

Paper 6- Laws, Ethics and Governance

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Full Marks:100

Time allowed: 3 hours

Section A

1. Answer all questions

(a) Multiple Choice Questions:

20 x 1 = 20

- (i) An agreement which is enforceable at the option of one or more parties thereto but not at the option of other or others is called
- (a) Void contract.
(b) Voidable contract.
(c) Void agreement.
(d) Unenforceable contract.
- (ii) Which of the following agency is irrevocable under The Indian Contract Act, 1872?
- (a) Agency for fixed period
(b) Agency for single transaction
(c) Agency coupled with interest
(d) Continuing agency
- (iii) A sort of tacit understanding/agreement among the intending bidders to stifle competition by not bidding against each other in an auction sale is called as
- (a) Damping
(b) Knock-out agreement
(c) Puffers
(d) By-bidders
- (iv) When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called
- (a) Ambiguous
(b) Inchoate
(c) Escrow
(d) Inland
- (v) Which Committee is constituted by the occupier to promote cooperation between the workers and management in maintaining proper safety and health at workplace?
- (a) Safety Committee**
(b) Health Committee
(c) Management Workers Consultative Committee
(d) Maintenance Committee
- (vi) Under Payment of Bonus Act, 1965, in disputed cases, bonus must be paid

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

- (a) Within 8 months from the close of the accounting year.
(b) **Within 1 month from the date on which the award becomes enforceable.**
(c) Within 2 months from the date on which the award becomes enforceable.
(d) Within 6 months from the date of closing of the accounting year.
- (vii) Businessmen or industrialists take initiative to form new companies. Their main function is to manage the company after its promotion, they are known as
(a) Particular Promoters
(b) Occasional Promoters
(c) Professional Promoters
(d) **General Promoters**
- (viii) Which of the following persons are exempted from fees under Right to Information (RTI) Act, 2005?
(a) Foreigners
(b) Young persons
(c) **People living below the poverty line**
(d) Association of persons
- (ix) The study of ethics can be divided into four operational areas namely meta ethics, normative ethics, descriptive ethics and
(a) Positive ethics
(b) Physical ethics
(c) **Applied ethics**
(d) Natural ethics
- (x) When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised, this threat is known as
(a) Familiarity threat
(b) Objectivity threat
(c) **Advocacy threat**
(d) Intimidation threat
- (xi) A contract is a combination of
(a) Agreement and free consent
(b) agreement and consideration
(c) **agreement and enforceability**
(d) agreement and competence of parties
- (xii) The provisions regarding maximum number of members in a partnership are given in
(a) The Partnership Act
(b) **The Companies Act**
(c) The Societies Registration Act
(d) The Co-operative Societies Act

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

- (xiii) X and Y agree to divide the profits of a business in equal shares but the loss if any is to be borne by X only. The partnership agreement is
- (a) void
 - (b) voidable
 - (c) **lawful**
 - (d) illegal
- (xiv) First aid boxes or cupboard equipped with prescribed contents and not less than one in number must be provided and maintained in every factory so as to be accessible during all working hours for every
- (a) 200 workers for any time
 - (b) **150 workers for any time**
 - (c) 500 workers for any time
 - (d) 30 workers for any time
- (xv) XYZ Ltd. do which the payment of Wages Act, 1936 is applicable, fixes the wages period of 36 days. You as a Cost and Management Accountant of the Company, how would advice the company.
- (a) There is no problem in the above act of the Company
 - (b) **As per Section 4(2) of the Act, no wage period can exceed one month. So the company would be advised accordingly.**
 - (c) The wages period can be more than 30 days subject to approval of appropriate Government
 - (d) The company should take permission of Inspector of the factory.
- (xvi) Under Section 14 of The Prevention of Money Laundering Act, 2002 gives immunity to _____ against civil proceedings for furnishing information
- (a) an individual
 - (b) a HUF
 - (c) an agency
 - (d) **a Banking Company**
- (xvii) One of the following is not a objective of the RTI Act.
- (a) Accountability
 - (b) Eliminate corruption (responsibility)
 - (c) **Freedom to speech**
 - (d) Transparency
- (xviii) When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the
- (a) Preceding day
 - (b) **Next preceding business day**
 - (c) Same day of next week
 - (d) 3rd day following the day holiday

