INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2015

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.
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.):

1×20=20

(i) Which of these are sources of Indian Contract Act?
- **(a) Law framed by East India Company**
- **(b) American Mercantile Law**
- **(c) Vedas and Purans**
- **(d) English Mercantile Laws**

(ii) If the Act has been done before any promise is made, it is called
- **(a) present consideration**
- **(b) past consideration**
- **(c) future consideration**
- **(d) executory consideration**

(iii) Which of the followings are not Goods as per Sale of Goods Act?
- **(a) Actionable claims**
- **(b) Stock and shares**
- **(c) Growing crops**
- **(d) Grass of things attached to earth**

(iv) In a Breach of Condition in a contract of sale, the buyer
- **(a) can not refuse to accept the goods**
- **(b) has to pay the price**
- **(c) can claim any damages**
- **(d) can refuse to accept the goods**

(v) 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
(b) 30
(c) 150

(vi) 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 of sales
(c) Dearness allowance
(d) Overtime allowance

(vii) 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

(viii) Ethics is a set of____ of human conduct that govern the behaviour of individuals or organizations.

(a) principles
(b) standards
(c) principles or standards
(d) None of the above

(ix) Which of these is not a negotiable instrument as per the Negotiable Instrument Act, 1881?

(a) Bill of exchange
(b) Delivery note
(c) Bearer cheque
(d) Share certificate

(x) A factory in Himachal has painted its walls, partitions, ceilings, staircases etc. with washable water paint, they need to be repainted in every period of _________ and washed at least once in every period of________.

(a) three years; one month
(b) three years; three months
(c) three years; six months
(d) three years; nine months

(xi) Workers will be entitled to overtime wages if they have worked for more than ________.

(a) fourty-eight hours in any four week
(b) forty-eight hours in any three week
(c) forty-eight hours in any two week
(d) forty-eight hours in any week

(xii) The term factory used in the payment of Wages Act, 1936 has the same meaning as in _____________.

(a) Industrial Dispute Act

(b) The Companies Act

(c) Equal Remuneration Act

(d) Section 2(m) of the Factories Act, 1948

(xiii) European business schools adopted business ethics after ______commencing with the European Business Ethics Network (EBEN) in_______ when the first single authored books in the field appeared.

(a) 1987, 1982

(b) 1980. 1982

(c) 1982,1980

(d) 1977, 1984

(xiv) Goods displayed in a shop with a price tag is an ______________.

(a) offer

(b) invitation to offer

(c) counter offer

(d) None of the above

(xv) _______is a set of principles and expectations that are considered binding on any person who is member of a particular group.

(a) Code of conduct

(b) Code of ethics

(c) Code of practice

(d) All of the above

(xvi) The Right to Information Act, 2005 confers on all citizens a right to receive information. This is now a ________ .

(a) Legal right

(b) Constitutional right

(c) Fundamental right

(d) Human right

(xvii) How many employment are contained in part 1 to Schedule 1 of the Minimum Wages Act, 1948?

(a) 10

(b) 15

(c) 18

(d) 21

(xviii) Which of the following statements about business ethics is true?

(a) It concerns the impact of a business's activities on society.

(b) It refers to principles and standards that determine acceptable behaviour in business organizations.

(c) It relates to an individual's values and moral standards and the resulting business decisions he or she makes.

(d) What is ethical is determined by the public, government regulators, interest groups, competitors, and each individual's personal moral values.

(xix) Pick the odd one. It is UNCOMMON for business to behave ethically because

(a) it has to meet stockholder expectations.

(b) it has to ignore their employees relations.

(c) to build trust with shareholders.

(d) All of the above

(xx) Permanent disablement benefit is paid at the rate of ______ of wages.

