

Paper 6- Laws, Ethics and Governance

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

The following table lists the learning objectives and the verbs that appear in the syllabus learning aims and examination questions:

	Learning objectives	Verbs used	Definition
LEVEL B	KNOWLEDGE What you are expected to know	List	Make a list of
		State	Express, fully or clearly, the details/facts
		Define	Give the exact meaning of
	COMPREHENSION What you are expected to understand	Describe	Communicate the key features of
		Distinguish	Highlight the differences between
		Explain	Make clear or intelligible/ state the meaning or purpose of
		Identify	Recognize, establish or select after consideration
		Illustrate	Use an example to describe or explain something
	APPLICATION How you are expected to apply your knowledge	Apply	Put to practical use
		Calculate	Ascertain or reckon mathematically
		Demonstrate	Prove with certainty or exhibit by practical means
		Prepare	Make or get ready for use
		Reconcile	Make or prove consistent/ compatible
		Solve	Find an answer to
		Tabulate	Arrange in a table
	ANALYSIS How you are expected to analyse the detail of what you have learned	Analyse	Examine in detail the structure of
		Categorise	Place into a defined class or division
		Compare and contrast	Show the similarities and/or differences between
Construct		Build up or compile	
Prioritise		Place in order of priority or sequence for action	
Produce		Create or bring into existence	

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) Mr. A offers to buy Mr. B's house on certain terms. Acceptance was to be sent by B within 6 (six) weeks. B within one week sent a letter accepting the offer with an alteration of one term. A then withdrew his offer. B writes again within three weeks accepting the terms originally proposed by A. Is this is a valid contract.
- (ii) On expiry of stipulated period, the pledgee can sell the pledged goods to any person. Comment.
- (iii) Parties to a contract of sale can get the price of goods fixed by third parties. Comment.
- (iv) Mr. S.K. Paul employed in seasonal establishment and was not employed throughout the year claimed gratuity at the rate of 15 days wages for each year of service. But Employer refused to pay any Gratuity to employees of seasonal establishment. Comment.
- (v) An individual dispute will be deemed to be industrial dispute (Industrial Disputes Act. 1947). Comment.
- (vi) A surety is discharged from his liability where there is failure of Consideration between the Creditor and the Principal Debtor in a Contract of Guarantee. Comment.
- (vii) 'A shelf prospectus is a prospectus issued by a financial institution or a bank'. Comment.
- (viii) 'A private company and a public company may have the same minimum paid up capital'. Comment.
- (ix) 'Social cost and benefit is a proposition for social responsibility'. Comment.
- (x) Is it a social responsibility of businesses to maintain good relationships with employees?

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Answer:

- (i)** Acceptance must be absolute and unqualified. A counter proposal or offer, offering different terms amounts to counter proposal. Further if B subsequently changes his mind and wants to accept the terms originally offered by A, no contract would come into existence, since the original offer of A will be deemed to have lapsed. Further there is no binding on the part of A to keep his offer open for six weeks that itself would require a contract for which there will have to be separate consideration moving from B to A.
- (ii)** Pawnee/Pledgee cannot sell. Pawnee/Pledgee is to give notice to pawner indicating his intention to sell. Notice of sale is essential even where the agreement specially excludes it (Sec. 176). Hence, this is void and unenforceable.
- (iii)** True. Sec.9 provides that the price may be left to be fixed in manner agreed between the parties. Thus the parties to a contract may agree that price of goods will be fixed by a third party.
- (iv)** Employer shall pay gratuity at the rate of seven days wages for each season to employees who are employed in a seasonal establishment and who are not so employed throughout the year. Wages will include Basic and D.A. Hence Mr. Paul is entitled to Gratuity.
- (v)** Where any employer discharges dismisses or retrenches or otherwise terminates the services of an individual workman, any disputes or difference between that workman and his employer connected with or arising out of such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial disputes notwithstanding that no other workman nor any union of workmen is a party to the dispute (Sec 2A of the Industrial Disputes Act, 1947).
- (vi)** As per Provisions of The Contract Act, presence of Consideration is an essential element for a valid contract. Therefore where there is a failure of Consideration in a Contract of Guarantee as between the Creditor and Principal Debtor, the surety is discharged.
- (vii)** As per section 31 of the Companies Act, 2013, 'shelf prospectus' means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.
- (viii)** As per section 2(68) of Companies Act, 2013, a private company must have a minimum paid up capital of ₹1,00,000 or such higher paid up capital as may be prescribed. As per

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section 2(71) of the Companies Act, 2013, a public company must have a minimum paid up capital of ₹5,00,000 or such higher paid up capital as may be prescribed.