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

- (xix) In case of an employee who has not completed 15 years of age at the beginning of the Accounting year, the minimum bonus will be
- ₹ 100 or 8.33% of salary or wages whichever is higher.
 - ₹ 60 or 8.33% of salary or wages whichever is higher.**
 - ₹ 60 or 8.33% of salary or wages whichever is lower.
 - 8.33% of salary or wages.
- (xx) Every LLP firm shall have at least _____ designated partners who are individuals.
- two**
 - three
 - four
 - Five

(b) Match the following:

5 x 1 = 5

	Column 'A'		Column 'B'
1.	Sec 25 of Indian Contract Act	(A)	Factory Act
2.	Quantum Merruit	(B)	Minimum Wages Act
3.	Relay	(C)	Solomon vs Solomon & Co. Ltd.
4.	Schedule Employment	(D)	Agreement without consideration
5.	Lifting of Corporate Veil	(E)	Sale of goods Act

Answer:

	Column 'A'		Column 'B'
1.	Sec 25 of Indian Contract Act	(D)	Agreement without consideration
2.	Quantum Merruit	(E)	Sale of goods Act
3.	Relay	(A)	Factory Act
4.	Schedule Employment	(B)	Minimum Wages Act
5.	Lifting of Corporate Veil	(C)	Solomon vs Solomon & Co. Ltd.

Section B

2. Answer any Three questions:

3 x 15 = 45

- (a) (i) What are essential elements of a valid acceptance? **8**
- (ii) What are the different categories of Industrial Disputes? **7**

Answer:

2.(a)(i)

(a) Acceptance must be absolute and unqualified; it must conform to the offer:

As per section 7 in order to convert a proposal into a promise, the acceptance must-

(1) Be absolute and unqualified: if the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract. An invitation with variation is no acceptance, it is simply a counter proposal which must be accepted by the original proposer before any contract is made. A counter offer puts an end to the original offer and cannot be revived by subsequent acceptance unless it is renewed. In *Hyde v Wrench* 1840 3 Bear 334 an offer to sell a car for \$1000 was turned down by the plaintiff who offered \$950 for it. This was rejected by the offeror and then the plaintiff agreed to pay \$1000. It was held that there would undoubtedly have been perfect contract, instead of that the plaintiff made an offer of his own to purchase the property for \$950 and rejected the offer previously made by the defendant. He was not afterwards competent to revive the proposal of the defendant, by tendering an acceptance for it. Thus the suit of the plaintiff was dismissed.

(2) Be expressed in some usual and reasonable manner, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such a manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance. In *Surender Nath v Kedar Nath* AIR 1936 Cat 87 the Calcutta High Court held that where an offerer requires that the acceptance should be sent to a particular person in writing, section 7 was not violated when the offeree instead of writing to the particular person, sent his agent in person to communicate the acceptance.

(b) Specific offer can be accepted by the person to whom it is made, whereas general offer can be accepted by anyone competent to contract and meeting the conditions of offer. It was held in *Boulton V Jones* (1857)27 LJ ex 117 case that a specific offer can be accepted only by the person to whom it is made. A general offer can be accepted by any one as held in case of *Carlill v Carbolic Smoke ball co*, *Harbanslal V Harbanslal*,

(c) Acceptance may be express or implied: As per section 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. It can be inferred from the conduct of the parties. When a person boards in Metro Rail it is an implied acceptance.

(d) Acceptance should be of the whole proposal and not in part; Acceptor should accept the whole proposal in total and not in parts. Part acceptance is no acceptance binding upon the proposer.

(e) Acceptance should be according to the mode prescribed or usual and reasonable mode; acceptor cannot accept the proposal in a manner different from the manner prescribed in the offer. If no such mode is prescribed it should be usual and reasonable

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

mode. Silence cannot be a mode of acceptance. In *Surernder Nath V Kedar Nath*, AIR 1936 Cal 87, the Calcutta High court held that where an offeror requires that the acceptance should be sent in writing to a particular person, section 7 of the Contract Act is not violated when the offeree instead of writing to particular person, sent his agent in person to communicate the acceptance.

