

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) If part of a contract is illegal then the whole Contract will be
- (a) Voidable
 - (b) **Void**
 - (c) Legal
 - (d) Illegal
- (ii) Which of the following is not a prohibited occupation under the Child Labour (Prohibition & Regulation) Act, 1986?
- (a) Foundries
 - (b) Diving
 - (c) **Carpet Weaving**
 - (d) Abattoirs/slaughter Houses
- (iii) A Contract of Sale may be
- (a) An agreement
 - (b) Unconditional
 - (c) **Absolute or Conditional**
 - (d) Legal contract
- (iv) Mr. Dogla signs an instrument stating, 'I promise to pay Mr. Das or order ₹5,000.' This is a
- (a) Mere acknowledgement
 - (b) **Promissory note**
 - (c) Condition to pay
 - (d) There is a promise but the sum is not certain
- (v) If all the partners, but one are insolvent it is
- (a) Dissolution of an agreement
 - (b) **Dissolution of firm**
 - (c) May or may not cause dissolution
 - (d) None of above
- (vi) A banking partnership business can have
- (a) **Not more than 10 partners**
 - (b) Not more than 20 partners
 - (c) Not more than 50 partners
 - (d) Any number of partners
- (vii) A new partner may be admitted to a partnership
- (a) **With the consent of all partners**
 - (b) With the consent of two third of old partners
 - (c) With the consent of any one of the partners
 - (d) Without the consent of old partners

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

- (viii) Ensuring the safety, health and welfare of the employees is the primary purpose of the
- (a) **Factories Act, 1948**
 - (b) Payment of wages Act, 1936
 - (c) Equal remuneration Act, 1976
 - (d) Industrial Dispute Act, 1947
- (ix) Which of the following is not connected with employee safety and healthy?
- (a) The Factories Act, 1948
 - (b) The Mines Act, 1952
 - (c) **The Payment of wages Act, 1965**
 - (d) The Dock Workers (Safety, Health and Welfare) Act, 1986
- (x) The Prevention of Money Laundering Act, 2002(PMLA) come into enforce on
- (a) 1st July 2002
 - (b) 1st July 2003
 - (c) 1st July 2004
 - (d) **1st July 2005**
- (xi) The latin term "quid pro quo" refers to:
- (a) **Something in return**
 - (b) Stranger to consideration
 - (c) Something sensible
 - (d) Something valuable
- (xii) A Company is
- (a) A Body Corporate
 - (b) A Company is an Artificial person
 - (c) A Company is an Abstract in law
 - (d) **All of the above**
- (xiii) Section 292A of the Companies Act, 1956 requires that every public limited company having a paid up capital of at least to constitute audit committee.
- (a) ₹5 lakhs
 - (b) ₹50 lakhs
 - (c) ₹1 crore
 - (d) **₹5 crore**
- (xiv) The Cost auditor shall be appointed by the.....
- (a) **Board of directors with the previous approval of the Central Government**
 - (b) Board of directors with the previous approval of the State Government
 - (c) Board of directors and Managers with the previous approval of the Central Government
 - (d) Board of directors and Managers with the previous approval of the State Government
- (xv) Who is responsible for ethical behavior?
- (a) Lecturers and supervisors
 - (b) **The Psychologist**
 - (c) The Participants
 - (d) The Psychological communit

- (xvi) What is the major drawback of offering financial incentive for participation?
(a) It may mean that people who are wealthy are less to participate
(b) It can be expensive
(c) **It can be coercive**
(d) None of these
- (xvii) The Right to Information Act, 2005 is enacted to secure the citizen of India the fundamental right of:
(a) **Right of Freedom of Speech and Expression**
(b) Right to Equality
(c) Right to Freedom of Religion
(d) Right to Constitutional Remedies
- (xviii) The Cadbury Report was formed in the year:
(a) **1992**
(b) 1995
(c) 1998
(d) 1999
- (xix) The Provisions regarding Statement in lieu of Prospectus is contained under of Companies Act, 1956.
(a) Section 56
(b) Section 60
(c) **Section 70**
(d) Section 80
- (xx) Prospectus is
(a) An unauthentic record
(b) **An invitation**
(c) Protection of employees
(d) None of the above

SECTION A

[Attempt any 4 questions]

2. (a) A Cricket Match is to be held between India and Pakistan. X agrees to pay ₹1,00,000 to Y if India wins the match and agrees to deposit the money with Z a third person of confidence for this purpose. X borrows ₹1,00,000 from W. What will be the implication of this case? Discuss. [3]
- (b) Vinky drew a cheque crossed Not Negotiable in blank and handed it to her Clerk to fill in the amount and the name of the payee. The clerk inserted a sum in excess of her authority and delivered the cheque to Shinky in payment of a debt of her own. Decide. [2]
- (c) 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

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

validity of Arup's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952. [2]

(d) When and to whom is gratuity payable under the Payment of Gratuity Act, 1972? [3]

(e) Amita Ltd. imposed a fine on Sumit, one of its employees for regularly reporting late for work. The fine was imposed on 4th April, 2013. The management wanted to recover the amount in September, 2013 during half yearly increment. Can the Company recover as per the Payment of Wages Act, 1936? [2]

