

Answer to PTP_Intermediate_Syllabus 2012_Jun2014_Set 1

Paper- 6: LAWS ETHICS AND GOVERNANCE

Time Allowed: 3 Hours

Full Marks: 100

The figures in the margin on the right side indicate full marks.

Question No. 1 is compulsory

1. Choose the correct answer from the given four alternatives. 1 x 20 = 20
- (i) A partnership for which no period or duration is fixed under the Indian Partnership Act is known as:
- (a) Unlimited partnership
 - (b) Co-ownership
 - (c) Particular partnership
 - (d) Partnership at will
- (ii) Mr. Saxena is a director of Suvalaxmi Ltd. which failed to file its annual return from the year 2012-13. The maximum period for which Mr Saxena will be disqualified from becoming a director in any public limited company is
- (a) 3 years
 - (b) 5 years
 - (c) 7 years
 - (d) 10 years
- (iii) Which of the following items requires special resolutions in a general meeting under the Companies Act, 1956?
- (a) Issue of shares at discount
 - (b) Adoption of Statutory Report
 - (c) Appointment of Managing / whole-time Director
 - (d) Reduction of Share Capital
- (iv) The partnership firms becomes an illegal association, when:
- (a) The number of partners in a banking business exceeds 10
 - (b) The number of partners in a non-banking business exceeds 10
 - (c) The number of partners in a non-banking business exceeds 20
 - (d) Both (a) and (c)
- (v) Ethics has been received from Greek Word
- (a) Ethos
 - (b) Ethes
 - (c) Eths
 - (d) Ethose
- (vi) _____ refers to ethical or unethical behaviors by employees in the context of their jobs.
- (a) Social ethics
 - (b) Business ethics
 - (c) Collusion
 - (d) Social Responsibility

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- (vii) In case of contract for the sale of specific or ascertained goods the property in goods passes to the buyer:
- (a) At such time as the parties to the contract intend it to be transferred
 - (b) When the price is paid
 - (c) When delivery is given
 - (d) When the contract is made
- (viii) For a valid contract of sale, delivery may be:
- (a) Actual delivery
 - (b) Symbolic delivery
 - (c) Constructive delivery
 - (d) All of these
- (ix) An agreement of agency must clear the _____ of a person to act on behalf of another person.
- (a) Intention
 - (b) Certainty
 - (c) Involvement
 - (d) None of the above
- (x) An agent is _____ between his principal and the third party
- (a) Connecting link
 - (b) Sub agent
 - (c) Partner
 - (d) None of the above
- (xi) Which of the following refers to an instrument in writing containing an unconditional order, signed by maker directing a certain person to pay on demand or at fixed or determinable future time a certain sum of money only to or to the order of, a certain person or to the bearer of the instrument?
- (a) Promissory note
 - (b) Bill of exchange
 - (c) Cheque
 - (d) Bearer debentures
- (xii) According to Negotiable Instrument Act 1881, which of the following is not the type of promissory note?
- (a) A promise to pay a certain sum of money to a person
 - (b) A promise to pay a certain sum of money to the order
 - (c) A promise to pay the bearer
 - (d) A promise to pay certain sum of money at some time
- (xiii) Every Banking Company, Financial Institution, Intermediary is required to communicate the name, designation and address of the _____ to the Director.
- (a) Principal Officer
 - (b) Agent
 - (c) Commissioner
 - (d) Inspector
- (xiv) To avoid overcrowding, there shall be posted in each workroom of a factory a notice specifying the _____ number of workers who may be employed.
- (a) Minimum

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- (b) Maximum
(c) Average
(d) None of the above
- (xv) How many employment are contained in part 1 to Schedule 1 of the Minimum Wages Act, 1948
(a) 10
(b) 15
(c) 18
(d) 21
- (xvi) Which of the following statements about business ethics is true?
(a) It concerns the impact of a business's activities on society.
(b) It refers to principles and standards that determine acceptable behavior in business organizations.
(c) It relates to an individual's values and moral standards and the resulting business decisions he or she makes.
(d) What is ethical is determined by the public, government regulators, interest groups, competitors, and each individual's personal moral values.
- (xvii) Pick the odd one. It is UNCOMMON for business to behave ethically because
(a) It has to meet stock holder expectations
(b) It has to ignore their employees relations
(c) To build trust with shareholders
(d) All of the above
- (xviii) Permanent disablement benefit is paid at the rate of _____ of wages.
(a) 120%
(b) 100%
(c) 79%
(d) 90%
- (xix) Under the Companies Act, 1956, the first directors shall hold office upto
(a) The end of the statutory meeting
(b) The end of the period as prescribed by the articles of the company
(c) The end of three years from the date of appointment
(d) Till the first Annual general Meeting
- (xx) As per section 292A of the Companies Act, 1956 every public company having paid up capital of not less than _____ of rupees shall constitute a committee of the Board known as Audit Committee.
(a) Fifty lakh
(b) Twenty-five crore
(c) Five crore
(d) Ten crore

