

Paper-6: LAWS, ETHICS AND GOVERNANCE

Full Marks: 100

Time Allowed: 3 Hours

This paper contains 4 questions. All questions are compulsory, subject to instructions provided against each question. All workings must form part of your answer. Assumptions, if any, must be clearly indicated.

Question 1: Answer all questions

[2 X 10 = 20]

- (i) A is sixteen years of age. He lends ₹1 lac to B on the strength of a mortgage executed in his favour. Is the borrower liable to repay the money? Give reasons.
- (ii) Can a minor appoint an agent?
- (iii) Does the endorsement of a Railway Receipt amount to Transfer of Ownership?
- (iv) What is 'Caveat Emptor'?
- (v) Gratuity can be attached by an order of the court.
- (vi) Eligibility to Bonus depends on the period of actual service.
- (vii) Is the appointment of Mr. Bonny, a minor, as a director of Azad (Private) limited valid. Comment with reference to Companies Act, 1956.
- (viii) What is meant by, information partly exempt, as per RTI Act, 2005.
- (ix) "Ethical Business can stop business malpractices". Comment.
- (x) How can ethics be used in production.

Answer:

(i) Yes, A can recover the money from B. Though a contract with a minor is void ab initio, he is allowed to be a beneficiary in a transaction and enforce his claim. The basic logic is that a contract with a minor has been kept void only to protect his interest and not to prejudice his interest.

(ii) Section 183 of the Indian Contract Act permits only persons of the age of majority to employ an agent. Thus, a minor cannot appoint an agent.

(iii) The question was raised in a Bombay case of Shamji v. N . W. Rly.. The High Court, in the case, ruled that endorsing a railway receipt in favour of another does not by itself, pass property in the goods to the endorsee. It merely constitutes the endorsee the agent of the consignor, to receive the goods. Such an endorsement by itself does not constitute the endorsee either a bona fide pledge or transferee for value of the goods represented by the railway receipt.

(iv) Caveat Emptor is the fundamental principle of the law of sale of goods. It means 'buyers beware' or 'caution buyer' (i.e. let the buyer beware). In the other words, it is no part of the seller's duty to point out defects of his own goods. The buyer must inspect the goods to find out if

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they will suit his purpose. He must buy goods after satisfying himself about quality, suitability etc. If he makes a bad choice, he cannot blame the seller.

(v) No gratuity payable under the Act and no gratuity payable to an employee in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any Civil, Revenue or Criminal Court.

(vi) Eligibility to Bonus amount depends on the actual period of service of an employee provided he has worked for a minimum number of 30 days in a year. Sanctioned leave is treated as actual service.

(vii) Section 274 disqualifies certain persons to act as a director. However, a minor is not covered by this section. Also, there is no other provision in the Companies Act which disqualifies a minor from acting as a director.

However, a person can be appointed as a director only if he has been allotted DIN. A minor is not eligible to obtain DIN. Therefore, a minor cannot become a director in any company, whether public or private.

(viii) Where a part of the information sought is exempt from disclosure, then access may be provided to that part of the record which does not contain any information which is exempt from disclosure and which can reasonably be severed from the part containing exempt information.

(ix) Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.

(x) This area of business ethics deals with the duties of a company to ensure that products and production processes do not cause harm. Some of the more acute dilemmas in this area arise out of the fact that there is usually a degree of danger in any product or production process and it is difficult to define a degree of permissibility, or the degree of permissibility may depend on the changing state of preventive technologies or changing social perception of acceptable risk.

Question 2: Answer any 4 questions

[4 × 12 = 48]

Question 2(a)

(i) X stands surety for Y for any amount which 'Z' may lend to Y from time to time during the next three months subject to a maximum of ₹ 50,000. One month later X revokes the guarantee, when Z had lent to Y ₹ 5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'X' is discharged from all the liabilities to 'Z' for any subsequent loan. What would be your answer in case 'Y' makes a default in paying back to 'Z' the money already borrowed i.e. ₹ 5,000?

