

INTERMEDIATE EXAMINATION

June 2023

P-5(BLE)

Syllabus 2022

BUSINESS LAWS AND ETHICS

Time Allowed: 3 hours

Full Marks: 100

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

Wherever considered necessary, suitable assumptions may be made and clearly indicated in the answer.

Answer Question No. 1 and any five from Question No. 2, 3, 4, 5, 6, 7 and 8.

Section-A

1. (a) Multiple Choice Questions:

1×12=12

- (i) Which one of the following is not the feature of 'agreement to sale'?
- (a) It gives a right to the buyer against the seller to sue for damages.
 - (b) The seller can sue for damages only in case of breach by the buyer.
 - (c) Sales takes place for existing and specific goods.
 - (d) It is an executor contract.
- (ii) The liability of surety arises only when the principal debtor fails to pay the debt to
- (a) solicitor
 - (b) creditor
 - (c) visitor
 - (d) collector
- (iii) The mutual rights and duties of the partners of a firm may be determined by
- (a) partner's will.
 - (b) the court of law.
 - (c) contract entered between the partners.
 - (d) the senior partner in the firm.
- (iv) Holder in due course means any person—
- (a) Who for consideration became the possession of promissory note
 - (b) Named in the instrument to whom or to whom order the money is directed to paid
 - (c) Drawing the instrument
 - (d) None of the above

- (v) Subject to the approval of P. F. Commissioner withdrawal from the Provident Fund may be allowed up to
- (a) 25% of the balance.
 - (b) 50% of the balance.
 - (c) 75% of the balance.
 - (d) 100% of the balance.
- (vi) Provisions for cool drinking water during hot weather shall be made where more than
- (a) 150 workers are employed.
 - (b) 250 workers are employed.
 - (c) 350 workers are employed.
 - (d) 500 workers are employed.
- (vii) Which one of the following *is not* a valid method of voting in a meeting of a company?
- (a) Voting by show of hands
 - (b) Voting through electronic means
 - (c) Postal ballot
 - (d) Voting by voice
- (viii) Copies of annual returns prepared and copies of all certificates and documents required to be annexed thereto shall be preserved for a period of _____ from the date of filing with the Registrar.
- (a) 8 years
 - (b) 10 years
 - (c) 12 years
 - (d) 15 years
- (ix) The tenure of director appointed by small shareholders shall be
- (a) Upto the date of next AGM
 - (b) 1 year
 - (c) 3 years
 - (d) 5 years
- (x) The Board of Directors of every listed public company shall constitute
- (a) a Finance Committee
 - (b) a Welfare Committee
 - (c) an Audit Committee
 - (d) an Enquiry Committee

(xi) Laws refer to the set of codified norms which are enforced by

- (a) the entity
- (b) the executive
- (c) the society
- (d) the state

(xii) Business ethics calls for avoidance of

- (a) Self-interest
- (b) Competition
- (c) Monopoly
- (d) Publicity

(b) State whether the following statements are True or False:

1×7=7

- (i) Silence on the part of the offeree amounts to acceptance.
- (ii) Secret partner does not take active part in the management of the firm's business.
- (iii) If an employee is transferred from one employment to another, the balance at his credit in his PF Account cannot be transferred to the new establishment.
- (iv) The concept of Producer Company in India was introduced to allow cooperatives to function as a corporate entity.
- (v) Notice of every meeting of the company shall be given to the auditor of the company.
- (vi) All companies are required to appoint one woman director.
- (vii) Public expects business to exhibit high level of ethical performance and social responsibility.

(c) Fill in the blanks:

1×6=6

- (i) Two or more persons are said to consent when they agree upon the same thing in the same _____.
- (ii) Negotiable instruments are those documents which are used to transfer money between _____ persons.
- (iii) _____ is not covered under the EPF Act.
- (iv) Every company shall prepare Annual Return in Form _____.
- (v) The tenure of the director appointed by small shareholders shall be _____ years.
- (vi) Law gives us a certain right because all humans are born _____.

