

Paper-6: LAWS, ETHICS AND GOVERNANCE

Question 1:

- (a) "A mere mental acceptance not evidenced by words or conduct is, in the eyes of the law, no acceptance." Comment.
- (b) A sells his grocery business, including goodwill, to B for a sum of ₹ 5,00,000. It is agreed that A is not to open another grocery store in the whole of India for the next ten years. A opens another store in the same city two months later. What are the rights of A?
- (c) A made a contract with B supplying to him certain goods at a place outside the State when there was no prohibition against sending the goods outside the State. Subsequently prohibition was imposed on the sending on those goods to that place and the railway booking was consequently closed. A failed to supply the goods. B sued A for damages for non-supply of goods. A, inter alia, pleaded that the contract becomes impossible of performance and so he was absolved from performing it. Will A succeed in his said defense?
- (d) A, B and C jointly promise to pay D ₹ 50,000. A and B are untraceable. Can D compel C to pay him in full?

Answer:

- (a) One of the rules of valid acceptance is that it must be communicated to the offeror. The communication may, however, be express or implied. A mere, mental acceptance is no acceptance. A mere mental acceptance means that the offeree is assenting to an offer in his mind only and has not communicated it to the offeror.
Acceptance may be communicated as per the prescribed mode; it may be also, by keeping custody of the goods beyond a reasonable time or maybe by doing any act as to adopt the transaction.
- (b) As per Section 27 of The Indian Contract Act, every agreement, by which anyone is retained from exercising a lawful profession, trade or business of any kind, is to that extent void. Exception to Section 27 provides that the seller of the goodwill of a business may agree with the buyer to refrain from carrying on a similar business, within local limits, so long as the buyer or any one deriving title to the goodwill from him carries on a like business, provided that such limits are reasonable.
In the given case, as the limits agreed regarding place as well as time is not reasonable, the agreement is void. So, B cannot take any legal action against A.

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(c) According to Section 56, impossibility of performance may fall into either at the time of agreement or arising subsequent to the formation of contract. Impossibility which arises subsequent to the formation of a contract (which could be performed at the time when the contract was entered into) is called post- contractual or supervening impossibility. In such a case, the contract becomes void when the act becomes impossible or unlawful. Impossibility of performance of a contract, as a general rule, is no excuse for the non-performance of the contract, but where this impossibility is caused by the circumstances beyond the control of the parties, the parties are discharged from further performance of the obligation under the contract.

In the given case, the contract is void and A is absolved from performing it.

(d) As per Section 43 of The Indian Contract Act when two or more persons make a joint promise and there is no express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise. This means the liability of joint promisors is joint and several.

So, in the given case, D can compel C to pay him in full.

Question 2:

(a) A's wife B paid ₹ 5000 to C to be given as a bribe to a jailor for procuring release for her husband from jail. The Jailor failed to procure the release. Can B recover the amount?

(b) Mr. Pal of his own promised to subscribe to Indira Gandhi Memorial Fund by 30.09.2015, but did not pay. Under the circumstances, he can be enforced – Comment.

(c) Write a note on 'Counter Offer'

Answer:

(a) An agreement will not be enforceable if its object or the consideration is unlawful. According to Section 23 of the Act, the consideration and the object of an agreement are unlawful if the court regards it as immoral or opposed to public policy, an agreement whose object or consideration is immoral or is opposed to the public policy, is void.

In the given case, as the agreement is unlawful, being opposed to public policy, is void. So, B cannot recover the amount.

(b) False. Consideration is essential element of contract without which no promise can be enforced. Therefore a gratuitous promise to contribute to Indira Gandhi Memorial Fund cannot be enforced. However if the promisor knew the purpose and also knew that on the faith of such promise, certain obligations are incurred, the promisor would be bound by the promise.

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(c) Where the offeree, instead of unconditionally assenting to the terms of the offer, accepts subject to certain conditions, he is said to have made a counteroffer.

Thus, where A offers his car to B for ₹ 1,00,000 and B accepts to buy A's car for ₹ 80,000, B has made a counter offer.

A counter offer has the effect of terminating the original offer. If in the aforesaid illustration, B later accepts to pay ₹ 1,00,000 for the car, it shall amount to a fresh offer by B which A may or may not accept.

Similarly, where an offeree agreed to accept half the quantity of goods offered by the offeror on the same terms and conditions as would have applied to the full contract, it was held that there was no contract as there was a counter offer to the original offer.

Question 3:

(a) A agrees to sell to B a horse for ₹ 2,00,000 if it wins a race and for ₹ 50,000 if it does not. The horse wins the race. Advise the parties if —

i. B refuses to pay ₹ 2,00,000 and buy the horse

ii. A refuses to sell the horse to B

iii. B agrees to buy the horse for ₹ 1,00,000

(b) A sold some land to B. At the time of sale both parties believed in good faith that the area of the land sold was 10 hectares. It, however, turned out that the area was 7 hectares only. How is the contract of sale affected? Give reasons.

(c) Hareem who was badly in need of money offered to sell his piano worth ₹ 50,000 to Chanda for ₹ 40,000. Chanda refused to buy. Hareem gradually lowered his price until ₹ 10,000 was reached, which Chanda accepted. Before the piano was delivered, Hareem received an offer of a larger sum from Tanu, and he refused to carry out the contract with Chanda, claiming that the consideration was inadequate. Is Hareem liable to pay damages to Chanda for failure to carry out his part of the contract?

Answer:

(a) A wager is an agreement between two parties by which one promises to pay money or money's worth on the happening of some uncertain event in consideration of the other party's promise to pay if the event does not happen. As per Section 30 no suit can be brought for recovering anything alleged to be won or any wager, or entrusted to any person to abide by the result of any game or other uncertain event on which any wager is made.

In the given case, as the agreement is a wager, the effect will be as follows:

i. A cannot compel B to buy the horse and pay ₹ 2,00,000

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- ii. B cannot compel A to sell the horse
- iii. A is not bound to sell the horse. B agreeing to buy the horse at ₹ 1,00,000, is a counter offer.

- (b)** Where both the parties to an agreement are under a mistake as to a matter of fact essential to the agreement, there is a bilateral mistake. In such a case, the agreement is void (Sec. 20). The following two conditions have to be fulfilled for the application of Sec 20.
- i. The mistake must be mutual
 - ii. The mistake must relate to a matter of fact essential to the agreement.

As Sec 20 is applicable on the given case, the agreement is void.

- (c)** Consideration means "something in return". This something in return need not necessarily be equal in value to "something given". So long as consideration exists, the Courts are not concerned as to its adequacy, provided it is of some value. The adequacy of the consideration is for the parties to consider at the time of making the agreement, not for the Court when it is sought to be enforced. Consideration must; however be something to which the law attaches value though it need not be equal in value to the promise made.
- In the given case, Hareem is liable to pay damages to Chanda for failure to carry out his part of the contract though the consideration is inadequate.

Question 4:

- (a)** A offers, by a letter, to sell a certain articles to B who receives the letter the next day. B immediately posts his letter of acceptance. The same evening A posts a letter revoking the offer. A's letter of revocation and B's letter of acceptance cross in the post. Is there a contract between A and B?
- (b)** Explain the concept of "Supervening impossibility" under the Indian Contract Act, 1872. State the circumstances where under a party to a contract may be exempted from the performance of contract on the ground of 'Supervening impossibility'.
- (c)** Under what circumstances can a non-owner create a valid pledge?

Answer:

- (a)** The communication of a proposal (offer) is complete when it comes to the knowledge of the person to whom it is made (Sec. 4). The communication of an acceptance is complete – as against the proposer when it is put into a course of transmission to him, so as to be out of the power of the acceptor.

