

Paper 6- Laws, Ethics and Governance

Answer to PTP_Intermediate_Syllabus 2012_Dec 2015_Set 3

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

	Learning objectives	Verbs used	Definition
LEVEL B	KNOWLEDGE 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
	COMPREHENSION 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
	APPLICATION 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
	ANALYSIS 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 X 10 = 20

(a) Mr. Deepak of RB Textile Ltd. enters into a contract with RS Garments Show Room for supply of 1,000 pieces of Cotton Shirts at ₹3000 per shirt to be supplied on or before 31st December, 2015. However, on 1st November, 2015 RB Textiles Ltd informs the RS 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 ₹3500 per shirt. Examine the rights of the Retail Garments Show Room in this regard.

(b) Bikash holds agricultural land on a lease granted by Anit, the owner. The land revenue payable by Anit to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Bikash's lease. Bikash, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from Anit. Referring to the provisions of the Indian Contract Act, 1872 decide whether Anit is liable to make good to Bikash, the amount so paid?

(c) Gopal's goods were seized by Custom Authorities. Whether this is bailment under Indian Contract Act, 1872?

(d) In an agreement between Priya and Rishab, there is a condition that they will not institute legal proceeding against each other without consent. Is the contract valid or void?

(e) R sent a consignment of goods worth ₹ 160,000 by railway and got railway receipt. He obtained an advance of ₹80,000 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 ₹ 160,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

(f) What is the permissible limit of deductions from wages under the Payment of Wages Act, 1936.

(g) Joint Holder of shares in a public company are not a single member. Comment.

(h) A private company may, in its articles, incorporate additional disqualifications in respect of directorship of the company.

(i) What is meant by, 'Iron Law of responsibility'

(j) State what is meant by the principal of confidentiality in business ethics of a finance and accounting professional.

Answer:

(a) In the given problem RB Textiles Ltd has indicated its unwillingness to supply the cotton shirts on 1st November 2015 itself when it has time upto 31st December 2015 for performance

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of the contract of supply of goods. It is therefore called anticipatory breach of contract. Thus RS Garments show room can claim damages from RB Textiles Ltd immediately after 1st November, 2011, without waiting upto 31st December 2011. The damages will be calculated at the rate of ₹500 per shirt i.e. the difference between ₹3500 (the price prevailing on 1st November) and ₹ 3000 the contracted price.

(b) Yes, Anit is bound to make good to Bikash the amount so paid. Section 69 of the Indian Contract Act, 1872, provides that "A person, who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case has made the payment of lawful dues of Anit in which Bikash had an interest. Therefore, Bikash is entitled to get the reimbursement from Anit.

(c) Yes, the possession of the goods is transferred to the custom authorities. Therefore bailment exists and section 148 of Contract Act, 1872 is applicable.

(d) An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872. Hence the agreement between Priya and Rishab would be void.

(e) As per Sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledge, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. In *Morvi Mercantile Bank Ltd. vs. Union of India*, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledgor. Thus, the bank will succeed in this claim of ₹ 160,000 against Railway.

(f) The total amount of deductions which may be made in a wage period u/s 7(2) from the wages of any employed person should not exceed 75% of wages earned if such deductions are made wholly or partly for payment to co-operative societies under Sec.7(2)(j). In any other case, the total deductions should not exceed 50% of total wages earned during the wage period [Sec.7 (3)]. Where total deductions authorized under Sec.7 (2) exceeds 75% or 50% as the case may be, the excess may be recovered in such a manner as prescribed [Provisio to Sec. 7(3)].

(g) The statement is true. Joint holders of shares in a public company are not single member. Each of the joint holders of shares is a member of the company but joint holders are counted as one member for the purpose of determining the maximum number of members ie 200 in a private company and for determining quorum at general meetings etc.

(h) Section 164(3) of Companies Act, 2013 specifies the provisions regarding disqualifications of directors. According to the said section a private company, which is not a subsidiary of a public company, may by its articles provide for any disqualifications in addition to the disqualifications stated in the above statement.

