

INTERMEDIATE EXAMINATION

35298

December 2022

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 chosen for your answer): 1×10=10
- (i) A person, who is usually of unsound mind, but occasionally of sound mind, may make a contract when he is of
- (A) unsound mind
 - (B) sound mind
 - (C) fresh mind
 - (D) cool mind
- (ii) 'Future good' is the goods to be manufactured or produced or acquired by the seller after
- (A) starting of the business
 - (B) beginning of the financial year
 - (C) making of the contract of sale
 - (D) receiving of the supply order
- (iii) Any limited liability partnership (LLP) may change its name by following the procedure as laid down in
- (A) The Partnership Act
 - (B) The Rules for LLP
 - (C) The Form No. 5
 - (D) The LLP Agreement

- (iv) Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are
- (A) under the employment
 - (B) drawing the pension
 - (C) on unauthorized leave
 - (D) at work in the factory
- (v) 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
- (A) three months
 - (B) six months
 - (C) nine months
 - (D) eleven months
- (vi) As per section 3 of the Companies Act, 2013 the one person company is a
- (A) small company
 - (B) public limited company
 - (C) private limited company
 - (D) section 8 company
- (vii) The meaning of the term *ultra vires* is simply
- (A) within (their) power
 - (B) beyond (their) power
 - (C) with (their) power
 - (D) without (their) power
- (viii) An application along with the fee is filed with the Regional Director for shifting of the registered office within the same state in
- (A) Form No. INC 22
 - (B) Form No. INC 23
 - (C) Form No. INC 26
 - (D) Form No. INC 28
- (ix) The remuneration payable to directors, who are neither Managing Directors nor Whole Time Directors shall not exceed
- (A) 1% of the net profits
 - (B) 2% of the net profits
 - (C) 3% of the net profits
 - (D) 5% of the net profits

- (x) The seven principles of public life were set out by Lord Nolan for the first time in the year
- (A) 1975
(B) 1985
(C) 1995
(D) 1999

(b) Match and Pair:**1×5=5**

	Column I		Column II
(1)	Sweat Equity Shares	(A)	Unconditional order
(2)	Misrepresentation	(B)	Character
(3)	Duties of a Director	(C)	Unintentionally
(4)	Bill of Exchange	(D)	Employees
(5)	Ethos	(E)	The Articles of the Company

(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 convict cannot enter into a contract while he is undergoing imprisonment.
- (ii) Gratuity shall be payable to an employee on his disablement due to disease after he has rendered seven years of continuous service.
- (iii) Members of the Company cannot offer whole or part of their holding of shares to the public.
- (iv) The e-voting shall remain open for not less than 3 days and shall close at 5.00 P.M. on the date preceding the date of general meeting.
- (v) High ethical performance also protects the individuals who work in business.

(d) Fill in the blanks:**1×5=5**

- (i) The person to whom the guarantee is given is called _____.
- (ii) Occupier of a factory has _____ control over the affairs of the factory.
- (iii) Before incorporation of a company, the promoter has to select a _____ for the company.
- (iv) Notice of change of name shall be given to the Registrar in Form No. 5 within _____ days of complying with the requirement.
- (v) Ethics are set of normal principles that guide a person's _____.

SECTION – B

Answer any five questions.

15×5=75

2. (a) Describe the different ways under which a contract may be discharged?
(b) Mr. Ajay is unconscious of his mind when he enters into an agreement with Mr. Vijay on 15th July 2022, in the evening, to sell his office space to him within 15th October 2022. Next day Mr. Ajay declares that he was not well and conscious last night and now he is not willing to transfer the office space to Mr. Vijay. Now, Mr. Vijay is arguing that as Mr. Ajay has already signed the agreement he will have to transfer the property in his name.
Decide whether the contract is valid. 10+5=15
3. (a) Discuss the procedure of conversion from unlisted public company into limited liability partnership.
(b) Mr. P draws a bill of exchange of ₹ 75,000 on Mr. Q, who accepts the same and returned to former. Later Mr. P endorsed the instrument in favour of Mr. R in settlement of an amount of ₹ 60,000 payable to him after recording the fact on the back of the bill that ₹ 15,000 has been received by Mr. P as a part payment of the bill. On maturity, Mr. R presented the bill for payment but it was dishonored. Discuss whether the endorsement of the bill by Mr. P to Mr. R is valid as per the provision of the Negotiable Instruments Act, 1881. 10+5=15
4. (a) Discuss the powers of an inspector appointed by the State Government as prescribed in the Factories Act, 1948.
(b) Discuss the different provisions relating to pension fund as per section 23 of the PFRDA Act, 2013. 9+6=15
5. (a) Discuss the relevant provisions of the Companies Act, 2013 relating to issue of bonus shares.
(b) What action may be taken by the Central Government on revocation of licence of Section 8 of the Companies Act, 2013? 9+6=15
6. (a) Can a director be removed? If so give the procedure in detail as per Companies Act, 2013.
(b) Discuss the prohibitions and restrictions regarding political contributions made by a company under the Companies Act, 2013. 10+5=15
7. (a) What are the areas in business ethics? Write a note of the same.
(b) What is the procedure of determining the amount of gratuity as per the Payment of Gratuity Act, 1972? 10+5=15
8. Write short notes on any three of the following terms: 5×3=15
(a) Doctrine of Privity of Contract
(b) Trust Deed as per Companies Act, 2013
(c) Improving ethical behaviour in business
(d) Duties of medical benefit council