- (f) Communication of acceptance is must;** a mental determination to accept unaccompanied by any external indication will not be sufficient acceptance. To constitute an acceptance such acceptance must be communicated to the offeror or his authorized agent. Example: A makes an offer to B to supply certain goods at a certain price. B writes the letter of acceptance and puts the letter in the drawer of his table and forgets all about it. Hence putting the letter of acceptance in the drawer does not amount to communication of acceptance without any external manifestation of the intention to accept the offer (*Brogden v Metropolitan Railway co*, 1877 AC 666). A mere mental assent is not a sufficient acceptance of an offer. To constitute an acceptance such assent must be communicated to the offeror or his authorised agent.
- (g) Acceptance must be given before its lapse;** Acceptance must be given before the offer lapses by expiry of time fixed or by expiry of reasonable time if no time is so fixed or before it is withdrawn or revoked by the offeror. In *Ramasgate Victoria Hotel co V Montefoire* (1866) LR 1 Exch 109 it was held that a person who applied for shares in a company in June was not bound by any allotment made in November.

2. (a)(ii)

The Second Schedule of the Industrial Disputes Act deals with matters within the jurisdiction of Labour Courts which fall under the category of Rights Disputes. Such disputes are as follows: (1) The propriety or legality of an order passed by an employer under the standing orders; (2) The application and interpretation of standing orders which regulate conditions of employment. (3) Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed; (4) Withdrawal of any customary concession or privilege; (5) Illegality or otherwise of a strike or lock-out; and (6) All matters other than those specified in the Third Schedule.

The Third Schedule of the Industrial Disputes Act deals with matters within the jurisdiction of Industrial Tribunals which could be classified as Interest Disputes. These are as follows:- (1) Wages, including the period and mode of payment; (2) Compensatory and other allowances; (3) Hours of work and rest intervals; (4) Leave with wages and holidays; (5) Bonus, profit sharing, provident fund and gratuity; (6) Shift working otherwise than in accordance with standing orders; (7) Classification by grades; (8) Rules of discipline; (9) Rationalization; (10) Retrenchment of workmen and closure of establishment; and (11) Any other matter that may be prescribed.

(b) (i) Limited Liability Partnerships are body corporate. Do you agree? Justify.

5

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

(ii) The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment.

4

(iii) State your views on the following:

2×3=6

- (a) Consideration for sale of goods must be in terms of money.
- (b) In an auction sale, a bid once made cannot be withdrawn by the bidder.
- (c) A partner is not an agent of other partners in a partnership firm.

Answer:

2. (b)(i)

Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:

- (i) A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
- (ii) A limited liability partnership shall have perpetual succession.
- (iii) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
- (iv) Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
- (v) Any individual or body corporate may be a partner in a limited liability partnership.

2. (b)(ii)

- (1) Minimum wages payable under this Act shall be paid in cash.
- (2) Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind
- (3) If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities at concessional rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.
- (4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

2. (b)(iii)

- (a) Correct: It is one of the essentials of the contract of sale, that price must be paid in terms of money.
- (b) Incorrect: The bidder can withdraw his bid anytime before the fall of the hammer i.e., completion of sale.
- (c) Incorrect: The basis of the partnership is mutual agency, hence a partner is an agent of all other partners.

- (c) (i) What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act 1965? 7
- (ii) Under what circumstances the gratuity payable to an employee be forfeited? 8

Answer:

2. (c)(i)

Recovery of bonus due from an employer

In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in section 21 of the act. It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the act.

The provisions relating to the recovery of bonus, as contained in section 21, are as under:

- (1) The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.
- (2) The application may be made by the employee himself or by any person authorised by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.
- (3) On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.
- (4) The application to the Appropriate Government should be made within one 'year' from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

2. (c)(ii)

Forfeiture of gratuity

The legal provisions relating to the forfeiture of gratuity are contained in section 4(6) of the Payment of Gratuity Act, 1972 and may be summed up as under:

1. The gratuity payable to an employee shall be forfeited where the services of an employee have been terminated due to any act, willful omission or negligence on the part of the employee and employee's such act etc. has caused:
 - (a) damage or loss to the property belonging to the employer, or
 - (b) destruction of the property belonging to the employer.

In this case, the gratuity payable to the employee shall be forfeited to the extent of the damage or loss caused to employer's property due to employees act, omission or negligence [Section 4(6)(a)]

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

2. The gratuity payable to an employee may be forfeited:

- (a) 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
- (b) 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 above stated cases, the gratuity payable to an employee may be forfeited wholly [Section 4(6)(b)]

Following judicial decisions are important to note in connection with the forfeiture of gratuity by the employer:

- (i) The right of the employer to forfeit the amount of gratuity of an employee whose services were terminated due to any act, willful omission or negligence causing any damage to the employer's property is limited to the extent of damage and the proof of such damage.

[Permal Wallance Ltd. V. state of M.P. (1996) ILLJ 515 (MP)].

