

Paper-6: LAWS, ETHICS AND GOVERNANCE

Answer to PTP_Intermediate_Syllabus 2012_June 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	
	Priorities	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]

(i) X induced Y to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Y complained that there were many defects in the motorcycle. X proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Y wants to rescind the contract.

(ii) R & Co. through a newspaper advertisement announced a season end sale of woolen garments and exhibited the articles in their showroom with the original and the reduced prices marked on them. Z, who had read the advertisement, picks up a woolen sweater marked ₹ 500 as original price and ₹ 200 as reduced price. But when Z offers ₹ 200 at the counter, the salesman refuses to accept the amount and hand over the article to Z. State the rights of Z against R & Co.

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

(iv) ABC 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. ABC Ltd. Intends to go to the court challenging the constitutional validity of the Minimum Wages Act, 1948. Will the company succeed?

(v) Safety officers in any factory are optional and not mandatory. Comment

(vi) A purchased from Q 500 tins of canned fruit to be packed in cases, each containing 50 tins but Q supplied cases containing 25 tins. Does A have right to reject the goods?

(vii) The Superior Merchants Association was constituted by two Joint Hindu families consisting of 51 major. The association was carrying the business of trading as retailers with the object for acquisitions of gain. The Association was not registered as a Company under companies Act or other law. State whether Superior Merchant Association is having any legal status?

(viii) Under Section 4 of Companies Act, 2013, the Memorandum of Association of a company may be in any form. Comment.

(ix) Do you consider business ethics to be a professional code?

(x) What responsibility towards public should a Management Accountant professional have?

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Answer:

(i) The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case Y could not rescind the contract, as his acceptance to the offer of X to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

(ii) Price quotations and price tags do not amount to an offer but are only an invitation to an offer. Therefore, Z's picking up the woolen sweater with price tag of ₹ 200 as reduced price amounts to an offer by Z to purchase the same at that price. It remains to be accepted by the seller- the salesman of R & Co. to result in a concluded contract. The sales man has every right to accept or refuse the offer. Thus Z shall have no remedies.

(iii) This 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, C, the pledgee who obtains the goods in good faith from A without notice of the previous sale, gets a good title. Thus the pledge is valid.

(iv) 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).

(v) As per Sec 40-B of The Factories Act, 1948 in every factory (i) wherein 1000 or more workers are ordinarily employed, or (ii) wherein, in opinion of the State Government, any manufacturing process or operation is carried on, which involves any risk or bodily injury, poisoning or any other hazard to health, to persons employed in factory, the occupier shall if so required by State Government by notification in Official Gazette, employ such number of safety officers as specified in the notification [Sec 40B(1)]. The duties, qualifications and conditions of service of Safety Officers are to be prescribed by State Government. [Sec.40 B(2)].

(vi) This is based on the provisions of Section 15 of the Sale of Goods Act, 1930. A is entitled to reject the goods because the goods were not packed according to the description. It is to be noted that if the goods do not correspond with the description but such goods are fit for buyer's purpose, even then the buyer may reject the goods and the seller cannot take defense by saying that the goods will serve buyer's purpose.

(vii) As per section 464 of Companies Act, 2013, no company, association or partnership consisting of more than fifty persons shall be formed for the purpose of carrying on any other business that has for its object the acquisition of gain by the company, association or partnership, or by the individual members thereof, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian law. Hence Superior Merchants Association is an illegal association as the number of adult members exceeds 50.

[Tutorial Note: To avoid illegality, such association or partnership should be –

- Registered as a company under the companies Act,2013 or
- Formed under any other law for the time being in force.]

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(viii) The statement is false. As per Sec 4, of Companies Act, 2013, the memorandum of association of a company shall be in such one of the Forms in Tables A B, C, D and E in Schedule I as may be applicable to the case of the company, or in a Form as near thereto as circumstances admit.

(ix) Business ethics is not a pure science but a professional practice, and society expects businessmen to abide by the principles of a civil society, just as it expects professionals from other areas such as medicine, bureaucracy, politics and sports to do so. Thus, instead of a value-free business ethics, we have a value-loaded or value-based business practice.

