

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2014

Paper- 6 : LAWS, ETHICS AND GOVERNANCE

Time Allowed : 3 Hours

Full Marks : 100

This paper contains four questions.

All questions are compulsory, subject to instruction provided against each questions.

All workings must form a part of your answer.

Assumptions, if any, must be clearly indicated.

1. Answer all questions: (Choose the correct answer from the given four alternatives). 2×10=20

(i) In social agreements usual presumption is

- (a) that parties do not intend to create social relations.
- (b) that parties intend to perform them.
- (c) that parties do not intend to make legal and social relations.
- (d) that the parties do not intend to create legal relations between them.

(ii) In a sale of goods, the doctrine of caveat emptor will not apply when there is

- (a) usage of trade
- (b) consent by fraud
- (c) buyer's error of judgment
- (d) Merchantable Quality

(iii) A bill of exchange, that is drawn accepted or endorsed without consideration is called

- (a) Accommodation bill
- (b) Promissory note
- (c) Trade bill
- (d) Bearer instrument

(iv) Under Industrial Disputes Act, Appropriate Government may require to constitute a workman committee on any day in the preceding 12 months, where an industrial establishment employees

- (a) 250 or more workers
- (b) 100 or more workers
- (c) 500 or more workers
- (d) 200 or more workers

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- (v) Employee's State Insurance Act, 1948 is applicable to all
- (a) factories including factories belonging to Government and seasonal factories.
 - (b) factories excluding seasonal factories.
 - (c) factories including factories belonging to Government and seasonal but excluding Silk factory.
 - (d) factories including factories belonging to Government but excluding seasonal factories.
- (vi) A partner must give a public notice of his retirement from the firm in order absolve himself from the liability for the acts of the other partners done after his retirement is known as
- (a) Dormant partner
 - (b) Ostensible partner
 - (c) Nominal partner
 - (d) Partner by estoppel
- (vii) A prospectus which does not have complete particulars on the price of securities offered and the quantum of securities offered by the company is known as
- (a) Statement in lieu of prospectus
 - (b) Red-herring prospectus
 - (c) Deemed prospectus
 - (d) Shelf prospectus
- (viii) Which of the following is often considered as one of the "four pillars" of corporate governance?
- (a) Shareholders
 - (b) Stake holders
 - (c) Internal Auditor
 - (d) Tax Auditor
- (ix) The crucial step in understanding business ethics is
- (a) Establishing codes of ethics
 - (b) Learning to recognize ethical issues
 - (c) Having efficient operations
 - (d) Implementing s strategic plan
- (x) Which of the following reason is applicable for unethical business practices?
- (a) Workplace Surveillance
 - (b) Profit making by some of the big companies
 - (c) Success of the company
 - (d) Administrative corruption

Answer:

1. (i) (d) That the parties do not intend to create legal relations between them.
- (ii) (d) Merchantable Quality
- (iii) (a) Accommodation bill

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- (iv) (b) 100 or more workers
- (v) (d) Factories including factories belonging to Government but excluding seasonal factories
- (vi) (b) Ostensible partner
- (vii) (b) Red-herring prospectus
- (viii) (c) Internal Auditor
- (ix) (b) Learning to recognize ethical issues
- (x) (d) Administrative corruption

