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## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

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### PAPER 6 – Laws, Ethics & Governance [Answer to Question No.1 is compulsory]

1. Choose the correct answer from the given four alternatives:

[1\*20=20]

- (i) The crucial step in understanding business ethics is:  
(a) Establishing codes of ethics  
**(b) Learning to recognize ethical issues**  
(c) Having efficient operations  
(d) Implementing a strategic plan
- (ii) Business ethics is based on well accepted .....
- (a) Moral and social values**  
(b) Social values only  
(c) Moral values only  
(d) None of the above
- (iii) Public Notice under the Indian Partnership Act, 1932 is given in the following manner:  
(a) Serving a copy of the Notice to the Registrar of firms  
(b) Publishing the Notice in the Official Gazette  
(c) Publishing the Notice in one vernacular newspaper circulating in the district where the firm's principal place of business is situated  
**(d) All of the above**
- (iv) Which of the following reason is / are applicable for unethical business practices?  
(a) Workplace surveillance  
**(b) Administrative corruption**  
(c) Profit making by some of the big companies  
(d) All of above
- (v) As per The Child Labour (Prohibition and Regulation) Act, 1986, no child shall be permitted or required to work between:  
**(a) 7 p.m. and 8 a.m.**  
(b) 6 p.m. and 8 a.m.  
(c) 7 p.m. and 9 a.m.  
(d) 6 p.m. and 9 a.m.
- (vi) In case of employee covered under the ESI, the accident report shall be sent in ..... to local office of the ESI to which the company attached.  
(a) Form No. 18  
(b) Form No. 18A  
(c) Form No. 25  
**(d) Form No. 16**

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

- (vii) If, after the arrival of goods at their destination, Carrier or other Bailee acknowledges to Buyer or his agent that he holds goods on his behalf, and continues possession of the goods, the transit is at an end:
- (a) even if the buyer indicates further destination for the goods to the Carrier**
  - (b) only when the buyer takes delivery of the goods
  - (c) only when the buyer is solvent
  - (d) only when the seller's agent takes delivery of the goods
- (viii) In the 60's salaries of Bargainable workers increased due to .....
- (a) Success of Union**
  - (b) Success of company
  - (c) Success of Labour
  - (d) Profit of Manager
- (ix) The Institute of Internal Auditors (Ghana) was formally registered in:
- (a) April 2001**
  - (b) June 2001
  - (c) July 2002
  - (d) November 2003
- (x) If a minor draws, endorses, delivers or negotiates an instrument, such instrument binds:
- (a) all parties to the instrument including the minor
  - (b) only the minor and not other parties to the instrument
  - (c) all parties to the instrument except the minor**
  - (d) none of the above
- (xi) In which of the following situations, the right of lien available to the Unpaid Seller is lost?
- (a) Where the Goods have been sold without any stipulation as to credit;
  - (b) Where the Goods have been sold on credit, but the credit period has expired;
  - (c) Where the Buyer becomes insolvent;
  - (d) Where the Unpaid Seller has parted with the possession of the goods.**
- (xii) Prior to the enactment of Indian Partnership Act, 1932 the law on this subject was contained in:
- (a) Code of Civil Procedure, 1908
  - (b) Indian Contract Act, 1872**
  - (c) Companies Act, 1913
  - (d) Negotiable Instruments Act, 1881
- (xiii) ..... is a form of combination of buyers to prevent competition among themselves at an auction sale.
- (a) Knock-out agreement**
  - (b) Monopoly agreement
  - (c) Oligopoly agreement
  - (d) Puffing agreement

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

(xiv) "Nemo dat quad non habet", means:

- (a) no one is greater than god
- (b) none can give who does not himself possess**
- (c) every one can give everything he has
- (d) everyone is bound by is habit

(xv) Section 69(3) of the Companies Act, 1956 provides that the amount payable on application on each share shall not be less than ..... of the nominal amount of the share.

- (a) 2%
- (b) 4%
- (c) 5%**
- (d) 7.5%

(xvi) The Chief Information Commissioner shall hold office upto the age of:

- (a) 50 years
- (b) 55 years
- (c) 60 years
- (d) 65 years**

(xvii) The Cromme Code was amended in:

- (a) 2002
- (b) 2004
- (c) 2005**
- (d) 2006

(xviii) ..... is often considered as one of the "four pillars" of corporate governance.

- (a) Internal Auditor**
- (b) Shareholders
- (c) Stakeholders
- (d) None of the above

(xix) Section 193 imposes a statutory obligation on ....., to keep minutes of all proceedings of every meeting of the company.

- (a) Private Company
- (b) Public Company
- (c) Every Company, whether Private or Public**
- (d) Foreign Company

(xx) 'Goods' as per The Sale of Goods Act, 1930 can be:

- (a) Existing goods, Future Goods and Contingent Goods
- (b) Future Goods, Contingent Goods and Specific Goods
- (c) Specific goods, Ascertained Goods and Unascertained Goods
- (d) All of the above**

**SECTION A**

[Answer any 4 questions]

2. (a) Jeet and Arijit purchased a taxi and they were plying it in partnership. The firm was not registered. After 1 year, Jeet sold the taxi without Arijit's consent and did not pay anything to Arijit. Arijit filed a suit against Jeet to recover his share in the sale proceeds. Jeet defended the suit on the ground that the firm was not registered. State the position of Arijit whether the suit is maintainable or not as per The Indian Partnership Act, 1932. [2]
- (b) Examine when a holder of a negotiable instrument shall be considered as a holder in due course under the provisions of the Negotiable Instruments Act, 1881. [3]
- (c) Y holds agricultural land in Assam on a lease granted by X, the owner. The land revenue payable by X to the Govt. being in arrear, his land is advertised for sale by the Govt. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Govt., the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid? [2]
- (d) What do you mean by Dissolution of Firm? What are the modes of Dissolution of a Firm? [1+4=5]

**Answer 2(a):**

Non-registration of firm does not affect the right of a partner to realize the property of a dissolved firm [Section 69(3)]. In the given case, Jeet and Arijit purchased a taxi and they were plying it in partnership. The firm was not registered. After 1 year, Jeet sold the taxi without Arijit's consent and did not pay anything to Arijit. Arijit filed a suit against Jeet to recover his share in the sale proceeds. Jeet defended the suit on the ground that the firm was not registered. The suit is maintainable because it is for the realization of the assets of a dissolved firm [**Basant Lal v. Chiranjit Lal**].