(a) 120%

(b) 100%

(c) 79%

(d) 90%

Answer:

1. (i) (d)
(ii) (b)
(iii) (a)
(iv) (d)
(v) (c)
(vi) (c)
(vii) (b)
(viii) (c)
(ix) (d)
(x) (c)
(xi) (d)
(xii) (d)
(xiii) (a)
(xiv) (b)
(xv) (a)
(xvi) (a)
(xvii) (d)
(xviii) (b)
(xix) (b)
(xx) (d)

2. Answer *any four* questions: 12×4=48

(a) (i) Y holds agricultural land in Assam on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due

from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid? 3

(ii) 'P' draws a cheque for ` 50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer? 3

(iii) Peter is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year:

(I) overtime allowance

(II) dearness allowance

(III) commission on sales

(IV) employer's contribution towards pension fund

(V) value of food

Examine as to which of the above payments form part of 'salary' of Peter under the provisions of the Payment of Bonus Act, 1965. 3

(iv) "Implied Authority of a partner can be extended or restricted."—Discuss the above statement in the light of the provisions of the Indian Partnership Act, 1932. 3

Answer:

2. (a) As per Section 69, if

(i) One person is legally bound to make a payment.

(ii) Some other person makes such payment.

(iii) The person making such payment is not legally bound to make such payment.

(iv) The person making such payment is interested in paying such amount.

The person who is interested in paying such amount shall be entitled to recover the payment made by him.

So, in the given case, Y is entitled to recover the payment from X.

(ii) Section 84 of the Negotiable Instruments Act, 1881 provides that where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time when presentation ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged from the liability, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than would have been if such cheque had *been* paid. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banker, and the facts of the particular case.

Applying the above provisions to the given problem since the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to pay the cheque, and the drawer has suffered actual damage, the drawer is discharged from the liability.

(iii) Computation of Salary *I* Wages: According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration In respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment and includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living, But the term excludes:

(i) Any other allowance which the employee is for the lime being entitled to;

(ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service 'or of any concessional supply of food grains or other articles;

(iii) Any traveling concession

(iv) Any bonus including incentive, production or attendance bonus,

(v) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.

(vi) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and

(vii) Any commission payable to the employee

It has been clarified in the explanation to the section that where an employee is given, in lieu of the whole or part of the salary. or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Peter while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds shall not form part of his salary.

(iv) Section 19 (1) of the Indian Partnership Act 1932. provides that the act of a partner which is done to carry on the usual way, business of the kind carried on by the firm bind the firm, provided the act is done in the film's name or in any manner expressing or implying an intention to bind the firm. The implied authority of a partner extends only to such acts which are common in the type of business carried on by the firm and are done by him in usual way of carrying on the firm's business. Thus, if it is usual to give credit to customers, in a particular business, the giving of credit by a partner to a customer will bind the firm. However, if a usual act is done in an unusual manner, this must raise a suspicion as to the authority of a partner and the protection on the ground of implied authority may not be available.

(b) (i) Examine the following cases in light of laws relating to employees:

Employees of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process'. Will their claim succeed? 3

(ii) X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930. 3

(iii) Minu Limited Company earned super profits during financial year. It intends to give maximum bonus to its employees. In this regard you are asked to advice the company on permissible maximum bonus under the Payment of Bonus Act, 1965. 3

(iv) State the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regulating the quantum of contribution to be made by the employer and employee to the provident fund. Is it possible for an employee to increase the amount of his contribution to the provident fund more than the minimum contribution as statutorily prescribed? 3

Answer:

(b) (i) As per section 2(k) of The Factories Act, 1948, manufacturing process means any process for-

(i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or

(ii) Pumping oil, water, sewage or any other substance; or;

(iii) Generating, transforming or transmitting power; or

(iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;

(v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act. 1976, w.e.f. 26-10-1976.)

(vi) Preserving or storing any article in cold storage;

Process undertaken at electricity generating station, substation transferring and transmitting electricity is not a manufacturing process and are not thus factory- *[Delhi Electricity Supply Undertaking* vs. *Management of DESU. AIR (1973)SCC 365]*

(ii) X has no remedy against the seller as the doctrine of Caveat Emptor will apply.

