i) Discuss about the contents of the Annual Return

(ii) How is Quorum calculated for conduct of meetings of different classes of companies?

[8+7 = 15]

Answer:

(E) (i) Contents of the Annual Return

Section 92 of the act requires a company to file Annual Return. This section provides that every company shall prepare a Annual Return in Form No. MGT-7. The Annual Return shall contain the following particulars as they stood at the end of the financial year:

- the register office of the company, its principal business activities, particulars of its holding, subsidiary and associate companies;
- its shares, debentures and other securities and shareholding pattern;
- its indebtedness;
- its members and debenture holders along with changes therein since the close of the previous financial year;
- its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- meetings of members or a class thereof, Board and its various committees along with attendance details;
- remuneration paid to Directors and Key Managerial Personnel;
- penalty and punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- matters relating to certification of companies, disclosures as may be prescribed;
- details in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them; and
- such other matters as may be prescribed.

The return shall be signed by a director and the Company Secretary. Where there is no company secretary, then it shall be signed by a Company Secretary in practice.

The proviso to Section 92(1) provides that the annual return of a OPC and small company, shall be signed by the Company Secretary or where there is no Company Secretary by the director of the Company.

(E) (ii) Calculation of Quorum for meetings

It is usual to calculate a quorum for a meeting for the validity of the transactions taken place in the meeting. The Articles of the company shall provide the quorum for a meeting. If no quorum is mentioned in the Article, Section 103(1) provides that -

- In case of a public company -
 - ❖ 5 members personally present if the number of members as on the date of meeting is not more than 1000;

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- ❖ 15 members personally present if the number of members as on the date of meeting is more than 1000 but up to 5000;
- ❖ 30 members personally present if the number of members as on the date of the meeting exceeds 5000;
- In case of a private company 2 members personally present shall be the quorum for a meeting of the company.
 - ❖ The articles of the company shall indicate the quorum more than this number or otherwise the above will be applicable.

Section 103(2) provides that if the quorum is not there within half an hour from the time appointed for holding a meeting of the company-

- the meeting shall stand adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine;
- the meeting, if called by requisitionists shall stand cancelled.

In the case of an adjourned meeting, the company shall give not less than 3 days notice to the members either individually or publishing an advertisement 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. If at the adjourned meeting also, a quorum is not also present within half an hour from the time appointed for holding meeting, the members present shall be the quorum.

- (F) (i) Discuss in brief about the values and attitudes of Professional Accountants.**
(ii) What are the rules regarding granting of Annual Leave under Factories Act, 1948?

[10+5 = 15]

Answer:

(F) (i) Values and attitudes of Professional Accountants

The roles, professional accountants take on a vast array of other roles in businesses of all sorts including in the public sector, not-for-profit sector, regulatory or professional bodies, and academia. Their wide ranging work and experience find commonality in one aspect – their knowledge of accounting. As such, professional accountants in businesses therefore have the task of defending the quality of financial reporting right at the source where the numbers and figures are produced besides the cost accounting. Like their counterparts in taxation or auditing, professional accountants in business play important roles that contribute to the overall stability and progress of society. Without public understanding of all these diverging roles and responsibilities of different accounting specialists working in business, public perceptions of their value may be misinformed.

A competent professional accountant in business is an invaluable asset to the company. These individuals employ an inquiring mind to their work founded on the basis of their knowledge of the company's financials. Using their skills and intimate understanding of the

company and the environment in which it operates, professional accountants in business ask challenging questions. Their training in accounting enables them to adopt a pragmatic and objective approach to solving issues. This is a valuable asset to management, particularly in small and medium enterprises where the professional accountants are often the only professionally qualified members of staff.

Cost management is an activity of managers related to planning and control of costs. Managers have to take decisions regarding use of materials, processes, product designs and have to plan costs or expenses to support the operating plan for their department or section. All these activities come under cost management. Information from accounting systems help managers in cost management activities. But the cost accounting system and the reports it generates is not the cost management system. Accounting system can be interpreted as a part of cost management system of an organization.

Cost management is not cost reduction alone. It is much broader. Organization increase advertising expenditure to increase sales, increase research and development expenditures to promote new products. Here the concerned managers are deliberately incurring additional costs in a period (compared to the previous period) as they expect profits from such decisions or expenditures. Cost management system has to ensure that a cost is incurred with the expectation of profit.

The role of management accounting is also described as problem solving, score keeping and attention directing.

- **Problem solving:** The role of accounting in problem solving is to provide information useful in evaluating alternatives.
- **Scorekeeping:** Scorekeeping records the results of various actions of the managers and helps in assessing whether the results expected from the various actions are realized or not.
- **Attention directing:** The scorekeeping function in combination with expected results, and comparative analysis of scores of various companies, divisions and departments, comparative analysis of present period scores or results with previous periods show opportunities of focusing attention of managers to improve things.

(F) (ii) Annual Leave under Factories Act, 1948

Section 79 of Factories Act, 1948 provides that every worker who has worked for a period 240 days or more in a factory during a calendar year shall be allowed leave with wages for a number days calculated at the rate of-

- if an adult, one day for every 20 days of work performed by him during the previous calendar year;
- if a child, one day for every 15 days of work performed by him during the previous calendar year.

