

Suggested Answer_Syl12_Dec13_Paper 6

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2013

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- (i) Cash is withdrawn by a customer of a bank from the automatic teller machine is an example of
(a) Express Contract
(b) Void Contract
(c) Tacit Contract
(d) Illegal Contract
- (ii) Which of the following is not implied condition under The Sale of Goods Act, 1930?
(a) Sale by description
(b) Sale by discount price
(c) Sale by sample
(d) Quality or fitness
- (iii) Occupier of every factory shall provide and maintain suitable room or rooms for the use of the children under the age of six years of women workers where the number of such women workers exceed
(a) 20
(b) 50
(c) 30
(d) 150
- (iv) Examine as to which of the following payments form part of "salary" under the provisions of the Payment of Bonus Act, 1965.
(a) Travelling allowance
(b) Commission on sales
(c) Dearness allowance
(d) Overtime allowance
- (v) Under Payment of wages Act, 1963, in any factory, in which 1200 persons are employed, wages must be paid
(a) any time
(b) before the expiry of 10th day of the following month
(c) before the close of the month
(d) before the expiry of 7th day of the following month

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- (vi) The Employees Provident Funds Act, 1952 is applicable to every establishment mentioned in schedule 1 and employed
- (a) 10 persons or more
 - (b) 100 or more persons
 - (c) 20 or more persons
 - (d) 50 or more persons
- (vii) A factory employs 250 workers. All the workers including workers above 60 years of age and below 15 years of age went on strike. The employer
- (a) can deduct fine from all the workers
 - (b) cannot deduct fine from workers who are under the age of 15
 - (c) no fine can be imposed from workers who are 60 years and above
 - (d) cannot deduct any fine from any worker
- (viii) The employer's and employee's share of contribution of ESI fund is
- (a) 1.75% and 4.75% of wages respectively
 - (b) 4.75% and 1.75% of wages respectively
 - (c) 10% and 3.75% of wages respectively
 - (d) 11 % and 3.75% of wages respectively
- (ix) A Formal notarial certificate attesting the dishonour of a bill or note is called
- (a) Noting
 - (b) Protest
 - (c) Attestation of Dishonour
 - (d) Endorsement
- (x) Public notice is not required when there is
- (a) admission of new partner
 - (b) retirement of any partner
 - (c) expulsion of any partner
 - (d) dissolution of the firm
- (xi) A LLP shall file an annual return duly authenticated with the Registrar within _____ of closure of a financial year under Limited Liability Partnership Act, 2008.
- (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 90 days
- (xii) Under Prevention of Money Laundering Act, 2002, CDD means
- (a) Compact Disk Delivery
 - (b) Customer Direct Dealing
 - (c) Customer Designated Director
 - (d) Customer Due Diligence
- (xiii) The board of directors may appoint additional directors from time to time if so authorized by
- (a) Articles of Association
 - (b) Memorandum of Association
 - (c) A resolution passed at general meeting
 - (d) A resolution passed at board meeting
- (xiv) As per clause 49 of corporate governance, independent director means a non executive director of the company who
- (a) is not less than 21 years of age
 - (b) has been an executive of the company in the immediately preceding three financial

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- years
- (c) is related to promoters or persons occupying management positions
(d) is a substantial shareholder of the company
- (xv) Where the information sought for concerns the life and death or liberty of a person, information under RTI Act, 2005 is to be supplied within
(a) 15 days from the date of receipt of request
(b) 72 hours from the date of receipt of request
(c) 48 hours from the date of receipt of request
(d) 30 hours from the date of receipt of request
- (xvi) Board of German Corporate Governance system is based on
(a) one-tier concept
(b) two-tier concept
(c) three-tier concept
(d) four-tier concept
- (xvii) Business ethics are gaining importance because of
(a) smooth functioning
(b) good image
(c) the growth of consumer movement
(d) increasing profit
- (xviii) Which of the following statement is correct about business ethics?
(a) Social responsibility and business ethics are considered different concepts
(b) Making higher profits should be the main objective of a business
(c) A business may sustain only if it cares for society
(d) Companies making ethical investments may not be able to compete
- (xix) Holders of public office should take decision solely in terms of the public interest. This principle of public life is called
(a) Integrity
(b) Accountability
(c) Honesty
(d) Selflessness
- (xx) To resolve the Ethical Conflict, following should not be considered.
(a) Relevant facts
(b) Alternative Course of action
(c) Arms Length
(d) Ethical issues involved

Answer:

- (i) C Tacit Contract
(ii) b Sale by discount price
(iii) c 30
(iv) c Dearness allowance
(v) b Before the expiry of 10th day of the following month
(vi) c 20 or more persons
(vii) b Cannot deduct fine from workers who are under the age of 15
(viii) b 4.75% and 1.75% of wages respectively
(ix) b Protest
(x) a Admission of new partner
(xi) c 60 days
(xii) d Customer Due Diligence

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- (xiii) a Articles of Association
- (xiv) a Is not less than 21 years of age
- (xv) c 48 hours
- (xvi) b Two -tier concept
- (xvii) c The growth of consumer movement
- (xviii) c A business may sustain only if it cares for society
- (xix) d Selflessness
- (xx) c Arms Length

SECTION A

Attempt any four questions.