(ii) What do you understand by "Agency by Ratification"? What is the effect of ratification?

(iii) P rents out his house situated at Kolkata to Q for a rent of ₹ 5000/- per month. A sum of ₹ 2 lac, the house tax payable in arrears, his house is advertised for sale by the Municipal Corporation. Q pays the Corporation, the sum due from P to avoid legal consequences.

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Referring to the provisions of Indian Contract Act, 1872, decide Q is entitled to get reimbursement of the said amount from P.

(iv) Does threat to commit suicide amount to coercion?

[4+4+2+2=12]

Answer:

(i) The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

By Notice:

A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.

By death of surety:

The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

The liability of the surety for previous transactions however remains.

Thus applying the above provisions in the given case, X is discharged from all the liabilities to Z for any subsequent loan.

Answer in the second case would differ i.e. X is liable to Z for ₹ 5,000 on default of Y since the loan was taken before the notice of revocation was given to Z.

(ii) A person may act on behalf on another without his knowledge or consent. Later on such another person may accept the act of the former or reject it. If he accepts the act of the former done without his consent, he is said to have ratified that act and it places the parties in exactly the same position in which they would have been the former had latter's authority at the time he made the contract. Likewise, when an agent exceeds the authority bestowed upon him by the principal, the principal may ratify the unauthorised act.

The effect of ratification is to tender the acts done by one person (agent) on behalf of another (principal), without his (principal's) knowledge or authority, as binding on the other person (principal) as if they had been performed by his authority (Section 196: Indian Contract Act,1872).

Further, ratification relates back to the date when the act was done by the agent. This means the agency comes into existence from the moment the agent first acted and not from the time when the principal ratified the act.

(iii) As per provisions of Section 69 of the Indian Contract Act,1872, Q is entitled to recover from P the amount paid to Municipal Corporation because of the following reasons :

- There is a contract between P and Q, viz. quasi contracts.
- P is bound to to make payment of house tax to Municipal Corporation.
- Q is interested in such payment
- Q himself is not liable for such payment.

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(iv) As per Section 15 of Indian Contract Act, committing or threatening to commit any act forbidden by Indian Penal Code is coercion. As such 'threat to commit suicide' amounts to coercion as it is forbidden by the Code.

Question 2(b):

(i) **Mr. X was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide, under the Sale of Goods Act, 1930, whether Mr. X would succeed in his claim?**

(ii) **"Nemo Dat Quod Non Habet" — No one can give a better title than he himself has. State the exceptions to the rule.**

(iii) **State difference between lien and stoppage in transit.**

(iv) **Write a note on Constructive delivery.**

[2+4+4+2= 12]

Answer:

(i) This is based on Section 16(2) of the Sale of Goods Act, 1930, which states that where 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 the goods shall be of merchantable quality. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used. In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the provision of Section 16(2), Mr. X would succeed in claim for damages from the owner of the shop.

(i) The exceptions to the rule are given vide Sections 27 to 30 of Sale of Goods Act, 1930. These are as follows:

1. Sale by a mercantile agent who is in possession of the goods with consent of the seller and sells the goods in ordinary course of business.
2. Sale by a joint owner in possession of goods with consent of other joint owners. (Sec 28)
3. Sale by a person in possession of goods under a contract which may be voidable on the ground of fraud, misrepresentation, coercion or undue influence provided sale is made before voidable contract is avoided. (Sec 29)
4. Sale by seller who is in possession of the goods after sale but not in capacity of buyer's bailee. The subsequent buyer must buy in good faith and for value. (Sec 30)
5. Sale by buyer who is in possession of the goods before actual purchase if the subsequent buyer buys bona fide and for value. (Sec 30(2))
6. Sale made by unpaid seller exercising his right of lien and stoppage in transit. (Sec 54(3))
7. Sale made by finder of lost goods u/s 169 of Indian Contract Act.

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8. Sale by pawnee or pledge u/s 176 of Indian Contract Act.
9. Sale made by Official Receiver or Official Assignee or Liquidator.

