

Answer to PTP_Intermediate_Syllabus 2012_Jun2014_Set 3

Paper- 6: LAWS, ETHICS AND GOVERNANCE

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

Question No. 1 is compulsory

1. Choose the correct answer from the given four alternatives. 1 x 20 = 20

- (i) Which of these are essential condition of a valid contract _____**
 - (a) Free consent**
 - (b) Competency of parties**
 - (c) Consideration**
 - (d) All the three**

- (ii) Under which Section of Companies Act, 1956 a private company can voluntarily converted into public company _____**
 - (a) 34**
 - (b) 44**
 - (c) 54**
 - (d) 64**

- (iii) Signature of memorandum and articles should be done by _____ number of persons in case of public company**
 - (a) 7**
 - (b) 5**
 - (c) 4**
 - (d) None of these**

- (iv) Every promise or set of promises forming the consideration for each other is called _____**
 - (a) Reciprocal promise**
 - (b) Contract**
 - (c) Agreement**
 - (d) None of the above**

- (v) When a bill of exchange has been noted or protested for non-acceptance or for better security, and any person accepts it supra protest for honor of the drawer or of any one of the endorser, such person is called an _____**
 - (a) Acceptor for request**
 - (b) Acceptor for demand**
 - (c) Acceptor for honour**
 - (d) Acceptor in need**

- (vi) Hundi's are Indigenous instrument written in _____ language**
 - (a) Vernacular**
 - (b) Hindi**
 - (c) English**
 - (d) Sanskrit**

- (vii) _____ can be ground for dissolution of a firm under section 44 of the Partnership Act.**
 - (a) A partner getting married without consent of other partners.**
 - (b) One partner transferring whole of his interest to another partner**

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- (c) One partner transferring whole of his interest to third party
 - (d) One partner transferring part of his interest to another partner.
- (viii) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005 _____
- (a) Where the disclosure prejudicially affects the sovereignty and integrity of India
 - (b) Where disclosure would cause a breach of privilege of the Parliament or the State Legislature
 - (c) Information received in confidence from foreign government
 - (d) All the above
- (ix) The ESI Act, 1948 provides certain benefits to the employees in case of _____
- (a) Case of sickness
 - (b) Maternity
 - (c) Employment injury
 - (d) All the three
- (x) As per the Child Labour (Prohibition and Regulation) Act, 1986 a person who has not completed the age of _____ is treated as child
- (a) 14
 - (b) 16
 - (c) 18
 - (d) 12
- (xi) The Sarbanes-Oxley Act 2002 made it important for business to have an _____
- (a) Ethics code
 - (b) Code of conduct
 - (c) Code of practice
 - (d) Business ethics
- (xii) Business Ethics is a code of conduct which society should follow while conducting their social activities.
- (a) True
 - (b) False
 - (c) Partly true
 - (d) None of the above
- (xiii) An act, to be called on 'act of a firm', within the meaning of Section 2(a) of the Indian Partnership Act, 1932 is _____
- (a) Every act of the partner
 - (b) Only such acts which give rise to a right enforceable by or against the firm
 - (c) Such acts which do not give rise to a right enforceable by or against the firm
 - (d) Either (a) or (b) or (c)
- (xiv) According to Sec 2(n) "Occupier" of a factory means _____
- (a) The person who has established the factory
 - (b) The person who has highest profit share in the factory
 - (c) The person who has ultimate control over the affairs of the factory
 - (d) The person who has ultimate control over the employees of the factory
- (xv) Wages as per the Payment of Wages Act can not be paid in _____
- (a) Currency notes
 - (b) Coins
 - (c) Kinds
 - (d) Cheques

- (xvi) Which of the following is a feature of business ethics?
- (a) Business ethics is based on well accepted moral and social values
 - (b) Practice of business ethics gives protection to customers and other social groups related to a firm
 - (c) Business ethics provide the legal, social, moral, economical and cultural limits within which business has to be conducted
 - (d) All the above
- (xvii) The ethical issues in finance that companies and employees are confronted with include:
- (a) Fraudulent asset valuations
 - (b) Insider trading
 - (c) Over billing of expenses
 - (d) All the above
- (xviii) Which company shares can be freely transferable
- (a) Private Company
 - (b) Public Company
 - (c) Both (a) & (b)
 - (d) None of the above
- (xix) A sold his old car to B for ₹ 11,000. How the purchase consideration can be discharged by B _____
- (a) Through cash/bank/draft/cheque only
 - (b) Equivalent value in kind
 - (c) Bank draft only
 - (d) Cash/bank draft/cheque or partly in cash /bankdraft/cheque and partly in kind
- (xx) Where the buyer has examined the goods, there is _____ as regards defects which such examination ought to have revealed.
- (a) an implied warranty of merchantability
 - (b) an implied condition as to merchantability
 - (c) no implied condition as to merchantability
 - (d) either (a) or (b) or (c)

Answer: 1.