2. Answer any four questions:

12x4=48

- (a) (i) **Makhan, seeing a mobile phone in a showcase of a shop which was marked for sale for ₹ 2,000, enters the shop, places ₹ 2,000 on cash counter and told to give him displayed mobile. Shop owner refused. Can the shop owner refuse to sale the displayed mobile?** **3**
- (ii) **A, B, C are partners in a firm. As per terms of the partnership deed, A is entitled to 20% of the partnership property and profits. A retires from firm and dies after 15 days. B, C continues business of the firm without settling accounts. What are the rights of A's legal representatives against the firm under the Indian Partnership Act, 1932?** **3**
- (iii) **Mr. Punit obtains fraudulently from Rohan a crossed cheque "Not Negotiable". He transfers the cheque to Sunit, who gets the cheque encashed from ABC bank limited which is not the drawee bank. Rohan on coming to know about the fraudulent act of Mr. Punit sues ABC Bank for the recovery of the money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether Rohan will succeed in his claim. Would your answer be still the same in case Mr. Punit does not transfer the cheque and gets the cheque encashed from ABC Bank himself?** **4**
- (iv) **What is Average Pay as per Industrial Disputes Act, 1947?** **2**
- (b) (i) **W, the wife of H, who is lunatic, purchases a diamond set of ₹ 10 lacs from a jeweller on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the jeweller is entitled to claim the above amount from the property of H.** **4**
- (ii) **A limited liability partnership wants to shift its registered office from Udaipur in the State of Rajasthan to Gurgaon in the State of Haryana. What procedure the corporate has to follow?** **4**
- (iii) **Lalit delivered sarees valuing ₹ 50,000 to Rohit on 'Sale or Return Basis'. Rohit further delivered these sarees to Sumit and Sumit to Mohit on the same terms and conditions. Subsequently, these sarees were burnt by fire while in the custody of Mohit. Lalit filed a suit against Mohit for the recovery of the price, with reference to provisions of the Sale of Goods Act, 1930, examine whether Lalit's suit for the price shall be maintainable.** **4**
- (c) (i) **Anil Pvt. Ltd. imposed in a fine on Anurag, one of its employees for regularly reporting late for work. The fine was imposed on 4th June 2014. The management wanted to recover the amount in November 2014 during half yearly increment. Can the Company recover this amount of fine, state your views as per Payment of Wages Act, 1936.** **2**

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- (ii) A is engaged in two types of job in a factory, that of mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage on an average rate. State whether this is correct, and explain your views as per Payment of Minimum Wages Act, 1948. 2
- (iii) State the Salient features of Employees Deposit Linked Insurance as outlined in Employee's Provident Fund & Misc. Provisions Act, 1952. 4
- (iv) How does Money Laundering take place under Prevention of Money Laundering Act, 2011? 4
- (d) (i) RK sells 200 bales of clothes to SK and sends 100 bales by lorry and 100 bales by Railway. SK receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. RK being still unpaid, stops the goods in transit. The official receiver, on SK's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. 4
- (ii) State the circumstances under which the drawer of a cheque will be liable for an offence relating to dishonor of the cheque under the Negotiable Instrument Act, 1881. Examine, whether there is an offence under the Negotiable Instrument Act, 1881, if a Drawer of a cheque after having issued the cheque, informs the Drawee not to present the cheque as well as informs the Bank to stop the payment. 5
- (iii) The workers of a factory were paid a lump sum Bonus during Id festival, which was not in a fixed time of the year. When the statutory bonus becomes due, can the employer adjust the festival bonus from it? What other dues, if any, may be deducted from the statutory bonus? 3
- (e) (i) State the circumstances in which surety is not discharged. 3
- (ii) Abhishek contracts to sell Bhusan, by showing sample, certain quantity of tea described as 'Best quality Darjeeling tea.' The tea when delivered matches with the sample, but it is not Darjeeling tea. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to Bhusan. 3
- (iii) When is an employer liable and not liable to pay compensation to a workman for personal injury under Employees Compensation Act, 1923? 3
- (iv) A Bill of exchange dated 1st February, 2014 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity? Explain with reference to the relevant provisions of the Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay. 3

Answer:

2. (a) (i) Price quotations and price tags do not amount to an offer but are only an invitation to an offer. Therefore, Makhan's picking up the mobile with price tag of ₹ 2000/- amounts to an offer by Makhan to purchase the same at that price. It remains to be accepted by the seller- the salesman at the cash counter of the mobile store, to result in a concluded contract. The salesman has every right to accept or refuse the offer. Thus Makhan shall have no remedies.
- (ii) Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner entitled to claim either.
- (a) such shares of the profits earned after the death or retirement of the partner

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which is attribute to the use of his share in the property of the firm; or
(b) interest at the rate of 6 per cent per annum on the amount of his share in the property.