'Caveat emptor' means "let the buyer beware". i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sole of Good: Act. 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition on to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

(iii) Where, in respect at any accounting year referred to in Section 10 of the Payment of Bonus Act,1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year-bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

In the given case therefore, the company will be free to give bonus at any rate exceeding 8.33% upto a maximum of 20% of the salary or wage earned by the employees during the accounting year. From the facts given, it may be presumed that the bonus at 20% may be payable.

(iv) **Contribution to Provident Fund under the EPF** and **Miscellaneous Provisions Act, 1952:** Section 6 of the EPF and MP Act, 1952 regulates contribution to Provident Fund Scheme established under the Act.

The employer's contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any payable to each of the employees whether employed by him directly or by or through a contractor.

The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

In case the employee so desires, he may contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

The Central Government may by notification make the employer's contribution equal to 12% for certain establishments class of establishments.

(c) (i) A, B and C were partners in ABC & Co. During the course of partnership, the firm ordered SS Ltd. to supply a machine to the firm. Before the machine was delivered, A expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners become insolvent and the firm failed to pay the price of machine to SS Ltd.

Explain with reasons:

(I) Whether A's private estate is liable for the price of the machine purchased by the firm?

(II) Against whom can the creditor obtain a decree for the recovery of the price? 3

(ii) Explain "Hours and Period of Work" u/s 7 of the Child Labour (Prohibition and Regulation) Act, 1986. 3

(iii) What are the conditions to deduct for recovery of advances made under the Payment of Wages Act, 1936? 3

(iv) What is the objective of Know Your Customer (KYC) guidelines? 3

Answer:

(c) (i) The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Therefore, considering the above provisions, the problem may be answered as follows:

(I) A's estate in this case will not be liable for the price of Machinery purchased. *[Bagel Vs. Willer]*

(b) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner.

This is because there was no debt due in respect of the goods in A's life time. [*Bagel* Vs. *Willer*].

(ii) Hours and period of work U/S 7 of the Child Labour (Prohibition and Regulation) Act1986 is as follows;

(a) 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.

(b) 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.

(c) 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.

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

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

(f) 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.

(iii) 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:

(a) 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;

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

(c) 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.

(iv) Know your customer (KYC) refers to due diligence activities that financial institutions and other regulated companies must perform to ascertain relevant information from their clients for the purpose of doing business with them.

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. Related procedures also enable banks to know or understand their customers and their financial dealings better. This helps them manage their risks prudently. Banks usually frame their KYC policies incorporating the following four key elements:

- Customer Acceptance Policy;
- Customer Identification Procedures;
- Monitoring of Transactions; and
- Risk Management.

(d) (i) Satish retired from the services of Life Management Limited on 31st March, 2014. He had a sum of ` 5 lac in his Provident Fund Account. It has become due for payment to Satish on 30th April, 2014 but the company made the payment of the said amount after one year. Satish claimed for the payment of interest on due amount at the rate of 15 per cent per annum for one year. Decide, whether the

claim of Satish is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. 3

(ii) When an employee becomes disabled due to any accident or disease and is unable to do the same work and re-employed on the reduced wages, how the gratuity of such employees shall be computed under the provisions of the Payment of Gratuity Act, 1972? 3

(iii) Mr. Big, a major and Small, a minor, executed a promissory note in favour of Ms. Purva. Examine with reference to the Provisions of the Negotiable Instrument Act, the validity of the promissory note and whether it is binding on Mr. Big and Small. 3

(iv) List the circumstances under which an LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal? 3

Answer:

(d) (i) According to Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, Satish can claim for the payment of interest on due amount @ of 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate he (Satish) can claim only 12 percent per annum interest on the due amount.

Hence claim of Satish for interest rate of 15% is not tenable.

