

PAPER 6: LAWS, ETHICS AND GOVERNANCE

Answer to PTP_Intermediate_Syllabus 2012_Dec2015_Set 1

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

- (a) S induced R to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, R complained that there were many defects in the motorcycle. S proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now R wants to rescind the contract.
- (b) 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?
- (c) Explain the provisions of the Payment of Bonus Act, 1965 relating to adjustment of customary bonus against bonus payable under the Act.
- (d) F sells the goodwill of his shop to G for ₹6,00,000 and promises not to carry on such business forever and anywhere in India. Comment on the validity of the contract.
- (e) State the rules regarding fixation of wage periods under the Payment of Wages Act, 1936.
- (f) P rents out his house situated at Kolkata to Q for a rent of ₹5000/- per month. A sum of ₹2 lac, the house tax payable in arrears, his house is advertised for sale by the Municipal Corporation. Q pays the Corporation, the sum due from P to avoid legal consequences. Referring to the provisions of Indian Contract Act, 1872, decide whether Q is entitled to get reimbursement of the said amount from P.
- (g) Define "sweat equity shares".
- (h) A charge requiring registration with Registrar of Companies was created on 1st August, 2014 by XYZ Limited. The secretary of the Company realized on 15th September, 2014 that the charge was not filed with the registrar. State whether the charge can be registered after 30 days of its creation.
- (i) Business and industry are closely linked with environment and resource utilization. Comment.
- (j) State the ICCR principles.

Answer:

- (a) 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. Accordingly in the given case R could not rescind the contract, as his acceptance to the offer of S to bear 40% of

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the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

- (b) 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.
- (c) The Payment of Bonus Act, 1965 provides that if in any accounting year, an employer has paid any customary bonus to an employee, then the former shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to employee under the Act in respect of that accounting year. The employee shall be entitled to receive only the balance. The employer can do the same thing even in a case where he has paid off the bonus payable under the Act to an employee before the date on which such bonus payable becomes payable. (Section 17)
- (d) 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 goodwill, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business. Hence the agreement is void.
- (e) This is discussed under Section 4 of the Payment of Wages Act, 1936. As per Section 4 of the said Act :
- (i) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable;
 - (ii) No wage-period shall exceed one month.
- (f) As per provisions of Section 69 of the Indian Contract Act, 1872, Q is entitled to recover from P the amount paid to Municipal Corporation because of the following reasons :
- There is a contract between P and Q, viz. quasi contracts.
 - P is bound to make payment of house tax to Municipal Corporation.
 - Q is interested in such payment
 - Q himself is not liable for such payment.
- (g) As per section 2(88) of Companies Act, 2013 'Sweat Equity Shares' means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or values additions, by whatever name called.
- (h) Registrar may register the charge created on 01.08.2014, since if a charge is not registered within 30 days of its creation, the Registrar may, on application made to him by the company, allow the registration of charge after 30 days of its creation, but within 300 days of creation of the charge. The company shall pay such additional fess as may be prescribed. [Section 77 of the Companies Act, 2013]
- (i) Setting up and carrying on of business results in environmental damage and utilization or resources. However, employing eco-friendly business practices, business would result in lesser damage to the environment. Thus it is correct to say that business and industry are closely linked with environment and resource utilization.
- (j) Interfaith Centre on Corporate Responsibility (ICCR) comprises of more than 275 religious institutions that use their investments to promote social change. ICCR seeks to build a sustainable world by integrating social values into investor actions. ICCR works to promote

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corporate practices that ensure long term business growth while improving environmental and social impacts.

Question 2: Answer any 4 questions

[4 × 12 =48]

Question 2(a)

- (i) Father promised to pay his son a sum of ₹ one lakh if the son passed CMA examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.
- (ii) Mr. Sachin started “Self-Service” system in his shop. Mr. Sunny entered the shop, took a basket and after taking article of his choice into the basket reached the cashier for payments. The cashier refused to accept the price. Can Mr. Sachin be compelled by Mr. Sunny to sell the said article? Decide.
- (iii) Mr. C, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 2,000 should be paid every year to B, who was the brother of Mr. C. On the same day, A made a promise with B and executed in his favour an agreement to give effect to stipulation. A failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no rights of action. Examining the provisions of Indian Contract Act, 1872, decide whether the contention of A is valid?
- (iv) Rama is the wife of Ram, who is lunatic, purchases a diamond set of ₹10 lacs from Fashion Jeweller on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the Fashion Jeweller is entitled to claim the above amount from the property of Ram.