- (i) (d) All the three
- (ii) (b) 44
- (iii) (a) 7
- (iv) (a) Reciprocal promise
- (v) (c) Acceptor for honour
- (vi) (a) Vernacular
- (vii) (c) One partner transferring whole of his interest to third party
- (viii) (d) All the above
- (ix) (d) All the three
- (x) (a) 14
- (xi) (a) Ethics code
- (xii) (a) True
- (xiii) (b) Only such acts which give rise to a right enforceable by or against the firm
- (xiv) (c) The person who has ultimate control over the affairs of the factory
- (xv) (c) Kinds
- (xvi) (d) All the above
- (xvii) (d) All the above
- (xviii) (a) Private Company
- (xix) (d) Cash/bank draft/cheque or partly in cash /bankdraft/cheque and partly in kind

- (xx) (c) no implied condition as to merchantability

SECTION A

Attempt any four questions.

2. (a) Whether the following notes may be considered as valid Promissory notes:
- (i) I promise to pay ₹ 5,000 or 7,000 to Mr. Ram.
 - (ii) I promise to pay to Mohan ₹ 500, if he secures 60% marks in the examination.
 - (iii) I promise to pay ₹ 3,000 to Ravi after 15 days of the death of A.
- (b) What is the objective of Know Your Customer (KYC) guidelines?
- (c) What is Specific Performance? When can Specific Performance of a contract be enforced? [3+3+(2+4)]

Answer: (a)

- (i) It is not a valid promissory note since the amount payable is not certain.
- (ii) It is not a valid promissory note since the promise is conditional (since it is not certain that Mohan would secure 60% marks in examination).
- (iii) It is a valid promissory note since the promise is not conditional (since it is dependent upon death of A, which is certain to happen, although the time of its happening is not certain).

- (b) Know Your Customer (KYC) refers to due diligence activities that financial institutions and other regulated companies must perform to ascertain relevant information from their clients for the purpose of doing business with them. The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. Related procedures also enable banks to know or understand their customers, and their financial dealings better. This helps them manage their risks prudently. Banks usually frame their KYC policies incorporating the following four key elements:
- Customer Acceptance Policy;
 - Customer Identification Procedures;
 - Monitoring of Transactions; and
 - Risk management.

(c) Specific Performance:

For breach of certain Contracts, monetary compensation by way of damages may not constitute adequate remedy. The aggrieved party may not be interested in monetary compensation. The court may, in such cases, direct the defaulting party to carry out the promise according to the terms of the contract. This is called "Specific Performance" of the contract.

Specific Performance is granted where -

- (i) Monetary compensation is not an adequate relief,
- (ii) There is no standard for ascertaining the actual damage,
- (iii) It is problem that compensation in money cannot be obtained for non-performance,
- (iv) There is no exact substitute or alternative to the subject matter of the contract of the contract, e.g. sale of a particular house, or sale of some rare article or thing for which there is no substitute in the market, etc.

Specific performance is not granted where –

- (i) Monetary compensation is an adequate relief.
- (ii) Contract is of a personal nature, e.g. a Contract to marry,
- (iii) It is not possible for the Court to supervise performance of contract, e.g. a building Construction contract,
- (iv) Contract is ultra – vires, i.e. made by a Company beyond its objects as laid down in Memorandum of Association.

3. (a) State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881?

- (i) The holder of the bill inserts the word “or order” in the bill,
- (ii) The holder of the bearer cheque converts it into account payee cheque.
- (iii) A bill payable to X is converted into a bill payable to X and Y.

(b) What will be the consequences when goods are sold by a person not the Owner and without Owner’s consent?

(c) What are the obligations of the parties to a Contract as regards Performance?