(x) Members should accept the obligation to act in a way that will serve the public interest, honour public trust and demonstrate commitment to professionalism. A distinguishing mark of a profession is acceptance of its responsibility to the public. The accounting professions public interest 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 the professionals. The public interest is defined as a collective well being of the community of people and institution the profession serves.

Question 2: Answer any 4 questions

[4 × 12 = 48]

Question 2(a)

(i) Mrs. Saxena received cheque dated 02.05.2014 for ₹10,000 from Mrs. Malhotra towards cost of furniture. On 13.11.14 Mrs. Malhotra closed the Bank Account. What action Mrs. Saxena can take to receive the amount against the cheque which is still with him.

(ii) J, the owner of a car handovers the car with key to P (the mercantile agent) to sell the car at a price not below ₹ 1,00,000. P (the agent) sold at ₹ 90,000 to A, who buys in good faith and without notice of reserve price/or any fraud. P misappropriated the money also. J filed a suit against A to recover the car. Advice with reason whether J can succeed.

(iii) Write short notes on 'Forfeiture' based on Gratuity Act, 1972

[4+4+4 = 12]

Answer:

(i) If the period of validity of the cheque is not specified in the cheque, the cheque must have been presented to the Bank within a period of three months from the date of cheque. In this case, the validity of the cheques expired on 2.08.2014 whereas the account was closed on 13.11.2014 i.e., after expiry of validity of the cheque. Mrs. Saxena failed to present the cheque within the validity of the cheque; the cheque would be dishonoured if this was presented after 2.08.2014 for which Mrs. Malhotra is not responsible. He may however request Mrs. Malhotra for fresh cheque stating the circumstances of delay in presenting by 2.08.2014.

(ii) In the instant case, A has purchased the car in good faith for ₹ 90,000. The agent, P on the one hand has concealed the information as to the reserve price fixed by the owner of the car on the other hand misappropriated the money also.

The principal is liable for any fraud or misrepresentation done by the agent with in his authority regardless of the fact that Act has resulted in benefit to the agent or the principal. No liability where agent exceeds the authority.

The principal is not liable for acts of agent done in excess of authority. Sometimes the acts can be separated as within the authority and beyond the authority. Principal is bound for those acts

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which are within the authority. But where acts are not separable, the principal may repudiate the entire transactions.

(iii) The gratuity payable under the Payment of Gratuity Act, is liable to full or partial forfeiture under different circumstances. Section 4(1) of Payment of Gratuity Act, 1972 deals with payment of gratuity; Whereas Section 4(6) of the Act, deals with forfeiture of gratuity.

Gratuity can be forfeited for any employee whose services have been terminated for any act, willful omission or negligence causing damage or destruction to the property belonging to the employer under this Act. It can also be forfeited for any act which constitutes an offence involving moral turpitude. Where services have not been terminated on any of the above grounds, the employer cannot withhold gratuity due to the employee. Where the land of the employer is not vacated by the employee, gratuity cannot be withheld.

Question 2(b):

(i) Under what circumstances pension under E.P.F can be applied for by an employee?

(ii) Romit draws a bill on Raja for ₹10,000 payable to his order. Raja accepts the bill but subsequently dishonours it by non-payments. Romit sues Raja on the bill. Raja proves that it was accepted for value as of ₹8,000 and as accommodation to Romit for ₹2,000. How much can Romit recover from Raja? Decide in the light of the provisions of the Negotiable Instruments Act, 1881?

(iii) Maker of a cheque is not liable under N.I. Act for dishonor of cheque under certain conditions. State such conditions.

(iv) While discussing, Rajib told his friends that, 'Contracts need not be performed under certain circumstances'. Deepak objected to it. State the correct position.

[4+2+2+4 = 12]

Answer:

(i) Pension under E.P.F can be applied for under 4 situations given below:

A. On superannuation - on attaining the age of 58 years or more and at least ten (10) years of service. A member can be continuing in services while receiving this pension.