- (ii) The right of the employer to forfeit the gratuity is available only in the circumstances enumerated in section 4(6), as stated in points (1) and (2) above, and is not available in any other circumstances as employee's right to gratuity is the statutory right.

[K.C. Mathew v. Plantation Corpn. Of Kerala Ltd. (2001) LLR 123 (ker.)].

- (iii) The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity.

[Travancore Plywood Industries Ltd. V. Regional Join labour Co.mmr, (1996) II LLJ 85 (Ker.)].

- (iv) In case of termination of services on account of offence involving moral turpitude the gratuity may be wholly or partially forfeited. In this regard, the Karnataka High Court has held that when an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of section 4 (6) of the Act.

[Bharat Gas Mines Ltd. V. Regional Labour Commr. (Central) (1987) 70 FJR 11 (Karn)].

(d) (i) State the circumstances under which a banker is bound to refuse the payment of a cheque. 8

(ii) Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court? Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. 7

Answer:

2. (d)(i)

Following are the circumstances in which the banker is bound to refuse the payment of a cheque:

- (1)** When the customer has countermanded payment. The term 'countermand' means the issue of instruction to the banker not to pay a particular cheque. Thus, where a customer

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

issues instructions to the banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'. And a stopped cheque is a piece of waste paper in the hands of payee. It is, however, necessary that a countermand to be effective must reach the banker before he had paid the cheque in the ordinary course. It may also be noted that the countermand notice must be duly signed by the customer and give correct particulars of the cheque.

- (2) When the customer has died. Sometimes, the banker receives notice of customer's death. In such cases, he must refuse the payment of the cheque presented after the notice of death. However, if the payment is made before the banker receives the notice of death, the payment is valid and banker is justified in making such payment.
- (3) When the customer has become insolvent. Sometimes, the banker receive; the notice of customer's insolvency. In such cases also he must refuse the payment of the cheques presented after the notice.
- (4) When the customer has become a person of unsound mind (i.e. insane). Sometimes, the banker receives the notice that his customer has become insane. In such cases also, he must refuse payment of the cheque presented after the notice.
- (5) When a garnishee order has been received by the banker. The term Garnishee order may be defined as a court order attaching the balance in customer's account. When the banker receives such order then he is bound to refuse the payment of the customer's cheque.
- (6) When the cheque is lost. Sometimes, the drawer informs the banker that a particular cheque is lost. In such cases, banker must refuse the payment of that cheque.
- (7) When the account is closed. Sometimes the customer closes his account and gives notice to the banker. In such cases the banker must not pay any cheque of the customer after the closure of the account.
- (8) When holder's title is defective. Sometimes, the banker comes to know of any defect in the title of the person presenting the cheque. In such cases, he must refuse the payment of the cheque.
- (9) **When a customer gives notice of assignment of credit balance** in his account, the banker must refuse the payment of cheque.

2. (d)(ii)

Attachment of Provident Fund:

According to Section 10 of E.P.F. & M.P. Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not In any way be capable of being assigned or charged and shall not be liable to attachment under any

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act nor any receiver appointed under the Provincial Insolvency Act shall be entitled to or have any claim on, any such amount.

The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

- (e) (i) X Father promised to pay his son Y a sum of ₹ One lakh if Y (son of X) passed CMA examination in the first attempt. Y passed the CMA examination in his first attempt, but X failed to pay the amount as promised. Y files a suit for recovery of the said amount. State along with reasons whether Y can recover the amount under the Indian Contract Act, 1872. 5**
- (ii) ABC & Co., a firm consists of three partners A, B and C having one-third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act. 5**
- (iii) Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. 5**

Answer:

2. (e)(i)

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreement of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour vs. Balfour. Accordingly, applying the provisions and the ease decision, in the case Y cannot recover the amount of Rupees One lakh from X for the reasons explained above.

2. (e)(ii)

Normally it is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:

- (i) power of expulsion should exist in the partnership deed (contract between the partners).

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

(ii) power has been exercised by the majority of the partners in good faith.

The test of good faith includes:

- (a) that the expulsion must be in the interest of the partnership;
- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed. Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as before.

