

Paper-6: LAWS, ETHICS AND GOVERNANCE

SECTION - A

Answer Q No. 1 (Compulsory) and any 4 from the rest of Section A

Question 1:

**Comment on the following based on legal provisions (no mark for wrong reasons or justification)
2X10=20**

- (a) P contracts with Q for a fixed price to construct a house for Q within a stipulated time. Q would supply the necessary material to be used in the construction. R guarantees P's performance of the contract. Q does not supply the timber as per the agreement. Is R discharged from his liability?
- (b) Z & Co. through a newspaper advertisement announced a season end sale of woolen garments and exhibited the articles in their showroom with the original and the reduced prices marked on them. H, who had read the advertisement, picks up a woolen sweater marked ₹ 500/- as original price and ₹ 200/- as reduced price. But when H offers ₹ 200/- at the counter, the salesman refuses to accept the amount and hand over the article to H. Discuss the rights of H against Z & Co
- (c) P rents out his house situated at Kolkata to Q for a rent of ₹ 5000/- per month. A sum of ₹ 2 lacs, 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. Referring to the provisions of Indian Contract Act, 1872, decide Q is entitled to get reimbursement of the said amount from P.
- (d) As per Industrial Disputes Act, 1947, Charitable Institutions are not industry.
- (e) Bonus is payable only if there is profit. Comment
- (f) Mr. Amit agrees to sale Mr. Rahim 20 bags of wheat out of 200 bags lying in his godown for ₹20,000. Wheat is completely destroyed by fire. Mr. Rahim cannot compel Mr. Amit to supply wheat as per contract.
- (g) A maker of the bill of exchange cannot be discharged until the payment against bill is made.
- (h) Workmen working in a public utility services have right to go on strike even without giving notice.
- (i) D offered to pay ₹ 50,000 to any person would swim a hundred yards on Gopalpur sea coast on New Years's day of 2013. B, a fisherman without any information about the offer, claimed ₹ 50,000 on swimming the distance to save his life after he was accidentally thrown overboard by the rough sea waves. D needs your views.
- (j) R sells the goodwill of his shop to S for ₹ 10,00,000 and promises not to carry on such business forever and anywhere in India. Examine the validity of the contract.

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Answer:

- (a) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission for the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case the Q omits to supply the timber. Hence R is discharged from his liability
- (b) Price quotations and price tags do not amount to an offer but are only an invitation to an offer. Therefore, H's picking up the woolen sweater with price tag of ₹ 200/- as reduced price amounts to an offer by H to purchase the same at that price. It remains to be accepted by the seller- the salesman of Z & Co. to result in a concluded contract. The sales man has every right to accept or refuse the offer. Thus H shall have no remedies.
- (c) 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 :
- i) There is a contract between P and Q, viz. quasi contracts.
 - ii) P is bound to make payment of house tax to Municipal Corporation.
 - iii) Q is interested in such payment
 - iv) Q himself is not liable for such payment.
- (d) As per Industrial Disputes Act institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service are not covered in the definitions of "Industry".
- (e) Subject to the other provisions of the Payment of Bonus Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in 1979 and in respect of any subsequent accounting year, a minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or ₹ 100 (₹ 60 in case of employees below 15 years of age), whichever is higher. The minimum bonus is payable whether or not the employer has any allocable surplus in the accounting year.
- (f) Mr. Rahim cannot compel Mr. Amit to supply wheat because where there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement is therefore avoided.
- (g) The maker, acceptor or endorsee is discharged from liability by (a) Cancellation by the holder of acceptor or endorser's name with intent to discharge him (b) by a holder issuing of discharge and (c) by payment.
- (h) No person employed in a public utility service can go on strike without giving "Notice of Strike" to the Employer.
- (i) Within 6 weeks before strike
 - (ii) Within 14 days of giving such notice
 - (iii) Before the expiry of the date of strike specified in the notice.
 - (iv) During the pendency of any conciliation proceedings before a conciliation officer and 7 days after the conclusion of such proceedings.
- (i) An offer made to world at large or public in general can be accepted by any person having knowledge of the offer by fulfilling the terms of offer. Here B acted without any information as to the offer. A person cannot accept an offer until he is aware of it. Therefore, the offer

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cannot be said to have been accepted thereby resulting in a contract. Similar decision was given in Lalman Shukla v. Gauri Datt Allahabad High Court (1913) 11 ALJ 489.