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In the given case, as B receives the letter sent by A the next day, the offer is complete. And as B posts his letter of acceptance immediately, the acceptance is complete as against A. So, there is contract between A and B.

- (b)** When performance of a promise becomes impossible or illegal by occurrence of an unexpected, event or a change of circumstances beyond the contemplation of parties, is called supervening impossibility. In case of supervening impossibility the contract becomes void.

A party to a contract may be excused from the performance of his promise on the ground of 'supervening impossibility' under the Indian Contract Act, 1872 in the following circumstances.

(i) Accidental destruction of the subject matter of the contract:

If the subject matter of the contract is destroyed by an accident both the parties are excused from the performance of the contract.

(ii) Non-existence or non occurrence of a particular state of things:

Non-existence or non occurrence of a particular state of things of the contract exempts the parties from the performance of the contract.

(iii) Incapacity to perform a contract of personal services:

In case of contract of personal service, disability or incapacity to perform, caused by the act of God e.g. illness, constitutes lawful excuse for non-performance of the contract.

(iv) Change in law:

Performance of a contract may also become impossible due to a subsequent change in the law. The law passed after the contract may prohibit performance of some act, which may be very basis of the contract. As such the contract is discharged due to subsequent impossibility and the parties become free from their mutual obligations.

(v) Outbreak of war:

Contracts may be affected by war in a variety of ways, viz., (A) by emergency legislation controlling prices or otherwise relating to restriction of trade; (B) by prohibiting or restraining transaction with alien enemy.

- (c)** A non-owner can create a valid pledge in the following situations :

(I) Pledge by mercantile agent (Sec 178):

- A mercantile agent who is in possession of goods or document of the title to goods, with the consent of owner, can pledge them while acting in the ordinary course of business as a mercantile agent.
- Such pledge shall be valid as if it were made with authority of the owner of goods.

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- The pledge shall be valid only if the pawnee — (i) acts in good faith, and (ii) has no notice at the time of pledge that the pawner had no authority to pledge.

(II) Pledge by a person in possession under voidable Contract (Sec 178 A):

When the pawner has obtained possession of goods under a voidable Contract u/s 19 or 19A i.e by way of fraud, coercion, etc. but the Contract is not rescinded at the time of pledge is valid. The pawnee obtains a good title to such goods provided that he acted in good faith and had no notice of the defective title of the pawner.

(III) Pledge where pawner has limited interest (Sec 179):

Where the pawner has only limited interest in the goods pledged, the pledge shall be valid only to the extent of such interests.

Question 5:

- (a) X, an agent of a buyer, had obtained goods from the Railway organization and loaded the goods on his truck. In the meantime, the Railway organization received a notice from Y, a seller, for stopping goods in transit as the buyer had become insolvent. Referring to the provisions of the Sale of Goods Act, 1930 decide whether the Railway organization can stop the goods in transit, as instructed by the seller?
- (b) 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?
- (c) Rama bought a refrigerator from M/s. Ananda Enterprises for a sum of ₹12,000. The Refrigerator was defective right from the beginning and it did not work inspite of repairs by the expert mechanics. Rama wants to return the refrigerator to M/s. Ananda Enterprises and claim refund. Explain.
- (d) A purchased a car from B who had no title to it. A used the car for several months. After that, the true owner spotted the car and demanded it from A – Discuss the remedies available to A.

Answer:

- (a) The right of stoppage of goods in transit can be exercised only so long as the goods are in the course of transit. In the given case the transit was at an end as soon as the agent of the buyer obtained goods from the Railway Organisation. Therefore Railway Organisation

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cannot act as instructed by the seller, who has lost the right of stoppage of the goods in transit as provided in Section 30 of the Sale of Goods Act, 1930.

- (b)** 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 joint owners may transfer a better title than he possesses. Section 28 provides that – “if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of 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”.

The given problem fulfills all such requirements. X, Y and Z are joint owners of the bus. Y had sole possession of it. In such a case if P has purchased the bus from Y in good faith without notice at the time of sale that Y had no authority to sell, then P acquires good title and becomes full owner although Y was not the full owner.

- (c)** Rama shall be entitled to return the refrigerator and claim refund. According to Section 16(2) of the Sale of Goods Act, unless otherwise agreed upon, every contract of sale of goods is subject to the condition as to merchantability, i.e., the goods must be capable of being used as the goods of that description. Thus, a refrigerator is expected to function as a refrigerator. Where it fails to, as in the present case, there is deemed to be breach of that condition and as such, return of price shall have to be made.

- (d)** As per Section 14(a) of The Sale of Goods Act, 1930 in a contract of sale unless the circumstances of the contract are such as to show a different intention is an implied condition on the part of the seller that in the case of a sale, he has a right to sell the goods. In the given case, A was bound to hand over the car to its true owner and A could successfully sue B, the seller without title, for the recovery of the purchase price even though several months had passed.

Question 6:

- (a) X of Delhi orders Y of Chennai, to deliver certain goods to him at Delhi. While the goods are lying at the Delhi Railway Station, the Station Master informs X that the goods are held at the Station at X's risk. But X has become insolvent. Has Y any right over the goods as an unpaid seller?**

- (b) B selects certain furniture in a shop. The price is settled. He arranges to take delivery of the furniture the next day and agrees to pay on the first of the next month. The furniture was destroyed by fire the same evening. Is B liable to pay the price? Give reasons.**

- (c) A agrees to sell to B his two second-hand cars on the terms that the price was to be fixed by C. B takes delivery of one car immediately. C, however, refuses to fix the price. A asks for the**

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return of the car already delivered whereas B insists on the delivery of the second car to him for a reasonable price of both the cars. Decide

(d) What are the exceptions to the doctrine of Caveat Emptor?

Answer:

(a) Y, in the given case, has lost his right of stoppage in transit, the intimation by the Station Master that the goods are held at the station at X's risk, has transformed the positions of the Station Master into a bailee of X instead of Y. the transit has thus come to an end [Sec. 51(31)]. An unpaid seller can stop the goods in transit in the event of buyer's insolvency. The transit being over, the right is thus lost.

(b) Yes, B is liable to pay the price, the contract being an unconditional contract for the sale of specific goods in a deliverable state. In the case of specific goods, in a deliverable state, property in them passes at the time when the contract (unconditional) is made (Section 20). The fact that the time of payment or the delivery of the goods, or both, is postponed does not affect the passing the property.

(c) As per Section 10 of The Sale of Goods Act, in case price is left to be fixed by the valuer and the valuer fails to fix the price, the agreement becomes void except as to part of goods delivered and accepted regarding which the buyer is bound to pay a reasonable price. If however, one of the parties prevents the 'valuer' from making the valuation, he would be liable to pay damages to the other contracting party.

In the given case, B shall have to pay for the car already delivered a reasonable price. A cannot ask for its return. As regards the second car, B cannot insist on its delivery to him since the contract has become void.

(d) The doctrine of "Caveat Emptor" is subject to the following exceptions :

1. Where the seller makes a false representation and buyer relies on that representation. The rule of "Caveat Emptor" will not apply and the buyer will be entitled to the goods according to that representation.

2. Where the seller actively conceals a defect in the goods, so that on a reasonable examination the same could not be discovered.

3. Where the buyer makes known to the seller the purpose for which he is buying the goods, and the seller happens to be a person whose business is to sell goods of that description, then there is an implied condition that the goods shall be reasonably fit for such purpose. The rule Caveat Emptor will not apply.

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4. In case of sale by description, there is implied condition as to their being of merchantable quality. However, if the buyer has examined the goods, this condition of "merchantability" extends only to hidden or latent defects. The defects which examination ought to have revealed are not covered, i.e., the rule of Caveat Emptor will be applicable.