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

- (i) the 20% shares of profits (as per the partnership deed); or
 - (ii) Interest at the rate of 6 per cent per annum on the amount of A's share in the property.
- (iii) According to Section 130 of the Negotiable Instruments Act 1881, a person taking a cheque crossed generally or specially bearing in either case the words, not negotiable shall not have or shall not be able to give a better title to the cheque than the title the person from whom he had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title but if the transferor has a defective title, the transferee is affected by such defects and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As Mr. Punit in the given case had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money and the bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. Ltd. vs. London and County Banking Co.) The answer in the second case would not change and shall remain the same for the reasons given above. Thus Rohan in both the cases shall succeed in his clam from ABC Bank.
- (iv) "Average Pay" as per Industrial Dispute Act means the average of the wages payable to a workman
- (a) In the case of monthly paid workman in the three complete calendar months.
 - (b) In the case of weekly paid workman in the four complete weeks.
 - (c) In the case of daily paid workman, in the twelve full working days preceding the date on which the average pay becomes payable if the workman had worked for three complete calendar months or four complete weeks or twelve full working days as the case may be and where such calculation cannot be made the average pay shall be calculated as the average of the wages payable to a workman during the period he actually worked.
- (b) (i) The problem relates to the provisions of quasi-contract.

It is to be noted that minors, persons of unsound mind or lunatics and other disqualified persons are incompetent to contract. But, under the provisions of section 68 of Indian Contract Act, 1872 "if necessities are supplied to a person, who is incompetent to contract, the supplier is entitled to claim the reimbursement from the estate of such person". A supplier would also be entitled to recover the price of necessities supplied to wives or minor child of the incompetent person, as he is legally bound to support them. Also necessities would mean 'goods suitable to the condition in the life of such person' and not luxuries. Again person liability is not accrued for minors and lunatics; it is only their estate that would be liable. If there is no property nothing would be realizable.

To establish his claim the supplier must prove not only that the goods were supplied to the person who was a minor or a lunatic, but also that they were suitable to his requirement at the time of sale and delivery. It is also to be noted that a person of unsound mind, who has intervals of sound mind can enter into a contract during such period. Thus the burden to prove that H is lunatic and he

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was of unsound mind when entered into the contract lies on the seller.

In the given problem, the jeweler would not be entitled for the claim, as a diamond set worth ₹10 lakhs for the wife of H, is not a necessity and is surely a luxury.

- (ii) Sec 13 of the LLP Act states that a limited liability partnership may change the place of its registered office and file the notice of such change With the Registrar in form 15 within 30 days. Registered office can be changed from one place to another place in the manner provided in the Partnership Agreement, if the agreement is silent then consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place, where the change in place of registered office is from one State to another State, the limited liability partnership having secured creditors shall also obtain consent of such secured creditors.

Where the change in place of registered office is from one state to another state, a general notice, not less than 21 days before filing any notice with Registrar, is required to be published in a daily newspaper published in English and in the principal language of the district in which the registered office of the limited liability partnership is situated and circulating in that district giving notice of change of registered office. However, there is just change in the jurisdiction of one Registrar to the jurisdiction of another Registrar; the limited liability Partnership shall file the notice in Form 15 with the Registrar from where the Limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose Jurisdiction the registered office is proposed to be shifted. Failure to comply with the provision of this section the limited liability partnership and its every partner is liable to be punishable with fine which shall not be less than two thousand rupees but which may extend to twenty five thousand rupees.

- (iii) In case of sale of goods on 'sale or return' basis the property in goods passes from the seller to the buyer in any of the following circumstances as per provisions given under section 24 of the Sale of Goods Act, 1930:
- (a) When he (buyer) signifies his approval or acceptances to the seller;
 - (b) Where he does any act adopting the transaction, i.e., sells or pledges the goods to a third party and,
 - (c) Where he retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods or beyond a reasonable time (where no time is fixed).