- (j) As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business. Here, agreement not to carry on similar business anywhere in India forever is unreasonable and hence void.

Question 2:

(a) Explain the concept of 'misrepresentation' in matters of contract.

(b) R proposed to sell his car to S. S sent his acceptance by e-mail. Next day, S sends a Fax withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:

- (i) The Fax of revocation of acceptance was received by R before the email of acceptance.**
(ii) The Fax of revocation and email both reached together.

(c) F, B and G jointly borrowed ₹500,000 from W. The whole amount was repaid to W by B. Decide in the light of the Indian Contract Act, 1872 whether:

- (i) B can recover the contribution from F and G,**
(ii) Legal representatives of F are liable in case of death of F,
(iii) B can recover the contribution from the assets, in case G becomes insolvent.

(d) State the circumstances where under an agent is personally liable to a third party for the acts during the course of agency? [3+3+3+3 = 12]

Answer:

(a) According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:

- i) When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
ii) When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
iii) When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it.

(b) The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is a complete as against the acceptor when it comes to the knowledge of the proposer. An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards. Referring to the above provisions

- (i)** Yes, the revocation of acceptance by S (the acceptor) is valid.
(ii) If R reads the Fax first, the acceptance stands revoked. If he opens the email first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

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- (c) Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel anyone or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections,
- i) B can recover the contribution from F and G because F, B, G are joint promisors.
 - ii) Legal representative of F are liable to pay the contribution to B. However, a legal representative is liable only to the extent of property of the deceased received by him.
 - iii) 'B' also can recover the contribution from G's assets.
- (d) Under the following circumstances an agent is personally liable.
- i) When he represents that he has authority to act on behalf of his principal, but who does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
 - ii) Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to required performance of it.
 - iii) Where the contract expressly provides for the personal liability of the agent.
 - iv) When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
 - v) Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
 - vi) Where the agent works for a foreign principal.
 - vii) Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).
 - viii) Where according to the usage of trade in certain kinds of business, agents are personally liable.
 - ix) Where his authority is coupled with interest, he can be sued only to the extent of his interest in the subject matter

Question 3:

- (a) **When is presentment of an instrument not necessary under the Negotiable Instruments Act?**
- (b) **C contracts to sell D, by showing sample, certain quantity of butter described as 'Made in Gokul'. The butter when delivered matches with the sample, but is not 'Made in Gokul'. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to D.**

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- (c) K the owner of a Fiat car wants to sell his car. For this purpose he hands over the car to M, a mercantile agent for sale at a price not less than ₹100, 000. The agent sells the car for ₹75, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the car. Decide given reasons whether K would succeed.
- (d) At an auction sale, H made the highest bid for an article of Y. State the legal position in the following cases :
- i) If H withdrew the bid before the fall of hammer though he knew that one of the condition of the sale was bid once made cannot be withdrawn'.
 - ii) If H appointed two persons A and B, to bid on his behalf. The sale was notified subject to a right to bid.

[4+2+4+2 = 12]

Answer:

- (a) According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:
- i) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - iii) if the instrument being payable at some other specified place, neither he nor any other person authorised to pay it attends at such place during the usual business hours, or
 - iv) if the instrument not being payable at any specified place, if he (i.e. maker etc) cannot after due search be found;
 - v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;
 - vi) as against any party if after maturity, with knowledge that the instrument has not been presented —he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment; as against the drawer, if the drawer could not suffer damage from want the of such presentment.
- (b) D 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, C supplied butter which did correspond with the sample but was not correspond to the description of 'Made in Gokul'. Hence the D has the right to repudiate the contract.
- (c) The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied :
- i) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
 - ii) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
 - iii) The buyer should act in good faith.
 - iv) The buyer should not have at the time of the contract of sale notice that the agent has

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no authority to sell.

