

PAPER 6 – LAWS AND ETHICS

SUGGESTED ANSWERS

SECTION – A

1. (a)

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

1. (b)

- 1 E
- 2 A
- 3 B
- 4 C
- 5 D

1. (c)

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

1. (d)

- (i) Novation of Contract
- (ii) Depository receipt
- (iii) Voting Rights
- (iv) 4 Years
- (v) Profitability

SECTION – B

2. (a)

The general rule of the Indian Contracts Act, 1872 states that:

- (i) Only the principal can enforce and can be held liable on a contract entered into by an agent.
- (ii) The agent is not personally liable on a contract entered into by him on behalf of the principal.

The following are the exceptions to the above rule:

1. Foreign Principal: When agent acts for sale or purchase of goods for a principal resident abroad i.e., foreign principal.
2. Personal liability by agreement: Where it is expressly provided in the contract that the agent shall be personally liable.
3. Undisclosed principal: Where agent does not disclose the name/identity of the principal.
4. Principal cannot be sued: Where the principal is disclosed but cannot be sued, e.g., foreign sovereigns, ambassadors etc.
5. Non-existence of Principal: When the principal is not in existence at the time when the act was done, i.e., the agent acted for a non-existent principal.
6. Agent's liability: When the agent exceeds his authority or commits a breach of warranty of authority.
7. Pretended Agent: When he acts as a pretended agent.
8. Mistake or Fraud: When he receives or pays money by mistake or fraud.
9. Agent sign an agreement without mentioning that he is an agent: Where an agent signs a negotiable instrument without mentioning that he is signing as an agent.
10. Trade or customs: Where the usage of trade or custom makes an agent personally liable.

2. (b)

Section 223 of the Indian Contract Act, 1872 provides that: where one person employs another person to do an act and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act.

In this case Mr. X instructed to Mr. Y to sale a property under his possession at ₹ 5 lacs and Mr. Y sold the said property at the same price in good faith. The employer i.e. Mr. X is liable to indemnify the agent Mr. Y against the consequences of the sale though it causes an injury to the rights of third person i.e. Mr. Z. Thus, Mr. X is liable to Mr. Y for such damages, costs etc.

Accordingly Mr. Y may recover the sum of sale proceeds and other relevant costs and expenses, if any.

3. (a)

- 1 **Sec 13 of the LLP Act** states that a Limited Liability Partnership may change the place of its registered office and file the notice of such change with the Registrar in form 15 within 30 days.
- 2 Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement.
- 3 If the agreement is silent then consent of all partners shall be required for changing the place of registered office of Limited Liability Partnership to another place,
- 4 where the change in place of registered office is from one State to another State, the Limited Liability Partnership having secured creditors shall also obtain consent of such secured creditors.
- 5 Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered

office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office.

- 6 However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the Limited Liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office.
- 7 With a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted.
- 8 Failure to comply with the provision of this section the Limited Liability Partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty-five thousand rupees.

3. (b)

Capacity to incur liability as a party to a negotiable instrument is co-extensive with capacity to contract. According to Section 26 of the Negotiable Instruments Act, 1881, every person capable of contracting according to law to which he is subject, may bind himself and be bound by making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. Negatively, minors, lunatics, idiots, drunken person and persons otherwise disqualified by their personal law, do not incur any liability as parties to negotiable instruments.

But in capacity of one or more of the parties to a negotiable instrument in no way, diminishes the liabilities of the competent parties to the said instrument. Therefore, where a minor is the endorser or payee of an instrument which has been endorsed all the parties excepting the minor are liable in the event of its dishonor.

In the given case Vikas can recover the amount of cheque from Vinit who delivers the cheque in favour of Pankaj, a minor by resorting to the provisions of the Negotiable Instruments Act, 1881.

4. (a)

Section 25A of Payment of Wages Act, 1936 provides that subject to the other provisions of the Act all amounts payable to an employed person as wages shall if such amounts could not or cannot be paid on account of his death before payment or on account of his whereabouts not being known –

- a) be paid to the person nominated by him in this behalf in accordance with the rules made under this Act; or
- b) where no such nomination has been made or where for any reasons such amounts cannot be paid to the person so nominated, be deposited with the prescribed authority who shall deal with the amounts so deposited in such manner as may be prescribed.

Where, in accordance with the provisions of sub-section (1), all amounts payable to an employed person as wages –

- a) are paid by the employer to the person nominated by the employed person; or
- b) are deposited by the employer with the prescribed authority, the employer shall be discharged of his liability to pay those wages.