(ii) **Computation of Gratuity of a disabled employee:** According to Section 4 (4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts :

- For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
- For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.

In the case of *Bharat Commerce and Industries* Vs. *Ram Prasad*, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

However, the maximum statutory ceiling limit as providing under Sub-Section 3 of Section 4 of the Act (the maximum amount of gratuity payable to an employee shall not exceed `10 lakh), cannot be reduced by mutual settlement or agreement.

(iii) **Minor being a party to negotiable instrument:** According to section 26 of the Negotiable Instruments Act, 1881, every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque.

As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

In view of the provisions of Section 26 explained above, the promissory note executed by Mr. Big and Small is valid even though a minor is a party to it. Small being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely Mr. Big from liability *[Sulochana v. Pandiyan Bank Ltd., AIR (1975) Mad. 70]*.

(iv) A Limited liability partnership may be wound up by the Tribunal,—

(a) if the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;

(b) If, for a period of more than six months, the number of partners of the limited liability partnership is reduced below two;

(c) if the limited liability partnership is unable to pay its debts;

(d) 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;

(e) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or

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

(e) (i) X is employed in ABC Ltd., a seasonal establishment. The factory was in operation for four months during the financial year 2010-11. X was not in continuous service during this period. However, he has worked for sixty days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether X is entitled to gratuity payable under the Act. Would your answer be the same in case X works for 100 days? 3

(ii) (I) A offers to buy B's House on certain terms. An answer to be given within six weeks. B within this time writes to A a letter purporting to accept but in fact containing a material alteration of the terms. A then withdraws his offer. B writes again still within six weeks correcting the error in his first letter and accepting the terms originally proposed by A. Is there a contract between A and B? State reasons for your answer.

(II) A contract of Bailment becomes void, if the bailee does any act with regards to the goods bailed, which is inconsistent with the conditions of Bailment. Decide.

(III) A hirer, who obtains possession of a Refrigerator from its owner under hire purchase agreement sells the refrigerator to a buyer in good faith and without notice of the right of the owner. Does this buyer get a good title to the Refrigerator? State reasons for your answer. 2×3=6

(iii) (I) Money Laundering can provide short term benefits to economy. Comment. 2

(II) On whom does the burden of proof vest under the PMLA, 2002? 1

Answer:

(e) (i) As per the provision given under section 2A of the Payment of Gratuity Act, 1972, where an employee is employed in a seasonal establishment and is not in continuous service for any period of one year or six months, there such an employee shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five percent of the number of days on which the establishment was in operation during such period.

In the given problem, as per the above provision of the Act, X has worked only for 'sixty days that are less than 90 days(75% of 4 months) therefore, X shall "hoi be 'eligible for getting any gratuity in first case.

In the second case, since X has worked for 100 days that is more than 75% of number of days therefore, he is entitled for gratuity.

(ii) (I) Acceptance must be absolute and unqualified. A counter proposal or offer, offering different terms, amounts to counter proposal. Further if B subsequently changes his mind and wants to accept the terms originally offered by A, no contract would come into existence, since the original offer of A will be deemed to have lapsed. Further there is no binding on the part of A to keep his offer open for six weeks; that itself would require a contract for which there will have to be separate consideration moving from B to A.

(II) According to Sec 153 of the Indian Contract Act, 1872, a contract of Bailment is voidable at the option of the bailor, if the bailee does any act with regard to the goods bailed inconsistent with the conditions of the bailment. Therefore, when an option is available to the bailer, the contract of bailment cannot be said to be void. It is voidable.

(III) Since the hirer under hire-purchase agreement referred to in the instant case has no title to the refrigerator, the buyer in question does not give a good title to the refrigerator. This is because the transferee of goods does not get a better title than the transferor had.