(iii)

Lien	Stoppage-in-transit
Applicable only when goods are in possession of the seller.	Applicable only after the seller has parted with the goods.
Applicable even if the buyer is solvent.	Applicable only when the buyer becomes insolvent.
This is a right to retain possession of goods.	This is a right to regain possession of goods.
The right can be exercised by seller only.	right can be exercised by seller through carrier or bailee who is in possession of the goods.

(iv) Constructive delivery:

In this case there is only an acknowledgement on the part of the person holding possession of goods that he holds them on behalf of buyer. There are three types of constructive delivery:

1. When buyer holding the goods, as bailor holds them as his own.
2. When seller holding the goods, holds them as bailee of the buyer.
3. When third person holding the goods on behalf seller, now agrees to hold them on behalf of buyer

Question 2(c):

(i) Safety officers in any factory are optional and not mandatory.

(ii) 'X' joined BE Engineering Works (P) Ltd. on 25.3.2014. On 8.12.2014 he was laid off as the management wanted to slow down due to shortage of power. 'X' was not allowed lay-off compensation on the ground that his period of service was less than one year.

(iii) 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.

(iv) P is an employee in a XYZ Ltd. The following payments were made to him during the previous year :

- Piece rate wages
- Productivity bonus
- Additional dearness allowance
- Value of Puja gift.

Examine as to which of the above payments form part of "Basic Wage" of P under the Employees Provident Fund and Miscellaneous Provisions Act, 1952.

[3+2+3+4=12]

Answer:

(i) As per Sec 40-B of The Factories Act, 1948 in every factory:

1. wherein 1000 or more workers are ordinarily employed, or

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2. wherein, in opinion of the State Government, any manufacturing process or operation is carried on, which involves any risk or bodily injury, poisoning or any other hazard to health, to persons employed in factory, the occupier shall if so required by State Government by notification in Official Gazette, employ such number of safety officers as specified in the notification [Sec 40B(1)]. The duties, qualifications and conditions of service of Safety Officers are to be prescribed by State Government. [Sec.40 B(2)].

(ii) Under Sec.25-B of Industrial Disputes Act, 1947, an employee shall deemed to be in continuous service of one year if has worked for at least 240 days during the period of 12 months preceding the reference date of calculation.

'A' has worked for 253 days before he was laid off. So he is entitled to lay-off compensation and can claim the same.

(iii) 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.

(iv) As per Section 2 of the Employees Provident Fund and Miscellaneous Provision Act, 1952, the "Basic Wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

1. the cash value of any food concessions;
2. any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment; or
3. any presents made by the employer.

Applying the above provisions of the Act to the given problem, the Basic wages of P will include only piece rate wages but it excludes the Productivity bonus, additional dearness allowance and value of puja gift.

Question 2(d):

(i) H retired from services on attaining the age of superannuation. After his retirement, it was noticed that he had misappropriated amount from travelling allowance drawn by him. The employer wants to deduct the misappropriated amount from gratuity payable to him. Is the action of the employer legally tenable?

(ii) Discuss 'Hazardous process' under the Factories Act, 1948.

(iii) Have the Government employees a fundamental or statutory right to go on strike under the Industrial Disputes Act, 1947?

(iv) Explain the term 'arising out of employment and in course of employment' in relation to the Employees' Compensation Act, 1923.

[4+3+2+3 = 12]

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Answer:

(i) Section 4(6) of the Payment of Gratuity Act, 1972 provides that –

1. The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.
2. The gratuity payable to an employee may be wholly or partially forfeited—
 - if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
 - if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

In the present case the employee has attained the age of superannuation and has retired. His misappropriation was noticed after his retirement. The employer wants to deduct misappropriated amount after his retirement. The decision of the employer is not tenable as H's services have not been terminated.

(ii) As per section 2(cb) of the Factories Act, hazardous process means any process or activity in relation to an industry specified in the First Schedule to the Act where , unless special care is taken, raw materials used therein or the intermediate or finished products, bye products, wastes or effluents thereof would –

1. cause material impairment to the health of the persons engaged in or connected therewith, or
2. result in the pollution of general environment.