(i) Business exists only because it brings invaluable services for society. Society gives business the right to consume its resources and this can be retained only if the business meets the needs and expectations of the society. Thus, a business should be responsible to the society – a resource place for business. Businesses that do not use power in a responsible manner will lose in the long run.

(j) 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

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confidentiality is maintained. However, an organization must submit information required under a legal obligation or statutory ruling.

Question 2: Answer any 4 questions

[4 × 12 =48]

Question 2(a)

- (i) State the circumstances where under an agent is personally liable to a third party for the acts during the course of agency?
- (ii) When a contract need not be performed?
- (iii) A sold his car to B for ₹175,000. After inspection and satisfaction, B paid ₹87,500 and took possession of the car and promised to pay the remaining amount within a month. Later on A refuses to give the remaining amount on the ground that the car was not in a good condition. Advise A as to what remedy is available to him against B.
- (iv) Kasim the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to Munshi, a mercantile agent for sale at a price not less than ₹100, 000. The agent sells the car for ₹75,000 to Bibhu, who buys the car in good faith and without notice of any fraud. Munshi misappropriated the money also. Kasim sues Bibhu to recover the Car. Decide given reasons whether Kasim would succeed.

[4+2+3+3 = 12]

Answer:

(i) Under the following circumstances an agent is personally liable:

1. When he represents that he has authority to act on behalf of his principal, but who does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
2. Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to required performance of it.
3. Where the contract expressly provides for the personal liability of the agent.
4. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
5. Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
6. Where the agent works for a foreign principal.
7. Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).
8. Where according to the usage of trade in certain kinds of business, agents are personally liable.

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9. Where his authority is coupled with interest, he can be sued only to the extent of his interest in the subject matter

(ii) A contract need not be performed under following circumstances:

1. When performance becomes impossible.
2. When parties to contract agree to substitute it with a new one or rescind it or alter it. (Sec. 6)
3. When the promisee waives or remits the performance of promise made to him, wholly or in part or extends the time of performance or accepts any other satisfaction for it. (Sec.63)
4. When a person at whose option it is voidable, rescinds it (Sec. 64)
5. When the promisee refuses or neglects to provide reasonable facilities to the promisor for performance of the promise. (Sec.67)
6. When the contract is illegal.

(iii) As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that—

Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].

Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, A will succeed against B for recovery of the remaining amount. Apart from this A is also entitled to:

1. Interest on the remaining amount.
2. Interest during the pendency of the suit.
3. Costs of the proceedings

(iv) The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

1. The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
2. The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
3. The buyer should act in good faith.
4. The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

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In the instant case, Munshi, the agent, was in the possession of the car with Kasim's consent for the purpose of sale. Bibhu, the buyer, therefore obtained a good title to the car. Hence, Kasim in this case, cannot recover the car from Bibhu. A similar decision, in analogous circumstances, was taken in Folkes vs. King.

Question 2(b)

(i) Miss Zoya, a film actress agreed to work exclusively for a period of 4 years, for a film production company. However, during the said period she enters into a contract to work for another film producer. Discuss the rights of the aggrieved film production company under the Indian Contract Act, 1872

(ii) '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 current financial year, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service. Later, when the bonus as 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'.

(iii) Briefly explain the difference between Partnership and Co-ownership.

[3+4+5 = 12]

Answer:

(i) Restraint on Miss Zoya is valid since an agreement of service under which an employee agrees to serve a certain employer for a certain duration, and that he will not serve anybody else during such period is a valid agreement [Charlesworth v. Mac Donald].

Miss Zoya cannot be compelled to work with the film production company since specific performance is generally not allowed where personal performance is required.

Miss Zoya may be restrained from working for another producer since in case of breach of a negative term of a contract, the defaulting party is generally restrained from doing what he promised not to do.

(ii) 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:

1. Where he commits fraud.
2. Because of his riotous or violent behavior while on the premises of the establishment.
3. 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

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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).