Answer 2(a):

The implication of the given case may be discussed as under:

- (a) The agreement between X and Y is a wagering agreement because the performance of an agreement depends upon the happening or non-happening of a future uncertain event and each party stands to win or lose.
- (b) If India wins the match, Y (a winner) cannot recover the amount but X (a loser) can recover if the amount has not been paid to Y. Thus, a winner cannot recover the amount but a loser can if the amount has not been paid to the winner.
- (c) If India wins the match and Z (a stakeholder) pays the money to Y (a winner), X (a loser) cannot recover it from Z. [Bridger v Savage].
- (d) The agreement between X and W which is a collateral to wagering agreement, is valid in India except in the States of Maharashtra and Gujarat. Thus, W can recover the money from X if the agreement between X and Y is entered into in India except in the States of Maharashtra and Gujarat but W cannot recover the money from X if the agreement between X and Y is entered into in the States of Maharashtra or Gujarat.

Answer 2(b):

Facts of the case are similar to **Wilson & Meeson vs Pikerling** case as under:

In this case, W drew a cheque crossed "Not Negotiable" in blank and handed it to his Clerk to fill in the amount and the name of the payee. The clerk inserted a sum in excess of her authority and delivered the cheque to P in payment of a debt of her own. Held, the Clerk had no title to the cheque and as such P had no better title, and therefore W was not liable.

Accordingly, in the given case, it can be said that the Clerk had no title to the cheque and as such Shinky had no better title and therefore Vinky cannot be held liable.

Answer 2(c):

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.

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

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

Answer 2(d):

As per Section 4 of the payment of Gratuity Act, 1972,

Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years -

- a) on his superannuation, or
- b) on his retirement or
- c) resignation, or
- d) on his death or disablement due to accident or disease :

Provided that the completion of continuous service of five years shall not be necessary where the termination of the employment of any employee is due to death or disablement;

Provided further that in the case of death of the employee, gratuity payable to him shall be paid to his nominee or, if no nomination has been made, to his heirs, and where any such nominees or heirs is a minor, the share of such minor, shall be deposited with the controlling authority who shall invest the same for the benefit of such minor in such bank or other financial institution, as may be prescribed, until such minor attains majority.

Explanation: For the purposes of this section, disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

Answer 2(e):

As per Sec. 8(7) of The Payment of Wages Act, 1936 no fines can be recovered after expiry of 90 days from the date on which it is imposed.

So Amita Ltd. will not be able to recover the fine in September, 2013 as the gap exceeded 90 days.

3. (a) Can a person apply for review of any order passed by the appropriate authority or any official under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952? If so, state the provisions. [3]

(b) What do you understand by a Contract of Guarantee? What are the essential features of a Contract of Guarantee? [2+5=7]

(c) Ria delivered a horse to Jia. Jia incurred ₹500 as feeding expenses and ₹1000 as medical expenses when the horse became sick. State the legal position (i) if nothing was charged by either party, (ii) if Ria charged ₹2500 from Jia. [2]

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

Answer 3(a):

1. **Rights given u/s 7B:** Section 7B confers a right to make an application for review of an order made u/s 7A.
2. **Review at whose instance?**
 - Any person aggrieved by an order u/s 7A can make an application for review.
 - The officer can himself review the order on his own motion.
3. **No review if appeal is filed:** No application for review can be made if an appeal is filed against the order made u/s 7A.
4. **Time limit:** The application for review can be made within 45 days of order made u/s 7A.
5. **Cases in which application can be made:**
 - (a) If new and important evidence is discovered which could not be produced earlier as it was not within the employer's knowledge even after due diligence; or
 - (b) There is some mistake or error apparent from the records; or
 - (c) Any other sufficient reason.
6. **Action by the officer:** The officer may -
 - (a) reject the application for review if there are not sufficient grounds for review; or
 - (b) grant the review.
7. **Appeal against the order of officer:**
 - Appeal cannot be filed against order rejecting the application for review.
 - If fresh order is passed after the review, appeal can be filed against such order.

Answer 3(b):

Meaning of a Contract of Guarantee [Section 126]:

A contract of guarantee is a contract to perform a promise or discharge the liability of a third person in case of his default.

Example: X and his friend Y enter a shop and X says to Z "Supply the goods required by Y and if he does not pay you, I will." It is a contract of guarantee.

There are three parties to a contract of Guarantee - Principle debtor, Creditor and Surety.

(a) Meaning of Principal Debtor [Section 126]: The person in respect of whose default the guarantee is given is called the 'Principal debtor'. Y is the principal debtor in the aforesaid example.

(b) Meaning of Creditor [Section 126]: The person to whom the guarantee is given, is called the 'creditor'. Z is the creditor in the aforesaid example.

(c) Meaning of Surety [Section 126]: The person who gives the guarantee is called the 'Surety'. X is the surety in the aforesaid example.