- (ix) In the past business was required to consider only two factors in deciding to proceed with an activity; technical and economic feasibility. The activity was considered if these were favorable. Now, there is a third factor to consider namely, the social effect of an activity. The expectation for social responsibility is that a detailed cost-benefit analysis will be made prior to determining whether to proceed with an activity. The social cost is given significant weight in the decision making process. The deciding factor would be whether the benefit out-weighs the cost so that there is net benefit.
- (x) Employee's relation is an issue of importance among business responsibilities. Without employees a business cannot achieve its goals. Employees expect business to make their role participatory. They expect good and congenial working conditions, good pay and standard of living commensurate with their states in life. Equity and fairness towards all employees is a major responsibility of business.

Question 2: Answer any 4 questions

[4 × 12 = 48]

Question 2(a)

- (i) Referring to a quarrel and disagreement between husband and wife, the husband agreed to execute and register a document in favour of his wife to transfer one of his properties to his wife. Later on husband refused. Whether wife can enforce?
- (ii) X agrees to pay Y a sum of money if Y marries Z. Z however marries F, who died subsequently. After the death of F, Z marries Y. Whether X is legally bound to pay the agreed sum of money to Y? Comment.
- (iii) Mr. Mitra guarantees payment to Mr. Basu to the extent of INR 50,000 for time to time supply of paper by Mr. Basu to Mr.Chandan. Basu supplies paper to Chandan more than the value of INR 50,000 and Mr. Chandan pays. Later on Mr. Basu, at the request of Chandan, supplies paper valued INR 60,000. This time Chandan fails to pay. What action Basu can take against Mitra?
- (iv) A contracts to sell B, by showing sample, certain quantity of sunflower oil described as 'foreign refined sunflower oil'. The oil when delivered matches with the sample, but is not foreign refined sunflower oil. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to B.

[3+4+2+3 = 12]

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Answer:

- (i) Wife cannot succeed. Sec. 25 (1) of Indian contract Act provides that a contract without consideration shall be valid if made out of natural love and affection between parties standing in a near relation to each other through a written and registered document. Mere nearness of relation or relationship does not impart natural love and affection. In this case since the promise to transfer property is made after reference to quarrels & disagreement, the contract shall not be enforceable as natural love and affection was absent.
- (ii) If a contract is contingent upon how a person will act at an unspecified time, the event shall be considered to become impossible when such person does anything which renders it impossible that he should so act within any definite time, or otherwise than under further contingencies (Sec. 34). In the instant case, future event on which the contract is contingent in the future conduct of a living person. Therefore the marriage of Y with Z must be considered impossible at the time Z marries F. Although it is possible that F dies and Z afterwards marries Y. Therefore at that point of time of Z's marriage with F, the contract becomes void on the ground of impossibility of the future event taking place. In view of this X is not legally bound to pay the agreed sum to Y.
- (iii) In this case, guarantee given by Mr. Mitra is a continuing guarantee (Sec.129) and accordingly Mr. Mitra being guarantor of INR 50000, he is liable to Mr. Basu to the extent of INR 50000 only. Mr. Basu can recover the balance amount from Chandan.
- (iv) B has a remedy to repudiate the contract. According to section 15 of the Sale of Goods Act, 1930, when the goods are sold by sample as well as by description, there shall be an implied condition that the goods shall correspond to the sample as well as description. In this case, A supplied refined sunflower oil which did correspond with the sample but was not correspond to the description of foreign refined sunflower oil. Hence the B has the right to repudiate the contract.

