

**PAPER 6: LAWS, ETHICS AND GOVERNANCE**

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2015\_Set 2**

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	<b>Learning objectives</b>	<b>Verbs used</b>	<b>Definition</b>
<b>LEVEL B</b>	<b>KNOWLEDGE</b> What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	<b>COMPREHENSION</b> What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identify	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	<b>APPLICATION</b> How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	<b>ANALYSIS</b> How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
Construct		Build up or compile	
Prioritise		Place in order of priority or sequence for action	
Produce		Create or bring into existence	

**Paper-6: Laws, Ethics and Governance**

Full Marks: 100

Time Allowed: 3 Hours

This paper contains 4 questions. All questions are compulsory, subject to instructions provided against each question. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

**Question 1: Answer all questions**

**2 × 10 = 20**

- (a) Discuss 'Hazardous process' under the Factories Act, 1948
- (b) K works in a social welfare organization. Examine whether the Payment of Bonus Act, 1965 is applicable to him.
- (c) The employer of TGH Ltd made certain alteration in wage structure as a result of which certain allowances were discontinued. However the total salary of an employee remained unchanged. Will an application under Sec 15(2) of the Payment of Wages Act, 1936 lie for this?
- (d) XYZ Ltd is running into losses and is unable to pay minimum rates of wages to its employees. The employees pleaded that employer is under obligation to pay the wages at minimum rates. XYZ Ltd. intends to go to the court challenging the constitutional validity of the Minimum Wages Act, 1948. Will the company succeed?
- (e) X' agreed to become an assistant for 5 years to 'Y' who was a Lawyer practicing at Delhi. It was also agreed that during the term of agreement 'X' will not practice on his own account in Delhi. At the end of one year, 'X' left the assistantship of 'Y' and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?
- (f) X lends a sum of ₹10,000 to Y, on the security of five shares of a Limited Company on 1<sup>st</sup> April 2011. On 15<sup>th</sup> September, 2011, the company issues bonus shares. Y returns the loan amount of ₹ 10,000 with interest but X returns only five shares which were pledged and refuses to give the bonus shares. Advise Y in the light of the provisions of the Indian Contract Act, 1872.
- (g) State the legal requirements of subscription to memorandum during formation of a company.
- (h) Jeevan Jyoti Co. has 50% of its share held by State Government of Maharashtra. It claims to be a Government Co. Comment.
- (i) List the OECD guidelines.
- (j) State how a good environment improves corporate performance.

**Answer:**

- (a) As per section 2(cb) of the Factories Act, hazardous process means any process or activity in relation to an industry specified in the First Schedule to the Act where, unless special care is taken, raw materials used therein or the intermediate or finished products, by products, wastes or effluents thereof would –

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- (i) cause material impairment to the health of the persons engaged in or connected therewith, or
- (ii) result in the pollution of general environment.

The State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

- (b) As per the provisions contained in Section 32 (v) (c) of the Payment of Bonus Act, 1965, 'K' is not entitled to any bonus as the said Act is not applicable to social welfare organization.
- (c) The discontinuance of allowance does not amount to 'deduction'. As such no application will lie under Sec. 15(2) of the Payment of Wages Act, 1936.
- (d) Minimum wages are required to be paid whether the company is in profit or loss. Section 3 of the Minimum Wages Act, 1948 lays down that appropriate Government shall fix minimum wage and Section 22 says that employer is liable for penalty if minimum wages are not paid as per provisions of the Act. (Kamani Metals vs workers 1967 AIR 1175, 1967 SCR(2) 463).
- (e) An agreement in restraint of trade/business/profession is void under Section 27 of the Indian Contract Act, 1872. But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade. However in the given case X cannot be restrained by an injunction from doing so.
- (f) This is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed."  
Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by Y to X. So X is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also (Motilal v Bai Mani).
- (g) The provisions relating to subscription of memorandum are as below :
  1. In case the company proposed to be formed is a public company, the memorandum must be subscribed to by 7 or more persons.
  2. In case the company proposed to be formed is a private company, the memorandum must be subscribed to by 2 or more persons.
  3. In case the company proposed to be formed is a One Person Company, the memorandum must be subscribed to by 1 person.
- (h) Government Company means any company
  - (i) in which not less than 51% of the paid up share capital is held
    1. by the Central Government; or
    2. by any State Government(s); or
    3. jointly by the Central Government and any State Government(s).
  - (ii) which is a subsidiary of a Government company

As per the above provision, Jeevan Jyoti Co. is not a Government Company.

