



**Paper 6- Laws and Ethics**

## Paper-6: - Laws and Ethics

Full Marks: 100

Time allowed:3 hours

Section A contains Question No.1.All parts of the question are compulsory.

1. Answer all the following question

[1X10=10]

(a)Multiple Choose questions:

- (i) Which of the following is not the discharge by operation of law?  
(A) By merger  
(B) By insolvency  
(C) By breach of contract  
(D) By the unauthorized alternation of items of a written document.
- (ii) Which one of the following is the subject matter of the contract?  
(A) Existing or future goods;  
(B) Goods perishing before making contract;  
(C) Goods perishing before sale but after agreement to sell  
(D) Any of the above
- (iii) The liability on the instrument may be discharged -  
(A) By cancellation  
(B) By release  
(C) By payment  
(D) By any one of the above methods.
- (iv) Intimation of the reconstitution of change in a registered partnership is to be given to the registrar of firms-  
(A) No time limit;  
(B) Within 30 days;  
(C) Within 60 days;  
(D) Within 90 days
- (v) The minimum number of designated partners in an LLP shall-  
(A) 1;  
(B) 2;  
(C) 7;  
(D) 15.
- (vi) Gratuity is payable to an employee  
(A) On his superannuation;  
(B) Retirement  
(C) Retrenchment  
(D) In all the above cases.

# MTP\_Intermediate\_Syl2016\_June,2019\_Paper6\_Set 1

(vii) While filing appeal to EPF Appellate Tribunal the employer has to deposit \_\_\_\_ of the amount due from him.

- (A) 25%
- (B) 50%
- (C) 75%
- (D) None of the above

(viii) Which, among the following, will not be included in the definition of wages?

- (A) Payment made on authorized leave ;
- (B) Travelling allowance;
- (C) Payment made on lock out;
- (D) Payment made for lay off.

(ix) The maximum bonus payable during an accounting year is \_\_\_\_ of the salary.

- (A) 8.33%
- (B) 12%
- (C) 15%
- (D) 20%

(x) The tenure of director appointed by small share holders shall be-

- (A) Up to the date of next AGM
- (B) 1 year
- (C) 3 years
- (D) 5 years

**Answer:**

(i)	(ii)	(iii)	(iv)	(v)	(vi)	(vii)	(viii)	(ix)	(x)
C	D	A	A	B	D	C	B	D	C

**(b) Match and Pair:**

	Column I		Column II
(1)	Presentment	(A)	Determines acceptable conduct in business organization
(2)	Form no. INC-23	(B)	Issue of global depository receipt
(3)	Continuing guarantee	(C)	Bill of exchange
(4)	Business ethics	(D)	Shifting of registered office within the same State
(5)	Section 41 of the Companies Act	(E)	Guarantee which extends to a series of transactions

**Answer:**

1(C)	2(D)	3(E)	4(A)	5(B)
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**(c) State where the following statements are True or False:**

**[1 X 5 = 5]**

- (i) A sleeping partner is not entitled to share profits of the firm.

# MTP\_Intermediate\_Syl2016\_June,2019\_Paper6\_Set 1

- (ii) The seller of the goods is not bound to accept the deliver them until the buyer applies for the delivery.
- (iii) Currency is a bill of exchange.
- (iv) For the purpose of calculation of gratuity 26 days are taken as a month.
- (v) The PF scheme is applicable to the factories in the State of Assam.

**Answer:**

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

**(d) Fill in the blanks:**

**[1 X 5 = 5]**

- (i) The two types of establishments under the Payment of Bonus Act are \_\_\_\_, \_\_\_\_
- (ii) If the Company is not able to allot securities' the application money shall be refunded within \_\_\_\_ days from the date of completion\_\_ days.
- (iii) The company shall maintain a Register of Employee Stock Option in Form No. \_\_\_\_.
- (iv) The maximum age limit of Managing Director is \_\_\_\_ years.
- (v) Continuous improvement or \_\_\_\_ is a popular theme.

**Answer:**

- (d) (i) Establishment in private sector, establishment in public sector
- (ii) 15, 60
- (iii) SH-6
- (iv) 70
- (v) Kaizan

## Section B

**Answer any Five Question [16 X 5 =80]**

2. (a) Does silence amount to fraud? Explain with exception and types of silence amount of fraud. **[9]**
- (b) Differentiate between contract of indemnity and contract of guarantee. **[6]**

**Answer:**

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

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

- (i) When there is a duty to speak.
- (ii) Where silence is equivalent to speech.

