

Answer to MTP_Intermediate_Syllabus 2012_Jun2014_Set 2

Paper-6: LAW, ETHICS AND GOVERNANCE

SECTION - A

Answer Q No. 1 (Compulsory) and any 4 from the rest of Section A

Question 1:

Choose the correct answer from the given four alternatives:

[1×20=20]

A. Business Ethics is a code of conduct which businessmen should follow while conducting their

.....

(a) Normal activities

(b) Special activities

(c) Specific activities

(d) None of the above

B. The first case on the 'doctrine of frustration' as decided by the Supreme Court of India is:

(a) Basanti Bastralaya v. River Steam Navigation Co. Ltd.

(b) Raja Dhuruv Dev Chand v. Raja Harmohinder Singh

(c) Sushila Devi v. Hari Singh

(d) Satyabrata Ghosh v. Mugneeram

C. A, B and C are partners of an unregistered firm. D owns this firm ₹1000 on a contract. The firm filed a suit against D the suit is dismissed for non-registration of the firm. The firm is registered later on. In this case which one of the following statements is MOST APPROPRIATE:

(a) **The firm can successfully bring the suit against D**

(b) Registration must have been effected by the firm, before a suit is filed in the court

(c) The firm cannot file suit against D

(d) None of the above

D. Employer carrying on any public utility service cannot declare lock out without giving notice.

(a) 3 weeks

(b) 4 weeks

(c) 5 weeks

(d) 6 weeks

E. A cheque is crossed when it bears across its face an addition of the name of a banker, either with or without the words "not negotiable".

(a) Specially

(b) General

(c) Restrictive

(d) None of the above

F. A party who does not suffer any loss in case of breach of contract, is entitled to:

(a) Statutory damages

(b) Liquidated damages

(c) Exemplary damages

(d) Nominal damages

G. Application for Director Identification Number(DIN) is to be made to Central Govt. in Form:

(a) DIN-1

(b) DIN-2

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- (c) DIN-3
(d) None of the above
- H. A Drawer is:**
(a) A person, who draws a cheque
(b) A bank on whom a cheque is drawn
(c) A person in whose favour a cheque is drawn
(d) None of the above
- I. In case of conflict of jurisdiction of the courts, the incidence of a contract shall be governed by the law of the place where the:**
(a) Contract is made
(b) Contract is performed
(c) Acceptor resides
(d) Proposer resides
- J. Offences by companies under The Prevention of Money Laundering Act, 2002 are dealt in:**
(a) Section 48
(b) Section 42
(c) Section 45
(d) Section 70
- K. When parties enter into a contract on telephone the contract becomes complete at the place where acceptance is heard by the proposer. This has been provided:**
(a) In no section of Indian Contract Act but so decided by the Supreme Court
(b) In section – 2
(c) In section – 3
(d) In section – 4
- L. The primary purpose of employee safety programme is to preserve the employees':**
(a) Mental health
(b) Physical health
(c) Emotional health
(d) All of the above
- M. In order to prosecute an employer under section 14 of The Child Labour (Prohibition and Regulation) Act, 1986, the age of the child must be proved to be less than of age.**
(a) 12 years
(b) 13 years
(c) 14 years
(d) 15 years
- N. Under the provisions of section 143 of the Negotiable Instruments Act, 1881, all offences under the Act are to be tried by:**
(a) any Judicial Magistrate
(b) Judicial Magistrate of the First Class or by a Metropolitan Magistrate
(c) only a District Judge
(d) none of the above
- O. As per Employees' State Insurance Act, 1948, the rate of Employer's contribution is:**
(a) 4.25%
(b) 4.50%