Section-B

2. (a) Discuss the position of minor's agreement and effect thereof under the Indian Contracts Act, 1872.
- (b) Distinguish between holder and holder in due course. 10+5=15
3. (a) Explain the different type of Implied conditions.
- (b) Prepare the list of mutual rights and liabilities of partners as per the Indian Partnership Act, 1932. 8+7=15
4. (a) Elaborate the procedure for fixing and revising minimum wages under the Code on Wages, 2019.
- (b) Prepare the list of benefits that are entitled to the insured persons under the Employees' State Insurance Act, 1948. 10+5=15
5. (a) Examine the procedure to be followed for the incorporation of a company under section 7 of the Companies Act, 2013.
- (b) Analyse the concept of shelf prospectus under the Companies Act, 2013. 9+6=15
6. (a) Prepare the list of different rights of a shareholder of a company under the Companies Act, 2013.
- (b) Discuss the procedure for Rotation of Directors. 10+5=15
7. (a) Explain the concept of emotional intelligence. Analyse the effects of emotional intelligence.
- (b) Anurag an employee of Majestic Iron Ltd., continued to occupy the quarter of the company for nine months after superannuation, company decided to forfeit the amount of gratuity of Anurag. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. 10+5=15
8. (a) "In modern times, legislation is considered as the most important source of law." — In light of the statement elaborate the legislation as a source of law.
- (b) Amar and Kunal are partners in a firm. They borrowed sum of ₹ 5,00,000 from Sunita. Later on, Amar becomes insolvent but his assets are insufficient to payback the loan. Sunita compels Kunal for the payment of entire loan. With reference to the provisions of the India Partnership Act, 1932, examine the validity of Sunita's claim and decide as to who may be held liable for the above loan. 10+5=15
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SUGGESTED ANSWERS TO QUESTIONS

SECTION-A

1 (a)

- (i) (c) Sales takes place for existing and specific goods
- (ii) (b) creditor
- (iii) (c) contract entered between the partners
- (iv) (a) Who for consideration became the possession of promissory note
- (v) (c) 75 % of the balance
- (vi) (b) 250 workers are employed
- (vii) (d) Voting by voice
- (viii) (a) 8 years
- (ix) (c) 3 years
- (x) (c) an Audit Committee
- (xi) (d) the state
- (xii) (c) Monopoly

(b) True or False

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

(c) Fill in the blanks

- (i) sense
- (ii) designated
- (iii) Apprentice
- (iv) MGT-7
- (v) Three
- (vi) Equal

SECTION- B

2. (a) As per section 3 of the Indian Majority Act of 1875, every person in India is a minor if he has not attained the age of 18 years of age. However, in case of a minor of whose person or property or both a guardian has been appointed under the Guardian and Wards Act, 1890 or whose property is under the superintendence of any court of wards before he attains 18 years of age is 21 years.

The position of Minor's agreement and effect thereof is as under:

1. An agreement with a minor is void ab-initio.
2. The law of estoppel does not apply against a minor. It means a minor can always plead his minority despite earlier misrepresenting to be a major. In other words, he cannot be held liable on an agreement on the ground that since earlier he had asserted that he had attained majority.
3. Doctrine of Restitution does not apply against a minor. In India, the rules of restitution by minor are similar to those found in English laws. The scope of restitution of contract by minor was examined by the Privy Council in Mohiri Bibi case when it has held that the restitution of money under section 64 of the Indian Contract Act cannot be granted under section 65 because a minor's agreement is not voidable but absolutely void ab-initio. Similarly no relief can be granted under section 65 as this section is applicable where the agreement is discovered to be void or the contract becomes void.
4. No Ratification on Attaining Majority - Ratification means approval or confirmation. A minor cannot confirm an agreement made by him during minority on attaining majority. If he wants to ratify the agreement, a fresh agreement and fresh consideration for the new agreement is required.
5. Contract beneficial to Minor - A minor is entitled to enforce a contract which is of some benefit to him. Minority is a personal privilege and a minor can take advantage of it and bind other parties.
6. Minor as an agent - A minor can be appointed an agent, but he is not personally liable for any of his acts.
7. Minor's liability for necessities - If somebody has supplied a minor or his dependents with necessities, minor's property is liable but a minor cannot be held personally liable.
8. A minor cannot be adjudged insolvent as he is incapable of entering into a contract.
9. Where a minor and an adult jointly enter into an agreement with another person, the minor is not liable and the contract can be enforced against the major person.

2. (b) Difference between Holder and Holder-in-due course

Sl No.	Holder	Holder-in-due course
1	Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	Holder-in-due course possesses the instrument for consideration before maturity and in good faith.
2	Title of the holder is subject to title of the transfer.	Holder-in-due course gets a better title than transfer.
3	Holder may receive the instrument without consideration.	Holder-in-due course always receives the instrument for consideration.
4	Holder does not get certain privileges available to the Holder-in-due course.	Holder-in-due course always gets privileges not available to holder.