- (i) The OECD guidelines are as follows :
  1. The mission of Organization for Economic Co-operation and Development (OECD) is to improve the economic and social well-being of people around the world.

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2. OECD recommends policies designed to make the lives of ordinary people better.
3. It provides a forum in which governments can work together to share experiences and seek solutions to common problems.

(j) Implementing environmental ethics results in increased brand image, increased sales turnover resulting in increase in profit. Also, adopting measures like reducing the consumption of non-renewable sources of energy, employing eco-friendly production processes and technologies, waste management not only result in conservation of natural resources and reduce environmental damage but also brings efficiency in business operations.

### **Question 2: Answer any 4 questions**

**[4 × 12 =48]**

#### **Question 2(a)**

(i) Anil borrowed a sum of ₹ 3 lakh from Shubhas. Anil appointed Shubhas as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Anil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Anil is lawful?

(ii) A appoints B as his agent to sell his estate. B, on looking over the estate before selling it, finds the existence of a good quality Granite-mine on the estate, which is unknown to A. B buys the estate himself after informing A that he (B) wishes to buy the estate for himself but conceals the existence of Granite-Mine. A allows B to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of B, the principal, against B, the agent.

What would be your answer if B had informed A about the existence of Mine before he purchased the estate, but after two months, he sold the estate at a profit of Rs. 1 lakh?

(iii) Ram sent a consignment of goods worth ₹ 1,00,000 by railway and got railway receipt. He obtained an advance of ₹ 40,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ₹ 1,00,000.

Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

(iv) M lends a sum of ₹ 5,000 to B, on the security of two shares of a Limited Company on 1st April 2015. On 15th June, 2015, the company issued two bonus shares. B returns the loan amount of ₹ 5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.

**[2+3+5+2 = 12]**

#### **Answer:**

(i) When agency is created for securing some benefit to the agent over and above his remuneration as an agent, it is called as agency coupled with interest.

Agency coupled with interest cannot be terminated to the prejudice of such interest. Thus, such agency is irrevocable to the extent of such interest.

Agency, in the given case is an agency coupled with interest. So, it is cannot be revoked by Anil.

(ii) An agent not to deal on his own account unless all the material facts have been disclosed to the principal and consent of the principal has been obtained.

If the agent, without the knowledge of the principal, deals in the business of agency on his own account, the principal may repudiate the transaction, if the agent dishonestly

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conceals any material facts or the dealings of the agent prove to be disadvantageous to him. He may claim from the agent the benefits derived by the agent.

In the given case, A can cancel the transaction and claim the profit made by B.

If B had informed A about the existence of mine, then, B would not be liable, even though he makes a profit of Rs. 1 lakh, since in such a case, there is no breach of duty of disclosure and obtaining consent.

- (iii) Deposit of title deeds with the bank as security against an advance constitutes a pledge. So, the contract between Ravi and Bank is a contract of pledge.

If a third person wrongfully deprives the pawnee of the goods, or damages the goods, the pawnee is entitled to all the remedies as the owner (viz. the pawnor) might have exercised as if the goods were not pledged [Sec. 180].

The Bank would succeed in suit filed against the railways for entire value of the consignment since in case of pledge, the pawnee can exercise all the rights which the pawnor could exercise in respect of such goods, if the goods are damaged or some third party deprives the pawnee of such goods [Morvi Mercantile Bank Ltd. v Union of India]. The compensation received by the pawnee shall be divided among the pawnor and pawnee as per their respective interests [Sec. 181].

The bank shall pay over to Rav ₹ 60,000 (viz. ₹ 1,00,000 less ₹ 40,000)

- (iv) The bailee must return to the bailor any accretion (i.e. addition) to the goods bailed.

In the given case, B is entitled to the two bonus shares since the bailor (pawnor, in case of pledge of goods) is entitled to any accretion to the goods and the issue of two bonus shares by the company amounts to accretion to the goods.

