PAPER-5: BUSINESS LAWS AND ETHICS
SUGGESTED ANSWERS
SECTION-A

1.

(i)	(C)
(ii)	(C)
(iii)	(D)
(iv)	(A)
(v)	(B)
(vi)	(B)
(vii)	(B)
(viii)	(A)
(ix)	(D)
(x)	(D)
(xi)	(C)
(xii)	(B)
(xiii)	(B)
(xiv)	(B)
(xv)	(A)

SECTION- B

2. (a)

E-contracts are paperless contracts and are in electronic form. It is the change of technology and legal requirements lead to the contract to be in electronic form. E-contract is a contract modelled, specified, executed and deployed by a software system. They are conceptually very similar to traditional commercial contracts. E-contract also requires the basic elements of a contract.

The following are ingredients of the E-contracts-

- An offer is to be made;
- Offer is to be accepted;
- There shall be a lawful consideration;
- There shall be an intention to create legal relations;
- The parties must be competent to contract;
- There must be free and genuine consent;
- The object of the contract must be lawful;
- There must be certainty and possibility of performance.

The main features of this type of E- contract is speed, accuracy and reliability. The parties to the contract have to obtain digital signature from the competent authority and they have to affix the digital signature instead of manual signing. The Information Technology Act, 2000 regulates such E-contracts.

In this type of contract, the web site of the offeror acts as a display to the world at large. E-mails are used to negotiate and agree on contract terms and to send and agree to the final contract. An email contract is enforceable if the requirements of the contract are fulfilled. Electronically signed contracts cannot be denied because they are in electronic form and delivered electronically.

2. (b)

Discharge of liability of surety

The liability of the surety is discharged under the following circumstances-

- By giving notice to the creditor – Section 130 of Indian Contract Act, 1872;
- By the death of the surety – Section 131 of Indian Contract Act, 1872;
- By variance in terms of contract – Section 133 of Indian Contract Act, 1872;
- By release or discharge of principal debtor – Section 134 of Indian Contract Act, 1872;

- When creditor compounds with the principal debtor by giving time to, or agrees not to sue principal debtor – Section 135 of Indian Contract Act, 1872;
- By creditor' act or omission impairing surety's eventual remedy – Section 139 of Indian Contract Act, 1872;

However, in the following circumstances the liability of the surety is not considered to be discharged-

- Where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged --Section 136 of Indian Contract Act, 1872;
- Mere forbearance on the part of the creditor to sue the principal debtor or to enforce the other remedy against him, does not, in the absence of any provision in the guarantee to the contrary, discharge the surety --Section 137 of Indian Contract Act, 1872;

Example: B owes to C a debt guaranteed by A. The debt becomes payable. C does not sue B for a year after the debt has become payable. A is not discharged from his surety ship.

3. (a)

Appointment of auditor of LLP:

A Chartered Accountant in practice is qualified for appointment as an auditor of LLP. The auditor(s) shall be appointed for each financial year of the LLP to audit its accounts. The designated partners may appoint an auditor(s)-

- At any time for the first financial year but before the end of the first financial year;
- At least 30 days prior to the end of each financial year (other than the first financial year);
- to fill a casual vacancy in the office of auditor, including in the case when the turnover or contribution of LLP exceeds the limits; or
- to fill up the vacancy caused by the removal of an auditor.

If the designated partners have failed to appoint auditor(s), the partners may appoint an auditor or auditors. An auditor appointed shall hold office in accordance with the terms of his or their appointment and shall continue to hold such office till the period-

- the new auditors are appointed or
- they are re-appointed.

Rule 24(14) provides that where no auditor has been appointed, any auditor in office shall be deemed to be re-appointed unless-

- the LLP agreement requires actual reappointment; or
- the majority of partners have determined that he should be reappointed and have given notice to this effect to the LLP.

A notice may be in hardcopy or electronic form and must be authenticated by the person or persons giving it. The above shall be applicable to removal and resignation of auditors.

The remuneration of an auditor may be fixed by the designated partners or in accordance with the procedure laid down in the LLP agreement.

3. (b)

Types of instruments

There are various types of instruments mentioned in this Act which are as follows:

- **Inland instrument** – a promissory note, bill of exchange or cheque drawn or made in India and made payable in, or drawn upon any person resident in, India shall be deemed to be an inland instrument.
- **Foreign instrument** – a promissory note, bill of exchange or cheque not drawn, made or made payable, in India, shall be deemed to be a foreign instrument.
- **Ambiguous instrument** – where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election, treat it as either promissory note or bill of exchange and the instrument shall be treated accordingly.