The State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

(iii) There is no statutory right to Government employees to go on strike. Where there is any injustice done to the employee in a democratic welfare State, they should resort to the machinery provided under statutory provisions for redressal of their grievances as held by the apex court in T.K. Rangarajan vs Government of Tamil Nadu and others.

(iv) An accident arising out of employment implies a causal connection between the injury and the accident and the work done in the course of employment.

'In course of employment' refers to time during which the employment continues. This includes not only the actual period of work but also the time when the employee is at a place where he would not be but for his employment.

Compensation under the Act is payable only in those injury/diseases where the employment is the immediate and proximate cause of the said injury/disease or in other words 'arising out of employment and in course of employment'.

Question 2(e):

(i) Explain 'committee method' and 'notification method' for fixation of minimum wages under the Minimum Wages Act, 1948.

(ii) A Limited Liability Partnership is a body corporate, so shall have perpetual succession and can carry on business with any number of partners under the Limited Liability Partnership Act, 2008. Do you agree?

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(iii) Comment on the following statement with reference to the provisions Negotiable Instruments Act. 1881: "Once a bearer instrument always a bearer instrument."

(iv) Discuss the various modes of creating an agency.

[3+2+4+3 = 12]

Answer:

(i) According to Section 5(1)(a) of the Minimum Wages Act, 1948 the appropriate government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. This method is called Committee method.

As provided in Section 5(1)(b) of the said Act, the appropriate Government by notification in the Official Gazette, fix or as the case may be revise the minimum rates of wages in respect of each scheduled employment and unless such notification otherwise provides it shall come into force on the expiry of three months from the date of its issue . This method is known as Notification method.

(ii) This is discussed in Section 6 of the Limited Liability Partnership Act, 2008. As per the 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.

(iii) A bearer instrument is one, which can change hands by mere delivery of the instrument. The instrument may be a promissory note or a bill of exchange, or a cheque. It should be expressed to be so payable or on which the last endorsement is in blank. (Explanation 2 to Section 13 of the Negotiable Instrument Act 1881).

Under Section 46 where an instrument is made payable to bearer, it is transferable merely by delivery, i.e. without any further endorsement thereon. But this character of the Instrument can be subsequently altered. Section 49 provides that a holder of negotiable instrument endorsed in blank (i.e. bearer) may, without signing his own name, by writing above the endorser's signature, direct that the payment of the instrument be made to another person. Thus the character of the instrument is changed and the instrument cannot be negotiated by mere delivery.

But in the case of a Cheque, however, the law is a little different from the one stated above. According to the provisions of Section 85 (2) where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, despite any endorsement whether in blank or full appearing thereon notwithstanding that any such instrument purported to restrict or exclude further negotiation. In other words, the original character of the cheque is not altered so far as the paying bank is concerned, provided the payment is made in due course. Hence the proposition, that once a bearer instrument always a bearer instrument.

(iv) Agency may be created in the following ways, as per Indian Contract Act:

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1. By express agreement either oral or in writing. (Sec.187)
2. By implied agreement arising out of conduct, situation or relationship of parties. (Sec.187).
Implied agency are of three types-
 - Agency by Estoppel-(Sec 237) When a person by his conduct or statements creates a situation whereby a certain person is believed to be his agent, he is estopped from denying the fact subsequently.
 - Agency by holding out – An affirmative conduct on part of principal is necessary to create an agency by holding out.
 - Agency of necessity – (Sec 189)In this case there is no express or implied contract between the parties involved, but one is forced to act on behalf of another because of the circumstances.
3. By ratification (Sec 196-200) When an agent acts without the knowledge of his principal or exceeds its authority, the principal, if he so desires, ratify the act of the agent. Such ratification may be express or implied.