3.(a). Implied conditions are of the following types.

i) Condition as to title [Section 14(a)]:

In a contract of sale, unless the circumstances of the contract are such as to show a different intention, there is an implied condition on the part of the seller that, in the case of a sale, he has a right to sell the goods and that, in the case of an agreement to sell, he will have a right to sell the goods at the time when the property is to pass.

ii) Sale by description [Section 15]:

Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description, and, if the sale is by sample as well as by description, it is not sufficient that the bulk of the goods corresponds with the sample if the goods do not also correspond with the description. Goods are sold by description when they are described in the contract, and the buyer contracted relying on such description of goods by the seller.

iii) Condition as to quality or fitness [Section 16]:

As per Sec 16 of the Sale of Goods Act, the buyer is supposed to satisfy himself about the quality of goods he purchased and is also charged with the responsibility of seeing that the goods suit the purpose for which they were purchased by him. Later on if the goods does not turn out to be as per his purpose, the seller cannot be asked to compensate him. This is based on the famous doctrine of Caveat Emptor which means 'let the buyer beware'

iv) Sale by sample [Section 17]:

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect.

In the case of a contract for sale by sample there is an implied condition –

- That the bulk shall correspond with the sample in quality.
- That the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the sample.

In case of eatables and provisions, in addition to the implied condition as to merchantability, there is another implied condition that the goods shall be wholesome.

3. (b) Followings are the Mutual rights and liabilities of partners:

Section 13 of the Indian Partnership Act, 1932 provides that subject to the contract between the partners-

- I.** a partner is not entitled to receive remuneration for taking part in the conduct of the business;
- II.** the partners are entitled to share equally in the profits earned and shall contribute equally to the losses sustained by the firm;
- III.** where a partner is entitled to interest on the capital subscribed by him, such interest shall be payable only out of profits;
- IV.** a partner, making, for the purposes of the business, any payment or advance beyond the amount of capital he has agreed to subscribe, is entitled to interest thereon at 6% per annum;
- V.** the firm shall indemnify a partner in respect of payments made, and liabilities incurred, by him-
 - a.** in the ordinary and proper conduct of the business, and
 - b.** in doing such act, in an emergency, for the purpose of protecting the firm from loss, as would be done by a person of ordinary prudence, in his own case, under similar circumstances; and
- VI.** a partner shall indemnify the firm or any loss caused to it by his willful neglect in the conduct of the business of the firm.
- VII.** When the profits are not shared equally, the losses are, in the absence of the agreement, to be borne in the same proportion as the profits are shares, regardless, whether one partner has put up more capital than other.

4. (a) Section 8 of the Code lays down provision relating to procedure for fixing and revising minimum wages. It contemplates the following:

1. In fixing minimum rates of wages for the first time or in revising minimum rates of wages under this Code, the appropriate Government shall either:
 - a) appoint as many committees as it considers necessary to hold enquiries and recommend in respect of such fixation or revision, as the case may be; or
 - b) by notification 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 shall be taken into consideration.
2. Every committee appointed by the appropriate Government under clause (a) of sub-section (1) shall consist of persons:
 - a) representing employers;
 - b) representing employees which shall be equal in number of the members specified in clause (a); andindependent persons, not exceeding one-third of the total members of the committee.
3. After considering the recommendation of the committee appointed under clause (a) of sub-section (1) or, as the case may be, all representations received by it before the date specified in the notification under clause (b) of that sub-section, the appropriate Government shall by notification fix, or as the case may be, revise the minimum rates of wages and unless such notification otherwise provides, it shall come into force on the expiry of three months from the date of its issue:
Provided that where the appropriate Government proposes to revise the minimum rates of wages in the manner specified in clause (b) of sub-section (1), it shall also consult concerned Advisory Board constituted under section 42.
4. The appropriate Government shall review or revise minimum rates of wages ordinarily at an interval not exceeding five years.

4. (b) Section 46 of the Employees Estate Insurance Act, 1948 provides that the insured persons, their dependents shall be entitled to the following benefits: -

- a. periodical payments to any insured person in case of his sickness;
- b. periodical payments to an insured woman in case of confinement or miscarriage or sickness arising out of the pregnancy, confinement, premature birth of child or miscarriage;
- c. periodical payments to an insured person suffering from a disablement as a result of an employment injury sustained as an employee;
- d. periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee;
- e. medical treatment for and attendance on insured persons;

- f. payment to the eldest surviving member of the family of an insured person, who has died, towards the expenditure on the funeral of the deceased insured person; if the injured person at the time of his death does not have a family, the funeral payment will be paid to the person who actually incurs the expenditure.