- **Instruments payable on demand** – A promissory note or bill of exchange, in which no time for payment is specified, and a cheque, are payable on demand.
- **Inchoate stamped instruments** – Where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments for the time being in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamp. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same, to any holder in due course for such amount provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the mount intended by him to be paid there under.

4. (a)

Section 45 of the Code on Wages 2019 deals with claims under Code and procedure thereof

1. The appropriate Government may, by notification, appoint one or more authorities, not below the rank of a Gazetted Officer, to hear and determine the claims which arise under the provisions of this Code.

2. The authority appointed under sub-section (1), while deciding the claim under that sub-section, may order, having regard to the circumstances under which the claim arises, the payment of compensation in addition to the claim determined, which may extend to ten times of the claim determined and endeavour shall be made by the authority to decide the claim within a period of three months.

3. If an employer fails to pay the claim determined and compensation ordered to be paid under sub-section (2), the authority shall issue a certificate of recovery to the Collector or District Magistrate of the district where the establishment is located who shall recover the same as arrears of land revenue and remit the same to the authority for payment to the concerned employee.

4. Any application before the authority for claim referred to in sub-section (1) may be filed by:
   a) the employee concerned; or
   b) any Trade Union registered under the Trade Unions Act, 1926 of which the employee is a member; or
   c) the Inspector-cum-Facilitator.

5. Subject to such rules as may be made, a single application may be filed under this section on behalf or in respect of any number of employees employed in an establishment.

6. The application under sub-section (4) may be filed within a period of three years from the date on which claims referred to in sub-section (1) arises: Provided that the authority referred to in sub-section (1) may, entertain the application after three years on sufficient cause being shown by the applicant for such delay.

7. The authority appointed under sub-section (1) and the appellate authority appointed under sub-section (1) of section 49, shall have all the powers of a civil court under the Code of Civil Procedure, 1908, for the purpose of taking evidence and of enforcing the attendance of witnesses and compelling the production of documents, and every such authority or appellate authority shall be deemed to be a civil court for all the purposes of section 195 of the Act and Chapter XXVI of the Code of Criminal Procedure, 1973.

4. (b)

Section 4(1) provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years:

- ✓ on his superannuation, or
- ✓ on his retirement; or
- ✓ resignation, or
- ✓ on his death or disablement due to accident or disease;

The completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement. In the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to the heirs.

Section 4(2) provides that for every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days' wages based on the rate of wages last drawn by the employee concerned. In the case of piece-rated employee, daily wages shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account.

In the case of an employee employed in a seasonal establishment, the employer shall pay the gratuity at the rate of seven days' wages for each season.

Section 4(3) provides that the amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.
Ministry of Labour & Employment vide Notification No. S.O. 1420(E) dated 29th March 2018 has notified that the amount of gratuity payable to an employee under the Act shall not exceed ₹ 20 lakhs.

The Department of Pension & Pensioners' Welfare, after due consultation with stakeholders, issued instructions vide OM No. 28/03/2024-P&PW (B)/Gratuity/9559 dated 30.05.2024, enhancing the maximum limit of Retirement Gratuity and Death Gratuity to ₹ 25 lakhs under the CCS (Pension) Rules, 2021 and the CCS (Payment of Gratuity under NPS) Rules, 2021. This enhancement will be effective from 1st January 2024.

Section 4(5) provides that nothing in this section shall affect the right of an employee to receive better terms of gratuity under any award or agreement or contract with the employer.

Amount of gratuity payable
Gratuity is calculated on the basis of the continuous service rendered by the employee, for every completed year of service or part in excess of six months at the rate of fifteen days wages last drawn. The maximum amount of gratuity allowed under the Act is ₹ 25 lakhs with effect from 1-1-2024.

Formula for calculation of gratuity = Last wage drawn × 15/26 × completed years of service
In calculation of gratuity one month is taken as 26 days.

5. (a)
Lifting of the corporate veil
The separate personality of a company is a statutory privilege, and it must be used for legitimate business purposes only. Where a fraudulent and dishonest use is made of the legal entity, the individuals concerned will not be allowed to take shelter behind the corporate personality. The court will break through the corporate shell and apply the principle/ doctrine of what is called as "lifting of or piercing the corporate veil". The court will look behind the corporate entity and take action as though no entity separates from the member existed and make the members or the controlling persons liable for debts and obligations of the company.

In the following circumstances, different courts found it necessary to lift the corporate veil and punish the actual persons who did wrong or unlawful acts under the name of the company.