Answer: 1.

- (i) (d) Partnership at will
(ii) (b) 5 years
(iii) (d) Reduction of Share Capital
(iv) (d) Both (a) and (c)
(v) (b) Ethes

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- (vi) (b) Business ethics
- (vii) (a) At such time as the parties to the contract intend it to be transferred
- (viii) (d) All of these
- (ix) (c) Involvement
- (x) (d) None of the above
- (xi) (b) Bill of exchange
- (xii) (c) A promise to pay the bearer
- (xiii) (a) Principal Officer
- (xiv) (b) Maximum
- (xv) (d) 21
- (xvi) (b) It refers to principles and standards that determine acceptable behavior in business organizations.
- (xvii) (b) It has to ignore their employees relations
- (xviii) (d) 90%
- (xix) (d) Till the first Annual general Meeting
- (xx) (c) Five crore

SECTION A

Attempt any four questions.

2. (a) P, Q and R jointly borrowed ₹500,000 from W. The whole amount was repaid to W by Q. Decide in the light of the Indian Contract Act, 1872 whether:
- (i) Q can recover the contribution from P and R,
 - (ii) Legal representatives of P are liable in case of death of P,
 - (iii) Q can recover the contribution from the assets, in case R becomes insolvent.
- (b) Explain the liabilities of a Partner to third parties?
- (c) Decide whether the following persons are entitled to get bonus under the Payment of Bonus Act, 1965:
- (i) An apprentice
 - (ii) A retrenched employee
 - (iii) A dismissed employee
- [3+6+3]**

Answer:

- (a) Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise. Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise. Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the

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remaining joint promisors must bear the loss arising from such default in equal shares. As per the provisions of above sections, (i) Q can recover the contribution from P and R because P,Q, R are joint promisors. (ii) Legal representative of P are liable to pay the contribution to Q. However, a legal representative is liable only to the extent of property of the deceased received by him. (iii) 'Q' also can recover the contribution from R's assets.

(b) The following are the liabilities of a partner to third parties:

(i) Liability of a partner for acts of the firm:

Every partner is jointly and severally liable for all acts of the firm done while he is a partner. Because of this liability, the creditor of the firm can sue all the partners jointly or individually.

In order that a partner may be held liable for any acts of the firm, the same must have been done while he was a partner irrespective of the fact that at the time of the action he had ceased to be a partner of the firm or the firm has been dissolved.

(ii) Liability of the firm for wrongful act of a partner:

If any loss or injury is caused to any third party or any penalty is imposed because of wrongful act or omission of a partner, the firm is liable to the same extent as the partner. However, the partner must act in the ordinary course of business of the firm or with authority of his partners.

The liability of the firm under section 26 arises only (i) if the act is done in the ordinary course of the firm or done with the authority of the other partners or on behalf of the firm in its name and the firm subsequently ratifies them with full knowledge of what those acts were and (ii) the results of the wrongful act or omission is the injury to any third party, or any penalty is incurred

In *Hurruck chanc v Govind Land 1906 10 CWN 1053* one of the partners received the stolen goods and credited the sale proceeds to the credit of the firm. It was held that both firm and partner are liable for this wrongful conversion.

In *Hamlayan v John Housten & Co, 1903 1 KB & 81* one of the two partners without the knowledge of his sleeping co-partner by bribery induced a clerk of the plaintiff, a competitor in trade, in breach of duty to his employer to give confidential information in regard to the plaintiff business. It was in the ordinary course of business of the firm to obtain such information by legitimate methods, and the partners acted in the interest of the firm. Both partners were held liable to the plaintiff.

