

## PAPER 6 – Laws, Ethics & Governance

[Answer to Question No.1 is compulsory]

1. Choose the correct answer from the given four alternatives: [1\*20=20]
- (i) An Industrial Establishment employing minimum ..... Workmen's is required to have one or more Grievances Redressal Committee to redress workmen's grievances.  
(a) 5  
(b) 10  
(c) 15  
**(d) 20**
- (ii) The Factories Act came into force with effect from:  
(a) 1<sup>st</sup> April 1881  
(b) 1<sup>st</sup> April 1934  
(c) 1<sup>st</sup> April 1948  
**(d) 1<sup>st</sup> April 1949**
- (iii) Section 2(b) defines, "When the person to whom the proposal is made, signifies his assent thereto, the proposal is said to be accepted. A proposal when accepted becomes a/an"  
(a) Contract  
(b) Agreement  
**(c) Promise**  
(d) Offer
- (iv) Which of the following is NOT necessary to assess ethical behavior?  
(a) Gather Facts  
(b) Make a judgment based on the Tightness or wrongness of the activity or policy.  
(c) Consider appropriate moral values  
**(d) Listen to what is the being said in the rumour.**
- (v) As per Rule 10 of the Prevention of Money Laundering Act, 2002, the record of identity of client is required to be maintained for a time period of:  
(a) 5 years  
(b) 7 years  
**(c) 10 years**  
(d) 12 years
- (vi) As per the Payment of Wages Act 1936, no fine can be imposed on a person who is under the age of:  
(a) 13 years  
(b) 14 years  
**(c) 15 years**  
(d) 16 years

## Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1

---

- (vii) A private company becomes a public company by process of law where:
- (a) Not less than 25% of its paid-up share capital is held by one or more bodies corporate
  - (b) Its entire paid-up share capital is held by another private company
  - (c) Not less than 25 % of the paid-up share capital of a public company is held by it
  - (d) **It is a subsidiary of a public company**
- (viii) Appropriate Government reviews the rates of minimum wages within:
- (a) 2 years
  - (b) 4 years
  - (c) **5 years**
  - (d) 6 years
- (ix) The Payment of Bonus Act 1965 extends to:
- (a) **The whole of India**
  - (b) The whole of India except Jammu & Kashmir
  - (c) The whole of India except Kerala
  - (d) The whole of India except Jammu & Kashmir and Kerala
- (x) If the agreement is made by obtaining consent by doing an act forbidden by the Indian Penal Code, the agreement would be caused by:
- (a) **Coercion**
  - (b) Fraud
  - (c) Misrepresentation
  - (d) Undue influence
- (xi) Clause 49 is applicable to all the listed companies which has a minimum paid-up capital of:
- (a) ₹5 crores
  - (b) **₹3 crores**
  - (c) ₹6 crores
  - (d) ₹4 crores
- (xii) The minimum ceiling on gratuity as per the Payment of Gratuity Act, 1972 is:
- (a) ₹5 lakhs
  - (b) **₹10 lakhs**
  - (c) ₹15 lakhs
  - (d) ₹20 lakhs
- (xiii) "If you contract to sell peas, you cannot oblige a party to have beans" - This statement applies to:
- (a) **a implied condition as to be description of goods**
  - (b) the implied condition as to fitness of goods for a particular purpose
  - (c) implied condition as to sample
  - (d) implied condition as to title

## Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1

---

- (xiv) Who is an Adolescent as per Factories Act, 1948?  
(a) Who has completed 17 years of age  
(b) Who is less than 18 years  
**(c) Who has completed 15 years but less than 18 years**  
(d) None of these
- (xv) The Charter of a Company is its:  
(a) Articles of Association  
(b) Prospectus  
**(c) Memorandum of Association**  
(d) Statement in lieu of Prospectus
- (xvi) Section 4 of The Prevention of Money Laundering Act, 2002 provides for:  
**(a) Fine and Imprisonment**  
(b) Fine only  
(c) Imprisonment only  
(d) Fine or Imprisonment
- (xvii) A monthly return of contribution in the prescribed form 6 is required to be filed with the Commissioner within ..... days of the close of the month as per Employees' Provident Funds and Miscellaneous Provisions Act, 1952.  
(a) 15  
(b) 20  
**(c) 25**  
(d) 30
- (xviii) Business Ethics helps the organisation in:  
(a) Retaining people  
(b) Getting people  
(c) Attract the best talent  
**(d) All of the above**
- (xix) If a minor draws, endorses, delivers or negotiates an instrument, such instrument binds  
(a) all parties to the instrument including the minor  
(b) only the minor and not other parties to the instrument  
**(c) all parties to the instrument except the minor**  
(d) none of the above
- (xx) Indian LLP is basically on the pattern of ..... model of LLP.  
(a) UK  
(b) Singapore  
**(c) Both (a) and (b)**  
(d) Japan

**SECTION A**

[Attempt any 4 questions]

2. (a) Y holds agricultural land in Assam on a lease granted by X, the owner. The land revenue payable by X to the Govt. being in arrear, his land is advertised for sale by the Govt. 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 Govt., 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? [2]

(b) Examine when a holder of a negotiable instrument shall be considered as a holder in due course under the provisions of the Negotiable Instruments Act, 1881. [4]

(c) Mr. Sharma is a supervisor in a factory drawing a salary of ₹3500 per month. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus as per the Payment of Bonus Act, 1965 to all eligible employees. State in this connection:

(i) What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?