The following shall be deemed to be days on which the worker has worked for the purpose of computation of the period of 240 days or more-

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- any days of lay off, by agreement or contract or as permissible under the standing orders;
- in the case of a female worker, maternity leave for any number of days not exceeding 12 weeks; and
- the leave earned in the year prior to that in which the leave is enjoyed

but the above shall not be entitled for a worker to earn leave. The leave admissible shall be exclusive of all holidays whether occurring during or at either end of the period of leave.

In calculating the leave fraction of leave of half a day or more shall be treated as one full day's leave and fraction of less than half a day shall be omitted.

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

[5 × 3 = 15]

- (i) Negotiable Instruments**
- (ii) Determination of amount of Gratuity**
- (iii) Secured debentures**
- (iv) Consequences of unethical behaviour**

Answer:

(G) (i) Negotiable Instruments

Section 13 of the Act defines the terms 'negotiable instrument' as a promissory note, bill of exchange or either payable either to order or to bearer. A promissory note, bill of exchange or cheque-

- is payable to order which is expressed to be so payable or which is expressed to be payable to a particular person and does not contain words prohibiting transfer or indicating an intention that it shall not be transferable;
- is payable to the bearer which is expressed to be so payable or on which the only or last endorsement is an endorsement in blank;
- either originally or by endorsement, is expressed to be payable to two or more payees jointly, or it may be made payable in the alternative to one of two, or one or some of several payees.

Section 13 shows that the Act is confined to three specific types of instruments most in common use, namely, promissory notes, bills of exchange and cheques. The Contract Act is a general statute dealing with contracts. The Negotiable instruments Act is a statute dealing with a particular form of the contract. The law laid down for special cases must always overrule the provisions of general character as held in 'Kwong Hip Lone Saw Mill Co. V. C.A.M.A.L. Firms'

The following are not the negotiable instruments-

- share certificate passing from hand to hand with blank transfers –
- Deposit receipts

- Mate's receipt
- Bill of lading
- A benefit under a letter of credit

(G) (ii) Determination of the amount of Gratuity

Section 7 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. The notice shall be in Form L.

The employer shall arrange to pay the amount of gratuity within 30 days from the date of its becoming payable to the person to whom it is payable. If it is not paid within the stipulated period the employer is liable to pay interest at the rate of 10% per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable.

If the claim for gratuity is not found admissible, issue a notice in Form 'M' to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

(G) (iii) Secured Debentures

Section 71(3) provides that secured debentures may be issued by a company subject to such terms and conditions as may be prescribed. Rule 18(1) of Companies (Share Capital and Debentures) Rules, 2014 provides the conditions for the issue of secured debentures. The conditions are as follows:

- The date of redemption of secured debentures shall not exceed ten years;
- The following classes of companies may issue secured debentures for a period exceeding 10 years but not exceeding 30 years:
 - ❖ Companies engaged in infrastructure projects;
 - ❖ 'Infrastructure Finance Companies'
 - ❖ Infrastructure Debt Fund Non Banking Financial Companies;
- The issue shall be secured by the creation of charge, on the properties or assets of the company, having a value which is sufficient for the due repayment of the amount of debentures and interest thereon;

- The company shall appoint a debenture trustee before the issue of prospectus or letter of offer for subscription of its debentures and not later than 60 days after the allotment of debentures;
- A debenture deed shall be executed to protect the interest of debenture holders; and
- The security for the debentures by way of a charge or mortgage shall be created in favor of the debenture trustee on-
 - ❖ any specific movable property of the company; and
 - ❖ any specific immovable property wherever situate, or any interest therein.

In case of a non banking financial company, the charge or mortgage may be created on any movable property.

In case any issue of debentures by a Government company which is fully secured by the guarantee given by the Central Government or one or more State Government or by both, the requirement of creation of charge shall not apply

(G) (iv) Consequences of Unethical behavior

Unethical behavior has adverse effects on business. Moreover, working for an unethical, deceptive, unfair or dishonest organization requires one to take unethical or compromised decisions which also take a toll on physical, mental and emotional health of individuals. Unethical behavior has a few consequences, as follows:

Firstly, if a company is unethical, the word spreads fast, and the reputation and goodwill of the company is at stake. Such impact can be of a permanent nature destroying the company's reputation possibly forever.

Secondly, unethical behaviour can also have a detrimental impact on the productivity of a company due to mistrust and lack of faith among the employees.

Thirdly, unethical behavior can, not only cause a company to lose good and valuable employees, but also it can be quite difficult to find new employees.

Moreover, indulgence in unethical behavior shall not only be instrumental in expediting the cost of training of new employees in terms of money, but also loss of valuable time which could be spent in production. Such disruptions or slowing down of production will result in greater customer dissatisfaction and fewer new customers. It is proved that good ethics carries many benefits, and its violations – penalties, and therefore refraining from unethical behavior should be the sine-qua-non consideration for an organization.