2.

(a)

(i) Does silence amount to fraud? 3

(ii) Arvind hires a carriage of Govind and agrees to pay INR 500 as hire charges. The carriage is unsafe though Govind is unaware of it. Arvind is injured and claims compensation for injuries suffered by him. Govind refuses to pay. Discuss the liability of Govind. 3

(b) Raman instructed Soman, a transporter, to send a consignment of apples to Mumbai. After covering half a distance, Soman found that the apples will perish before reaching Mumbai. Hence, he sold the same at a half the market price. Raman sued against Soman. Will he succeed? 3

(c) Arun, Varun and Tarun are partners of software business and jointly promise to pay INR 60,000 to Karun. Over a period of time, Varun becomes insolvent, but his assets are sufficient to pay one-fourth of his debts. Tarun is compelled to pay the whole. Decide whether Tarun is required to pay whole amount to Karun in discharging joint promise? 3

Answer:

(a)

(i) At times one of the party to a contract makes studied silence to some of the facts relating to the subject matter of contract. The matter on which silence is maintained by party may be material fact. Does this amount to passive fraud under the Indian Contract Act or not depends upon various factors.

Explanation to section 17 of the Indian Contract Act, 1872, provides that mere silence as to facts likely to affect the willingness of a person to enter into a contract is not fraud unless the circumstances of case are such that having regard to them it is the duty of the person keeping silence to speak or unless silence itself is equivalent to speech.

Exceptions to the General Rule:

The general rule that silence does not amount to fraud has the following exceptions:

(i) When the parties stand in fiduciary relationship (i.e., relationship of faith and trust, parent and child, etc.)

(ii) Where silence is equivalent to speech.

(iii) Half Truth – It is worse than a blatant lie. Partial truthful disclosures may easily deceive the other party.

(ii) Problem asked in the question is based on the provisions of the Indian contract Act, 1872, as contained in the section of 150. The section provides that if the goods are bailed for hire, the bailer is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying

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above provisions in the given case Govind is responsible to compensate Arvind for the Injuries sustained even if he was not aware of the defects in the carriage.

- (b) Agent's Authority in an emergency:** As per section 189 of the sale of Goods Act, 1930.

An agent has the authority in an emergency to do all such acts as man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances. A typical case is where the agent handling perishable goods like 'apples' can decide the time, date and place of sale, not necessary as per instructions of the principal, with the intention of protecting the principal from losses. Here the agent acts in an emergency and act as a man of ordinary prudence. In the given case, Soman had acted in an emergency situation and Raman will not succeed against him.

- (c)** According to section 43 of Indian Contract Act, 1872 when two or more persons make a joint promise, promise may, in absence of express agreement to the contrary compel any one or more for such joint promisors to perform the whole of the promise. Further, if any one of two or more joint promisors makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Tarun is entitled to receive INR 5000 (one fourth of Varun share of debt) from Varun's assets and balance INR 27500 from Arun.

3.

(a)

- (i) Who is a Partner by "Holding Out" or "Estoppels"?** 2

- (ii) 'Anil' draws a bill on 'Susheel' for INR 10,000 payable to his order. 'Susheel' accepts the bill but subsequently dishonours it by non-payment. 'Anil' sues 'Susheel' on the bill. 'Susheel' proves that it was accepted for value as of INR 8,000 and as accommodation to 'Anil' for INR 2,000. How much can 'Anil' recover from 'Susheel'? Decide in the light of the provisions of the Negotiable Instruments Act, 1881?** 3

- (b) Anurag was an employee of Coffee Estate Ltd. The whole undertaking of Coffee Estate Ltd. was taken over by a new company Asian Coffee Ltd. The Service of Anurag remained continuous in the new company. After serving for one year, Anurag met with an accident and become permanently disable. Anurag applied to the new company for the payment of gratuity. The company Asian Estate Ltd. refused to pay gratuity on the ground that Anurag has served only for a year in the company. Examine the validity of refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972.** 3

- (c) If the following statements are not correct, give the correct answer.** 1 x 4 = 4
- (i) Authorized capital for formation of limited liability partnership (LLP) is one crore.**
- (ii) Maximum number of partners in a LLP shall not exceed 50.**
- (iii) Foreign nationals can also be partners in a LLP.**
- (iv) Audit is not required in LLP in any circumstances.**

Answer:

(a)

- (i)** If any person behaves and/or poses in such a way that others consider him to be a partner, he will be held liable to those persons who have been misled, suffered or lent finance to the firm on assumption that he is a partner. Such a person is known as "Partner by Holding out 'or Estoppels." He is not a true partner and he is not entitled to any share in the profit in the firm.