B. Before superannuation - on attaining the age between 50 and 58 years and at least 10 years of service.

C. Death- death while in service or while not in service.

D. Permanent disablement - permanently and totally unfit for employment which the member was doing at the time of such disablement.

No pensioner can receive more than one E.P.F. pension.

(ii) According to the provisions of section 44 of Negotiable Instruments Act, 1881, when there is a partial absence or failure of money consideration for which a person signed a bill of exchange, the same rules applicable for total absence or failure of consideration will apply. Thus, the parties standing in immediate relation to each other cannot recover more than the actual consideration. Accordingly Romit can recover only ₹ 8000.

(iii) Maker of the cheque will not be liable for dishonor in following cases—

1. If the cheque is not presented to the Bank within the validity of the cheque.

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2. Where the cheque is issued not for the purpose of discharge of any debt or other liability. A cheque given as a gift or for any other reason but not for satisfaction of any debt and/or liability.

(iv) Sections 62 to 67 of the Contract Act are listed under the heading "Contracts which need not be performed". The relevant provisions are as follows:

- ❖ If by mutual agreement there is Novation, Rescission or Alteration, the original contract need not be performed (Sec 62).
- ❖ Where 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).
- ❖ When a voidable contract is rescinded, the other party need not perform his promise (Sec 64).
- ❖ If the promisee neglects or refuses to afford the promisor reasonable facilities of the performance of his promise, the promisor is excused by such neglect or refusal as to any non-performance caused thereby (Sec 67).

Under the Law of Contract, the following agreements need not be performed.

- ❖ Unlawful consideration and object - Sec 23.
- ❖ Where the performance is unlawful or illegal - Sec 56.
- ❖ When performance become impossible.

In view of the above, it is possible that a Contract need not be performed under certain circumstances.

Question 2(c):

(i) Mr. Harsh lets to Mr. Menon for hire a horse for his own riding but Mr. Menon drives the horse in his carriage. What action Mr. Harsh can take?

(ii) As per order, T sent some goods to P at Kolkata through Rail. The Station Superintendent of Howrah station informed P that Goods are held at the Station at P's risk and cost. In the mean time, P became insolvent. T wants to enforce right as an unpaid seller. Comment.

(iii) Ashim sells 1600 kgs. of wheat out of large quantity lying in his godown forwarded to Bablu. Out of these, Bablu sells 600 kgs. to Chandan (wheat yet to be ascertained). Then Chandan the delivery order signed by Bablu to Ashim who confirmed that wheat would be dispatched in due course. Bablu then becomes insolvent. Ashim refused to deliver to Chandan. Advice Chandan based on rules. Comment

(iv) Mr. Batliboi bought 50 kgs. of potato against cash payment from Mr. Joshi under a Contract of Sale but half of consignment was rotten and Mr. Joshi refused to change the rotten potato nor refunded the value. Comment.

(v) 'A' (workman) is laid-off by his employer B' because of strike in another part of 'B's establishment. 'A' is entitled to get compensation for lay off under the Industrial Disputes Act, 1947. Comment

(vi) A workman while returning home after duty was murdered within the premises of the employer. A's widow is not entitled to compensation under the Workmen's Compensation Act 1923. Comment

[6 × 2 =12]

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Answer:

(i) Where the contract stipulates a certain mode of acceptance, it must be executed in that manner. In the instant case, Mr. Menon is under obligation to use the horse only for this personal riding not otherwise. Since he has violated the very stipulation in agreement, Mr. Harsh got right to terminate the agreement and take back his horse and proceed against Menon for the damages caused if any.

(ii) As per Section 46 of the Sale of Goods Act, 1930 an unpaid seller has the right of stopping the goods in transit in case of insolvency of a buyer. In addition his other remedies T has got the right of withholding delivery of the goods and repudiate the contract and proceed against the buyer for the damages (Section 46)

(iii) According to Section 46 of the Sale of Goods Act, 1930 Mr. Ashim has a lien on the goods for the price which he is in possession of them. Since the wheat bags are still in his possession, he got every right to withhold the delivery as Bablu has become insolvent. In the instant case Chandan has to proceed against Bablu for specific performance of the contract.