(iii) Liability of the firm for misutilisation by partners :

Where (a) a partner acting within his apparent authority receives money or property from a third party and misutilises it (b) or a firm receives money or property from a third party in the course of its business and any of the partners misutilises such money or property, then the firm is liable to make good the loss.

Under clause (a) of section 27 to hold the firm liable a partner must have received money or property while acting within his apparent authority and it must have been misapplied by that partner.

Under clause (b) of section 27 to hold the partner liable the money or property must have been received by the firm in the course of the business of the firm and the

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money must have been misapplied by any partner while it is in the custody of the firm.

(iv) Liability of an incoming partner:

An incoming partner is liable for the debts and acts of the firm from the date of his admission into the firm. However, the incoming partner may agree to be liable for debts prior to his admission. Such agreeing will not empower the prior creditor to sue the incoming partner. He will be liable only to the other co-partners.

(v) Liability of a retiring partner:

A retiring partner is liable for the acts of the firm done before his retirement. But a retiring partner may not be liable for the debts incurred before his retirement if an agreement is reached between the third parties and the remaining partners of the firm discharging the retiring partner from all liabilities. After retirement the retiring partner shall be liable unless a public notice of his retirement is given. No such notice is required in case of retirement of a sleeping or dormant partner.

(vi) Liability for holding out:

As per section 28 of the Act if anyone by words spoken or written or by conduct represent himself, or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit. Similarly where after partner's death the business continued in the old firm-name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

(c)

(i) An apprentice is not eligible	<ul style="list-style-type: none">• since he is expressly excluded from the definition of employee [Sec. 2(13)].
(ii) A retrenched employee is eligible	<ul style="list-style-type: none">• provided he has worked for a minimum period of 30 days in the Accounting Year (Sec. 8).
(iii) A dismissed employee is eligible	<ul style="list-style-type: none">• provided he has worked for a minimum period of 30 days in the Accounting Year (Sec. 8); and• Provided he is not disqualified as per Sec. 9.

3. (a) X, Y and Z were joint owners of a bus and possession of the said bus was with Y. P purchased the bus from Y without knowing that X and Z were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between Y and P is valid or not?

(b) What are the remedies available to the buyer for breach of conditions?

(c) Point out the defenses' available to employers regarding personal injury caused to a workman by accident arising out of and in the course of employment.

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(e) What are the distinction between void agreement and illegal agreement?

(e) 'Money laundering can provide short term benefits to economy.' Comment. [2+2+3+3+2]

Answer:

(a) This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of the joint owners may transfer a better title than that he possesses. Section 28 provides that – if one of several joint owners of goods has the sole possession of them by permission of the other co-owners, the property in goods is transferred to any person who buys them from such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell.

(b) The following remedies are available to the buyer for breach of conditions :

- (i) Affected party may claim refund of price and reject the goods;
- (ii) Elect to treat breach of condition as breach of warranty and claim damages or compensation;
- (iii) When the affected party treat breach of condition as breach of warranty he can not repudiate the contract but claim damages only;
- (iv) No remedy is available when the fulfilment of condition is excused by law by means of impossibility or otherwise (13(3)).

(c) An employer is not liable to pay compensation for personal injury caused to a workman by accident arising out of and in the course of employment—

- (a) if the injury does not result in the total or partial disablement of the workman for a period exceeding 3 days ;
- (b) if the injury, not resulting in death, is caused by an accident which is directly attributable to—
 - (i) the workman having been at the time of the accident under the influence of drink or drugs ; or
 - (ii) the willful disobedience of the workman to an order expressly given, or to a rule expressly framed, for the purpose of securing the safety of workmen ; or
 - (iii) the willful removal or disregard by the workman of any safety guard or other device (which is an offence under the Factories Act, 1948) which he knew to have been provided for the purpose of securing the safety of the workmen [Proviso (a) to Sec. 3 (1)].

The exceptions, namely (i) intoxication by drink or drugs, (ii) willful disobedience of certain rules and orders, (iii) willful removal of safety devices, are not applicable in case of a fatal accident [Proviso (b) to Sec. 3 (1)]. The reason is that where a workman has died as a result of personal injury it is extremely difficult for the dependants to rebut evidence that the accident was caused by the deceased's misconduct.