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(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 Anil can recover only INR 8000.

(b) According to the section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years of his superannuation or, on his retirement or resignation or on his death or disablement due to accident or disease.

The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section. Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

The given problem fulfills all the above requirements as stated. Therefore, Anurag is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

(c)

(i) NIL-Since not specified in the Act.

(ii) No maximum limit-as no specific number specified in the Act.

(iii) Yes, foreign Nationals can also be partners.

(iv) Audit is required if the contribution is above INR 25 Lakhs or if annual turnover is above INR 40 Lakhs.

4.

(a)

(i) **What will be the fate of a 'Holder' of negotiable instrument if he fails to give notice of dishonour to prior parties?** 2

(ii) **A company having its registered head office in Kolkata has three departments in Delhi, Chennai and Mumbai. The company paid minimum bonus under Payment of Bonus Act, to all its entitled employees of head office excepting the employees of departments located outside Kolkata. State whether employer was right.** 3

(b) **In case of auction sales, auctioneers has some implied obligations. State such obligations.** 4

(c) **An inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the 'shareholders Register'. How far under the Act is his action reasonable?** 3

Answer:

(a)

(i) If the Holder does not give notice of dishonour of the bill, instrument or cheque (except when the notice of dishonour is excused, all the parties liable thereon are discharged of their liability.)

(ii) As per section 3 of The Payment of Bonus Act, 1965, for the purpose of computation

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of bonus, an establishment shall include departments, undertakings, and branches. It is immaterial whether these are situated in same place or not.

Exception: A branch, department or undertaking shall not be treated as part of an establishment if the following 2 conditions are satisfied –

- (a) A separate B/S and P & L A/c has been prepared for such branch, department or undertaking.
- (b) Such branch, department or undertaking has never been treated as part of the establishment for the purpose of computation of bonus.

But since the question is silent regarding the above mentioned exceptions, we may assume that the establishment consists of different departments, undertakings, and branches and all such units are treated as part of same establishment for the purpose of computation of bonus.

Hence, the employer's contention is not correct and the employees of all the three departments are entitled to bonus.

- (b) Yes, obligations are:-
 - (i) He has authority to sale goods.
 - (ii) He warrants that he does not know any defects in the title of the principal
 - (iii) He undertakes to give possession of the goods against price paid.
 - (iv) He guarantees quiet possession of goods by the purchases.
- (c) Under section 13(2) of the Employees Provident Funds and miscellaneous Provision Act.1952, an inspector can inspect and make copies of, take extract from any book, register or other documents maintained in relation to the establishment and where he has reason to believe that any offence under this Act has been committed by an employer seize with assistance as may think fit, such book, register or other documents or portions there of as he may consider relevant in respect of that offence.

In the present case, the inspector had sought to take copies of the shareholder's register which is irrelevant the office after the working hours (10.00 pm) which is not reasonable.

5.

- (a)
 - (i) **Define 'Designated business or profession' under The Prevention of Money Laundering Act, 2002.** 2
 - (ii) **Explain the partial disablement with the help of leading case under the Employees Compensation Act, 1923.** 4
- (b) **Explain "Hours and period of work" u/s 7 of the Child Labour (Prohibition and Regulation) Act, 1986.** 3
- (c) **What are the conditions to deduct for recovery of advances made under the Payment of Wages Act, 1936?** 3

Answer:

- (a)
 - (i) Designated business or profession means carrying on activities for playing games of chance for cash or kind and includes such activities associated with casino or such other activities as the central government may by notification, so designate from time to time.
 - (ii) Disablement means loss of capacity to work or to move. Disablement reduces a

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worker's earning capacity. Disablement may be partial or total. Further it may be temporary or permanent.

Partial disablement [Sec 2(g)] reduces the earning capacity of a workman as a result of some accident.

Temporary partial disablement reduces the earning capacity of a workman in the type of employment he was engaged in at the time of accident.

Permanent partial disablement reduces the earning capacity of a workman in every types of employment he was capable of at the time of accident.

The following case will help in understanding the concept of partial disablement: in upper Doaba Sugar Mills Ltd vs Daulat Ram Air 1060 All 493 A blacksmith lost the index and middle finger, the rest of hand namely the thumb and other two fingers could be utilized in work. The test laid down in this case to determine the nature of disablement was : if it is found that the employee is disable from performing his duties of blacksmith fitter, the court should consider whether he has been incapacities from undertaking any employment and whether in that other employment the rest of hand could be utilized.

