

INTERMEDIATE EXAMINATION

June 2023

P-6(LNE)
Syllabus 2016

LAW AND ETHICS

Time Allowed: 3 hours

Full Marks: 100

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

*Wherever necessary, Candidates may make appropriate assumptions
and state them clearly in the answer.*

This question paper has two sections A and B.

Both the sections are to be answered subject to instructions given against each.

Section – A

[25 marks]

Answer *all* the questions.

1. (a) Choose the correct answer from the given alternatives (you may write only the roman numeral and the alphabet choosen for your answer): 1×10=10

- (i) A statement of fact which one party makes in the course of negotiation with a view to induce the other party to enter into a contract is known as
 - (A) mistake
 - (B) fraud
 - (C) misrepresentation
 - (D) coercion
- (ii) A contract of sale of goods is a contract whereby the seller transfers the property in goods to the buyer
 - (A) for exchange of goods
 - (B) for a price
 - (C) for a gift
 - (D) for mutual satisfaction
- (iii) The first endorsement of an instrument can be made by the
 - (A) payee
 - (B) drawer
 - (C) holder in due course
 - (D) bank
- (iv) Chapter III of the Factories Act, 1948 deals with measures to be taken considering the
 - (A) health aspects of the workers.
 - (B) safety aspects of the workers.
 - (C) welfare aspects of the workers.
 - (D) payment aspects of the workers.

- (v) Under the Employees State Insurance Act, 1948 seasonal factory is one which is engaged for a period not exceeding
 - (A) 3 months in a year.
 - (B) 6 months in a year.
 - (C) 7 months in a year.
 - (D) 8 months in a year.
- (vi) As per Minimum Wages Act, 1948 the wages of a worker in the establishment, where less than 1000 persons are employed, must be paid
 - (A) before the expiry of 5th day.
 - (B) before the expiry of 7th day.
 - (C) before the expiry of 9th day.
 - (D) before the expiry of 12th day.
- (vii) If the equity shares of the company are listed on a recognized stock exchange, the employees stock option scheme shall be issued, in accordance with the regulations made by
 - (A) Registrar of companies.
 - (B) Ministry of corporate affairs.
 - (C) Securities and Exchange Board of India.
 - (D) Relevant stock exchanges.
- (viii) The appointment of an independent director shall be approved by the
 - (A) Board meeting.
 - (B) General meeting.
 - (C) Registrar of companies.
 - (D) Central Government.
- (ix) A director may be elected by small shareholders upon a notice by
 - (A) not less than 1000 small shareholders.
 - (B) one tenth of the total number of shareholders.
 - (C) not less than 1000 small shareholders or one tenth of such shareholders, whichever is lower.
 - (D) None of the above
- (x) Which one of the following is not the features of business ethics?
 - (A) Code of conduct
 - (B) Provide protection to social group
 - (C) Provide basic framework
 - (D) Profit making

(b) Match and Pair:

1×5=5

	Column I		Column II
1	Bailments	A	An intermediary
2	Certificate of registration	B	Name for the company
3	Point of presence	C	Value chain
4	Form - INC1	D	Voluntary and involuntary
5	Michael Porter	E	Conclusive evidence

(c) State whether the following statements are True or False (You may write only the Roman numeral and whether 'True or False' without copying the statements into the Answer books):

1×5=5

- (i) A pledge is a bailment of moveable property by way of security.
- (ii) Secret partner contributes capital only and he does not take active part in the management of the firm's business.
- (iii) Payment of gratuity is the newly adopted retiral social security benefit.
- (iv) Trustee Bank means a banking company as defined in the Banking Regulation Act, 1949.
- (v) Every listed company is required to appoint at least two-third of the total number of directors as independent directors.

(d) Fill in the blanks:

1×5=5

- (i) Acceptance may be either general or _____.
- (ii) All payments of wages shall be made on a _____ day.
- (iii) The registered office shall be opened within 15 days from the date of _____ of the company.
- (iv) The office of a director shall become vacant in case he becomes disqualified by an order of a court or _____.
- (v) Like other professional, accountants also face ethical _____.

Section – B

Answer any five questions.