**Answer 2(b):**

A holder of a negotiable instrument shall be considered as a holder in due course under the following cases:

1. Every prior party to a negotiable instrument is liable to a HDC [Sec. 36] .
2. A holder who derives title from HDC has the same rights as that of a HDC [Sec. 53].
3. No prior party can set up a defence that the negotiable instrument was drawn, made or endorsed by him without any consideration [Sec. 43].
4. No prior party can set up a defence that the negotiable instrument was lost or was obtained from him by an offence or fraud or for an unlawful consideration. Thus, HDC gets a valid title to the negotiable instrument even though the title of the transferor was defective [Sec. 58].
5. No prior party can allege that negotiable instrument was delivered conditionally or for a special purpose only [Sec. 46].

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

6. HDC can claim full amount of the negotiable instrument (but not exceeding the amount covered by the stamp) even though such amount is in excess of the amount authorized by the person delivering an inchoate negotiable instrument [Sec. 20].

### Answer 2(c):

X is liable to pay to Y the amount paid by Y to the Govt.:

- ✓ Since there is a contract between X and Y, viz., quasi contract;
- ✓ Since X is bound to make the payment of land revenue to the Govt.;
- ✓ Since Y is interested in such payment;
- ✓ Since Y is not himself liable for such payment.

### Answer 2(d):

The term 'dissolution' stands for discontinuation. Under the Indian Partnership Act, 1932, the dissolution may be either of Partnership or of a Firm. Dissolution of a firm means the dissolution of partnership between all the partners of a firm. In such a situation, the business of the firm is discontinued, its assets are realized, the liabilities are paid off and the surplus (if any) is distributed among the partners according to their rights.

### Modes of Dissolution of a Firm:

Without the Court's Order [Sec. 40 to 43]	By the Court's Order [Sec. 44]
<ul style="list-style-type: none"><li>• By Mutual Agreement [Sec. 40]</li><li>• Compulsory Dissolution [Sec. 41]</li><li>• On happening of Certain Contingencies [Sec. 42]<ul style="list-style-type: none"><li>• By Notice [Sec. 43]</li></ul></li></ul>	<ul style="list-style-type: none"><li>• Insanity</li><li>• Permanent Incapacity</li><li>• Misconduct</li><li>• Persistent Breach of Agreement</li><li>• Transfer of Interest</li><li>• Perpetual Losses</li><li>• Any other Just and Equitable Ground</li></ul>

**Dissolution without the Court's Order [Sections 40 to 43]:** Dissolution of firm without the Court's order may take place in the following ways:

1. **Dissolution by Mutual Agreement [Sec. 40]:** A firm may be dissolved by mutual agreement among all the partners.  
Note: Even a firm for a fixed duration may be dissolved by mutual agreement.
2. **Compulsory Dissolution [Sec. 41]:** A firm is compulsorily dissolved in the following two circumstances:
  - (a) If all the partners, or all but one partner of the firm are declared insolvent;
  - (b) If some event takes place which makes it unlawful for the firm's business to be carried on.

- 3. Dissolution on the happening of certain Contingencies [Sec. 42]:** Unless otherwise agreed by partners, a firm is dissolved on the happening of any of the following four contingencies:
- (a) On the expiry of the fixed term for which the firm was constituted;
  - (b) On completion of the venture(s) or undertaking(s) for which the firm was constituted;
  - (c) On the death of a partner; and
  - (d) On the insolvency of a partner.

Note: If all the partners or all but one partner of the firm are dead, the firm shall be compulsorily dissolved even if the partnership agreement provided that the firm shall not be dissolved on the death of a partner. The reason is that there must be at least two partners to continue a firm.

- 4. Dissolution by Notice [Sec. 43]:** Where the partnership is at will, the firm may be dissolved by any partner giving notice in writing to all other partners of his intention to dissolve the firm. The firm is dissolved from the date of dissolution mentioned in the notice or if no date is mentioned, as from the date of the communication of the notice.

Note: Notice once given cannot be withdrawn without the consent of all other partners.

### **Dissolution by the Court's Order [Sec. 44]:**

- 1. Insanity [Sec. 44 (a)]:** When a partner has become of unsound mind, the court may allow dissolution of the firm on a suit by any partner of the firm. However, temporary sickness is no ground for dissolution of partnership. Similarly, a dormant partner's insanity will be no ground to seek dissolution under this head as such partner has hardly any duties to perform.
- 2. Permanent Incapacity [Sec. 44 (b)]:** When a partner [i.e., an active partner and not a sleeping partner] has become permanently incapable of performing his duties as a partner, any other partner may apply for dissolution. Such permanent incapacity may result from physical disablement, illness etc.
- 3. Misconduct [Sec. 44 (c)]:** When a partner is guilty of misconduct which is likely to adversely affect the carrying on of the business, the court may allow dissolution. The court may order the dissolution of a firm on account of misconduct of any partner other than the one filing a suit for dissolution.
- 4. Persistent Breach of Agreement [Sec. 44 (d)]:** When a partner willfully or persistently commits breach of agreement in matters relating to the business of the firm, any other partner may seek for dissolution of the firm.
- 5. Transfer of Interest [Sec. 44 (e)]:** When a partner has transferred the whole of his interest in the firm to a third party or allowed his share to be charged on account of a decree passed by a court towards payment of liabilities of that partner or allowed his share to be sold in the recovery of arrears of land revenue, it would be sufficient to attract dissolution.
- 6. Perpetual Losses:** Where the business of the firm cannot be carried on except at a loss, the court may order dissolution of the firm.
- 7. Any other Just and Equitable Ground [Sec. 44 (f)]:** Where the court is satisfied that it is just and equitable to dissolve the firm it may allow dissolution using its discretionary power to meet the ends of justice.

**Note:** The right of a partner to file a suit for dissolution on any of the above seven grounds cannot be excluded by any agreement to the contrary.

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

3. (a) What is the time limit within which payment of bonus due to an employee under the Act, be paid? [3]

(b) Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. State giving reasons as per the provisions of The Sale of Goods Act, 1930, is the dealer liable to refund the price? [4]

(c) Kiara is an employee of RSS Limited, a software company which works 5 days in a week. Kiara was not in continuous service during the financial year 2011-12. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to provisions of the Payment of Gratuity Act, 1972 decide whether Kiara is entitled to gratuity payable under the Act. Would your answer remain the same in case RSS Limited works 6 days in a week? [3]

(d) X draws a cheque for ₹2000 and Y, a holder without the consent of X alters the figure of ₹2000 to ₹20000 and makes the instrument look like a cheque drawn for ₹20000. The banker pays the cheque in due course. Discuss the legal position of the banker. [2]

**Answer 3(a):**

1. **Mode of payment:** Bonus shall be paid only in cash.