(d) “Counter offer to an offer lapses the offer” Comment. [3+2+4+3]

Answer: (a)

(i) It is not a material alteration:

- Since even after insertion of the words ‘or order’, the negotiable instrument continues to be an order instrument.

(ii) It is a material alteration :

- Since it restricts the right of the holder to obtain the payment of the cheque in cash and to negotiate it.
- But such alteration is authorized by the Act, and so no party is discharged.

(iii) It is a material alteration :

- Since the right to receive the payment has been altered (before the alteration, the right to receive was with X, but after the alternation, the right is with X and Y jointly).

(b) Where goods are sold by a person who is not the owner or who does not sell with the consent of the owner, the buyer acquires no better title to the goods than the seller had unless the owner of goods is by conduct precluded from denying the seller's authority to sell.

However where a Mercantile Agent is, with the consent of the owner, in possession of the goods or of a documents of title of goods, any sale made by him as an agent, shall be as valid as if he was expressly authorized by the owner of the goods provided the buyer act in good faith and without the knowledge that the seller had no authority to sell.

(c) Duty: The parties to a Contract must either –

- (i) perform, or
- (ii) offer to perform, their respective promises.

No Performance: The parties need not perform when the performance is –

- (i) dispensed with, or
- (ii) excused under the provisions of this Act or other law.

Obligation to continue even after death of promisor:

Representatives of the Promisor are bound to perform the promise, where he

(Promisor) dies before performance. But, the representatives are not bound when –
(i) it involves the personal skill of the Promisor, or
(ii) there is no such provision in the Contract.

Example: Z promises to deliver goods to Y on a certain day on payment of ₹10,000. Z dies before that certain day. Z's representatives are bound to deliver goods to Y, and Y is bound to pay the amount.

Effect of Neglect of Promisee to afford reasonable facilities for performance [Sec. 67]:

- (i) It is usual for the Promisor to offer performance to the Promisee.
- (ii) On offer by the Promisor, the Promisee is bound to afford reasonable facilities for the performance.
- (iii) Where the Promisee neglects to provide or does not provide such reasonable facilities for performance, the Promisor is excused by such neglect or refusal as to any non-performance caused thereby.

Example: A contracts to repair B's house. B does not show him the places that require repair. A is excused for non-performance where it is so caused by B's neglect.

(d)

- (i) When two persons make identical offers to each other, in ignorance of each other's offer, it is called cross offer or Counter offer.
- (ii) One offer cannot be taken as offer and the other person's offer cannot be taken as its acceptance. **[Tinn vs Hoffman]**
- (iii) There can be no concluded Contract in such a case because both are offers and there is no Acceptance.
- (iv) When – there is across offer, the original offer terminates. It is for the original Offer or to accept to the counter- offer made by the offerenee.

Example: M offers to sell his car for ₹ 3.8 lakhs to N. N says he would buy it for ₹ 3.5 Lakhs. This is not valid acceptance but a counter offer by N for ₹ 3.5 lakhs which M may or may not accept.

4. (a) State the meaning of 'Salary' and 'wages' under the payment of Bonus Act, 1965.

(b) Moon Ltd. contracts with Ohm Shanti Traders to make and deliver certain machinery to them by 30.01.2014 for ₹ 11.50 lakhs. Due to labour strike, Moon Ltd. could not manufacture and deliver the machinery to Ohm Shanti Traders. Later, Ohm Shanti Traders procured the machinery from another manufacturer for ₹ 12.75 lakhs. Ohm Shanty Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with Moon Ltd. and were compelled to pay compensation for breach of contract. Advise Ohm Shanti Traders the amount of compensation which it can claim from Moon Ltd., referring to the legal provisions of the Indian Contract Act.

(c) Write short notes on Reservation of Right of Disposal (Section 25 of the Sale of Goods Act). [3+4+5]

Answer:

(a) 'Salary or wage' means –

- remuneration in respect of work done
- which would become payable to an employee
- if the terms of employment (whether expressed or implied) were fulfilled.

'Salary or wages' includes-

- (i) Dearness allowance {i.e., all cash payments by whatever name called, paid to employee on account of a rise in the cost of living}
- (ii) Food allowance or the value of free food given by the employer in lieu of salary.