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- (c) 4.75%
- (d) 4.95%

- P. Clause 49 is applicable to all the listed companies which has a minimum paid-up capital of:**
- (a) ₹5 crores
 - (b) ₹3 crores**
 - (c) ₹6 crores
 - (d) ₹4 crores
- Q. Public Notice under the Indian Partnership Act, 1932 is given in the following manner:**
- (a) Serving a copy of the Notice to the Registrar of firms
 - (b) Publishing the Notice in the Official Gazette
 - (c) Publishing the Notice in one vernacular newspaper circulating in the district where the firm's principal place of business is situated
 - (d) All of the above**
- R. In case of employee covered under the ESI, the accident report shall be sent in to local office of the ESI to which the company attached.**
- (a) Form No. 18
 - (b) Form No. 18A
 - (c) Form No. 25
 - (d) Form No. 16**
- S. The Sarbanes-Oxley Act was formed by the US in the year:**
- (a) 2002**
 - (b) 2003
 - (c) 2004
 - (d) 2005
- T. Which of the following is not a threat that may affect the business environment and influence finance and accounting professionals:**
- (a) Self-interest threats
 - (b) Advocacy threats
 - (c) Functional threats**
 - (d) Intimidation threats

Question 2:

(a) A issues an open 'bearer' cheque for ₹ 10,000 in favour of B who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to C and D. When it is finally presented by D's banker, it is returned with remarks 'payment countermanded' by drawer. In response to this legal notice from D, A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, decide whether A's argument is valid or not? [3]

(b) Explain the power of Central Government to appoint Inquiry Committee under Section 41-D of the Factories Act, 1948. [3]

(c) Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be

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exempted from liability under the provisions of the Indian Contract Act, 1872.

[4]

(d) Mr. Amit, who retired on 30/11/2013, did not vacate office quarter which was provided by his employer. Employer withheld the Gratuity to force him to vacate the quarter. [2]

Answer:

(a)

Effects of striking off the word 'bearer'	<ul style="list-style-type: none">• It amounts to a material alteration.• However, such material alteration is authorised by the Act.• Therefore, the cheque is not discharged; it remains valid.
Effects of crossing the cheque	<ul style="list-style-type: none">• It amounts to a material alteration.• However, such material alteration is authorised by the Act.• Therefore, the cheque is not discharged; it remains valid.
A's argument is not valid	<ul style="list-style-type: none">• Since the reason for dishonour of cheque is not 'material alteration', but 'payment countermanded by drawer'.• Therefore, A is liable for the payment of the cheque, and he shall also be liable for dishonour of cheque in accordance with the provisions of Sec. 138.

(b) Appointment of an Inquiry Committee in the event of occurrence of an extraordinary situation. The Central Government may, in the event of the occurrence of an extraordinary situation involving a factory engaged in a hazardous process, appoint an Inquiry Committee to inquire into the standards of health and safety observed in the factory. The object of appointing the Committee is to find out the causes of any failure or neglect in the adoption of any measures or standards prescribed for the health and safety of the workers employed in the factory or the general public affected or likely to be affected due to such failure or neglect and for the prevention and recurrence of such extraordinary situation in future in such factory or elsewhere [Sec. 41-D (1)].

Membership of the Committee and its tenure of office. The Committee shall consist of a Chairman and 2 other members. The terms of reference of the Committee and the tenure of office of its members shall be such as may be determined by the Central Government according to the requirements of the situation [Sec. 41-D (2)].

Recommendations of the Committee advisory. The recommendations of the Committee shall be advisory in nature [Sec. 41-D (3)].

(c) According to Section 56 (Para 2) of Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (Budget V Bennington; Jacobs V Credit Lyonnais).

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

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(d) Gratuity cannot be withheld for non-vacation of service quarters by retired employees. (Ref: Air India Vs Authority under the Act 1998 CLA 34 Bon 66). Gratuity can only be forfeited to the extent of damage or loss where services have been terminated for any act or willful omission or negligence causing damage/loss/destruction of employer's property and not for non-vacation of service quarters.

Question 3:

(a) When gratuity payable to an employee can be forfeited? [2]

(b) Does threat to commit suicide amount to coercion? [2]

(c) State the difference between coercion and undue influence. [4]

(d) Is there presumption of undue influence in relationship of husband and wife? [2]

(e) X, a minor wanted to become a professional soccer player. He entered into a contract with Y, a soccer coach and agreed to pay him ₹10000/- per month to learn the game. Is X liable to pay the amount? [2]

Answer:

(a) The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for –

- (i) His riotous disorderly conduct or any other act of violence on his part, or
- (ii) Any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment [Sec. 4 (6) (b)]. Any decision to forfeit royalty can however be taken only after affording opportunity of hearing to the employee.