2. **If there is a dispute regarding payment of bonus:**

The bonus shall be paid within 1 month of -

- ✓ Award becoming enforceable; or
- ✓ Settlement coming into operation.

3. **In any other case:**

✓ **Time limit:** The bonus shall be paid within 8 months from the end of AY.

✓ **Extension of period:**

- AG may extend the time limit for payment of bonus.
- Conditions for extension of time are as follows:
  - (a) An application shall be made by the employer to AG.
  - (b) AG must be satisfied that there are sufficient reasons to grant extension of time for payment of bonus.
  - (c) Total period of extension shall not exceed 2 years.

**Answer 3(b):**

**As per the Rule of Implied Condition, [Sec. 16(1)]:** There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim *caveat emptor* (let the buyer beware).

**But there is exception to this rule of Condition as to Quality or Fitness:** There is an implied condition that the goods shall be reasonably fit for a particular purpose described if the following three conditions are satisfied -

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

- (i) The particular purpose for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.
- (ii) The buyer must have relied upon the seller's skill or judgement.
- (iii) The seller's business must be to sell such goods.

Note: This condition cannot be invoked against a casual seller.

In the given case, Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. The dealer is liable to refund the price because refrigerator was unfit for the purpose for which it was meant for and the buyer was not required to disclose this particular purpose. [Evens v. Stelle Benjamin].

### Answer 3(c):

- **No. of working days for Kiara as per Sec. 2A:**  
Days actually worked + Days on which a female employee was on maternity leave provided that the period of maternity leave does not exceed 12 weeks;  
= 150 days + 50 days = 200 days.
- **Kiara shall be deemed to be in continuous service** since she has worked for not less than 190 days in the establishment which works for less than 6 days in a week.
- **Kiara is entitled to gratuity** since she was in continuous service as per Sec. 2A.
- **Kiara shall not be entitled to gratuity if RSS Ltd. works 6 days in a week** since in such a case, the legal requirement for being in continuous service is that the employee should have worked for 240 days, whereas Kiara worked only for 200 days.

### Answer 3(d):

**Protection to a Person paying a Materially Altered Instrument [Sec. 89]:** The payer of a materially altered instrument is discharged from all liability on the instrument if the following two conditions are fulfilled:

- (a) The alteration must not be apparent; and
- (b) The payment must be made in due course.

In the given case, X draws a cheque for ₹2000 and Y, a holder without the consent of X alters the figure of ₹2000 to ₹20000 and makes the instrument look like a cheque drawn for ₹20000. The banker pays the cheque in due course. The banker is discharged from all liabilities as the banker made the payment in due course and alteration was not apparent.

4. (a) **Mira Ltd. contracts with Shanti Traders to make and deliver certain machinery to them by 30.06.2012 for ₹11.50 lakhs. Due to labour strike, Mira Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with Mira Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from Mira Ltd., referring to the legal provisions of the Indian Contract Act.**

[3]



## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

(b) What is Auction Sale? Discuss the rules regarding Sale by Auction.

[2+4=6]

(c) X picked up a diamond from the floor of Y's shop and handed it over to Y to keep it till owner is found, Y did his best to find out the owner but true owner could not be found. After sometime, X offered Y the lawful charges incurred by Y for finding out the true owner and asked him to return the diamond to him. Y refused to do so. Discuss the legal position. [3]

**Answer 4(a):**

- Labour strike does not amount to supervening impossibility [Sec. 56].
- Non-delivery of machinery by Mira Ltd. results in a breach of contract by Mira Ltd.
- Mira Ltd. is liable to compensate the loss incurred by Shanti Traders, i.e., to pay ordinary damages of ₹1.25 lakhs (i.e., the difference between ₹12.75 lakhs and ₹11.50 lakhs) [Sec. 73].
- Mira Ltd. is not liable to pay any compensation for loss caused to Shanti Traders due to non-performance of contract entered into with Zenith Traders since special circumstances, viz., contract between Shanti Traders and Zenith Traders were not brought to the knowledge of Mira Ltd.

**Answer 4(b):**

Auction sale means a public sale where intending buyer assemble at one place and offer the price at which they are ready to buy the goods. The offer of the price is known as 'bid' and the person making the bid is known as the 'bidder'. The owner of the goods may himself sell them by auction or appoint a person to sell the goods by auction on his behalf. The person so appointed is known as 'auctioneer.' The relationship between the owner of the goods and the auctioneer is that of the principal and agent. In an auction the goods are sold to the highest bidder. It may be noted that an advertisement to sell the goods by auction is simply an invitation to the public to make offers and not an offer to sell. That is why the intending buyers have no right to sue the auctioneer if auctioneer cancels or postpones the sale by auction.

**Rules regarding Sale by Auction [Sec. 64]**

1. **Separate Contract:** Where goods are put up for sale in lots, each lot is *prima facie* deemed to be the subject of a separate contract of sale [Sec. 64(1)].
2. **Completion of Sale:** A sale is complete when the auctioneer announces its completion by the fall of the hammer or in other customary manner. For example, by saying one, two and three, or by shouting going, going, gone etc. [Sec. 64(2)].
3. **Right to withdraw bid:** Until the announcement of completion of sale is made, any bidder may withdraw his bid [Sec. 64(2)].
4. **Seller's right to bid:** A right to bid may be reserved expressly by or on behalf of the seller and, where such right is expressly so reserved, the seller or anyone person on his behalf may bid at the auction [Sec. 64(3)].
5. **Fraudulent Sale:** Where a sale is not notified to be subject to a right to bid on behalf of the seller, it shall not be lawful for the seller to bid himself or to employ any person to bid at such sale, or for the auctioneer knowingly to take any bid from the seller or any such person, and any sale contravening the rule may be treated as fraudulent by the buyer [Sec. 64(4)].

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

---

6. **Reserve Price:** A sale may be notified to be subject to a reserve or upset price [Sec. 64(5)]. The term 'reserve' or 'upset' price may be defined as the minimum price below which the auctioneer will not sell the goods put up for auction sale.
7. **Voidable Sale:** If a seller makes use of pretended bidding to raise the price, the sale is voidable at the option of the buyer [Sec. 64(6)].