(d) Distinction between void agreement and illegal agreement

Basis of distinction	Void agreement	Illegal agreement
1. Meaning	An agreement not enforceable by law is said to	An agreement which is forbidden (i.e. prohibited) by

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	be a void agreement.	any law for the time being in force, is an illegal agreement.
2. One in another	All void agreements are not illegal.	An illegal agreement is always void.
3. Reason	If an agreement does not satisfy one or more requirements of Sec. 10, 29 or 56, it is void.	An agreement becomes an illegal agreement only if it is made against the provisions of any law for the time being in force.
4. Punishment	The Parties are not liable to be punished.	In case of an illegal agreement, the parties are criminally liable.
5. Void-ab-initio	A valid contract may subsequently become void.	An illegal agreement is void from the very beginning.
6. Effect on collateral transactions	A transaction which is collateral to a void agreement, is not void.	A transaction which is collateral to an illegal agreement, is also illegal.

(e) The statement is not true. The genesis of money laundering is the practice of concealing identity, source, or destination of illegally gained money. Money laundering from illegal activities directly affect the freedom of access to investment, affecting the labor market laws, marketing, consumption and production itself. Money launder is conversion of 'dirty' money to 'clean' money and therefore illegal.

4. (a) What are the liabilities of Buyer for rejecting, neglecting or refusing delivery of goods?

(b) When is the director empowered to impose fine on a Banking Company, Financial Institution or Intermediary as per Money Laundering Act, 2002?

(c) Write down the main objectives of Industrial Dispute Act.

(d) A worker whose monthly wage is ₹ 2,000 loses one hand as a result of injury caused to him on 14th September, 2013. On 1st August, 2013 he had completed 30 years of age. Calculate the amount of compensation payable to him. Relevant factor for age 30 is 207.98. [4+4+2+2]

Answer: (a)

- (i) Buyer not bound to return rejected goods (Sec 43). As per section 43 unless otherwise agreed, if the goods are delivered to the buyer and he refuses to accept them, he is not bound to return them to the seller. But at the same time he is to intimate the seller that he refuses to accept them. Quite possible the seller may also refuse to take back the delivery. In such cases the buyer becomes bailee and his position is that of a bailee for which he can charge reasonable amount for keeping the goods.
- (ii) As per section 44 when the seller is ready and willing to deliver the goods and requests the buyer to take delivery, and the buyer does not, within a reasonable time after such request, take delivery of the goods, he becomes liable to the seller for any loss occasioned by his neglect or refusal to take delivery and also for a reasonable charge for the care and custody of the goods. This does not affect the rights of the

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seller where the neglect or refusal of the buyer to take delivery amounts to a repudiation of the contract.

(b) The power of director to impose fine on a Banking Company, Financial Institution or Intermediary is explained below:

(i) Inquiry to director [Section 13(1)]

The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

(ii) Imposition of fine by director [Section 13(2)]

If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ₹ 10,000 but may extend to ₹ 1 lakh for each failure.

(iii) Copies of order [Section 13(3)]

The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

(c) The main objectives of the Act are as follows:

(i) Securing industrial peace through –

(a) Preventing and settling industrial disputes between employers and employees.

(b) Setting up an internal Works Committee for maintaining good relations between employers and employees.

(c) Promoting good relations through external machineries like Conciliation, Courts of Enquiry, Industrial Tribunals, National Tribunals and Labour Courts.

(ii) Ameliorating the condition of workmen in industry.

(a) By redressing the grievances of workmen through statutory machinery.

(b) By assuring job security.

(d) As per Schedule I, the injury results in 60 per cent loss of earning capacity. The amount of compensation, therefore, will be 60 per cent of the compensation payable in case of permanent total disablement. It shall be calculated as follows:

$$60\% \text{ of } \frac{60 \times 2000 \times 207.98}{60} = 60\% \text{ of } ₹ 2,49,576 = ₹ 1,49,746.$$

5. (a) Explain the treatment of goodwill when the firm is dissolved under section 55 of the Indian Partnership Act, 1932?

(b) "Lock-out is employer's weapon"- Explain.

(c) P appoints A as his agent to sell his estate. A, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to P. A buys the estate himself after informing P that he (A) wishes to buy the estate for himself but conceals the existence of Granite-Mine. P allows A to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of P, the principal, against A, the agent.

What would be your answer if A had informed P about the existence of Mine before he purchased the estate, but after two months, he sold the estate at a profit of ₹ 1 lac?

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(d) E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company – Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company.

Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972. [4+4+2+2]

Answer:

(a) When the firm is dissolved the treatment of goodwill is provided in section 55 of the Act.

- (i) In settling the accounts of a firm after dissolution, the goodwill shall, subject to contract between the partners, be included in the assets, and it may be sold either separately or along with other property of the firm.
- (ii) RIGHTS OF BUYER AND SELLER OF GOODWILL: Where the goodwill of a firm is sold after dissolution, a partner may carry on a business competing with that of the buyer and he may advertise such business, but, subject to agreement between him and the buyer, he may not:
 - (a) use the firm-name,
 - (b) represent himself as carrying on the business of the firm, or
 - (c) solicit the custom of persons who were dealing with the firm before its dissolution.
- (iii) AGREEMENTS IN RESTRAINT OF TRADE: Any partner may upon the sale of the goodwill of a firm, make an agreement with the buyer that such partner will not carry on any business similar to that of the firm within a specified period or within specified local limits, and, notwithstanding anything contained in section 27 of the Indian Contract Act, 1872 such agreement shall be valid if the restrictions are reasonable.

(b) In *Kairbetta Estate v. Rajamanickam*, A.I.R. (1960) S.C 893, the Supreme Court observed: "Lock-out can be described as the antithesis of a strike. Just as a strike is a weapon available to the employees for enforcing their industrial demands, a lock-out is a weapon available to the employer to persuade by a coercive process the employees to see his point of view to accept his demands."

In a tussle between employees and an employer whereas 'strike' is the weapon of the employees, 'lock-out' is the corresponding weapon in the armoury of the employer. If the employer shuts down his place of business as a means of reprisal or as an instrument of coercion or as a mode of exerting pressure on the employees, or, generally speaking, when his act is what may be called an act of belligerency, there would be a lock-out [*Sri Ramachandran Spg. Mills v. Stare of Madras*, A.I.R. (1956) Mad. 241].

(c)

Non- disclosure of fact of existence of mine amounts to breach of duty by A	- since A, without disclosing all material facts and without obtaining the consent of P, dealt in the business of agency on his own account.
If A had informed P about the existence of mine	- then, A would not be liable, even though he makes a profit of ₹ 1 lakh, since in such a case, there is no breach

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	of duty of disclosure and obtaining consent.
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(d) The refusal of the directors is not valid

- since E is entitled to gratuity;
- since the condition of continuous service of five years is not applicable in case the employment of an employee is terminated due to death or disablement due to accident or disease.

6. (a) In the respect of Factories Act given the definition of the following.

- (i) Hazardous process
- (ii) Factory

(b) When is an alteration in a negotiable instrument deemed to be a 'material alteration' under the Negotiable Instruments Act, 1881? What are the consequences of material alteration in a negotiable instrument?

(c) Whether the person is a holder or not - Various cases

- (i) X who obtains a cheque drawn by Y by way of gift.
- (ii) A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.
- (iii) M, who finds a cheque payable to bearer, on the road and retains it.
- (iv) B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.
- (v) B, who steals a blank cheque of A and forges A's signature. [[2+2)+3+5]

Answer:

(a) (i) "Hazardous process" means any process or activity in relation to an industry specified to the first Schedule where, unless special care is taken, raw materials used therein or the intermediate or finished product, bye-products, wastes or effluents thereof would –

- Cause material impairment to the health of the persons engaged in or connected therewith, or (Result in the pollution of the general environment; Provided that State Government may, by notification in the Official Gazette, amend the First Schedule by way of addition, omission or variation of any industry specified in the said Schedule.

(ii) "Factory" means any premises including the precincts thereof-

- I. Whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in nay part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- II. Whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on, but does not include a mine subject to the operation of the Mines Act, 1952 (35 of 1952), or a mobile unit belongs to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place.

(b)

Meaning	An alteration is called as material alteration if it alters – <ul style="list-style-type: none"> ▪ the character or operation (i.e., the legal effect) of a negotiable instrument; or ▪ the rights and liabilities of any of the parties to a negotiable
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	instrument.
Material alterations authorized by Act	(a) Filling blanks of an inchoate instrument (Sec. 20) (b) Conversion of a blank endorsement into an endorsement in full (Sec. 49) (c) Crossing of cheques (Sec. 125) (d) Conversion of general crossing into special crossing or not negotiable crossing or A/c Payee Crossing (but not vice-versa). (e) Conversion of a bearer instrument into an order instrument by deleting the word 'Bearer'.
Effects of material alteration (Sec. 87)	All the parties to the negotiable instrument not consenting to the material alteration are discharged.