(b) As per Section 15 of Indian Contract Act, committing or threatening to commit any act forbidden by Indian Penal Code is coercion .As such 'threat to commit suicide' amounts to coercion as it is forbidden by the Code.

(c)

Coercion	Undue Influence
It involves the physical force or threat. The aggrieved party is compelled to make the contract against its will.	It involves moral or mental pressure. The aggrieved party believes that he or she would make the contract.
It involves committing or threatening to commit an act forbidden by Indian Penal Code for detaining or threatening to detain property of another person.	No such illegal act is committed or a threat is given.
It is not necessary that there must be some relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
Coercion need not proceed from the promisor nor need it be directed against the promisor.	Undue influence is always essential between the parties to the contract.
The contract is voidable at the option of the	Where consent is induced by undue

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party whose consent has been obtained by the coercion.	influence, the contract is either voidable or the court may set it sale or enforce it in a modified form.
In case of coercion where the aggrieved party, as per Section 64, rescinds the contract any benefit received has to be restored back to the other party.	The court has the distinction to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions.

(d) Undue influence cannot be presumed in husband wife relationship unless the wife is a pardanashin woman (Howes v. Bishop, 1909, 2KB 390). The burden of proving pardanashin rests on the wife.

(e) Education in India has been held as a necessity of life and as per to section 68 of the Indian Contract Act 1872, "If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person." So X will be liable to pay the amount provided he has properties existing in his name.

Question 4:

(a) A purchased a car from B who had no title to it. A used the car for several months. After that, the true owner spotted the car and demanded it from A – Discuss the remedies available to A.

[3]

(b) Mr. Wrong, owner of Wrong Textiles enters into a contract with Retail Garments Show Room for supply of ₹1,000 pieces of Cotton Shirts at ₹300 per shirt to be supplied on or before 31st December. However, on 1st November, Wrong Textiles informs the Retail Garments Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone up to ₹350 per shirt. Examine the rights of the Retail Garments Show Room in this regard.

[4]

(c) 'X', a temporary employee drawing a salary of ₹3,000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2013-14, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service. Later, when the bonus was to be paid to other employees, the employers refused to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of the employer's refusal to pay bonus to 'X'.

[5]

Answer:

(a) As per Section 14(a) of The Sale of Goods Act, 1930 in a contract of sale unless the circumstances of the contract are such as to show a different intention is an implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods.

In the given case, A was bound to hand over the car to its true owner and A could successfully sue B, the seller without title, for the recovery of the purchase price even though several months had passed.

(b) Anticipatory breach of contract occurs when the promisor refuses altogether to perform his promise and signifies his unwillingness even before the time for performance has arrived. In such a situation the promisee can claim compensation by way of loss or damage caused to him by

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the refusal of the promisor. For this, the promisee need not wait till the time stipulated in the contract for fulfillment of the promise by the promisor is over.

In the given problem Wrong Textiles has indicated its unwillingness to supply the cotton shirts on 1st November itself when it has time upto 31st - December for performance of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus Retail Garments show room can claim damages from Wrong Textiles immediately after 1st November, without waiting upto 31st December. The damages will be calculated at the rate of ₹ 50 per shirt i.e. the difference between ₹ 350/- (the price prevailing on 1st November) and ₹ 300/- the contracted price.

(c) As per section 8, every employee is entitled to bonus, if he has worked in the establishment for 30 or more working days in an Accounting Year.

As per section 9, an employee is disqualified from receiving bonus only if he is dismissed from service because of any of the following reasons:

- (i) Where he commits fraud.
- (ii) Because of his riotous or violent behavior while on the premises of the establishment.
- (iii) Where he commits theft, misappropriation or sabotage of any property of the establishment.

In the given case, X is entitled to receive bonus, since:

- He is covered under the Payment of Bonus Act, 1965, i.e., the Act applies to the establishment in which he is employed.
- He is an 'employee' as defined u/s 2(13) as his salary or wage does not exceed ₹10,000 per month and he is not an apprentice.
- He has worked for not less than 30 working days in the accounting year; and
- He is not disqualified from receiving bonus u/s 9, since he has not been dismissed from service.