(iii) The partnership and co-ownership can be distinguished as under:

Based on	Partnership	Co-ownership
Agreement	It arises from an agreement.	It may or may not arise from agreement.
Business	It is formed to carry on a business.	It may or may not involve carrying on a business.
Profit or Loss	It involves profit or loss.	It may or may not involve profit or loss.
Mutual agency	Partners have a mutual agency relationship.	Co-owners do not have a mutual agency relationship.
Name of persons involved	The persons who form partnership are called partners.	The persons who own some property jointly are called co-owners.
Maximum limit	The maximum limit of partners is 50	There is no maximum limit of co-owners.
Transfer of interest	A partner cannot transfer his share to a stranger without the consent of other partners.	A co-owner can transfer his share to a stranger without the consent of other co-owners.
Right to claim partition	A partner has no right to claim partition of property but he can sue the other partners for the dissolution of the firm and accounts.	A co-owner has the right to claim partition of property.
Lien on property	A partner has a lien on the partnership property for expenses incurred by him on behalf of the firm.	A co-owner has no such lien.

Question 2(c)

(i) State the circumstances in which surety is not discharged.

(ii) Abhishek contracts to sell Bhusan, by showing sample, certain quantity of tea described as "Best quality Darjeeling tea". The tea when delivered matches with the sample, but it is not Darjeeling tea. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to Bhusan.

(iii) When is an employer liable and not liable to pay compensation to a workman for personal injury under Employees Compensation Act, 1923?

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(iv) A Bill of exchange dated 1st February, 2015 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay.

[3+3+3+3 = 12]

Answer:

(i) As per provisions of Indian Contract Act, 1872 Surety is not discharged in following circumstances:

(a) When Agreements made with third person to give time to principal debtor (Section 136): 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.

(b) Creditor's Forbearance to Sue (Section 137): Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

(c) Release of One Co-Surety (Section 138): Where there are co-sureties, a release by the creditor of one of them does not discharge the others: neither does it free the surety so released from his responsibility to the other sureties.

(ii) Sale by sample is described in Sec 17 of the Sale of Goods Act, 1930. A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample there is an implied condition-

- That the bulk shall correspond with the sample in quality.
- That they shall have a reasonable opportunity of comparing the bulk with the sample.
- That the goods shall be free from any defect, rendering them un-merchantable, which would not be apparent on reasonable examination of the goods.

In a contract for sale of brand by sample, Bhusan is entitled to return the tea and claim refund of money as there is breach of condition.

(iii) Employer to pay compensation:

In case a personal injury is caused to a workman by accident arising out of and in the course of his employment, his employer is liable to pay compensation in accordance with the provision of the Act within 30 days from the date when it fell due otherwise he would also be liable to pay interest and penalty.

When employer is not liable:

An employer is not liable to pay compensation for personal injury caused to an employee by accident arising out of and in the course of employment –

(a) If the injury does not result in total or partial disablement of the employee for a period exceeding 3 days;

(b) If the injury, not resulting in death, or permanent total disablement, is caused by an accident which is directly attributable to –

1. The employee having been at the time of the accident under the influence of drink or drugs; or
2. The willful disobedience of the employee to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of the employees; or

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3. The willful removal or disregard by the employee of any safety guard or other device (which is an offence under the factories Act, 1948) which he knew to have been provided for the purpose of securing the safety of the employees.

If these defences were not available to an employer, an employee may be induced to cause to himself an injury by his own acts and to claim compensation from the employer.

(iv) The due date of maturity is 4th April, 2015 (i.e., 3rd day after two months)

Promissory notes, bills of exchange and cheques must be presented for payment at the due date of maturity to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In default of such presentment, the other parties to the instrument (i. e., parties other than the parties primarily liable) are not liable thereon to such holder. If authorized by agreement or usage, a presentation through the post office by means of a registered letter is sufficient (section 64). So, the Endorser is discharged due to delayed presentment for payment, and the primary party (i.e., Maker of the instrument) continues to be liable.

Question 2(d)

(i) Explain the concept of 'whistle blowing' with respect to the Limited Liability Partnership Act, 2008.

(ii) X buys from Y a painting which both believe to be work of an old masterpiece and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract.

(iii) 'A' issue 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 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, discuss whether A's argument is valid or not.