4. (b)

The National Pension System have the following basic features:—

- 1) every subscriber shall have an individual pension account under the National Pension System;
- 2) withdrawals, not exceeding twenty-five per cent of the contribution made by the subscriber, may be permitted from the individual pension account subject to the conditions, such as purpose, frequency and limits, as may be specified by the regulations;
- 3) the functions of recordkeeping, accounting and switching of options by the subscriber shall be effected by the central recordkeeping agency;

- 4) there shall be a choice of multiple pension funds and multiple schemes: Provided that—
 - the subscriber shall have an option of investing up to hundred per cent of his funds in Government Securities; and
 - the subscriber, seeking minimum assured returns, shall have an option to invest his funds in such schemes providing minimum assured returns as may be notified by the Authority;
- 5) there shall be portability of individual pension accounts in case of change of employment;
- 6) collection and transmission of contributions and instructions shall be through points of presence to the central recordkeeping agency;
- 7) there shall not be any implicit or explicit assurance of benefits except market-based guarantee mechanism to be purchased by the subscriber;
- 8) a subscriber shall not exit from the National Pension System except as may be specified by the regulations; and
- 9) at exit, the subscriber shall purchase an annuity from a life insurance company in accordance with the regulations.

5. (a)

Section 92 of the Companies Act, 2013 requires a company to file Annual Return. This section provides that every company shall prepare an 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.

- 1 the register office of the company, its principal business activities, particulars of its holding, subsidiary and associate companies;
- 2 its shares, debentures and other securities and shareholding pattern;
- 3 its indebtedness;
- 4 its members and debenture holders along with changes therein since the close of the previous financial year;
- 5 its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- 6 meetings of members or a class thereof, Board and its various committees along with attendance details;
- 7 remuneration paid to Directors and Key Managerial Personnel;
- 8 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;
- 9 matters relating to certification of companies, disclosures as may be prescribed;
- 10 details in respect of shares held by or on behalf of the Foreign Institutional Investors; and
- 11 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.

5. (b)

Section 40(6) of the Companies Act, 2013 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 Rule.

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:

- 1 the payment of such commission shall be authorized in the company's articles of association;
- 2 the commission may be paid out of proceeds of the issue or the profit of the company or both;
- 3 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;
- 4 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;
- 5 commission shall not be paid to any underwriter on securities which are not offered to the public for subscription;
- 6 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)

Section 179 of the Companies Act, 2013 deals with the powers of the board; all powers to do such acts and things for which the company is authorized is vested with board of directors. But the board can act or do the things for which powers are vested with them and not with general meeting.

The following, section 179(3) read with Rule 8 of Companies (Management & Administration) Rules, 2014 powers of the Board of directors shall be exercised only by means of resolutions passed at meetings of the Board, namely :-

- (1) to make calls on shareholders in respect of money unpaid on their shares;
- (2) to authorise buy-back of securities under section 68;
- (3) to issue securities, including debentures, whether in or outside India;
- (4) to borrow monies;
- (5) to invest the funds of the company;
- (6) to grant loans or give guarantee or provide security in respect of loans;
- (7) to approve financial statement and the Board's report;
- (8) to diversify the business of the company;
- (9) to approve amalgamation, merger or reconstruction;
- (10) to take over a company or acquire a controlling or substantial stake in another company;
- (11) to make political contributions;
- (12) to appoint or remove key managerial personnel (KMP);
- (13) to appoint internal auditors and secretarial auditor;

The Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any other 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 (4) to (6) above on such conditions as it may specify.

The banking company is not covered under the purview of this section. The company may impose restriction and conditions on the powers of the Board.

6. (b)

Re-appointment of Director

1. A director liable to be retired may be re-appointed in the general meeting.

Section 164(2) of the Companies Act 2013, provides that no person who is or has been a director of a company which-

2. has not filed financial statements or annual returns for any continuous period of 3 financial years; or
3. has failed to repay the deposits accepted by it or pay interest thereon or to redeem any debentures on the due date or pay interest due thereon or
4. has failed to pay any dividend declared and such failure to pay or redeem continues for one year or more or
5. shall be eligible to be re-appointed as a director of that company or appointed in other company for a period of 5 years from the date on which the said company fails to do so.