Mere suspension from service and initiation of inquiry against an employee does not disentitle an employee from receiving bonus, if he is not dismissed from service on any of the grounds mentioned u/s 9. In other words, if an employee is prevented from working and is subsequently reinstated in service, employer remains liable to pay bonus to the employee [ONGC v Sham Kumar Sahegal]. Further, the employee is entitled to receive bonus even for the period during which he was suspended, since a person should not be punished where he is not at fault.

Conclusion: The employer's refusal to pay bonus to X is not valid. X is entitled to bonus for full year (including the period of 2 months during which he remained suspended).

Question 5:

(a) A to sell a horse to B who tells A that he (B) needs the horse for riding to Mumbai immediately. The horse is ill at the time of agreement. What are the rights of A and B? [3]

(b) Describe the provisions relating to contribution by the employees and the employer under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. [5]

(c) A seller agrees to supply to the buyer timber of 1/2" thickness for being made into cement barrels. The timber actually supplied varies in thickness from 1/2" to 5/8". The timber is merchantable and commercially fit for the purpose for which it was ordered. The buyer rejects the timber. Is his action justified? [4]

Answer:

(a) As per Section 8 of the Sale of Goods Act, an agreement to sell specific goods become void if subsequently the goods, without any fault on the part of the seller or buyer, perish or

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become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer.

In the given case B needs the horse for riding to Mumbai immediately. But the horse is ill and not able to perform the agreement. As per the above cited explanation the horse being a specific good the agreement becomes void.

(b) According to section 6 of the EPF & MP Act, 1952, the employees' contribution to the fund shall be 10% of the basic wage, dearness allowance and retaining allowance (if any). An employee can at his will contribute beyond 10 if the scheme makes provision therefore subject to the conditions that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section (i.e. 10%). This rule will prevail irrespective of whether the employer employs the person directly or through contractor.

According to the first proviso to the Section 6, the Central Government may, however, raise the aforesaid percentage of contribution from 10% to 12% in respect of any establishments. It may do so after making such enquiries as it deems fit.

The following points are relevant in this regard:

- (i) Where the amount of any contribution involves a fraction of rupee, the scheme may provide for the rounding off of such fraction to the nearest rupee, half rupee or a quarter rupee.
- (ii) Dearness allowance includes cash value of any food concession allowed to the employee.
- (iii) Retaining allowance means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the establishment is not working for retaining his services.

Section 2(13) under the Payment of Bonus Act, 1965 defines an employee as any person (other than an apprentice) employed on a salary or wage not exceeding ten thousand rupees per month in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

Section 8 under the same act states, every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

(c) Where there is a contract for the sale of goods by description, there is an implied condition that the goods shall correspond with the description. The rule of law contained in Section 15 of the Sale of Goods Act summarized in the following maxim: "If you contract to sell peas, you cannot oblige a party to take beans. If the description of the article tendered is different in any respect, it is not the article bargained for and the other party is not bound to take it".

In the given case the buyer can reject the timber even if the timber is merchantable and commercially fit for the purpose for which it was ordered.

Question 6:

(a) B selects certain furniture in a shop. The price is settled. He arranges to take delivery of the furniture the next day and agrees to pay on the first of the next month. The furniture was destroyed by fire the same evening. Is B liable to pay the price? Give reasons. [2]

(b) A hirer, who obtains possession of Machinery from its owner under a hire purchase agreement, sells the Machinery to a buyer who buys in good faith and without notice of the right of the owner. The buyer gets good title to the Machinery. [2]

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(c) Twelve employed persons acting in concert absent themselves for 2 days without due notice and without reasonable cause. What is the maximum amount that may be deducted on account of the absence from duty of these persons? [2]

(d) A watchman whose duty was to guard the property of the premises of a rest house had his quarters within the premises of the rest house. His duty ended at 11 p.m. At 2.30 a.m. (i.e. within 3.5 hours of the said 11 p.m.) he was found murdered near his quarters. Is the employer liable to pay compensation? [2]

(e) An Agreement was entered into on 11.10.2013 between the owner of building and Mr. Ramesh for exhibition cum sales centre. On 30.11.2013 owner expressed his intention to cancel the agreement as the building is unsafe as declared by Municipal Corporation on 29.11.2013. Comment. [2]

(e) In an Auction sale, a bid once made can be withdrawn by the Bidder. Comment citing rules. [2]

Answer:

(a) B is liable to pay the price, the contract being an unconditional contract for the sale of specific goods in a deliverable state. In the case of specific goods, in a deliverable state, property in them passes at the time when the contract (unconditional) is made (Section 20). The fact that the time of payment or the delivery of the goods, or both, is postponed does not affect the passing the property.