Thus in the given problem, Rohit is deemed to have accepted the sarees by further transaction to Sumit. And Sumit is deemed to have accepted the sarees by further transaction to Mohit. The ownership is thus vests on Sumit till Mohit approves or does any act adopting the transaction. In the meantime the sarees are burnt from the custody of Mohit, and it is assumed that Mohit has handled the sarees with due care. Hence **the loss should fall on Sumit**, because at present he is the owner and risk being associated with ownership unless otherwise agreed between the parties.

- (c) (i) As per Section 8 (6) of the Payment of Wages Act 1936 no fines can be recovered after expiry of 90 days from the date on which it is imposed. So ABC Pvt. Ltd. will not be able to recover the fine in November 2014 as the gap exceeded 90 days.

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- (ii) Where an employee does two or more classes of work, to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus employer just cannot pay him at simple average rate of both wages of both classes of job.
- (iii) As per Sec 6C of Employees' Provident Fund & Misc. Provisions Act 1952, the Central Government may, by notification in the Official Gazette, frame a scheme to be called the Employees' Deposit-linked Insurance Scheme for the purpose of providing life insurance benefits to the employees of any establishment or class of establishments to which this Act applies.

There shall be established, as soon as may be after the framing of the Insurance Scheme, a Deposit linked Insurance fund into which shall be paid by the employer from time to time in respect of every such employee in relation to whom he is the employer, such amount, not being more than one percent of the aggregate of the basic wages dearness allowance and retaining allowance (if any) for the time being payable in relation to such employee as the Central Government may, by notification in the Official Gazette, specify. The employer shall pay into the Insurance Fund such further sums of money, not exceeding one fourth of the contribution which he is required to make under subsection (2), as the Central Government may, from time to time, determine to meet all the expenses in connection with the administration of the Insurance scheme other than that expenses towards the cost of any benefits provided by or under that scheme.

The Insurance Fund shall vest in the Central Board and be administered by it in such manner as may be specified in the Insurance Scheme. The Insurance Scheme may provide for all or any of the matters specified in Schedule IV.

The insurance scheme may provide that any of its provisions shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that scheme.

- (iv) Usually, the process of Money Laundering goes through the following three stages:

(a) Placement- The Money Launderer, who is holding the money generated from criminal activities, introduces the illegal funds into the financial system. This might be done by breaking up large amount of cash into less conspicuous smaller sums which are deposited directly into a Bank Account or by purchasing a series of instruments such as Cheques, Bank Drafts etc., which are then collected and deposited into one or more accounts at another location.

(b) Layering- The second stage of Money Laundering is layering. In this stage, the Money Launderer typically engages in a series of continuous conversions or movements of funds, within the financial or banking system by way of numerous accounts, so as to hide their true origin and to distance them from their criminal source. The Money Launderer may use various channels for movement of funds, like a series of Bank Accounts, sometimes spread across the globe, especially in those jurisdictions which do not co-operate in anti-Money Laundering investigations.

(c) Integration- Having successfully processed his criminal profits through the first two stages of Money Laundering, the Launderer then moves to

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this third stage in which the funds reach the legitimate economy, after getting inseparably mixed with the legitimate money earned through legal sources of income. The Money Launderer might then choose to invest the funds into real estate, business ventures and luxury assets, etc. so that he can enjoy the laundered money, without any fear of law enforcement agencies.

The above three steps may not always follow each other. At times, illegal money may be mixed with legitimate money, even prior to placement in the financial system. In certain cash rich businesses, like Casinos (Gambling) and Real Estate, the proceeds of crime may be invested without entering the mainstream financial system at all.

- (d) (i) Section 50, of Sale of Goods Act, states that, subject to the provisions of this Act, when the buyer of goods becomes insolvent, the unpaid seller who has parted with the possession of the goods has the right of stopping them in transit, that is to say, he may resume possession of the goods as long as they are in course of transit and retain them until payment of tender of the price.