(c)

(i) X is a holder	- since X is entitled in his own name to the possession of the cheque and to receive the amount of the cheque.
(ii) A is not a holder	- since he is not entitled to recover the amount of the cheque as per court's order.
(iii) M is not a holder	- since the cheque was not negotiated to him; - since mere 'possession' does not make a person a holder; it is the 'entitlement to possession' which makes a person 'holder'; - since M is not entitled to the possession and is not entitled to receive or recover the amount of the cheque (Sec. 8); - since a finder of a lost negotiable instrument has no right to receive the amount of the negotiable instrument (Sec. 58).
(iv) B is not a holder	- since he is entitled to the possession of the negotiable instrument, but not in his own name; - since he is entitled to receive the amount of the negotiable instrument, but not in his own name
(v) B is not a holder	- since he is in wrongful possession of the negotiable instrument; - since he is not at all entitled to the possession of the negotiable instrument; - since he is not entitled to receive or recover the amount of the negotiable instrument; - since a cheque containing forged signature of the drawer is a nullity, and does not confer any title to any person.

SECTION B

Attempt any two questions.

7. (a) A company is not authorized by its memorandum of association to run a canteen but it is obliged to do so under section 46 of the Factories Act, 1948. Under the facts and circumstances, should the company undergo the formalities of changing its objects clause?

(b) State the provisions relating to retirement of directors by rotation and filling of vacancies as applicable to a private company.

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- (c) Explain in detail the restrictions imposed on the appointment or advertisement of directors. [2+2+4]

Answer:

- (a) If the running of the canteen is incidental to the main object of the company, there is no necessity to amend the objects clause, but if the purpose is to earn profit, then the objects clause should contain enabling provision to carry on such business by suitably amending the memorandum in accordance with the law.
- (b) The provisions of sections 255 and 256 apply only to a public company. In other words, the provisions relating to retirement of directors and filling of vacancies do not apply to a private company. Therefore, if the articles of a private company are silent in this respect, then following provisions shall apply:
- (i) No director of a private company shall be liable to retire by rotation. Thus, all the directors of a private company shall hold office till death, resignation, removal or disqualification.
- (ii) All the directors shall be appointed in the general meeting.
- However, it is open for a private company to provide in its articles that a certain proportion of its directors shall retire by rotation. In such a case, the directors shall retire in accordance with the provisions contained in the articles. But, sections 255 and 256 shall not apply.
- (c) As per section 266, no person shall be appointed as a director by its articles or named as a director in a prospectus or named as a director in statement in lieu of prospectus unless the following two conditions are satisfied:
- (i) He has signed and filed with the registrar his consent to act as a director.
- (ii) He has-
- (a) signed the memorandum for his qualification shares; or
 - (b) taken his qualification shares and paid/agreed to pay for them; or
 - (c) signed an undertaking to take qualification shares and pay for them (in such a case, he shall as regards those shares, be in the same position as if he had signed the memorandum); or
 - (d) filed an affidavit with the registrar that qualification shares are already registered in his name.

The above two conditions must be fulfilled before registration of the articles or publication of the prospectus or statement in lieu of prospectus.

Non-applicability

This section does not apply to -

- (a) a company not having a share capital;
- (b) a private company;
- (c) a company which was a private company before becoming a public company; and
- (d) a prospectus issued after 1 year from the date the company was entitled to commence business

8. (a) SHIKSHA TELECOM LTD., a private mobile operator had furnished confidential information relating to customer complaints lodged with the company during the quarter ended 31.3.2012 to a public authority. On an application under the Right to Information Act,

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2005, the public authority wants to furnish the said information. The authority seeks the objections of SHIKSHA TELECOM LTD.

Can SHIKSHA TELECOM LTD. ask the public authority not to furnish the same on the grounds that the said information is confidential and that it may endanger its image in the market?

What decision should the public authority take?

(b) Write down the nature of Internal Audit?