15×5=75

2. (a) State the circumstances which are identified as quasi contracts by the Indian Contract Act, 1872.
- (b) Mr. X, a businessman, has been fighting a long drawn litigation with Mr. Y, another businessman. To support his legal campaign Mr. X enlists the services of Mr. Z, a legal expert, stating that an amount of ₹ 10 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay. Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872.

10+5=15

3. (a) Discuss the remedies available to buyer against seller for breach of contract.
(b) What are the different types of instruments mentioned in the Negotiable Instruments Act, 1881? 9+6=15
 4. (a) Enumerate the procedure of imposition of fine under the Payment of Wages Act, 1936.
(b) Enumerate the determination of moneys due from employers (Employees Provident Fund and Miscellaneous Act, 1952). 8+7=15
 5. (a) In which manner the Memorandum and Articles are to be signed on behalf of the company?
(b) What are the prohibitions of buy back as mentioned in section 70 of the Companies Act, 2013? 10+5=15
 6. (a) Describe the procedures for the resignation of a director.
(b) Discuss the process of appointment of director elected by small shareholders in a company. 10+5=15
 7. (a) Explain Value chain. What are its new themes and challenges?
(b) Explain provision relating to the Notice for payment of gratuity. 8+7=15
 8. Write short notes on *any three* of the following: 5×3=15
 - (a) Agreement without consideration as per Indian Contract Act, 1872
 - (b) 'Solvency certificate' as per Companies Act, 2013
 - (c) Recognition of ethical issues in business
 - (d) 'Review of Minimum wages' as per Minimum Wages Act, 1948
-

SUGGESTED ANSWERS TO QUESTIONS

SECTION – A

1. (a)

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

1. (b)

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

1. (c)

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

1. (d)

- (i) qualified
- (ii) working
- (iii) incorporation
- (iv) Tribunal
- (v) Dilemmas

SECTION – B

2. (a)

Circumstances identified as quasi-contracts:

1. **Sec-68--Claim for necessities supplied to persons incapable of contracting:**

Any person supplying necessities of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. Similarly, where money is paid to such persons for purchase of necessities, reimbursement can be claimed.

2. **Sec-69-Right to recover money paid for another person:**

A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.

3. **Sec-70-Obligation of person enjoying benefits of non-gratuitous act:**

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 latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.

4. **Sec-71-Responsibility of finder of goods:**

A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.

5. **Sec-72- Liability for money paid or thing delivered by mistake or by coercion:**

A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it. In all the above cases contractual liability arises without any agreement between the parties.

2. (b)

The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void.

Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc. are void agreements.

Thus Mr. Z cannot recover the amount of Rs. 10 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.

3. (a)

A buyer also has certain remedies against the seller who commits a breach. These are as under:

1. **Suit for Damages for Non-Delivery [Section 57]**- When the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer may sue the seller for damages for non-delivery. This is in addition to the buyer's right to recover the price, if already paid, in case of non-delivery.
2. **Suit for price**- Where the buyer has paid the price and the goods are not delivered to him, he can recover the amount paid.
3. **Suit for specific performance [Section 58]**- When the goods are specific or ascertained, a buyer may sue the seller for specific performance of the contract and compel him to deliver the same goods.

The court orders for specific performance only when the goods are specific or ascertained and an order for damages would not be an adequate remedy. Specific performance is generally allowed where the goods are of special significance or value e.g. a rare painting, a unique piece of jewellery, etc.

4. **Suit for Breach of Warranty [Section 59]**- Where there is a breach of warranty by the seller, or where the buyer elects or is compelled to treat the breach of condition as breach of warranty; the buyer cannot reject the goods. The buyer may,
 - a) Set up the breach of warranty in extinction or diminution of the price payable by him, or
 - b) Sue the seller for damages for breach of warranty.
5. **Repudiation of contract before the due date [Section 60]** -- Section 60 provides that where either party to a contract of sale repudiates the contract before the date of delivery, the other may either treat the contract as subsisting or wait till the date of delivery, or he may treat the contract as rescinded and sue for damages for the breach.
6. **Suit for interest--** The buyer may recover such interest or special damages, as may be recoverable by law. He may also recover the money paid where the consideration for the payment of it has failed. In the absence of a contract to the contrary, the court may award interest, to the buyer, in a suit by him for the refund of the price in a case of a breach on the part of the seller, at such rate as it thinks fit on the amount of the price from the date on which the payment was made.