Hence the major rules applicable would be:

- (a) The seller must be unpaid
- (b) He must have parted with the possession of goods
- (c) The goods must be in transit
- (d) The buyer must have become insolvent

Applying the above provisions in the given case, we may conclude that RK being unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit and SK has become insolvent.

- (ii) On dishonour of a cheque the drawer is punishable with imprisonment for a term not exceeding two years or with a fine not exceeding twice the amount of a cheque or with both of the following conditions are fulfilled:
- (a) if the cheque is returned by the bank unpaid due to insufficiency of funds in the account of drawer.
 - (b) If the cheque was drawn to discharge a legally enforceable debt or other liability in whole or part of it.
 - (c) If the cheque has been presented to the bank within a period of three months from the date on which it is drawn on or within the period of its validity, whichever is earlier.
 - (d) If the payee or the holder in due course of the cheque has given a written notice demanding payment within 30 days from the drawer on receipt of information of dishonour of cheque from the bank.
 - (e) If the drawer has failed to make payment within 15 days of the receipt of the said notice. (Section 13S)
 - (f) If the payee or a holder in due course has made a complaint within one month of cause of action arising under Section 138 (Section 142)

Case Laws: The Supreme Court held in Modi Cements Ltd. Vs. Kuchil Kumar Nandi held that once a cheque is issued by the drawer, a presumption under Section 139 follows (i.e. the cheque has been issued for the discharge of any debt or other liability) and merely because the drawer issued a notice thereafter to the drawee as to the bank for stoppage of payment, it will not preclude an action under Section 138. Hence, the drawer of the cheque will be liable for the offence

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under Section 138 for dishonour of cheque.

- (iii) It is very customary these days to pay interim bonus in the form of puja bonus or other customary bonus, then the employer is entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year and the employee will be entitled to receive only the balance.

Moreover, if an employee is found guilty of misconduct causing financial loss to the employer, then, the employer can deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only.

Again, if an employee has not worked for all the working days in an accounting year, the minimum bonus of one hundred rupees or, as the case may be, of sixty rupees, if such bonus is higher than 8.33 per cent of his salary or wage for the days he has worked in that accounting year, is proportionately reduced.

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

(a) When Agreements made with third person to give time to principal debtor (Section 136) Where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.

(b) Creditor's Forbearance to Sue (Section 137)

Mere forbearance on the part of the creditor to sue the principal debtor or to enforce any other remedy against him does not, in the absence of any provision in the guarantee to the contrary, discharge the surety.

(c) Release of One Co-Surety (Section 138)

Where there are co-sureties, a release by the creditor of one of them does not discharge the others: neither does it free the surety so released from his responsibility to the other sureties.

- (ii) Sale by sample is described in Sec 17 of the Sale of Goods Act, 1930.

A contract of sale is a contract for sale by sample where there is a term in the contract, express or implied, to that effect. In the case of a contract for sale by sample there is an implied condition-

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

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

- (iii) **Employer to pay compensation:**

In case a personal injury is caused to a workman by accident arising out of and

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in the course of his employment, his employer is liable to pay compensation in accordance with the provision of the Act within 30 days from the date when it fell due otherwise he would also be liable to pay interest and penalty.

When employer is not liable:

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

- (a) If the injury does not result in total or partial disablement of the employee for a period exceeding 3 days;
- (b) If the injury, not resulting in death, or permanent total disablement, is caused by an accident which is directly attributable to –
 1. The employee having been at the time of the accident under the influence of drink or drugs; or
 2. The willful disobedience of the employee to an order expressly given, or to a rule expressly framed for the purpose of securing the safety of the employees; or
 3. The willful removal or disregard by the employee of any safety guard or other device (which is an offence under the factories Act, 1948) which he knew to have been provided for the purpose of securing the safety of the employees.