(iv) Under what circumstances breach of condition is treated as breach of warranty under the provisions of The Sale of Goods Act, 1930?

[3+2+3+4 =12]

Answer:

(i) The concept has been discussed in sec.31 of the Limited Liability Partnership Act,2008. As per the sec-

1. The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that-
 - a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or
 - b) when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.
2. No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section(1)

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(ii) The Contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab-initio, as per section 20 of the Indian Contract Act, 1872,

(iii) Effects of striking off the word bearer

- It amounts to a material alteration.
- However, such material alteration is authorized by the Act.
- Therefore, the cheque is not discharged; it remains valid

Effects of crossing the cheque

- It amounts to a material alteration.
- However, such material alteration is authorized by the Act. Therefore, the cheque is not discharged; it remains valid.

A's argument is not valid

- Since the reason for dishonor 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 dishonor of cheque in accordance with the provisions of Sec. 138.

(iv) According to section 13 of the sale of the Goods Act, 1930 a breach of condition may be treated as breach of warranty in the following circumstances:

1. Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.
2. Where the buyer elects to treat the breach of condition as breach of a warranty
3. Where the contract of sale is non-severable and the buyer has accepted the whole goods of any part thereof.
4. Where the fulfillment of any condition or warranty is excused by law, by reason of impossibility or otherwise.

Question 2(e)

(i) Makhan, seeing a mobile phone in a showcase of a shop which was marked for sale for ₹2,000, enters the shop, places ₹2,000 on cash counter and told to give him displayed mobile. Shop owner refused. Can the shop owner refuse to sale the displayed mobile?

(ii) A, B, C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from firm and dies after 15 days. B, C continues business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?

(iii) Mr. Punit obtains fraudulently from Rohan a crossed cheque "Not Negotiable". He transfers the cheque to Sunit, who gets the cheque encashed from ABC bank limited which is not the drawee bank. Rohan on coming to know about the fraudulent act of Mr. Punit sues ABC Bank for the recovery of the money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether Rohan will succeed in his claim. Would your answer be still the same in case Mr. Punit does not transfer the cheque and gets the cheque encashed from ABC Bank himself?

(iv) What is Average Pay as per Industrial Disputes Act, 1947?

[3+3+4+2 = 12]

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Answer:

(i) Price quotations and price tags do not amount to an offer but are only an invitation to an offer. Therefore, Makhan's picking up the mobile with price tag of ₹2000 amounts to an offer by Makhan to purchase the same at that price. It remains to be accepted by the seller-the salesman at the cash counter of the mobile store, to result in a concluded contract. The salesman has every right to accept or refuse the offer. Thus Makhan shall have no remedies.

(ii) Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner entitled to claim either.

- (a) such shares of the profits earned after the death or retirement of the partner which is attribute to the use of his share in the property of the firm; or
- (b) interest at the rate of 6 per cent per annum on the amount of his share in the property.

Based on the aforesaid provisions of the Section 37 of the Indian Partnership Act, 1932 in the given problem, A's representative, at his option, can claim:

- (i) the 20% shares of profits (as per the partnership deed); or
- (ii) Interest at the rate of 6 per cent per annum on the amount of A's share in the property.

(iii) According to Section 130 of the Negotiable Instruments Act 1881, a person taking a cheque crossed generally or specially bearing in either case the words, not negotiable shall not have or shall not be able to give a better title to the cheque than the title the person from whom he had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title but if the transferor has a defective title, the transferee is affected by such defects and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As Mr. Punit in the given case had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money and the bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. Ltd. vs. London and County Banking Co.) The answer in the second case would not change and shall remain the same for the reasons given above. Thus Rohan in both the cases shall succeed in his clam from ABC Bank.

(iv) "Average Pay" as per Industrial Dispute Act means the average of the wages payable to a workman

- (a) In the case of monthly paid workman in the three complete calendar months.
- (b) In the case of weekly paid workman in the four complete weeks.
- (c) In the case of daily paid workman, in the twelve full working days preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days as the case may be and where such calculation cannot be made the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.