'Salary or wages' does not include -

- (i) Allowances
- (ii) Commission
- (iii) Bonus
- (iv) Travelling concession
- (v) Ex – gratia payment
- (vi) Retrenchment compensation, gratuity or other retirement benefits
- (vii) Any amenity, service, or concessional supply of food grains or other articles
- (viii) Employer's contribution to PF or pension fund
- (ix) Remuneration in respect of overtime work.

(b)

(i) Labour Strike:

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract.

(ii) Non-delivery of machinery by Moon Ltd.:

In this case Moon Ltd. could not deliver certain machinery as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance and hence Moon Ltd. is liable to Ohm Shanti Traders for non-performance of contract.

(iii) Moon Ltd. is liable:

To compensate the loss incurred by Ohm Shanti Traders, i.e., to pay ordinary damages of ₹ 1.25 lakhs (i.e., the difference between ₹ 12.75 lakhs and ₹ 11.50 lakhs) (Sec. 73).

(iv) Moon Ltd. is not liable:

To pay any compensation for loss caused to Ohm Shanti Traders due to non-performance of contract entered into with Zenith Traders.

Since special circumstances, viz., contract between Ohm Shanti Traders and Zenith traders were not brought to the knowledge of Moon Ltd.

- (c)** Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

The seller is deemed to have reserved the right of disposal:

- (i) Where goods are shipped or delivered to a railway administration for carriage by railway and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, the seller is prima facie deemed to reserve the right of disposal.
- (ii) Where the seller of goods draws on the buyer for the price and transmits to the buyer the bill of exchange together with the bill of lading or, as the may be, the

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railway receipt, to secure acceptance to payment of the bill of exchange, the buyer is bound to return the bill of lading or the railway receipt if he does not honour the bill of exchange, and, if he wrongfully retains the bill of lading or the railway receipt, the property in the goods does not pass to him.

5. (a) A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it, B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B.

Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the Negotiable Instruments Act, 1881.

- (b) Examine with reasons, the validity of the following nominations made under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952:

- (i) J nominated N (his son) as a nominee.
- (ii) M nominated S (his wife) and K (a friend) as nominees.
- (iii) R who does not have a family nominated A (a close relative) as a nominee.
- (iv) G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.
- (v) G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year of nomination he gets married to N.

- (c) Whether a 'partner by holding out' will be liable under the Act?

[3+5+4]

Answer:

- (a) B is liable to the true owner:

- since his title is not better than the title of the immediate transferor, who had either stolen or found the cheque, and was therefore, not entitled to receive the amount of the cheque (Sec. 130).

The paying banker is not liable:

- provided it made the payment in good faith and without negligence (Sec. 128).

The collecting banker is not liable:

- since it has collected the payment of the cheque, acting as an agent
- provided it has collected the payment of the cheque in good faith and without negligence (Sec. 131).

- (b)

- (i) Nomination by J in favour of N is valid since N is a member of the family of J (since son is covered under the definition of 'family').

- (ii) Nomination by M

- in favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family');
- in favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

- (iii) Nomination by R in favour of A is valid

- although A is not covered under the definition of family;

- since, if the employee does not have a family, then, nomination may be made in favour of any person.
- (iv)** Nomination by G in favour of N is valid but it becomes void immediately on marriage
- since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.
- (v)** Nomination by G in favour of N is valid but it becomes void immediately on marriage
- since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family;
 - since it is immaterial as to whether the person in whose favour nomination was made before marriage, is the same one to whom G has been married.
- (c)** The Act provides that any person (not being a partner in any LLP), who by words spoken or written or by conduct, represents himself, or knowingly permits himself to be represented to be a partner in a LLP (known as 'partner by Holding out') is liable to any person who has on the faith of any such representation given credit to the LLP, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
- It has further been provided that where any credit is received by the LLP as a result of such representation, the LLP shall, without prejudice to the liability of the person so representing himself or represented to be a partner, be liable to the extent of credit received by it or any financial benefit derived thereon.
- The provisions have also been made in the Act to provide that where after a partner's death the business is continued in the same LLP name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the LLP done after his death.

6. (a) How can an existing partner cease to be a partner of an LLP?

(b) What are the distinction between void agreement and illegal agreement?