In the instant case, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

(d)

- i) H's bid was an offer to buy and he was entitled to withdraw his bid before the sale is completed as per express provision of Section 64(2). [*Payne v. Cave*]
- ii) It amounts to fraud and sale is voidable at the option of the buyer because the seller could appoint only one person to bid on his behalf. [Sec 64(3) and Sec 64(6)]. Here the intention of the seller was not to protect his interest but to raise the price. [*Thornett v Haines*].

Question 4:

(a) List the circumstances under which an LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal?

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

(c) 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?

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

- i) Piece rate wages
- ii) Productivity bonus
- iii) Additional dearness allowance
- iv) Value of Puja gift.

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

[3+3+3+3=12]

Answer:

(a) A limited liability partnership may be wound up by the Tribunal,—

- i) if, the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
- ii) if, for a period of more than six month ,the number of partners of the limited liability partnership is reduced below two;
- iii) if the limited liability partnership is unable to pay its debts;
- iv) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
- v) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
- vi) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up

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(b) 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.

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

i) 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.

ii) The gratuity payable to an employee may be wholly or partially 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 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.

(d) 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:

i) the cash value of any food concessions;

ii) 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

iii) any presents made by the employer.

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

Question 5:

(a) 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.

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

(c) Farhan failed to give details of travelling expenses on account of tour inspite of several reminders. His company deducted the amount of tour advance from Farhan's salary after expiry of 3 months. Is the company justified under the Payment of Wages Act, 1936?

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- (d) Y, on retirement withdrew the entire amount of his accumulation in the provident fund. Later on, he was re-appointed for a fixed tenure. The PF Inspector claimed contribution in respect of salary paid to Y. Is the demand made by PF Inspector tenable in law under The Employees 'Provident' Funds and Miscellaneous Provisions Act, 1952?
- (e) What do you understand by the terms 'premises' and 'precincts' under the Factories Act, 1948?
- (f) 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?
[6 × 2 = 12]

Answer:

- (a) 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.
- (b) As per Sec 40-B of The Factories Act, 1948 in every factory (i) wherein 1000 or more workers are ordinarily employed, or (ii) 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)].
- (c) According to Sec. 7(2) f and Sec . 12 of the Payment of Wages Act, 1936 no recovery can be made of such advances given for travelling expenses. The recovery of such advance is governed by rules made by appropriate Government in this regard. So the company on its own cannot make such recovery.
- (d) An employee who has been member of PF, withdrew the full amount of his accumulations is an 'excluded employee.' However , once he is reappointed in connection with work of the company, he attracts definition of 'employee' and the Act becomes applicable to him afresh. In Harrison Malayalam Ltd. and Ors vs. RPF & Ors. (CAL H.C) 2001 I LLJ 1160, the company was held liable to cover an employee who took VRS and later appointed for a lump sum basis. Thus the demand made by authorities is tenable.
- (e) Premises means the building or shed where the factory machineries are set up and manufacturing process are carried on. Precincts means the surrounding areas like open space inside the factory boundary, roads, gardens, open godowns etc where the workers move inside the factory boundary.
- (f) 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

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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.