### **Notes:**

- (i) An auctioneer can refuse to accept even the highest bid because 'bid' is only an offer which may or may not be accepted by the auctioneer.
- (ii) An agreement between the bidders not to bid against each other is called the knock-out agreement. Under such agreement, it is agreed that only one person will bid and anything obtained by him shall be shared by all privately. Such agreements are lawful unless the intention of the parties to the agreement is to defraud a third party.
- (iii) Damping, which is intended to discourage the bidders from bidding is an unlawful act.
- (iv) Puffers (also known as By-bidders or White Bonnets or Decoy Ducks) are persons who are appointed by the seller for the purpose of raising the price. The seller can appoint only one puffer.

### **Answer 4(c):**

#### **Responsibility of Finder of Goods [Sec. 71]**

A person who finds goods belonging to another, and takes them into his custody, is subject to the same responsibility as a bailee.

#### **Right to Sue for Reward [Sec. 168]**

Where the owner has offered a specific reward for the return of goods lost, the finder has a right to sue the owner for such reward and to retain the goods until he receives it.

In the given case, X picked up a diamond from the floor of Y's shop and handed it over to Y to keep it till owner is found, Y did his best to find out the owner but true owner could not be found. After sometime, X offered Y the lawful charges incurred by Y for finding out the true owner and asked him to return the diamond to him. Y refused to do so.

Y must return the diamond to X because X was entitled to retain it against the whole world except the true owner.

5. (a) **What are the various rights and liabilities of a partner on dissolution?** **[6]**

**(b) Jai, a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. Jai, the shareholder of the company was neither a Director nor a person - in - charge of the Company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether Jai has committed an offence under Sec. 138**

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

---

of the Act and decide whether he (Jai) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store). [4]

(c) In an accounting year, a company to which the Payment of Bonus Act, 1965 applies, suffered heavy losses. The Board of directors of the said company decided not to give bonus to the employees. The employees of the company move to the Court for relief. Decide in the light of the provisions of the said Act whether the employees will get relief. [2]

**Answer 5(a):**

**Rights of a Partner on Dissolution:**

- 1. Partner's General Lien [Sec. 46]:** Every partner or his representative is entitled:
  - (i) To have the firm's property applied in payment of the firm's debts, and
  - (ii) To have the surplus distributed amongst the partners or the representatives according to their respective rights.
- 2. Right to Claim the Return of Premium on Premature Winding Up [Sec. 51]:** If a partner joined a firm for a fixed term and had paid a premium and the firm is dissolved before the fixed term, he is entitled to return the premium. The amount of premium will depend upon (i) the terms upon which he became a partner, and (ii) the length of the time during which he was a partner. However, such a partner cannot claim any return of the premium in the following 3 circumstances:
  - (i) When the dissolution is due to the death of partner;
  - (ii) When the dissolution is mainly due to the misconduct of the partner who paid the premium; or
  - (iii) The dissolution is according to an agreement which had no provision for the return of premium or any part thereof.
- 3. Rights of a Partner in case of Dissolution on Account of Fraud or Misrepresentation [Sec. 52]:** Where the partnership is rescinded on grounds of fraud or misrepresentation, the aggrieved partner, besides other rights under other provisions, has the following rights:
  - (i) He has a right of lien on the surplus assets after the payment of firm's debts, for any sum paid by him for purchase of a share in the firm or for any capital contributed by him;
  - (ii) He is entitled to rank as a creditor of the firm in respect of any payment made by him towards firm's debts;
  - (iii) He is entitled to be indemnified by the partner(s) guilty of fraud or misrepresentation against all the debts of the firm.
- 4. Right to Restrain from Use of Firm Name or Firm Property [Sec. 53]:** Unless otherwise agreed by the partners, every partner or his representative may restrain any other partner or his representative from carrying on a similar business in the firm name or from using the property of the firm for his own benefit till the affairs of the firm are completely wound up.

**Liabilities of a Partner on Dissolution:**

- 1. Continuing Liability for Acts of Partners done after Dissolution [Sec. 45]:** Until a public notice is given of dissolution, the partners continue to be liable for any act done by any of them after dissolution and such act is deemed to be an act done before the dissolution.

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

---

**Exceptions:** The following shall not be liable for acts done after the dissolution of the firm even though the public notice has not been given:

- (i) the estate of a deceased partner;
- (ii) the estate of an insolvent partner;
- (iii) a sleeping or dormant partner who has retired from the firm.

**2. Continuing Authority of Partners after Dissolution [Sec. 47]:** After the dissolution of a firm, the authority of a partner to bind the firm and the other mutual rights and obligations of the partners continue, so far as may be necessary:

- (i) to wind up the affairs of the firm, and
- (ii) to complete the unfinished transactions pending at the date of dissolution.

**Answer 5(b):**

- **Company has committed an offence u/s 138** since a company is held liable for dishonor of a cheque issued to discharge the debt or liability of any other person [Sec. 138].
- **Persons liable where offence u/s 138 is committed by a company:** In case of dishonour of a cheque issued by a company, company as well as every officer in charge of the company is liable u/s 138 [Sec. 141].
- **Jai has not committed any offence u/s 138** since Jai is not a director or an officer in charge of the company [HNB Mulla Firoze v. C Y Somaya Julu].
- **Jai is liable for the payment of goods purchased** since Jai purchased the goods on credit, and contracted to pay the price of the goods to the Mall (Departmental Store).

**Answer 5(c):**

As per section 10, in respect of every Accounting Year, the employer is liable to pay minimum bonus to every employee who is entitled to receive bonus, whether or not the employer has any allocable surplus in an Accounting Year.

Thus, the fact that the employer has suffered heavy losses cannot be put as a defence for non-payment of minimum bonus.

**Conclusion:** The decision of the Board not to pay bonus to employees is not correct. Thus, the workers have the right to receive the minimum bonus. For this purpose, the workers may make an application to Appropriate Government for recovery of bonus due under the Act as per the provisions of section 21.

**Comment:** Under section 36, the Appropriate Government may, in public interest, exempt any establishment or class of establishments from all or any of the provisions of this Act. Thus, the employer shall not be liable to pay bonus, if the Appropriate Government grants exemption to the employer from liability to pay bonus under the Act.