(c) Prasad proposed to sell his house to Ranganathan. Ranganathan sent his Acceptance by Post. Next day, Ranganathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance, in the light of the following -

- (i) The telegram of revocation of acceptance is received by Prasad before the letter of acceptance (by Post).**
- (ii) The telegram of revocation and letter of acceptance both reached together.**

(d) In 2013, the Electronics Corporation, a Public Sector establishment under the Department of Science and Technology, Government of West Bengal starts to sell mobile sets manufactured by it, in addition to T.V sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the corporation. The employees of the Corporation went to strike for demand of Bonus. Decide, whether the demand of the employees is tenable under the provisions of the Payment of Bonus Act, 1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the Corporation?

[2+5+(1+2)+2]

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Answer:

(a) A person may cease to be a partner in accordance with the agreement or in the absence of agreement, by giving 30 days notice to the other partners.

A person shall also cease to be a partner of a limited liability partnership-

- (i) on his death or dissolution of the limited liability partnership; or
- (ii) if he is declared to be of unsound mind by a competent court; or
- (iii) if he has applied to be adjudged as an insolvent or declared as an insolvent.

Notice is required to be given to ROC when a person becomes or ceases to be partner or for any change in partners.

(b) Distinction between void agreement and illegal agreement

| Basis of distinction | Void agreement | Illegal agreement |
|---|---|---|
| 1. Meaning | An agreement not enforceable by law is said to be a void agreement. | An agreement which is forbidden (i.e. prohibited) by any law for the time being in force, is an illegal agreement. |
| 2. One in another | All void agreements are not illegal. | An illegal agreement is always void. |
| 3. Reason | If an agreement does not satisfy one or more requirements of Sec. 10, 29 or 56, it is void. | An agreement becomes an illegal agreement only if it is made against the provisions of any law for the time being in force. |
| 4. Punishment | The Parties are not liable to be punished. | In case of an illegal agreement, the parties are criminally liable. |
| 5. Void-ab-initio | A valid contract may subsequently become void. | An illegal agreement is void from the very beginning. |
| 6. Effect on collateral transactions | A transaction which is collateral to a void agreement, is not void. | A transaction which is collateral to an illegal agreement, is also illegal. |
| 7. Example | Agreement entered into with a Minor. | Agreement to murder a person. |

(c)

- (i) The revocation of acceptance by the Offeree (i.e. Ranganathan) is valid, since the acceptance has been revoked within the appropriate time.
- (ii) The revocation is sent by telegram but the acceptance is sent by post. The validity of acceptance is determined by which is opened first, i.e. telegram or post. The following situations may arise -
 - A rational person would normally open the telegram first, and hence the acceptance stands revoked. So, if Prasad (Proposer) opens the telegram first and reads it, the revocation of acceptance is valid, and there is no Contract.
 - However, if Prasad opens the letter first and reads it, the acceptance is complete and cannot be revoked. There is a valid Contract in such case.

(d) The employees are entitled to bonus

- Since the Act applies to Electronics Corporation
- Since the income of Electronics Corporation from sale of mobile sets (by competing with the private sector) is 20% or more of its gross total income.

If the income from sale of mobile sets is only 10%

- Then, the Act shall not apply to Electronics Corporation, and so the employees shall not have any right to demand bonus.

SECTION B

Attempt any two questions.

7. (a) Write down the procedure for obtaining information under the Right to Information Act, 2005.
- (b) Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 1956. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.
- (c) A certificate of incorporation issued by the Registrar of Companies is not valid if all the signatures of the subscribers to memorandum of association have been forged. Comment. [3+4+1]

Answer:

(a) Procedure for Obtaining Information

Public Information Officer shall deal with requests from persons seeking information. If the information requested for is held by another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.

PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, provide the information on payment of such fee as may be prescribed. Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request.

Where a request has been rejected, the PIO shall communicate the following to the requester:

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the Appellate Authority.

(b) Corporate Veil

After incorporation the company in the eyes of law is a different person altogether from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though the shareholders control the entire share capital of the company. This is popularly known as Corporate Veil and in certain circumstances the courts are empowered to lift or pierce the corporate veil by ignoring the company and directly examine the promoters and others who have managed the affairs of the company after its incorporation. Thus, when the corporate veil is lifted by the courts, (i.e., the courts have disregarded the company as an entity), the promoters can be made personally liable for the debts of the company. In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

- (i) Trading with enemy country.
- (ii) Evasion of taxes.
- (iii) Forming a subsidiary company to act as its agent.
- (iv) The benefit of limited liability is destroyed by reducing the number of members below 7 in the case of public company and 2 in the case of private company for more than six months.
- (v) Under law relating to exchange control.
- (vi) Device of incorporation is adopted to defraud creditors or to avoid legal obligations.