(iv) As per Section 16 of the Sale of Goods Act, 1930, where the goods are brought by description from a seller who deals in goods of that description, there is an implied condition that the goods shall be merchantable quality. This condition is a stipulation essential to the main purpose of the contract, the breach of which gives rise to a right to treat the contract repudiated. In the instant case Batliboi got the right to proceed against Mr. Joshi for recovery of the loss sustained due to the damage of goods.

(v) Section 25 E provides that no compensation shall be payable to a work man who has been laid off if such laying off is due to a strike or slowing down of production on the part of workmen in another part of the establishment whether one establishment is part of another establishment or not depend upon several factors. As such no compensation is payable to 'A'.

(vi) In this case, there was casual and approximate connection between the accident and the employment. Since the workman was on the spot only for his employment and accordingly his wife/legal heirs is/are entitled for compensation (Naima Bibi v Lohne Colliery).)

Question 2(d):

(i) Comment on the following based on legal provisions (no mark for wrong reasons or justification):

A. Mr. Menon offered on 1st December, 2013 to sell his house to Mr. Pandey at ₹ 35,00,000. Mr. Pandey accepted by email on 2nd December, 2013 at 8 AM. and at 10 A.M. Mr. Pandey sent a Fax revoking the acceptance. Both email (i.e. acceptance) and Fax (i.e. revocation) revoked Menon at the same time. Hence this was valid. Comment.

B. Provisions of Indian Partnership Act 1932 are applicable to LLPs and the body Corporate may be partner of LLP.

C. On 01.10.2014 Mr. Barun kept his Cow under the custody of Mr. Tarun for one month and paid ₹ 1000 for maintenance. On 15.10.2014, the Cow gave birth of a Calf. On 30.10.2014. Tarun returned the Cow retaining the Calf. Justify Tarun's action.

D. A surety is discharged from his liability where there is failure of Consideration between the

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Creditor and the Principal Debtor in a Contract of Guarantee. Comment

E. Whether Mr. Sham who joined the company on 1.7.2010 and died on 30.11.2014 is entitled Gratuity. Answer citing Rules.

F. Manager of ABC Ltd. told that total amount of deduction which may be made from (he wages of any workman during a month shall not exceed 90% of such wages. - State Legal provisions.

[6 × 2 =12]

Answer:

(i)

A. In case both the letter of acceptance (e-mail) and the revocation (Fax) reached Menon at the same time, the formation of contract would depend on the fact that which of the two was opened first by Menon.

If Menon read the Fax first then revocation was valid otherwise if he read the e-mail first, then revocation was not possible.

B. As per the provisions of the Limited Liability Partnership Act, 2008, an LLP may be formed by individual and/or by Body Corporate. In view of the explicit provision in the LLP Act, a Body Corporate may be a Partner of an LLP.

Limited Liability Partnerships in India are governed by the Provisions of the Limited Liability Partnership Act, 2008. Therefore, Indian Partnership Act is not applicable to LLPs.

C. As per The Contract Act, in the absence of any contract to the contrary, the bailee (i.e. Tarun) is under obligation to deliver to the bailor (i.e. Barun) or according to his directions, any increase or profit which may have accrued from the goods bailed. Hence, Mr. Tarun is obliged to return both Cow & Calf.

D. A contract without a consideration is void as per Provisions of the Contract Act. Therefore, the presence of Consideration is one of the essential elements for a valid contract.

In the instant case, the Contract of Guarantee between the Creditor and Principal Debtor is not supported by the consideration. Hence, the surety is discharged from his liability.

E. Payment of Gratuity Act provides that gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous services for not less than 5 years.

However provided further that incase of death, completion of continuous services of 5 years shall not be necessary. Hence Mr. Sham's nominee is entitled to gratuity although Mr. Sham has worked for less than 5 years.

F. The total amount of deduction which shall be made in any wage period from the wages of any employed person shall not exceed.