Protection of Revenue	The court may ignore the Separate Legal Entity status of a company, where it is used for tax invasion or circumventing tax obligation.
Determination of enemy character of the company	Company being an artificial person cannot be enemy or friend. But during war, it may become necessary to lift the corporate veil and see the persons behind it to determine whether they are friends or enemy.
Prevention of fraud	Where a company is used for committing frauds or improper conduct, the court may lift the corporate veil and look at the realities of the situation.

Protection of public policy	The court shall lift the corporate veil without any hesitation to protect the public policy and prevent transaction opposed to public policy.
Company mere sham or cloak	Where the company is a mere sham and was really a ploy used for committing illegalities and to defraud people, the court shall lift the corporate veil.
Where a Company acts as an agent of its shareholders	If there is an arrangement between the shareholders and a company to the effect that the company will act as an agent of shareholders for the purpose of carrying on the business, the business is essentially of that of the shareholders and will have unlimited liability
Avoidance of welfare legislation	Where a company tries to avoid its legal obligations, the corporate veil shall be lifted to look at the real picture.
To punish for contempt of court	Company being an artificial person cannot disobey the orders of the court. Therefore, the person at fault should be identified.

5. (b)

Director's Remuneration:

The remuneration payable to the directors of a company, including any managing or whole-time director, shall be determined, in accordance with the provisions of Companies Act either by the articles of the company, or by a resolution (special resolution if the articles so require), passed by the company in general meeting and the remuneration payable to any such director determined as per the said provisions shall be inclusive of the remuneration payable to such director for services rendered by him in any other capacity.

Section 197 lays down the overall maximum of managerial remuneration which can be paid by public company or a subsidiary of a public company. The total managerial remuneration payable to directors or manager in respect of the financial year shall not exceed eleven per cent of the net profits of the company. But sometimes a company may make no or inadequate profits in a financial year. This does not mean that its directors shall remain unpaid. In such a case, the company may, with the previous approval of the Central Government, pay by way of minimum remuneration any sum as may be authorized.

It may be noted that the remuneration of directors can be determined only by the articles of a company or a resolution of the general body or a special resolution if the articles so require. The directors cannot themselves fix the remuneration of all or any one of themselves. A managing or whole-time director may be paid either on a monthly basis or a specified percentage of the net profits of the company or partly by one way and partly by the other. But a managing director or whole-time director is not entitled to draw more than five per cent or where there is more than one such director, ten per cent of net profits by way of remuneration, except subject to conditions specified in Schedule V or with the approval of the Central Government.

As per Section 2(78) of the companies Act, 2013 'Remuneration' defined as any money or its equivalent given or passed to any person for services rendered by him and includes perquisites as defined under income tax Act, 1961. As per Section 197 of the Act, the total managerial remuneration payable by a public company, to its directors, including managing director, whole time director and its manager, in respect of any financial year shall not exceed 11% of the net profits of that company. Accordingly, a public company can pay remuneration to its directors including executive directors and non-executive directors within the limits of 11% of the net profits and this limit can only be exceeded with the prior approval of the members of the company by an ordinary resolution. The remuneration payable to a director shall be inclusive of the remuneration payable to him for the services rendered by him in any other capacity. So, even if a director is paid remuneration for special services apart from directorial services, such amount must also be included in the total remuneration in order to ascertain the limits of 11% of net profits as prescribed under Section 197(1) of the Act. However, the only exception is when remuneration paid for professional services rendered by a director to the company without any limit is not included in the limit, if the following two conditions are satisfied: The services rendered are of a professional nature and; In the opinion of the Nomination and Remuneration Committee the director possesses the requisite qualification for the practice of the profession.

If the company does not require to have such a committee under section 178, the board can form this opinion.

6. (a)

Section 134 of the Companies Act, 2013 lays down provisions relating to Board's report, Directors Report, Financial Statement, Board's Report, etc.

It says that the financial statement, including consolidated financial statement shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