Question 3: Answer any 2 questions

[2 × 8 = 16]

Question 3(a)

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- (i) Explain provisions of the Companies Act, 2013 regarding “document containing offer of securities for sale to be deemed prospectus”.
- (ii) Is there any provision for exemption from Disclosure of Information under RTI Act, 2005?
[6+2 = 8]

Answer:

(i) Document containing offer of securities for sale to be deemed prospectus-

The section 25 of the Companies Act, 2013 seeks to provide that any document by which the offer or sale of shares or debentures to the public is made shall for all purpose be treated as prospectus issued by the company.

Act lays down the following provisions-

(a) Document by which offer for sale to the public is made : According to the given provision where a company allots or agrees to allot any securities of the company to all or any of those securities being offered for sale to the public, then any document by which the offer for sale to the public is made-shall be deemed to be a prospectus issued by the company.

(b) Contents of prospectus and the liability: All enactments and rules of law as to the contents of prospectus and as to liability in respect of mis-statements, in and omissions from prospectus, or otherwise relating to prospectus, shall apply with the modifications [as specified in sub-sections (3) and (4) and shall have effect as if the securities had been offered to the public for subscription and as if persons accepting the offer in respect of any securities were subscribers for those securities. The liability, if any, of the persons by whom the offer is made in respect of mis-statements contained in the document or otherwise in respect thereof, remains same as that in the case of a prospectus.

(c) Securities must be offered for sale to the public: For the purpose of this Act, it shall be evident that an allotment of, or an agreement to allot, securities was made with a view to the securities being offered for sale to the public if it is shown -

1. that an offer of the securities or of any of them for sale to the public was made within six months after the allotment or agreement to allot; or
2. that at the date when the offer was made, the whole consideration to be received by the company in respect of the securities had not been received by it.

(d) Person making an offer is a company or firm: Where a person making an offer to which this section relates is a company or a firm, it shall be sufficient if the document, that is deemed to be prospectus, is signed on behalf of the company or firm (i) by two directors of the company or (ii) by not less than one-half of the partners in the firm, as the case may be.

(ii) Sub-section (1) of section 8 and section 9 of the Act enumerate the types of information which is exempt from disclosure. Sub-section (2) of section 8, however, provides that information exempted under sub-section (1) or exempted under the Official Secrets Act, 1923 can be disclosed if public interest in disclosure overweighs the harm to the protected interest.

Question 3(b)

(i) A Public Company secures residential accommodation for the use of its managing director by entering into a license arrangement under which the company has to deposit

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a certain amount with the landlord to secure compliance with the terms of the license agreement. Can it be considered as a loan to a director?

(ii) Explain amended Cromme Code 2005 under "Transparency" in Germany Corporate Governance.

[5+3 =8]

Answer:

(i) As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly, make any loan to a director.

In the present case, the company has provided the managing director with a housing accommodation. It does not amount to a loan because of the following reasons:

- The company has not given any deposit or advance to the managing director. The amount deposited with the landlord cannot be said to be an 'indirect loan' to the managing director.
- It is a usual practice to give a security deposit to the landlord with whom a rent or lease agreement is entered into. Thus, the company has made the security deposit on account of bonafide business considerations.
- It is of no concern of the managing director as to the terms on which the company secures residential accommodation for him.

It is the company and not the director who has entered into the lease agreement. Therefore, the company can at anytime use the accommodation for any other purpose and the managing director will have to vacate it, as and when desired by the company.

(ii) The code provides that the management board should disclose immediately any facts that might affect the enterprise's activities and which are not publicly known. The report emphasizes that all shareholders should be treated equally in respect of information disclosure and that the company may use appropriate media, such as the internet, to inform the shareholders and investors in an efficient and timely manner, there is disclosure required in terms of the shareholdings, including options and derivatives, which are held by individual management board and supervisory board members. These must be reported if they directly or indirectly exceed 1 percent of the share issued by the company. The code also states:" if the entire holdings of all of the management board and supervisory board exceed 1 percent of the shares issued by the company, these shall be reported separately according to the management board and supervisory board'. These disclosures should all be included in the Corporate Governance report.