In cases where such deduction are wholly or partly made for payment to co-operative societies 75% of such wages and in any other case 50% of such wages provided that where the total deduction authorised under the sub-sec (2) of section 7 of payment of Wages Act, 1936 exceed 75% or as the case may be prescribed.

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Question 2(e):

- (i) All the members of a limited partnership firm are "designated members".
- (ii) 'A' the buyer ordered a patent smoke consuming furnace by its Patent name for his brewery on 'B'. Furnace received was however found to be unsuitable for the purpose. Hence seller is responsible.
- (iii) ABC Ltd. who incurred heavy loss during 2013-14 has not paid Bonus to any of its employees.
- (iv) Works Manager has deducted ₹ 500 from wages towards the cost of tools and raw materials supplied to workers for purpose of employment (Payment of Wages Act).

[6+2+2+2 = 12]

Answer:

- (i) According to Section 7 of Limited Liability Partnership Act, 2008,
- (1) Every limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India:
Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.
- (2) Subject to the provisions of sub-section (1),—
- (i) if the incorporation document-
- (a) specifies who are to be designated partners, such persons shall be designated partners on incorporation; or
- (b) states that each of the partners from time to time of limited liability partnership is to be designated partner, every partner shall be a designated partner;
- (ii) Any partner may become a designated partner by and in accordance with the limited liability partnership agreement and a partner may cease to be a designated partner in accordance with limited liability partnership agreement.
- (3) An individual shall not become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed.
- (ii) In this case, specific item under its patent name as per buyers' specification was supplied by 'B'. Hence, the implied condition as to its fitness is not applicable. Therefore, the buyer had no cause of action against the seller under the Patents Act, 1970 as patented goods was purchased. (Chanter Vs Hopkins).
- (iii) The Payment of Bonus Act, 1965 provides for payment of at least minimum bonus @ 8.33% to a certain class of employees even if there is no or inadequate profit. Therefore, the action taken by the ABC Ltd., not to pay Bonus for the year 2013-14 is not tenable and in violation of the relevant provisions as to payment of bonus under the Act.
- (iv) As per Section 7 of the Payment of Wages Act, 1936 the employer may make deductions for damage to or loss of goods expressly entrusted to the employed person for custody or for loss

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of money for which he is required to account where such damage or loss is directly attributable to his neglect or default. Therefore, the Works Manager is authorized to deduct ₹ 500.

Question 3: Answer any 2 questions

[2 × 8 = 16]

Question 3(a)

(i) Mr. Kanungo failed to receive certain information in connection with his Provident Fund accumulation. He intends to take shelter under RTI Act, 2005. Please advise the steps or procedure to be followed.

(ii) A, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for it. The dividend and interest income received by the company was handed back to F as a pretended loan. This way F divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose three companies were established? Whether the legal personality of all the three companies may be disregarded?

[5 + 3 = 8]

Answer:

(i) Under RTI Act, 2005, a person who desires to seek some information from a Central Government Public Authority is required to send, along with the application, a demand draft or a banker's cheque or an Indian Postal Order of ₹10 (Rupees ten), payable to the Accounts Officer of the public authority as fee prescribed for seeking information. There is no prescribed format of application for seeking information. The application can be made on plain paper. The application should, however, have the name and complete postal address of the applicant. The information seeker is not required to give reasons for seeking information.

In normal course, information to an applicant shall be supplied within 30 days from the receipt of application by the public authority. If an applicant is not supplied information within the prescribed time of thirty days or is not satisfied with the information furnished to him, he may prefer an appeal to the first appellate authority who is an officer senior in rank to the Public Information Officer. Such an appeal should be filed within a period of thirty days from the date on which the limit of 30 days of supply of information is expired or from the date on which the information or decision of the Public Information Officer is received. The appellate authority of the public authority shall dispose of the appeal within a period of thirty days or in exceptional cases within 45 days of the receipt of the appeal.

If the first appellate authority fails to pass an order on the appeal within the prescribed period or if the appellant is not satisfied with the order of the first appellate authority, he may prefer a second appeal with the Central Information Commission within ninety days from the date on which the decision should have been made by the first appellate authority or was actually received by the appellant.