The amount of such payment shall not exceed such amount as may be prescribed by the Central Government. The claim for such payments shall be made within 3 months of the death of the insured person or within such extended period as the Corporation allow in this behalf.

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 documents to the Registrar of companies within whose jurisdiction the registered office of the company is proposed to be situated for registration.

1. Memorandum and articles of the company duly signed by all the subscribers to the memorandum in such manner as may be prescribed;
 2. 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 thereunder in respect of registration;
 3. 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)**
 - (i) he is not convicted of any offence in connection with the promotion, formation or management of any company, or
 - (ii) he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the last five years and
 - (iii) 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;
 4. The address for correspondence till registered office is established;
 5. All particulars of every subscriber to the memorandum along with the proof of identity;
 6. The particulars of the persons mentioned in the articles as the first directors of the company;
 7. The consent to act as directors of company in such form as may be prescribed.
- The memorandum of association and articles of association are the basic essential documents of the company.

A new **section (10A)** has been introduced with the introduction of Companies Amendment Ordinance. It provides that every company, incorporated after the notification of the ordinance, shall not commence business, unless the directors file a declaration within 180 days of incorporation that every subscriber has paid for the shares as agreed and the registered office has been verified by filing necessary returns. Under 12A (new in section) the name of the company may be struck off if no office is found on physical verification.

5. (b) Shelf prospectus

The explanation to **section 31** defines the term ‘shelf prospectuses, as a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

Any class or classes of companies as the SEBI may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the first time offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus and in respect of a second or subsequent offer of such securities during the period of validity of that prospectus, no further prospectus is required.

A company filing a shelf prospectus shall be required to file an information memorandum containing all material facts relating to new charges created, changes in the financial position of the company as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer and other prescribed changes, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under such prospectus.

Where a company or any other person has received applications for allotment of securities along with the advanced payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants. If they express a desire to withdraw their application, the company or other person, shall refund all the monies received as subscription within 15 days.

Where an information memorandum is filed, every time an offer of securities is made as aforesaid, such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

6. (a) A person who is a shareholder of a company has many rights under the Companies Act, 2013. Some of them are:

- (i) The right to vote at all meetings [**Sec.47**];

- (ii) The right to requisition an extraordinary general meeting of the company [Sec.100];
- (iii) The right to receive notice of a general meeting [Sec.101];
- (iv) The right to appoint proxy and inspect proxy register [Sec.105]
- (v) In the case of a body corporate which is a member, the right to appoint a representative to attend a general meeting on its behalf [Sec.113]; and
- (vi) The right to require the company to circulate resolution [Sec.111].
- (vii) To have certificate of share held ready for delivery to him within two months from the date of allotment [Sec.56]
- (viii) To Transfer shares subject to the provisions of the Act and Article of Association [Sec.44].
- (ix) To inspect the Register of members and Register of debenture-holders and get extracts there from [Sec.94].
- (x) To obtain, on request, minutes of proceedings at general meetings as also to inspect the minutes [Sec.119].
- (xi) To apply to the Tribunal to have any variation of shareholders rights set aside [Sec.48].
- (xii) To participate in the removal of directors by passing an ordinary resolution [Sec.169]

6 (b): Rotation of directors:

Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two thirds of the total number of directors of a public company shall-

- be persons whose period of office is liable to determination by retirement of directors by rotation; and
- save as otherwise expressly provided in the Act, be appointed by the company in general meeting.

At the first annual general meeting of a public company held next after the date of the general meeting at which the first directors are appointed at every subsequent annual general meeting, one third of such of the directors for the time being as are liable to retire by rotation, or if their number is neither three nor a multiple of three, then, the number nearest to one-third, shall retire from office.

The directors to retire by rotation at every annual general meeting shall be those who have been longest in office since their last appointment, but as between persons who became directors on the same day, those who are to retire shall, in default of and subject to any agreement among themselves, be determined by lot. The company may fill up the vacancy by appointing the retired director or some other person thereto.

7(a): Emotional intelligence also known as emotional quotient or EQ, is the ability to understand, use, and manage your own emotions in positive ways to relieve stress, communicate effectively, empathize with others, overcome challenges and defuse conflict. Emotional intelligence helps you build stronger relationships, succeed at school and work, and achieve your career and personal goals. It can also help you to connect with your feelings, turn intention into action, and make informed decisions about what matters most to you.