To this board's report, the auditors' report would be attached to every financial statement whereby the contents would include: a report by its Board of Directors, which shall include: the web address, number of meetings of the Board; Directors' Responsibility Statement; details in respect of frauds reported by auditors under subsection (12) of section 143 other than those which are reportable to the Central Government; a statement on declaration given by independent directors under sub-section (6) of section 149; in case of a company covered under sub-section (1) of section 178, company's policy on directors' appointment and remuneration including criteria for determining qualifications, positive attributes, independence of a director and other matters provided under sub-section (3) of section 178; explanations or comments by the Board on every qualification, reservation or adverse remark or disclaimer made by the auditor in his report; and by the company secretary in practice in his secretarial audit report; particulars of loans, guarantees or investments under section 186; particulars of contracts or arrangements with related parties referred to in sub-section (1) of section 188 in the prescribed form; the state of the company's affairs; the amounts, if any, which it proposes to carry to any reserves; the amount, if any, which it recommends should be paid by way of dividend; material changes and commitments, if any, affecting the financial position of the company which have occurred between the end of the financial year of the company to which the financial statements relate and the date of the report; the conservation of energy, technology absorption, foreign exchange earnings and outgo, in such manner as may be prescribed; a statement indicating development and implementation of a risk management policy for the company including identification therein of elements of risk, if any, which in the opinion of the Board may threaten the existence of the company; the details about the policy developed and implemented by the company on corporate social responsibility initiatives taken during the year; in case of a listed company and every other public company having such paid-up share capital as may be prescribed, a statement indicating the manner in which formal annual evaluation of the performance of the Board, its Committees and of individual directors has been made, among other things.

6. (b)

Cancellation or Surrender or Deactivation of DIN

The Central Government or any officer authorised may, upon being satisfied on verification of particulars or documentary proof attached with the application received for cancellation, surrender or deactivation of the DIN.

1) the DIN is found to be duplicated
2) the DIN was obtained in a wrongful manner or by fraudulent means
3) of the death of the concerned individual.
4) the concerned individual has been declared as a person of unsound mind by a competent Court.
5) if the concerned individual has been adjudicated an insolvent.
6) on an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN.

7(a)

Relationship between ethics and law:

Laws and ethics both serve similar purposes of guiding human conduct to make it conducive to civilized social existence. They enforce a sense of right and wrong. Laws refer to the set of codified norms which are enforced by the state. They act as external obligations. On the other hand, ethics refer to the set of norms which guide our internal compass and judgements.

While laws apply uniformly to all, ethics can vary from person to person, and they change more frequently than laws. In case of a breach of law, the state is within its right to punish. Hence, they work as a medium of retributive justice. On the other hand, ethics are generally not enforceable.

The relationship between laws and ethics is a complex one. Many laws are representative of ethics of the time and have been shaped by what is considered ethical. The idea that everyone is equal before law is derived from the value that human is born equal. At the same time, laws have shaped ethics. They have been used to counter regressive doctrines.

From the above we can say that laws alone are not enough to promote ethical behaviour. Laws can never be so exhaustive to cover each and every scenario possible. Hence, there will always be scope for discretion. In such scenarios, ethical behaviour should come from within.

There are many scenarios where laws cannot exist, as we cannot have strict laws to scrutinize every small act of corruption. Even with laws, some unethical practices continue to exist such as violence against women. Laws and ethics are equally important and go hand in hand.

7. (b)
Kinds of business ethics:
There are many kinds of business ethics. These are:

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.

8.(a)

Cheque payable to order **[Section 85 of the Negotiable Instruments Act, 1881]**

(1) Where a cheque payable to order purports to be endorsed by or on behalf of the payee, the drawee is discharged by payment in due course.

(2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any endorsement whether in full or in blank appearing thereon, and notwithstanding that any such endorsement purports to restrict or exclude further negotiation.

As per the given facts, cheque is drawn payable to "Mr. Y or order". It was lost and Mr. Y was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Z, who encashed the cheque from the drawee bank. After few days, Mr. Y intimated about the theft of the cheque, to the drawee bank, by which time, the drawee bank had already made the payment.

According to above stated section 85 of the Act, the drawee banker is discharged when it has made a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature of Mr. Y is forged, the banker is protected and is discharged. The true owner, Mr. Y, cannot recover the money from the drawee bank in this situation.

8. (b)

As per Section 169 of CompaniesAct,2013, shareholders have been given the inherent right to remove the directors appointed by them. Directors can be either removed by shareholders or by Tribunal. It is not necessary that there should be proof of mismanagement, breach of trust, misfeasance or other misconduct on the part of the directors. Special notice shall be required of any resolution to remove a director under this section, or to appoint somebody in place of a director so removed, at the meeting at which he is removed.

Where the shareholders feel the policies pursued by the directors or any of them are not to their liking, they have the option to remove the directors by passing an ordinary resolution in the same way as they have the right to appoint directors by passing an ordinary resolution.

Therefore, the removal of Mr. A is legally permissible and valid.

The vacancy is created under this situation after the removal of Mr. A and in the same meeting Mr. B is being appointed for the time being. The newly appointed director, Mr. B, has to hold the post until the duration up to the new formal appointment of the director is made. Thus, appointment of Mr. B is also valid and as per law.