### **Question 2(b)**

- (i) S delivered his car to M for repairs. Mahesh completed the work, but did not return the car to S within reasonable time, though S repeatedly reminded Mahesh for the return of car. In the meantime a big fire occurred in the neighbourhood and the car was destroyed. Decide whether M can be held liable under the provisions of the Indian Contract Act, 1872.

- (ii) Amal hires a carriage of Bimal and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though Bimal is unaware of it. Amal is injured and claims compensation for injuries suffered by him. Bimal refuses to pay. Discuss the liability of Bimal.

- (iii) Amit, the bailor, pledges cinema projector and other accessories with Cine Association Co-operative Bank Limited, the bailee, for loan. Amit requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded.

Examining the provisions of Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between Amit, the bailor and Bank, the bailee?

- (iv) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

[3+3+4+2 = 15]

**Answer:**

- (i) The bailee must return the goods, without waiting for demand from bailor, if  
- The time specified in the contract has expired; or

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- The purpose specified in the contract is accomplished (Sec 160)
- If the goods are not so returned, then
- The goods shall be at the risk of the bailee;
  - The bailee shall be liable for any loss or damage, even if such loss is caused without any fault or negligence of the bailee or due to an act of God or other unavoidable reasons (Sec 161).
- In the given case, M is liable for the loss of car by fire.

**(ii)** In case of non-gratuitous bailment (i.e. goods bailed for hire or reward) the bailor is liable to disclose all the faults whether known to him or not. The bailor shall be liable for damages for any loss caused to the bailee whether or not he was aware of the faults.

In the given case, Hire of carriage of Bimal by Amal amounts to non-gratuitous bailment. Amal is entitled to compensation for injuries suffered by him due to non-disclosure of faults in the carriage.

**(iii)** Constructive delivery means doing of any act which has the effect of putting the goods in the possession of a person who agrees to hold them as a bailee for some other person, although transfer of possession of goods does not actually take place.  
There is a valid contract of pledge since Mr. A has pledged the goods with the Bank as a security for the loan and 'constructive delivery' of cinema projector' from Mr. A to the Bank has taken place in the given case.

**(iv)** A is not discharged from his liability since, where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged (Sec. 136).

### **Question 2(c)**

- (i) What do you understand by the term 'partial disablement' under the Employees' Compensation Act, 1923?**
- (ii) X was engaged as a car driver by Y, Manager of BOK Bank who received an allowance in this regard. Examine whether X can be held as an employee of the Bank under the Industrial Dispute Act, 1947, if the car is maintained at the Bank's expenses**
- (iii) 'Receipt of goods by buyer does not necessarily result in acceptance of goods by him under contract of sale.' State when can a buyer be deemed to have accepted the goods?**
- (iv) A contracts with B for sale of 50 quintals of 'Desi Ghee', delivery to be done in batches within a specified period. A delivers 40 quintals of ghee but does not supply the residue. A claims price for the quantity supplied, and refuses to supply the remainder unless price is paid for the quantity delivered. Decide.**

**[3+3+3+3 = 12]**

### **Answer:**

- (i)** According to sec 2(1)(g) of the Employees' Compensation Act, 1923, "partial disablement" means, where the disablement is of a temporary nature, such disablement as reduces the earning capacity of an employee in any employment in which he was engaged at the time of the accident resulting in the disablement.  
Temporary partial disablement reduces the earning capacity of workman in any employment in which he was engaged at the time of employment.

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Permanent partial disablement reduces the earning capacity in every employment the worker was capable of doing at the time of employment; provided that every injury specified [in Part II of Schedule I] shall be deemed to result in permanent partial disablement.

- (ii) According to section 2 of the Industrial Disputes Act, 1947, "workman" means any person (including an apprentice) employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied.

X cannot be regarded as workman or an employee under the said act as the control of him was not with bank, as held in case of PNB v Ghulam Dastagir, (1978) 2 SCC 358.

- (iii) Acceptance means the final assent by the buyer that he has received the goods, and in performance of, the contract of sale. According to section 42 of the Sale of Goods Act, 1930 the buyer is deemed to have accepted the goods:

- when he intimates to the seller that he has accepted them, or;
- when the goods have been delivered to him and he does any act in relation to them which is inconsistent with the ownership of the seller, or;
- when, after the lapse of a reasonable time, he retains the goods without intimating to the seller that he has rejected them.

