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Solved Scanner

(Solution of December - 2016)

**CMA Foundation
(Syllabus 2016)**

Paper - 3 : Fundamentals of Laws and Ethics

[Chapter - 1] Indian Contract Act, 1872

1. (i) An agreement to do an act impossible in itself under section 56 of Indian Act, 1872 is
- (a) Void
 - (b) Valid
 - (c) Voidable
 - (d) Illegal
- (ii) A agrees to pay B ₹ 500 if a particular ship does not return to the port. The ship was sunk. The contract
- (a) can be enforced by B.
 - (b) cannot be enforced by B.
 - (c) is a wagering contract.
 - (d) is unlawful, illegal and against public policy. **(1 mark each)**

Answer:

- (i)** (d)
- (ii)** (b)

[Chapter - 2] Sale of Goods Act, 1930

1. (iii) Goods that are identified and agreed upon at the time of contract of sale are known as
- (a) Specific goods
 - (b) Future goods
 - (c) Generic goods
 - (d) Existing goods **(1 mark)**

Answer: (a)

[Chapter - 1] Indian Contract Act, 1872

1. (iv) P agrees to discover treasure by magic if Q pays him ₹ 5,000. This agreement is
- (a) void
 - (b) voidable
 - (c) valid
 - (d) unenforceable.
- (1 mark)**

Answer: (d)

[Chapter - 2] Sale of Goods Act, 1930

1. (v) Under Section 2(7) of the Sale of Goods Act, 1930 the term 'goods' does not include
- (a) Stock and Share
 - (b) Growing crops
 - (c) Grass
 - (d) Neither (a) nor (b) nor (c).
- (1 mark)**

Answer: (a)

[Chapter - 3] Negotiable Instruments Act, 1881

1. (vi) An instrument incomplete in some respect is known as
- (a) Inchoate instrument
 - (b) Escrow instrument
 - (c) Ambiguous instrument
 - (d) Foreign instrument.
- (1 mark)**

Answer: (a)

[Chapter - 4] Ethics and Business

1. (x) Business ethics calls for avoidance of
- (a) Competition
 - (b) Publicity
 - (c) Monopoly
 - (d) Self-Interest
- (1 mark)**

Answer: (c)

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2. (a) An ancient Arabic Wisdom States, "Live together like brothers and do business like_____". **(2 marks)**

Answer: Strangers

[Chapter - 1] Indian Contract Act, 1872

2. (f) An agreement in restraint of marriage is_____ **(2 marks)**

Answer: Void

[Chapter - 3] Negotiable Instruments Act, 1881

2. (h) There are only_____ parties in a bill of exchange. **(2 marks)**

Answer: Three

[Chapter - 1] Indian Contract Act, 1872

2. (j) The sweetmeat sold by M/S MISTI MUKH & Co. contained germs of dyspepsia, this is a breach of. **(2 marks)**

Answer: Law.

[Chapter - 1] Indian Contract Act, 1872

4. State whether the following statements given below are TRUE or FALSE:

- (ii) Every contract is an agreement but every agreement is not a contract. **(1 mark)**

Answer: True.

[Chapter - 2] Sale of Goods Act, 1930

4. State whether the following statements given below are TRUE or FALSE:

- (iii) Goods displayed in a shop window with a price level will amount to offer.
(iv) A gave a piece of suit-length to X a leading tailor to be returned to him on Payment of his charges after making a party dress for him. This is a case of sale. **(1 mark each)**

Answer:

(iii) True

(iv) False

[Chapter - 4] Ethics and Business

4. State whether the following statements given below are TRUE or FALSE:

- (viii) "There are two fools in every market: One asks too little, one asks too much, so says an Italian Proverb." **(1 mark)**

Answer: False.

[Chapter - 1] Indian Contract Act, 1872

5. Define the following:

- (a) Void contract **(3 marks)**

Answer:

Void contract:

A contract which ceases to be unenforceable by law becomes void when it ceases to be enforceable by law. Void contract is initially a perfectly valid contract but subsequent development turns it into a void contract.

The following agreements have been expressly declared to be void by the Indian Contract Act:

- (i) Agreement by a minor or a person of unsound mind. [Sec(11) and Sec(12)]
- (ii) Agreement of which the consideration or object is unlawful. [Sec(23)]
- (iii) Agreement made under a bilateral mistake of fact material to the agreement. [Sec(20)]
- (iv) Agreement of which the consideration or object is unlawful in part and the illegal part cannot be separated from the legal part. [Sec(24)]
- (v) Agreement made without consideration. [Sec(25)]
- (vi) Agreement in restraint of marriage. [Sec(26)] - Every agreement in restraint of the marriage of any person, other than a minor, is void.
- (vii) Agreement in restraint of trade. [Sec(27)]- Every agreement by which anyone is restrained from exercising a lawful profession, trade or business of any kind, is to that extent void. The exception is an agreement not to carry on business of which goodwill is sold.

[Chapter - 2] Sale of Goods Act, 1930

5. Define the following:

(b) Goods under the Sales of Goods Act, 1930.