SUGGESTED ANSWERS TO QUESTIONS

Section – A

1×10=10 Marks

1. Answer all questions.

(a) Multiple Choice Questions

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

(b) Match and Pair

1×5 = 5 Marks

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

(c) True or False

1×5 = 5 Marks

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

(d) Fill in the blanks

1×5 = 5 Marks

- (i) Creditor
- (ii) Ultimate
- (iii) Name
- (iv) 30
- (v) Behaviour

Section -B

[Answer any FIVE questions]

Answer to Question 2(a):

10+5 = 15 Marks

When the rights and obligations created by a contract come to an end then said contract is said to be discharged. It is termination of contractual relationship between parties.

The following are the various ways of discharging a contract:

- i. **Discharge by performance:** Performance is the usual way of discharging a contract. Performance may be
 - a. Actual performance – It is the fulfillment of the obligations arising from a contract by the parties to it in accordance with the terms of the contract.
 - b. Attempted performance – it is offer of performance. A valid tender of performance is equivalent to performance
- ii. **Discharge by agreement:** Parties may agree to terminate the existence of the contract by different ways viz. novation, alteration, rescission, remission and waiver. When a new contract is substituted in place of existing contract, it is called novation. It discharges the original contract. Alteration means change in one or more of the terms of the contract. When all or some of the terms of the contract are cancelled it is known as rescission. Remission means acceptance of a lesser performance than what is actually due under the contract. Giving up certain rights is called as waiver. When a party agrees to give up its rights the contract is discharged
- iii. **Discharge by lapse of time:** Every contract must be performed within a fixed period. Lapse of time discharges the contract
- iv. **Discharge by operation of law:** A contract may be discharged by operation of law in the cases of death, insolvency, unauthorized material alteration and merger. In contract involving personal skill or ability, death terminates the contract and in other cases the rights and liabilities of the deceased person will pass on to his legal representatives. The insolvency of the promisor discharges the contract. Material alteration in the terms of the contract without the consent of the other party discharges the contract. When inferior rights of a person under a contract merge with the superior rights under a new contract, the contract with inferior rights will come to an end.
- v. **Discharge by impossibility of performance:** when performance of contract becomes impossible it results in discharge of the contract. An agreement which is impossible is void, because law does not compel to do impossible.
- vi. **Discharge by breach:** when a party fails to perform his obligations under a contract it is known as breach. It brings an end to the obligations created by a contract.
(In case if students mention only heading (name of point) then half mark each point is to be awarded.

Answer to Question 2(b):

Section 12 of the Indian Contract Act, 1872 provides that a person is said to be of sound mind for the purposes of making contract if, at the time when he makes it, he is capable of understanding it and of forming a rational judgment as to its effect upon his interest.

In this case Mr. Ajay when he made the contract in the evening of 15th July 2022, he was not capable of understanding the agreement and of forming rational judgment as to effect upon his interest.

As per the provision of the Indian Contract Act, 1872 Mr. Ajay cannot contract whilst such unconscious lasts. Therefore, the contract between Mr. Ajay and Mr. Vijay is not a valid contract.

Answer to Question 3(a):**10+5 =15 Marks**

Para 1(b) of the fourth schedule defines the term ‘**convert**’ in relation to a company converting into a LLP, as a transfer of the property, assets, interests, rights, privileges, liabilities, obligations and the undertaking of the company to the LLP in accordance with the provisions of the schedule.