- (iv) According to section 34 of the Sale of Goods Act, 1930, a delivery of part of goods, in progress of the delivery of the whole has the same effect, for the purpose of passing the property in such goods, as a delivery of the whole, but a delivery of part of the goods, with an intention of severing it from the whole, does not operate as a delivery of the remainder.

Thus A cannot insist on the payment of the price of the ghee supplied by him before supplying the entire quantity of 50 quintals of ghee.

### **Question 2(d)**

- (i) **W is engaged in two types of job in a factory, that of a mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage at an average rate.**

- (ii) **Progressive Ltd. is a navratna undertaking having its factories throughout India. The company have an impeccable record of best welfare measures and working conditions. Do the company require to appoint welfare officers?**

- (iii) **What are the implied conditions in a contract of 'Sale by sample' under the Sale of Goods Act, 1930?**

- (iv) **X sold a stock of wheat to Y at an agreed price per ton. The wheat was to be weighed by the agents of X and Y for ascertainment of price. A part of wheat was weighed and carried away by Y's agent but remainder was swept away by the flood. Who will bear the loss for the remainder?**

**[3+3+3+3 = 12]**

### **Answer:**

- (i) According to Sec 16 of the Minimum Wages Act, 1948, where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in



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each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Thus in the given case employer just cannot pay him at simple average rate of both wages of both classes of job.

- (ii) According to Section 49(1) of The Factories Act, 1948, in every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number of Welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and conditions of service of officers employed under sub-section (1).[ Sec 49(2)].

In the given question Progressive Ltd. is a navratna undertaking having its factories throughout India. If the company has five hundred or more workers it is required to appoint welfare officers.

- (iii) The - following are implied conditions in a contract of sale by sample in accordance with Section 17 of the Sale of Goods Act, 1930;

- that the bulk shall correspond with the sample in quality;
- that the buyer shall have a reasonable opportunity of comparing the bulk with the sample.
- that the goods shall be free from any defect, rendering them unmerchantable, which would not be apparent on a reasonable examination of the sample [Section 17(2)].

- (iv) According to Sec 22 of the Sale Of Goods Act , 1930, where there is a contract for the sale of specific goods in a deliverable state, but the seller is bound to weigh, measure, test or do some other act or thing with reference to the goods for the purpose of ascertaining the price, the property does not pass until such act or thing is done and the buyer has notice thereof.

Here, the remainder was not weighed as per agreement between X and Y. So the property in goods remained with X and he has to bear the loss. However he is eligible to get price for the goods taken away by Y's agents.

### **Question 2(e)**

- (i) Explain the theory of notional extension of employment under the Employees' Compensation Act, 1923.

- (ii) ABC(P) Ltd. imposed a fine on Q , one of its employees for irregular attendance . No prior notice specifying this particular act in respect of which could be imposed was exhibited. ABC(P) Ltd deducted the fine in four installments from salary of Q. Is the employer justified?

- (iii) R buys goods from S on payment but leaves the goods in the possession of S. S then pledges the goods to T who has no notice of the sale to R. State whether the pledge is valid and whether T can enforce it. Decide with reference to the provisions of the Sale of Goods Act, 1930.

- (iv) Goods are delivered by P to Q on 'sale or return' basis. They are further delivered by Q to R and then by R to S. The goods are stolen when in custody of R. Examine who is/are to bear the loss and why?

[3+3+3+3 = 12]

**Answer:**

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- (i) The principle behind compensation to the injured worker under the Employees' Compensation Act, 1923 is considered according to the Doctrine of Notional Extension. This doctrine throws light on the course of employment of a worker.

Section 3(1) of Employee's Compensation Act, 1923 provides that the injury must be caused to workman by an accident arising out of and in the course of employment. Employment does not necessarily ends when the tool down signal is given or when the workman leaves the actual workshop. There is a notional extension at both the entry and exit time and space. As employment may end or may begin not only when the employee begins to work or leaves his tools but also when he used the means of access and egress to and from the place of employment.