Question 2(b)

- (i) **What would constitute as 'Delivery' in relation to Sale of Goods Act,1930.**
- (ii) **Mohan introduced Kabir to Seikh as a partner in his firm named Mohan and Friends. But, in fact, Kabir is not a partner in the firm named. However, despite not being a partner in the firm, Kabir not contradicted the aforementioned statement of Mohan, and had preferred to keep quiet, instead. After a couple of days, Seikh had given a loan of ₹ 1,25,000 to the firm. But, as the firm was not paying back the loan amount, Seikh had approached Kabir for repayment of the loan. At this point of time, Kabir refused to repay**

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the loan on the ground that he was never a partner in the firm, and therefore, he cannot be held responsible for the repayment of the loan given not to him but to the firm of Mohan. Do you think that the contention of Kabir in the instant case is legally justified? Give reasons for your answer.

- (iii) The seller had sold to the buyer 1,200 tonnes of stainless steel sheets of a specific quality, which was required under the contract for sale of goods, to be shipped at 100 tonnes per month and in equal installments each month. But after 400 tonnes of the total quantity of 1,200 tonnes delivered to and also paid for by the buyer, it was found that the goods which were supplied were not of the agreed quality, and accordingly, he had refused to take any further delivery of the goods. Do you think that the buyer was rightfully entitled to refuse to take any further delivery of the goods? Give reasons for your answer.

[4+4+4 = 12]

Answer:

- (i) 'Delivery' is defined under the act as 'a voluntary transfer of possession from one person to another.' (Sec.(2)) As per Section 33, delivery of goods sold may be effected by doing anything which parties agree to be treated as delivery. Thus delivery of goods may be:
- i) Actual or physical delivery- Physical possession of goods is handed over to buyer from seller.
 - ii) Symbolic delivery- In this case delivery involves transfer of some symbol that signifies real possession or control of goods. For example, endorsement of Railway Receipt, delivery of godown key etc.
 - iii) 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:
 - A) When buyer holding the goods as bailor holds them as his own.
 - B) When seller holding the goods, holds them as bailee of the buyer.
 - C) When third person holding the goods on behalf seller, now agrees to hold them on behalf of buyer.
- (ii) No, the contention of Kabir in the instant case is not legally justified. This is so because, Kabir, in the instant case, will be considered as partner of the firm by virtue of being a 'partner by holding out', also referred to as a 'partner by estoppel', as per the provisions of Section 28, based on the following circumstances of the case :
- (a) That, Kabir had knowingly permitted himself to be represented, to be a partner of the firm;
 - (b) That, such representation was made by him by his conduct; and
 - (c) That, the other party had given the credit to the firm, based on the faith of such representation.

Accordingly, Kabir cannot be allowed to plead that, in fact, he was not a partner in the

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firm. Instead, he will have to compensate Seikh by virtue of his being a 'partner by holding out', also referred to as a 'partner by estoppel'.

- (iii) Yes, the buyer was rightfully entitled to refuse to take any further delivery of the goods, because he was not bound to take the risk of accepting any further delivery of the goods which did not conform to the quality that was contracted for. This is so because though, under the provisions of the Sale of Goods Act, usually, the failure on the part of the seller to deliver any one of the installments to the buyer, or the failure on the part of the buyer to pay for any of the instalments to the seller, does not amount to the repudiation of the contract as a whole, in the cases where the breach is of such a nature that it could be reasonably inferred that a similar breach is most likely to be committed by the defaulting party even in the cases of future transactions, the other party will be entitled to treat the whole contract as repudiated. This contention is also confirmed in a similar case titled Robert A. Munso & Co. vs Meyer [(1930) 2 K.B. 312].

Question 2(c)

- (i) **Who is a 'occupier' under Factories Act, 1948?**
- (ii) **Arvind is the owner of a concern manufacturing cigars. 20 persons are employed in the concern. Of these 20 employees, one is a graduate for supervising the work and another apprentice learning work. The remaining 18 are employed not on the time wage system, but on the piece work system. Is the concern 'A Factory' within the meaning of that term under the Factories Act, 1948 ?**
- (iii) **ABC Ltd bought ghee from various sources. Ghee so bought were sampled chemically, analysed and packed in tins for transportation to various stock points to be sold in market. Does this amount to manufacturing process under the Factories Act, 1948?**
- (iv) **Distinguish between an 'agent' and a 'servant'.**

[3+3+3+3 = 12]

Answer:

- (i) 'Occupier' of Factory implies the person who has ultimate control over the affairs of the factory. Provided that:
- i. In case of a firm or AOP any partner or member shall deemed to be occupier.
 - ii. In case of a company, the directors are occupiers.