(ii) What shall be the total bonus payable to him in that accounting year?

(iii) What would be your answer if the Company suffers losses in that accounting year?

(iv) Is bonus payable to him if he was illegally terminated. [4]

(d) Arup, a 57 years old district judge was appointed by Central Govt. as presiding officer of the Employees Provident Funds Appellate Tribunal from a period of 5 years. After 3 years, he (Arup) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Govt. till that date. Examine the validity of Arup's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952. [2]

**Answer 2(a):**

X is liable to pay to Y the amount paid by Y to the Govt.:

- ✓ Since there is a contract between X and Y, viz., quasi contract;
- ✓ Since X is bound to make the payment of land revenue to the Govt.;
- ✓ Since Y is interested in such payment;
- ✓ Since Y is not himself liable for such payment.

**Answer 2(b):**

A holder of a negotiable instrument shall be considered as a holder in due course under the following cases:

1. Every prior party to a negotiable instrument is liable to a HDC [Sec. 36] .
2. A holder who derives title from HDC has the same rights as that of a HDC [Sec. 53].
3. No prior party can set up a defence that the negotiable instrument was drawn, made or endorsed by him without any consideration [Sec. 43].

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

4. No prior party can set up a defence that the negotiable instrument was lost or was obtained from him by an offence or fraud or for an unlawful consideration. Thus, HDC gets a valid title to the negotiable instrument even though the title of the transferor was defective [Sec. 58].
5. No prior party can allege that negotiable instrument was delivered conditionally or for a special purpose only [Sec. 46].

HDC can claim full amount of the negotiable instrument (but not exceeding the amount covered by the stamp) even though such amount is in excess of the amount authorized by the person delivering an inchoate negotiable instrument [Sec. 20].

### **Answer 2(c):**

- (i) Where the salary or wage of an employee exceeds ₹2,500 per month, the bonus payable to such employee u/s 10 or as the case may be u/s 11 shall be calculated as if his salary or wages were ₹2,500 per month. In the instant case, Mr. Sharma is drawing a salary of ₹3,500 per month. For the purpose of bonus his salary shall be taken at ₹2,500 per month.
- (ii) The total bonus payable to him in that accounting year shall be ₹2,500 x 12 x 8.33 % for the purpose of calculating the total working days, leave with salary or wages shall be deemed to be the working days of an employee. (He was on leave with salary for one month).
- (iii) Even if the Company suffers losses, the employer has to pay the minimum bonus as prescribed by Section 10 (State vs Sardar Dalip Singh Majihia, 1979).
- (iv) Where an employee was prevented from working by reason of an illegal order of termination, Sections 13 and 14 do not apply.

### **Answer 2(d):**

#### **Arup continues to be in office:**

- Till the remaining period of his office, viz. 2 years; or
  - Till his successor enters upon his office; or
  - Till the expiry of 3 months from the date of resignation;
- Whichever is earlier.

**Arup's decision to cease work** is not valid, unless he is permitted by CG to relinquish his office sooner.

- 3. (a) State the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 relating to the protection of the amount standing to the credit of an employee in the Provident Fund against attachment. [3]**

**(b) What are the essential elements of Contract of Sale? [6]**

**(c) Miss Zoya, a film actress agreed to work exclusively for a period of 4 years, for a film production company. However, during the said period she enters into a contract to work for another film producer. Discuss the rights of the aggrieved film production company under the Indian Contract Act, 1872. [3]**

### Answer 3(a):

#### Nature of protections:

The amount standing to the credit of any member in the Fund:

- (a) Shall not in anyway be capable of being assigned or charged;
- (b) Shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability;
- (c) Shall not be capable of being claimed by the official assignee or the official receiver;
- (d) Shall be free from any debt or other liability (in the hands of the nominee) incurred by the deceased member.

#### No protection:

The employee cannot claim any protection in respect of the money which has been withdrawn by him from the PF Account.

### Answer 3(b):

According to Section 4(1) of the Sale of Goods Act, 1930, "contract of sale of goods is a contract whereby the seller transfers or agrees to transfer the property in goods to the buyer for a price."

The aforesaid definition clearly indicates the following essential elements:

- 1. Seller and Buyer:** There must be a seller as well as a buyer. 'Buyer' means a person who buys or agrees to buy goods [Section 2(1)]. 'Seller' means a person who sells or agrees to sell goods [Section 2(13)]. A person cannot be a seller as well as a buyer as a person cannot buy his own goods. That is why distribution of goods among partners on account of dissolution of a firm does not amount to a sale of goods because the partners are joint owners and they cannot be both sellers and buyers [State of Gujarat v. Raman Lal & Co.]. However, one part owner may be a seller and another part owner may be buyer. Where a person's goods are sold under an execution of decree, a bankrupt may also buy back his own goods from his trustee. [King v. England]
- 2. Goods:** There must be some goods. 'Goods' means every kind of movable property other than actionable claims and money and includes stock and shares, growing crops, grass and things attached to or forming part of the land which are agreed to be severed before sale or under the contract of sale [Section 2(7)]. It may be noted that the contract relating to actionable claims, immovable property and services are not covered by this Act.  
**Notes:** (i) The 'actionable claims' mean a claim which can be enforced through the courts of Law, e.g., a debt due from one person to another is the actionable claim.  
(ii) The 'money' here means the legal tender (i.e., currency of the country) and not old coins.
- 3. Transfer of Property:** Property means the general property in goods, and not merely a special property [Section 2(11)]. General property in goods means ownership of the goods. Special property in goods means possession of goods. Thus, there must be either a transfer of ownership of goods or an agreement to transfer the ownership of goods. The ownership may transfer either immediately on completion of sale or sometime in future in agreement to sell.
- 4. Price:** There must be a price. Price here means the money consideration for a sale of goods [Section 2(10)]. When the consideration is only goods, it amounts to a 'barter' and not sale.

## Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1

---

When there is no consideration, it amounts to gift and not sale. However, the consideration may be partly in money and partly in goods because the law does not prohibit as such. [Sheldon v. Cox]

5. **Essential Elements of a Valid Contract:** In addition to the aforesaid specific essential elements, all the essential elements of a valid contract as specified u/s 10 of Indian Contract Act, 1872 must also be present since a contract of sale is a special type of a contract. For example, an agreement to sell smuggled gold is not valid because its object is unlawful.

### Answer 3(c):

**Restraint on Miss Zoya** is valid since an agreement of service under which an employee agrees to serve a certain employer for a certain duration, and that he will not serve anybody else during such period is a valid agreement [Charlesworth v. Mac Donald].

**Miss Zoya cannot be compelled to work with the film production company** since specific performance is generally not allowed where personal performance is required.

**Miss Zoya may be restrained from working for another producer** since in case of breach of a negative term of a contract, the defaulting party is generally restrained from doing what he promised not to do.

4. (a) **Bani obtains Adi's acceptance to a bill of exchange by fraud. Bani endorses it to Chiza who is a holder in due course. Chiza endorses the bill to Dia who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1881, decide whether Dia can recover the money from Adi in the given case.** [2]

(b) **How does the Child Labour (Prohibition and Regulation) Act, 1986 define 'a child'? How is this definition different from that under the Factories Act, 1948?** [2]

(c) **A and B were partners in a business of letting lock up garages and requiring cars. B was a sleeping partner. A clause in the partnership deed prohibited partners from buying and selling cars on behalf of the firm. A, the acting partner, sold a car to which the firm had no title and obtained \$700. When the buyer found that the seller had no title to sell, he claimed \$700 from B, the sleeping partner. Referring to the provisions of the Indian Partnership Act, 1932 decide:**

**Whether B is liable to pay?** [3]

(d) **Does a laundry attached to the hospital (main institution) used for washing linen used in the hospital, is a factory within the meaning of the Factories Act, 1948?** [5]

### Answer 4(a):

**Dia has the same rights as that of Chiza:**

- Since a person who derives title to a negotiable instrument from a HDC has the same rights as that of the HDC (Sec. 53);
- Since Dia has derived title to the bill from a HDC.

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

### **Dia can recover payment from Adi:**

- Since Dia has the same rights as that of Chiza;
- Since Dia has acquired the negotiable instrument from Chiza, and the title of Chiza is not defective;
- Since it is immaterial that Dia had knowledge of the fraud (provided Dia was not a party to the fraud).

### **Answer 4(b):**

Under the Child Labour (Prohibition and Regulation) Act, 1986 a child means a person who has not completed his fourteen years of age.

However the Factories Act, 1948 defines a child as a person who has not completed his fifteenth year of age which is different from the definition mentioned under the Child Labour(Prohibition and Regulation) Act, 1986.

### **Answer 4(c):**

The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act 1932. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority' [Sub-Section (i) of section 19]. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership.

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

B will be held liable. Garage owners usually sell second – hand cars. The act was therefore within the scope of the implied authority. The Plaintiff did not know of any restrictions in the deed and he did know that he was dealing with a partner within the scope of his usual authority. [Mercantile Credit Co. Ltd. v Garrod (1962) 3 All ER 1103].

### **Answer 4(d):**

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;



## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

In *Dr PSS Sundar Rao, GS v. Inspector of Factories Vellore 1984 II LLJ 237 Mad*, the question was whether a laundry attached to the Christian Medical College & Hospital; Vellore is a factory within the meaning of this Act. The Madras High Court held that the laundry run by the Hospital cannot be separated from the main institution. In order to ensure a high degree of hygienic standard the Hospital is having its own laundry for washing the linen used in the Hospital. Therefore, laundry is only a subsidiary, minor or incidental establishment of the Hospital which is not a factory. One department of the Hospital established for the efficient functioning of the Hospital cannot be therefore be disjoined from the main institution and termed to be a factory. The paramount or the primary character of the main institution alone has to be taken into consideration and when the main institution is not a factory; a department thereof cannot become so, even though a manufacturing process is carried on there.

**5. (a) In an accounting year, a company to which the Payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of directors of the said company decided not to give bonus to the employees. The employees of the company move to the Court for relief. Decide in the light of the provisions of the said Act whether the employees will get relief. [3]**

**(b) Mr. Adi takes the delivery of a furniture from Amit under an agreement which provides for: (i) an immediate down payment of ₹300, (ii) the balance by way of 12 monthly instalments of 100 each, (iii) transfer of ownership on the payment of last instalment, (iv) Amit's right to or possess the goods in case of non-payment of instalments due. Before the 12<sup>th</sup> instalment was paid, Adi sold the furniture to Zia. Can Amit recover the furniture from Zia? State your answer in each of the following cases:**

**Case (a): If the agreement does not provide for any other stipulation.**

**Case (b): If the agreement also provides that Adi can return the goods. [2]**

**(c) On whom does the burden of proof vest under the PMLA, 2002? What are the obligations of Banking Companies, Financial Institutions and Intermediaries as per Section 12? [2+3=5]**

**(d) A Limited Liability Partnership is a body corporate, so it can carry on business with any number of partners under the Limited Liability Partnership Act, 2008. Do you agree? [2]**

### **Answer 5(a):**

As per section 10, in respect of every Accounting Year, the employer is liable to pay minimum bonus to every employee who is entitled to receive bonus, whether or not the employer has any allocable surplus in an Accounting Year.