3. (b)

There are various types of instruments mentioned in the Negotiable Instruments Act, 1881 as follows:

1. **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.
2. **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.
3. **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 and the instrument shall be thenceforward treated accordingly.
4. **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.
5. **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 amount intended by him to be paid there under.

4. (a)

Section 8 of the Payment of Wages Act 1936, provides imposing of fines by the employer on the employees. The procedure of imposition of fine is detailed as below:

- 1) No fine shall be imposed on any employed person who is under the age of fifteen years;
- 2) No fine shall be imposed on any employed person save in respect of such acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of the prescribed authority, may have specified by notice;
- 3) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory), at the prescribed place or places.
- 4) No fine shall be imposed on any employed person until he has been given an opportunity of showing cause against the fine, or otherwise than in accordance with such procedure as may be prescribed for the imposition of fines.
- 5) The total amount of fine which may be imposed in any one wage-period on any employed person shall not exceed an amount equal to three per cent of the wages payable to him in respect of that wage-period.
- 6) No fine imposed on any employed person shall be recovered from him by instalments or after the expiry of 90 days from the day on which it was imposed.
- 7) Every fine shall be deemed to have been imposed on the day of the act or omission in respect of which it was imposed.
- 8) All fines and all realizations thereof shall be recorded in a register to be kept by the person responsible for the payment of wages under section 3 in such form as may be prescribed; and all such realizations shall be applied only to such purposes beneficial to the persons employed in the factory or establishment as are approved by the prescribed authority.

4. (b)

Determination of moneys due from employers (Employees Provident Fund and Miscellaneous Provisions Act, 1952)

Section 7A provides that in case where a dispute arises regarding the applicability of this Act to an establishment, the Authority concerned may conduct such enquiry as he may deem necessary decide such dispute and determine the amount due from any employer under the provision of this Act, the scheme or the Pension Scheme or the Insurance Scheme as the case may be. Before passing such order, the employer concerned shall be given a reasonable opportunity of representing his case. For the purpose of conducting inquiry the Authority shall have the same powers as are vested in a court under CPC for trying a suit in respect of the following matters-

- Enforcing the attendance of any person or examining him on oath;
- Requiring the discovery and production of documents,
- Receiving evidence on affidavit;
- Issuing commissions for the examination of witnesses.

Where the employer, employee or any other person required to attend the inquiry, fails to attend such inquiry, the Authority shall decide the case ex-parte and pass orders based on the available documents put forth before him. The employer, within three months from the date of communication of such order, may apply to the Authority to set aside the ex-parte order showing that there are sufficient causes for not enabling him to attend the hearing on the prescribed date. If the Authority is satisfied, he may set aside the ex-parte order and shall appoint a date for proceeding with the inquiry.

in ‘S.K. Nasiruddin Beedi Merchant Limited V. Central Provident Fund Commissioner’- AIR 2001 SC 850 it was held that the applicability of the Act to any class of employees is not determined and decided by any proceeding under Section 7A of the Act but under the provisions of the Act itself. When the Act became applicable to the employees in question, the liability arises. What is done under Section 7A of the Act is only determination of qualification of the same.

5. (a)

Rule 13 provides for signing of memorandum and articles. The Memorandum and articles shall be signed in the following manner:

1. The memorandum and articles of association of the company shall be signed by each subscriber to the memorandum. The name, address, description and occupation, if any, are to be added. One witness shall attest the signature of the subscriber. The witness also is to sign and furnish his full details.
2. The witness shall state that –“I witness to subscriber/subscriber(s) who has/have subscribed and signed in my presence (date and place to be given); further I have verified his or their Identity Details for their identification and satisfied myself of his/her/their identification particulars filled in”.
3. Where a subscriber to the memorandum is illiterate, he shall affix his thumb impression or mark which shall be described as such by the person, writing for him, who shall place the name of the subscriber against or below the mark and authenticate by his own signature and he shall also write against the name of the subscriber, the number of shares taken by him;
4. Such person shall also read and explain the contents of the memorandum and articles of association to the subscriber and make an endorsement to that effect on the memorandum and articles of the association;
5. Where the subscriber is a body corporate, the memorandum and articles of association shall be signed by director, officer or employee of the body corporate duly authorized in this behalf by a resolution of the board of directors of the body corporate. Where the subscriber is an LLP, it shall be signed by a partner of the LLP, duly authorized by a resolution approved by all the partners of the LLP. In either case, the person so authorized shall not, at the same time, be a subscriber to the memorandum and articles of association;

6. Where the subscriber is a foreign national residing outside India-
 - In a country in any part of the Commonwealth, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized by a Notary Public in that part of the Commonwealth;
 - In a country which is a party to the Hague Apostille Convention, 1961, his signatures and address on the memorandum and articles of association and proof of identity shall be notarized before the Notary Public of the Country of his origin and be duly apostilled in accordance with the Hague Convention;
 - In a country outside the commonwealth and not a party to the Hague Apostille Convention, 1961, his signatures and address shall be notarized before the Notary Public of that country and the certificate of the Notary Public shall be authenticated by a Diplomatic or Consular Officer empowered in this behalf.
 - Visited in India and intended to incorporate a company, in such case the incorporation shall be allowed if, he/she is having a valid Business Visa.

5. (b)

As per the Section 70 of the Companies Act, 2013 no company shall directly or indirectly purchase its own shares or other specified securities –

- Through any subsidiary company including its own subsidiary companies,
- Through any investment company or group of investment companies, or
- If a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company. The buy back is not prohibited if the default is remedied and a period of three years has lapsed after such default ceased to subsist.
- No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of sections 92, 123, 127 and section 129.

6. (a)

Resignation of a director, Section 168 provides the procedure for the resignation of a director as detailed below:

1. A director may resign from his office by giving a notice in writing to the company;
2. He shall within 30 days from the date of resignation, forward to the Registrar a copy of his resignation along with the reasons for the resignation, in Form No. DIR – 11 along with the fee;
3. A foreign director may authorize in writing a practicing Chartered Accountant or Cost Accountant in practice or Company Secretary in practice or any other resident director of the company to sign the Form No. DIR – 11 and file the same on his behalf intimating the reasons for the resignation;
4. The Board shall on receipt of such notice take notice of the same;
5. The company shall intimate the Registrar in Form No. DIR-12 within one month from the date of receipt of such notice;
6. The said information is to be posted on the website of the company;
7. The fact of the resignation shall be included in the report of directors laid in immediately following general meeting by the company;
8. 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;
9. The director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure;
10. Where all directors of a company resign from their offices the promoter or, in his absence, the Central Government shall appoint the required number of directors, who shall hold the office till the directors are appointed by the company in general meeting.

6. (b)

Process of appointment of director elected by small shareholders:

‘Small shareholders’ means a shareholder holding shares of nominal value of not more than Rs. 20,000 or such other sum as may be prescribed. A listed company may have one director elected by small shareholders.

Rules 7 requires that a listed company, may upon notice of not less than 1000 small shareholders or one tenth of the total number of such shareholders, whichever is lower, have a small shareholders’ director elected by small shareholders.

Such director shall not be liable to retire by rotation. The tenure shall not exceed a period of three consecutive years and on the expiry of the tenure such director shall not be eligible for re-appointment.

A disqualified person for the appointment of director shall not be eligible for such appointment. No person shall hold the position of small shareholder’s director in more than two companies at the same time. A small shareholders’ director shall not, for a period of 3 years from the date on which he ceases to hold office as a small shareholders’ director in a company, be appointed in or be associated with such company in any other capacity either directly or indirectly.

7. (a)

Value Chain

Value chain is a visualization of complete business as a sequence of activities in which usefulness is added to the products or services produced and sold by an organization. Management accountants provide decision support for managers in each activity of value chain.