[4+4]

Answer:

(a) Disclosure of Information treated as confidential by third party:

As per section 11 (1) of the Right to Information Act, 2005 where a public authority intends to disclose any information or record, or part thereof on a request made under this Act which relates to, or has been supplied by a third party and has been treated as confidential by that third party, the Public Information Officer shall, within five days from the receipt of a request, give written notice to such third party of the request and of the fact that the public authority intends to disclose the information or record, or part thereof and invite the third party to make a submission, in writing or orally, regarding whether the information should be disclosed, which submission shall be taken into account when determining whether to disclose the information.

Provided that except in the case of trade or commercial secrets protected by law, disclosure may be allowed if the public interest in disclosure outweighs in importance any possible harm or injury to the interests of such party.

SHIKSHA TELECOM LTD. cannot ask the public authority not to furnish the same on the grounds that the said information is confidential and that it may spoil its image in the market. This is not trade or commercial secrets protected by law. Hence the public authority should overrule the objections of SHIKSHA TELECOM LTD and furnish the information to the applicant under the RTI Act.

(b) The Institute of Internal Auditors has defined Internal Audit as - Internal Auditing is an independent appraisal activity within an organization for the review of operations as a service to management. It is a managerial control which functions by measuring the effectiveness of other control.

There are various definitions of Internal Auditing prevailing, which can be stated as follows:-

- (i) Internal audit is a management tool, performed by employees of the organization to ensure correctness in accounting data and to detect fraud by way of periodical review of organizational system and procedures.
- (ii) Internal audit is a continuous and systematic process of examining and reporting the operations and records of a concern by its employees or external agencies specially assigned for this purpose. It is, in essence, auditing for the management and its scope may vary depending upon the nature and size of the concern.
- (iii) It is a control system concerned with examination and appraisal of other control mechanisms.

(iv) Internal audit is an extension of and as such is complimentary to statutory audit.

In short internal audit means appraisal of control techniques employed by a firm and its performance.

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9. (a) What are the differences between e-governance and e-government?
- (b) Does increase in the rate of dividend payable to preference shareholders amount to variation in the rights of the equity shareholders under Section 106 of the Companies Act?
- (c) While incorporating a limited company the subscribers agreed to take 10 shares each @ ₹ 100 each per share. Immediately after incorporation the share unit has been changed from ₹ 100 to ₹ 10. State whether the subscribers are required to subscribe to 10 shares of ₹ 100 each or 100 shares of ₹ 10 each?
- (d) The Department of Company Affairs while sanctioning directors' remuneration restricts medical expenses to ₹ 5,000 per annum. The companies generally take insurance policy for the directors concerned and pay a small amount as premium. The actual medical expenses of the directors concerned may exceed ₹ 5,000 per year, but the entire amount is realized from the insurance company.
Under the above circumstances can the company be deemed to have contravened the central government approval, when the director concerned has been paid more than ₹ 5,000 as medical expenses whereas the company has only spent ₹ 500. [4+1+1+2]

Answer:

(a) Difference between e-governance and e-government

Both the terms are treated to be the same; however, there are some differences between the two. "E-government" is the use of the Information and Communication Technologies (ICTs) in public administrations- combined with organisational change and new skills- to improve public services and democratic processes and to strengthen support to public policies". The problem in this definition to be congruent with the definition of E-Governance is that there is no provision for governance of ICTs as a matter of fact, the governance of ICTs requires most probably a substantial increase in regulation and policy- making capabilities, with all the expertise and opinion- shaping processes among the various social stakeholders of these concerns. So, the perspective of the E-Governance is "the use of the technologies that both help governing and have to be governed".

E-Governance is the future that many countries are looking forward to for a corruption free government. E-government is one-way communication protocol whereas E-governance is two-way communication protocol. The essence of E-governance is to reach the beneficiary and ensure that the services intended to reach the desired individual has been met with there should be an auto-response system to support the essence of E-governance, whereby the Government realizes the efficacy of its governance. E-governance is by the governed, for the governed and of the governed.

Establishing the identity of the end beneficiary is a true challenge in all citizen-centric services. Statistical information published by governments and world bodies do not always reveal the facts. Best form of E-governance cuts down on unwanted interference of too many layers while delivering governmental services. It depends on good infrastructural setup with the support of local processes and parameters for governments to reach their citizens or end beneficiaries. Budget for planning, development and growth can be derived from well laid out E-governance systems.

- (b) An increase in the rate of dividend of preference shares will not amount to variation in the right of equity shareholders within the meaning of section 106.