Thus, the fact that the employer has suffered heavy losses cannot be put as a defence for non-payment of minimum bonus.

**Conclusion:** The decision of the Board not to pay bonus to employees is not correct. Thus, the workers have the right to receive the minimum bonus. For this purpose, the workers may make an application to Appropriate Government for recovery of bonus due under the Act as per the provisions of section 21.

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

**Comment:** Under section 36, the Appropriate Government may, in public interest, exempt any establishment or class of establishments from all or any of the provisions of this Act. Thus, the employer shall not be liable to pay bonus, if the Appropriate Government grants exemption to the employer from liability to pay bonus under the Act.

### **Answer 5(b):**

**Case (a):** Amit cannot recover the furniture from Zia because it was a contract of sale (as Adi was not having any option to return but was under compulsion to buy) and not hire-purchase agreement.

**Case (b):** Amit can recover the furniture from Zia because it was a hire-purchase agreement (as Adi was having an option to return) and hence, Adi was not having any title to it.

### **Answer 5(c):**

Money Laundering is the generic term used to describe the process by which criminals disguise the original ownership and control of the proceeds of criminal conduct by making such process appear to have derived from the legitimate source.

Section 3 of the Prevention of Money Laundering Act, 2002 says "Whosoever directly or indirectly attempts to indulge or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering".

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].

**Section 12** of the Act cast a duty upon every banking company, financial institution and intermediary to:

- (a) Maintain a record of all transaction, the nature and value of which may be prescribed whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other and where such series of transactions take place within a month. Such record should be maintained for a period of ten years from the date of transaction between the clients and the banking company or financial institution or intermediary as the case may be.
- (b) Furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed.
- (c) Verify and maintain the records of the identity of all its clients in such a manner as may be prescribed.

Such record should be maintained for a period of 10 years from the date of cessation of transaction between the clients and the banking company or financial institution or intermediary as the case may be.

Where the Principal officer of a banking company or a financial institution or intermediary as the case may be has reasons to believe that a single transaction or series of transactions integrally

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

connected to each other have been valued below the prescribed value so as to defeat the provisions of this section, such officer shall furnish information in respect of such transactions to the Director within the prescribed time.

### **Answer 5(d):**

This is discussed in Section 6 of the Limited Liability Partnership Act, 2008. As per this section:

(1) Every limited liability partnership shall have at least two partners.

(2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

**6. (a) Referring to the provisions of the Payment of Bonus Act, 1965, state whether an employee dismissed on the ground of misconduct is entitled to bonus under the Act. [3]**

**(b) What is Caveat Emptor? What are the exceptions to the Doctrine of Caveat Emptor?**

**[2+5=7]**

**(c) Examine the following case in light of laws relating to employees:**

**Y, a laboratory assistant consumes a chemical during the night shift and dies. The chemical was not of the laboratory kit. His wife claimed compensation under the Employees Compensation Act, 1923. [2]**

### **Answer 6(a):**

As per section 9, an employee shall be disqualified from receiving bonus, if the following two conditions are satisfied:

(a) The employee was dismissed from service.

(b) The employee was dismissed because:

- (i) he had committed fraud; or
- (ii) of his riotous or violent behavior while on the premises of the establishment; or
- (iii) theft, misappropriation or sabotage of any property of the establishment.

As per section 18, deduction can be made from the amount of bonus payable to an employee if all the following conditions are satisfied:

(a) Financial loss is caused to the employer as a consequence of misconduct of employee.

(b) The deduction shall be restricted to the amount of financial loss actually caused to the employer.

(c) The deduction can be made against the amount of bonus payable to the employee in respect of that accounting year only.

Dismissal of employee from service is not a condition for making the deduction u/s 18.

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

Accordingly, an employee dismissed on the ground of misconduct is not eligible provided misconduct by him attracts any of the reasons given under section 9.

However, if the misconduct by the employee does not attract section 9, then, the employee is eligible to receive bonus, but the employer shall have a right to deduct from bonus payable, the amount of financial loss caused to him (Section 18).

### **Answer 6(b):**

The expression 'Caveat Emptor' means 'let the buyer beware.' The doctrine of caveat emptor has been given in the first para of Section 16 which reads as under:

"Subject to the provisions of this Act and any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale".

In other words, it is not part of the seller's duty to point out defects of the goods which he offers for sale, rather it is the duty of the buyer to satisfy himself about the quality as well as the suitability of the goods.

Example: Pigs were sold subject to tall faults and the seller knew that the pigs were suffering from swine-fever but he did not inform the buyer about this defect. The seller was not liable for damages because there was no implied warranty [Ward v. Hobbs].