Question 7:

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

(b) A is the owner of a concern manufacturing cigars. 20 persons are employed in the concern. Of these 20 employees, one is a graduate for supervising the work and another apprentice learning work. The remaining 18 are employed not on the time wage system, but on the piece work system. Is the concern a factory within the meaning of the term under the Factories Act, 1948?

(c) Daily working hours in a factory cannot be more than 8 hours on any day considering ceiling of 48 working hours in a week as per the Factories Act 1948

Answer:

(a) As per Sec 40-B of The Factories Act, 1948 in every factory (i) wherein 1000 or more workers are ordinarily employed, or (ii) wherein, in opinion of the State Government, any manufacturing process or operation is carried on, which involves any risk or bodily injury, poisoning or any other hazard to health, to persons employed in factory, the occupier shall if so required by State Government by notification in Official Gazette, employ such number of safety officers as specified in the notification [Sec 40B(1)]. The duties, qualifications and conditions of service of Safety Officers are to be prescribed by State Government. [Sec.40 B(2)]. Hence, if the above conditions are satisfied, safety officers should be employed.

(b) As per Section 2 (m) factory means any premises including the precincts thereof -

- (i) Whereon 10 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on, or
- (ii) Whereon 20 or more workers are working or were working on any day of the preceding 12 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.

For computing the number of workers, all the workers in different groups in a day shall be taken into account. So, in the given case, as per section 2(m) the concern is a factory within the meaning of that term under the Factories Act, 1948.

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(c) As per Sec . 51 of the Factories Act, 1948 no adult employee is required to work more than 48 hours in any week. Subject to this rule, no adult employee shall be required to work for more than 9 hours in any day.

But in order to facilitate the change of shift, this limit may exceed. This can, however, be done with the previous approval of the Chief Inspector of Factories.

Question 8:

(a) X' joined Super Fire Works (P) Ltd. on 8.3.2014. On 8th December, 2014 he was laid off as the management wanted to slow down due t o shortage of power. 'X' was not allowed lay-off compensation on the ground that his period of service was less than one year.

(b) Fantastic Four Ltd. was running in continuous losses for 5 years. As a result, the company's financial position worsened. The company declared lay-off of 10 of its employees. The employees protested the lay-off. Is this action of employer justified?

(c) "An individual dispute is not an industrial dispute". Comment.

(d) Young Ltd. orders ex parte dismissal of A, an employee for unauthorized absence without leave for more than 10 days. Examine the validity of the order under the Industrial Dispute Act, 1947.

Answer:

(a) Under Sec.25-B of Industrial Disputes Act, 1947, an employee shall deemed to be in continuous service of one year if has worked for at least 240 days during the period of 12 months preceding the reference date of calculation.

'A' has worked for 270 days before he was laid off. So he is entitled to lay-off compensation and can claim the same

(b) As per section 2(kkk) of the Industrial Dispute Act lay-off - means failure, refusal or inability of an employer to give employment to a workman (a) whose name is borne on the muster – rolls of his industrial establishment, and (b)who has not been retrenched. The failure, refusal or inability of an employer to give employment may be due to- (1) shortage of coal, power, or raw materials, (2) the accumulation of stocks (3) breakdown of machinery (4) natural calamity or any other connected reasons.

In the given problem, because of continuous losses, the company's financial position worsened. The company declared lay-of of 10 of its employees. The words 'for any other reason' used in the definition is analogous to the reasons given in the definition. But the cause stated by the company is not covered under the definition. As such, the action of the employer is not justified. Similar observation was made in J. K Hosier vs. LAT of India.

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- (c) Where any employer discharges, dismisses, retrenches or otherwise terminates the services of an individual workman, any dispute or difference between that workman and his employer connected with, or arising out of, such discharge, dismissal, retrenchment or termination shall be deemed to be an industrial dispute notwithstanding that no other workman nor any union of workmen is a party to the dispute.
- (d) Before taking any action against any employee, proper opportunity needs to be given to him. As per law, proper reconciliation proceeding be started. Holding of formal inquiry is necessary before dismissing an employee on the ground of misconduct. The employee should be given an opportunity of being heard.
In the given case, the order is valid if proper inquiry has been made before dismissal even if the dismissal order is ex parte.

Question 9:

- (a) How do you define 'disablement' under the Workmen's Compensation Act, 1923?
- (b) A laboratory assistant consumes a chemical during the night shift and dies. The chemical was not of the laboratory kit. His wife claimed compensation under the Employees Compensation Act, 1923.
- (c) An electrician, who had to go frequently to a heating room from a cooling plant, contracted pneumonia which resulted in his death. Is the employer liable to pay compensation under the Employees Compensation Act, 1923?
- (d) When is compensation not payable under the Employee's Compensation Act, 1923?

Answer:

- (a) Disablement implies loss of capacity to work or move. Disablement leads to loss or reduction in earning capacity of workman. Disablement may be partial or total. Further it may be temporary or permanent.
Partial disablement reduces the earning capacity of workman as a result of some accident. It may be temporary or permanent. Temporary partial disablement reduces the earning capacity of workman in any employment in which he was engaged at the time of employment.
Permanent partial disablement reduces the earning capacity in every employment the worker was capable of doing at the time of employment.

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Total disablement u/s 2(1) (I) means worker becomes incapable in performing any work which he could perform before accident. Total disablement is deemed to result from every injury specified in Part I of Schedule I or combination of injuries specified in Part II resulting in loss of earning capacity to the extent of 100% or more.

- (b)** The Employer is not liable to pay compensation as it is a case of suicide by the employee. The apex court observed in *Mackenzie & Co. v. Ibrahim Mohammad Isaac* (1970) S C 1906 that the words 'in course of employment' means in course of the work which the employee who is employed to do and which is incidental to it. Further the words 'during the course of employment' the injury should result from some risk incidental to duties of service owing to the employer. If the accident is inclined with some risk situated with employment, then the employee would succeed in getting compensation.
- (c)** According to Section 3 of the Employees Compensation Act, 1923, employer is liable to pay compensation if personal injury is caused in course of employment. The course of employment is not interrupted by intervals of rest.
In the given problem, an employee had to frequently go into a heating room and from there to a cooling room in course of his duties. He suffered pneumonia and died. This is out of employment and employer is liable to pay compensation. [*Indian News Chronicle Ltd. vs Lazarus*(1951) 3 FJR 190]
- (d)** Compensation under this Act is not payable when:
- (i) The disablement due to injury is less than 3 days
 - (ii) The employee was under the influence of drugs/alcohol at the time of accident.
 - (iii) Employee willfully disobeys any safety rule.
 - (iv) Employee willfully removes/disregards any safety guard/ equipments.
 - (v) Employee has filed a Civil suit against the employer for claim of compensation.
 - (vi) Employee has refused to get himself medically examined cost of which is borne by the employer.

Question 10:

- (a) ABC (P) Ltd. imposed a fine on Q , one of its employees for irregular attendance . No prior notice specifying this particular act in respect of which could be imposed was exhibited. ABC (P) Ltd deducted the fine in four monthly installments from salary of Q. Is the employer justified?**
- (b) Javed is engaged in two types of job in a factory, that of a mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage at an average rate, as per Minimum Wages Act, 1948.**

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- (c) On whom does the responsibility for payment of wages lie under the Payment of Wages Act, 1936?
- (d) The employer of Tough Ltd made certain alteration in wage structure as a result of which certain allowances were discontinued. However the total salary of an employee remained unchanged. Will an application under Sec 15(2) on the Payment of Wages Act, 1936 lie for this?