7. (a)

Some of the major reasons why a good understanding of business ethics is important can be stated as follows:-

1. **Stop business malpractices:** Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help, to stop these business malpractices.
2. **Improve customers' confidence:** Business ethics are needed to improve the customers' confidence about the quality, quantity, price, – etc, of the products. The customers have more trust and confidence in the businessmen who follow ethical rules, they feel that such businessmen will not cheat them.
3. **Survival of business:** Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman, he will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.
4. **Safeguarding consumer's rights:** Consumer sovereignty cannot be either ruled out or denied. Business can survive so long as it enjoys the patronage of consumer. The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard right to redress, etc. But many businessmen do not respect and protect these rights. Business ethics are must to safeguard these rights of the consumers.
5. **Protecting employees and shareholders:** Business ethics are required to protect the interest of and image for the business and businessmen. If the businessmen follow all ethical rules, then he will be fully accepted and not criticised by the society. The society will always support the businessmen who follow the necessary code of conduct.
6. **Develops good relations:** Business ethics are important to develop good and friendly relations between business and society. This will result in a supply of good quality goods and service at low prices to the society. It will also result in profits for the businesses thereby resulting in growth of economy.

7. **Creates good image:** Business ethics create a good image for the business and businessmen. If the businessman follows all ethical rules, then they will be fully accepted and not criticized by the society. The society will always support those businessmen who follow this necessary code of conduct.
8. **Smooth functioning:** If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. So they will give full cooperation to the business. This will result in smooth functioning of the business. So, the business will grow, expand and diversify easily and quickly. It will have more sales and more profits.
9. **Consumer movement:** Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for a ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organised. Now they are more organised and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high-priced and counterfeit (duplicate) goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forums and Consumer Associations are more active and vocal now.
10. **Consumer satisfaction:** Today, the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction. If the consumer is not satisfied, then there will be no sales and thus no profits too. Consumer will be satisfied only if the business follows all the business ethics, and hence are highly needed.
11. **Importance of labour:** Labour, i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions. There must be good relations between employer and employees. The employees must also be given proper welfare facilities.
12. **Healthy competition:** The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency, breaks complacency and leads to optimal utilization of scarce resources, hence is always welcome. They must not do cut-throat competition. Similarly, they must give equal opportunities to small-scale business. They must avoid monopoly. This is because a monopoly is harmful to the consumers.

7. (b)

All the two units shall be treated as two separate establishments since all the two units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment;
- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Payment of Bonus Act, 1965, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the two units taken together.

8. (a)

Invalid guarantee:

As per the **Indian Contract Act, 1872** the following are considered as invalid guarantee:-

- Guarantee obtained by misrepresentation – Section 142 of the Indian Contract Act, 1872 provides that any guarantee which has been obtained by means of misrepresentation made by the creditor or with his knowledge and assent, concerning a material part of the transaction is invalid;
- Guarantee obtained by concealment – Section 143 of the Indian Contract Act, 1872 provides that any guarantee without the creditor has obtained by means of keeping silence as to a material circumstance is invalid.

8. (b)

Dissent to variation of rights Section 48 (2) of the Companies Act 2013, provides that if the holders of not less than 10% of the issued shares of a 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. Such application shall be filed before the Tribunal within 21 days from the date on which the consent was given or the resolution was passed. Such application may be made on behalf of all the shareholders who dissented by such one or more of their number as they may appoint in writing for the purpose. If an application is made before the Tribunal the variation shall not be effected until it is confirmed by the Tribunal.

Section 48 (3) provides that the decision of the Tribunal shall be binding on the shareholders. The company shall file a copy of the order of the Tribunal with the Registrar of the Company within 30 days from the date of the order.

8. (c)

Common unethical practices by executives of a corporate

- (i) Corruption - financial/non-financial
- (ii) Greed for profit/turnover
- (iii) Accommodating a group, may be employees, vendors, customers.
- (iv) Leak of knowledge
- (v) Leak of professionalism
- (vi) External pressure
- (vii) Ego and dominance of top management ignoring right things

8. (d)

Productivity Linked Bonus

Section 31A of Payment of Bonus Act, 1965, provides that-

- where an agreement or a settlement has been entered into by the employee with their employer before the commencement of the Payment of Bonus (Amendment) Act, 1976 or
- where the employees enter into any agreement or settlement with their employer after such commencement, for payment of annual bonus linked with production or productivity in lieu of bonus based on profits payable then such employees shall be entitled to receive bonus due to them under such agreement or settlement.
- Any such agreement or settlement whereby the employees relinquish their right to receive the minimum bonus shall be null and void in so far as it purports to deprive them of such right. Such employees shall not be entitled to be paid in excess of 20% of the salary or wage earned by them during the relevant accounting year.