[3+3+4+2=12]

Answer:

- (i) **The son cannot sue the father for recovering ₹ 1 lakh** since there is no contract between the father and the son. The father does not receive any consideration and there is no intention to create legal relations, as it is a domestic or social agreement
- (ii) Display of goods in the shop for sale is an invitation to offer, but not an offer. Selection of goods by Mr. Sunny results in an offer from Mr. Sunny to the cashier. Refusal by cashier to accept the price results in rejection of offer of Mr. Sunny.
Mr. Sachin cannot be compelled to sell the said articles since no contract concluded between Mr. Sachin and Mr. Sunny (*Pharmaceutical Society of Great Britain v Boots Cash Chemists Ltd.*)
- (iii) ‘Privity of consideration is not required’ since so long as there is consideration for promise, it is immaterial as to who has furnished it and if a party receives consideration, the contract is valid, even though the person furnishing the consideration is not a party to the contract. As long as there is consideration in a contract, it is immaterial as to who has given this consideration.
Contention of A is not valid since privity of consideration is not required, as explained above. the same decision was given in *Chinnaya v Rammaya* on the same facts as in the given case.
- (iv) **Jeweller is not entitled to recover the amount of diamond set from Ram** since he is not competent to contract and is not liable u/s 68, as the diamond set of ₹10 lacs sold to his wife is not ‘necessities’.

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Question 2(b)

- (i) 'A' draws a bill of exchange payable to himself on 'X', who accepts the bill without consideration just to accommodate 'A'. 'A' transfers the bill to 'P' for good consideration. State the rights of 'A' and 'P'. Would your answer be different if 'A' transferred the bill to 'P' after maturity?
- (ii) Nibedita Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment.
- (iii) Mr. 'E' joined as supervisor on monthly salary of ₹ 3,400 on 1.02.2015 and resigned from his job on 28.02.2015. The company declared bonus of 20% to all eligible employees and paid it on time. Mr. 'E' knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

[5+5+2 =12]

Answer:

- (i) **A is not entitled to sue X** since there is no consideration between A and X and there is no obligation to pay, if there is no consideration between the parties to the transaction.

P is entitled to sue A and X since P is a holder for consideration and a holder for consideration can sue the transferor for consideration and every party prior to him.

Even if A had transferred the bill after maturity the answer would have remained same. The right to sue the transferor for consideration and every party prior to him, is available to 'holder for consideration', even though he is not a 'holder in due course' (i.e., even if the holder for consideration obtains the bill after maturity).

- (ii) All the 3 units shall be treated as 3 separate establishments as all the 3 units maintain separate B/S and P&L Account.

Employees of the unit which is incurring losses are not entitled to claim bonus on the ground that the unit incurring loss is a part of one single establishment. But they are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).

However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

- (iii) **Mr. E is an 'employee'** since he is employed on a salary or wage not exceeding ₹ 10,000 [Sec. 2(13)] but he **is not eligible for bonus** as he has not worked for 30 days or more (Sec. 8).

Question 2(c)

- (i) **Ramesh, a 57 years old District Judge was appointed by Central Government as Presiding Officer of the Employees Provident Funds Appellate Tribunal for a period of five years. After three years, he (Ramesh) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the**

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Government till that date. Examine the validity of Ramesh's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.

- (ii) Mr. X was an employee of Multistore Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial conditions the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity.

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

- (iii) M/s Hitech Ltd. has been regularly depositing the provident fund contributions to the government. Owing to adverse market conditions, the company suffered loss for the past two years. The management is considering the reduction of salary of the employees to reduce the company's contribution to Provident Fund, and instead, to pay compensatory allowance, so that the employees' pay packet remains the same. Explain in terms of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, whether the company can effect such reduction.