(b) Hours and period of work U/S 7 of the Child Labour (Prohibition and Regulation) Act.1986 is as follows;

(i) No child shall be required or permitted to work in any establishment in excess of such number of hours as may be prescribed for such establishment or class of establishments.

(ii) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for, rest for at least one hour

(iii) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub section (2),it shall not be spread over more than six hours including the time spent in waiting for work on any day

(iv) No child shall be required or permitted to work between 7p.m.and 8a.m.

(v) No child shall be required or permitted to work overtime

(vi) No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

(c) Deductions under clause (f) of sub-section (2) of section 7 (the Payment of Wages Act. 1936) shall be subject to the following conditions namely:

(i) recovery of advance of money given before employment began shall be made from the first payment of wages in respect of a complete wage period, but no recovery shall be made of such advances given for travelling expenses;

(ii) recovery of an advances of money given after employment began shall be subject to such conditions as the Appropriate Government may impose;

(iii) recovery of advances of wages not already earned shall be subject to any rules made by the Appropriate Government regulating the extent to which such advances may be given and the installments by which it may be recovered.

6.

(a) Mr. Mahavir joined the company on 25.05.1987 and retired on 30.11.2012 when his salary was INR 70,000 per month. He also received conveyance allowance INR 20,000 per month and average overtime INR 1,000 per month, calculate the amount of gratuity. 3

(b) A non owner can convey a better title to the bonafide purchaser of goods for value in certain cases. List out those cases. 6

(c) What are the circumstances in which Limited Liability Partnership may be wound up by Tribunal? 3

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Answer:

- (a) He superannuated on 30.11.2012
Joined on 25.05.1987
05.06.25

He is entitled for 25 year 6 months + 5 = 26 years

$$\begin{aligned} \text{Amount of gratuity} &= \frac{15 \times 26 \times 70,000}{26} \\ &= \text{INR. } 10,50,000 \end{aligned}$$

But maximum ceiling being INR 10,00,000
His gratuity is INR 10,00,000

(b) Sale by person not the owner

Where goods are sold by a person who is not the owner thereof and who does not sell them under the authority or with the consent of the owner, the buyer acquires no better title to the goods than the seller had, unless the owner of the goods is by conduct precluded the seller's authority from denying the seller's authority to sell. Generally the owner alone can transfer property in goods "namo dat quod non habet" means that no one can give what he himself does not have. It means a non owner cannot make valid transfer of property in goods. If the title of the seller is defective, the buyer's title will also be subject to same defect. If the seller has no title, the buyer does not acquire any title although he might have acted honestly and might have acquired the goods after due payment. This rule is to protect the real owner of the goods. Though this doctrine seeks to protect the interest of real owners, but in the interest of the trade and commerce there must be some safeguard available to a person who acquired such goods in good faith for value; accordingly the Act provides the following exceptions to this doctrine which seeks to protect the interest of bonafide buyers.

- (i) Sale by mercantile agent (section 27):** Where a mercantile agent is, with the consent of the owner, in possession of the goods or of a document of title to the goods, any sale made by him, when acting in the ordinary course of business of a mercantile agent, shall be as valid as if he were expressly authorized by the owner of the goods to make the same, provided that the buyer acts in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

Held as H was in possession of the Car with F's consent for the purpose of sale, K obtained a good title to the Car [Folkes v King 1923 IKB282].

- (ii) Sale by one of joint owners (section 28):** If one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in the goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell. Where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are sanctioned.

- (iii) Sale by person in possession under voidable contract (section 29):** When the seller of goods has obtained possession thereof under a contract voidable under Section 19 or Section 19A of the Indian Contract Act, 1872, but the contract has not rescinded at the time of the sale the buyer acquires a good title to the goods, provided he buys them in good faith and without notice of the seller's defect of title.

- (iv) Seller or buyer in possession after sale (section 30):** Where a person, having sold goods, continues or is in possession of the goods or of the documents of title to the goods, the delivery or transfer by that person or by a mercantile agent acting for him of the goods

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or documents of title under any sale, pledge or other disposition thereof to any person receiving the same in good faith and without notice of the previous sale shall have the same effect as if the person making the delivery to transfer were expressly authorized by the owner of the goods to make the same.

(v) Sale by estoppel (section 27): Where the owner by his conduct or omission, leads the buyer to believe that the seller has authority to sell, he is estopped from denying the fact afterwards. The buyer thus gets a better title than the seller.

(vi) Sale by an unpaid seller after exercising his right of lien or stoppage in transit: In addition to the exceptions discussed above which are provided in various sections of the Sale of Goods Act, the following exceptions are provided in other Acts like Contract Act, Civil Procedure Code etc.