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- iii. In case of a factory owned by Central or State Government or Local Authority, the persons employed to manage the affairs of the factory will be deemed to be the occupiers.

In short, an occupier may be owner, lessee or licensee but he should have the right to occupy the property and dictate terms of management. An employee charged with specific machinery, workers or office is not an occupier.

- (ii) As per Section 2 (m) factory means any premises including the precincts thereof -
 - i. Whereon 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
 - ii. Whereon 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

For computing the number of workers, all the workers in different groups in a day shall be taken into account.

So, in the given case, as per section 2(m) the concern is a factory within the meaning of that term under the Factories Act, 1948.

- (iii) As per section 2(k) of The Factories Act, 1948, manufacturing process means any process for-
 - (i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
 - (ii) Pumping oil, water, sewage or any other substance; or;
 - (iii) Generating, transforming or transmitting power; or
 - (iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
 - (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.)
 - (vi) Preserving or storing any article in cold storage;

The process of sampling, analyzing and packing of ghee for sale in market is a manufacturing process as per the definition under the Factories Act, 1948. [Shri Laxmi Das Premji Ghee Merchant v. R. Inspector of Factories(1960) 1 LLJ]

- (iv) There is too much of similarity between an agent and a servant as both are employed to act for and on behalf of principal. However, there is a lot of difference between the two. An agent has the authority to create contractual relationship between the principal and a third party, but a servant ordinarily has no such authority. A servant usually serves only one master but an agent may work for several principals at the same time. A servant is generally paid salary or wages, whereas an agent may be

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paid on commission basis. Thus, we find that an agent is not a servant though a servant may be authorized to serve as an agent.

Question 2(d)

(i) J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it returned the bill to J. J tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?

(ii) How is the amount of Gratuity determined in case of the following employees:

- a) A monthly rated employee
- b) A piece rated employee
- c) An employee of a seasonal establishment

(iii) Define the term 'Cost of living index number' in relation to Minimum Wages Act, 1948.

[4+6+2 = 12]

Answer:

(i) L is a holder in due course, since he acquired the bill in good faith and for value; and since he became the possessor of the bill payable to bearer (assumed that the bill was payable to bearer) (Sec. 9)

J cannot deny the validity of the bill, since no drawer or acceptor of a bill shall, in a suit by a holder in due course, be permitted to deny the validity of the bill as originally drawn, and thus, L who is the holder in due course, acquires a good title to the bill (Sec. 120).

L is entitled to recover the payment of the bill from J and all prior parties, since a holder in due course has the right to sue all the prior parties (Sec. 36)

(b) Calculation of amount of gratuity:

(i) In case of monthly rated employee:

- The gratuity shall be payable @ 15 days wages for every completed year of service or part thereof in excess of 6 months.
- 'Wages' means last drawn wages.
- 'Month' means a period of 26 days.
- Thus, gratuity shall be computed as follows:

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- Last drawn wages x 15/26 x Completed years of service (including a part of year in excess of 6 months).

(ii) In case of piece rated employee:

- Gratuity shall be computed as follows:
- Last drawn wages x 15/26 x Completed years of service (including a part of year in excess of 6 months).
- Last drawn wages shall be computed by taking average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. While computing daily wages, the total wages of last 3 months is to be divided by number of days the employee actually worked, and not by the number of days or the number of working days in the said period of 3 months.
- For the purpose of computation of last drawn wages, wages paid for overtime work shall not be included in 'wages'.

(iii) In the case of an employee of a seasonal establishment:

- Such an employee shall be paid gratuity at the rate of 7 days' wages for each season.

(iii) According to Sec 2(d) of the Minimum Wages Act, 1948, 'Cost of living index number' in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment.

Question 2(e)

(i) Examine with reasons, the validity of the following nominations made under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952:

(a) J nominated N (his son) as a nominee.

(b) M nominated S (his wife) and K (a friend) as nominees.

(c) R who does not have a family nominated A (a close relative) as a nominee.

(d) G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

(ii) State the "power to remove difficulties" as per Child Labour (Prohibition and regulation) Act, 1986.