Para 1(c) defines the term ‘**listed company**’ as defined in SEBI (Disclosure and Investor Protection) Guidelines, 2000 issued by SEBI under Section 11 of the SEBI Act, 1992 which defines as a company which has any of its securities offered through an offer document listed on a recognized stock exchange and also includes Public Sector Undertakings whose securities are listed on a recognized stock exchange.

Para 1(d) defines the term ‘**unlisted company**’ as a company which is not a listed company.

A company may apply to convert into a LLP if and only if_

1. there is no security interest in its assets subsisting or in force at the time of application; and
2. the partners of the LLP to which it converts comprise all the shareholders of the company and no one else.

A company is also to file the following documents-

- A statement by all its shareholders in Form No.18 along with fee containing the following particulars-
 - the name and registration number of the company;
 - the date of which the company was incorporated; and
- Incorporation document and statement;

On receipt of the above statements the Registrar shall register the documents, subject to the provisions of the Act and the rules made there under. The Registrar may require the documents to be verified ashe considers fit. The Registrar shall issue a certificate of registration in Form No. 19 as the Registrar may determine stating that the LLP is, on and from the date specified in the certificate, registered under the Act.

The LLP shall inform the concerned Registrar of Companies within 15 days of the date of registration about the conversion and the particulars of the LLP.

The Registrar, if is he is not satisfied with the particulars or other information furnished, may refuse to register. Against this order an appeal may be filed before the Tribunal.

Answer to Question 3(b):

It is important to note that the whole amount of the bill has to be endorsed for a valid endorsement. A part of the amount of an instrument cannot be endorsed. However, when a part of the amount has been received by the holder, the whole of the remaining unpaid amount can be endorsed to any party.

In this particular case a bill of exchange of Rs. 75,000 hold by Mr. P who has already received Rs. 15,000 as a part payment which has been clearly recorded on the back of the instrument. Since Mr. P has endorsed whole of the remaining amount of the bill i.e. Rs. 60,0000 to Mr. R, it will be considered as a valid endorsement. Thus, Mr. R will enjoy all the legal rights to recover the amount from Mr. P as per the provisions of the Negotiable Instruments Act, 1881.

Answer to Question 4(a):**9+6 =15 Marks**

As per the provision of **section 8 of the Factories Act, 1948**, the **state government may appoint** a person possessing the **prescribed qualifications** to be **inspector** for the purpose of this Act and may also **assign local limits** as may be think fit by the said government. As per **section 9** of the Act the following powers can be exercised by the inspector:

1. He may enter to any place which is used, or which has reason to believe is used as a factory,
2. He can examine the premises, plant, machinery, article or substance,
3. He may inquire into any accident or dangerous occurrence whether resulting in bodily injury, disability or not take on the spot statements of any person which he may consider necessary for such inquiry,
4. He can require the production of any document relating to factory,
5. He may seize or take copies of any register, record or other documents of any portion thereof as he may consider necessary,
6. He can take possession of any article or substance or part thereof and detain it for so long as is necessary for such examination
7. He can exercise any such other powers as may be prescribed.

Answer to Question 4(b):

The following provisions relating to pension fund have been laid down in the section 23 of the PFRDA Act, 2013:

- (1) The Authority may, by granting a certificate of registration under sub-section (3) of Section 27, permit one or more persons to act as a pension fund for the purpose of receiving contributions, accumulating them and making payments to the subscriber in such manner as may be specified by regulations.
- (2) The number of pension funds shall be determined by regulations and the Authority may, in public interest, vary the number of pension funds: Provided that at least one of the pension funds shall be a Government company. Here, for the purposes of this sub-section, the expression “Government Company” shall have the meaning assigned to it in Section 617 of the Companies Act, 1956.
- (3) The pension fund shall function in accordance with the terms of its certificate of registration and the regulations made under this Act.
- (4) The pension fund shall manage the schemes in accordance with the regulations.

Answer to Question 5(a):**9+6 = 15 Marks**

Section 63 of the Companies Act, 2013 provides for the issue of bonus shares. Section 63(1) provides that a company issue fully paid-up bonus shares to its members out of its

- free reserves;
- he securities premium account; or
- the capital redemption reserve account.

No bonus shares shall be made by capitalizing reserves created by revaluation of assets.

