

PAPER-5: BUSINESS LAWS AND ETHICS

SUGGESTED ANSWERS

SECTION-A

1.

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

SECTION- B

2. (a)

The following points shall be taken into account in the case of acceptance-

- 1 Acceptance may be oral or in writing;
- 2 It may be expressed or implied;
- 3 If a particular method of acceptance is prescribed, the offer must be accepted in the prescribed manner;
- 4 It must be unqualified and absolute and must correspond with all terms of the offer;
- 5 The conditional acceptance will amount to rejection of offer;
- 6 A counter offer for acceptance will also amount to reject of offer but the counter offer may be accepted or rejected by the other party;
- 7 It must be communicated to the offeror, since acceptance is completed the moment, it is communicated;
- 8 Mere silence on the part of the offeree does not amount to acceptance;
- 9 The acceptance should be given if there is a time limit is fixed or otherwise at a reasonable time and before the offer lapses **or** is revoked.

2. (b)

Section 125 of the Indian Contracts Act, 1872, provides the rights of indemnity holder when sued. This section provides that the promise, in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

- (i) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (ii) all costs which he may be compelled to pay in any such suit if, in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorized him to bring or defend the suit;
- (iii) all the sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promise to make in the absence of any contract of indemnity, or if the promisor authorized him to compromise the suit.

This section is not exhaustive and does not set out all the reliefs which an indemnity holder who has been sued may get. It leaves untouched certain equitable reliefs which he may get. The rights of the indemnity holder are not confined to those mentioned in this section. Even before damage is incurred, it is open to him to sue for the specific performance of the contract of indemnity, provided that it is shown, that an absolute liability has been incurred by him and that the contract of indemnity covers the said liability.

In 'Pepin V. Chandra Seekur', ILR 5 Cal. 811 it was held that in the case of contract of indemnity, the liability of the party indemnified to a third person is not only contemplated at the time of indemnity, but is the very moving cause of that contract and in case of such a nature, the costs reasonably incurred in resisting or reducing or ascertaining the claim may be recovered.

3. (a)

Procedure to form a partnership is as under.

The first step is to decide the number of partners of a firm. The law provides for minimum 2 number of partners. The upper limit is 10 in case of banking business and 20 in respect of other business.

- 1 First decide who are the partners of the firm, considering the limit envisaged in the Act;
- 2 The name of the partnership firm is selected subject to the provisions of the partnership Act;
- 3 Select the business to be done by the partnership and object of the business;
- 4 Decide the capital to be brought by each and every partner;
- 5 Prepare the agreement deed of the firm – the deed is the vital and most significant document. The deed shall contain all aspects of the partnership firm. This document prescribes the 'a to z' of the partnership firm to be formed;
- 6 The agreement should invariably be in writing and signed by all partners;
- 7 The provisions contained in the agreement are binding on all partners;
- 8 The partnership firm is to be registered. According to the Act the partnership firm may be registered or may not be registered. Unregistered firms have no legal protection and therefore registration of partnership firm is to be preferred.
- 9 Open bank account in the name of the partnership firm;
- 10 In the present scenario obtaining PAN is necessary and get the PAN from the Income Tax Authority;
- 11 Acquire all mandatory licenses from the respective authorities for the conduct of the business;
- 12 Registration with required tax authorities i.e., direct tax as well as indirect tax such as GST, Customs, VAT, CST etc.,
- 13 The Registration certificate is the conclusive evidence of the formation of the partnership firm.

3. (b)

1. **Under Section 12(2) of the Sales of Goods Act, 1930**, a condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract as repudiated. A condition in a contract of sale of goods is of fundamental nature for breach of which buyer can repudiate the contract.
2. **Under Section 12(3)**, a warranty is a stipulation collateral to the main purpose of the contract, the breach of which gives rise to a claim for damages but not to a right to reject the goods and treat the contract as repudiated.