Answer:

- (a) According to Section 8 of the Payment of Wages Act, 1936:

- i) A notice specifying such acts and omissions shall be exhibited in the prescribed manner on the premises in which the employment carried on or in the case of persons employed upon a railway (otherwise than in a factory) at the prescribed place or places. [Sec 8(2)]
- ii) No fine imposed on any employed person shall be recovered from him by installments or after the expiry of sixty days from the day on which it was imposed. [Sec 8(6)]

Thus ABC(P) Ltd violates the provisions of Secs. 8(2) and 8(6) of the Payment of Wages Act, 1936.

- (b) According to Sec 16 of the Minimum Wages Act, 1948, where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class.

Thus in the given case employer just cannot pay him at simple average rate of both wages of both classes of job.

- (c) Every employer shall be responsible for payment to persons employed by him of all wages required to be paid under the Payment of Wages Act, 1936 (Sec 3). But in the case of persons employed (otherwise than by a contractor) in factories, industrial establishments or upon railways, the following persons shall also be responsible for the payment of wages :

- (i) in factories if a person has been named as the manager of the factory under clause (f) of sub-section (1) of section 7 of the Factories Act, 1948;
- (ii) in industrial or other establishments if there is a person responsible to the employer for the supervision and control of the industrial or other establishments;
- (iii) upon railways (other than in factories) if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.

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- (iv) in the case of contractor, a person designated by such contractor who is directly under his charge; and
- (v) in any other case, a person designated by the employer as a person responsible for complying with the provisions of the Act, the person so named, the person responsible to the employer, the person so nominated or the person so designated, as the case may be, shall be responsible for such payment.

Notwithstanding anything contained in sub-section(1), it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

- (d)** The discontinuance of allowance does not amount to 'deduction'. As such no application will lie under Sec. 15(2) of the Payment of Wages Act, 1936.

Question 11:

- (a) K works in a social welfare organization. Examine whether the Payment of Bonus Act, 1965 is applicable to him.**
- (b) Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Payment of Bonus Act, 1965 :**
 - (i) An apprentice;**
 - (ii) An employee dismissed on the ground of misconduct;**
 - (iii) A temporary workman;**
 - (iv) A piece-rated worker**
- (c) Explain the provisions of the Payment of Bonus Act, 1965 relating to application of the Act to the establishments in public sector. What is the time limit within which payment of bonus due to an employee under the Act, be paid?**

Answer:

- (a)** Provisions contained in Section 32 (v) (c) of the Payment of Bonus Act, 1965, states that, nothing contained in the Payment of Bonus Act, 1965 shall apply to employees employed by,-
 - (i) the Indian Red Cross Society or any other institution of a like nature (including its branches);
 - (ii) universities and other educational institutions;
 - (iii) institutions (including hospitals, chambers of commerce and social welfare institutions) established not for purposes of profit;

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Hence, 'K' is not entitled to any bonus as the said Act is not applicable to social welfare organization.

(b)

- (i) An Apprentice is not entitled to bonus [Wheel RIM Co.Vs. Govt. of Tamil Nadu(1971)]
- (ii) An employee dismissed on the ground of misconduct is disqualified for any is not entitled to bonus. [Pandian Roadways Corporation Ltd.Vs. Presiding Officer(1996)]
- (iii) A temporary workman is entitled to bonus on the basis of the total number of days worked by him.
- (iv) A piece-rated worker is entitled to bonus. [Mathurads KaniVs. L.A. Tribunal (1958)]

(c) Application of the Act to the establishment in public sector: Section 20 of the Payment of Bonus Act, 1965 provides that if in any accounting year, an establishment in public sector may sell any goods produced or manufactured by it or it may render any services in competition with an establishment in private sector. And if the income from such sale or service or both is not less than 20% of the gross income of establishment in public sector, then the provisions of Bonus Act shall apply in relation to establishment in private Sector (Sub-section 1) Save as otherwise provided in Subsection (1), nothing in this Act shall apply to the employees employed by any establishment in the public sector (Sub-section2).

The time limit for a payment of bonus: The employer is bound to pay his employee bonus within one month from the date on which the award becomes enforceable or the settlement comes into operation, if a dispute regarding payment of bonus is pending before any authority under Section 22 of the Act. In other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting. But this period of 8 months may be extended upto a maximum of 2 years by the appropriate Government or by any authority specified; by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

Question 12:

(a) H retired from services on attaining the age of superannuation. After his retirement, it was noticed that he had misappropriated amount from travelling allowance drawn by him. The employer wants to deduct the misappropriated amount from gratuity payable to him. Is the action of the employer legally tenable?

(b) What are rules relating to recovery of Gratuity under the Payment of Gratuity Act, 1972?

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- (c) G absented himself from duty without applying for leave and left the job. When he claimed gratuity, the company refused to pay gratuity quoting his absence from duty without proper leave resulted in break in service. Will he get gratuity?**

Answer:

- (a)** Section 4(6) of the Payment of Gratuity Act, 1972 provides that –

(A) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

(B) The gratuity payable to an employee may be wholly or partially forfeited—

(i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or

(ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

In the present case the employee has attained the age of superannuation and has retired. His misappropriation was noticed after his retirement. The employer wants to deduct misappropriated amount after his retirement. The decision of the employer is not tenable as H's services have not been terminated.

- (b)** No gratuity payable under the Act and no gratuity payable to an employee in any establishment, factory, mine, oilfield, plantation, port, railway company or shop exempted under Section 5 shall be liable to attachment in execution of any decree or order of any Civil, Revenue or Criminal Court.

Section 8 deals with the recovery of gratuity. If the employer fails to pay gratuity within the prescribed time to the person entitled thereto, the controlling authorities are authorised to issue a certificate to the Collector to recover the amount. The amount will carry compound interest at such rate as the Central Government may, by notification, specify (Presently 10 per cent) from the date of expiry of the prescribed time. This amount has to be recovered as arrears of land revenue. However, the amount of interest payable shall in no case exceed the amount of the gratuity payable under the Act.

- (c)** Section 2A of the Payment of Gratuity Act, 1972 provides that an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order 3 i.e. treating the absence as break in service has been passed in accordance with the standing orders, rules or regulations governing the employees of the establishment), lay-off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such

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uninterrupted or interrupted service was rendered before or after the commencement of this Act. Therefore G is eligible and will get Gratuity.

Question 13:

(a) Write a note on Employees State Insurance Fund. What are the purposes for which this fund may be utilized?

(b) State the duties of Medical benefit council.

Answer:

(a) As per section 26 of Employees State Insurance Act, 1948, Employees State Insurance Fund should constitute the following:

- (i) All contributions paid under this Act and all other moneys received on behalf of the Corporation shall be paid into a fund called the Employees State Insurance Fund which shall be held and administered by the Corporation for the purposes of this Act.
- (ii) The Corporation may accept grants, donations and gifts from the Central or any State Government, local authority, or any individual or body whether incorporated or not, for all or any of the purposes of this Act.
- (iii) Subject to the other provisions contained in this Act and to any rules or regulations made in this behalf, all moneys accruing or payable to the said Fund shall be paid into the Reserve Bank of India or such other bank as may be approved by the Central Government to the credit of an account styled the account of the Employees State Insurance Fund.
- (iv) Such account shall be operated on by such officers as may be authorised by the Standing Committee with the approval of the Corporation.