(iii) State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

(iv) "Money laundering and siphoning of funds are same". Comment.

[4+3+3+2 = 12]

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Answer:

(i)

(a) Nomination by J in favour of N is valid, since N is a member of the family of J (since son is covered under the definition of 'family').

(b) Nomination by M in favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family'); But in favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

(c) Nomination by R in favour of A is valid although A is not covered under the definition of family; but if the employee does not have a family, then, nomination may be made in favour of any person.

(d) Nomination by G in favour of N is valid but it becomes void immediately on marriage since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.

(ii) As per section 9 of Child Labour (Prohibition and regulation) Act, 1986, if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty : Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President. Every order made under this section shall, as soon as may be after it is made, be laid before the Houses of Parliament.

(iii) As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.
2. Where after a partners death the business is continued in the old firm name, the continued use of that name or of the deceased partners name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

(iv) The statement is false. Mere earning of money or income or deriving any property by

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committing a crime does not amount to money laundering, though it may amount to siphoning of funds. Deriving or obtaining any property by committing a crime which amounts to a schedule offence, and then projecting such property as untainted property amounts to money laundering.

Question 3: Answer any 2 questions

[2 × 8 = 16]

Question 3(a)

- (i) Explain the need for Accounting Standard in improving Corporate Governance, in present India.
- (ii) "A company does not have unlimited powers to alter its articles of association."
Comment.

[5+3 = 8]

Answer:

- (i) Accounting Standards is another area which needs to be attended to for bringing about further improvements in Corporate Governance in India. There are some gaps in Accounting Standards, which need to be closed or narrowed down for better transparency. One of the first and foremost demands of good corporate governance is to let investors know how their money has been used to further the interests of the company they have invested in.

The question that assumes importance here is how effectively the resources of the company are utilized for strengthening the organization. The only available source of information regarding the affairs of a company appears to be its Balance Sheet. Yet, for obvious reasons, the Balance Sheet remains the most abused statement of several companies.

The common methods by which companies hide their wrongful practices, which are all too well known, are to use legal and accounting jargon, non-disclosure, and selective adoption of only those policies that are mandatory in nature. Only a handful of qualified persons, primarily the accountants and other knowledgeable people, can get to the picture behind the scenes and unmask the actual from the portrayed picture. It is in this context that the adoption of United States Generally Accepted Accounting Principles (US-GAAP), which provides for rigorous accounting standards and disclosures, assumes relevance.

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There are many areas such as consolidation of accounts, treatment of fixed assets, depreciation, and R&D costs where Indian Accounting Standards (IAS) are at variance with US-GAAP. However, it is heartening to note that things appear to be changing for the better on the Indian turf; thanks to the impetus towards a more transparent accounting system shown by market leaders. Recently, the Institute of Chartered Accountants of India (ICAI) issued the Accounting Standard 21 (AS-21) for consolidation of accounts whereby accounts of companies will be presented along with those of their subsidiaries. This would meet the long pending demand of investors on greater transparency and disclosure.

- (ii) According to Section 2(5) of the Companies Act, 2013, article means the article of association of a company as originally framed or as altered from time to time in pursuance of a previous company's law or of this act. It also includes the regulations contained in Tables in Schedule I of the Act.

The Articles or its alteration should not be inconsistent with the Companies Memorandum or any other statute. It should not be illegal or should not oppose to any public policy or order of the court. The alteration of Article should be for the benefit of the company and should not be detrimental to the minority interest. The alteration should not be done so as to do away from any contractual lie or to have any retrospective effect.

Question 3(b)

- (i) **Mr. Rahul, vice-president of Flower Ltd., was appointed as an additional director in January, 2014. On the office of managing director falling vacant he was appointed as managing director on existing remuneration. Whether Mr. Rahul will cease to be managing director in the next annual general meeting?**

- (ii) **What do you understand by 'Nidhi'.**

[6+2 = 8]

Answer:

- (i) An additional director holds office upto the date of next annual general meeting [Section 161(1) of the Companies Act, 2013]. However, he is not a 'retiring director' as per Explanation to Section 152(7). As per Explanation to section 152(7), 'retiring director' means a director retiring by rotation. Therefore, an additional director may be appointed as a regular director in the annual general meeting only if the conditions prescribed under section 160 are complied with.