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

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

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

3. Answer any two questions:

8 x 2 = 16

- (a) (i) **The Board of Directors of Tribhuvan Ltd. have allotted shares to the investors of the company without issuing a prospectus or filing a statement in lieu of prospectus with the Registrar of Companies, Chennai. Explain the remedies available to the investors in this regard.** **3**
- (ii) **Explain amended Gromme Code 2005 under 'Transparency' in Germany Corporate Governance.** **3**
- (iii) **Is there any provision for exemption from Disclosure of Information under RTI Act, 2005?** **2**
- (b) (i) **Explain provisions of the Companies Act, 2013 regarding document containing offer of securities for sale to be deemed prospectus.** **5**
- (ii) **Mr. Ghosh made an application with requisite fees to a Public Authority of A Ltd. for an information which is held by another Public Authority of B Ltd. Whether the**

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Public authority of A Ltd. will reject the application or take any action. If so, is there any time limit to be complied with by Public Authority of A Ltd? 3

(c) (i) A textile mill appoints M/s Niren Shah & Co., Cost Accountants to get its cost records audited as per sec. 233B of the Companies Act, 1956. State the role of the Audit Committee of the company for such appointment. 3

(ii) What are the benefits of XBRL Web Services deployment? 5

Answer:

3. (a) (i) According to the provisions of Section 70 and 71 of the Companies Act, 1956 any allotment of shares by a company without filling of prospectus or filling a statement in lieu of prospectus will become irregular allotment. The effect of it is that the allotment made by Tribhuvan Ltd. will become voidable at the instance of the allottee i.e. the applicant for the shares, within two months after holding of the statutory meeting of the company, and not later or, in case where the company is not required to hold a statutory meeting or where allotment is made after holding of the statutory meeting or, within a period of two months from the date of allotment and not later. The allotment is voidable at the option of the investor applicant even if the company is in course of winding up. Further, the directors liable for the default are also liable to compensate the company and the allottee respectively for any loss damages or cost which the company or the allottee may have sustained or incurred thereby. There is a time limit of two years for claiming damages for loss etc. by the investors.

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

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

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

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

Act lays down the following provisions-

(a) Document by which offer for sale to the public is made: According to the given provision where a company allots or agrees to allot any securities of the

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company to all or any of those securities being offered for sale to the public, then any document by which the offer for sale to the public is made shall be deemed to be a prospectus issued by the company.

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

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

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

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

(ii) As per provisions of section 6(3) of Right to Information Act, 2005, where an application is made to a public authority requesting for an information which is held by another authority.

The subject matter of which is more closely connected with the functions of another public authority, the public authority to which such application is made shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer.

Such transfer shall be made as soon as possible but in not later than five days from the date of receipt of application.

(c) (i) The company required to get its cost records audited under section 233B (1) of the Companies Act, 1956 shall appoint a cost auditor who is a Cost Accountant as defined in clauses (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959 (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and includes a firm of Cost Accountants.

The audit Committee of the Board shall be the first point of reference regarding the appointment of cost auditors.

The Audit Committee shall ensure that the cost auditor is free from any disqualifications as specified under section 233B (5) read with section 224 and sub section (3) or sub-section (4) of section 226 of the Companies Act 1956. While a cost auditor shall have prime responsibility to ensure that he does not

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violate the limits specified under section 224 (1-B) of the Companies Act 1956, the Audit Committee shall also be responsible for such compliance by the cost auditor.

The Audit Committee shall obtain a certificate from the cost auditor certifying his/its independence and arm's length relationship with the company.

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

- Automated and more reliable exchange of regulatory and financial information across all software formats and technologies, including the internet.
- Reduced or eliminated manual data re-entry, lowering risks associated with transcription errors.
- Lowered costs of preparing and distributing regulatory reports and related information, such as instructions, definitions etc.
- Improved access to financial information reported by regulated entities through a format which enhances information re-usability.
- Lowered production costs, greater reliability and faster processing speed for more timely, accurate and informed regulatory assessments.
- Increased efficiency of regulatory assessments and analytics.
- Accelerated changes to and adoption of reporting standards and requirements through an extensible, flexible platform that facilitates and thereby accelerates changes in and adoption of reporting standards.
- Collaborative nature of XBRL process provides regulators with input on the standards via enhanced communication and cooperation between regulators and respective industry organizations.
- Reduced cost of regulation by spreading development and maintenance among collaborating organizations.