Purposes for which the Fund may be expended.—Subject to the provisions of this Act and of any rules made by the Central Government in that behalf, the Employees' State Insurance Fund shall be expended only for the following purposes, namely:—

- (i) payment of benefits and provision of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, the provision of such medical benefit to their families, in accordance with the provisions of this Act and defraying the charges and costs in connection therewith;

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- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and the Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- (iii) payment of salaries, leave and joining time allowances, travelling and compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of offices and other services set up for the purpose of giving effect to the provisions of this Act;
- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provision of medical and other ancillary services for the benefit of insured persons and, where the medical benefit is extended to their families;
- (v) payment of contributions to any State Government, local authority or any private body or individual, towards the cost of medical treatment and attendance provided to insured persons and, where the medical benefit is extended to their families, including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of its assets and liabilities;
- (vii) defraying the cost (including all expenses) of the Employees' Insurance Courts set up under this Act;
- (viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (ix) payment of sums under any decree, order or award of any Court or Tribunal against the Corporation or any of its officers or servants for any act done in the execution of his duty or under a compromise or settlement of any suit or other legal proceeding or claim instituted or made against the Corporation;
- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- (xi) defraying expenditure, within the limits prescribed, on measures for the improvement of the health, welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and

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(xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

(b) The Medical Benefit Council shall —

- (i) advise the Corporation and the Standing Committee on matters relating to the administration of medical benefit, the certification for purposes of the grant of benefits and other connected matters ;
- (ii) have such powers and duties of investigation as may be prescribed in relation to complaints against medical practitioners in connection with medical treatment and attendance ; and
- (iii) perform such other duties in connection with medical treatment and attendance as may be specified in the regulations.

Question 14:

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

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

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

(b) The payment of contribution to provident fund of an employee, to be made by his employer, who has become insolvent, a preferential payment as per the provisions of the Employees Provident fund and Miscellaneous Provisions Act, 1952.

(c) Y, on retirement withdrew the entire amount of his accumulation in the provident fund. Later on, he was re-appointed for a fixed tenure. The PF Inspector claimed contribution in respect of salary paid to Y. Is the demand made by PF Inspector tenable in law under The Employees Provident Funds and Miscellaneous Provisions Act, 1952?

Answer:

(a) As per Section 2 of the Employees Provident Fund and Miscellaneous Provision Act, 1952, the “Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include :

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- (i) the cash value of any food concessions;
- (ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment; or
- (iii) any presents made by the employer.

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

- (b)** According to Section 11 of the Employees' Provident Fund and Miscellaneous Provisions Act 1952, if the employer is adjudged as insolvent or if the employer is a company and an order winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or employer's contribution must be included among the debts which are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability thereof has accrued before this order of adjudication or winding up is made.

- (c)** An employee who has been member of PF, withdrew the full amount of his accumulations is an 'excluded employee.' However, once he is reappointed in connection with work of the company, he attracts definition of 'employee' and the Act becomes applicable to him afresh. In Harrison Malayalam Ltd. and Ors vs. RPF& Ors. (CAL H.C) 2001 I LLJ 1160, the company was held liable to cover an employee who took VRS and later appointed for a lump sum basis. Thus the demand made by authorities is tenable.

Question 15:

- (a) Write a note on Child Labour Technical Advisory Committee.**

- (b) What are the rules according to which a child would be allowed to work?**

Answer:

- (a)**
 - (i) The Central Government may, by notification in the official Gazette, constitute an advisory committee to be called the Child Labour Technical Advisory Committee (hereafter in this section referred to as the Committee) to advise the Central Government for the purpose of addition or occupations and processes to the Schedule.

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- (ii) The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
- (iii) The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.
- (iv) The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the Committee.
- (v) The term of office of, the manner of filling casual vacancies in the office of, and the allowances, if any, payable to, the Chairman and other members of the Committee, and the conditions and restrictions subject to which the Committee may appoint any person who is not a member of the Committee as a member of any of its sub-committees shall be such as may be prescribed

(b) As per section 7 of Child Labor (Prohibition and Regulation) Act, 1986

- (i) No child shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- (ii) The period of work on each day shall be so fixed that no period shall exceed three hours and that no child shall work for more than three hours before he has had an interval for rest for at least one hour.
- (iii) The period of work of a child shall be so arranged that inclusive of his interval for rest, under sub-section (2), it shall not be spread over more than six hours, including the time spent in waiting for work on any day.
- (iv) No child shall be permitted or required to work between 7 p.m. and 8 a.m.
- (v) No child shall be required or permitted to work overtime.
- (vi) No child shall be required or permitted to work in, any establishment on any day on which he has already been working in another establishment.

Question 16:

(a) P by inducing Q obtains a bill of exchange from him fraudulently in his (P) favour. Later, he

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enters into a commercial deal and endorses the bill to R towards consideration to him (R) for the deal. R takes the bill as a Holder-in-due-course. R subsequently endorses the bill to P for value, as consideration to P for some other deal. On maturity the bill is dishonoured. P sues Q for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, decide whether P will succeed in the case?

- (b) When is presentment of an instrument not necessary under the Negotiable Instruments Act?
- (c) Promissory note dated 1st February, 2015 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of Maturity? Explain with reference to the relevant provisions of the 'Negotiable Instruments Act, 1881 whether the endorser and the maker will be discharged by reasons of such delay.

Answer:

(a) The problem stated in the question is based on the provisions of the Negotiable Instruments Act as contained in Section 53. The section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey.' Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53).

Thus applying the above provisions it is quite clear that P who originally induced Q in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as P himself was a party to the fraud.

- (b) According to Section 76 of the Negotiable Instruments Act 1881, no presentment to payment is necessary in any one of the following cases:
- (i) if the maker, drawee or acceptor intentionally prevents the presentment of the instrument, or
 - (ii) if the instrument being payable at his place of business, he closes such place on a business day during the usual business hours, or
 - (iii) if the instrument being payable at some other specified place, neither he nor any other person authorised to pay it attends at such place during the usual business hours, or
 - (iv) if the instrument not being payable at any specified place, if he (i.e. maker etc) cannot after due search be found;

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(v) as against any party sought to be charged therewith, if he (i.e maker, etc.) has engaged to pay notwithstanding non-presentment;

(vi) as against any party if after maturity, with knowledge that the instrument has not been presented — he makes a part payment on account of the amount due on the instrument, or promises to pay the amount due thereon in whole or in part, or otherwise waives his right to take advantage of any default in presentment for payment; as against the drawer, if the drawer could not suffer damage from the of such presentment.

(c) If a promissory note is made payable a stated number of months after date, it becomes payable three days after the corresponding date of months after the stated number of months (Section 23 read with Section 22 Negotiable Instruments Act 1881). Therefore- in this case the date of maturity of the promissory note is 4th April, 2015.

In this case the promissory note was presented for payment 10 days after maturity. According to Section 64 of Negotiable Instruments Act read with Section 66, a promissory note must be presented for payment at maturity by on behalf of the holder. In default of such presentment, the other parties the instrument (that is, parties other than the parties primarily liable) are not liable to such holder. The indorser is discharged by the delayed presentment for payment. But the maker being the primary party liable on the instrument continues to be liable.

Question 17:

(a) Explain the concept of “whistle blowing” with respect to the Limited liability Partnership Act, 2008.

(b) Is registration of Partnership firms, compulsory? If so what is the procedure of Registration of partnership firms.

(c) Explain in details the term ‘designated partners’ under LLP Act, 2008.

Answer:

(a) The concept of “Whistle Blowing” has been discussed in Sec 31 of the Limited liability Partnership Act, 2008. As per the sec:

- (i) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that-
1. such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

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2. when any information given by any partner or employee (whether or not during investigation) leads to limited liability partnership or any partner or employee of such limited liability partnership being convicted under this Act or any other Act.