**6. (a) Point out the distinction between 'Coercion' and 'Undue influence'. [4]**

**(b) A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs and delivers it to B with a request to fill up the amount due payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is**

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

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dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C. [2]

(c) Arup, a 57 years old district judge was appointed by Central Govt. as presiding officer of the Employees Provident Funds Appellate Tribunal from a period of 5 years. After 3 years, he (Arup) 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 Govt. till that date. Examine the validity of Arup's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952. [2]

(d) Discuss the procedure and powers of Appellate Tribunal as per The Prevention of Money Laundering Act, 2002. [4]

**Answer 6(a):**

Basis of Distinction	Coercion	Undue Influence
Governing section	The provisions governing coercion are given u/s 15.	The provisions governing undue influence are given u/s 16.
Meaning	Coercion involves using or a threat to use physical force.	Undue influence involves use of moral force or mental pressure.
Intention	The purpose of employing coercion is to compel the other party to enter into a contract against his will.	The purpose of exercising undue influence is to obtain an unfair advantage.
Punishment	The party employing coercion is criminally liable under the Indian Penal Code.	The party exercising undue influence is not liable under the Indian Penal Code.
Parties	Coercion may be employed by any person. Similarly, coercion may be directed against any person.	Undue influence is always exercised between the parties to the contract.
Relationship between the parties	In case of coercion, the relationship between the parties is immaterial.	Undue influence can be exercised only when one party is in a position to dominate the will of the other.
Legal effect	The contract is voidable at the option of the party whose consent was obtained by coercion.	The contract is voidable at the option of the party whose consent was obtained by undue influence.
Restitution	If the aggrieved party rescinds the contract, he shall restore to the other party any benefit received by him under the contract.	The Court has the discretion to direct the aggrieved party to return the benefit in whole or in part.

**Answer 6(b):**

**B is entitled to recover only such amount as was intended to be paid by A** since a holder to whom an inchoate instrument is delivered is entitled to receive only such amount as was intended to be paid by the person delivering an inchoate instrument [Sec. 20]

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## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

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**C is entitled to recover the whole amount of cheque** since a holder in due course is entitled to receive whole of the amount of the negotiable instrument [Sec. 20].

**Answer 6(c):**

**Arup continues to be in office:**

- Till the remaining period of his office, viz. 2 years; or
- Till his successor enters upon his office; or
- Till the expiry of 3 months from the date of resignation;  
Whichever is earlier.

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

**Answer 6(d):**

**Procedure and powers of Appellate Tribunal [Sec 35]**

- (1) The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 (5 of 1908), but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.
- (2) The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 (5 of 1908) while trying a suit, in respect of the following matters, namely:
  - (i) summoning and enforcing the attendance of any person and examining him on oath;
  - (ii) requiring the discovery and production of documents;
  - (iii) receiving evidence on affidavits;
  - (iv) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872 (1 of 1872), requisitioning any public record or document or copy of such record or document from any office;
  - (v) issuing commissions for the examination of witnesses or documents;
  - (vi) reviewing its decisions;
  - (vii) dismissing a representation for default or deciding it ex parte;
  - (viii) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
  - (ix) any other matter, which may be, prescribed by the Central Government.
- (3) An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose; the Appellate Tribunal shall have all the powers of a civil court.
- (4) Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.
- (5) All proceedings before the Appellate Tribunal shall be deemed to be judicial proceedings within the meaning of sections 193 and 228 of the Indian Penal Code (45 of 1860) and the Appellate Tribunal shall be deemed to be a civil court for the purposes of sections 345 and 346 of the Code of Criminal Procedure, 1973 (2 of 1974).

### SECTION B

[Answer any two questions]

7. (a) Fairy Ltd. was registered as a public company. There are 64 members in the company as noted below:

(i) Directors and their relatives	34
(ii) Employees	10
(iii) Ex-employees (shares were allotted when they were employees)	5
(iv) 5 couples holding shares jointly in the names of husband and wife (5x2)	10
(v) Others	5
(vi) Total no. of members	64

The board of directors of the company proposes to convert it into a private company. Advise the board of directors about the steps to be taken for conversion into a private company including reduction in the number of members, if necessary. [4]

(b) "The development of corporate governance in the UK was initially the findings of a trilogy of codes"- Explain the same. [4]

Answer 7(a):

Total no. of members as per Sec. 3(1)(iii)	(i) Directors and their relatives	34
	(ii) Employees [Since employees are not considered while computing the limit of 50 members given u/s 3(1)(iii)]	0
	(iii) Ex-employees [Since past employees are not considered while computing the limit of 50 members given u/s 3(1)(iii), if shares were allotted to them while they were in the employment of the company]	0
	(iv) 5 couples holding shares jointly in the names of husband and wife [Since joint shareholders are considered as one member only for the purpose of Sec. 3(1)(iii)]	5
	(v) Others	5
	<b>Total</b>	<b>44</b>
Reduction in no. of members is not required	- Since the number of members after conversion into a private company would not be more than 50.	
Steps required for conversion into a private company are-	<ul style="list-style-type: none"> <li>- Pass SR for amendment of the articles so as to include the four restrictions specified u/s 3(1)(iii);</li> <li>- Pass SR for adding the word 'private' at the end of the name of the company;</li> <li>- Within 3 months of alteration of articles, apply to CG for obtaining its approval;</li> </ul>	

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

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	- Within 1 month of receipt of approval of CG, file with the registrar an amended copy of the articles.
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### Answer 7(b):

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

#### **Cadbury Report (1992)**

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

The recommendations covered: the operation of the main board; the establishment, composition, and operation of key board committees; the importance of, and contribution that can be made by, non-executive directors; the reporting and control mechanisms of a business. The Cadbury Report recommended a code of Best Practice with which the boards of all listed companies registered in the UK should comply, and utilized a 'comply or explain' mechanism. This mechanism means that a company should comply with the code but, if it cannot comply with any particular aspect of it, then it should explain why it is unable to do so.

#### **Greenbury Report (1995)**

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

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



## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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closely aligned. Since that time (1995), disclosure of directors' remuneration has become quite prolific in UK company accounts.

### **Hampel Report (1998)**

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

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

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

**8. (a) Discuss the procedure for appointment of Cost Auditor. [6]**

**(b) M/s India Computers Ltd. was registered as a public company on 1<sup>st</sup> July, 2012 in the State of Maharashtra. Another company by name M/s All India Computers Ltd. was registered in Delhi on 15<sup>th</sup> July, 2012. The promoters of India Computers Ltd. have failed to persuade the management of All India Computers Ltd. to change the company's name, as it closely resembles with the name of the first registered company. [2]**

### **Answer 8(a):**

The Cost Auditor shall be appointed by the Board of directors with the previous approval of the Central Government. Cost audit is necessary only when Central Government makes an order directing a company to conduct cost audit in respect of a particular year.