Question 6:

- (a) **Bill of Exchange dated 1st February, 2013 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of Maturity? Explain with reference to the relevant provisions of the 'Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay.**
- (b) **Daily working hours in a factory cannot be more than 8 hours on any day considering ceiling of 48 working hours in a week as per the Factories Act 1948.**
- (c) **"Nemo Dat Quod Non Habet" — No one can give a better title than he himself has. State the exceptions to the rule.**
- (d) **G invites F (an actor popular among children for his acts) to his son H's birthday party. F accepts the invitation and promises to attend the party. G made special arrangement for the party and H was very excited about this fact. However F did not turn up for the party. H was very upset and refused to cut the cake. G enraged with F's behavior, wanted to sue for loss incurred in making special arrangements and spoiling the party. G seeks your advice.**
[4+2+4+2 = 12]

Answer:

- (a) If a Bill is made payable a stated number of months after date, it becomes payable three days after the corresponding date of months after the stated number of months (Section 23 read with Section 22 Negotiable Instruments Act 1881). Therefore in this case the date of maturity of the bill is 4th April, 2013.
In this case the promissory note was presented for payment 10 days after maturity. According to Section 64 of Negotiable Instruments Act read with Section 66, a promissory note must be presented for payment at maturity by on behalf of the holder. In default of such presentment, the other parties the instrument (that is, parties other than the parties primarily liable) is not liable to such holder. The endorser is discharged by the delayed presentment for payment. But the maker being the primary party liable on the instrument continues to be liable.
- (b) As per Sec . 51 of the Factories Act, 1948 no adult employee is required to work more than 48 hours in any week. Subject to this rule, no adult employee shall be required to work for more than 9 hours in any day. But in order to facilitate the change of shift, this limit may exceed. This can, however, be done with the previous approval of the Chief Inspector of Factories.
- (c) The exceptions to the rule are given vide Sections 27 to 30 of Sale of Goods Act, 1930. These are as follows:
- i) 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.

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- ii) Sale by a joint owner in possession of goods with consent of other joint owners. (Sec 28)
- iii) 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)
- iv) 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)
- v) 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))
- vi) Sale made by unpaid seller exercising his right of lien and stoppage in transit. (Sec 54(3))
- vii) Sale made by finder of lost goods u/s 169 of Indian Contract Act.
- viii) Sale by pawnee or pledgee u/s 176 of Indian Contract Act.
- ix) Sale made by Official Receiver or Official Assignee or Liquidator

(d) According to section 2(h) of the Indian Contract Act, 1872, 'an agreement enforceable at law is a contract.' The parties must intend to create a legal relationship. Agreements of social or domestic nature do not contemplate legal relationship, so they are not contracts. Here G cannot sue F for loss. Agreement was a kind of social nature and therefore lacked the intention to create legal relationship.

SECTION - B

Answer any 2 questions

Question 7:

(a) Explain the term 'right to information' under the RTI Act, 2005.

(b) What is Project Governance

(c) A, who was appointed as a Director at the last AGM resigned. The Board filled up the vacancy by appointing B. But within few days of his becoming Director, B died. The Board wishes to appoint C in place of B in the next board Meeting. Can the Board do so?

[2+3+3 = 8]

Answer:

(a) Sec 2(j) of the Right to Information Act, 2005 states "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to —

- i) inspection of work, documents, records;
- ii) taking notes, extracts or certified copies of documents or records;
- iii) taking certified samples of material;
- iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in computer or in any other device;

(b) Project Governance extends the principle of Governance into both the management of individual projects via Governance structures, and the management of projects at the business level, for example via Business Reviews of Projects. Today, many organisations are developing models for 'Project Governance Structures', which can be different to a traditional Organisation Structure in that it defines accountabilities and responsibilities for

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strategic decision-making across the project. This can be particularly useful to project management processes such as change control and strategic (project) decision-making. When implemented well, it can have a significantly positive effect on the quality and speed of decision making on significant issues on projects.

- (c) Casual vacancy u/s 262 is the vacancy arising in the office of the director appointed by the Company in the General Meeting before the expiry of his term of office.
In the above case, the vacancy on account of death of B cannot be considered as a casual vacancy in the office of the director, as the appointment of B himself was not originally made by the Company in General Meeting. However, in the interest of the smooth working of a company, if the casual vacancy is in an office which was filled by election at a general meeting, then the Board may fill the casual vacancy as many times as necessary, i.e., if the original appointment was made by the company in the General Meeting any subsequent casual vacancy to the office of the Director can be filled by the Board.
Hence, in the above case, the Board can appoint C as Director.