(c) The give statement is false.

As per Section 35, a certificate of incorporation shall be conclusive evidence that all the requirements of this Act have been complied with respect of registration and matters precedent and incidental thereto. Thus, certificate of incorporation, once issued, cannot be challenged on any ground whatsoever.

8. (a) State the major 'characteristics' of good corporate governance.

(b) K a member of MNO Limited appoints L as his proxy to attend the general meeting of the company. Later he (K) also attends the meeting. Both K (the member) and L (the Proxy) voted on a particular resolution in the meeting. K's vote was declared invalid by the chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to decision of the Chairman.

Decide, under the provisions of the Companies Act, 1956 whether K's objections shall be tenable.

(c) Under Section 108 of the Companies Act, the instrument of transfer of shares has to be in the prescribed form and has to be delivered to the company within the time mentioned, from the date of the presentation thereof to the prescribed authority. In some cases on scrutiny by the company it is found that there are certain discrepancies in the instrument of transfer and by the time the discrepancies are rectified, the said period expires. Is it obligatory for a company to register such shares on receipt of the same after expiry of the said period in view of the fact that when the said instrument of transfer was originally delivered to the company the same was within the time?

[4+2+2]

Answer:

(a) Characteristics of good corporate governance:

- (i) **Participation:** All the stakeholders must be given an opportunity to participate. The participation may be either direct or through legitimate representatives.
- (ii) **Equity and inclusiveness:** All the stakeholders should have an opportunity to express their concerns in the business decisions.
- (iii) **Consensus oriented:** The management should consider and analyse the concerns of all the stakeholders, and then take such decisions as are in the best interests of all of them.
- (iv) **Responsiveness:** The management should address the concerns of all the stakeholders.
- (v) **Accountability:** The management should develop effective checks and controls so as to prevent any possible abuse of power.
- (vi) **Transparency:** The governance should be such that the investors and other stakeholders get a true picture of entity's financial and non-financial aspects.

- (vii) Follows the rule of law: The decisions taken and their implementation should be in total compliance with the laws, rules and regulations.
- (viii) Effectiveness and efficiency: The governance should enable the organization to achieve its goals and meet the needs of the society as well.

(b) The appointment of L as proxy is revoked

- when K, the member, himself attends the GM.

Vote of L, the proxy is void

- since, when K, the member, himself attends the GM, the proxy is revoked, and so, L has no right to vote.

K's objection is tenable

- since the Chairman has erroneously considered L's vote as valid.

- (c)** A reference in this connection was made to the provisions of Section 108 of the Act which require that a company shall not register a transfer of shares unless a proper instrument of transfer duly stamped and executed has been delivered to the company along with relevant share certificate. If the instrument is not complete or is erroneous, it will only be a case of bad delivery and the company would be entitled to refuse registration. In case the period of limitation prescribed under Section 108 of the Companies Act expires before the errors are corrected, the remedy to the transferee would be to make an application to the central government under the provisions of Section 108 (1-D) for extension of the prescribed period for delivery of the transfer deed.

9. **(a)** A public company having been incorporated with seven subscribers one of whom was a public limited company issued right shares within two years of its incorporation on pro-rata basis to the existing seven share-holders/subscribers. All the six subscribers/shareholders renounced those right shares excepting the remaining shareholder which was a public limited company as already stated above. The said remaining subscriber/share-holder was offered all those right shares and in turn it also accepted the entire offer. Ultimately, the company was allotted all the right shares and thereby the subscribing company i.e., shareholder, became the "holding company of the former". In such case whether Section 372 of the Act will come into play? If so, why so, and if not, why not?

- (b)** A Public Limited Company earned profit during last three years as under:

| Year | Profit (₹) |
|---------|------------|
| 2010-11 | 10 Crores |
| 2011-12 | 12 Crores |
| 2012-13 | 15 Crores |

All the directors of the said company are entitled to get remuneration by way of commission @ 1% of net profit. Therefore, directors received remuneration of ₹ 10 lakh, ₹ 12 lakhs and ₹ 15 lakh during the year 2010-11, 2011-12 and 2012-13 respectively.