Question 3: Answer any 2 questions

[2 × 8 = 16]

Question 3(a)

- (i) What is the manner in which requests may be made by a citizen to the authority for obtaining information under the Right to Information Act, 2005.
- (ii) “A foreign Company has opened an office for operating bank accounts in India”. Hence it is supposed to carry on business in India. Justify, with reference to Companies Act, 1956.
- (iii) What do you understand by ‘Producer Companies’

[4+3+1 = 8]

Answer:

(i)

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—
 - 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.

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3. Where an application is made to a public authority requesting for an information,—
- A. which is held by another public authority; or
 - B. 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 practicable but in no case later than five days from the date of receipt of the application.

(ii) As per section 591, of Companies Act, 1956, a foreign Company would mean:

- companies incorporated outside India which, after the commencement of this Act, establish a place of business within India; and
- companies incorporated outside India which have, before the commencement of this Act, established a place of business within India and continue to have an established place of business within India at the commencement of this Act.

Hence, operating bank account in India does not constitute carrying on business. Carrying on small transactions, conducting meetings of shareholders and directors, operating bank accounts, transfer of shares and securities, procuring orders does not constitute carrying on business. Hence the statement is false.

(iii) As provided in Section 581A of Companies Act, 1956, 'Producer Company' means a body corporate having objects or activities specified 581B and registered as Producer Company, under the Act.

Question 3(b):

(i) Write a note on, "Appointment of directors and proportion of those who are to retire by rotation"

(ii) Describe the provisions for disclosure of interest by directors under section 299, of Companies Act, 1956.

[4+4 = 8]

Answer:

Section 255 of Companies Act, 1956, deals with "Appointment of directors and proportion of those who are to retire by rotation". It states that,

1. Unless the articles provide for the retirement of all directors at every annual general meeting, not less than two-thirds of the total number of directors of a public company, or of a private company which is a subsidiary of a public company, shall
 - be persons whose period of office is liable to determination by retirement of directors by rotation; and
 - save as otherwise expressly provided in this Act, be appointed by the company in general meeting.

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2. The remaining directors in the case of any such company, and the directors generally in the case of a private company which is not a subsidiary of a public company, shall, in default of and subject to any regulations in the articles of the company, also be appointed by the company in general meeting.

(i) According to section 299 of the Companies Act, 1956, every director of a company, who is directly or indirectly concerned or interested in a contract or a proposed contract or arrangement, entered into or to be entered into, by or on behalf of the company, shall disclose the nature of his concern or interest at a meeting of the Board of directors.

In the case of a proposed contract or arrangement, the disclosure required to be made by a director under sub-section (1) shall be made at the meeting of the Board at which the question of entering into the contract or arrangement is first taken into consideration.

In the case of any other contract or arrangement, the required disclosure shall be made at the first meeting of the Board held after the director becomes concerned or interested in the contract or arrangement. For the purpose the director concerned shall give a notice to the Board to this effect. This is deemed to be sufficient disclosure of interest.

Every director who fails to comply with the rules shall be punishable with fine which may extend to fifty thousand rupees.

Question 3(c):

(i) "The development of corporate governance in the UK was initially the findings of a trilogy of codes"- Explain the same.

(ii) A company was formed and it commenced business, but directors were not appointed. Can the company function?

[6+2 = 8]

Answer:

(i) As in other countries, the development of corporate governance in the UK was initially the findings of a trilogy of codes: the Cadbury Report (1992), the Greenbury Report (1995), and the Hampel Report (1998).

Cadbury Report (1992):

Following various financial scandals and collapses (Coloroll and Polly Peck, to name but two) and a perceived general lack of confidence in the financial reporting of many UK companies, the Financial Reporting Council, the London Stock Exchange, and the accountancy profession established the Committee on the Financial Aspects of Corporate Governance in May 1991. After the Committee was set up, the scandals at BCCI and Maxwell happened, and as a result, the committee interpreted its remit more widely and looked beyond the financial aspects to Corporate Governance as a whole. The Committee was chaired by Sir Adrian Cadbury and, when the Committee reported in December 1992, the report became widely known as "the Cadbury Report".