The essential features of a contract of guarantee are as follows:

(a) Tripartite Agreement A contract of guarantee is a tripartite agreement between the principal debtor, creditor and surety. There are three contracts as under:

- (i) Contract between creditor and the principal debtor out of which the guaranteed debt arises.

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

- (ii) Contract between surety and the principal debtor by which the principal debtor undertakes to indemnify the surety if surety is required to pay.
- (iii) Contract between surety and the creditor by which the surety guarantees to pay the principal debtor's debt if the principal debtor fails to pay.

(b) Consent of Three Parties There must be consent of all the three parties.

Example X sells and delivers goods to Y, X afterwards requests Z to pay in default of Y. Z agrees to do so. Here, Z cannot become surety without the consent of Y.

(c) Existence of a Liability There must be an existing liability or a promise whose performance is guaranteed. Such liability or promise must be enforceable by law. Hence, guarantee can be given only for liability or promise which is enforceable by law. For example, guarantee given for a time-barred debt is invalid since time-barred debt is not legally enforceable. But there is an exception to this rule. The exception is a guarantee given for minor's debt. Though minor's debt is not enforceable by law, yet the guarantee given for minor's debt is valid.

Example: X took a loan of ₹10,000 from Y on 1st Jan. 1993 and paid nothing on account of interest and principal. On 2nd Jan. 1996, Z gave the guarantee to Y for the payment of ₹10,000 due from X. This is not a valid contract of guarantee because the primary liability between X and Y is a time barred debt which is not enforceable by law.

(d) Essentials of a Valid Contract All the essentials of a valid contract must be present in a contract of guarantee. However, the following points are worth noting in this regard:

- (i) The principal debtor need not be competent to contract. In case the principal debtor is not competent to contract, the surety would be regarded as the principal debtor and would be personally liable to pay.
- (ii) Surety need not be benefited. According to Section 127, "Anything done, or any promise made, for the benefit of the principal debtor, may be a sufficient consideration to the surety for giving the guarantee."

Example: B requests A to sell and deliver to him goods on credit. A agrees to do so, provided C guarantees the payment of the price of the goods. C promises to guarantee the payment in consideration of A's promise to deliver the goods. This is a sufficient consideration for C's promise.

- (iii) A guarantee need not be in writing. According to Section 126, a guarantee may be either oral or written.

(e) Guarantee not to be obtained by Misrepresentation [Section 142] Any guarantee which has been obtained by means of misrepresentation made by the creditor, or with his knowledge and assent, concerning a material part of the transaction, is invalid.

(f) Guarantee not to be Obtained by Concealment [Section 143] Any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.

Example: A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duty accounting. C

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

gives his guarantee for B's duty accounting. A does not acquaint C with B's previous conduct. B afterwards makes a default. The guarantee is invalid.

(g) The liability of the principal debtor is primary.

(h) The liability of surety is secondary and conditional and arises only if the principal debtor makes a default.

Answer 3(c):

Case (i): It is a case of gratuitous bailment where Ria (the bailor) must repay ₹1500 to Jia (the bailee) because the bailor is bound to bear all expenses incurred by the bailee for the purpose of bailment.

Case (ii): It is a case of non-gratuitous bailment where Ria (the bailor) must repay ₹1000 to Jia (the bailee) because the bailor is bound to bear all extraordinary expenses (and not ordinary expenses) incurred by the bailee for the purpose of bailment.

4. (a) Explain 'holder' and 'holder in due course' in respect of the Negotiable Instruments Act, 1881. [2]

(b) Discuss the provisions under Prevention of Money Laundering Act, 2002 in respect of Offences to be Cognizable and Non-Bailable. [4]

(c) State the provisions regarding Compromise, Arrangement or Reconstruction of Limited Liability Partnership. [6]

Answer 4(a):

Meaning of Holder [Section 8]

A person is called holder of a negotiable instrument if he satisfies the following two conditions:

(a) he must be entitled to the possession of the instrument in his own name; and

(b) he must be entitled to receive/recover the amount due on the instrument from the parties liable under the instrument.

Thus, Holder means the bearer of the bearer instrument and the endorsee or payee of the order instrument. He must be a de jure holder and not a de facto holder. He should be the owner thereof at law, whatever be his position in equity. It may be noted that under English Law, actual possession of the instrument is essential to be a Holder but such physical possession is not necessary under the Negotiable Instruments Act.

Example X advanced ₹10,000 to Y who executed a promissory note in the name of Z a benamidar. On Maturity Y failed to pay the amount due and X brought an action against Y. It was held that X could not recover the amount because he was not entitled to the promissory note in his own name. [Sarjoo Prasad v. Ramapayah Debi]

Note: Only a holder can bring a legal action to recover the amount due on the instrument.

Holder in case of loss or destruction: Where a note, bill or cheque is lost or destroyed, its holder is the person who was entitled to the instrument in his own name at the time of such loss or

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

destruction. For example, the finder of a lost instrument payable to bearer, or a person in wrongful possession of such instrument is not a holder. Similarly, an agent holding an instrument for his principal will also not be a holder of it although he may receive its payment.