Question 8:

- (a) **M was appointed as director of the company in an annual general meeting. He took over the office and carried on his functions as director. Subsequently, it was found that there were some irregularities in voting and hence the appointment was declared invalid. Would the acts done by M, while in office as director, be binding upon the company?**
- (b) **Who cannot be appointed as Cost Auditor? What are the additional disqualifications notified by The Institute of Cost Accountants of India regarding cost auditor.**

[3+5 = 8]

Answer:

- (a) According to section 290, the acts done by a director shall be valid notwithstanding that it may afterwards be discovered that his appointment was invalid by reason of any defect or disqualification in his appointment. The section will protect, the bona fide acts and not where they are done with notice that they were done wrongfully or illegally. Hence, the acts done by M as a director, before the irregularity was found, are in order and interests of company as well as outsiders dealing with the company would be protected. But the acts done after the discovery of invalidity would not be protected.
- (b) A person cannot be appointed as a cost auditor of a company if he attracts any of the disqualifications listed in sub-sections (3) and (4) of section 226 of the Act. Thus, the following cannot be appointed as cost auditors:
- i) A body corporate;
 - ii) An officer or employee of the company;
 - iii) A person who is a partner or who is in the employment of an officer or employee of the company;
 - iv) A person who is indebted to the company for an amount exceeding ₹ 1,000 or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the company for an amount exceeding ₹ 1,000 ;
 - v) A person holding any vote carrying security of the company;
 - vi) A person who is disqualified to be the cost auditor of its subsidiary or holding company or of another subsidiary of its holding company ;
 - vii) A person appointed under section 224 as an auditor of a company [Section 233B (5)(b)].

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If a person appointed for conducting the audit of cost accounts of a company becomes subject, after his appointment to any of the aforesaid disqualifications, he shall on and from the date on which he becomes so subject, cease to conduct the audit of the cost accounts of the company [Section 233B(5)(c)].

Additional disqualification – In addition to the aforesaid disqualifications the Institute of Cost Accountants of India has notified that any cost accountant who accepts an appointment as the cost auditor of a company in the following situations shall be deemed to be guilty of professional misconduct:

- i) If he is an employee of the company's auditor appointed under section 224;
- ii) If he is an employee of any of the partners of a firm of chartered accountants which is appointed as company's auditor under section 224.

Question 9:

(a) Distinguish between a public company and a private company.

(b) In respect of The Right to Information Act, give the definition of "Competent Authority".

[5+3 = 8]

Answer:

Public company and a Private company:

- i) Minimum capital - A private company must have a minimum paid-up capital of ₹ 1,00,000 whereas a public limited company must have a minimum paid-up capital of ₹ 5,00,000.
- ii) Minimum number - The minimum number of persons required to form a public company is 7. It is 2 in case of private company.
- iii) Maximum number - There is no restriction on maximum number of members in a public company, whereas the maximum number cannot exceed 50 in a private company.
- iv) Number of directors - A public company must have at least 3 directors whereas a private company must have at least 2 directors (Sec. 252).
- v) Restriction on appointment of directors - In the case of a public company, the directors must file with the Registrar a consent to act as directors or sign undertaking for their qualification shares. The directors of a private company need not do so (Sec. 266).
- vi) Restriction on invitation to subscribe for shares - A public company invites the general public to subscribe for the shares in, or the debentures of, the company. A private company by its Articles prohibits any such invitation to the public.
- vii) Transferability of shares/debentures - In a public company, the shares and debentures are freely transferable (Sec. 82). In a private company the right to transfer shares and debentures is restricted by the Articles.
- viii) Special privileges - A private company enjoys some special privileges. A public company enjoys no such privileges.
- ix) Quorum - If the Articles of a company do not provide for a larger quorum, 5 members personally present in the case of a public company are quorum for a meeting of the company. It is 2 in the case of a private company (Sec. 174).
- x) Managerial remuneration - Total managerial remuneration in a public company cannot exceed 11 per cent of the net profits (Sec. 198). No such restriction applies to a private company.