The recommendations covered: the operation of the main board; the establishment, composition, and operation of key board committees; the importance of, and contribution that can be made by, non-executive directors; the reporting and control mechanisms of a business.

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The Cadbury Report recommended a code of Best Practice with which the boards of all listed companies registered in the UK should comply, and utilized a “comply or explain” mechanism. This mechanism means that a company should comply with the code but, if it cannot comply with any particular aspect of it, then it should explain why it is unable to do so.

Greenbury Report (1995):

The Greenbury committee was set up in response to concern at both the size of director's remuneration packages and their inconsistent and incomplete disclosure in company's annual reports. It made, in 1995, comprehensive recommendations regarding disclosure of director's remuneration packages. There has been much discussion about how much disclosure there should be of director's remuneration and how useful detailed disclosures might be. Whilst the work of the Greenbury Committee focused on the directors of public limited companies, it hoped that both smaller listed companies and unlisted companies would find its recommendations useful.

Central to the Greenbury report recommendations were strengthening accountability and enhancing the performance of directors. These two aims were to be achieved by (i) the presence of a remuneration committee comprised of independent non-executive directors who would report fully to the shareholders each year about the company's executive remuneration policy, including full disclosure of the elements in the remuneration of individual directors; and (ii) the adoption of performance measures linking rewards to the performance of both the company and individual directors, so that the interests of directors and shareholders were more closely aligned. Since that time (1995), disclosure of directors' remuneration has become quite prolific in UK company accounts.

Hampel Report (1998)

The Hampel Committee was set up in 1995 to review the implementation of the Cadbury and Greenbury Committee recommendations. The Hampel Committee reported in 1998. The Hampel Report said:

“We endorse the overwhelming majority of the findings of the two earlier committees”. There has been much discussion about the extent to which a company should consider the interests of various stakeholders, such as employees, customers, suppliers, providers of credit, the local community, etc., as well as the interests of its shareholders. The Hampel report stated that the directors as a board are responsible for relations with stakeholders; but they are accountable to the shareholders'. However, the report does also state that directors can meet their legal duties to shareholders, and can pursue the objective of long-term shareholder value successfully, only by developing and sustaining these stakeholder relationships.

The Hampel Report, like its precursors, also emphasized the important role that institutional investors have to play in the companies in which they invest (investee companies).

(iii) Subject to regulations of the Articles of Association and until directors are appointed under section 255, of Companies Act, 1956, the individuals who are subscribers of Memorandum of Association are deemed to be directors as per section 254 of the said Act.

Question 4: Answer any 2 questions

[2 × 8 = 16]

Question 4(a)

(i) What is ethics and what are the benefits of Business Ethics?

[1+7 = 8]

Answer:

(i) Ethics is a set of principles or standards of human conduct that govern the behavior of individuals or organizations. Using these ethical standards, a person or a group of persons or an organization regulate their behavior to distinguish between what is right and what is wrong as perceived by others.

Benefits of Business Ethics are detailed as under:

1. Improved society:

One of the greatest benefits of business ethics is the improved society. Awareness about business ethics resulted in better working conditions to employees, better prices of products,

2. Easier change management:

Attention to business ethics helps the organizations to manage times of change in a better way. During times of change, there is often uncertainty and sound business ethics helps them to take correct decisions. It ensures clarity in thought and the employees follow ethical guidelines in times of change, leading to consistent action and behavior. Thus, ethical programs help in easier change management.

3. Strong teamwork and greater productivity:

Continuous attention to ethical programs in the workplace builds openness, integrity, teamwork and unity among members. Employees get strongly aligned to organization's ethical values resulting in strong motivation and better performance. They understand and help each other which benefit the organization in the long run.

4. Enhanced employee growth:

Attention to ethical programs help the employees face the most difficult scenarios in the right spirit and gain confidence from dealing with complex work situations.

5. Ensure personnel policies are legal:

Ethical programs ensure highly ethical policies and procedures in the workplace. They are helpful in managing diversity. Each organization is desirous of having well drafted personnel policies which are legal and ethical in all respects. Organizations have understood the need and importance of a good ethical structure and are willing to spend.