### **Procedure for appointment of a Cost auditor**

MCA Circular No. 15/2011 (52/5/CAB-2011), dated 11-04-2011 w.r.t. appointment of Cost Auditor is reproduced as under:

1. The Ministry has reviewed the existing procedure followed by the companies for seeking prior approval of the Central Government for appointment of Cost Auditor under section 233B (2) of the Companies Act, 1956. In supersession of any earlier Order/Circular issued in this regard, the revised procedure to be followed by the companies and Cost Auditor shall be as under:
  - (a) The Company is required to get its cost records audited under section 233B (1) of the Companies Act, 1956 shall appoint a Cost Auditor who is a Cost Accountant as defined in clauses (b) of sub-section (1) of section 2 of the Cost and Works Accountants Act, 1959

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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- (23 of 1959) and who holds a valid certificate of practice under sub-section (1) of section 6 of that Act and includes a firm of Cost Accountants.
- (b) The Audit Committee of the Board shall be the first point of reference regarding the appointment of Cost Auditors.
  - (c) The Audit Committee shall ensure that the cost auditor is free from any disqualifications as specified under section 233B (5) read with section 224 and sub-section (3) or sub-section (4) of section 226 of the Companies Act, 1956.
  - (d) While a Cost Auditor shall have prime responsibility to ensure that he does not violate the limits specified under section 224 (1-B) of the Companies Act 1956, the Audit Committee shall also be responsible for such compliance by the Cost Auditor.
  - (e) The Audit Committee shall obtain a certificate from the Cost Auditor certifying his/its independence and arm's length relationship with the company.
  - (f) The Company shall e-file its application with the Central Government on www.mca.gov.in portal, in the prescribed form 23C within ninety days from the date of commencement of each financial year, along with the prescribed fee as per the Companies (Fees on Applications) Rules, 1999 as amended from time-to-time and other documents as per existing practice i.e., Certified copy of the Board Resolution proposing appointment of the Cost Auditor; and Copy of the certificate obtained from the Cost Auditor regarding compliance of section 224 (1-B) of the Companies Act, 1956.
  - (g) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within thirty days from the date of filing such application.
  - (h) If within thirty days from the date of filing such application, the Central Government directs, the company to re-submit the said application with such additional information or explanation, as may be specified in that direction, the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the Company.
  - (i) After expiry of thirty days, as the case may be, the Company shall issue formal letter of appointment to the Cost Auditor, as approved by the Board.
  - (j) Within thirty days of receipt of formal letter of appointment from the company, the cost auditor shall inform the Central Government in the prescribed form, along with a copy of such appointment. An e-form for the same is being developed and will be notified shortly.
  - (k) The company shall disclose full particulars of the Cost Auditor, along with the due date and actual date of filing of the cost audit report by the Cost Auditor, in its Annual Report for each relevant financial year.
  - (l) In those companies where constitution of an Audit Committee of the Board is not required by law, the words "Audit Committee" shall stand substituted by the words "Board of Directors".
2. If a company contravenes any provisions of this circular, the company and every officer thereof who is in default, including the persons referred to in sub-section (6) of section 209 of the Act, shall be punishable as provided under sub-section (2) of section 642 read with sub-sections (5) and (7) of section 209 and sub-section (11) of section 233B of Companies Act, 1956.
  3. If default is made by the Cost Auditor in complying with the aforesaid provisions, he shall be punishable with fine, which may extend to five thousand rupees.

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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4. The modified procedure contained in this circular shall be effective from the financial year commencing on or after the 1<sup>st</sup> day of April, 2011.

Capacity to authenticate the Compliance Report as per the Companies (Cost Accounting Records) Rules 2011.

As per Rule 5, the Compliance Report and annexure thereto is required to be certified by a "Cost Accountant" as defined under Rule 2(c).

As per Rule 7, the annexure to the Compliance Report is to be duly approved by the Board of Directors.

A "Cost Accountant" within the definition of these Rules does not include:

- (a) A member holding a part-time certificate of practice; or
- (b) A member who is in full time employment whose membership fees are in arrears;
- (c) A member of The Institute of Cost Accountants of India who has been admitted as a member through reciprocal arrangement of membership by virtue of being a member of Institute of Management Accountants USA.

**Note:** A Cost Accountant is in full time employment in a company. He is also holding part time Certificate of Practice. Whether he can certify the Compliance Report of group companies and/or any other company.

- (i) A Cost Accountant and a member of the Institute can certify the Compliance Report of the Company where he is a permanent employee.
- (ii) In his capacity as a part-time COP holder, he is neither authorized to certify the Compliance Report of other group companies nor any other Company.

### **Answer 8(b):**

The name 'All India Computers Ltd; is undesirable	- Since it too nearly resembles with the name by which a company in existence has been previously registered (viz; 'India computers Ltd.')
Advice to 'India computers Ltd;	<ul style="list-style-type: none"><li>▪ Make an application to CG seeking a direction from CG to 'All India Computers Ltd; to rectify its name.</li><li>▪ On issue of such a direction by CG, 'All India Computers Ltd. '; shall be bound to rectify its name within 3 months of receipt of the direction of CG.</li></ul>

9. (a) **M Ltd. served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. A, a shareholder of the M Ltd. complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M Ltd. regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 1956? Explain fully. [3]**

(b) **"Internal auditing is an independent appraisal function established within the organization to examine and evaluate its activities as a service to the organization."**

**In the light of the above statement, state the importance of Internal Audit for Governance. [5]**

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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### **Answer 9(a):**

Issue of sweat equity shares	- is an item of special business
Explanatory statement is required	- for every item of special business.
Material facts must be disclosed	- in the explanatory statement.
Material facts in the given case are -	(a) Number of share (b) Current market price (c) Consideration (d) The class of directors or employees to whom such equity shares shall be issued (Sec. 79A)
The notice is not valid in the given case	- Since the provisions of Sec.173 are mandatory; - Since notice given, or any resolution passed in the GM, without containing the explanatory or without disclosing the material facts, is invalid.