(ii) No partner or employee of any limited liability partnership may be discharged, demoted, suspended, threatened, harassed or in any other manner discriminated against the terms and conditions of his limited liability partnership or employment merely because of his providing information or causing information to be provided pursuant to sub-section (1).

(b) Prior to passing of India Partnership Act, 1932 there was no provision for the registration of firms in India. Registration of a Firm is not mandatory under the Act also. But, certain privileges are available only to Registered Firms, thus indirectly making it compulsory to register so as to enjoy those privileges. Registration does not create Partnership, but is only the evidence of existence of Partnership. It is advantageous both to Firm and also outsiders.

Procedure for Registration of Partnership - [Sec. 58 and 59]:

Time	Registration may be effected at any time during the continuance of Partnership.
Application	Registrar of Firms in the area in which the place of business or principal place of business of the Firm is situated / proposed to be situated.
Form & Fees	Statement in the prescribed form and accompanied by the prescribed fees.
Contents	<ol style="list-style-type: none">1. Firm Name,2. Place of business or principal place of business,3. Names of any other places where the Firm carries on business,4. Date when each Partner joined the Firm,5. Names in full and permanent address of the Partners,6. Duration of the Firm, if any. <p>Note: Names that are undesirable, like use of Crown, Emperor, Empress, Royal, King, Queen, Empire, Imperial, etc. in the opinion of the Registrar will not be permitted. Also, use of words that indicate sanction, patronage or approval of the Government shall not be allowed unless specially consented to in writing by the Government.</p>
Signing and Verification	By all the Partners, or their agents specially authorised in this behalf. Each person signing shall verify in the prescribed manner.
Registration by Registrar	<ul style="list-style-type: none"><input type="checkbox"/> If the provisions of Sec. 58 are duly complied with, the Registrar upon satisfaction of the same shall record an entry of statement (application) in the Register of Firms.<input type="checkbox"/> He shall also file the Statement and issue a Certificate of Registration.

(c) "Designated partner" in reference to Limited Liability Partnership means any partner designated as such pursuant to section 7 of Limited Liability Partnership Act 2008. Every

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limited liability partnership shall have at least two designated partners who are individuals and at least one of them shall be a resident in India. In case if no partner is designated as such, or if at any time there is only one designated partner, each partner shall be deemed to be a designated partner of the LLP.

Provided that in case of a limited liability partnership in which all the partners are bodies corporate or in which one or more partners are individuals and bodies corporate, at least two individuals who are partners of such limited liability partnership or nominees of such bodies corporate shall act as designated partners.

An individual cannot become a designated partner in any limited liability partnership unless he has given his prior consent to act as such to the limited liability partnership in such form and manner as may be prescribed and he is also required to obtain a Designated Partner Identification Number (DPIN).

The role of Designated Partners in case of LLP is on same footage as of Directors in case of Company. The Designated Partners as provided under Section 8 are directly responsible for the compliances of all provisions provided under LLP Act, 2008 and the provisions specified in the LLP Agreement.

Rights of Designated Partner are same as of other Partners. Alike other partners they are not entitled to any remuneration for their participation in management of LLP unless otherwise specifically provided in the LLP Agreement they , yet they have additional responsibilities to comply with.

A designated partner shall be:

- (i) responsible for the doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and
- (ii) liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.

Major duties of Designated Partner

- (i) Notify any changes in the LLP's to Registrar of Companies.
- (ii) Notify any changes in the Partners names & residential addresses to Registrar of Companies.
- (iii) Notify any change in Registered Office Address to Registrar of Companies.

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- (iv) Filing of any Annual return, Statement of Accounts and other documents specified under the provisions of LLP Act with the Registrar of Companies.
- (v) Statement of Accounts & Solvency to be signed by the Designated Partners of the Company.
- (vi) to preserve and to produce before an inspector or any person authorized by him in this behalf with the previous approval of the Central Government, all books and papers of, or relating to, the limited liability partnership or, as the case may be, the other entity, which are in their custody or power
- (vii) Responsible for signing all the eforms filed with the Registrar of Companies.

Any vacancy arising in the office of Designated Partner shall be filled within 30 days and the change shall be intimated to the Registrar of Companies

Question 18:

(a) Preference Bank Limited, is a newly formed private sector bank. It is unaware of the KYC requirements that banks and financial institutions needs to follow. It seeks your advice in this regard.

(b) Describe the key powers of the Central Government in respect of the PMLA, 2002.

Answer:

(a) KYC Requirement for Banks and Financial Institutions

1. KYC Compliance requires verification of the records, to establish the identity of Clients. Every Banking Company, Financial Institution and Intermediary, shall - (a) at the time of commencement of an account based relationship, identify its Clients, verify their identity and obtain information on the purpose and intended nature of the business relationship, and (b) in all other cases, verify identity while carrying out -
 - (a) Transaction of an amount equal to or exceeding ₹ 50,000 whether conducted as a single transaction or several transactions that appear to be connected, or
 - (b) Any International Money Transfer Operations.
2. The Banking Company / Financial Institution / Intermediary shall -
 - (a) Determine whether a Client is acting on behalf of a Beneficial Owner, identify the Beneficial Owner and take all reasonable steps to verify his identity. "Beneficial Owner" shall mean the natural person who ultimately owns or controls a Client and / or the person on whose behalf a transaction is being conducted, and includes a person who exercises ultimate effective control over a judicial person.
 - (b) Exercise ongoing due diligence with respect to the business relationship with every

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client and closely examine the transactions in order to ensure that they are consistent with their knowledge of the customer, his business and risk profile.

(c) Ensure that no anonymous account or accounts in fictitious names are maintained.

(d) Shall verify the prescribed documents as follows -

Nature	Documents Prescribed
Individual	One certified copy of an 'officially valid document' containing details of his identity and address, one recent photograph and such other documents including in respect of the nature of business and financial status of the Client as may be required "by the Banking Company / Financial Institution / Intermediary.
Company	One certified copy of - (a) Certificate of incorporation, (b) Memorandum and Articles of Association, (c) Board Resolution / Power of Attorney and (d) Proof for Attorney Holder.
Partnership Firm	One certified copy of the following documents - (a) Registration Certificate, (b) Partnership Deed, and (c) Proof for Attorney Holder.
Trust	One certified copy of the following documents - (a) Registration Certificate, (b) Trust Deed, and (c) Proof for Attorney Holder.
Unincorporated Association or a Body of Individuals	One certified copy of the following documents - (a) Resolution of the Managing Body, (b) Power of Attorney, (c) Proof for Attorney Holder, (d) Such information as may be required to collectively establish the legal existence.
Juridical Person	Any person purporting to act on behalf of such Client is so authorised and verify the identity of that person.

Note: The above records shall be maintained for a period of 10 years from the date of cessation of the transactions between Client and Banking Company.

(b) Powers of Central Government

- Furnishing Information:** The Central Government may, in consultation with RBI, prescribe the procedure and the manner of maintaining and furnishing information u/s 12 [Sec.15].
- Establishment of Tribunal:** The Central Government shall by notification, establish an Appellate Tribunal to hear appeals against the orders of the Adjudicating Authority and the Authorities.
- Notification of Trial Courts:** For the purposes of trial of offences punishable u/s 4, the Central Government in consultation with the Chief Justice of the High Court, shall notify, one or more Courts of Session as Special Courts - (a) for such areas, or (b) for such case or class or group of cases.