(b) "Competent Authority" means—

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- i) the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
- ii) the Chief Justice of India in the case of the Supreme Court;
- iii) the Chief Justice of the High Court in the case of a High Court;
- iv) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
- v) the administrator appointed under article 239 of the Constitution

SECTION - C Answer any 2 questions

Question 10:

- (a) Discuss the 7 principles of public life and state the relationship between law and business ethics. [7+1 = 8]**

Answer:

(a) The Seven Principles of Public Life:

- i) Selflessness: Holders of public office should take decisions solely in terms of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends.
- ii) Integrity: Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance of their official duties.
- iii) Objectivity: In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit.
- iv) Accountability: Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office.
- v) Openness: Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
- vi) Honesty: Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest.
- vii) Leadership: Holders of public office should promote and support these principles by sound leadership and prove to be an example in whatever they perform.

Relationship Between Law And Business Ethics: Law is essentially an institutionalization or codification of ethics into specific social rules, regulations and prescriptions. Thus, in one sense, business ethics can be said to begin where law ends. Business ethics is primarily concerned with those issues not completely covered by law, or where there is no definite consensus on whether something is right or wrong. Hence, it is often remarked, that business ethics is about the "grey areas" of business where values are in conflict.

Question 11:

- (a) What is value free ethics? Discuss about its concept and evolution.**

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(b) Can business ethics be a professional code?

[2+4+2 = 8]

Answer:

(a) Value-free Ethics:

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

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

Concept and Evolution of Value-free Ethics:

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 metaethics 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.

(b) Business Ethics as Professional Code:

Business ethics is not a pure science but a professional practice, and society expects businessmen to abide by the principles of a civil society, just as it expects professionals from other areas such as medicine, bureaucracy, politics and sports to do so. Thus, instead of a value-free business ethics, we have a value-loaded or value-based business practice.

Question 12:

(a) Discuss about the fundamental principles of ethical behavior.

(b) Write a short note on Business for profit.

[5+3 = 8]

Answer:

(a)

The fundamental principles of Ethical Behaviour would be as follows:

- i) Integrity: The principle calls upon all accounting and finance professional adhere to honesty and firmness while discharging their respective professional duties:

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- Avoid being involved in activities which would impair the goodwill of the organization.
 - Communicate adverse as well as favorable information with those concerned.
 - Refuse any favour which could influence his actions in a negative way.
 - Refuse to get involved in any activity which would adversely affect objectivity.
 - Avoid conflicts and advise related parties on imminent conflicts.
- ii) Objectivity: Communicate information fairly and objectively in a transparent manner.
- iii) Confidentiality: Accounting and financial management should refrain from disclosing confidential information acquired during their work. When such information are to be disclosed to their subordinates in course of their normal work, care should be taken that ultimate confidentiality is maintained. However, an organization must to submit information required under a legal obligation or statutory ruling.
- iv) Professional competence: Finance and accounting professionals need to update their professional skills from time to time. it has to be ensured that the client or employer receives competent professional services based upon current and contemporary developments in the related areas.
- v) Obedience to Rules: Accounting and finance professionals should comply with relevant laws and regulations and avoid such actions which may result into discrediting the profession.
- (b)** It would seem that business ethics does not come within the confines of ethics. As Adam Smith (1779),the father of modern economics says: 'People of the same trade seldom come together, even for merriment and diversion, but the conversation ends in a conspiracy against the public, or in some contrivance to raise prices.' People find mechanisms to generate the highest possible returns when conducting business. No one holds it against a worker for demanding higher wages, or a landlord for increasing the rent. Their actions are not considered illegal or unethical. Profits are the just wages for invested capital and entrepreneurship. Hence, these should not be resented and should be left alone outside the boundaries of ethics. Business is for profit; the just reward for doing business lies in the excess returns received on the investment.