(b) A hirer is not the owner of the goods and does not possess title deed. He therefore has no right to confer ownership to anyone. Since sale involves transfer of ownership and a hirer, being a non-owner, cannot transfer ownerships in the given case, buyer shall not get a good title.

(c) If, however, 10 or more employed persons, acting in concert, absent themselves without due notice and without reasonable cause, the deduction for absence from duty from any such person may include such amount not exceeding his wages for 8 days as may be due to the employer in lieu of notice [Proviso to Sec.9 (2)].
So, in the given case, wages for 10 days, i.e. two days' wages for absence plus 8 days' wages for not giving due notice may be deducted.

(d) As the accident arise out of and in the course of employment. When a person is employed on a duty of this kind his actual employment does not cease within the specified hours of duty but he is in a way constant employment since it can by no means be said that if a watchman detected a thief at a time he was not actually on duty, he would not be required to resist and obstruct the thief and that it would be no part of his duty to do so.

(e) When a contract becomes impossible to perform at a date subsequent to the date of agreement, it is called doctrine of supervening impossibility or Doctrine of frustration. If the Municipality's declaration is known to the owner after the date of execution of agreement, this agreement is discharged and Mr. Ramesh cannot force the owner.

(f) In the case of sale by Auction, the sale is complete only when the auctioneer announce its completions by the fall of a hammer or in other customary manner and until such announcement is made any bidder may retract/withdraw his bid.

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SECTION - B Answer any 2 from the Section B

Question 7:

(a) The Right to Information is associated with which fundamental right? Discuss the rules for appointment of Central Information Commission as per The Right to Information Act, 2005.

[1+3=4]

(b) Why is Internal audit necessary to Management? Discuss.

[4]

Answer:

(a) Right to Information Act 2005 is an important Act enacted by the Parliament to secure to the citizen of India the fundamental right of freedom of speech and expression enshrined in Article 19(1) of the Constitution of India.

As per Section 13 of the Act,

1. The Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment:

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

2. Every Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner:

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in sub-section (3) of section 12:

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

3. The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

(b)

Internal Audit has become an important management tool for the following reasons:

1. It ensures compliance of Companies (Auditors Report) Order, 2003.
2. Internal Auditing is a specialized service to look into the standards of efficiency of business operation.
3. Internal auditing can evaluate various problems independently in terms of overall management control and suggest improvement.
4. Internal audit's independent appraisal and review can ensure the reliability and promptness of MIS and the management reporting on the basis of which the top management can take firm decisions.
5. Internal Audit system makes sure the internal control system including accounting control system in an organization is effective.
6. Internal Audit ensures the adequacy, reliability and accuracy of financial and operational data by conducting appraisal and review from an independent angle.
7. Internal Audit is an integral part of "Management by System".
8. Internal Audit can break through the power ego and personality factors and possible

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conflicts of interest within the organization.

9. It ensures compliance of accounting procedures and accounting policies.

10. Internal auditor can be of valuable assistance to management in acquiring new business, in promoting new products and in launching new projects for expansion or diversification of business.

Question 8:

(a) X, a minor was gifted 100 shares of Techno Ltd by his father Y. In light of the Companies Act, 1956, decide how far can a minor become a member of a company under the Companies Act, 1956? [3]

(b) PQR Ltd was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of office equipments by the company after incorporation. The company was incorporated and the office equipments were used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above office equipments. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for payment under the following situations:

(i) When the company has already adopted the contract after incorporation?'

(ii) When the company makes a fresh contract with the suppliers in terms of pre-incorporation contract? [5]

Answer:

(a) The Company Law Board has laid down in *Nandita Jain v. Bennet Coleman & Co. Ltd.* that a minor can become a member provided four conditions are fulfilled:

- i) Company must be a Co. Ltd. by shares.
- ii) Shares are fully paid up.
- iii) Application for transfer is made on behalf of minor by lawful guardian.
- iv) The transfer is manifestly for the benefit of the minor.