As a rule, the employment of an employee does not commence until he has reached the place of employment and does not continue when he has left the place of employment, the journey to and from the place of employment being excluded. It is now well-settled, however, that this is subject to the theory of notional extension of the employer's premises so as to include an area which the workman passes and repasses in going to and in leaving the actual place of work. There may be some reasonable extension in both time and place and a workman may be regarded as in the course of his employment even though he had not reached or had left his employer's premises. The facts and circumstances of each case will have to be examined very carefully in order to determine whether the accident arose out of and in the course of the employment of an employee, keeping in view at all times this theory of notional extension.

- (ii) According to Section 8 of the Payment of Wages Act, 1936:

- A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places.[Sec 8(2)]
- No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed.[Sec 8(6)]

Thus ABC(P) Ltd violates the provisions of Secs. 8(2) and 8(6) of the Payment of Wages Act, 1936.

- (iii) The problem is based on the provisions of Section 30 (1) of the Sale of Goods Act, 1930 which provides an exception to the general rule that no one can give a better title than he himself possesses. As per the provisions of the section, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may pledge them to a third person and if such person obtains them in good faith without notice of the previous sale, he would have good title to them. Accordingly, T the pledgee who obtains the goods in good faith from R without notice of the previous sale, gets a good title. Thus the pledge is valid.

- (iv) As per Section 24 of the Sale Of Goods Act, 1930, when goods are delivered to the buyer on approval or on sale or return or other similar terms, the property therein passes to the buyer-

- o when he signifies his approval or acceptance to the seller to does not other act adopting the transaction;
- o if he does not signify his approval or acceptance to the seller but retains the goods without giving notice of rejection, then, if a time has been fixed for the return of the goods, on the expiration of such time, and, if no time has been fixed, on the expiration of a reasonable time.

In the given case the property in the goods passed from P to Q when Q transferred them to R and from Q to R when R transferred them to S. The goods got stolen from S before S signified his acceptance. So R is the owner of goods and shall bear the loss.

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### Question 3: Answer any 2 questions

[2 × 8 = 16]

#### Question 3(a)

- (i) The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however entered into an agreement with Q to supply 100 laptops of worth ₹ 5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act.
- (ii) The residents of HBC locality wanted one street in the area to be repaired before monsoon which was in highly dilapidated state. They approached the local MLA who expressed inability due to exhaustion of MLA Funds. The residents refuse to believe. Advise them in context of Right to Information Act, 2005.

[5+3 = 8]

#### **Answer:**

- (i) Ultra means 'beyond' or 'in excess of' and vires means 'powers'. Thus, ultra vires means an act or transaction beyond or in excess of the powers of the company. An act or transaction shall be ultra vires if
- It is not permitted or authorized by the Companies Act, 2013
  - It falls outside the object clause of memorandum; and
  - Its attainment is not incidental or ancillary to the attainment of main object.

An act which is ultra vires the company is void and of no legal effect. Neither the company nor the other contracting party derives any right under an ultra vires contract.

In the given case, the contract to purchase laptops is an ultra vires contract, and is therefore, void ab initio. Q cannot enforce the contract against RST Limited. The Court may order RST Limited to deliver back the laptops to Q if the laptops are still in the possession of the company and the Court, applying the principle of equity, deems it fit considering the circumstances of the case.

- (ii) The resident may apply to Public Information Officer under RTI Act in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO, specifying the list of works sanctioned using their MLA's funds and also the balance amount enclosing the prescribed fee. The PIO is required to supply information within 30 days from the date of application.

Based on information supplied the residents can satisfy themselves about the truth of their MLA's statement.

#### Question 3(b)

- (i) Define the term "Contributory" as per Companies Act, 2013.
- (ii) The annual general meeting of a company was held in November, 2013. The company did not hold any general meeting in 2014. R, S and T are the directors liable to retire at the general meeting. Can they continue in office?

[2+6 = 8]

#### **Answer:**

- (i) 'Contributory' means a person liable to contribute towards the assets of the company in the event of its being wound up.

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A person holding fully paid-up shares in a company shall be considered as a contributory but shall have no liabilities of a contributory under the Act whilst retaining rights of such a contributory.