### **The doctrine of caveat emptor is subject to the following exceptions:**

- (a) In Case of Misrepresentation by the Seller** Where the seller makes a misrepresentation and the buyer relies on that representation.
- (b) In case of Concealment of Latent Defect** Where the seller knowingly conceals a defect which would not be discovered on a reasonable examination.
- (c) In Case of Sale by Description [Section 15]** Where the goods are sold by description and the goods supplied by the seller do not correspond to the description.
- (d) In Case of Sale by Sample [Section 17]** Where the goods are sold by sample and the goods supplied by the seller do not correspond with the sample.
- (e) In Case of Sale by Sample as well as Description [Section 15]** Where the goods are sold by sample as well as description and the goods supplied do not correspond with sample as well as description.
- (f) Fitness for a Particular Purpose [Section 16(1)]** Where the seller or a manufacturer is a dealer of the type of goods sale by him and the buyer has disclosed the purpose for which goods are required and required and relied upon the seller's skill or judgement.
- (g) Merchantable Quality [Section 16(2)]** Where the goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that goods shall be of merchantable quality.

The rule of Caveat Emptor appeared to play an important role in the past when trade was conducted on local scale and the buyer had every opportunity to examine the goods before buying. However, in the modern context, the rigours of the rule have been mitigated because of global dimensions of trade, government legislations on consumer protection, professional

management, intense competition and consumer awareness. In fact, the rule of caveat emptor should be replaced by the rule of '**caveat vendor**' (Let the seller beware).

### **Answer 6(c):**

The Employer is not liable to pay compensation as it is a case of suicide by the employee. The Apex Court observed in Mackenzie & Co. v. Ibrahim Mohammad Isaac (1970) S C 1906 that the words 'in course of employment' means in course of the work which the employee who is employed to do and which is incidental to it. Further the words 'during the course of employment' the injury should result from some risk incidental to duties of service owing to the employer. If the accident is inclined with some risk situated with employment, then the employee would succeed in getting compensation.

### **SECTION B**

**[Answer any two questions]**

**7. (a) A company was started with the object of building 'A mall with shops'. The building was destroyed by fire and the company wanted to alter the objects clause in the memorandum by substituting the words 'A mall with shops' with the words 'Shops, Residential buildings and Warehouses for letting purposes'. Will this alteration of the memorandum for the purpose be permissible? Decide referring to the provisions of the Companies Act, 1956. [4]**

**(b) Discuss the provisions of Audit Committee as per Clause 49 of the Listing Agreement. [4]**

### **Answer 7(a):**

Section 17(1) of the Companies Act, 1956 permits a company to alter its objects for the under mentioned purposes:

- (1) to carry on business more economically;
- (2) to attain the main purpose of the company by new and improved means;
- (3) to carry on some business which the existing circumstances may conveniently or advantageously be combined with the existing business;
- (4) to change and enlarge the local area of operations;
- (5) to restrict or abandon any of the existing objects;
- (6) to sell or dispose of the whole or any part of the undertaking;
- (7) to amalgamate with any other company or body of persons.

The alteration of object clause is permissible since an alteration is permissible if it enables the company to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company.

For change in objects, the following are the steps:

- (1) Hold Board meeting for approval of changed object and for notice for holding AGM and authorise one director or secretary to deal with ROC in this regard.

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

- (2) Hold the general meeting and pass the special resolution.
- (3) File form 23 with ROC with amended MOA.
- (4) Get the form registered and get a certificate for registration.

### **Answer 7(b):**

#### **Provisions of Audit Committee under Clause 49 are as under:**

Clause 49 is applicable to all the listed companies with the paid up capital of ₹3 crores and above or net worth of ₹25 crores or more at any time in the history of the company. Revised clause 49 of the listing agreement provides for specific requirements of an Audit Committee. The provisions are:

- The Audit Committee shall have minimum three directors as members. Two-third of the members of Audit Committee shall be independent directors.
- All members of Audit Committee shall be financially literate and at least one member shall have accounting or related financial management expertise.
- The Chairman of the Audit Committee shall be an independent director.
- The Chairman of the Audit Committee shall be present at Annual General Meeting to answer shareholder queries.
- The audit committee may invite such of the executives, as it considers appropriate (and particularly the head of the finance function) to be present at the meetings of the committee, but on occasions it may also meet without the presence of any executives of the company. The finance director, head of internal audit and a representative of the statutory auditor may be present as invitees for the meetings of the audit committee.
- The Company Secretary shall act as the secretary to the committee.
- The Audit Committee should meet at least four times in a year and not more than four months shall elapse between two meetings. The quorum shall be either two members or one-third of the members of the audit committee whichever is greater, but there should be a minimum of two independent members present.

**8. (a) A Public Limited Company with a paid up share capital of ₹3.00 crores and free reserves of ₹2.00 crores has not so far given any guarantee. Advise the company about the legal requirements under the Companies Act in respect of the following transactions:**

- (i) To give guarantee to a housing finance company in respect of ₹40 lakhs borrowed by the company's employees.
- (ii) To give security to a finance company for a loan of ₹2 crores obtained by its subsidiary company. **[2+2=4]**

**(b) Write a short note on Statutory Audit.**

**[4]**

### **Answer 8(a):**

In accordance with the provisions of section 372A, the Board of Directors of a public company can make inter-corporate loans, investments and provide securities and guarantees to the extent of 60% (sixty percent) of aggregate of its paid up capital and free reserves or 100% of free

## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

reserves, whichever is more, on its own. This limit can be exceeded with the prior approval of the members by a special resolution.