6. Avoids criminal acts "of omission" and lowers fines:

Ethical programs help detect ethical issues and violations earlier in such a way that they can be addressed. This helps the organization to avoid possible future legal action.

7. Manages values associated with quality management, strategic management and diversity management:

Ethical programs help us to identify values and align the organizational policies accordingly. These programs train the personnel about the preferred policies and procedures which helps them to align with the values.

8. Promotes a strong public image:

Answer to MTP_Intermediate_Syllabus 2012_Dec 2014_Set 1

Organizations considering ethics gain respect and good image among public. People see such organizations as prestigious and this automatically contributes to the long term growth of the business.

Question 4(b)

(i) 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.

(ii) How to create an Ethical Accounting Environment?

[6+2 = 8]

Answer:

(i) 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

Answer to MTP_Intermediate_Syllabus 2012_Dec 2014_Set 1

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

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

(ii) To create an ethical environment the following are to be considered:

1. Employee Awareness:

It should be noted and ensured that employees are aware of their legal and ethical responsibilities. Organization should train and motivate employees toward ethical behavior. Top management should initiate steps in developing such an ethical environment

2. Encouraging communication:

Ethical organization need to provide channels through which employees could communicate with concerned Managers, for reporting frauds, mismanagement or any other form of detrimental behavior.

3. Ensuring fair treatment to Whistle Blowers:

A person or an employee who reports fraud, mismanagement or any other detrimental practices to the concerned Managers is called Whistle Blower. Organization should ensure protection and fair treatment to Whistle Blowers to reduce fraud

Question 4(c)

(i) Discuss the standards of ethical conduct for practitioners of management accounting and financial management. [8]

Answer:

(i) Management Accountants have an obligation to provide services at the highest level of ethics possible. Ethics is an integral part of management accounting, and companies need to develop a code of ethics or conduct, to set the expected ethical behavior for an accountant.

Answer to MTP_Intermediate_Syllabus 2012_Dec 2014_Set 1

In recognition of this obligation, the Institute of Management Accountants has promulgated the following standards of ethical conduct for practitioners of management accounting and financial management. Adherence to these standards internationally is integral to achieving objective of management accounting.

1. Competence:

Practitioners of management accounting and financial management have a responsibility to:

- Maintain an appropriate level of professional competence by ongoing development of their knowledge and skills.
- Perform their professional duties in accordance with relevant laws, regulations and technical standards.
- Prepare complete and clear reports and recommendations after appropriate analysis of relevant and reliable information

2. Confidentiality:

Practitioners of management accounting and financial management have a responsibility to:

- Refrain from disclosing confidential information acquired in the course of their work except when authorized, unless legally obligated to do so.
- Inform subordinates as appropriate regarding the confidentiality of information acquired in the course of their work and monitor their activities to assure the maintenance of that confidentiality.
- Refrain from using or appearing to use confidential information acquired in the course of their work for unethical or illegal advantage either personally or through third parties.

3. Integrity:

Practitioners of management accounting and financial management have a responsibility to:

- Avoid actual or apparent conflicts of interest and advise all appropriate parties of any potential conflict.
- Refrain from engaging in any activity that would prejudice their ability to carry out their duties ethically.
- Refuse any gift, favor, or hospitality that would influence or would appear to influence their actions.
- Refrain from either actively or passively subverting the attainment of the organization's legitimate and ethical objectives.
- Recognize and communicate professional limitations or other constraints that would preclude responsible judgment or successful performance of an activity.
- Communicate unfavorable as well as favorable information and professional judgment or opinion.
- Refrain from engaging or supporting any activity that would discredit the profession.

4. Objectivity:

Practitioners of management accounting and financial management have a responsibility to:

- Communicate information fairly and objectively.
- Disclose fully all relevant information that could reasonably be expected to influence an intended user's understanding of the reports, comments, and recommendations presented.