Section 63(2) provides that no company shall capitalize is profits or reserves for the purpose of issuing fully paid-up shares unless-

1. it is authorized by its articles;

2. it has, on the recommendation of the Board, been authorized in the general meeting of the company;
3. it has no defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
4. it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
5. the partly paid-up shares, if any outstanding on the date of allotment are made fully paid up;
6. it complies with such conditions as may be prescribed;

Section 63(3) provides that the bonus shares shall not be issued in lieu of dividend. Rule 14 provides that the company which once announced the decision of the Board recommending a Bonus issue shall not subsequently withdraw the same.

Answer to Question 5(b):

Revocation of licence Section 8(6) provides that the Central Government may, by order, revoke the licence granted to the company registered under this section-

- (1) if the company contravenes any of the requirements of this section; or
- (2) any of the conditions subject to which a licence is issued; or
- (3) the affairs of the company are conducted fraudulently or in a manner violative of the objects of the company or prejudicial to public interest.

The Central Government shall direct the company to convert its status and change its name to add the words 'Limited' or 'Private Limited' to its name. No such order will not be passed without giving opportunity to the company of being heard. A copy of such order shall be given to the Registrar. The Registrar shall, without prejudice to any action taken, on application, in the prescribed form, register the company accordingly.

Where a licence is revoked by the Central Government, it may direct that the company may be wound up under this Act or amalgamated with another company registered under this section, if it is satisfied that it is essential in the public interest. No such order shall be made unless the company is given a reasonable opportunity of being heard. Where a licence is revoked by the Central Government and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and the obligations as may be specified in the order.

Answer to Question 6(a):

Removal of Directors :

10+5 =15 Marks

Section 169 deals with the procedure of **removal of directors**. A company may remove a director by passing ordinary resolution. A company **cannot remove a director appointed by the Tribunal**.

The following is the procedure to remove a director and to appoint another director in the place of removed director:

1. A special notice of any resolution shall be sent for a meeting in which the director is to be removed, to the company;
2. On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;

3. The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
4. The director concerned may make his representation in writing to the company;
5. The director may request the company to send his representation to the members of the company;
6. The Company, shall if the time permits it to do so

- in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
- send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company's default, the director may require that the representation shall be read out at the meeting. The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order the company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. Provided special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled, it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. Nothing in this section shall be taken as depriving a person removed under this section of any compensation or damages payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

Answer to Question 6(b):

Prohibitions and Restrictions Regarding Political Contributions:

- i. According to Section 182 of the Companies Act, 2013, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly to any political party.
- ii. The contribution must be authorized by the Board of Directors in its meeting by resolution and such resolution shall be deemed to be the justification in law for such contribution.
- iii. The donation may be directly or indirectly.
- iv. If the contribution so made is likely to affect the public support for a political party shall also be deemed to be the contribution for political purpose.
- v. The expenditure incurred on advertisement in any publication souvenir, brochure, tract, pamphlet or the like is also deemed as political contribution, if such publication is by or on behalf of political party or if not, then for the advantage to such political party for a political purpose.
- vi. Every company shall disclose in its profit and loss account the total amount contributed by it under this section during the financial year to which the account relates. The contribution under this section shall not be made except by an account payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account.

Answer to Question 7(a):**10+5 = 15 Marks**

Areas in business ethics

- Corporate Social Responsibility;
- Fiduciary responsibility to stake holders;
- Industrial espionage.

Ethical behavior and corporate social responsibility can bring significant benefits to a business. For example, they may:

- attract customers to the firm's products, which means boosting sales and profits
- make employees want to stay with the business, reduce labour turnover and therefore increase productivity
- attract more employees wanting to work for the business, reduce recruitment costs and enable the company to get the most talented employees
- attract investors and keep the company's share price high, thereby protecting the business from takeover.

Knowing that the company, they deal with, has stated their morals and made a promise to work in an ethical and responsible manner allows investors' peace of mind that their money is being used in a way that arranges with their own moral standing. When working for a company with strong business ethics, employees are comfortable in the knowledge that they are not by their own action allowing unethical practices to continue. Customers are at ease buying products or services from a company they know to source their materials and labor in an ethical and responsible way.