- (iv) PQR Limited, Kolkata refused to pay bonus to its employees on the ground that an authorized controller appointed by the West Bengal Government controls its management and as such is exempt from the liability to pay bonus. Referring to the provisions of the Payment of Bonus Act, 1965, decide whether the plea of the company is tenable.

[3+3+2+4 = 12]

Answer:

- (i) The Presiding Officer may, by notice in writing under his hand addressed to CG, resign from his office.

The Presiding Officer shall, unless he is permitted by the CG to relinquish his office sooner, continue to hold office until the expiry of 3 months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is earliest.

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

- (ii) **The refusal of the company to pay gratuity is not valid** since it is the statutory obligation of the employer to pay gratuity to Mr. X. No such ground is provided under the Act for non-payment of gratuity.

If the amount of gratuity payable under the Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the latter shall make an application to the controlling authority. The controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector. The Collector shall recover the amount together with compound interest thereon at such rate as the Central Government may, by notification published in the official gazette, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto.

- (iii) **The proposal to reduce the salary is not valid** since the purpose of such reduction is to reduce the contribution towards Provident Fund, which is prohibited u/s 12.

- (iv) **The plea of the company is not valid** since the grounds for 'non-applicability' of the Act given u/s 32 do not cover any ground where an authorised controller is appointed by the Government. As per Sec. 10, it is the duty of the employer to pay minimum bonus to every employee who is eligible for bonus, in every accounting year. Appointment of

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authorised controller by the Government is a temporary phenomenon. The employer, PQR Limited, has not been granted by AG any exemption from the provisions of the Act u/s 36.

Question 2(d)

- (i) A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his bankers. B, the drawer, wants to recover the amount from C's bankers.

Decide in the light of the provisions of Negotiable Instruments Act, 1881–

- I. whether B, the drawer, can recover the amount of the cheque from C's bankers?
 - II. whether C is the fictitious payee?
 - III. would your answer be still the same in case C is a fictitious person?
- (ii) Rakesh of Mumbai sends his agent Mohan to purchase certain goods from Global Enterprise, Kolkata on credit for him. Later on Rakesh pays the amount for the goods purchased. On another occasion, he again sends Mohan to purchase goods but this time pays sufficient cash to Mohan for the purpose. Mohan, however again purchases the goods from Global Enterprises but on credit and soon thereafter he dies. Global Enterprise files a suit against Rakesh for recovery of the said amount. Decide whether Global Enterprise would be given any relief by the Court under the provisions of the Indian Contract Act 1872.
- (iii) Mr. A of Mumbai engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of a nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same house to Mr. A for ₹ 26 lakhs. Mr. A later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

[6+3+3 = 12]

Answer:

- (i) **B's banker is not liable** since a paying banker is not liable even if it is subsequently found that any endorsement on the cheque has been forged provided the paying banker made the payment in due course (Sec. 85).

A's banker is not liable since a collecting banker is not liable for any loss caused to the true owner due to defective title of the holder provided the collecting banker acted in good faith and without negligence while collecting the amount of the crossed cheque as an agent (Sec. 131).

In the light of the above, we can answer the questions as follows :

- I. B, can not recover the amount of the cheque from C's bankers as it has neither collected nor paid the cheque.
 - II. C is not the fictitious payee since C, in fact, exists.
 - III. If C were a fictitious payee, the answer would have remained same since protection is available to a collecting banker u/s 131 and paying banker u/s 85, irrespective of the fact that the payee is a fictitious person or not
- (ii) **Rakesh is liable to Global Enterprise for goods purchased by Mohan** since the principal is bound to third parties for all such acts of the agent as are within the scope of authority of the agent.

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On a previous occasion, purchase of goods by Mohan on behalf of Rakesh, and subsequent payment for such goods by Rakesh, established that it was within the scope of authority of Mohan to purchase goods on credit on behalf of Rakesh.