### **Answer 9(b):**

Traditionally, the expression, 'internal audit' refers to an audit conducted on behalf of the management to ensure that the existing internal controls are adequate and effective; the financial accounting and other records and reports show results of actual operations accurately and promptly; and each unit of the organization follows the policies and procedures as laid down by the top management. Thus, during initial stages, the internal auditor's significant emphasis was on detection of errors and frauds focussed on financial aspects of the enterprise.

Over a period of time, the participation in non-financial areas increased rapidly since the business scene was changing very fast. Pressure on the managements was building up due to enormous growth of organisations in size and operations. The complexity of business activities and voluminous transactions led to increasing dependence on large number of people. It was in this context that the management recognised the possibility of utilising the services of internal audit department in a much more effective manner, and this was possible with only a little extra expenditure. It was strongly felt that the expertise built by the internal auditor in financial operations should be equally useful for non-financial operation of the enterprise as well. This is how in the expression given in the question all three words viz. "accounting", "financial" and "other operations" stand on equal importance. The Statement of Responsibilities of Internal Auditor issued in 1971 by the Institute of Internal Auditors, USA cut the umbilical cord to the books of account and simply defined internal auditing as, Internal auditing is, "the review of operations as a service to management". With this revision of definition, it was made clear that accounting activity is also one of the operational areas of the entity like production, research and development, personnel, marketing, etc. In 1981, the definition was modified as under:

"Internal auditing is an independent appraisal function established within the organization to examine and evaluate its activities as a service to the organisation. It is a managerial control which functions by measuring and evaluating the effectiveness of other controls."

With this, internal auditing came to be recognised as a management resource - an important part of the total internal control system for which management is primary responsible. Today, the total range of services rendered by the internal auditor covers both protective needs and

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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constructive needs stressing on performance and operations. Specifically, the range of activities as outlined in the Statement of Responsibilities of Internal Auditors is as follows:

- (i) Reviewing and appraising the soundness, adequacy and application of accounting, financial, and other operating controls, and promoting effective control at reasonable cost.
- (ii) Ascertaining the extent of compliance with established policies, plans and procedures.
- (iii) Ascertaining the extent to which company's assets are accounted for and safeguarded from losses of all kinds.
- (iv) Ascertaining the reliability of management data developed within the organisation.
- (v) Appraising the quality of performance in carrying out assigned responsibilities.
- (vi) Recommending operating improvements.
- (vii) A close examination of those services help us in identification of primary protective services viz second, third and fourth, and those that are primarily directed to further improvement in operations (i.e. the first, fifth, and sixth).

The modern concept of internal auditing suggests that internal auditing need not be confined to financial transactions and that its scope may be extended to the task of reviewing whether the resource utilisation of the enterprise is efficient and economically. This would necessitate a review of all operations of the enterprise as also an evaluation of the effectiveness of management. In this sense, the internal auditor performs what is known as 'Operational audit' or 'Management audit'. Thus, the expression makes it clear that the scope of activities of internal auditor is not restricted to financial areas but extends to non-financial areas as well.

(Note: Recently, the Institute of Internal Auditors itself has revised the definition of Internal Auditing. The revised definition is:

"Internal auditing is an independent, objective assurance and consulting activity designed to add value and improve an organisation's operations. It helps an organisation accomplish its objectives by bringing a systematic, disciplined approach to evaluate and improve the effectiveness of risk management, control and governance process).

### **SECTION C**

**[Answer any two questions]**

**10. (a) Discuss the key factors which influence the Ethical decisions in an organization and list some of the examples of ethical issues faced by the employees in the workplace. [3+3=6]**

**(b) How to create an Ethical Accounting Environment? [2]**

**Answer 10(a):**

**The following are the three key factors which influence the ethical decisions in an organization:**

#### **1. Individual moral standards**

Each individual has a set of thoughts in his own mind about what is right and what is not. Good personal values help an individual to set a good example to fellow workers. Having sound personal values help in creating an ethical workplace.

### 2. Influence of managers and co-workers

The behaviour of the colleagues has a huge influence on ethical conduct of other employees. If a majority of the employees follow the rules of the organization, it will motivate other employees and new comers to obey the same resulting in an effective system.

### 3. Opportunity to engage in misconduct

Where the organization does not have a code of ethical conduct, employees get more opportunities to engage in misconduct. If a company fails to provide direction for appropriate conduct, confusion and conflict will develop resulting in unethical behaviour.

### The Individual

An ethical issue is an identifiable problem, situation or opportunity requiring a person to choose from several alternatives. An individual's behavior affects not only his own reputation but also the reputation of the company. It is, therefore, the duty of the individual to act in an ethical manner and make the right choice.

An individual's values reflect in his attitude, action and in the choices he makes. Personal beliefs shape the values of an individual. Values develop right from our childhood and are constantly tested in our workplace by means of decisions we take. Persons who have negative attitude or who lacks personal motivation may be affected by the following socio-psychological factors:

- Negative work or life experiences
- Aggressive financial or business targets
- Pressure to perform and take quick decisions
- Employees failing to respect each other's unique personalities

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

#### 1. Relationship with suppliers and business partners

- a. Bribery and immoral entertainment
- b. Discrimination between suppliers
- c. Dishonesty in making and keeping contracts

#### 2. Relationship with customers

- a. Unfair pricing
- b. Cheating customers
- c. Dishonest advertising

#### 3. Relationship with employees

- a. Discrimination in hiring and treatment of employees

#### 4. Management of resources

- a. Misuse of organizational funds
- b. Tax evasion

### Answer 10(b):

**A. Employee Awareness:** It should be noted and ensured that employees are aware of their legal and ethical responsibilities. Organization should train and motivate employees toward

## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

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ethical behavior. Top management should initiate steps in developing such an ethical environment.

- B. Encouraging communication:** Ethical organization need to provide channels through which employees could communicate with concerned Managers, for reporting frauds, mismanagement or any other form of detrimental behavior.
- C. Ensuring fair treatment to Whistle Blowers:** A person or an employee who reports fraud, mismanagement or any other detrimental practices to the concerned Managers is called Whistle Blower. Organization should ensure protection and fair treatment to Whistle Blowers to reduce fraud.

11. (a) Write a short note on:

- (i) Ethics and Ethical Dilemma  
(ii) Evolution of Ethics

[2+2=4]

(b) Explain the reasons for unethical behavior among finance and accounting professional.