(ii) The three companies were established for the purpose of avoiding tax liability, and not for any legitimate purpose.

The legal personality of all the three companies shall be disregarded, since, on similar facts, it was held in *Re, Sir Dinshaw Maneckjee Pettit*- which each of these three companies was a sham, and therefore, income earned by all the three companies was to be treated as the income of the assessee.

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Question 3(b):

- (i) Define the term 'Associate Company', as per Companies Act, 2013.
- (ii) Articles of a public company clearly stated that Mr. L will be the Solicitor of the company. The company in its general meeting of the shareholders resolved unanimously to appoint Mr. M in place of Mr. L as the Solicitor of the company by altering the articles of association. State with reasons, whether the company can do so? If L files a case against the company for removal as a solicitor, will he succeed?
- (iii) Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement. Mr. X purchased some partly paid shares of the company in good faith on the Stock Exchange. Subsequently, the company was wound up and the name of Mr. X was in the list of contributors. Decide:
- (i) Whether Mr. X is liable to pay the unpaid amount?
- (ii) Can Mr. X sue the directors of the company to recover damages? [3+2+3 =8]

Answer:

- (i) As per section 2(6) of Companies Act, 2013 an 'Associate Company':

'Associate company', in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

Explanation: For the purposes of this clause, "significant influence" means control of at least 20% of total share capital, or of business decisions under an agreement.

- (ii) Since the memorandum and articles do not bind a company to the outsiders (Sec. 10 of the Companies Act, 2013) unless L proves a contract independent of the articles, he cannot enforce any right against the company as he has no right to rely on the articles.

- (iii) Since he purchased shares from the secondary market, viz. stock exchange. Mr. X holds partly paid shares and he is liable as a contributory. So, Mr. X has no cause of action against the company or the directors as he did not subscribe for shares on the faith of a misleading prospectus (**Peek v Gurney**).

Question 3(c):

- (i) 'X' was appointed as managing director for life by the articles of association of a private company incorporated on 1st June, 2010. The articles also empowered 'X' to appoint a successor. 'X' appointed, by will, 'G' to succeed him after his death. Can 'G' succeed 'X' as managing director after the death of 'X'?

- (ii) What are the probable steps for implementation of Corporate Social Responsibility?

[5+3 = 8]

Answer:

- (i) No director shall assign his office to any other person. If he does, the assignment shall be void as per Section 312 of Companies Act, 1956.

The articles of a company empowered its managing director to appoint a successor. The managing director appointed, by his will, Mr. G to succeed him as a managing director after his

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death. The Court observed that a director is prohibited from assigning his office. The word 'his' use in section 312 indicates that the prohibition applies only when an office held by a director is assigned to any other person. Where a director dies, the office held by him becomes vacant and therefore, such office cannot be assigned to any other person. Therefore, appointment of a new person in such office does not amount to an assignment within the meaning of section 312. [Oriental Metal Pressing Pvt. Ltd. v B.K. Thakoor (1961) 31 Comp Cas 143]. The facts of the given case are identical to the facts discussed in the above case. Accordingly, it can be said that appointment of 'G' is valid and it does not amount to an assignment of office by 'X'.

(ii) Each company differs in how it implements Corporate Social Responsibility (CSR). The distinction depends on such factors as the company's size, sector, culture and the commitment of its leadership. Below are some key strategies that companies can use when implementing CSR policies and practices in a company:

1. Mission, Vision and Value Statements
2. Cultural Values
3. Management Structures
4. Strategic Planning
5. General Accountability
6. Employee Recognition and Rewards
7. Communications, Education and Training
8. CSR Reporting

Question 4: Answer any 2 questions

[2 × 8 = 16]

Question 4(a)

(i) "To maintain social contract between society and business, the trusteeship relations are essential". Describe the role of business ethics in this reference.