In the given case, the aggregate of paid up capital and free reserves is ₹5.00 crores. Thus, the Board can exercise powers upto ₹3.00 crores i.e., 60% of aggregate of paid up capital and free reserves.

- (i) Provisions of section 372A are attracted in this case because the guarantee is to be provided to a body corporate.
- (ii) Provisions of section 372A are attracted in this case also because exemption is available only when security or guarantee is provided for a wholly owned subsidiary company.

Assuming that the company does not have any existing inter-corporate loans, investments, securities and guarantees, both the proposals are within the powers of the Board of Directors itself and members prior approval by special resolution is not required. Thus the decision shall be taken by the Board of Directors in its meeting with the consent of all the directors present therein.

### **Answer 8(b):**

Continuing globalization will increase the complexity of principles, regulations, and the cultures in which organizations operate, increasing litigation, legislation, and regulations will carry important compliance implications. Ever growing competition will increase the pressure on organizations to enhance productivity.

The principal objectives of the Statutory Audit is to ensure that the financial statements i.e. the Balance Sheet, Profit & Loss Account and Cash Flow Statement give a true & fair view and are free from any material misstatements.

Our approach to Statutory Audit of the financial statements is to provide reasonable assurance that the accounts have been prepared in accordance with the Generally Accepted Accounting Principles (GAAP) and are free of any misstatements, errors and discrepancies. In addition to the traditional statutory audit, we also help the clients by monitoring organizational ethics, conducting effective reviews of operational and financial performance, assessing the quality, economy and efficiency of their operations and suggesting continuous improvement strategies in simple terms statutory audit in India is equated with audit under the companies act. Every company incorporated under the companies act is required to get its accounts audited by a chartered accountant in Practice to ensure true and fair view of the accounts. Further, the auditor has to ensure compliance with various provisions of the companies act. Statutory audit ensures reliability of annual accounts of the company for various consumers of Accounts of the Company like government, shareholders, debtors, creditors, bankers etc.

The complexity of statutory audit function has increased manifolds during recent times. Globalisation, fast changing business and statutory environment combined with need for synchronisation with various global accounting standards and ever increasing reliance on audited accounts by a variety of interested parties has put ever increasing responsibilities on the shoulders of any statutory auditor.

Generally the firm will follow the following steps:



## Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1

---

- i) Getting appointment letter and Board resolution copy.
- ii) Getting NOC from previous auditor.
- iii) Filling the firm's no disqualification status to the company.
- iv) Filling of Form 23B to ROC.
- v) Getting Letter of engagement.
- vi) Assessment of internal control.
- vii) Formulation of internal control action plan and calendar.
- viii) Conduct of audit as per IGAAP, Companies Act, ICAI Accounting Standards and Auditing Standards.
- ix) Forming an opinion of financial statement prepared by the company.
- x) Reporting to shareholders.
- xi) Attending AGM.

**9. (a) PQR Limited held three board meetings till 31<sup>st</sup> December, 2011 during the financial year 20011-12. The next board meeting was due to be held on 27<sup>th</sup> March, 2012, but for want of quorum the meeting could not be held. A group of shareholders complained that the company has violated the provisions of Section 285 of the Companies Act, 1956 in not holding the required board meetings. Further, Mr. P and Mr. Q who are the directors of the company informed the company their inability to attend the meeting because the notice of the meeting was not served on them. Discuss whether there is any default on the part of the company and the consequences thereof. What will be the quorum in the given situation? [4]**

**(b) State the powers and functions of the Information Commissions as per the Right to Information Act, 2005. [4]**

**Answer 9(a):**

The present problem relates to sections 285, 286, 287 and 288 of the Companies Act, 1956.

### **The Legal Position**

1. As per section 285, at least four Board meetings shall be held in each calendar year and at least one Board meeting shall be held in each quarter.
2. As per section 286, notice of every Board meeting shall be sent to every director for the time being in India and to every other director at his usual address in India.
3. As per section 287(2), the quorum shall be higher of:
  - (i) 1/3<sup>rd</sup> of total strength (any fraction contained in that 1/3<sup>rd</sup> shall be rounded off as one); or
  - (ii) 2 directors.
4. As per section 288, section 285 shall not be deemed to be contravened, if a Board meeting could not be held for want of quorum.

### **The given case**

1. The last board was held in the calendar year 2011.
2. During the First Quarter of 2012, a board meeting was scheduled for 27<sup>th</sup> March, but it could not be held due to want of quorum.



## **Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1**

---

3. Notice of board meeting was not given to the directors, Mr. P and Mr. Q, who did not attend the board meeting.

### **Analysis of the case**

1. The board meeting for 27<sup>th</sup> March was duly called in accordance with the provisions of section 285. But it could not be held for want of quorum. This would not be deemed to be a contravention of section 285 in view of the provisions of section 288.
2. Not giving notice of board meeting to the directors, Mr. P and Mr. Q, shall amount to a default of section 286. Since notice is not given to Mr. P and Mr. Q, all the resolutions passed at such board meeting shall be void [Parmeshwari Prasad v Union of India]. It is immaterial as to whether Mr. P and Mr. Q had the knowledge of the fact that the board meeting had been called.
3. Every officer of the Company whose duty is to serve the notice as aforesaid and who fails to do so shall be punishable with fine upto ₹1000.
4. As per section 287(2), the quorum shall be higher of:
  - (i) 1/3<sup>rd</sup> of total strength (any fraction contained in that 1/3<sup>rd</sup> shall be rounded off as one); or
  - (ii) 2 directors.