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

# MTP\_Intermediate\_Syl2016\_June,2019\_Paper6\_Set 1

**(a) Where there is change in circumstances-** A representation may be true when made but with the passage of time or changed circumstances it may become false. Accordingly, this must be communicated to other party otherwise it amount to fraud.

**(b) When there is half-truth-** Even when a person is not bound to disclose a fact, he may be held guilty of fraud if he volunteers to disclose a state of fact partly. This is so when the undisclosed part renders the disclosed part false.

2(b)

SI No	Contract of Indemnity	Contract of guarantee
1	In this contract there are two parties – the indemnifies and the indemnified	In this contract three parties are involved – principal debtors, surety and creditor
2	The primary liability is on the indemnifier	The principal liability is on the principal debtors. Secondary liability is on the surety.
3	The indemnifier is not acting at the request of the debtor.	The surety gives contract at the request of the principal debtor.
4	The possibility of any loss happening is the only contingency against which the indemnifier undertakes to indemnify.	There is an existing debt for which the surety gives guarantee to the creditor on behalf of the principal debtor.
5	The indemnifier cannot sue the third party in his own, unless there is an assignment.	The surety is entitled to proceed against the principal debtor when he is obliged to perform the guarantee
6	The contract is between the indemnifier and indemnified.	The contract is between the principal debtor-creditor; surety – creditor; principal debtor- surety.

**3(a)** Discus Buyer's remedies against Seller for Breach of Contract.

**[9]**

**(b)** X, by inducing Y, obtains a Bill of Exchange from him fraudulently in his (X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the Bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity, the bill is dishonored. X sues Y for recovery of money. With reference to the provisions of Negotiable Instruments Act, decide whether X will succeed in the case.

**[6]**

**Answer:**

**3(a)** A buyer also has certain remedies against the seller who commits a breach. These are:

**1. Suit for Damages for Non-Delivery [Section 57]-** When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of non-delivery.

**2. Suit for price-** Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.

**3. Suit for specific performance [Section 58]-** When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods. The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare painting, a unique piece of jewellery, etc.

**4. Suit for Breach of Warranty [Section 59]-** Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may,

- (a) set up the breach of warranty in extinction or diminution of the price payable by him, or
- (b) sue the seller for damages for breach of warranty.

**5. Repudiation of contract before the due date [Section 60]**

Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.

**6. Suit for interest**

The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed.

In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

**(b)** Section 58 of Negotiable Instruments Act provides that when an instrument is obtained by fraud, offence or for unlawful consideration, possessor or endorsee cannot receive the amount of instrument. Hence, normally X would not be entitled to sue Y as X has obtained instrument through fraud.

However, as per section 53, a holder who derives title from holder in due course has all rights of a holder in due course. Since X derives his title from Z (who is a holder in due course), X has all rights of Z.

Second part of section 58 also makes it clear that even if a negotiable instrument is obtained by means of an offence or fraud or for unlawful consideration, the possessor or endorsee is entitled to receive the amount from the maker, if he is a holder in due course or claims through a person who was a holder in due course. Hence, X can sue Y as he is deriving his right from Z, who is holder in due course. Hence will succeed.

- 4(a)** Elaborate the procedure for fixing and revising minimum wages **[8]**  
**(b)** Under what circumstances advances and withdrawal made from the PF fund. **[7]**

**Answer:4(a)**

Section 5 (1) provides that In fixing minimum rates of wages in respect of any scheduled employment for the first time under this Act or in revising minimum rates of wages so fixed, the appropriate government shall, either –

appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be; or  
by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected thereby and specify a date not less than two months from the date of the notification on which the proposals will be taken into consideration.

Section 5(2) provides that after considering the advice of the committee or committees all representations received by it before the date specified in the notification, the appropriate government shall by notification in the Official Gazette, fix, or, as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue. Where the appropriate government proposes to revise the minimum rates of wages by the mode specified in clause (b) of sub-section (1) the appropriate government shall consult the Advisory Board also.

In 'T.G. Lakshmaiah Setty & Sons, Adoni V. State of Andhra Pradesh' – 1981 Lab IC 690 it was held that what is contemplated by the Act to be notified under Section 5(1)(b) is no doubt draft proposals. The objection to draft proposals can be made both by employers and employees as well. Thus, if the employees had exercised their privilege to represent and ask for higher wages and if eventually the State authorities had adopted higher rates of minimum wages.

#### **4(b)Withdrawal from the fund**

Withdrawal from the fund is allowed for the following purposes-

- For the purchase of a dwelling house/flat or for the construction of a dwelling house including the acquisition of a suitable site for this purpose;
- For repayment of loans in special cases;
- Withdrawal within one year before the retirement;
- Withdrawal upto 75% of the balance, if not employed from one month or more, subject to approval of P.F. Commissioner or any officer authorised by him. Such withdrawals are not required to be repaid.

