

PAPER – 5 : BUSINESS LAWS AND ETHICS

SUGGESTED ANSWERS

SECTION - A

1.

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

SECTION – B

2. (a)

Quasi contracts are so called because the obligations associated with such transactions could neither be referred as tortuous nor contractual but still recognized by law as enforceable like other contracts.

A quasi contract is a fictitious contract created under legal obligations, similar to a valid contract. These contracts are also known as implied-in-law contracts. What makes this different is that the parties involved do not intend to create a contract. A quasi contract is created by the Court. For the same reason, there is no actual offer or acceptance or an agreement between the parties.

Types of Quasi Contracts:

Sections 68 to 72 of The Indian Contract Act, 1872 deals with five kinds of quasi contracts. These are as under:

- 1) Section 68 - Claim for necessaries supplied to person incapable of contracting, or on his account – This section provides that if a person, incapable of entering into a contract, or anyone whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person;
- 2) Section 69 - Reimbursement of person paying money due by another in payment of which he is interested- This section provides that a person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other.
- 3) Section 70 – Obligation of person enjoying benefit of non-gratuitous act - This section provides that where a person lawfully does anything for another person or delivers anything to him, not intending to do so gratuitously, and such other person enjoys the benefit thereof, the later is bound to make compensation to the former in respect of, or to restore, the thing so done or delivered – it is otherwise called as quantum meruit;
- 4) Section 71 – Responsibility of finder of goods - This section provides that a person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee;

5) Section 72 - Liability of person to whom money is paid or thing delivered by mistake or under coercion - This section provides that a person to whom money has been paid, or anything delivered, by mistake or under coercion, must repay or return it.

2. (b)

The main differences between Contract of Indemnity and Contract of guarantee are mentioned as below:

Sr. No	Contract of Indemnity	Contract of guarantee
1	In this contract there are two parties – (1) the indemnifier and (2) the indemnified	In this contract three parties are involved – (1) principal debtors, (2) surety and (3) creditors
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 debtors.
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.
7	Defined under section 124 of the Indian Contract Act, 1872	Defined under section 126 of the Indian Contract Act, 1872

3. (a)

Right of partners after dissolution

Section 46 provides that on the dissolution of a firm, every partner or his representative is entitled as against all the other partners or their representatives, to have the property of the firm applied in payment of the debts and liabilities of the firm and to have the surplus distributed among the partners or their representatives according to their rights.

Liability of partners after dissolution

Section 45 provides that the liability of the partners will continue for the acts done before the dissolution, even after the dissolution, until public notice is given of the dissolution. The following partner is not liable for the acts after the date on which he ceases to be a partner-

- a deceased partner;
- a partner who is adjudicated as an insolvent;
- a partner, who not having been known to the person, dealing with the firm, to be a person, retires from the firm

In ‘Rajagopala Pillai v. Krishnaswai Chetti’ – 8 Mad LJ 261 it was held that the legal representatives of a deceased partner cannot be validly bound by an acknowledgement made by the surviving partner after dissolution caused by death. Once the partnership is dissolved, even the theory of implied agency disappears. After the jural relationship of partners having been put an end, there can be no question of any partner, acting in any representative capacity, so as to bind the firm.

3. (b)

Difference between Contract of sale and Agreement to sell are as under:

Basis	Contract of sale	Agreement to sell
Transfer of property	The property of the goods passes from the buyer to the seller.	The transfer of property takes place at a future time or subject to certain conditions to be fulfilled.
Type of contract	It is an executed contract.	It is an executory contract.
Type of goods	Sales takes place only for existing and specific goods.	Future and contingent goods.
Risk of loss	If the goods are destroyed, the loss falls on the buyer despite the goods are in the possession of the seller.	If the goods are destroyed, the loss falls on the seller despite the goods are in the possession of the buyer
Breach of contract	The seller can sue the buyer for price and for damages in case of breach by the buyer	The seller can sue for damages only in case of breach by the buyer
General and particular property	It gives buyer to enjoy the goods as against the world at large including the seller	It gives a right to the buyer against the seller to sue for damages
Insolvency of the buyer	In the absence of lien over the goods the seller is to return the goods to the official receiver or assignee. He is entitled to get the dividend declared by the Official receiver which will be at the reduced rate.	The seller is not bound to part with the goods until the price is paid to him.
Insolvency of the seller	The buyer, becoming the owner, is entitled to recover the same from the Official receiver or assignee	The buyer cannot claim the goods but the dividend declared by the Official receiver or assignee.