### **Answer 9(b):**

As per Section 18 of the Right to Information Act, 2005, the powers and functions of the Information Commissions are as follows:

- (1) Subject to the provisions of this Act, it shall be the duty of the Central Information Commission or State Information Commission, as the case may be, to receive and inquire into a complaint from any person -
  - (a) who has been unable to submit a request to a Central Public Information Officer or State Public Information Officer, as the case may be, either by reason that no such officer has been appointed under this Act, or because the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, has refused to accept his or her application for information or appeal under this Act for forwarding the same to the Central Public Information Officer or State Public Information Officer or senior officer specified in sub-section (1) of section 19 or the Central Information Commission or the State Information Commission, as the case may be;
  - (b) who has been refused access to any information requested under this Act;
  - (c) who has not been given a response to a request for information or access to information within the time limit specified under this Act;
  - (d) who has been required to pay an amount of fee which he or she considers unreasonable;
  - (e) who believes that he or she has been given incomplete, misleading or false information under this Act, and
  - (f) in respect of any other matter relating to requesting or obtaining access to records under this Act.
- (2) Where the Central Information Commission or State Information Commission, as the case may be, is satisfied that there are reasonable grounds to inquire into the matter, it may initiate an inquiry in respect thereof.

- (3) The Central Information Commission or State Information Commission, as the case may be, shall, while inquiring into any matter under this section, have the same powers as are vested in a civil court while trying a suit under the Code of Civil Procedure, 1908, in respect of the following matters, namely -
- (a) summoning and enforcing the attendance of persons and compel them to give oral or written evidence on oath and to produce the documents or things;
  - (b) requiring the discovery and inspection of documents;
  - (c) receiving evidence on affidavit;
  - (d) requisitioning any public record or copies thereof from any court or office;
  - (e) issuing summons for examination of witnesses or documents; and
  - (f) any other matter which may be prescribed.
- (4) Notwithstanding anything inconsistent contained in any other Act of Parliament or State Legislature, as the case may be, the Central Information Commission or the State Information Commission, as the case may be, may, during the inquiry of any complaint under this Act, examine any record to which this Act applies which is under the control of the public authority, and no such record may be withheld from it on any grounds.

### **SECTION C**

**[Answer any two questions]**

- 10. (a) What do you understand by the term 'Ethical Dilemma'? Discuss the steps on how to resolve an ethical dilemma. [2+2=4]**
- (b) How can one create an ethical environment in an organization? [4]**

**Answer 10(a):**

Identifying ethical issues is the most important step in business ethics. "An ethical issue is an identifiable problem, situation or opportunity that requires a person to choose from among several actions which may be ethical or unethical".

Ethical dilemma is any situation in which guiding moral principles cannot determine which course of action is right or wrong. Managers face highly complex ethical dilemmas with no clear guidelines. They occur in situations where the decision involves a choice between "right and right". Each person must weigh alternatives and make choices in light of personal values and goals considering the organizational and professional success. Best possible decisions have to be taken in light of the long term benefits. Business organizations should employ proper means to achieve their profit maximization goals.

The following steps could help resolve an ethical dilemma and take a proper decision:

1. Understand the problem clearly without being a party to the problem i.e. Give a third party's view to the problem.
2. Identify the factors which led to the problem.
3. Objective of the decision
4. What will be the probable effects of the decision?

5. Who are the interested parties of the decision?
6. Is it possible for you to discuss the problem with the interested parties?
7. Can you reveal the decision to your boss, CEO, Board of Directors, society as a whole?
8. What are the exceptions to your decision?
9. Is it possible to communicate your decision in clear and understandable terms?
10. The potentials of your decision.

### Answer 10(b):

#### CREATING AN ETHICAL ENVIRONMENT:

##### 1. Ensuring that employees are aware of legal and ethical responsibilities

It is the duty of the organizations to train and motivate employees towards ethical behavior. This can be achieved only with the commitment and initiation from top management. In India, Wipro has been the pioneer to establish an organised set of beliefs to guide business conduct. Employees are also provided with an integrity manual to guide them whenever they face ethical dilemma.

##### 2. Providing a transparent communication system between the management and the employees

Organizations should provide for a system whereby employees can communicate frauds, mismanagement or any other form of non routine behaviour without any fear of being punished or demoted. Companies like Wipro have introduced a helpline connecting the members to senior managers of the company for guidance on any moral, legal or ethical issues an employee may face.

##### 3. Ensuring fair treatment to whistle blowers

Whistle blowers are those who bring unethical practices to the notice of the parties concerned. Fair treatment to whistle blowers is important, as this encourages other members of the company also to report similar activities in future. On the contrary, if the company decides to punish the whistle blowers, it sets a negative example and discourages other employees from reporting on any malpractices within the organisation which might affect its reputation as well as cause financial losses.