**(ii)** At every annual general meeting, 1/3rd (or nearest to 1/3rd) of rotational directors shall retire from office [Section 152(6)]. As a general rule, the directors who are liable to retire at an annual general meeting cannot continue in office after the last day on which the annual general meeting should have been held. This is because the calling of annual general meeting is a duty and responsibility of the directors. They cannot, by omitting to call the annual general meeting, take advantage of their own default and by that means extend their tenure of office [B.R. Kundra v Motion Pictures Association (1976) 46 Comp Cas 339]. Also, the rule of automatic reappointment does not apply to a case where annual general meeting is not held.

The annual general meeting of the company must be held not later than 15 months from the date of its previous annual general meeting. Further, an annual general meeting must be held in each calendar year. The registrar has the power to grant extension of time for holding the annual general meeting by a period not exceeding 3 months.

The answer to the given problem is as under:

- (a) The annual general meeting must be held on or before 31.12.2014. If it is not so held, the directors, R, S and T shall cease to hold office on 31.12.2014. Their continuance beyond this date shall be invalid.
- (b) However, if the registrar grants extension of time for holding the meeting, the meeting can be held upto 31.3.2015 and so directors can continue in office till that date. However, if annual general meeting is not held upto 31.3.2015, the directors, R, S and T shall cease to hold office on 31.3.2015. Their continuance beyond this date shall be invalid.

### **Question 3(c)**

**(i) Mr. Ashim, a director of ABC Limited proceeding on a long foreign tour, appointed Mr. Amit as an alternate director to act for him during his absence. The articles of the company provide for the appointment of an alternate director. Mr. Ashim claims that he has a right to appoint an alternate director. Examine the given case in the light of the provisions of the Companies Act, 2013.**

**(ii) How is Central Information Commission constituted under the RTI Act, 2005?**

**[5+3 = 8]**

**Answer:**

**(i)** No director shall assign his office to any other person. If he does, the assignment shall be void (Section 166(6) of the Companies Act, 2013). As per section 161(2) of the Companies Act, 2013, the Board is empowered to appoint an alternate director in place of a director during his absence for a period of not less than 3 months from India. The Board can appoint an alternate director only if it is authorised by the articles or by a resolution passed at a general meeting.

In the present case, the appointment of Mr. Amit as an alternate director by Mr. Ashim would amount to assignment of office which is prohibited under section 166(6) and therefore, the appointment of Mr. Amit as an alternate director is void. Further, an alternate director is appointed by the Board of directors and not by the director in whose place he is appointed (i.e. the original director). Therefore, in the present case Mr. Ashim has no power to nominate a person to act as an alternate director in his place and the appointment of Mr. Amit is not in

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order. While appointing the alternate director, the Board is not bound to even consider the candidature of Mr. Amit.

- (ii) This is discussed under Section 12 of the RTI Act, 2005.
- 1) Central Information Commission to be constituted by the Central Government through a Gazette Notification.
  - 2) Commission includes 1 Chief Information Commissioner (CIC) and not more than 10 Information Commissioners (IC) who will be appointed by the President of India.
  - 3) Oath of Office will be administered by the President of India according to the form set out in the First Schedule.
  - 4) Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government.
  - 5) Commission will exercise its powers without being subjected to directions by any other authority.

### **Question 4: Answer any 2 questions**

**[2 × 8 = 16]**

#### **Question 4(a)**

- (i) **What are the reasons for which unethical behaviour might arise in an organization?**
- (ii) **What is the concept of ethical dilemma in context of finance and accounting professionals?**