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4. **Appointment of Prosecutor:** The Central Government may appoint for any case or class or group of cases a Special Public Prosecutor.
5. **Appointment of Authorities:**
 - (a) The Central Government may appoint such persons as it thinks fit to be the Authorities for the purposes of PMLA.
 - (b) The Central Government may authorise the Director or Additional / Joint / Deputy / Assistant Director, to appoint other authorities below the rank of an Assistant Director.
6. **Power to issue directions [Sec.52]:**
 - (a) The Central Government may issue orders, instructions and directions to the Authorities as it may deem fit for the proper administration of the Act. The Authorities and all other persons employed in execution of the Act shall observe and follow such orders, instructions and directions of the Central Government.
 - (b) Restriction: The Central Government shall not issue any orders, instructions or directions so as to -
 - require any authority to decide a particular case in a particular manner, or
 - interfere with the discretion of the Adjudicating Authority in exercise of his functions.
7. **Empowerment of Officers [Sec.53]:**
 - (a) The Central Government may by a special or general order, empower an Officer not below the rank of Director of the Central / State Government, to act as an Authority under PMLA.
 - (b) The Central Government may empower an Officer below the rank of Director, if the Officer of the rank of the Director or above, is not available in a particular area.
8. **Agreement with other countries:** The Central Government may enter into an agreement with the Government of any country outside India for -
 - (a) enforcing the provisions of the PMLA, 2002,
 - (b) exchange of information for the prevention of any offence under PMLA or under the corresponding law in force in that country or investigation of cases relating to any offence under PMLA.
9. **Power to remove difficulties [Sec.75]:** If any difficulty arises in giving effect to the provisions of PMLA, the Central Government may, by order published in the Official Gazette, make such provisions not inconsistent with the provisions of the Act, as may appear to be necessary for removing the difficulty. However, no order shall be made u/s 75 after the expiry of 2 years from the commencement of the Act. Every order made u/s 75 shall be laid, as soon as may be after it is made, before each House of Parliament.

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Question 19:

- (a) A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Comment.
- (b) Dev Limited issued a notice for holding of its annual general meeting on 7th November, 2014. The notice was posted to the members on 16.10.2014. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide -
- (i) Whether the meeting has been validly called?
 - (ii) If there is a shortfall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?
 - (iii) Can the shortfall, if any, be condoned?
- (c) 500 equity shares in 'XYZ Limited' were acquired by Mr. 'B'. But the signature of Mr. 'A', the transferor, on the transfer deed was forged. Mr. 'B', after getting the shares registered by the company in his name, sold 200 equity shares to Mr. 'C' on the strength of the share certificate issued by 'XYZ Limited'. Mr. 'B' and Mr. 'C' were not aware of the forgery. What are the rights of Mr. 'A', 'B' and 'C' against the company with reference to the aforesaid shares?

Answer:

- (a) The prospectus is misleading
- since non-disclosure of the fact that the company was making losses and that the dividends were paid out of past year profits gave a false impression that the company was making profits;
 - since suppression of such fact might have affected investor's decision to subscribe for shares.
 - since the prospectus does not disclose all the material facts truly, honestly and accurately.

The allottee of shares is entitled to avoid allotment since the allottee has a right to rescind the contract of allotment of shares if he had relied and acted on the prospectus, i.e., he subscribed for shares after being influenced by a misleading prospectus [Rex v Kysant].

(b)

Day of holding the AGM

7th November, 2014.

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(ii) Would your answer be still the same in case the company, instead of 30%, decides to buy-back only 20% of its equity share capital?

(b) Discuss whether property of the company before registration vests in the company incorporated under the Companies Act, 2013?

Answer:

(a) The proposal of the company to buy-back its shares is not valid

- since the company has passed OR instead of SR, as required u/s 68;
- since the company proposes to buy-back 30% of the equity share capital which exceeds the statutory ceiling of 25% of total paid up equity capital;
- since the company proposes to buy-back out of the proceeds of an earlier issue of same kind of shares, which is prohibited u/s 68.

The decision to buy-back 20% of equity share capital shall not be valid

- since buy-back by passing OR is violative of Sec. 68;
- since buy-back out of the proceeds of an earlier issue of same kind of shares is prohibited u/s 68.

(b) As per section 368 of Companies Act, 2013, all the property belonging to the company before registration, shall pass to the company incorporated under the Companies Act, 2013. In other words, all the property vested in the company before registration of the company shall vest in the company as incorporated under the Companies Act, 2013. The provisions of section 368 shall apply to all property, whether movable or immovable as well as to all actionable claims.

The effect of section 368 is that there is automatic vesting and divesting of the property. The company (before registration) is divested of all the properties, and the company incorporated under the Companies Act, 2013 is vested with all such properties. The vesting of property is as a result of the statute, and therefore, no registered instrument of transfer is necessary [Rama Sundari Ray v Syamendra Lal Ray, ILR (1947) 2 Cal 1].

If the constitution of a partnership firm is changed into that of a company by registering under Part I of Chapter XXI of the Companies Act, 2013, there shall be statutory vesting of title of all the property of the previous firm in the newly incorporated company without any need for a separate conveyance deed or sale deed [Vali Pattabhirama Rao v Sri Ramanuja Ginning & Rice Factory P. Ltd. (1968) 60 Com Cases 568 (AP-DB)].

Question 21:

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(a) Mr. Rahim was appointed as managing director of Prudential Company Limited in accordance with Schedule V for a period of 5 years with effect from 1st April, 2014 on a remuneration of ₹ 30,00,000 per year. The Board of directors the company propose to increase the remuneration of the managing director to ₹ 40,00,000 per year. Advise the Board of directors about the legal requirements under the Companies Act, 2013 to give effect to the proposal. State whether the increased remuneration can be paid as minimum remuneration in the event of loss or inadequacy of profit.

(b) A public company wants to include the following clause in its articles of association:

"Each director shall be entitled to be paid out of the funds of the company for attending meetings of the Board or a committee thereof including adjourned meetings such sum as sitting fees as shall be determined from time to time by the directors, but not exceeding a sum of ₹ 1,50,000 for each such meeting to be attended by the director."

You are required to advise the Company as to the validity of such a clause and the correct legal position, in the light of Companies Act, 2013

Answer:

(a) As per section 197 of Companies Act, 2013, where the proposed increase in remuneration is within the limits laid down in Part II of Schedule V, the company is competent to increase the remuneration of the managerial person without the approval of the Central Government.

As per Section II of Part II of Schedule V, in the absence or inadequacy of profits, a company having an effective capital of less than ₹ 5 crore may pay a maximum of ₹ 30 lakh as the managerial remuneration. However, if the effective capital of the company is ₹ 5 crore or more but less than ₹ 100 crore, the maximum remuneration shall not exceed ₹ 42 lakh. However, these limits shall be doubled, if the resolution passed by the shareholders is a special resolution.

In the present case, the effective capital of the company is not given. In case the effective capital of the company is ₹ 5 crore or more, then, Mr. Rahim may be paid remuneration of ₹ 40 lakh without passing special resolution. However, if the effective capital of the company is less than ₹ 5 crore, then, remuneration of ₹ 40 lakh may be paid to Mr. Rahim by passing a special resolution.

(b) The provisions relating to payment of sitting fees to the directors are contained in section 197(2) of Companies Act, 2013 read with Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014. Following points are worth noting regarding payment of sitting fees to directors:

- (i) Sitting fees may be paid to a director for attending a Board meeting as well as for attending a meeting of a committee of directors.
- (ii) Sitting fees may be paid whether or not the meeting proceeds to business or is adjourned for

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want of quorum or any other reason.

- (iii) The amount of sitting fees shall not exceed the sum prescribed. As per Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the sum prescribed is ₹ 1 Lakh for every meeting of the Board or any committee of the Board.
- (iv) If the amount of sitting fees received by any director exceeds the prescribed sum, he shall refund to the company such excess amount. The company shall not waive recovery of such excess amount unless permitted by the Central Government.