(3 marks)

Answer:

Definition of Goods: According to Section 2(7), "Goods means every kind of moveable property other than actionable claims and money; and includes stock and shares; growing crops, grass, trees and things attached to or forming part of the land which are agreed to be severed it before sale or under contract of sale".

Example: Where the trees were sold so that they were to be cut out and separated from land and taken away by the buyer. The contract was for sale of trees as moveable goods.

[Chapter - 3] Negotiable Instruments Act, 1881

5. Define the following:

(c) Escrow Instrument

(3 marks)

Answer:

Escrow Instrument:

When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called Escrow instrument. The liability to pay in case of an Escrow instrument does not arise if the conditions agreed upon are not fulfilled or the purpose for which the instrument was delivered is not achieved.

[Chapter - 4] Ethics and Business

5. Define the following:

(h) Business Ethics

(3 marks)

Answer:

Ethics in Business:

"Business ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed"

(i) **Business for Profit** :It would seem that business ethics does not

come within the confines of ethics. As Adam Smith (1779), the father of modern economics says: 'People of the same trade seldom come together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.' People find mechanisms to generate the highest possible returns when conducting business.

- (ii) **Business and Ethics:** No matter how hard one tries, it is impossible to separate life from business. For a businessman, business is life. Mahatma Gandhi (1948) said, 'It is difficult but not impossible to conduct strictly honest business. What is true is that honesty is incompatible with amassing of large fortune.' The business world is an important part of society, as it is concerned with the livelihoods of people.
- (iii) **Character of Business:** 'There are two fools in every market: one asks too little, one asks too much,' so says a Russian proverb. Is there a concept called balanced profit? The business in a society reflects its character. Transparency International, in its corruption perception index, gives Finland, Denmark, and New Zealand the first place with 9.4 points. India is way down at 72, with just 3.5 points on a scale of 10. We may gloat over our cultural heritage and religious and ethical glories of the past, but we stand exposed before the world as a corrupt society.
- (iv) **Professional Ethics:** The aforementioned discussion may be understood through the following distinctions: ethics and business ethics. We have studied the distinction between normative and practical ethics and have established that business ethics comes under practical ethics and is applied to a particular activity. Just as a society functions on the social codes of conduct and a country is governed by its constitution, a business is run on corporate codes. In other words, there is a professional code of conduct for any business.

[Chapter - 1] Indian Contract Act, 1872

6. Answer the following question:

- (a) Explain what are the exceptions to general rule “No Consideration, No Contract”.
(10 marks)

Answer:

NO CONSIDERATION – NO CONTRACT: [Sec. 25]

The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void. For example if A promises to pay B ₹ 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in Section 25 itself.

As per Section 25, an agreement made without consideration is not void in the following circumstances:

1.	Promise made on account of natural love and affection	An agreement made without consideration is valid if it is in writing and registered and is made on account of natural love and affection between parties standing in a near relation to each other. Thus, an agreement without consideration will be valid provided. (a) It is expressed in writing. (b) It is registered under the law. (c) It is made on account of natural love and affection. (d) It is between parties standing in near relation to each other.
2.	Promise to compensate for voluntary services	Voluntary service means service done without any request. An agreement made without consideration is valid if it is a promise to compensate a person who has already voluntarily done something for the promisor. To apply this rule the following essentials must exist. (a) The service should have been done voluntarily.

		<p>(b) The service should have been done for the promisor.</p> <p>(c) The promisor must have been in existence at the time when the service was done.</p> <p>(d) The intention of promisor must have been to compensate the promisee.</p> <p>(e) The service rendered must also be legal.</p> <p>Example: A finds B's purse and gives it to him. B promises to give A ₹ 50. This is a contract.</p>
3.	Promise to pay time-barred debt	<p>A promise by a debtor to pay a time-barred debt is also enforceable. But the promise must be in writing. It must be signed by the promisor or his authorised agent. The promise may be to pay the whole or part of the debt.</p> <p>Example: A owes B ₹ 1,000 but the debt is barred by the Limitation Act. A signs a written promise to pay ₹ 500 on account of the debt. The promise will be valid and binding without any fresh consideration.</p>
4.	Creation of Agency	<p>According to Section 185 of the Contract Act, no consideration is necessary to create an agency. Thus when a person is appointed as an agent, his appointment is valid even if there is no consideration.</p>

5.	Completed Gifts	Gifts once made cannot be recovered on the ground of absence of consideration. Absence of consideration will not affect the validity of any gift already made. Thus if a person gives certain properties as gift to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground there was no consideration. Example: A gave a watch as a gift to B on his birthday. Later on A cannot demand the watch back on the ground there was no consideration.
6.	Contract of guarantee	Under section 127, no consideration is needed for a contract of guarantee. In other words, contract of guarantee needs no consideration.
7.	Remission	Remission means lesser performance of the contract than what is actually to be performed.

[Chapter - 2] Sale of Goods Act, 1930

6. Answer the following question:

(b) Who is an Unpaid Seller?

Briefly discuss the rights of an unpaid seller.