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- (c) Since the original subscription to the memorandum of association of the company was ₹ 1000 in 10 shares of ₹ 100 each, after sub-division of shares the amount of subscription of ₹ 1,000 will remain the same but the character of shareholding will change to 100 shares of ₹ 10 each in conformity with the provisions contained in section 94 (1) (d) of the Companies Act, 1956.
- (d) The amount reimbursed by the insurance company in such cases is not a charge on the company's income nor is it an income for the company. So the amount paid by the insurance company is immaterial. Whatever amount of premium is paid by the company will be the material figure and the same should be within the sanctioned limit. As regards the incidence of tax, the amount received from the insurance company will amount to casual receipt and in that event it will not be subject to tax.

SECTION C

Attempt any two questions.

10. (a) What are the types of threats that may affect the business environment and influence finance and Accounting professionals?
- (b) 'X' have just starting working for a plc and all his colleagues have warned him that his predecessor was asked to inflate the value of products, as well as to overvalue stock, when reporting. This was to benefit the director's bonus. To date 'X' has not been asked to do anything untoward, but wonder how best he can approach the issue should he be put in this position. Share your views with him. [5+3]

Answer: (a)

- (i) Self-Interest Threats: Occur as a result of the financial or other interest of Finance and Accounting professional or personal interest of key personnel.
 - (ii) Self-Review Threats: When a previous judgment of the Finance and accounting Professional is to be re-evaluated.
 - (iii) Advocacy Threats: When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised.
 - (iv) Familiarity Threats: When a professional has close relationships with the work environment which may impair his selfless attitude towards work.
 - (v) Intimidation Threats: when a professional may be prohibited from acting objectively by actual or perceived threat.
- (b) At present what he has been told is hearsay, so he needs to be sure of any facts. Being new to a post sets him in a stronger position to professionally guide future action should a similar request be made of him. He needs to consider threats and safeguards within the company as well as options for resolution. Misleading reporting is a clear breach of overall integrity and in particular principles for preparation and reporting of information. He needs to remember that once he has breached an ethical line, it is harder the next time to push back.

11. (a) How does business ethics relate to Corporate Social Responsibility (CSR)?

(b) List out the Importance of Business Ethics?

[4+4]

Answer:

(a) An organisation's core ethical values and standards should underpin everything that it does and the way its employees conduct their everyday business. Business ethics is about "doing things ethically". How an organisation approaches the social and environmental impacts of its business operations and its voluntary contribution to the wellbeing of the global and local communities in which it operates, is often known as Corporate Social Responsibility (CSR); it is often about "doing ethical things. An organisation cannot be genuinely responsible without an embedded and inherent culture that is based on ethical values such as trust, openness, respect and integrity. If business ethics is about the application of ethical values, CR is the expression of those values both within core business strategies and as a set of commitments and obligations made to its stakeholders. CR is about an organisation's approach to what it is responsible for, to whom it is responsible, and why, and this will be underpinned by its ethical values and by the policies and programmes in place to make those values operational.

(b) Need or Importance of Business Ethics:

- (i) Stop business malpractices
- (ii) Improve consumer's confidence
- (iii) Survival of business
- (iv) Protecting consumer's rights
- (v) Protecting employees, shareholders, etc.
- (vi) Develop good relations between business and society
- (vii) Create good image of business
- (viii) Smooth functioning of business
- (ix) Consumer movement
- (x) Consumer satisfaction
- (xi) Importance of labour
- (xii) Healthy competition

12. (a) Write down the seven principles of public life.

(b) Write Short Notes on Ethical Conflict Resolution.

[6+2]

Answer:

(a) The Seven Principles of Public Life

Selflessness	Holders of public office should take decisions solely in tells of the public interest. They should not do so in order to gain financial or other material benefits for
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	themselves, their family, or their friends.
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 or their official duties.
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.
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.
Openness	Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands.
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.
Leadership	Holders of public office should promote and support these principles by sound leadership and prove to be an example in whatever they perform.

(b) Ethical conflict is a situation where the professionals have to decide between compliance with principles and actions which are beneficial to the business organization.

To resolve the conflict, following aspect should be considered:

- (i) Relevant facts;
- (ii) Ethical issues involved;
- (iii) Fundamental principles related to the matter in question;
- (iv) Established internal procedures; and
- (v) Alternative courses of action.