[4]

Answer 11(a):

(i) Ethics and Ethical Dilemma:

Ethics may be defined as "those moral principles which guide the conduct of individuals". Individuals will have different opinions on the same subject matter. Hence, what one thinks as right may not always be the right thing to do. Ethical behavior implies course of action decided after giving due thought to their impact on the society and other stake holders. Ethical dilemmas exist when financial and accounting professionals need to choose from alternatives and these are:

1. Significant value conflicts among differing interests
2. Actual alternatives, all of which can be justified from different angles
3. Significant consequences to all stakeholders

Eg:

1. When finance and accounting professionals at Enron did not report of the wrongs, they were considered to be unethical, though they were not actually involved in fraudulent activities. On the other side, Cynthia Cooper, Internal Audit - Vice president of WorldCom reported about the wrong accounting entries which inflated profits. These two behaviors provide us an insight about ethical dilemma and the right course of action to be taken.
2. A finance and accounting professional is given the job to prepare a profit forecast for the purpose of availing a loan from the banker. The company has not been doing well for the past few years and without this loan, it may have to shut down its operations. This loan can be availed only if the projected profits are atleast ₹25,00,000 per annum. However, a realistic projection of profits gives a lower figure. Thus, in the given situation, the professional has to resolve the dilemma of the profit forecast to be given to the banker.

(ii) Evolution of Ethics:

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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Social conduct has evolved along with the evolution of society. When your elders tell you 'Do not cheat', they are referring to a social code of conduct. Social conduct has developed in society over hundreds of years. The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. In ancient India, there was no moral problem with the custom of sati - immolating the wife on the funeral pyre of the deceased husband. But society has evolved humanely and has condemned the act as unacceptable and morally reprehensible.

The laws of a country are based on the customs or moral codes of its society. Penalties are prescribed for bad actions, actions that contradict the established laws. The laws are a measure against those people who cross the limits of the code of social conduct, and ensure that good citizens are protected from the negative consequences of the law-breakers.

The object of the social codes of conduct is to maintain, promote, and elevate harmonious relationships.

'Honour your parents' is one such code. It maintains a peaceful relationship between parents and children and promotes respect for each other in the family. It is because of its salutary effects, it is considered as one of the fundamental values to be cultivated.

The Evolution of Ethics constructs a conceptual bridge between biology and human behavior. This is accomplished by examining the cultural and biological feedback systems that inspires the evolution of social rules. In theory, a cybernetic process is at the heart of developing ethical systems. This process occurs when biology and culture collide. The resulting conflict acts as a form of "informational feedback" telling people that there are serious problems that need to be resolved. Conflict inspires human adaptation in a way that extends the survival of the species. In this sense, the evolution of ethical systems is a response to the drive of the human species to survive. Additionally, a whole array of related "rule systems" such as statutory laws, professional codes, customs, and even the rules of etiquette evolve to further human adaptation. "Ethical systems" are reasoned rules of conduct that derive from past experience while moral laws (informally known) evolve over centuries of time and many times are influenced and expressed by human emotions.

### **Answer 11(b):**

The reasons for unethical behavior among finance and accounting professional are as under:

#### **(A) Individual driven unethical behavior**

Various economic, social or personal factors may account for why a financial and accounting professional becomes unethical. These factors or reasons are discussed below:



## Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3

<b>1. Greed for money</b>	<p>Greed for money or personal or family gain may induce a professional to behave unethically. Similarly, the desire to further one's career (i.e. career advancement) is one important reason for unethical behaviour. Such professionals have a belief and say to themselves, "No one will ever come to know; I won't get caught".</p> <p>A finance and accounting professional may find himself to be forced by circumstances to be unethical because of financial problems and family pressures. In order to protect his livelihood, he may give up to the wishes of the unethical management.</p>
<b>2. Accounting complexities</b>	<p>Because of ignorance of law, rules and regulations, a professional may fail to carry out his duties diligently, thus being unethical. Also, due to complexities of various laws, rules, regulations, standards and accounting principles, sometimes it may be difficult and extremely time consuming, to identify the manipulations. Thus, the finance professionals may just ignore the same.</p> <p>Simply speaking, failure to understand the treatment and impact of various transactions results in unethical conduct of a finance and accounting professional.</p>
<b>3. Familiarity</b>	<p>Because of friendship and familiarity with the colleagues, superiors and associates, a professional may start relying on the judgement of others, without carrying out his functions and duties, thus being unethical.</p>
<b>4. Unmindful of consequences</b>	<p>Many employees have a tendency to bow to the orders of the superior regardless of considering their consequences and whether they are being ethical or not. When they are confronted, they give the excuse, "I was just following the orders" or that "everyone does it".</p>

### (B) System driven unethical behavior

<b>1. Organisational pressures</b>	<p>The most likely factor to cause unethical behaviour in an organisation is setting unrealistic business objectives and deadlines. This may result in employees resorting to shortcuts or manipulations, thus, becoming unethical.</p> <p>A professional may be pressurised by the management to manipulate the financial statements so that the objectives and targets set by the entity, although not achieved, seem to be achieved.</p>
<b>2. No clarity about values</b>	<p>Unethical behaviour is also due to absence of clearly defined and communicated rules of behaviour, standards or rules or code of conduct. When the employees of such an organisation are confronted, most of them would give the excuse, "Nobody told me".</p>
<b>3. False profitability</b>	<p>Entities wish to involve in manipulations with the help of finance and accounting professionals, so that by showing false profitability, they can boost up the prices of shares in the market. This is the most common reason for unethical behaviour.</p>

<b>4. Ignoring small unethical issues</b>	If small ethical lapses are tolerated or not taken seriously, unethical behaviour tends to be repeated in the future. Appropriate disciplinary action is a must, so that small unethical issue today does not result in a scandal tomorrow.
<b>5. Economic cycles</b>	Economic cycles, at times, may cause an adverse impact on an organization and its near future plans. In order to show that the investment already made is, and the proposed investment shall be, a prudent decision, the management and the finance and accounting professionals may resort to window dressing and manipulate the market standing of the organization.

### 12. What are the benefits of Business Ethics?

[8]

**Answer 12:**

**Benefits of Business Ethics are detailed as under:**

#### **1. Improved society**

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

#### **2. Easier change management**

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

#### **3. Strong teamwork and greater productivity**

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

#### **4. Enhanced employee growth**

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

#### **5. Ensure personnel policies are legal**

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

#### **6. Avoids criminal acts "of omission" and lowers fines**

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

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

## **Answer to PTP\_Intermediate\_Syllabus 2012\_Dec2013\_Set 3**

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

### **8. Promotes a strong public image**

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