(a) Sale by a finder of lost goods: Under section 169 of the Contract Act, if a finder of lost goods could not reasonably find the true owner or the true owner refuses to pay the lawful charges of the finder of lost goods, the finder of lost goods can sell the goods when the goods are perishable in nature or when the lawful charges of the finder of lost goods amounts to 2/3rd of its value.

(b) Under section 176 of the Indian Contract Act, a pawnee can sell the goods under certain circumstances with due notice to the owner.

(c) Sale by official receiver or assignee: In case of insolvency of any individual his official receiver or liquidator of a company can sell the goods and buyer thereof gets good title to it.

(d) Execution of Sale: Under order 21 of the Civil Procedure Code officer of court may sell goods and convey good title to the buyer inspite of the fact they are not the true owner of the goods.

(c) The circumstances in which a limited liability of partnership may be dissolved by Tribunal are provided in section 64 of the Limited Liability Partnership Act, 2008 A limited liability partnership may be wound up by the Tribunal in following ways-

(i) The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

(ii) if, for a period of more than six month, the number of partners of the limited liability partnership is reduced below two;

(iii) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the state or public order;

(iv) if the limited liability partnership has made a default in filling with the Registrar the statement of account and solvency or annual return for any five consecutive financial year; or

(v) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

(vi) If the limited liability partnership is unable to pay its debts.

SECTION B

Attempt any two questions.

7.

(a) A Company was incorporated on 6th October, 2013. The certificate of incorporation of the company was issued by the Registrar on 25th October, 2013. The company on 10th October, 2013 entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of The Companies Act, 1956, whether the company can be exempted from the said contractual liability.

3

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- (b) What is the difference between 'e-governance' and 'e-government'? 3
- (c) Describe the meaning of 'Records' under the Right To Information Act, 2005. 2

Answer:

- (a) Upon the registration of the documents as required under the Companies Act, 1956 for incorporation of a company, and on payment of the necessary fees, the Registrar of Companies issues a certificate that company is incorporated (u/s 34) Section 35 provides that a certificate of incorporation issued by the Registrar is conclusive as to all administrative acts relating to the incorporation and as to the date of incorporation. The facts as given problem are similar to those in case of Jubilee Cotton Mills Vs. Lewis (1924) A.C. 1958 where it was held that an allotment of shares made on the date after incorporation could not be declared void on the ground that it was made before the company was incorporated when the certificate of incorporation was issued at a later date.

Applying the above principles the contention of the company in this case cannot be tenable. It is immaterial that the certificate of incorporation was issued at a later date. Since the company came into existence on the date of incorporation stated on the certificate, it is quite legal for the company to enter into contracts. To conclude the contracts entered into by the company before the issue of certificate of incorporation shall be binding upon the company. The date of issue of certificate is immaterial.

- (b) Both term are treated to be the same however, there is some difference between the two. E-government is the use of the ICTs in public administrations-combined with organizational change and new skills- to improve public services and democratic processes and to strengthen support to public policies. The problem in this definition to be congruent with the definition of E-Governance is that there is no provisions for governance of ICTs. As matter of fact, the governance of ICTs requires most probably a substantial increase in regulation and policy-making capabilities, with all the expertise and opinion-shaping processes among the various social stakeholders of these concerns. So, the perspective of the E-Governance is the use of the technologies that both help governing and have to be governed.

E-Governance is the future, many countries are looking forward to for a corruption free government. E-government is one way communication protocol whereas E-governance is two way communication protocol. The essence of E-governance is to reach the beneficiary and ensure that the services intended to reach the desired individual has been met with, there should be an auto-response system to support the essence of E- governance, whereby the Government realizes the efficacy of its governance. E-governance is by governed, for the governed and of the governed.

Establishing the identity of the end beneficiary is a true challenge in all citizen-centric services. Statistical information published by governments and the world bodies do not always reveal the facts. Best form of E-governance cuts down on unwanted interference of too many layers while delivering governmental services, it depends on good infrastructural setup with the support of local processes and parameters for governments to reach their citizens or end beneficiaries. Budget for planning, development and growth can be derived from well laid out E-governance system.

- (c) Under Section 2 of the Right To Information Act 2005 "Record" includes-
- 1) any document, manuscript and file;
 - 2) any microfilm, microfiche and facsimile copy of a document;
 - 3) any reproduction of image or images embodied in such microfilm (whether enlarged or not);and
 - 4) any other material produced by a computer or any other device;

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- 8.
- (a)
- (i) A company was formed and commenced business but directors were not appointed. In such case who will act as director? 2
- (ii) Board acts on the advice given by a person in his professional capacity, whether he shall be treated as director. 1
- (b) What are the conditions to be complied with to keep the minutes in the loose leaf binders? 3
- (c) "Audit committee is only luxury to the company". Do you agree? 2

Answer:

- (a)
- (i) Subject to regulations in the Articles of Association and until directors are appointed U/S 255, the individuals who are subscribers of Memorandum of Association will be deemed to be directors U/S.254.
- (ii) As per section 7 of, Indian Companies Act 1956, such person shall not be deemed to be directors.
- (b) **Minutes may be kept in the loose leaf binders**
The modern practice is to type out or obtain computerized printing of the minutes in loose leaves and then keep them in a binder. The Department of Company affairs vide File No. 8/16(I)/61 PR have prescribed that, in certain cases, minutes may be kept in loose leaf binder provided the following conditions are fulfilled:
- (i) The pages are serially numbered;
- (ii) The loose leaves are bound up at reasonable interval, say not exceeding six months;
- (iii) There should be proper locking device to ensure security and proper control to prevent irregular removal of the loose leaves.
- (c) Audit committee serves as a communication link among various departments and has to interact with management, internal auditor, statutory auditor and the public. Audit Committee provides an 'independent' reassurance to the board through its oversight and monitoring role. The Audit Committee is a key governance structure charged with oversight over financial reporting and disclosure. The Audit Committee has a responsibility to ensure that the company's financials are void of any misrepresentation or misleading information.
The role of the Audit Committee in corporate governance has evolved in the wake of the corporate governance failures around the world and the Audit Committee has become increasingly relevant in enhancing confidence in the integrity of an organization's processes and procedures relating to internal control and corporate and financial reporting. The Audit Committee has become one of the main pillars of corporate governance in checking and forestalling corporate misconduct. The effectiveness of the Audit Committee determines to a large extent the integrity of a company's financials.
So, it can be said that the given statement is not true. Audit committee is not only luxury to the company.

- 9.
- (a) Describe the provisions for disclosure of interest by directors' u/s 299 of the Companies Act, 1956. 3
- (b) A chemical manufacturing company distributed ₹ Twenty lakhs to scientific institutions for furtherance of scientific education and research. Referring to the provisions of The

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Companies Act, 1956, decide whether the said distribution of money was 'ultra vires' the company. 2

(c) Explain the combined code (2006) under the Corporate Governance in the UK. 3

Answer:

(a) According to section 299-the Companies Act, 1956, every director of a company, who is directly or indirectly concerned or interested in a contract or proposed contract entered into, or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the board of directors. In case of a proposed contract, such disclosure shall be made by a director at the meeting of the Board at which the question of entering into contract or agreement is first taken into consideration. In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes interested in this contract. For the purpose the director concerned shall give a notice to the Board to this effect. This is deemed to be sufficient disclosure of the interest.

A director of a company must not place himself in a position in which his personal interest clashes with his duty. Therefore he should not take part in the discussion of or vote as a director on any contract or arrangement in which he is directly or indirectly interested unless authorized by the articles. In case he votes, his vote would not be counted. Even his presence shall not be taken into consideration while computing the quorum for the meeting. Every director who knowingly contravenes with these provisions shall be punishable with fine which may extend to INR 50000.

(b) The term *ultra vires* means beyond powers. Here, in the given case, a chemical manufacturing company distributed ₹ Twenty lakhs to scientific institutions for furtherance of scientific education and research. It is not *ultra vires* since it is conducive to the continued growth of the company as chemical manufacturers.

Similar view was found in the case of **Evans v. Brunner Mond & Company, (1921) Ch 359**. Here, a company was incorporated for carrying on business of manufacturing chemicals. The objects clause in the memorandum of the company authorized the company to do "all such business and things as maybe incidental or conducive to the attainment of the above objects or any of them" by a resolution the directors were authorized to distribute £ 100,000 out of surplus reserve account to such universities in U.K. as they might select for the furtherance of scientific research and education.

The resolution was challenged on the ground that it was beyond the objects clause of the memorandum and therefore it was *ultra vires* the power of the company. The directors proved that the company had great difficulty in finding trained men and the purpose of the resolution was to encourage scientific training of more men to enable the company to recruit staff and continue its progress.

The court held that the expenditure authorized by the resolution was necessary for the continued progress of the company as chemical manufacturers and thus the resolution was incidental or conducive to the attainment of the main object of the company and consequently it was not *ultra vires*. "Acts incidental or ancillary" are those acts, which have a reasonable proximate connection with the objects stated in the objects clause of the memorandum.

(c) An updated version of the Combined Code was issued in June 2006. There were three main changes made:

(i) to allow the company chairman to serve on (but not to chair) the remuneration committee where he is considered independent on appointment as chairman;

(ii) It provide a 'vote withheld' option on proxy appointment forms to enable a shareholders to indicate that they wish to withhold their vote;

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- (iii) to recommend that companies publish on their website the details of proxies lodged of general meetings where votes were taken on a show of hands.

SECTION C Attempt any two questions.