#### **Advances from the fund**

Advances from the fund are paid for the following purposes-

- For illness in certain cases;
- For marriages or post matriculation education of children;
- In abnormal conditions such as calamity of exceptional nature such as flood, earthquakes or riots – (non-refundable)
- Granted to members affected by cut in the supply of electricity; (non-refundable)
- Grant of advance to members who are physically handicapped; (non-refundable)

**5(a)** What are the documents to be submitted to Registrar of Companies for incorporation of a company **[8]**

**(b)** Explain the provisions relating to pay commission in connection with the subscription to the securities, by a company **[7]**

**Answer:5(a)** Section 7 of the Companies Act, 2013 provides for the procedure to be followed for the incorporations of a company. The promotor of the company shall submit the following

# MTP\_Intermediate\_Syl2016\_June,2019\_Paper6\_Set 1

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documents to the Registrar of companies within 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, that all the requirements of the Act and rules made there under in respect of registration;

(c) A declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles stating that — (Form No. INC-9)

(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 company under this Act or any previous company law during the last five years and

(3) 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.

**5(b)** Section 40(6) provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed in the Rules.

Rule 13 provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the following conditions:

- the payment of such commission shall be authorized in the company's articles of association;

- the commission may be paid out of proceeds of the issue or the profit of the company or both;

- the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorized by the articles, whichever is less, and in the case of debentures, shall not exceed 2.5% of the price at which the debentures are issued, or as specified in company's articles, whichever is less;

- the prospectus of the company shall disclose the name of the underwriters, the rate and amount of the commission payable to the underwriter and the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally;

- commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;

- a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration

**6(a)** Discuss the provisions of the Companies Act, 2013 regarding disqualifications for appointment of director.

[9]

**(b)** What are the duties of a director in a company?

[6]

**Answer: 6(a)** Section 164 of the Act details the disqualification of a person for the appointment as a Director. A person shall not be eligible for appointment as a Director of a company, if-



# MTP\_Intermediate\_Syl2016\_June,2019\_Paper6\_Set 1

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- (a) he is of unsound mind and stands so declared by a competent court;
- (b) he is an undischarged insolvent;
- (c) he has applied to be adjudicated as an insolvent and his application is pending;
- (d) he has been convicted by a Court of any offence, whether involving moral turpitude or otherwise and sentenced to imprisonment for not less than 6 months and a period of 5 years has not elapsed from the date of expiry of the sentence;
- If a person has been convicted of any offence and sentenced in respect thereof to imprisonment for a period of 7 years or more, he shall not be eligible to be appointed as a director in any company;
- (e) an order disqualifying him for appointment as a director has been passed by the Court or Tribunal and the order is in force;
- (f) he has not paid any calls in respect of any shares of the company held by him, whether alone or jointly with others and six months have elapsed from the last day fixed for the payment of the call;
- (g) he has been convicted of the offence dealing with related party transactions under Section 188 at any time during the last preceding five years; or
- (h) he has not obtain DIN.

A private company may by its articles provide for any disqualifications for appointment as a director in addition to the above disqualifications.

The disqualifications referred under (d), (e) and (g) above shall continue to apply even if the appeal or petition has been filed against the order of conviction or disqualification

**6(b)** Section 166 of the Act prescribes the duties of a director under the provisions of this Act as detailed below:

- A director of a company shall act in accordance with the articles of the company;
- A director of a company shall act in good faith in order to promote the objects of the company for the benefit of its members as a whole, and in the best interests of the company, its employees, the shareholders, the community and for the protection of environment;
- A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment;
- A director shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company;
- A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company;
- A director of a company shall not assign his office and any assignment so made shall be void; if a director of the company contravenes the provisions of Section 166 such director shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

- 7(a)** Describe the seven principles of public life. [10]
- (b)** Explain the provisions relating to exemption given to the employer from the liability in certain cases from payment of gratuity. [5]

**Answer: 7(a)** The British Government appointed a committee called as Committee on Standards in Public Life to advise the Prime Minister on ethical standards of public life. The

# MTP\_Intermediate\_Syl2016\_June,2019\_Paper6\_Set 1

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Committee was established in October 1994. The term of reference to the committee is –

- to examine current concerns about standards of conduct of all holders of public office, including arrangements relating to financial and commercial activities; and
- to make recommendations as to any changes in present arrangements which might be required to ensure the highest standards of propriety in public life.