4. (a)**Time limit for payment of wages (Section -17)**

1. The employer shall pay or cause to be paid wages to the employees, engaged on:
 - a) daily basis, at the end of the shift;
 - b) weekly basis, on the last working day of the week, that is to say, before the weekly holiday;
 - c) fortnightly basis, before the end of the second day after the end of the fortnight;
 - d) monthly basis, before the expiry of the seventh day of the succeeding month.
2. Where an employee has been:
 - a) removed or dismissed from service; or
 - b) retrenched or has resigned from service, or became unemployed due to closure of the establishment, the wages payable to him shall be paid within two working days of his removal, dismissal, retrenchment or, as the case may be, his resignation.
3. Notwithstanding anything contained in sub-section (1) or sub-section (2), the appropriate Government may, provide any other time limit for payment of wages where it considers reasonable having regard to the circumstances under which the wages are to be paid.
4. Nothing contained in sub-section (1) or sub-section (2) shall affect any time limit for payment of wages provided in any other law for the time being in force.

4. (b)

Section 6 of the Payment of Gratuity Act, 1972 provides for filing nomination for receiving the gratuity after the death of the employee. The following are the points to be noted in respect of nomination-

- Each employee, who has completed one year of service, shall make nomination in Form – F;
- He may distribute the amount of gratuity payable to him under this Act amongst more than one nominee;
- If an employee has a family at the time of making a nomination, the nomination shall be made in favor of one or more members of his family, and any nomination made by such employee in favor of a person who is not a member of his family shall be void.;
- If at the time of making a nomination the employee has no family, the nomination may be made in favor of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favor of one or more members of his family;
- A nomination may, subject to above, be modified by an employee at any time, after giving to his employer a written notice in such form and in such manner as may be prescribed, of his intention to do so;
- If a nominee predeceases the employee, the interest of the nominee shall revert to the employee who shall make a fresh nomination, in the prescribed form, in respect of such interest;
- Every nomination, fresh nomination or alteration of nomination, as the case may be, shall be sent by the employee to his employer, who shall keep the same in his safe custody.

Rule 6 (1) provides that a nomination shall be submitted in duplicate by personal service by the employee, after taking proper receipt or by sending through registered post acknowledgement due to the employer,

- in the case of an employee who is already in employment for a year or more on the date of commencement of these rules, ordinarily, within ninety days from such date, and
- in the case of an employee who completes one year of service after the date of commencement of these rules, ordinarily within thirty days of the completion of one year of service.

Nomination in Form ‘F’ shall be accepted by the employer after the specified period, if filed with reasonable grounds for delay, and no nomination so accepted shall be invalid merely because it was filed after the specified period.

5. (a)

Buy back of Shares

Section 68(2) of the Companies Act, 2013 provides that a company shall purchase its own shares or other specified securities if-

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

5. (b)

The following duties and liabilities have been imposed on the directors of companies, by the Indian Companies Act of 2013, under its Section 166: -

- 1 A director of a company shall act in accordance with the Articles of Association of the company.
- 2 A director of the company shall act in good faith, in order to promote the objects of the company, for the benefits of the company as a whole, and in the best interests of the stakeholders of the company.
- 3 A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 4 A director of a company 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.
- 5 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.
- 6 A director of a company shall not assign his office and any assignment so made shall be void.

6. (a)

Every Audit Committee shall act in accordance with the terms of reference specified in writing by the Board which shall, inter alia, include, –

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors' report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

Provided that the Audit Committee may make omnibus approval for related party transactions proposed to be entered into by the company subject to such conditions as may be prescribed; Provided further that in case of transaction, other than transactions referred to in section 188, and where Audit Committee does not approve the transaction, it shall make its recommendations to the Board:

Provided also that in case any transaction involving any amount not exceeding one crore rupees is entered into by a director or officer of the company without obtaining the approval of the Audit Committee and it is not ratified by the Audit Committee within three months from the date of the transaction, such transaction shall be voidable at the option of the Audit Committee and if the transaction is with the related party to any director or is authorized by any other director, the director concerned shall indemnify the company against any loss incurred by it:

Provided also that the provisions of this clause shall not apply to a transaction, other than a transaction referred to in section 188, between a holding company and its wholly owned subsidiary company.

- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) Monitoring the end use of funds raised through public offers and related matters.

6. (b)

The Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:

- a) to make calls on shareholders in respect of money unpaid on their shares;
- b) to authorize buy-back of securities under Section 68;
- c) to issue securities, including debenture, whether in or outside India;
- d) to borrow monies;

- e) to invest the funds of the company;
- f) to grant loans or give guarantee or provide security in respect of loans;
- g) to approve financial statement and the Board's report;
- h) to diversify the business of the company;
- i) to approve amalgamation, merger or reconstruction;
- j) to take over a company or acquire a controlling or substantial stake in another company;
- k) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (d) to (f) on such conditions as it may specify.