XBRL Web services are currently being used in the US, Europe and Asia for several different types of regulatory reporting, including

- Bank position reports consisting of thousands of individual data points collected by regulatory authorities.
- Company financial reports consisting not only of individual data points, but also text disclosures of policies, tabular schedules of assets, consolidations and a myriad of notes under a variety of accounting standards.
- Business statistical information.

4. Answer any two questions:	8x2=16
(a) (i) "Ethics are desirable for every business." Comment.	5
(a) Explain the concept of value free ethics.	3
(b) (i) Explain Business ethics as professional ethics.	4
(ii) Discuss the ways of creating an ethical accounting environment.	4
(c) (i) What is the concept of ethical dilemma in context of finance and accounting professionals?	4

(ii) Differentiate between ethical code and contract.

4

Answer:

4. (a) (i) **Need for Business Ethics**

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

- **Stop business malpractices:** Business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
- **Improve customers' confidence:** Business ethics are needed to improve the customers' confidence about the quality, quantity, price etc. of the products.
- **Survival of business:** Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman.
- **Safeguarding consumers' rights:** Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. Business ethics are must to safeguard the rights of the consumers.
- **Protecting employees and shareholders:** Business ethics protects employees and shareholders from exploitation through unfair trade practices.
- **Develops good relations:** Business ethics are important to develop good and friendly relations between business and society.
- **Creates good image:** Business ethics create a good image for the business and businessmen.
- **Smooth functioning:** If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will be all happy.
- **Consumer movement:** Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous businessmen by their false propaganda and false claims, unfair trade practices.
- **Consumer satisfaction:** Today the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction.
- **Importance of labor:** Labour i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees.
- **Healthy competition:** The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. They must avoid monopoly. This is because a monopoly is harmful to the consumers.

(ii) The concept of 'Value-free' business ethics appears to be quite appealing to businessmen. It is as though it may be pursued devoid of all rules within a social vacuum. The concept of value free ethics found application in economics in a rather ironical fashion. Ludwig von Mises known as the father of the Austrian School of Economics, proposed the pure theory of economics, stating that

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economic concepts are a priori, that is, they are not dependent on experience, but are purely virtual concepts. The concept of choice, for instance, is a pure concept. It is immaterial whether one chooses water or wine, but the concept in itself is free of such particular elements. Hence, choice is value-free (wertfrei). Applied to ethics, it would mean that we should be able to study the principles of this discipline, such as goodness, truth, justice, honour, etc. in their pure form. It is obvious that such value-free ethics, when understood in the right sense, leads us to study meta-ethics or the fundamental principles of ethics as a pure science. However, if we are to apply an ethical standard to such a study, it would be called a pure study of values not value free ethics.

- (b) (i) Just as a society functions on the social codes of conduct and a country is governed by its constitution, a business is run on corporate codes. In other words, there is a professional code of conduct for any business. These codes keep evolving as other things around evolve and develop. Therefore, not only should business be defined within the confines of ethics, but it should be practiced strictly under its own professional code of conduct. This distinction helps to orient the general principles of ethics and business to a particular activity. The principles, however, do not change.