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The opening words of Section 2(54) of Companies Act, 2013 defines a 'managing director' as 'Managing Director means a director who...'. Thus, the definition suggests that a managing director has to be a director first. If a managing director ceases to be a director, he will automatically cease to be a managing director.

In the given case, Samrat will hold office upto the date of next annual general meeting. Since, he will cease to be a director, he will also vacate the office of managing director. Further, even if the annual general meeting is not held, he will cease to be an additional director on the last day, on which the annual general meeting ought to have been held [Section 161(1) of the Companies Act, 2013]

However, if a notice is given of the candidature of Mr. Rahul under section 160 and at the annual general meeting he is appointed as a director, he shall continue as a managing director.

- (ii) 'Nidhi' means a company which has been incorporated as a Nidhi with the object of cultivation the habit of thrift and savings amongst its members, receiving deposits from, and lending to, its members only, for their mutual benefit, and which complies with such rules as are prescribed by the Central Government for regulation of such class of companies.

Question 3(c)

(i) **How would a company alter the object clause of its memorandum?**

(ii) **Under Right to information Act if life or liberty of any person is involved, the PIO is expected to reply within one month. Comment.**

[5+3 =8]

Answer:

(i) The points to be kept in mind for alteration of memorandum are as follows:

(a) A company may alter its objects clause by passing a special resolution.

(b) If a company has raised money from the public by issue of a prospectus, and any part of such money remains unutilized with the company, then, the company shall not alter its objects for which it raised the money through prospectus unless-

- The company has published the prescribed details and justification for such alteration in two newspapers (one English newspaper and one newspaper in vernacular language) circulating at the place where the registered office of the company is situated.

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- The prescribed details and justification for such change have been placed on the website of the company, if any; and
- The dissenting shareholders have been given an exit opportunity by the promoters and shareholders having control in accordance with the regulations to be specified by SEBI.

(c) The company shall file with the registrar a copy of the special resolution

(d) The registrar shall, within 30 days, register the alteration, and issue a certificate of registration.

(e) The alteration shall not be effective until it has been duly registered by the Registrar.

(ii) As per section 3 of the Right to Information Act, 2005 provides that all citizens shall have the Right to information subject to the provisions of the Act. The Act stipulates time limits for replying to the request. If the request has been made to the Public Information Officer designated under the statute, the reply is to be given within 30 days of receipt. However, if life or liberty of any person is involved, the Public Information Officer is expected to reply within 48 hours.

Question 4: Answer any 2 questions

[2 × 8 = 16]

Question 4(a)

(i) 'Good business ethics promotes good business'. Analyze.

(ii) State the standards for ethical Marketing guide.

[6+2 = 8]

Answer:

(i) There is a growing realization all over the world that ethics is vitally important for any business and for the progress of any society. Ethics makes for an efficient economy; ethics alone, not government or laws, can protect society; ethics is good in itself; ethics and profits go together in long run. An ethically responsible company is one which has developed a culture of caring for people and for the environment; a culture which flows downwards from top managers and leaders.

Thus, business ethics is vital and plays a key role in success of any business. Prof. Robert Day has said that when ethical conduct is displayed, it puts some kind of trust and confidence in relationship. Adopting ethical behavior in an organization not only increases its goodwill but also leads to positive consequences in the long run. Business ethics protects the interest of all stakeholders. Businessman who follows business ethics gets self satisfaction and motivates others also to follow the same principle. So in the era of global economy, for a successful business he has to follow sound ethical practices.

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

Ethics are important not only in business but in all aspects of life because it is an essential part of the foundation on which civilized society is built. A business or society that lacks ethical principles is bound to fail sooner or later. An organization that has strong ethical program in place will certainly help in reducing the burden on the employees while deciding on such alternatives. Ethics help employees in developing a rationale behind the actions that they undertake in the efficient performance of their duties. It will certainly help in reducing unnecessary tensions and unavoidable thoughts that an individual gets surrounded with when he is faced with such kind of problems. This helps him in concentrating more on his work and less on the indecisive thought that come to his mind.