7. (a)

There are many kinds of business ethics. These may include personal responsibility, corporate responsibility, loyalty, respect, trustworthiness, fairness, community and environmental responsibility

- 1) **Personal responsibility:** Each person who works for a business, whether on the executive level or the entry-level, will be expected to show personal responsibility. This could mean completing tasks your manager has assigned to you, or simply fulfilling the duties of your job description. If you make a mistake, you acknowledge your fault and do whatever you need to do to fix it.
- 2) **Corporate responsibility:** Businesses have responsibilities to their employees, their clients or customers, and, in some cases, to their board of directors. Some of these may be contractual or legal obligations, others may be promises, for example, to conduct business fairly and to treat people with dignity and respect. Whatever those obligations are, the business has a responsibility to keep them.
- 3) **Loyalty:** Both businesses and their employees are expected to show loyalty. Employees should be loyal to their co-workers, managers, and the company. This might involve speaking positively about the business in public and only addressing personnel or corporate issues in private. Customer or client loyalty is important to a company not only to maintain good business relations but also to attract business through a good reputation.
- 4) **Respect:** Respect is an important business ethic, both in the way the business treats its clients, customers and employees, and also in the way its employees treat one another. When you show respect to someone, that person feels like a valued member of the team or an important customer. You care about their opinions, you keep your promises to them, and you work quickly to resolve any issues they may have.
- 5) **Trustworthiness:** A business cultivates trustworthiness with its clients, customers and employees through honesty, transparency and reliability. Employees should feel they can trust the business to keep to the terms of their employment. Clients and customers should be able to trust the business with their money, data, contractual obligations and confidential information. Being trustworthy encourages people to do business with you and helps you maintain a positive reputation.
- 6) **Fairness:** When a business exercises fairness, it applies the same standards for all employees regardless of rank. The same expectations with regard to honesty, integrity and responsibility placed upon the entry-level employee also apply to the CEO. The business will treat its customers with equal respect, offering the same goods and services to all based on the same terms.
- 7) **Community and Environmental Responsibility:** Not only will businesses act ethically toward their clients, customers and employees, but also with regard to the community and the environment. Many companies look for ways to give back to their communities through volunteer work or financial investments. They will also adopt measures to reduce waste and promote a safe and healthy environment.

7. (b)

Emotional intelligence is commonly defined by four attributes:

1. **Self-management** – You're able to control impulsive feelings and behaviors, manage your emotions in healthy ways, take initiative, follow through on commitments, and adapt to changing circumstances.
2. **Self-awareness** – You recognize your own emotions and how they affect your thoughts and behavior. You know your strengths and weaknesses, and have self-confidence.
3. **Social awareness** – You have empathy. You can understand the emotions, needs, and concerns of other people, pick up on emotional cues, feel comfortable socially, and recognize the power dynamics in a group or organization.
4. **Relationship management** – You know how to develop and maintain good relationships, communicate clearly, inspire and influence others, work well in a team, and manage conflict.

Importance of emotional intelligence:

As we know, it's not the smartest people who are the most successful or the most fulfilled in life. You probably know people who are academically brilliant and yet are socially inept and unsuccessful at work or in their personal relationships. Intellectual ability or your intelligence quotient (IQ) isn't enough on its own to achieve success in life. Yes, your IQ can help you get into college, but it's your EQ that will help you manage the stress and emotions when facing your final exams. IQ and EQ exist in tandem and are most effective when they build off one another.

8. (a)

Section 156 of the Indian Contract Act, 1872 provides that if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods and the goods can be separated or divided, the property in the goods remains in the parties, respectively, but the bailee is bound to bear the expenses of separation or division, and any damage arising from the mixture.

In the present case it is observed that Mr. Y, bailee, mixed all 100 bales of cotton marked with particular mark with other bales of his own, bearing a different mark. Now, the bailor, Mr. X, demands for the return of at least 50 bales of cotton. But Mr. Y demands labour charges from Mr. X for separating the cotton bales which were mixed in the warehouse.

As per the provision of the Indian Contract Act, 1872, Mr. X is entitled to have all his 100 bales returned, and Mr. Y is bound to bear all the expenses incurred in the separation of the cotton bales and also any other incidental damage.

Therefore, Mr. Y will have to return 50 bales of cotton at his own cost for separating the cotton bales.

8. (b)

A director may resign from his office by giving a notice in writing to the company as per Section 168 (1) of the Companies Act, 2013. On receipt of such notice, the Board shall take note of the same and the company shall intimate the Registrar in such manner, within such time and in such form as may be prescribed and shall also place the fact of such resignation in the report of directors laid in the immediately following general meeting by the company.

The resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later.

In the present case, resignation of Mr. Dilip Kumar, a director of ABC Co, may be accepted and it cannot be rejected on mere the ground that the copy of the letter has not been forwarded to the Registrar, It was held in Saumil Dilip Mehta vs. State of Maharashtra [2002], that a director can resign just by sending in writing a letter informing either chairman or secretary of company, his intention to resign from post of director of said company. He can tender his resignation unilaterally and without sending a notice to Registrar of Companies.

Therefore, the resignation letter of Mr. Dilip Kumar may be accepted with effect from 25.04.2023 i.e. the date of receiving the intimation of the resignation of the director by the Chairman and not with effect from the date of sending the resignation letter.