(ii) The responsibility of the corporate management lies towards shareholders only. Justify
[4+4 =8]

Answer:

(i) The 'trusteeship philosophy' as propounded by Gandhiji suggests that no individual has any right of private ownership of property except so far as may be permitted by the society for its own welfare. Thus, an individual is not free to hold or use his wealth for selfish satisfaction or in disregard of the interests of the society.

Trusteeship provides a means of transforming a capitalist society into an egalitarian one (i.e. democratic, equal).

According to Gandhiji, "a businessman has to act only as a trustee of the society for whatever he has gained from the society. Everything finally belongs to the society." Society bestows upon businesses the authority to own and use land and natural resources. In return, society has the right to expect that business organisations will enhance the general interests of consumers, employees and community.

Applying the 'trusteeship philosophy' in the context of business, a business organisation should adopt ethical business practices. Adhering to the principles of business ethics creates a positive environment for the long term prosperity of the business. An ethically driven business not only results in prosperity for the business but also for the society.

Answer to PTP_Intermediate_Syllabus 2012_June 2015_Set 3

(ii) As per the 'shareholders' approach' (the Traditional Governance Model), the primary and only objective of a business organisation is to maximise the profit.

However, as per 'stakeholders' approach', every business has the responsibility towards all the stakeholders.

A business that is responsive to the demands of all of its stakeholders is better positioned to achieve long-term financial success.

The 'stakeholder approach' requires the business to balance the needs of all the stakeholders, viz. reward the shareholders adequately and at the same time protect and promote the interests of all the stakeholders.

Thus, it is wrong to say that the company management has responsibility only towards its shareholders.

The statement "The Governance Model positions Management as accountable solely to investors" is incorrect.

Question 4(b)

(i) Knowledge without morality is a social sin. Justify.

(ii) Fairness and honesty are the pillars of success in Business. Comment

[4+4 = 8]

Answer:

(i) Business ethics means application of ethical norms to business. Business ethics encompass all those principles and standards that determine acceptable conduct.

Application of scientific and technical knowledge in the conduct of business brings efficiency in business. However, at the same time the interests of all the stakeholders must also be protected.

A business which uses knowledge for maximization of profits by harming the interests of consumers, employees, environment, public interest or society at large, is not contributing anything to the society.

As such, use of knowledge in business also requires consideration of ethical principles.

Thus, it is correct to say that knowledge without morality is a social sin.

(ii) 'Fairness' means to deal fairly and honestly with all the stakeholders, including the shareholders, creditors, lenders, suppliers, customers and employees.

'Fairness and honesty' requires complying with all the applicable laws and regulations, not to cheat or deceive customers, not to carry on anti-competitive practices, creating an environment free from discrimination, exploitation and harassment and so on.

It is in the long term interest of a business organisation to observe business ethics. Adhering to the principles of business ethics creates a positive environment for the long term prosperity of the business. In other words, there is a positive correlation between fairness and honesty and long term profitability.

Thus, the statement "Fairness and honesty are the pillars of success in business" is correct.

Answer to PTP_Intermediate_Syllabus 2012_June 2015_Set 3

Question 4(c)

(i) State the requirements of 'business ethics'

(ii) Is it possible to have single right answer to all ethical issues?

[4+4 = 8]

Answer:

(i)

❖ **Legal compliance regulations:** Every decision and action should be in total compliance with the laws, rules and regulations. The compliance must be in letter as well as spirit.

❖ **Ethical conduct:** The decision and actions should comply with -

- expectations of the society; and
- ethical principles

❖ **Accountability:** The management should be accountable for the decisions taken by it. The decisions taken should be in accordance with the set goals and objectives, strategies and policies.

❖ **Fairness:** The actions and decisions of the organization should be fair and honest. It should address general concerns like recognizing and responding to the needs of others.

❖ **Transparency:** The governance should be such that the investors and other stakeholders get a true picture of the organization's financial and non-financial aspects.

❖ **Stakeholder protection:** An organization should protect and promote the interests of all the stakeholders, viz. investors, employees, customers, local community, environment, etc. The products and services offered by it and the decisions taken by it should have a positive impact on all the stakeholders.

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

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

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

Ethics can give several answers.

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

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

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