- (iii) If the agent, without the knowledge of the principal, deals in the business of agency on his own account, the principal has the following right :
1. He may repudiate the transaction, if the agent dishonestly conceals any material facts or the dealings of the agent prove to be disadvantageous to him.
 2. He may claim from the agent the benefits derived by the agent (Sec. 215 and 216).

In the given case, Mr. Singh, without disclosing all material facts and without obtaining the consent of Mr. A, dealt in the business of agency on his own account (Sec. 215) and made a secret profit (Sec. 216). So, Mr. A is entitled to repudiate the contract or to claim from Mr. Singh ₹ 6 lakhs.

Question 2(e)

- (i) **Mr. X was shopping in a self-service Super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide, under the Sale of Goods Act, 1930, whether Mr. X would succeed in his claim?**
- (ii) **B buys goods from A on payment but leaves the goods in the possession of A. A then pledges the goods to C who has no notice of the sale to B. State whether the pledge is valid and whether C can enforce it. Decide with reference to the provisions of the Sale of Goods Act, 1930.**
- (iii) **P purchased from Q 5000 tins of canned fruit to be packed in cases, each containing 50 tins but Q supplied cases containing 25 tins. Does P have right to reject the goods?**
- (iv) **W contracted to erect machinery on V's premises on the condition that the price shall be paid on completion of work. During the progress of work the premises and machinery were destroyed by an accidental fire. Referring to the provisions of the Sale of Goods Act, 1930, decide whether the parties are bound to perform their promises and can W recover the price of the work actually done?**

[4+3+2+3= 12]

Answer:

- (i) This is based on Section 16(2) of the Sale of Goods Act, 1930, which states that where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used. In the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the provision of Section 16(2), Mr. X would succeed in claim for damages from the owner of the shop.
- (ii) This is based on the provisions of Section 30 (1) of the Sale of Goods Act, 1930 which provides an exception to the general rule that no one can give a better title than he himself possesses. As per the provisions of the section, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may

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pledge them to a third person and if such person obtains them in good faith without notice of the previous sale, he would have good title to them. Accordingly, C, the pledgee who obtains the goods in good faith from A without notice of the previous sale, gets a good title. Thus the pledge is valid.

- (iii) This is based on the provisions of Section 15 of the Sale of Goods Act, 1930. P is entitled to reject the goods because the goods were not packed according to the description. It is to be noted that if the goods do not correspond with the description but such goods are fit for buyers purpose, even then the buyer may reject the goods and the seller cannot take defence by saying that the goods will serve buyer's purpose.
- (iv) Section 8 of the Sale of Goods Act, 1930 states that where there is an agreement to sell specific goods and subsequently the goods without the fault of seller or buyer perish before the risk passes to the buyer, the agreement becomes void. In the given case the premises and machinery get destroyed because of accidental fire before the risk passes to the buyer and therefore both parties were excused from further performance. W having contracted for an entire work for a specific price to be paid on completion of work, could not recover any price for the work actually done.

Question 3: Answer any 2 questions

[2 × 8 = 16]

Question 3(a)

- (i) **Under the Articles of Association of Sunrise Ltd. Company directors had power to borrow up to ₹ 10,000 without the consent of the general meeting. The Directors themselves lent ₹35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, whether the company is liable? If so, what is the extent of liability of the company in this case?**
- (ii) **What is Project Governance?**

[5+3=8]

Answer:

- (i) The benefit of doctrine of indoor management can be availed of only by an outsider who has no knowledge of any irregularity in the internal management of the company. Since the directors, having knowledge of the fact that the limit of borrowings specified under the articles would be exceeded, themselves lent ₹ 35,000 without the consent of the general meeting, **the company is not liable for ₹ 35,000. The liability of the company is limited up to ₹ 10,000.**
- On the similar facts as in the given case, same decision was given in **Howard v Patent Ivory Manufacturing Company**
- (ii) 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 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.