Meaning of Holder in due Course [Section 9]

A person is called a holder in due course if he satisfies the following conditions:

- (a) He must be a **holder**.
- (b) He must have become, **for consideration, either the** possessor of the instrument if payable to bearer, or payee or endorsee thereof if payable to order. Such consideration must not be unlawful and need not be adequate.
- (c) He must have obtained the instrument **before its maturity**. He must become the holder before the amount becomes payable thereon. A person taking the bill or note on the day on which it becomes payable is not a holder as he takes it after it has become payable since the instrument may be discharged at any time on that day.
- (d) He must have obtained the instrument **in good faith**, i.e. without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.
- (e) He must receive the instrument **complete and regular on the face of it**, e.g. in *Arab Bank Ltd. v. Ross (1952)*; the payee in the promissory note was described as F and F.N. & Co., whereas endorser endorsed the note as F and F.N. omitting the words 'company'. Held, the endorsee did not constitute to be a holder in due course since the endorser and the payee appeared to be different person making the instrument not complete and regular on the face of it.

Answer 4(b):

As per section 45 of the Act,

1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless:
 - (i) the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - (ii) where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail:

Provided that a person, who, is under the age of sixteen years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs:
Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by –

 - (i) the Director; or
 - (ii) any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.

- 1A. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), or any other provision of this Act, no police officer shall investigate into an offence under this

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

Act unless specifically authorised, by the Central Government by a general or special order, and, subject to such conditions as may be prescribed."]

2. The limitation on granting of bail specified in sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

Answer 4(c):

As per section 60 of the Limited Liability Partnership Act, the provisions regarding Compromise, Arrangement or Reconstruction may be stated as follows:

1. Where a compromise or arrangement is proposed –
 - (a) between a limited liability partnership and its creditors;
 - (b) between a limited liability partnership and its partners, the Tribunal may, on the application of the limited liability partnership or of any creditor or partner of the limited liability partnership, or, in the case of a limited liability partnership which is being wound up, of the liquidator, order a meeting of the creditors or of the partners, as the case may be, to be called, held and conducted in such manner as may be prescribed or as the Tribunal directs.
2. If a majority representing three-fourths in value of the creditors, or partners, as the case may be, at the meeting, agree to any compromise or arrangement, the compromise or arrangement shall, if sanctioned by the Tribunal, by order be binding on all the creditors or all the partners, as the case may be, and also on the limited liability partnership, or in the case of a limited liability partnership which is being wound up, on the liquidator and contributories of the limited liability partnership:
Provided that no order sanctioning any compromise or arrangement shall be made by the Tribunal unless the Tribunal is satisfied that the limited liability partnership or any other person by whom an application has been made under sub-section (1) has disclosed to the Tribunal, by affidavit or otherwise, all material facts relating to the limited liability partnership, including the latest financial position of the limited liability partnership and the pendency of any investigation proceedings in relation to the limited liability partnership.
3. An order made by the Tribunal under sub-section (2) shall be filed by the limited liability partnership with the Registrar within thirty days after making such an order and shall have effect only after it is so filed.
4. If default is made in complying with sub-section (3), the limited liability partnership, and every designated partner of the limited liability partnership shall be punishable with fine which may extend to one lakh rupees.
5. The Tribunal may, at any time after an application has been made to it under this section, stay the commencement or continuation of any suit or proceeding against the limited liability partnership on such terms as the Tribunal thinks fit, until the application is finally disposed of.

Power of Tribunal to enforce compromise or arrangement

1. Where the Tribunal makes an order under section 60 sanctioning a compromise or an arrangement in respect of a limited liability partnership, it

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

- (a) shall have power to supervise the carrying out of the compromise or an arrangement; and
- (b) may, at the time of making such order or at any time thereafter, give such directions in regard to any matter or make such modifications in the compromise or arrangement as it may consider necessary' for the proper working of the compromise or arrangement.
2. If the Tribunal aforesaid is satisfied that a compromise or an arrangement sanctioned under section 60 cannot be worked satisfactorily with or without modifications, it may, either on its own motion or on the application of any person interested in the affairs of the limited liability partnership, make an order for winding up the limited liability partnership, and such an order shall be deemed to be an order made under section 64 of this Act.

5. (a) Who is regarded as an employee under the Payment of Bonus Act, 1965? [2]

(b) Piu purchased from Kia 2000 bottles of canned juice to be packed in cases, each containing 35 bottles but Kia supplied cases containing 20 bottles. Does Piu have right to reject the goods? [2]

(c) Aditya is engaged in two types of job in a factory, that of a mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage at an average rate. State whether this is correct as per the Minimum Wages Act, 1948? [2]

(d) A, B and C were partners in ABC & Co. During the course of partnership, the firm ordered Sindha 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 became insolvent and the firm failed to pay the price of machine to Sindha 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? [2]

(e) "The dominant purpose of Employees' Compensation Act is to protect the workmen." – Elaborate the statement. [4]

Answer 5(a):

As per the Payment of Bonus Act, 1965, Employee as per Sec. 2(13) means:

- any person (other than an apprentice)
- employed on salary or wage not exceeding ₹ 10,000 per month [w.e.f 1.4.2006 by Payment of Bonus (Amendment) Act, 2007]
- in any industry
- to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical, or clerical work
- for hire or reward.
- It makes no difference whether terms of employment are expressed or implied.