Ethical behaviour is particularly important to professions and to business:

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

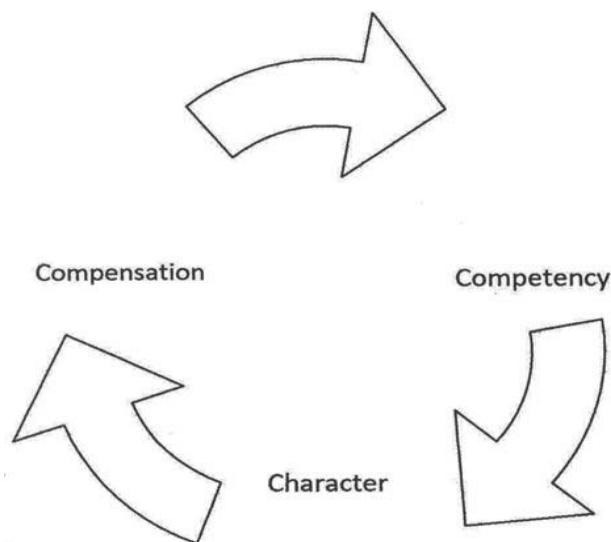
It matters to business because investors will not back a company that will not report fairly and customers, increasingly, will not buy from a business that is not acting in the wider interests of society.

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

The character of a true professional remains undivided, whether at work or at home. Our roles may change from time to time and from place to place but the integrity of our character should be maintained.

Business ethics, thus, professionally adheres to a code of conduct that is in accordance with the normative principles. Further, it may be concretely stated that professionals bear the following marked characteristics: (i) competency of educational qualification, (ii) professional skills, and (iii) compensation (salary/remuneration, etc.).

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Figure

(ii) Creating an ethical accounting environment:

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

- (a) **Employee awareness:** It should be noted and ensured that employees are aware of their legal and ethical responsibilities. Organisation should train and motivate employees toward ethical behavior. Top management should initiate steps in developing such an ethical environment.
- (b) **Encouraging communication:** Ethical organization need to provide channels through which employees can communicate with concerned Managers, for reporting frauds, mismanagement or any other form of detrimental behavior. In India Wipro has introduced a helpline comprising of senior members of the company who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.
- (c) **Ensuring fair treatment to Whistle Blowers:** A person or an employee who reports fraud, mismanagement or any other detrimental practices to the concerned managers is called Whistle Blower. Organisation should ensure protection and fair treatment to Whistle Blowers to reduce fraud. However, needless to say that appreciation is much more needed from within company rather than outside.

(c) (i) The term ethics, refers to moral principles, which guide the conduct of individuals. Ethical behavior implies actions ought to have taken after considering the impact on society and other stakeholders. Accounting and finance professionals have onerous duty and obligation to report the wrongs, even if they are done at the top. This often brings them into a situation of ethical dilemmas, which arise when finance and accounting professionals need to choose from amongst alternatives involving-

- (a) significant value conflicts among differing interest
- (b) actual alternatives which can all be justified and
- (c) significant consequences to all stakeholders for example in preparing a profit forecast for launching a new product to be financed by external debt. A finance and accounting professional should decide between
 1. Projecting unrealistic high revenue and mislead the launching institution in

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order to get the loan, or

2. Projecting realistic but insufficient revenue, which is not satisfactory to the lender and consequently the project is closed. Both the above mentioned actions have got their own risks. There is no right and to such a situation.

(ii) Differences between ethical code and contract

Ethical codes or code of ethics are guidelines intended to serve the interests of a profession; its members and communities that are served, and hereby commit oneself to the highest ethical and professional conduct. Ethical codes are adopted by organizations to assist the members in understanding the difference between 'right and wrong' and applying that understanding in decision making. An ethical code generally implies documents at three levels: code of business ethics, codes of conduct for employees, and codes of professional practice. Thus, code of ethics focuses on the social issue of the organization emphasizing on development of business, plan of business development that plans to conduct business at the highest level.

Code of ethics decides the code of conduct for employees, and set out the procedures to be used in specific ethical situations such as conflict of interests and prescribes procedures to determine whether a violation of the code of ethics occurred, and if so what remedies need to be imposed.

Ethical contract is an agreement between two or more parties; whereby parties of the contract are legally bound and committed to its promises. It also takes into consideration reasons for breaches in contract and the way in which these ethical considerations may impact upon them.