This was also confirmed in *S.L. Bagree v. Britannia Industries.*

In also *Diwan Singh v. Minerva Films Ltd. [(1958) 28 Comp. Cases 191 (Punj.), (1959) 29 Comp. Cases 263 (Punj.)]*, the Punjab High Court held that there is no legal bar to minor becoming a member of a company by acquiring shares (by way of transfer) provided the shares are fully paid and no further obligation or liability is attached to them.

Minor can become member by transfer or transmission, but a company may not allow a minor to be a member by allotment.

(b) The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification

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applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

- (i) the promoters in the first case will be liable to the suppliers of office equipments . There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.
- (ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

Question 9:

(a) PIO under the RTI Act, 2005 rejected X's application because he wanted too many information which PIO found difficult to handle. Explain the provision. [4]

(b) What are the key corporate governance lessons from the financial crisis? What issues need the most urgent attention? [4]

Answer:

(a) The RTI Act, 2005 does not permit rejection of application simply because it relates to large number of documents. In any case, in practice officials should consider the processing of applications as a cooperative activity, such that the official should work with the applicants to assist them to get information they need. If a large number of records are involved in relation to a request, the PIO can contact the requestor and clarify their request to see if they can reach a mediated solution that will give the requestor what they want without unnecessarily burdening the PIO. This recognises that in some cases at least, a broad application may be simply because the requestor was not sure what was available. No penalty is shall lie against PIO for anything which is in good faith done or intended to be done under this Act or any rule made thereunder.(Sec 21)

If some information requested work relates to the work of another public authority within the same department or in another department, The PIO has the power to transfer those parts of the application to such public authority under Sec 6(3) of the Act.

(b) The most obvious lesson from financial crisis is that corporate governance matters. The financial crisis revealed severe shortcomings in corporate governance. When most needed, existing standards failed to provide the checks and balances that companies need in order to cultivate sound business practices.

In 2008, the OECD launched an ambitious action plan to develop a set of recommendations for improvements in priority areas such as remuneration, risk management, board practices and the

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exercise of shareholder rights. These recommendations also address how the implementation of already-agreed standards can be improved.

Company executives, policy makers, regulators and shareholders need to pay more attention to corporate governance. When times were good, it seems that many took their eye off the ball and now we see the consequences. A firm's rising share price is not necessarily a sign of good corporate governance. History tells us that it could actually be the opposite.

There are four key areas: corporate risk management, pay and bonuses, the performance of board directors, and the need for shareholders to be more proactive in their role as owners.

SECTION - C **Answer any 2 from the Section C**

Question 10:

- (a) How does business ethics relate to Corporate Social Responsibility (CSR)? [4]**
- (b) What are the various threats which can be faced by a Finance and Accounting Professional while working as an Auditor, Consultant or an Employee in an organization? [4]**

Answer:

(a) An organisation's core ethical values and standards should underpin everything that it does and the way its employees conduct their everyday business. Business ethics is about "doing things ethically". How an organisation approaches the social and environmental impacts of its business operations and its voluntary contribution to the wellbeing of the global and local communities in which it operates, is often known as Corporate Social Responsibility (CSR); it is often about "doing ethical things. An organisation cannot be genuinely responsible without an embedded and inherent culture that is based on ethical values such as trust, openness, respect and integrity.

If business ethics is about the application of ethical values, CR is the expression of those values both within core business strategies and as a set of commitments and obligations made to its stakeholders. CR is about an organisation's approach to what it is responsible for, to whom it is responsible, and why, and this will be underpinned by its ethical values and by the policies and programmes in place to make those values operational.