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

Where the salary or wage of an employee is more than ₹ 3500/- per mensem, the bonus payable to the employee u/s 10 or u/s 11 shall be calculated as if the salary is ₹ 3500/- per mensem. This means bonus is payable to employees getting upto ₹ 10,000 but bonus will be calculated on ₹ 3500/- only.

Answer 5(b):

This is based on the provisions of Section 15 of the Sale of Goods Act, 1930. Piu is entitled to reject the goods because the goods were not packed according to the description. It is to be noted that if the goods do not correspond with the description but such goods are fit for buyer's purpose, even then the buyer may reject the goods and the seller cannot take defense by saying that the goods will serve buyer's purpose.

Answer 5(c):

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus employer just cannot pay him at simple average rate of both wages of both classes of job.

Answer 5(d):

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 the Machinery purchased. **[Bagel Vs. Willer]**
- (ii) 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 not debt due in respect of the goods in A's life time. **[Bagel Vs. Willer].**

Answer 5(e):

The growing complexity of Industry in India, with the increasing use of machinery and consequent danger to workmen, comparative poverty of workmen, non-payment of compensation by employers generally to the workmen, etc made it the government to thought of protecting the workmen as far as possible from hardship arising from accidents.

In Sumita Devi v Avtar Singh (2004)104 FJR 1007 Jhar; - It was observed that "it is well settled that the Act is a piece of social security and welfare legislation. Its dominant purpose is to protect the workmen and therefore the provisions of the Act should not be interpreted too narrowly so as to debar the workman from compensation, which the parliament thought they ought to have. The intention of the legislator was to make the employer an insurer of the workmen responsible against the loss caused by the injuries or death which ought to

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

have happened while the workman was engaged in his work; This act contains 36 sections contained in four chapters and 4 schedules. Both State Governments (u/s 32) and Central Government (u/s 35 read with 36) have powers to make rules to carry out the purpose of this Act. Payment of compensation for personal injury arising out of or in the course of employment is a right of an employee and any contract or arrangement made whereby an employee relinquishes compensation from employee is null and void in so far as it purports to remove or reduce the liability of any person to pay compensation under this Act. (Sec 17).

The object of this Act is to provide Compensation to Employee for accidental injury and occupational diseases arising during and in the course of employment.

6. (a) What is Money Laundering? Discuss the powers of Director to impose fine. [2+2=4]

(b) State the distinction between Condition and Warranty. Also state when Condition can be treated as Warranty? [3+3=6]

(c) Who is an insurable employee under the Employees' State Insurance Act, 1948. [2]

Answer 6(a):

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. The term money laundering has not been defined in the Act anywhere, however, section 2 of the Act which defines various terms and expressions used in the Act in sub section (p) refer the meaning of money laundering to section 3 of the Act.

Section 3 of the Act 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". So we can say that activity or process by which tainted money of crime is projected as untainted property is money laundering. It is not necessary that the person should be directly involved in the process of legitimating the tainted money but also all those persons who assisted or were party to it or attempts to do will be guilty of money laundering activity.

Powers of Director to impose fine (Sec 13)

1. The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.
2. If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

3. The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

Answer 6(b):

A condition can be distinguished from a warranty as under:

Basis of Distinction	Condition	Warranty
1. Essential vs. Collateral	It is a stipulation which is essential to the main purpose of the contract.	It is a stipulation which is only collateral to the main purpose of the contract.
2. Right in case of breach	The aggrieved party can terminate the contract.	The aggrieved party can claim damages but cannot terminate contract.
3. Treatment	A breach of condition can be treated as a breach of warranty. For example, a buyer may like to retain the goods and claim only damages.	A breach of warranty cannot be treated as a breach of condition.

In the following three cases, a breach of a condition is treated as a breach of a warranty [Section 13]:

- (a) where the buyer waives a condition; once the buyer waives a condition, he cannot insist on its fulfillment e.g. accepting defective goods or beyond the stipulated time amounts to waiving a condition.
- (b) where the buyer elects to treat breach of the condition as a breach of warranty; e.g. where he claims damages instead of repudiating the contract.
- (c) where the contract is not severable and the buyer has accepted the goods or part thereof, the breach of any condition by the seller can only be treated as a breach of warranty. It cannot be treated as a ground for rejecting the goods unless otherwise specified in the contract. Thus, where the buyer after purchasing the goods finds that some condition is not fulfilled, he cannot reject the goods. He has to retain the goods entitling him to claim damages.