Question 3(c)

(i) What are the benefits of XBRL Web Services deployment for regulators and other government authorities?

(ii) Explain the objectives of Right to Information Act, 2005.

[5+3 = 8]

Answer:

(i) Implementing XBRL Web services offers regulators and other government entities the following benefits:

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- Automated and more reliable exchange of regulatory and financial information across all software formats and technologies, including the internet.
- Reduced or eliminated manual data re-entry, lowering risks associated with transcription errors.
- Lowered costs of preparing and distributing regulatory reports and related information, such as instructions, definitions etc.
- Improved access to financial information reported by regulated entities through a format which enhances information re-usability.
- Lowered production costs, greater reliability and faster processing speed for more timely, accurate and informed regulatory assessments.
- Increased efficiency of regulatory assessments and analytics.
- Accelerated changes to and adoption of reporting standards and requirements through an extensible, flexible platform that facilitates and thereby accelerates changes in and adoption of reporting standards.
- Collaborative nature of XBRL process provides regulators with input on the standards via enhanced communication and cooperation between regulators and respective industry organizations.
- Reduced cost of regulation by spreading development and maintenance among collaborating organizations. XBRL Web services are currently being used in the US, Europe and Asia for several different types of regulatory reporting, including
- Bank position reports consisting of thousands of individual data points collected by regulatory authorities.
- Company financial reports consisting not only of individual data points, but also text disclosures of policies, tabular schedules of assets, consolidations and a myriad of notes under a variety of accounting standards.
- Business statistical information.

(ii) The objectives of the Act are to-

1. Give effect to the Fundamental Right to Information, which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability and reducing corruption
2. Establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public authorities in a swift, effective, inexpensive and reasonable manner,
3. Promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons to:
 - Understand their rights in terms of this Act in order to exercise their rights in relation to public authorities;
 - Understand the functions and operation of public authorities; and effectively participating in decision making by public authorities that affects their rights.

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Question 4: Answer any 2 questions

[2 × 8 = 16]

Question 4(a)

1. "Ethics are desirable for every business." Comment.

2. Explain the interface between Ethics and Laws

[6+2 = 8]

Answer:

(i) Need for Business Ethics

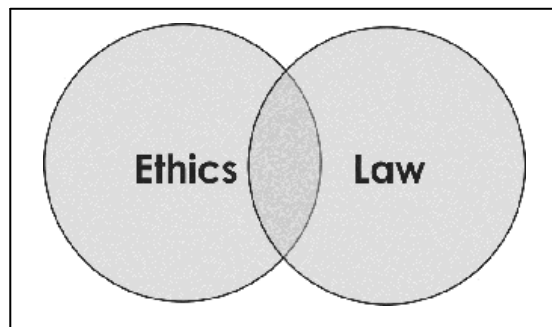
Business ethics is currently a very prominent business topic, and the debates and dilemmas surrounding business ethics have attracted enormous amount of attention from different quarters of organizations and society. Hence, it has emerged as an increasingly important area of study. Some of the major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

- **Stop business malpractices:** Business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
- **Improve customers' confidence:** Business ethics are needed to improve the customers' confidence about the quality, quantity, price etc. of the products.
- **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.
- **Safeguarding consumers' rights:** Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. Business ethics are must to safeguard the rights of the consumers.
- **Protecting employees and shareholders:** Business ethics protects employees and shareholders from exploitation through unfair trade practices.
- **Develops good relations:** Business ethics are important to develop good and friendly relations between business and society.
- **Creates good image:** Business ethics create a good image for the business and businessmen.
- **Smooth functioning:** If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will be all happy.
- **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 businessmen by their false propaganda and false claims, unfair trade practices.
- **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.

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- **Importance of labor:** 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.
- **Healthy competition:** The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. They must avoid monopoly. This is because a monopoly is harmful to the consumers

(ii) Law is essentially an institutionalization or codification of ethics into specific social rules, regulations and prescriptions. Perhaps the best way of visualizing ethics and law is in terms of two intersecting domains as depicted in the following figure:



Thus, in one sense, business ethics can be said to begin where law ends. Business Ethics is primarily concerned with those issues not completely covered by law, or where there is no definite consensus on whether something is right or wrong. Hence, it is often remarked, that business ethics is about the "grey areas" of business where values are in conflict.