#### 11. (a) Discuss the types of Ethical issues. [4]

(b) State with reasons whether the following statement is correct or incorrect:

“There is no difference between ethics and morals.” [4]

### Answer 11(a):

Ethical dilemma exists in all walks of business. Business situations are highly complex with no clear guidelines and equally justifiable alternatives. Hence, ethical dilemma should be dealt carefully. They arise when there are conflict in values with superiors in the area of strategy, goals, policy and administration. Ethical issues get categorized in the following four main areas:

## 1. Business Relationships

Business relationships, i.e. relationships with customers, suppliers and others in the work place also have ethical concerns. Ethical behaviour in the business involves meeting obligations and responsibilities duly on time, keeping company secrets and avoiding undue pressure that may force others to act unethically.

The managers and other superiors can use their authority to influence the employees and make them act in an unethical manner. In the process, the manager may tell the employees to adopt unethical practices which the employee may not be willing to adopt. The ethical practices of the business must be focussed on customer needs as the customer is the life line of the business. Organisations that cater to customer needs by adopting an honest & ethical approach make the customer feel that they are important and this in turn guarantees the success of the organisation in the long run.

## 2. Conflict of interest

Conflict of interest exists when a person has to decide whether to proceed with his own personal interest or in the interest of the organization.

**Example:** Bribe is a conflict of interest because it benefits the individual but harms the organization and the society.

Conflict of interest can be managed in an effective manner when employees are able to separate their personal interests from their business dealings. Sam Walton, the late founder of Wal-Mart, banned company buyers from accepting even a cup of coffee from suppliers. It is not always necessary that conflict of interest should be financial.

## 3. Fairness and honesty

Fairness and honesty are difficult principles of business ethics, which an organization is expected to follow. It is not enough for a company to ensure compliance with applicable laws and regulations, it should not cause any harm to employees, customers, competitors knowingly by means of unfair and deceptive trade practices. Disclosure of potential harm caused by product use is an example of "fairness and honesty". Though the legal system encourages competition and prevents monopoly, business organizations continue doing activities causing harm to the competition. Thus, ethical conduct of business depends on their commitment to fairness and honesty.

## 4. Communications

Organizations need to communicate with its environment to sustain and grow. They have to give true and correct information about their products and services. Nowadays, false and misleading advertisements occupy the business world. Consumers have a right to know full and true information about product's quality, price and safety. Manufacturers often fail to communicate the differences or similarities between products.

## Answer to MTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 1

**Example:** Johnson & Johnson agreed to pay a claim amount of \$860 million dollars since they gave false information and misleading information about two products - Acuvue and 1 -day Acuvue contact lenses.

Ethical issues also arise in product labelling. It is obligatory for the cigarette manufacturing company to indicate on the packs that smoking is injurious to health.

### Answer 11(b):

Moral is derived from a Greek word "mos" meaning "custom". Ethics is derived from a Greek word "ethos" meaning "character".

The main points of distinction are as follows:

Basic of distinction	Morals	Ethics
1. Meaning	'Morals' refers to personal or cultural values, codes of conduct or social mores referring to what is considered as right or wrong.	'Ethics' means principles of conduct governing an individual or a group in dealing what is good or bad.
2. Approach	'Moral' requires an individual to conform to what is right behaviour. The key issue with 'morals' is that one is expected to 'conform to the standard of right behaviour' and not question that 'conforming'. Thus, morals are dictated to us by either society or religion.	Ethics requires a person to choose the 'principles of conduct' for governing the life that he has chosen himself.
3. Thought process	With morals the 'thinking has already been done'. In case of morals, the individual has to either accept or not to accept.	With 'ethics', a person has the freedom to 'think and choose' his personal philosophy for guiding the conduct of his life.
4. Uniformity	Morals differ from society to society and religion to religion. So, there is nothing like absolute morality.	Ethics are uniform across different cultures, religions and societies.
5. Expression	Morals are, more or less, expressed as general rules and statements.	'Ethics are comparatively abstract and cannot be expressed as general rules and statements.
6. Applicability in business	Morals do not have any application in business. There is nothing like 'business morals'.	The application of ethics in today's business cannot be ignored. It is termed as 'business ethics'.

**12. State the fundamental principles relating to ethics.**

**[8]**

**Answer 12:**

**FUNDAMENTAL PRINCIPLES RELATING TO ETHICS:**

Certain rules are to be followed for behaving in an ethical manner. These principles are:

**1. The principle of integrity**

Integrity means "honesty and straightforwardness". Therefore professionals have to be honest and straightforward in their duties. The following acts would help comply with the integrity principle,

- a) Avoid activities which would affect goodwill of an organisation
- b) Refuse to take part in activities which could influence actions taken or to be taken
- c) Communicate adverse and favourable information with those concerned
- d) Avoid conflicts and attempt to foresee potential conflicts and advice parties
- e) Refuse favours or gifts which could influence action taken or to be taken

**2. The principle of objectivity**

According to this principle, accounting professionals should not allow bias, personal views, conflicting interests and undue influence of themselves or others to override business judgements. They should communicate information in a fair and objective manner so that complete information reaches its end user.

**3. The principle of confidentiality**

Accounting and financial professionals are not supposed to disclose the information of their work to any outsiders except under the following two circumstances:

- a) To sub-ordinates, and ensure that they also maintain confidentiality
- b) When under legal obligation or because of some statutory ruling

**4. The principle of professional competence and due care**

It has become mandatory for finance and accounting professionals to update their professional skills from time to time in order to provide the best quality service to their clients. Professionals are required to know the current developments in their areas and accordingly conduct their work.

**5. The principle of professional behaviour**

The professionals must comply with relevant laws and regulations and avoid actions which damage the reputation, thereby bringing dishonor to the profession.