Answer 6(c):

Every employee of a factory or establishment to which the Act applies is an insurable person. Section 38 states that subject to provisions of the Act, all employees in factories or establishments to which this Act applies shall be insured in manner as provided in Act. However the following persons are not insurable and Act does not provide any benefit to them:

- (a) Workers in mines subject to Mines Act, 1952[Sec 2(12)]
- (b) Workers in a railway running shed[Sec 2(12)]
- (c) Any member of [the Indian] naval, military or air forces [Sec2 (9)]
- (d) Any person so employed whose wages (excluding remuneration for overtime work) exceed [such wages as may be prescribed by the Central Government]

SECTION B

[Answer any two questions]

7. (a) A Company was incorporated on 10th April, and had entered into a contract with a third party on 9th March for supply of goods. After incorporation, the Company does not want to proceed with the contract. State in this connection, whether the Company is bound by the contract. If not, who can be held personally liable? [4]
- (b) State the procedure regarding how a person seeking information may apply under Right to Information Act, 2005. [4]

Answer 7(a):

The Company does not want to proceed with the contract. Hence, it has not accepted the contract. So, the Company is not bound by the contract, and the Third Party cannot enforce the contract against the Company.

However, Promoters can be held personally liable. The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Answer 7(b):

As per section 6 of the Act,

- 1) A person, who desires to obtain any information under this Act, shall make a request in writing or through electronic means in English or Hindi or in the official language of the area in which the application is being made, accompanying such fee as may be prescribed, to:

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

- (a) the Central Public Information Officer or State Public Information Officer, as the case may be, of the concerned public authority;
- (b) the Central Assistant Public Information Officer or State Assistant Public Information Officer, as the case may be, specifying the particulars of the information sought by him or her:
- Provided that where such request cannot be made in writing, the Central Public Information Officer or State Public Information Officer, as the case may be, shall render all reasonable assistance to the person making the request orally to reduce the same in writing.
- 2) An applicant making request for information shall not be required to give any reason for requesting the information or any other personal details except those that may be necessary for contacting him.
- 3) Where an application is made to a public authority requesting for an information –
- (i) which is held by another public authority; or
- (ii) the subject matter of which is more closely connected with the functions of another public authority, the public authority, to which such application is made, shall transfer the application or such part of it as may be appropriate to that other public authority and inform the applicant immediately about such transfer:
- Provided that the transfer of an application pursuant to this sub-section shall be made as soon as possible but in no case later than five days from the date of receipt of the application.
- 8. (a) In ABC Ltd. three Directors were to be appointed. The item was included in agenda for the Annual General Meeting scheduled on 30th September, 2012, under the category of 'Ordinary Business'. All the three persons as proposed by the Board of Directors were elected as Directors of the company by passing a 'single resolution' avoiding the repetition (multiplicity) of resolution. After the three directors joined the Board, certain members objected to their appointment and the resolution. Examine the provisions of Companies Act, 1956 and decide:**
- (i) **Whether the contention of the members shall be tenable and whether both the appointment of Directors and the single resolution passed at the Company's Annual General Meeting shall be void.**
- (ii) **What would be your answer in case the company in question is an "Association not for Profit" incorporated under Section 25 of the Companies Act, 1956? [4]**
- (b) During the year 2012, A Ltd. held four meetings of the Board on 1st January 2012, 9th May 2012, 15th October 2012 and 30th December 2012. Examine whether this was in accordance with the provisions of the companies Act, 1956? [4]**

Answer 8(a):

At a general meeting, two or more persons cannot be appointed as directors by a single resolution unless a resolution that appointment shall be so made has first been agreed to by the meeting without any 1 vote being given against it. A resolution moved in contravention of this provision shall be void, whether or not objection was raised at the time when such resolution was passed (Section 263).

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

- (i) In the present case, appointment of 3 directors has been made by passing a single resolution. The resolution is void since before moving the resolution for appointment of 3 directors by a single resolution, no resolution was passed to the effect that the appointment of 3 directors shall be made by a single resolution. It is immaterial that no member objected to such appointments.
- Thus, the contention of the members that the appointment of the 3 directors is void, is correct. Also, the single resolution passed for appointments, is void.
- (ii) Section 263 does not apply to a company licensed under section 25, i.e. an association not for profit. Thus, the appointment of all the 3 directors by a single resolution shall be valid in such a case.

Answer 8(b):

As per Section 285 of the Companies Act, 1956, in case of every company, a meeting of its Board of directors shall be held at least once in every three calendar months and at least four such meetings shall be held in every year.

1 st Quarter	January to March	1 st January
2 nd Quarter	April to June	9 th May
3 rd Quarter	July to September	No Meeting
4 th Quarter	October to December	15 th October and 30 th December

Since no meeting has been held in the 3rd quarter, section 285 has been violated.

It is also to be noted that in case of a listed company, time gap between two board meetings shall not exceed 120 days.

9. (a) Write a short note on Corporate Governance in Germany. [4]

(b) Discuss the scope of Internal Auditing. [4]

Answer 9(a):

Corporate Governance in Germany:

The German corporate governance system could be termed an 'insider' system. The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a management board (*Vorstand*) and a supervisory board (*Aufsichtsrat*). The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the chairman of the management board co-ordinates the work of the management board. On the other hand, the supervisory board appoints, supervises, and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board co-ordinates the work of the supervisory board. The members of the Supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employees representation. So, for firms or companies which have more than five hundred or two

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

thousand employees in Germany, employees are also represented in the supervisory board which then comprises one-third employee representative or one-half employee representative respectively. The representatives elected by the shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

The committee on corporate governance in Germany was chaired by Dr. Gerhard Cromme and is usually referred to as the Cromme Report or Cromme Code. The code harmonizes a wide variety of laws and regulations and contains recommendations and also suggestions for complying with international best practice on Corporate Governance.