- 10.
- (a) "Good business ethics promotes good business"— Explain. 4
- (b) Mr. ROY is a CEO of a pharmaceutical company. His R & D department, while experimenting with a chemical molecule, sees the possibility that the molecule may be developed into a drug for a rare, painful, life-threatening genetic disease that afflicts only one child in ten million. But to develop the drug, his company may have to invest huge sum of the shareholder's money, despite the drug not wide salability. Is Mr. ROY confronted by an ethical dilemma? How should he resolve the issue? 4

Answer:

- (a) There is a growing realization all over the world that ethics is vitally important for any business and for the progress of any society. Ethics makes for an efficient economy; ethics alone, not government or laws, can protect society; ethics is good in itself; ethics and profits go together in the long-run. An ethically responsible company is one which has developed a culture of caring for people and for the environment; a culture which flows downwards from the top managers and leaders.

Thus, business ethics is vital and plays a key role in success of any business. Prof. Robert Day has said that when ethical conduct is displayed, it puts some kind of trust and confidence in relationship. Adopting ethical behaviour in an organization not only increase its goodwill but also leads to positive consequences in the long run. Business ethics protects the interest of all stakeholders. Businessman who follows business ethics gets self satisfaction and motivates others also to follow the same principles. So in the era of global economy, for a successful business he has to follow sound ethical practices. Ethics are important not only in business but in all aspects of life because it is an essential part of the foundation on which civilized society is built. A business or society that lacks ethical principles is bound to fail sooner or later.

An organization that has a strong ethical program in place with certainly help in reducing the burden on the employees while deciding on such alternatives, Ethics help employees in developing a rationale behind the actions that they undertake in the efficient performance of their duties. It will certainly help in reducing unnecessary tensions and unavoidable thoughts that an individual gets surrounded with when he is faced such kind of problems. This helps him in concentrating more on his work and less on the indecisive thoughts that come to his mind

- (b) Mr. Roy is in a situation where he has to choose between carrying on the development of a drug for a painful and life threatening disease which afflicts one in ten million and the action of spending huge sum of shareholder's money for such development. As we can see, both are positive and ethically right choices. As a socially responsible person he has to think in terms of eliminating serious illness but at the same time he must be careful in dealing with shareholder's money. This is a classic case of an ethical dilemma. Such an ethical dilemma must be resolved by addressing the following points;
- (i) Defining the problem clearly.
 - (ii) How to define the problem if you stood on the other side of fence?
 - (iii) How did the situation arise?
 - (iv) To whom are you loyal as person and a member of the organization?

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- (v) What is your intention in making this decision?
- (vi) How does this intention compare with the probable results?
- (vii) Whom could your decision or action injure?
- (viii) Can you discuss the problem with affected parties before you make your decision?
- (ix) Are you confident that your position will be as valid over a long period?
- (x) Could you disclose without any doubt your decision or action to your boss, your CEO, the Board of Directors, your family, society as a whole?
- (xi) What is the symbolic potential of your action if understood? Misunderstood?
- (xii) Under what condition would you allow exceptions to your stand?

11.

- (a) **“Ethics and morals are one and the same” ’—Comment. 3**
- (b) **Explain briefly the matters to be considered and the step that may be taken by an accounting professional when he is required to resolve an ethical conflict in the application of fundamental principles. 5**

Answer:

- (a) The terms 'ethics' and 'morals' are etymologically that is, from their very roots or terms, different. The word moral (s) is derived from the Latin root moral is, which implies custom. In other words, it refers to a behaviour that is accepted or rejected due to an accepted social custom. The word ethics stems from the Greek word ethike, which attributes to a social environment, referred to as ethos or social milieu. This latter meaning embraces much more than mere custom. It refers to everything that is part and parcel of society and not just what is allowed or forbidden. Morality is more concerned with the norms, values and beliefs embedded in social processes which define what is right or wrong for an individual or community.

Another point of difference between the two refers to their usage in ordinary language. For instance, a lawyer defending an alleged rapist would accuse the victim as 'morally fallen' and not as 'ethically fallen'. On the other hand, a committee that is formed to probe the behaviour of the members of Parliament would be called 'ethics committee', not moral committee. The meaning of the word is in its usage. Thus, both these terms have their unique characteristics and applications.

However, the terms are intrinsically not different. Both of them refer to the same reality of human actions, which may be characterized as morally or ethically positive or negative as the case may be. It may be true that the terms (ethics and morals) sound different but they refer to the same social reality wherein a certain body of accepted norms forms a code of conduct in society. The actions of the members are described as 'moral' or 'ethical' depending on the linguistic nuances of the meaning in a particular case as well as on the conventional use of the terms. It is in the use of the words in a given context, that the meaning becomes clear.