(10 marks)

Answer:

Unpaid Seller: The seller who has not received the whole of the price of the goods sold is called an “unpaid seller”. According to Section 45, the seller of goods is deemed to be an unpaid seller:

- (a) When the whole of the price has not been paid, or
 - (b) When a bill of exchange or other negotiable instrument has been received as conditional payment, and the same has been dishonoured.
- A seller who has been partly paid is also an unpaid seller.

	Rights of an unpaid seller	According to the Sale of Goods Act the unpaid seller has the following rights. They are: A. Rights against the goods B. Rights against the buyer
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A.	Rights against the goods	An unpaid seller has some rights against the goods sold when the property in the goods has passed to the buyer. They are as follows: 1. Right of Lien 2. Right of stoppage of goods in transit 3. Right of Re-sale 4. Right of withholding delivery
	1. Right of Lien: [Sec. 47]	Lien is a right to retain possession of goods until payment of price. According to Section 47(1) an unpaid seller can exercise the right of lien in the following cases: (i) Where the goods have been sold without any stipulation as to credit. (ii) Where the goods have been sold on credit, but the period of credit has expired. (iii) Where the buyer becomes insolvent.
	Conditions for the exercise of lien	The following are the conditions precedent to the exercise of the lien. 1. The ownership must have passed to the buyer. 2. The goods must be in the possession of the seller. 3. The whole or part of the price must remain unpaid.
	2. Right of stoppage of goods in transit: [Sec. 50]	The right of stoppage in transit is a right of stopping the goods, while they are in transit and retaining the possession until payment of the price. This right is conferred on the seller by Section 50 of the Act. This right can be exercised under the following cases: (i) the seller must be an unpaid seller. (ii) the goods must be in-transit (iii) the buyer must have become insolvent. (iv) the property in the goods must have

		passed from the seller to the buyer.
	3. Right of Re-sale: [Sec. 54]	An unpaid seller who has exercised either the right of lien or the right of stoppage-in-transit can resell such goods. The right to resell the goods is called 'right of resale'. This right is conferred by Section 54. An unpaid seller can exercise the right of resale in the following cases: (i) where the goods are of a perishable nature. (ii) where the seller expressly reserves the right of resale in case the buyer makes a default in the payment of price. (iii) where the seller has exercised his right of lien or stoppage in transit, and gives notice to the buyer of his intention to resell the goods.
B.	Rights against the buyer personally	An unpaid seller in addition to his rights against the goods, has the following rights against the buyer personally.
	1. Suit for price: [Sec. 55]	Where the property in goods has passed to the buyer, and the buyer wrongfully neglects or refuses to pay the price, the seller can sue the buyer for price.
	2. Suit for damages for non-acceptance [Sec. 56]	Where the buyer wrongfully neglects or refuses to accept and pay for the goods, the seller can sue him for damages for non-acceptance of the goods.
	3. Suit for repudiation	Where the buyer repudiates the contract before the date of delivery, the seller may wait till the date of delivery or may treat the contract as cancelled and sue for damages for breach.

	4. Suit for interest: [Sec. 61]	Where there is specific agreement between the seller and the buyer regarding interest on the price of goods, the seller may claim it from the date when payment becomes due. If there is no specific agreement, the interest is payable from the date notified by the seller to the buyer.
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[Chapter - 4] Ethics and Business

6. Answer the following question:

- (f) Specify the reasons why a good understanding of Business Ethics is important. **(10 marks)**

Answer:

Need for Business Ethics

Business ethics is currently a very prominent business topic, and the debates and dilemmas surrounding business ethics have attracted enormous amount of attention from different quarters of organizations and society. Hence, it has emerged as an increasingly important area of study. Some of the major reasons why a good understanding of business ethics is important can be stated as follows:

1.	Stop business malpractices	Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
2.	Improve customers' confidence	Business ethics are needed to improve the customers' confidence about the quality, quantity, price, etc. of the products. The customers have more trust and confidence in the businessmen who follow ethical rules. They feel that such

		businessmen will not cheat them.
3.	Survival of business	Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman. He will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.
4.	Safeguarding consumers' rights	Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard, right to redress, etc.
5.	Protecting employees and shareholders	Business ethics are required to protect the interest of employees, shareholders, competitors, dealers, suppliers, etc. It protects them from exploitation through unfair trade practices.
6.	Develops good relations	Business ethics are important to develop good and friendly relations between business and society. This will result in a regular supply of good quality goods and services at low prices to the society. It will also result in profits for the businesses thereby resulting in growth of economy.

7.	Creates good image	Business ethics create a good image for the business and businessmen. If the businessmen follow all ethical rules, then they will be fully accepted and not criticised by the society.
8.	Smooth functioning	If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. So they will give full cooperation to the business. This will result in smooth functioning of the business. So, the business will grow, expand and diversify easily and quickly. It will have more sales and more profits.
9.	Consumer movement	Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propoganda and false claims, unfair trade practices.
10.	Consumer satisfaction	Today, the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction.
11.	Importance of labour	Labour, i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions.

12.	Healthy competition	The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency, break complacency and leads to optimal utilisation of scarce resources, hence is always welcome.
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