(b) Threats can be faced by a Finance and Accounting Professional while working as an Auditor, Consultant or an Employee in an organization, whereby the basic principles cannot be complied with. Such Threats may be classified as follows:

- 1. Self-Interest Threats** may occur as a result of the financial or other interests of a Finance and Accounting Professional or of an immediate or close family member.
- 2. Self-Review Threats** may occur when a previous judgement needs to be re-evaluated by the Finance and Accounting Professional responsible for that judgement.
- 3. Advocacy Threats** occur when a Finance and Accounting Professional promotes a position or opinion to the point that subsequent objectivity may be compromised.
- 4. Familiarity Threats** occur when a Finance and Accounting Professional has close relationships in the work environment and such relationships impair his selfless attitude towards work.
- 5. Intimidation Threats** occur when a Finance and Accounting Professional may be prohibited from acting objectively by threats, actual or perceived.

Question 11:

- (a) Is it possible to have single right answer to all ethical issues? [4]**

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(b) Point out the difference between Ethical Code and Ethical Contract.

[4]

Answer:

(a) Ethics doesn't always show the right answer to moral problems.

Indeed more and more people think that for many ethical issues there isn't a single right answer - just a set of principles that can be applied to particular cases to give those involved some clear choices.

Some philosophers go further and say that all ethics can do is eliminate confusion and clarify the issues. After that it's up to each individual to come to their own conclusions.

Ethics can give several answers.

Many people want there to be a single right answer to ethical questions. They find moral ambiguity hard to live with because they genuinely want to do the 'right' thing, and even if they can't work out what that right thing is, they like the idea that 'somewhere' there is one right answer.

But often there isn't one right answer - there may be several right answers, or just some least worst answers - and the individual must choose between them.

For others moral ambiguity is difficult because it forces them to take responsibility for their own choices and actions, rather than falling back on convenient rules and customs.

(b) The main points of difference between ethical code and ethical contract may be highlighted as under:

Ethical codes or code of ethics are guidelines intended to serve the interests of a profession; its members and communities that are served, and hereby commit oneself to the highest ethical and professional conduct. Ethical codes are adopted by organizations to assist the members in understanding the difference between 'right and wrong', and applying that understanding in decision making.

An ethical code generally implies documents at three levels: code of business ethics, codes of conduct for employees, and codes of professional practice.

Thus, code of ethics focuses on the social issue of the organization emphasizing on development of business, plan of business development that plans to conduct business at the highest level.

Code of ethics decides the code of conduct for employees, and set out the procedures to be used in specific ethical situations such as conflict of interests and prescribes procedures to determine whether a violation of the code of ethics occurred, and if so what remedies need to be imposed.

Ethical contract is an agreement between two or more parties; whereby parties of the contract are legally bound and committed to its promises. It also takes into consideration reasons for breaches in contract, and the way in which these ethical considerations may impact upon them.

Question 12:

(a) What is the difference between business ethics and an ethical business?

[3]

(b) State the fundamental principles of Ethical Behaviour.

[5]

Answer:

(a) *Business ethics* relates to how any organisation conducts its business in order to make profit or achieve other goals. Any organisation can seek to do business in a way that is guided by ethical values. Whether an organisation is judged to be an *ethical business* however, may involve a subjective assessment of any of the following: the products and services it offers, its founding

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priorities, goals and values, its philanthropy, its reputation among its stakeholders, the way it treats customers and staff etc.

(b) The fundamental principles of Ethical Behaviour are:

- A. Integrity:** The principle calls upon all accounting and finance professional adhere to honesty and firmness while discharging their respective professional duties:
- Avoid being involved in activities which would impair the goodwill of the organization.
 - Communicate adverse as well as favorable information with those concerned.
 - Refuse any favour which could influence his actions in a negative way.
 - Refuse to get involved in any activity which would adversely affect objectivity.
 - Avoid conflicts and advise related parties on imminent conflicts.
- B. Objectivity:** Communicate information fairly and objectively in a transparent manner.
- C. Confidentiality:** Accounting and financial management should refrain from disclosing confidential information acquired during their work. When such information is to be disclosed to their subordinates in course of their normal work, care should be taken that ultimate confidentiality is maintained. However, an organization must to submit information required under a legal obligation or statutory ruling.
- D. Professional competence:** Finance and accounting professionals need to update their professional skills from time to time. It has to be ensured that the client or employer receives competent professional services based upon current and contemporary developments in the related areas.
- E. Obedience to Rules:** Accounting and finance professionals should comply with relevant laws and regulations and avoid such actions which may result into discrediting the profession.