The Cromme Code was published in 2002 and is split into a number of sections, starting with a section on shareholders and the general meeting. The Cromme Code also reflects some of the latest developments in technology. The Cromme Code was amended in 2005.

Table: Key characteristics influencing German corporate governance

Feature	Key characteristic
Main business form	Public or private companies limited by shares
Predominant ownership structure	Financial and non-financial companies
Legal system	Civil law
Board structure	Dual
Important aspect	Compulsory employee representation on supervisory board.

Answer 9(b):

The Institute of Internal Auditors defines scope of internal auditing as "The examination and evaluation of the adequacy and effectiveness of organisation's system of internal control and the quality of actual performance.

Therefore, internal auditing is concerned with an evaluation of both internal control as well as the quality of actual performance.

According to The Institute of Internal Auditors, internal audit involves five areas of operations, which can be discussed as follows:

(a) Reliability and Integrity of Financial and operating Information: Internal Auditors should review the reliability and integrity of financial and operating information and the means used to identify, measure, classify and report such information.

(b) Economical and Efficient Use of Resources: Internal auditor should ensure the economic and efficient use of resources available.

(c) Compliance with Laws, policies, plans, procedures, regulations: Internal auditor should review the systems established to ensure compliance with those policies, plans and procedures, law and regulations which could have a significant impact on operations and should determine whether the organization is in compliance thereof.

- (d) Accomplishment of established Goals for operations:** Internal auditor should review operations, programmes to ascertain whether results are consistent with established objectives and goals and whether the operations or programmes are being carried out as planned.
- (e) Safeguarding of assets:** Internal auditor should verify the existence of assets and should review means of safeguarding assets. The business transactions of an organization may be broadly divided into phases:
- (i) Planning stage:** It usually culminates in an authorization from the appropriate level of management in the organization. At this stage, the decisions are issues like whether or not to make or buy, whether or not to undertake a new project or export etc. These are more of managerial decisions and the scope of internal audit is often not much practical, in the initial stage unless it takes to what is called management audit.
- (ii) Execution stage:** This stage is the stage of recording in the various books of accounts, which only for correctness and classification of expenditure under the same heads as those mentioned in the project report. At this stage the scope of internal audit emerges out of need for correctness of accounts and proper classifications of heads in a designed manner.
- (iii) Reviewing stage:** The third and final stage deal with reviewing the transaction and here internal audit is intimately concerned. At this stage internal audit embraces the following main functions:
- (a) Scrutiny of the records of an undertaking to assess the reliability of the information contained therein.
 - (b) Examination of the documentary evidence from which the records are written up.
 - (c) Detection and prevention of error and fraud
 - (d) A general examination of the financial statements prepared from the records to ascertain whether a true and fair view has been given about the financial position at a specific date.

Internal auditing therefore, is a function distinct from authorization and recording. It is concerned not only with examination of the transaction as recorded in the Books of Accounts but also with appraisal of procedure with a view to effecting change for better efficiency, where possible. A proper organizational status for the internal auditing department ensures its relative independence so that it can carry out its work freely and objectively and render impartial and unbiased reporting.

SECTION C

[Answer any two questions]

10. (a) **Business ethics, professionally adheres to a code of conduct. State the same.** [4]
- (b) **Point out the difference between Ethical Code and Ethical Contract.** [4]

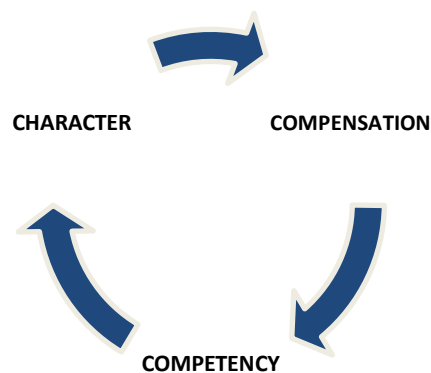
Answer 10(a):

Just as a society functions on the social codes of conduct and a country is governed by its

constitution, a business is run on corporate codes. In other words, there is a professional code of conduct for any business. These codes keep evolving as other things around evolve and develop. Therefore, not only should business be defined within the confines of ethics, but it should be practiced strictly under its own professional code of conduct. This distinction helps to orient the general principles of ethics and business to a particular activity. The principles, however, do not change. For instance, there is a manager who is doing very well in his career because he is both efficient and honest. To his neighbours and friends, he is not only a very successful businessman, but also a very good family man. To a question asked by a journalist on how he divided his time between his family and business despite his busy schedule, he replied, 'Efficiently. 'What is the secret of your success?' asked the journalist. He replied 'Honesty.' The journalist looked inquiringly as if to say, 'Look, business and family are separate.' The businessman said, 'both efficiency and honesty work equally well at work and at home.' The character of a true professional remains undivided, whether at work or at home. Our roles may change from time to time and from place to place but the integrity of our character should be maintained.