- (b) **Conflict Resolution:** while evaluating compliance with the fundamental principles, a finance and accounting professional may be required to resolve a conflict on the application of fundamental principles. The following need to be considered, either individually or together with others, during a conflict resolution process:
 - (a) Relevant facts
 - (b) Ethical issues involved
 - (c) Fundamental principles related to the matter in question
 - (d) Established internal proceedings and
 - (e) Alternative course of action

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Having considered these issues, the professional should determine the appropriate course of action that is consistent with the fundamental principles identified. The professional should weigh the consequences of each possible course of action. If the matter remains unresolved, the professional should consult other appropriate persons within the firm or employing organization for help in obtaining resolution. During times, where a matter involves a conflict with or within an organization, the finance and accounting professional should also consider consulting those charged with governance of the organization, such as the Board of Directors.

If may be in the best interests of the professional to document the substance of the issues and details of any discussions held or decisions taken, concerning that issue: If a significant conflict cannot be resolved, a professional may also obtain professional advice from the relevant professional body or legal advisor and there by obtain guidance on ethical issues without breaching confidentially.

If, after adopting all strategies, the ethical conflict still remains unresolved, a professional should try to disassociate from the matter causing the conflict or even from the organization, if need be.

12.

- (a) **What are the reasons for which unethical behaviour might arise in an organization? 4**
- (b) **Discuss the code of ethics to be followed by Management Accountant professional. 4**

Answer:

- (a) The reasons for unethical behaviour arise in the organization are:
 - Over Emphasis on Short Term Profitability: Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.
 - (i) **Ignoring Small Unethical issues:** companies need to develop an environment where small ethical lapses are taken seriously so that they do not recur in the future.
 - (ii) **Economic Cycles:** when the company is doing well, no one is bothered to understand its actual financial position. However, when the economy takes a downward turn, finance and accounting managers may take decisions by compromising over the established principles. To prevent disclosure of unethical problems in times of depression, companies need to be careful and vigilant also during prosperous time period.
 - (iii) **Market Complexity:** In the era of globalization and massive cross border flow of capital, accounting rules have becomes more complex. The complexity of principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behavior.
 - (iv) **Money- Mindedness:** Most business organizations try to display better financial condition by window dressing. Following such a principle towards "showing profits" rather than "earning profits" leads to unethical accounting and financial practices.
- (b) **Code of Ethics by Management accountant professionals**

Codes of ethics by professionals are as follows-

(i) Responsibility to Public

Members should accept the obligation to act in a way that will serve the public interest, honor the public trust, and demonstrate commitment to professionalism. A distinguishing mark of a profession is acceptance of its responsibility to the public. The accounting profession's public consists of clients, credit grantors, governments, employers, investors, the business and financial community and others who rely on

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the objectivity and integrity of certified public accountants to maintain the orderly functioning of commerce. This reliance imposes a public interest responsibility on certified public professionals. The public interest is defined as the collective well-being of the community of people and institution the profession serves.

(ii) Integrity

To maintain and broaden public confidence, members should perform all professional responsibilities with the highest sense of integrity. Integrity is an element of character fundamental to professional recognition. It is the quality from which the public trust derives and the benchmark against which a member must ultimately test all decisions.

Integrity requires a member to be, among other things, honest and candid within the constraints of client confidentiality. Service and the public trust should not be subordinated to personal gain and advantage. Integrity can accommodate the inadvertent error and the honest difference of opinion; it cannot accommodate deceit or subordination of principle.

(iii) Objectivity and Independence

A member should maintain objectivity and be free of conflicts of interest in discharging professional responsibilities. A member in public practice should be independent in fact and appearance when providing auditing and other attestation services. Objectivity is a state of mind, a quality that lends value to a member's services. It is a distinguishing feature of the profession. The principle of objectivity imposes the obligation to be impartial, intellectually honest, and free of conflicts of interest. Independence precludes relationships that may appear to impair a member's objectivity in rendering attestation services.

(iv) Due Care

A member should observe the profession's technical and ethical standards, strive continually to improve competence and the quality of services, and discharge professional responsibility to the best of the member's ability. The quest for excellence is the essence of due care. Due care requires a member to discharge professional responsibilities with competence and diligence. It imposes the obligation to perform professional services to the best of a member's ability with concern for the best interest of those for whom the services are performed and consistent with the profession's responsibility to the public.

Members should be diligent in discharging, responsibilities to clients, employers, and the public. Diligence imposes the responsibility to render services promptly and carefully, to be thorough and to observe applicable technical and ethical standards. Due care requires a member to plan and supervise adequately any professional activity for which he or she is responsible.

(v) Not to disclose any confidential client information

A member in public practice shall not disclose any confidential client information without the specific consent of the client.

Members who are in professional practice shall not use their own advantage or disclose any member's confidential client information that comes to their attention in carrying out those activities. This prohibition shall not restrict member's exchange of information in connection with the investigative or disciplinary proceedings or the professionals practice