(ii) Ethical standard for four functions:

- To help identify acceptable practices
- Foster internal control
- Avoid confusion
- Facilitate a basis for discussion.

Question 4(b)

(i) Discuss the relation between Ethics and Social Responsibility.

[8]

Answer:

(i) Social responsibility is not an entirely new area. A business enterprise is a citizen of the country. As such, it has rights and obligations just as any other citizen. Business and society co-exists and the responsibility of the business is to understand the needs and requirements of the society.

Business has two aspects – individual and social. It should conform to the various social needs. Conceptually, social responsibility implies a genuine concern for the community that restrains business or organizational behavior from causing destructive and harmful activities. Social responsibility is interpreted as attitude, cost and goal as policies.

According to Keith Davis, social responsibility refers to the decisions and actions taken by the business for reasons at least partially beyond the firm's direct economic or technical interests. It is the obligation of the business to nurture and develop human values as morale, cooperation, motivation and self realization among its work-force. Social responsibility is the obligation a business assumes through its positive impact and reduces negative impact on society. It is necessary to ensure economic survival. If business calls for educated and healthy employees, customers, suppliers and services, it must take steps to help solve the social and environmental problems that exist today.

Answer to MTP_Intermediate_Syllabus 2012_Dec 2015_Set 2

Man's relationship with himself is heavily influenced by his relationships with core social institutions within which he lives. Social institutions help generate values, ethics in each individual. The core institutions are the family, the community of belonging, and education. Any changes necessitate new approaches and development in both economic and social scenario that result in the business and the organizations adapting to these changes. The industrial revolution has brought forth mass production and modernization resulting in the increase of business activities. This in turn has led to the emergence of new types of business organizations – corporate type or company form of organizations. It is today accepted throughout the world as an appropriate type of business organization to cope up with the large volume of business.

Overriding all business society relationship is the fact that business operates in an environment of social values which both society and business possess. Social responsibility of business refers to its role in resolving current social problems and issues over and above legal requirements. The economy as a whole has been through five revolutions in the twentieth century, which have transformed its basic structure and method of functioning.

The changes that are taking place in the internal and external environments in which the business operates give rise to re-identification of the corporate mission statement as, 'Be informed. Be involved. Make a difference.' This new ethical standard and social attitude are blooming everywhere.

Question 4(c)

- (i) Discuss the Profit motive approach of deriving standard of Business ethics.**
- (ii) State the social responsibility issues relating to relations with owners and investors.**

[6+2 = 8]

Answer:

- (i)** Some business people argue that there is a symbiotic relation between ethics and business for profit oriented business feels adopting good ethical policies will neutrally lead to good business. In other words, good ethics results in good business. Moral business practices are profitable. This has also disadvantages. First, many moral business practices will have an economic advantage only in the long run. In other words, this may not suit the short-term businesses and may provide little incentive for businesses that are designed exclusively to seek short-term profits. When competition grows, survival would be a serious problem. Second, some moral business practices may not be economically viable even in long run. For example, this might be the case with retaining older workers who are inefficient, as opposed to replacing them with younger and more efficient workers. Third, moral business practices which are good for business depends upon what

produces profit. In different segments, the same practices may not be economically viable. Thus, any overlap that exists between morality and profit is both limited and incidental.

The other version of this profit approach takes a reverse strategy. In a competitive and free market, the profit motive will in fact bring about a morally proper environment. That is, if customers demand safe products, or workers demand privacy, they will buy from or work for only those businesses that meet their demands. This view maintains that since the drive for profit will create morality, good business results in good ethics. Proponents of this view, such as Milton Friedman, argue that this would happen if the government would allow a truly competitive and free market. But this view also has problems since it assumes that consumers or workers will demand the morally proper thing. In fact, consumers may opt for products whose price is less than the safe products. In short, not every moral business practice will simply emerge from the profit principle as suggested.

- (ii)** Businesses must first be responsible to their owners who are primarily concerned with earning profit or a return on their investment. In small business, this responsibility is fairly easy to fulfill because the owners personally manages the business or knows the managers well. In large businesses, particularly cooperations owned by thousand of stock holders, assuring responsibility to owners becomes a difficult task. Attention towards the needs of the society should never be a conflict with the responsibility of the business to its owners and investors.