(iii) (I) The statement is not true. The genesis of money laundering is the practice of concealing identity, source, or destination of illegally gained money. Money laundering from illegal activities directly affect the freedom of access to investment, affecting the labor market laws, marketing, consumption and production itself, Money launder is conversion of 'dirty' money to 'clean' money and therefore illegal.

(II) When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. [Sec 24, The PMLA, 2002]

3. Answer *any two* questions: 8×2=16

(a) (i) Define the term "Body Corporate" as per Section 2(ii) of the Companies Act, 2013. 2

(ii) What is the effect of the registration of the Memorandum of Association of a Company on (1) the subscribers of the memorandum and (2) such other persons as may from time to time become members of the company. 4

(iii) Who can file an application for allotment of DIN? 2

Answer:

3. (a) (i) "Body corporate" or 'corporation' includes a company incorporated outside India, but does not include —

(a) a co-operative society registered under any law relating to co-operative societies; and

(b) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf. [Section 2(11)]

(ii) When the Memorandum of Association of a Company has been registered, it has the following effect:-

(1) The signatories become members of the company, the entry of their names in the register of members not being legally necessary, and they are bound to observe all the provisions of the Memorandum.

(2) Such other persons as may from time to time become members of the company are bound by the Memorandum, as if it had been signed by them, to observe all the provisions thereof.

(iii) Any individual who is an existing director of a company or intends to be appointed as a director of the company can file an application for allotment of DIN.

(b) (i) With reference to provisions laid down under the Companies Act, 2013, state briefly which company is required to constitute CSR (Corporate Social Responsibility) Committee? 4

(ii) Who shall be considered as "Key Managerial Personnel", in relation to a Company according to the definition given in the Companies Act, 2013. 2

(iii) Explain "Information" under RTI Act, 2005. 2

Answer:

(b) (i) Which Company is required to constitute CSR committee:

(A) Every company including its holding or subsidiary and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India having

(1) net worth of rupees 500 crore or more, or

(2) turnover of rupees 1000 crore or more or

(3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

(ii) "Key managerial personnel", in relation to a company means —

(a) the Chief Executive Officer or the managing director or the manager;

(b) the Company Secretary;

(c) the Whole-time Director;

(d) the Chief Financial Officer;

(e) such other officer as may be prescribed. [Section 2(51)]

(iii) "Information" means any material in any form, including records, documents, memos, emails, opinions, advices, press releases, circulars, orders, log-books, contracts, reports, papers, samples, models, data, material held in any electronic form and any information relating to a private body which can be accessed by a Public Authority under any law for the time being in force.

(c) (i) The Articles of a Public Company clearly stated that Mr. X will be the Solicitor of the Company. The Company in its general meeting of the shareholders resolved unanimously to appoint Y in place of X as the solicitor of the company by altering the Articles of Association. Examine whether the company can do so? Give reasons. 4

(ii) Define the term 'Financial Statement' as contained in the Companies Act, 2013. 2

(iii) Who is Internal Auditor to conduct internal audit of the functions and activities of the company under the Companies Act, 2013? 2

Answer:

(c) (i) According to Section 10(1) of the Companies Act, 2013, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively Had been signed by the company and by each member and contained covenants on its and his part to observe all the provisions of the memorandum and articles.

Further, under Section 14(1) subject to the provisions of this Act and to the conditions contained in the Memorandum, a company may by a special resolution, alter its Articles.

Moreover, under section 14(2) the company will be required to file within fifteen days the altered Articles with the Registrar along with necessary documents, such as the copy of the special resolution etc, and in such manner as may be prescribed. On receipt of all documents the Registrar shall register the same.

Section 14(3) further provides that any alterations in the Articles will be valid as if they were in the original Articles.

In the present case, the company has altered the Articles by a unanimous resolution of the members passed at a general meeting. Hence, the alteration is valid and after registration of the altered Articles the appointment of Y will stand and X will be terminated.