Hence, it is seen from the above that during the years 2010-11, 2011-12 and 2012-13 the remunerations of the directors are increasing. Now the question is whether the approval of the Central Government is required for increase of remuneration in every year pursuant to the provisions of Section 310 of the Companies Act, 1956 although the rate of commission of all directors together is fixed i.e., 1% of profit.

- (c)** Write down the qualification and disqualification of a cost auditor. **[2+2+(2+2)]**

Answer:

- (a) Under sub-section (4) of Section 372 of the Companies Act, 1956, acquisition of "right shares" under Section 81(1A) does not require approval of the Central Government provided that the percentage of shareholding in the investee company remains the same. However, in case of subsequent investment in share, other than the right shares, all the existing investments in right shares will be included for the purposes of computing ceiling fixed under subsection (2) of section 372 of the Act. In the given case the investee public limited company will be affected by the provision of Section 372 of the Act.
- (b) Section 309(b) of the Companies Act, 1956 stipulated that commissions paid to a director, or where there is more than one such director, to all of them taken together, if the company by special resolution authorizes such payment, should not exceed one percent of the net profits of the company.
In the instant case, the commissions to the directors during the years 2010-11, 2011-12 and 2012-13 did not exceed the stipulated 1% of the net profit of that relevant particular year. So it did not attract Section 310 of the Companies Act, 1956 though the commission indicated an increase in quantum from year to year but did not exceed the ratio of 1% stipulated by Section 309(4b) of the Companies Act, 1956.
- (c) **Qualification of a cost auditor:**
The cost auditor shall be a Cost Accountant within the meaning of the Cost and Works Accountants Act, 1959. However a Chartered Accountant possessing the prescribed qualifications may be appointed as the cost auditor if the Central Government is of the opinion that sufficient numbers of cost accountants are not available for conducting the cost audit and a notification is issued to this effect. At present, no such notification has been issued.
- Disqualification of a Cost Auditor:**
- (i) A person disqualified to act as a statutory auditor of the company under section 226(3) and (4) shall not be appointed for conducting the cost audit.
 - (ii) The statutory auditor of the company shall not be appointed as the cost auditor.
 - (iii) If the cost auditor, after his appointment, becomes subject to any of the above disqualifications, he shall be deemed to have vacated his office.
 - (iv) A person who is an employee of any of the partners of a firm of Chartered Accountants which is appointed as company auditor under section 224 shall not be appointed as a cost auditor [Notification issued by ICWAI, added 10.12.1969 as amended].
 - (v) An internal auditor of a company shall not be appointed as its cost auditor [Department Circular No. 1/83, dated 20.1.1983].

SECTION C

Attempt any two questions.

10. (a) **To pay proper attention to business ethics is certainly beneficial in the interest of business. Describe four such benefits which may be obtained by paying attention to business ethics.**

(b) **Write short notes on Business for Profit.**

[6+2]

Answer:

- (a) In the long run, only those business organizations which are run ethically will survive and prosper. Various benefits of paying attention to business ethics are as follows:
- (i) **Pressure to be ethical:**

Now a days, business organisations experience pressure to comply with ethical standards. Government regulations, pressure from trade unions, NGOs and media require business organisations to behave ethically.

(ii) Easier change management:

- Implementing change becomes easier with the support of employees.
- Ensuring ethical conduct helps the management win over the confidence and support of employees, thus enabling easier change management.

(iii) Team work and productivity:

- Payment of fair wages and provision of better working conditions results in better work performance and high morale and motivation of employees.
- There is greater alignment between the values and goals of employees and those of the organisation. This results in strong team work and higher productivity.

(iv) Employee growth:

- An ethical work environment offers appropriate career advancement opportunities to the employees.
- Objective performance appraisals and training programs also contribute to all round development of employees.

(v) Better workplace management:

- Business ethics help in maintaining a better workplace. The work environment is free from discrimination, harassment and exploitation.
- This results in lesser disputes with employees and minimum litigation.

(vi) Avoid violations:

- Ethical conduct requires strict compliance with laws, rules and regulations.
- This results in keeping ethical violations to the minimum.
- Also, it helps in early detection of ethical violations, if any.
- It helps the business avoid wastage of money and time and loss of reputation.