Question 4(b)

(i) **Explain Business ethics as professional ethics.**

(ii) **Discuss the ways of creating an ethical accounting environment.**

[4+4 = 8]

Answer:

(i) 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. These codes keep evolving as other things around evolve and develop. Therefore, not only should business be defined within the confines of ethics, but it should be practiced strictly under its own professional code of conduct. This distinction helps to orient the general principles of ethics and business to a particular activity. The principles, however, do not change.

Ethical behaviour is particularly important to professions and to business:

It matters to the professions because the complexity of what they do mean that there has to be trust by the user in what they do, or they have no purpose.

It matters to business because investors will not back a company that will not report fairly and customers, increasingly, will not buy from a business that is not acting in the wider interests of society.

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Deciding what is the right thing to do can be challenging. We all face numerous personal, social and organisational pressures which influence our decisions and actions. Sometimes it is easy to assume that compliance with legislation, regulations and policies and procedures equates to doing the right thing. By its nature, a compliance approach to decision-making cannot cover all types of situations and eventualities. Even when a specific circumstance is addressed by a rule, compliance is often with the letter of the rule, not its spirit. What is needed is a principles based approach to decision-making, which encourages deliberation, judgment and responsibility.

The character of a true professional remains undivided, whether at work or at home. Our roles may change from time to time and from place to place but the integrity of our character should be maintained. Business ethics, thus, professionally adheres to a code of conduct that is in accordance with the normative principles. Further, it may be concretely stated that professionals bear the following marked characteristics: (i) competency of educational qualification, (ii) professional skills, and (iii) compensation (salary/ remuneration, etc.).

(ii) Creating an ethical accounting environment:

The following three points need to be addressed for creating a sound ethical environment in any company

(a) Employee awareness : It should be noted and ensured that employees are aware of their legal and ethical responsibilities. Organisation should train and motivate employees toward ethical behavior. Top management should initiate steps in developing such an ethical environment.

(b) Encouraging communication: Ethical organization need to provide channels through which employees can communicate with concerned Managers, for reporting frauds, mismanagement or any other form of detrimental behavior. In India Wipro has introduced a helpline comprising of senior members of the company who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.

(c) Ensuring fair treatment to Whistle Blowers: A person or an employee who reports fraud, mismanagement or any other detrimental practices to the concerned managers is called Whistle Blower. Organisation should ensure protection and fair treatment to Whistle Blowers to reduce fraud. However, needless to say that appreciation is much more needed from within company rather than outside.

Question 4(c)

(i) What are the different types of threat that may affect the business environment and influence financial and accounting professionals?

(ii) What is Ethical Conflict? What are the aspects to be considered to resolve the conflict?

[4+4 =8]

Answer:

(i) The following types of threats may affect the business environment and thus, can influence Finance and Accounting professionals:

1. Self-Interest Threats: These threats occur as a result of financial or other interest of Financial and Accounting professionals or personal interest of key personnel.

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2. **Self-Review Threats:** When a previous judgment of the finance and professional is to be re-evaluated.
3. **Advocacy Threats:** When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised.
4. **Familiarity Threats:** When a professional has close relationship with the work environment, thereby impacting his or her selfless attitude towards work.
5. **Intimidation Threats:** When a professional may be prohibited from acting objectively by actual or perceived threats.

(ii) Ethical conflict is a situation where the professionals have to decide between compliance with principles and actions which are beneficial to the business organisation. An ethical conflict is a complex situation that often involves an apparent mental conflict between moral imperatives, in which to obey one would result in transgressing another. This is also called an ethical paradox since in moral philosophy, paradox often plays a central role in ethics debates. To resolve the conflict, following aspects should be considered:

- a) Relevant facts;
- b) Ethical issues involved;
- c) Fundamental principles related to the matter in question;
- d) Established internal procedures; and
- e) Alternative courses of action