(ii) "Financial statement" in relation to a company, includes —

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account or in the case of a company carrying on any activity not for profit an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to or forming part of any document referred to in sub clause (i) to sub-clause (iv);

Provided that the financial statement with respect to One Person Company, small company and dormant company, may not include the cash flow statement. [Section 2(40)]

(iii) Who is Internal Auditor

(a) Internal Auditor shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Here, the term "Chartered Accountant" shall mean a Chartered Accountant whether engaged in practice or not.

(b) The internal auditor may or may not be an employee of the company.

4. Answer any two questions: 8×2=16

(a) (i) What is the difference between business ethics and an ethical business? 3

(ii) Is it possible to have single right answer to all ethical issues? 5

Answer:

4\. (a) (i) Business ethics refers to how any organisation conducts its business in order to make profit or achieve other goals. Any organisation can seek to do business in a way that is guided by ethical values; whether an organisation is judged to be an ethical business however, may involve a subjective assessment of any of the following: the products and services it offers, its founding priorities, goals and values, its philanthropy, its reputation amounts stakeholders, the way it treats customers and staff etc.

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

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

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

Ethics can give several answers.

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

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

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

(b) (i) Enumerate briefly five sources of Ethical Standards. 4

(ii) List out some of the examples of ethical issues faced by the employees in the workeplace. 4

Answer:

(b) (i) Five Sources of Ethical Standards

The Utilitarian Approach: The ethical corporate action is the one that produces the greatest good and does the least harm for all who are affected. The utilitarian approach deals with consequences; it tries both to increase the good done and to reduce the harm done.

The Rights Approach (The Deontological Approach): This approach suggest the ethical action that best protects and respects the moral rights of those affected. This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives.

The Fairness or Justice Approach: This approach contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally-or if unequally, then fairly based on some standard that is defensible.

The Common Good Approach: This approach calls attention to the common conditions that are important to the welfare of everyone. This may be a system of Laws, effective police and fire departments, health care, a public educational system, or even public recreational areas.

The Virtue Approach: A very ancient approach to ethics is that ethical actions ought to be consistent with certain Ideal virtues that provide for the full development of our humanity. Honesty, courage, compassion, generosity, tolerance, love, fidelity, integrity, fairness, self-control, and prudence are all examples of virtues.

(ii) The following are some of the examples of ethical issues faced by the employees in the workplace:

1. **Relationship with suppliers and business partners**
   a. Bribery and immoral entertainment
   b. Discrimination between suppliers
   c. Dishonesty in making and keeping contracts
2. **Relationship with customers**
   a. Unfair pricing
   b. Cheating customers
   c. Dishonest advertising
3. **Relationship with employees**
   a. Discrimination In hiring and treatment of employees
4. **Management of resources**
   a. Misuse of organizational funds
   b. Tax evasion

(c) (i) Fairness and honesty are the pillars of success in business. Comment. 4

(ii) State briefly the safeguard which may be created by the profession, legislation or regulations to reduce the threats to an acceptable level to ensure an ethical environment in an organization. 4

Answer:

(c) (i) **Correct.** The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination.

One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. For example, Mitsubishi Motors, a Japanese automaker, faced criminal charges and negative publicity after executives admitted that the company had systematically covered up customer complaints about tens of thousands of defective automobiles over a 20 year period In order to avoid expensive and embarrassing product recalls.

Another aspect of fairness relate to competition. Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition.

Rivals of Microsoft, for example, accused the software giant of using unfair and monopolistic practices to maintain market dominance with its Internet Explore browser.

These aforesaid examples show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. Therefore we may say that fairness and honesty are the pillars of success in the business.

(ii) Safeguards created by the profession, legislation or regulation are as follows:

(a) Educational, training and experience requirements for entry into the profession.

(b) Continuing professional development requirements

(c) Corporate governance regulations

(d) Professional standards

(e) Professional or regulatory monitoring and disciplinary procedures

(f) External review by a legally empowered third party of the reports, returns, communications or Information produced by concerned professionals.