Business ethics, thus, professionally adheres to a code of conduct that is in accordance with the normative principles. Further, it may be concretely stated that professionals bear the following marked characteristics:

- (i) competency of educational qualification,
- (ii) professional skills, character, and
- (iii) compensation (salary/remuneration, etc.)



Professional Characteristics

Answer 10(b):

The main points of difference between ethical code and ethical contract may be highlighted as under:

Ethical codes or code of ethics are guidelines intended to serve the interests of a profession; its members and communities that are served, and hereby commit oneself to the highest ethical and professional conduct. Ethical codes are adopted by organizations to assist the members in understanding the difference between 'right and wrong', and applying that understanding in decision making.

Answer to MTP_Intermediate_Syllabus 2012_Dec2013_Set 2

An ethical code generally implies documents at three levels: code of business ethics, codes of conduct for employees, and codes of professional practice.

Thus, code of ethics focuses on the social issue of the organization emphasizing on development of business, plan of business development that plans to conduct business at the highest level.

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

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

11. (a) Discuss the Concept of Value-free Ethics. [4]

(b) State the consequences of Unethical Behavior. [4]

Answer 11(a):

Value-free Ethics

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

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

Nowadays, we are familiar with 'sugar-free' soft drinks, 'caffeine-free' coffee, and 'alcohol-free' beer. The concept of 'value-free' business ethics appears to be quite appealing to businessmen. It is as though it may be pursued devoid of all rules within a social vacuum. The concept of value-free ethics found application in economics in a rather ironical fashion. Ludwig von Mises known as the father of the Austrian School of Economics, proposed the pure theory of economics, stating that economic concepts are a priori, that is, they are not dependent on experience, but are purely virtual concepts. The concept of choice, for instance, is a pure concept. It is immaterial whether one chooses water or wine, but the concept in itself is free of such particular elements. Hence, choice is value-free. Applied to ethics, it would mean that we should be able to study the principles of this discipline, such as goodness, truth, justice, honour, etc. in their pure form.

It is obvious that such value-free ethics, when understood in the right sense, leads us to study the fundamental principles of ethics as a pure science. However, if we are to apply an ethical standard to such a study, it would be called a pure study of values, not value-free ethics.

Answer 11(b):

Unethical behavior has adverse effects on business. Moreover, working for an unethical, deceptive, unfair or dishonest organization requires one to take unethical or compromised decisions which also takes a toll on physical, mental and emotional health of individuals.

1. Firstly, if a company is unethical, the word spreads fast, and the reputation and goodwill of the company is at stake. Such impact can be of a permanent nature destroying the company's reputation possibly forever.
2. Secondly, unethical behavior can also have a detrimental impact on the productivity of a company due to mistrust and lack of faith among the employees.
3. Thirdly, unethical behavior can, not only cause a company to lose good and valuable employees, but also it can be quite difficult to find new employees.
4. Moreover, indulgence in unethical behavior shall not only be instrumental in expediting the cost of training of new employees in terms of money, but also loss of valuable time which could be spent in production. Such disruptions or slowing down of production will result in greater customer dissatisfaction and fewer new customers.

It is proved that good ethics carries many benefits, and its violations – penalties, and therefore refraining from unethical behavior should be the **sine-qua-non** consideration for an organization.

12. Discuss the key factors which influence the Ethical decisions in an organization and list some of the examples of ethical issues faced by the employees in the workplace. [8]

Answer 12:

The following are the three key factors which influence the ethical decisions in an organization:

1. Individual moral standards

Each individual has a set of thoughts in his own mind about what is right and what is not. Good personal values help an individual to set a good example to fellow workers. Having sound personal values help in creating an ethical workplace.

2. Influence of managers and co- workers

The behaviour of the colleagues has a huge influence on ethical conduct of other employees. If a majority of the employees follow the rules of the organization, it will motivate other employees and new comers to obey the same resulting in an effective system.

3. Opportunity to engage in misconduct

Where the organization does not have a code of ethical conduct, employees get more opportunities to engage in misconduct. If a company fails to provide direction for appropriate conduct, confusion and conflict will develop resulting in unethical behaviour.

The Individual

An ethical issue is an identifiable problem, situation or opportunity requiring a person to choose from several alternatives. An individual's behavior affects not only his own reputation but also the reputation

of the company. It is, therefore, the duty of the individual to act in an ethical manner and make the right choice.

An individual's values reflect in his attitude, action and in the choices he makes. Personal beliefs shape the values of an individual. Values develop right from our childhood and are constantly tested in our workplace by means of decisions we take. Persons who have negative attitude or who lacks personal motivation may be affected by the following socio-psychological factors:

- Negative work or life experiences
- Aggressive financial or business targets
- Pressure to perform and take quick decisions
- Employees failing to respect each other's unique personalities

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