Thus, the statement “to pay proper attention to business ethics is certainly beneficial in the interest of business” is absolutely correct.

(b) Business for Profit

It would seem that business ethics does not come within the confines of ethics. As Adam Smith (1779), the father of modern economics says: ‘People of the same trade seldom come together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.’ People find mechanisms to generate the highest possible returns when conducting business. No one holds it against a worker for demanding higher wages, or a landlord for increasing the rent. Their actions are not considered illegal or unethical. Profits are the just wages for invested capital and entrepreneurship. Hence, these should not be resented and should be left alone outside the boundaries of ethics. Business is for profit; the just reward for doing business lies in the excess returns received on the investment.

11. (a) ‘O’ , a CMA is Finance Manager of QRB Ltd. He has been asked to conduct an activity-based costing with a very short deadline and too few resources. He thinks that his CEO may be planning to use this information to restructure the company – including making redundancies. He is not confident that this work will be robust enough, given the timescale, to inform such a big business decision, but feels under pressure to “deliver”. Advise him.

(b) Distinguish between ‘Moral’ and ‘Ethics’.

[2+6]

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Answer:

(a) At the moment he is not sure how his CEO wishes to use the information, and in relation to ethical dilemmas he should try to work from facts. However, he has been asked to do something that may undermine his obligations of professional competence and due care, given the insufficient timeframe and inadequate resource for the proper performance of the duty. He should raise his concerns verbally with his line manager and/or CEO and follow up by email so that everyone's expectations are clarified. By explaining possible consequences, he should try to seek agreement for both a longer timeframe and further resources to provide information that will help them in the long term.

(b)

| Basis of distinction | Morals | Ethics |
|--------------------------------|---|--|
| (i) Meaning | 'Morals' refers to personal, religious, social or a cultural value, referring to what is considered as right or wrong. | 'Ethics' means principles of conduct that guide an individual or a group in deciding what is good or bad. |
| (ii) Approach | 'Moral' requires an individual to conform to what is right behavior and not question that 'conforming'. Thus, morals are dictated to us either by the society, religion or culture. | 'Ethics' requires a person to choose the 'principles of conduct' for governing his life. |
| (iii) Thought process | With morals the 'thinking has already been done'. In case of morals, the individual has to either accept. | With 'ethics', a person has the freedom to 'think and choose' his personal philosophy for guiding the conduct of his life. |
| (iv) Uniformity | Morals differ from society to society and religion to religion. | Ethics are uniform across different cultures, religions and societies. |
| (v) Expression | Morals are expressed as general rules and statements. | 'Ethics' are comparatively abstract and cannot be expressed as general rules and statements. |
| (vi) Applicability in business | Morals do not have any application in business. There is nothing like 'business morals'. | Application of ethics in today's business cannot be ignored. It is termed as 'business ethics'. |

12. (a) Give some examples of Intimidation Threats which can be faced by a Finance & Accounting Professional while working as (i) Auditor or Consultant, or (ii) Employee in a Company.

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

(c) Write short notes on Value-free Ethics.

[3+3+2]

Answer:

(a) Intimidation Threats for Finance and Accounting Professionals are as follows:

(i) Working as Consultants or Auditors

- Being threatened with dismissal or replacement.
- Being threatened with litigation.
- Being pressured to reduce inappropriately the scope and extent of work performed in order to reduce fees.

(ii) Working as Employees

- Threat of dismissal or replacement of the Professional or a close or immediate family member over a disagreement about the application of an accounting principle or the way in which financial information is to be reported for external use as well as for decision making purposes.
- A dominant personality attempting to influence the decision making process, e.g. with regard to the exclusion of irrelevant costs from projected cost estimates.

(b)

- '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.

(c) It would seem that business is an ethically neutral or value-free activity. In other words, the only value business is concerned with is the monetary value. It is not in the interest of business to mix ethical values. An ancient Arabic wisdom states, 'Live together like brothers and do business like strangers.' Business should be kept free from other social relationships and obligations. The only successful relationship that exists in business is that of a vendor and a customer.

It is also said that 'for the merchant, even honesty is a financial speculation.' Indeed, for a businessman every factor in the business is measured in terms of money. The volatility that we see in the stock market is a clear example of the speculative nature of business, which is directly proportional to the prevailing attitude of the people.