2. (e)(iii)

Right of stoppage of goods in transit

The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (i) The seller must be unpaid
- (ii) He must have parted with the possession of goods
- (iii) The goods must be in transit
- (iv) The buyer must have become insolvent
- (v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

Section C

3. Answer any one question:

15×1 = 15

- (a) (i) Explain the procedure for removal of Directors from a company. 8**
- (ii) Explain about the allotment of Director Identification Number. 7**

Answer:

3. (a)(i)

Section 169 deals with the procedure of removal of directors. A company may remove a director by passing ordinary resolution. A company cannot remove a director appointed by the Tribunal. The following is the procedure to remove a director and to appoint another director in the place of removed director:

- A special notice of any resolution, shall be sent for a meeting in which the director is to be removed to the company;

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

- On receipt of notice of a resolution to remove a director, the company shall send a copy of it to the director concerned;
- The director, whether he is a member or not, is entitled to be heard on the resolution at the meeting;
- The director concerned may make his representation in writing to the company;
- The director may request the company to send his representation to the members of the company;
- The Company, if the time permits it to do so-
 - ❖ in any notice of the resolution given to members of the company, state the fact of the representation having been made; and
 - ❖ send a copy of the representation to every member of the company to whom notice of the meeting is sent, whether before or after receipt of the representation of the company.

If a copy of the representation is not sent due to insufficient time or for the company's default, the director may be required that the representation shall be read out at the meeting.

The copy of the representation need not be sent out and read out at the meeting if, on the application either of the company or of any other person who claims to be aggrieved, the Tribunal is satisfied that the rights conferred by this section are being abused to secure needless publicity for defamatory matter. The Tribunal may order at company's costs on the application to be paid in whole or in part by the director notwithstanding that he is not a party to it.

A vacancy created by the removal of the director may be filled by the appointment of another director in his place at the meeting at which he is removed. For this purpose special notice of the intended appointment has been given. The new director so appointed shall hold office till the date up to which his predecessor would have held office if he had not been removed. If the vacancy is not filled it may be filled as casual vacancy in accordance with the provisions of the Act.

The removed director shall not be reappointed as director by the Board of Directors. He shall not be eligible any compensation or damage payable for his removal as director, as per the terms of contract or terms of his appointment as director or of any other appointment terminating with that as director or as derogating from any power to remove a director under other provisions of the Act.

3. (a)(ii)

Director Identification Number

Every individual, who is to be appointed as director of a company shall make an application electronically in Form No. DIR-3 to the Central Government for allotment of DIN along with the prescribed fees. The applicant can download the said form from the website of Ministry of Corporate Affairs ('MCA' for short) duly filled in all respects along with photograph and signed digitally. The form shall be verified by a Chartered Accountant in practice or a Company Secretary in practice or a Cost Accountant in practice.

On application, the system shall generate an application number. The Central Government shall process the application and decide the approval or rejection and communicate the same to the applicant along with the DIN allotted in case of approval by way of a letter by post or electronically or in any other mode within 30 days from the receipt of such application.

If any defect is found in the application the Central Government shall give intimation of such defect or incompleteness to the applicant by placing it on its web site and by email to the applicant to rectify such defects within 15 days from the date of intimation. If the same has not been rectified the Government shall reject the application directing to file a fresh application. In case of rejection or invalidation of application the fee so paid with the application shall neither be refunded nor adjusted with any other application.

The DIN allotted to a director before the commencement of this Act shall be deemed to be the DIN allotted under the present Act. The DIN allotted shall be valid up to the life time of the Director. The said number shall not be allotted to any other person. Similarly a person shall be allotted only one DIN.

The director, on allotment of DIN, is to intimate the company in Form No. DIR - 3C within 15 days from the intimation, given to him. Every company shall, within 15 days of the receipt of intimation, furnish the same with the Registrar. If a company fails to furnish DIN the company shall be punishable with fine which shall not be less than ₹ 25,000/- but which may extend to ₹ 1 lakh. Every officer of the company who is default shall be punishable with fine which shall not be less than ₹ 25,000/- but which may extend to ₹ 1 lakh.

Section 159 provides that if any individual or director of a company, contravenes any of the provisions of Section 152 (dealing with the appointment of directors), Section 155 (dealing with prohibition to obtain more than one DIN) and Section 156 (Director to intimate DIN), such individual or director shall be punishable with imprisonment for a term which may extend to six months or with fine which may extend to ₹ 50,000/-. If the contravention is continuing one further fine will be imposed which may extend to ₹ 500/- for every day after the first during which the contravention continues.