**[4+4 = 8]**

**Answer:**

- (i) The reasons for unethical behaviour arise in the organization are:
- 1) Over Emphasis on Short Term Profitability: Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.
  - 2) Ignoring Small Unethical issues: companies need to develop an environment where small ethical lapses are taken seriously so that they do not recur in the future.
  - 3) Economic Cycles: when the company is doing well, no one is bothered to understand its actual financial position. However, when the economy takes a downward turn, finance and accounting managers may take decisions by compromising over the established principles. To prevent disclosure of unethical problems in times of depression, companies need to be careful and vigilant also during prosperous time period.
  - 4) Market Complexity: In the era of globalization and massive cross border flow of capital, accounting rules have becomes more complex. The complexity of principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behavior.
  - 5) Money- Mindedness: Most business organizations try to display better financial condition by window dressing. Following such a principle towards "showing profits" rather than "earning profits" leads to unethical accounting and financial practices.
- (ii) The term ethics, refers to moral principles, which guide the conduct of individuals. Ethical behavior implies actions ought to have taken after considering the impact on society and other stakeholders. Accounting and finance professionals have onerous duty and obligation to report the wrongs, even if they are done at the top. This often brings them into a situation of ethical dilemmas, which arise when finance and accounting professionals need to choose from amongst alternatives involving-
- (a) significant value conflicts among differing interest
  - (b) actual alternatives which can all be justified and

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(c) significant consequences to all stakeholders for example in preparing a profit forecast for launching a new product to be financed by external debt.

A finance and accounting professional should decide between

1. Projecting unrealistic high revenue and mislead the launching institution in order to get the loan, or
2. Projecting realistic but insufficient revenue, which is not satisfactory to the lender and consequently the project is closed.

Both the above mentioned actions have got their own risks. There is no right and wrong to such a situation.

### **Question 4(b)**

**Discuss the code of ethic, to be followed by Management Accountant professional.**

**[8]**

**Answer:**

Codes of ethics by professionals are as follows-

- (i) **Responsibility to Public:** Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism. A distinguishing mark of a profession is acceptance of its responsibility to the public. The accounting profession's public consists of clients, credit grantors, governments, employers, investors, the business and financial community and others who rely on the objectivity and integrity of certified public accountants to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on certified public professionals. The public interest is defined as the collective well-being of the community of people and institution the profession serves.
- (ii) **Integrity:** To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity. Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions. Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle.
- (iii) **Objectivity and Independence:** A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. A member in public practice should be independent in fact and appearance when providing auditing and other attestation services. Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services.
- (iv) **Due Care:** A member should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member's ability. The quest for excellence is the essence of due care. Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public. Members should be diligent in discharging, responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough and to observe applicable technical and ethical

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standards. Due care requires a member to plan and supervise adequately any professional activity for which he or she is responsible.

- (v) Not to disclose any confidential client information: A member in public practice shall not disclose any confidential client information without the specific consent of the client. Members who are in professional practice shall not use their own advantage or disclose any member's confidential client information that comes to their attention in carrying out those activities. This prohibition shall not restrict member's exchange of information in connection with the investigative or disciplinary proceedings or the professionals practice.

### **Question 4(c)**

- (i) Mr. ROY is a CEO of a pharmaceutical company. His R&D department, while experimenting with a chemical molecule, sees the possibility that the molecule may be developed into a rug for a rare, painful, life-threatening genetic disease that afflicts only one child in ten million. But to develop the drug, his company may have to invest huge sum of the shareholder's money, despite the drug not wide salability. Is Mr. ROY confronted by an ethical dilemma? How should he resolve the issue?**

- (ii) Differentiate between ethical code and contract.**

**[5+3 = 8]**

### **Answer:**

**(i)** Mr. Roy is in a situation where he has to choose between carrying on the development of a drug for a painful and life threatening disease which afflicts one in ten million and the action of spending huge sum of shareholder's money for such development. As we can see, both are positive and ethically right choices. As a socially responsible person he has to think in terms of eliminating serious illness but at the same time he must be careful in dealing with shareholder's money. This is a classic case of an ethical dilemma. Such an ethical dilemma must be resolved by addressing the following points:

- (1) Defining the problem clearly.
- (2) How to define the problem if you stood on the other side of fence?
- (3) How did the situation arise?
- (4) To whom are you loyal as person and a member of the organization?
- (5) What is your intention in making this decision?
- (6) How does this intention compare with the probable results?
- (7) Whom could your decision or action injure?
- (8) Can you discuss the problem with affected parties before you make your decision?
- (9) Are you confident that your position will be as valid over a long period?
- (10) Could you disclose without any doubt your decision or action to your boss, your CEO, the Board of Directors, your family, society as a whole?
- (11) What is the symbolic potential of your action if understood? Misunderstood?
- (12) Under what condition would you allow exceptions to your stand?

**(ii)** 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

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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.