A company which sets out to work within its own ethical guidelines is also less at risk of being fined for poor behavior, and less likely to find themselves in breach of one of a large number of laws concerning required behavior. Reputation is one of a company's most important assets, and one of the most difficult to rebuild should not be lost. Maintaining the promises it has made is crucial to maintaining that reputation. Businesses not following any kind of ethical code or carrying out their social responsibility leads to wider consequences. Unethical behavior may damage a firm's reputation and make it less appealing to stakeholders. This means that profits could fall as a result. The natural world can be affected by a lack of business ethics. For example, a business which does not show care for where it disposes its waste products, or fails to take a long-term view when buying up land for development, is damaging the world in which every human being lives, and damaging the future prospects of all companies.

Answer to Question 7(b):

Section 7 of the Payment of Gratuity Act, 1972 prescribes the procedure for determination of the amount of gratuity. As soon as the gratuity becomes payable the employer shall whether the employee has made application or not, determine the amount of gratuity. Then he is to give notice to the person to whom the gratuity is payable and also to the controlling authority, specifying the amount of gratuity so determined. The employer shall arrange to pay the amount of gratuity within **30 days** from the date of its becoming payable to the person to whom it is payable. If it is not paid within stipulated period the employer is liable to pay interest at the rate of **10 %** per annum. If the delay in payment is due to the fault of the employee and the employer has obtained permission in writing from the controlling authority for the delayed payment, on this ground, no interest is payable. 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.

Write short notes any THREE from the following:

5X3=15 Marks

Answer to Question 8(a):

Doctrine of Privity of Contract The doctrine of privity of contract means that a contract is between the parties only and no third person can sue upon it. It means that a stranger to contract cannot sue upon it. The Supreme Court of India recognized this rule in *MC Chacko v State Bank of Travancore*. It is settled law that a person not a party to a contract cannot subject to certain well recognized exceptions, enforce the terms of the contract. Under the English Common law, only a person who is party to a contract can sue upon it. In India, the common law doctrine of privity of contract is applicable. In the course of time, the courts have introduced a number of exceptions to rule of privity of contract. The Indian Contract Act, 1872 is silent about the right of a stranger to contract to sue or not to sue but the Privy Council extended the Principle of English Common law to India in its decision in *Jamna Das V Ram Avtar Pandey* which was affirmed by the Honourable Supreme Court of India in the case of *MC Chako v State Bank of Travancore*. Accordingly, in the following circumstances a stranger to contract can sue:

1. Beneficiaries under trust or charge.
2. Marriage settlement, partition or other family arrangements.
3. Acknowledgement or estoppel.
4. Agency.
5. Assignee in case of insurance policy.

Answer to Question 8(b):

Trust deed A trust deed in Form No. SH-12 shall be executed by the company issuing debenture in favor of the debenture trustees within three months of closure of the issue or offer. A trust deed for securing any issue of debentures shall be open for inspection to any member of debenture holder of the company, in the same manner, to the same extent and on the payment of the same fees, as if it were the register of members of the company. A copy of the trust deed shall be forwarded to any member or debenture holder of the company, at his request, within 7 days of the making, on payment of fee.

Answer to Question 8(c):

Improving ethical behaviour in business: Understanding how people make ethical choices and what prompts a person to act unethically may reverse the current trend toward unethical behavior in business. Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and coworkers, and the opportunity to engage in misconduct. It is difficult for employees to determine what conduct is acceptable within a company if the firm does not have ethics policies and standards. And without such policies and standards, employees may base decisions on how their peers and superiors behave. Professional codes of ethics are formalized rules and standards that describe what a company expects of its employees. Codes of ethics, policies on ethics, and ethics training programs advance ethical behavior because they prescribe which activities are acceptable and which are not, and they limit the opportunity for misconduct by providing punishments for violations of the rules and standards. The enforcement of such codes and policies through rewards and punishments increases the acceptance of ethical standards by employees.

Business ethics is important to practice good ethical behavior. One of the most formidable challenges is avoiding immoral management, and transitioning from an amoral to a moral management mode of leadership, behavior, decision making, policies and practices. Moral management requires ethical leadership. It entails more than just 'not doing wrong'.

Answer to Question 8(d):

Duties of medical benefit council

Section 22 of the Employee's State Insurance Act, 1948 provides the duties of the Medical Benefit Council as to

- a. Advise the corporation and the standing committee on matters relating to the administration of medical benefit, the certification for purposes of the agent of benefits and other connected matters,
- b. Have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with the medical treatment and attendance, and
- c. Perform such other duties in connection with the medical treatment and attendance as may be specified in the regulations.