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| (b) (i) Why is internal audit necessary to Management? Discuss. | 7 |
| (ii) Write down the procedure to be followed by a PIO for providing information to an applicant under Right to Information Act, 2005. | 8 |

Answer:

3. (b)(i)

Necessity of Internal audit to Management

Internal Audit has become an important management tool for the following reasons:-

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

- (i) It ensures compliance of Companies (Auditors Report) Order.
- (ii) Internal Auditing is a specialized service to look into the standards of efficiency of business operation.
- (iii) Internal auditing can evaluate various problems independently in terms of overall management control and suggest improvement.
- (iv) Internal audit's independent appraisal and review can ensure the reliability and promptness of the management reporting on the basis of which the top management can take firm decisions.
- (v) Internal Audit system makes sure the internal control system including accounting control system in an organization is effective.
- (vi) Internal Audit ensures the adequacy, reliability and accuracy of financial and operational data by conducting appraisal and review from an independent angle.
- (vii) Internal Audit is an integral part of "Management by System".
- (viii) Internal Audit can break through the power ego and personality factors and possible conflicts of interest within the organization.
- (ix) It ensures compliance of accounting procedures and accounting policies.
- (x) Internal auditor can be of valuable assistance to management in acquiring new business, in promoting new products and in launching new projects for expansion or diversification of business.

3. (b)(ii)

Procedure for Obtaining Information Public Information Officer shall deal with requests from persons seeking information. If the information requested for is held by another public authority, the PIO shall transfer, within 5 days, the request to that other public authority and inform the applicant immediately.

PIO, on receipt of a request, shall as expeditiously as possible, and in any case within 30 days of the receipt of the request, provide the information on payment of such fee as may be prescribed. Where the information requested for concerns the life or liberty of a person, the same shall be provided within forty-eight hours of the receipt of the request.

If the PIO fails to give decision on the request within the period specified, he shall be deemed to have refused the request. Where a request has been rejected, the PIO shall communicate the following to the requester:

- (i) the reasons for such rejection;
- (ii) the period within which an appeal against such rejection may be preferred; and
- (iii) the particulars of the Appellate Authority.

Section D

4. Answer any one question: 1 x 15 = 15
- 4 (a) (i) Explain the differences between Ethical Code and Contract. 7
- (ii) What are the circumstances leading to actual happening of threats for an Accounting Professionals working as employee. 8

Answer:

4. (a)(i)

Difference between Ethical Code and Contract:

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. 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.

4. (a)(ii)

Types of threats for an Accounting Professionals working as employee

(a) Self interest threat:

- (i) Financial interests, loans and guarantees in the company where the professional is working.
- (ii) Incentive, compensation, arrangements.
- (iii) Inappropriate personal use of corporate assets.
- (iv) Concern over employment security.
- (v) Commercial pressure from outside the employing organization.

Answer to MTP_Intermediate_Syllabus 2012_Dec2017_Set 2

(b) Self Review Threat:

When business decisions or data is subjected to review and justification is required to be given by the professional who takes the decisions or prepare the data.

(c) Advocacy Threat:

Influencing organisation finance and accounting reports through misleading statement.

(d) Familiarity Threat:

- (i) In a position to influence reporting of business decisions to benefit close family member.
- (ii) Long association with business contacts influencing business decisions.
- (iii) Acceptance of gift or preferential treatment.

(e) Intimidation Threat:

- (i) Fear of loss of job over disagreement about an accounting principle in financial reporting.
- (ii) Attempt by dominant personality to influence

4 (b) (i) Explain the features of good corporate governance. 8

(ii) Explain the concept of Value free ethics. 7

Answer:

4. (b)(i)

The features of Good Corporate Governance can be enumerated as follows

1	Participation	All the stakeholders must be given an opportunity to participate. The participation may be either direct or through legitimate representatives.
2	Equity and inclusiveness	All the stakeholders should have an opportunity to express their concerns in the business decisions.
3	Consensus oriented	The management should consider and analyse the concerns of all the stakeholders, and then take such decisions as are in the best interests of all of them.
4	Responsiveness	The management should address the concerns of all the stakeholders.
5	Accountability	The management should develop effective checks and controls so as to prevent any possible abuse of power.
6	Transparency	The governance should be such that the investors and other stakeholders get a true picture of entity's financial and non-financial aspects.
7	Follows the rule of law	The decisions taken and their implementation should be in total compliance with the laws, rules and regulations.
8	Effectiveness and efficiency	The governance should enable the organisation to achieve its goals and meet the needs of the society as well.

4. (b)(ii)

Concept of value free ethics:

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 (*wertfrei*). 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 meta-ethics or 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.