The Committee submitted its first report in the year 1995 containing the seven principles of public life. The said principles have been amended over year. The seven principles of public life as amended up to and as on 2015 are as follows-

- Selflessness– Holders of public office should act solely in terms of the public interest.
- Integrity - Holders of public office must avoid placing themselves under any obligation to people or organizations that might try inappropriately to influence them in their work. They should not act or take decisions in order to gain financial or other material benefits for themselves, their family, or their friends. They must declare and resolve any interests and relationships.
- Objectivity- Holders of public office must act and take decisions impartially, fairly and on merit, using the best evidence and without discrimination or bias.
- Accountability- Holders of public office are accountable to the public for their decisions and actions and must submit themselves to the scrutiny necessary to ensure this.
- Openness- Holders of public office should act and take decisions in an open and transparent manner. Information should not be withheld from the public unless there are clear and lawful reasons for so doing.
- Honesty- Holders of public office should be truthful
- Leadership -Holders of public office should exhibit these principles in their own behavior. They should actively promote and robustly support the principles and be willing to challenge poor behavior wherever it occurs.

**(b)** Section 10 provides that where an employer is charged with an offence punishable under this Act, he shall be entitled, upon complaint duly made by him and on giving to the complainant not less than three clear days' notice in writing of his intention to do so, to have any other person whom he charges as the actual offender brought before the court at the time appointed for hearing the charge; and if, after the commission of the offence has been proved, the employer proves to the satisfaction of the court-

- that he has used due diligence to enforce the execution of this Act, and
- that the said other person committed the offence in question without his knowledge, consent or connivance, that other person shall be convicted of the offence and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under this Act in respect of such offence;

In seeking to prove as aforesaid, the employer may be examined on oath and his evidence and that of any witness whom he calls in his support shall be subject to cross-examination on behalf of the person he charges as the actual offender and by the prosecutor.

If the person charged as the actual offender by the employer cannot be brought before the court at the time appointed for hearing the charge, the court shall adjourn the hearing from time to time for a period not exceeding three months and if by the end of the said period the person charged as the actual offender cannot still be brought before the court, the court shall proceed to hear the charge against the employer and shall, if the offence be proved, convict the employer.

**8. Write short notes any three of the following :**

**3X5=15**

**(a)** Contingent contract

- (b) Alternation of Share Capital
- (c) Revocation of licence
- (d) Cleanliness of factory:

**Answer:**

**8(a) Contingent contract**

Section 31 under the Indian Contract Act, 1872 defines 'contingent contract' as a contract to do or not to do something, if some event, collateral to such contract, does or does not happen. The following are the essential of contingent contract-

- a) Uncertainty and futurity of the event to which it is related
- b) Uncertain future event must be collateral to the contract

A contingent contract need not necessarily be independent on any external event. It may be conditional on the voluntary act or the future conduct of one of the parties or a third person. Section 32 of the Act provides that contingent contract to do or not to do anything if an uncertain future event happens cannot be enforced by law unless and until that event has happened. If the event becomes impossible, such contracts become void.

**8(b) Alteration of share capital**

Section 61 provides that a limited company having a share capital may, if so authorized by its articles alter its memorandum in its general meeting-

- increase its authorized share capital by such amount as it thinks expedient;
- consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares. No consolidation and division which results in change in the voting percentage of the shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- convert all or any of its fully paid up shares into stock and reconvert that stock into fully paid up shares of any denomination;
- sub division of shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however that in the sub division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. The cancellation shall not be deemed to reduction of share capital.

**8(c) Revocation of licence**

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

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

The Central Government shall direct the company to convert its status and change its name to add the words 'Limited' or 'Private Limited' to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be

given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

**8(d) Cleanliness of factory:**

Section 11 of the Act provides every factory shall be kept clean and free from effluvia arising from any drain, privy or other nuisance, and in particular-

- removal of accumulated dirt and refuse on floors, benches of workroom, stair cases and passages and effective disposal of the same;
- cleaning of the floor of every workroom – once in every week by washing with disinfectant or by some other effective method;
- providing effective drainage for removing water to the extent possible; to ensure that interior walls and roofs etc., are kept clean the following is to be complied with-
- white wash or color wash should be carried out at least once in every period of 14 months;
- where surface has been painted or varnished, repair or revarnish should be carried out once in every five years, if washable then once in every period of six months;
- where they are painted or varnished or where they have smooth impervious surface, it should be cleaned once in every period of 14 months by such method as may be prescribed.
- all doors, windows and other framework which are of wooden or metallic shall be kept painted or varnished at least once in every period of five years; The dates on which such processes are carried out shall be entered in the prescribed register.