Emotional intelligence affects

Your performance at school or work: High emotional intelligence can help you navigate the social complexities of the workplace, lead and motivate others, and excel in your career. In fact, when it comes to gauging important job candidates, many companies now rate emotional intelligence as important as technical ability and employ EQ testing before hiring.

Your physical health: If you're unable to manage your emotions, you are probably not managing your stress either. This can lead to serious health problems. Uncontrolled stress raises blood pressure, suppresses the immune system, increases the risk of heart attacks and strokes, contributes to infertility, and speeds up the ageing process.

The first step to improving emotional intelligence is to learn how to manage stress.

Your mental health: Uncontrolled emotions and stress can also impact your mental health, making you vulnerable to anxiety and depression. If you are unable to understand, get comfortable with, or manage your emotions, you'll also struggle to form strong relationships. This in turn can leave you feeling lonely and isolated and further exacerbate any mental health problems.

Your relationships: By understanding your emotions and how to control them, you're better able to express how you feel and understand how others are feeling. This allows you to communicate more effectively and forge stronger relationships, both at work and in your personal life.

7 (b) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:

(i) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or

(i) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Anurag is entitled to receive the balance gratuity.

8. (a) Legislation as a Source of Law:

In modern times, legislation is considered as the most important source of law. The term 'legislation' is derived from the Latin word legis which means 'law' and latum which means "to make" or "set". Therefore, the word 'legislation' means the 'making of law'. The importance of legislation as a source of law can be measured from the fact that it is backed by the authority of the sovereign, and it is directly enacted and recognised by the State. The expression 'legislation' has been used in various senses. It includes every method of law-making. In the strict sense it means laws enacted by the sovereign or any other person or institution authorised by him. The chart below explains the types of legislation: The kinds of legislation can be explained as follows:

(i) Primary Legislation:

When the laws are directly enacted by the sovereign, it is considered as supreme legislation. One of the features of Supreme legislation is that, no other authority except the sovereign itself can control or check it. The laws enacted by the British Parliament fall in this category, as the British Parliament is considered as sovereign. The law enacted by the Indian Parliament also falls in the same category. However in India, powers of the Parliament are regulated and controlled by the Constitution, through the laws enacted by it are not under the control of any other legislative body.

(ii) Subordinate Legislation:

Subordinate legislation is a legislation which is made by any authority which is subordinate to the supreme or sovereign authority. It is enacted under the delegated authority of the sovereign. The origin, validity, existence and continuance of such legislation totally depends on the will of the sovereign authority. Subordinate legislation further can be classified into the following types:-

a) Local laws:

In some countries, local bodies are recognized and conferred with the law-making powers. They are entitled to make bye-laws in their respective jurisdictions. In India, local bodies like Panchayats and Municipal Corporations have been recognized by the Constitution through the 73rd and 74th Constitutional amendments. The rules and bye-laws enacted by them are examples of local laws.

b) Laws made by the Executive:

Laws are supposed to be enacted by the sovereign and the sovereignty may be vested in one authority or it may be distributed among the various organs of the State. In most of the modern States, sovereignty is generally divided among the three organs of the State.

The three organs of the State namely legislature, executive and judiciary are vested with three different functions. The prime responsibility of law-making vests with the legislature, while the executive is vested with the responsibility to implement the laws enacted by the legislature. However, the legislature delegates some of its law-making powers to executive organs which are also termed delegated legislation. Delegated legislation is also a class of subordinate legislation. In welfare and modern states, the amount of legislation has increased manifold and it is not possible for legislative

bodies to go through all the details of law. Therefore, it deals with only a fundamental part of the legislation and wide discretion has been given to the executive to fill the gaps. This increasing tendency of delegated legislation has been criticized. However, delegated legislation is resorted to, on account of reasons like paucity of time, technicalities of law and emergencies. Therefore, delegated legislation is sometimes considered as a necessary evil.

8 (b):

This problem is concerned with the contractual liability of the Partners. As stated in the Section 25 of the Indian Partnership Act,1932, in partnership the liability of the partners is unlimited.

The share of each partner in the partnership property along with his private property is liable for the discharge of partnership liabilities.

The liability of the partners is not only unlimited but is also stated that a partner is both jointly and severally liable to third parties.

However, every partner is liable jointly with other partner and also severally for the acts of the firm done while he is a partner.

On the basis of above provisions, Sunita can compel Kunal for the payment of entire loan. Kunal must pay the said loan and they he can recover the share of Amar's loan from his property.