Generally, the following are the differences between condition and warranty:

Condition	Warranty
A condition is a stipulation which is essential to the main purpose of the contract	A warranty is a stipulation which is collateral to the main purpose of the contract.
The aggrieved party can repudiate the contract of sale in case there is a breach of a condition.	The aggrieved party can claim damages only in case of breach of warranty.
A breach of condition may be treated as a breach of a warranty. This would happen where the aggrieved party is contended with damages only	A breach of a warranty cannot be treated as a breach of condition.

Section 13 provides where a contract of sale is;

- 1 Subject to any condition to be fulfilled by the seller, the buyer may waive the condition or elect to treat the breach of the condition as a breach of warranty and not as a ground for treating the contract as repudiated;
- 2 Not severable and the buyer has accepted the goods or part thereof, the breach of any condition to be fulfilled by the seller can only be treated as a breach of warranty and not as a ground for rejecting the goods and treating the contract as repudiated, unless there is a term of the contract, express or implied, to that effect.

Nothing in this section shall affect the case of any condition or warranty fulfilment of which is excused by law by reason of impossibility or otherwise.

4. (a)

Section 19 of The Code on Wages, 2019 Act talks about fines. It lays down the following:

1. No fine shall be imposed on any employee save in respect of those acts and omissions on his part as the employer, with the previous approval of the appropriate Government or of such authority as may be prescribed, may have specified by notice under sub-section (2).
2. A notice specifying such acts and omissions shall be exhibited in such manner as may be prescribed, on the premises in which the employment is carried on.
3. No fine shall be imposed on any employee until such employee 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.
4. The total amount of fine which may be imposed in any one wage-period on any employee shall not exceed an amount equal to three per cent. of the wages payable to him in respect of that wage-period.
5. No fine shall be imposed on any employee who is under the age of fifteen years.
6. No fine imposed on any employee shall be recovered from him by instalments or after the expiry of ninety 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 realisations thereof shall be recorded in a register to be kept in such manner and form as may be prescribed; and all such realisations shall be applied only to such purposes beneficial to the persons employed in the establishment as are approved by the prescribed authority

4. (b)

Section 46 of the Employees state Insurance Act, 1948 provides that the insured persons, their dependents shall be entitled to the following benefits: -

- 1 periodical payments to any insured person in case of his sickness;
- 2 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;
- 3 periodical payments to an insured person suffering from disablement as a result of an employment injury sustained as an employee;
- 4 periodical payments to such dependents of an insured person who dies as a result of an employment injury sustained as an employee;
- 5 medical treatment for and attendance on insured persons;
- 6 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 12 (3) of the Companies Act, 2013 provides that every company shall publish its name in the following manner:

- 1 The company shall paint or affix its name and the address of the Registered Office and keep the same painted or affixed on the outside of every office of the company or place in which the company carries on its business, in a conspicuous position and in legible letters
- 2 The language of the words shall be of any language, but one language shall be of the local language of that place
- 3 The company shall have its name engraved in legible characters on its seal, if any (company seal is made optional now)
- 4 The company shall get its name, address of its registered office, Corporate Identity Number, telephone number, fax number, email id and website address printed etc., in all its business letters, invoices, notice etc, and in other official communications
- 5 The company shall have its name printed on hundis, promissory notes, bills of exchange and such other documents as may be prescribed.
- 6 The words 'One Person Company' shall be mentioned in brackets below the name of such company, wherever the name is printed or affixed or engraved.
- 7 The first proviso to Section 12 provides that where a company has changed its name or names during the last two years, it shall paint or affix or print along with the name, the former name or names so changed during the last two years.

5. (b)

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

- 1 A director of a company shall act in accordance with the Articles of Association of the company.
- 2 A director of the company shall act in good faith, in order to promote the objects of the company, for the benefits of the company as a whole, and in the best interests of the stakeholders of the company.
- 3 A director of a company shall exercise his duties with due and reasonable care, skill and diligence and shall exercise independent judgment.
- 4 A director of a company shall not involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- 5 A director of a company shall not achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.
- 6 A director of a company shall not assign his office and any assignment so made shall be void.