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Question 3(b)

- (i) X, a registered shareholder of Y limited left his share certificates with his broker. A forged the transfer deed in favour of Z, and lodged the transfer deed alongwith the share certificates with the company for registration. The Company Secretary who had certain doubts, wrote to X informing him of the proposed transfer and in the absence of a reply from him (X) within the stipulated time, registered the transfer of shares in the name of Z. Subsequently, Z sold the shares to J and J's name was placed in the register of shareholders. Later on, X discovered that forgery has taken place.

Referring to the provisions of the Companies Act,2013 state the remedy available to X, Z and J in the given case. Explain.

- (ii) A Limited held equity shares in B Limited. Later on Anson Limited became a subsidiary company of B Limited. Decide under the Companies Act, 2013 whether it is necessary for A Limited to surrender the equity shares of B Limited and will it have any voting right in B Limited?

[5+3 = 8]

Answer:

- (i) Mr. X can compel the company to restore his name on the register of members (since a forged transfer is without any legal effect and the true owner continues to be the member of the company).

'Z' is liable to compensate the loss caused to the company since he had lodged the forged transfer deed, even though he was not aware of the forgery.

The company can refuse to register 'J' as a member but the company is liable to 'J' since the company had issued share certificate to Z, and therefore, the company shall be stopped from denying the liability accruing to it for its own default.

- (ii) One of the exceptions to the rule that no company shall, either by itself or through its nominees, hold any shares in its holding company is that if the subsidiary company became a shareholder before it became a subsidiary of the holding company, it can continue to hold those equity shares in the holding company.

So, in the given case, A Limited can continue to hold equity shares in B Limited since A Limited became a shareholder in B Limited even before it became a subsidiary company of B Limited.

A Limited shall not have any right to vote in any general meeting of B Limited.

Question 3(c)

- (i) X, a chemical manufacturing company distributed 25 lac (₹ Twenty five Lac) to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, decide whether the said distribution of money was 'Ultra vires' the company?

- (ii) Explain the term 'right to information' and 'Competent Authority' under the RTI Act, 2005.

[3+5=8]

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Answer:

- (i) **Donation of ₹ 20 Lakhs for furtherance of scientific education and research is permissible** since it is incidental or ancillary to the main objects of the company. it is conducive to the continued growth of the company as chemical manufacturers as was held in **Evans v Brunner, Mood & Co. Ltd.**
- (ii) 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 —
- 1) inspection of work, documents, records;
 - 2) taking notes, extracts or certified copies of documents or records;
 - 3) taking certified samples of material;
 - 4) 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;

"Competent Authority" means—

- 1) 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;
- 2) the Chief Justice of India in the case of the Supreme Court;
- 3) the Chief Justice of the High Court in the case of a High Court;
- 4) the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
- 5) the administrator appointed under article 239 of the Constitution

Question 4: Answer any 2 questions

[2 × 8 = 16]

Question 4(a)

- (i) **How would you evaluate Corporate Governance?**
- (ii) **What is value free ethics? Discuss about its concept and evolution.**

[3+5=8]

Answer:

(i)

- 1) Ensure adequacy of **internal controls** so as to prevent any possible abuse of power.
- 2) Constitute various **committees** for ensuring compliances and review of business decisions.
- 3) Timely and balanced **disclosure** of financial information and executive compensation.
- 4) Placing **constraints** on powers of the management.
- 5) Ensuring an optimum **board composition** consisting of executive and non-executive directors, independent directors, professionals and experts.
- 6) Overloaded **stock options** create the possibility of unwarranted share value dilution. Corporate governance seeks to **check misuse** of stock options.
- 7) Corporate governance should be given **prominence** in entity's **Mission, Vision and Values Statements.**

(ii) 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.

Question 4(b)

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

Answer:

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

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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 4(c)

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

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

[5+3 = 8]

Answer:

(i) The fundamental principles of Ethical Behaviour would be as follows:

- 1) Integrity: The principle calls upon all accounting and finance professional adhere to honesty and firmness while discharging their respective professional duties:
 - 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.
- 2) Objectivity: Communicate information fairly and objectively in a transparent manner.
- 3) 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.
- 4) 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.
- 5) 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.

(ii) 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

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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.