The design of management accounting system has to take into consideration the decision needs of the managers. Also, it has to take into consideration the new themes and challenges that managers face currently.

1. **Customer focus:** The challenge for managers is to invest sufficient resources to enhance customer satisfaction. But every action of the organization has result in enhanced profitability or maintained profitability for the organization.
2. **Key Success Factors:** These are non-financial factors which have an effect on the economic viability of the organization. Cost, quality, time and innovation are important key success factors. Management accounting systems need to have provisions for tracking the performance of the organization and its divisions as well as competitors on these success factors.
3. **Continuous improvement:** Continuous improvement or kaizen is a popular theme. Innovation related to this area in costing is kaizen costing.
4. **Value Chain and Supply Chain Analysis:** Value chain as a strategic framework for analysis of competitive advantage was promoted by Michael Porter. Management accountants have to become familiar with the framework and provide information to implement the framework by strategic planners.

7. (b)

Notice for payment of gratuity

- (1) Within fifteen days of the receipt of an application under rule 7 for payment of gratuity, the employer shall-
 - (i) if the claim is found admissible on verification, issue a notice in Form ‘L’ to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the thirtieth day after the date of receipt of the application, for payment thereof, or
 - (ii) if the claim for gratuity is not found admissible, issue a notice in Form ‘M’ to the applicant employee, nominee or legal heir, as the case may be, specifying the reasons why the claim for gratuity is not considered admissible. In either case a copy of the notice shall be endorsed to the controlling authority.

- (2) In case payment of gratuity is due to be made in the employer's office, the date fixed for the purpose in the notice in Form 'L' under clause (1) of sub-rule (1) shall be re fixed by the employer, if a written application in this behalf is made by the payee explaining why it is not possible for him to be present in person on the date specified.
- (3) If the claimant for gratuity is a nominee or a legal heir, the employer may ask for such witness or evidence as may be deemed relevant for establishing his identity or maintainability of his claim, as the case may be. In that 'case, the time limit specified for issuance of notices under sub-rule (1) shall be operative with effect from the date such witness or evidence, as the case may be, called for by the employer is furnished to the employer.
- (4) A notice in Form 'L' or Form 'M' shall be served on the applicant either by personal service after taking receipt or by registered post with acknowledgement due.
- (5) A notice under sub-section (2) of section 7 shall in Form 'L'

8. (a)

Agreement without consideration:

Section 25 provides that an agreement made without consideration is void unless

- 1) it is in writing and registered – It is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between parties standing in a near relation to each other; or unless
- 2) if is a promise to compensate for something done – It is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do; or unless
- 3) it is a promise to pay a debt, barred by limitation law – It is a promise, made in writing and signed by the person to be charged herewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In any of these cases, such an agreement is a contract.

8. (b)

Solvency certificate:

Section 68 (6) provides that a listed company before making a buy back, shall file with the Registrar and SEBI, a declaration of solvency in Form No. SH-9. This has to be signed by at least two directors of the company, one of whom shall be the Managing Director, if any, and verified by an affidavit to the effect that the Board of Directors of the company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year from the date of declaration adopted by the Board. An unlisted company is not required to file the declaration of solvency with SEBI.

8. (c)

Recognition of ethical issues in business

Learning to recognize ethical issues is the most important step in understanding business ethics. An ethical issue is an identifiable problem, situation, or opportunity that requires person to choose from among several actions that may be evaluated as right or wrong, ethical or unethical. In business, such a choice often involves weighing monetary profit against what a person considers appropriate conduct. The best way to judge the ethics of a decision is to look at a situation from a customer's or competitor's viewpoint.

Many business issues may seem straightforward and easy to resolve, but in reality, a person often needs several years of experience in business to understand what is acceptable or ethical. Ethics are also related to the culture in which a business operates.

8. (d)

Review of Minimum wages:

Section 3(1)(b) provides that the appropriate Government may review at such intervals, as it may think fit, such intervals not exceeding five years and revise the minimum rate of wages, if necessary. Where for any reason the appropriate Government has not reviewed the minimum rates of wages fixed by it in respect or any scheduled employment within any interval of five years, nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them, if necessary, and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.