6. (a)

A financial controller is responsible for the financial function of an overall organization. An operational controller job title specifies the responsibilities for a particular part of a company, so those duties vary from business to business depending on its operations.

While there are some similarities of an operations or business controller versus financial controller, they are definitely two distinct roles within an organization.

Both positions usually involve budgeting, forecasting and financial reporting. The financial control deals with the organization's daily accounting operations. It includes overseeing accounting, payroll, accounts payable and accounts receivable departments.

By managing the organizational budget and the preparation and publishing of regulatory and monthly financial reporting, the financial controller gauges fiscal efficacy.

Unlike a financial controller, the role of operation control includes reporting and budgeting responsibilities including fiscal reporting for a particular unit within the larger company.

6. (b)

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

- 1) to make calls on shareholders in respect of money unpaid on their shares;
- 2) to authorize buy-back of securities under Section 68;
- 3) to issue securities, including debenture, 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) any other matter which may be prescribed:

Provided that the Board may, by a resolution passed at a meeting, delegate to any committee of directors, the managing director, the manager or any principal officer of the company or in the case of a branch office of the company, the principal officer of the branch office, the powers specified in clauses (4) to (6) on such conditions as it may specify.

7. (a)

A code of ethics in business is a set of guiding principles intended to ensure a business and its employees act with honesty and integrity in all facets of its day-to-day operations and to only engage in acts that promote a benefit to society. All companies will have a different code of ethics with different areas of interest, based on the industry they are involved in, but the five areas that companies typically focus on include integrity, objectivity, professional competence, confidentiality, and professional behavior. Many firms and organizations have adopted a Code of Ethics.

According to the CFAI's website, Members of CFA Institute, including CFA, and candidates for the CFA designation must adhere to the following Code of Ethics:

1. Act with integrity, competence, diligence, respect, and in an ethical manner with the public, clients, prospective clients, employers, employees, colleagues in the investment profession, and other participants in the global capital markets.
2. Place the integrity of the investment profession and the interests of clients above their own personal interests.
3. Use reasonable care and exercise independent professional judgment when conducting investment analysis, making investment recommendations, taking investment actions, and engaging in other professional activities.
4. Practice and encourage others to practice professionally and ethically that will reflect credit on themselves and the profession.
5. Promote the integrity and viability of the global capital markets or the ultimate benefit of society.
6. Maintain and improve their professional competence and strive to maintain and improve the competence of other investment professionals.

7. (b)

Emotional intelligence is commonly defined by four attributes:

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

Importance of emotional intelligence:

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

8. (a)

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

In the present case it is observed that Mr. B, bailee, mixed all 1,000 bottles of energy drinks marked with five star with other bottles of energy drinks of his own, bearing a different mark. Now, the bailor, Mr. A, demands for the return of at least 500 bottles of energy drinks supplied by him. But Mr. B demands labour charges from Mr. A for separating the bottles of energy drinks which were mixed in the warehouse with his own stocks.

As per the provision of the Indian Contract Act, 1872, Mr. A is entitled to have all his 1,000 bottles of energy drinks returned, and Mr. B is bound to bear all the expenses incurred in the separation of the same and also any other incidental damage.

Therefore, Mr. B will have to return 500 bottles of energy drinks at his own cost i.e. labour charges for separating the bottles of energy drinks.

8. (b)

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

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. However, under Section 168 (2) of the Companies Act, 2013, the director who has resigned shall be liable even after his resignation for the offences which occurred during his tenure.

In the present case Mr. Mohan resignation will be accepted by the Board of Directors with effect from 9th July 2024 only i.e. the date of receiving the resignation letter. In this context it is to be noted that Mr. Mohan can resign just by sending in writing a letter informing either chairman or secretary of company, his intention to resign from post of director of said company. He can tender his resignation unilaterally and without sending a notice to Registrar of Companies. But, under Section 168 (2) of the Companies Act, 2013, Mr. Mohan shall be liable even after his resignation for the offences which occurred during his tenure.