The effect of the proposed clause relating to payment of sitting fees is discussed as under:

- (i) The proposed clause purports payment of sitting fees at the rate of ₹ 1,50,000 per meeting. Since the amount proposed exceeds the prescribed sum of ₹ 1,00,000 per meeting, it is not valid.
- (ii) It is permissible to pay sitting fees for attending a meeting of a committee of directors.
- (iii) Where a Board meeting is adjourned for want of quorum or any other reason, the company may pay sitting fees to the directors who attended such Board meeting.

An adjourned meeting is a continuation of the original meeting. Therefore, where a Board meeting is held and is adjourned to a later date, the sitting fees cannot be paid twice, since it is counted as one Board meeting only.

Question 22:

(a) In the light of the conditions laid down under the Companies Act, 2013 examine if the following transaction can reconsidered as a loan to directors:

“A loan to a firm in which the director is a partner”

(b) Notice has been received from a member proposing himself for appointment as a director after the issue of notice convening the annual general meeting. As a secretary of a public company, how will you deal with the above situation?

(c) Desert Rose Limited submitted the documents for incorporation on 5th October, 2014. It was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2014. The company on 14th October, 2014 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act, 2013 whether the company can be exempted from the said contractual liability.

Answer:

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- (a) As per section 185 of the Companies Act, 2013, no company shall, directly or indirectly, make a loan to any person specified under section 185 of the Companies Act, 2013. Amongst the persons specified, a firm in which any director or relative of a director is a partner is also covered. Accordingly, loan cannot be made to a firm, in which the director of the company is a partner.
- (b) Section 160 recognises the right of a person, who is not a retiring director, to stand for directorship. A notice received under section 160 shall be valid, if it complies with the following requirements:
- The notice is given at least 14 days before the general meeting.
 - It is deposited at the registered office of the company.
 - The notice is signed by the person eligible to give notice.
 - A sum of ₹ 1 lakh or such higher amount as may be prescribed, is deposited along with the notice.

As per Section 101, the notice of every general meeting shall be sent by the company to the members at least 21 clear days before the meeting. However, section 160 does not require that the notice to be given to the company under section 160 must be received by the company before issue of notice of the general meeting by the company.

In the present case, the notice under section 160 has been received by the company from a member after the company has issued the notice of the annual general meeting. The notice given by the member shall be in accordance with the provisions of section 160 if it is received by the company at least 14 days before the general meeting and the notice complies with other requirements of section 160. In case, the notice given by the member is in accordance with the provisions of section 160, the company shall inform its members about the candidature of the proposed director by serving individual notices or by advertisement in accordance with the provisions of section 160 read with Rule 13 of the Companies (Appointment and Qualification of Directors) Rules, 2014.

- (c) The company is not bound by the contract entered into on 20.10.2014 since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into. Thus, the company is exempted from the said liability. However, the company shall be bound by the contract entered into on 20.10.2014, if The company, after incorporation, has adopted the pre-incorporation contract in accordance with the provisions of Sec. 15 and 19 of Specific Relief Act, 1963.

Question 23:

- (a) **Under the Right to Information Act, 2005 competent authority means authority competent to seek information. Comment**

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(b) Certain categories of information have been exempted from disclosure under the Right to Information Act, 2005. Comment

(c) PIO under the RTI Act, 2005 rejected X's application because he wanted too many information which PIO found difficult to handle.

Answer:

(a) Under the Right to Information Act, 2005 competent authority means—

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

The competent authority may, by notification in the Official Gazette, make rules to carry out the provisions of this Act.

(b) As provided in section 8 of the Right to Information Act, 2005, there shall be no obligation to give following information to any citizen:

- (i) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (ii) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (iii) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (iv) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (v) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;

- (vi) information received in confidence from foreign Government;
- (vii) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (viii) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (ix) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers :
Provided that the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over
Provided further that those matters which come under the exemptions specified in this section shall not be disclosed;
- (x) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information:
Provided that the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person

(c) The RTI Act, 2005 does not permit rejection of application simply because it relates to large number of documents. In any case , in practice officials should consider the processing of applications as a cooperative activity, such that the official should work with the applicants to assist them to get information they need. If a large number of records are involved in relation to a request, the PIO can contact the requestor and clarify their request to see if they can reach a mediated solution that will give the requestor what they want without unnecessarily burdening the PIO. This recognises that in some cases at least, a broad application may be simply because the requestor was not sure what was available. No penalty is shall lie against PIO for anything which is in good faith done or intended to be done under this Act or any rule made there under.(Sec 21)

If some information requested work relates to the work of another public authority within the same department or in another department, The PIO has the power to transfer those parts of the application to such public authority under Sec 6(3) of the Act.

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Question 24:

- (a) Explain the features of Good Corporate Governance.
- (b) "Firms which are sensitive to society's needs would survive in the long run". Discuss with reference to Corporate Social Responsibility.
- (c) Explain the need of Corporate Governance in Banks.

Answer:

- (a) The features of Good Corporate Governance can be enumerated as follows

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

- (b) In today's competitive business world being a good corporate citizen and being sensitive to the needs of the society has become of utmost importance. It has gained so much of importance in the past few years that it has become one of the important points for survival in the long run.
- Society gives business the licence to exist which may be revoked or amended at anytime if the business fails to fulfil the expectations of the society. Thus, in order to retain its powers, a business organisation should fulfil its social responsibility.
 - The iron law states that 'in the long run, those who do not use power in a manner which society considers responsible will tend to lose it'.
 - The implication of the 'iron rule' is that the business organisations must recognize that avoiding social responsibility would lead to the gradual erosion of power.

- Thus, the given statement is incorrect.

(c) If we examine the need for improving corporate governance in banks, two reasons stand out: (i) Banks exist because they are willing to take on and manage risks. Besides, with the rapid pace of financial innovation and globalisation, the face of banking business is undergoing a sea-change. Banking business is becoming more complex and diversified. Risk taking and management in a less regulated competitive market will have to be done in such a way that investors' confidence is not eroded, (ii) Even in a regulated set-up, as it was in India prior to 1991, some big banks in the public sector and a few in the private sector had incurred substantial losses. This, along with the massive failures of non-banking financial Companies (NBFCs), had adversely impacted investors' confidence.

Moreover, protecting the interests of depositors becomes a matter of paramount importance to banks. In other corporates, this is not and need not be so for two reasons: (i) The depositors collectively entrust a very large sum of their hard-earned money to the care of banks. It is found that in India, the depositor's contribution was well over 15.5 times the shareholders' stake in banks as early as in March 2001. This is bound to be much more now. (ii) The depositors are very large in number and are scattered and have little say in the administration of banks. In other corporates, big lenders do exercise the right to direct the management. In any case, the lenders' stake in them might not exceed 2 or 3 times the owners' stake.

Banks deal in people's funds and should, therefore, act as trustees of the depositors. A regulator the worlds over have recognised the vulnerability of depositors to the whims of managerial misadventures in banks and, therefore, have been regulating banks more tightly than other corporates.

To sum up, the objective of governance in banks should first be protection of depositors' interests and then be to "optimise" the shareholders' interests. All other considerations would fall in place once these two are achieved.

As part of its ongoing efforts to address supervisory issues, the Basel Committee on Banking Supervision (BCBS) has been active in drawing from the collective supervisory experience of its members and other supervisors in issuing supervisory guidance to foster safe and sound banking practices. The committee was set up to reinforce the importance for banks of the OECD principles, to draw attention to corporate governance issues addressed by previous committees, and to present some new topics related to corporate governance for banks and their supervisors to consider.

Banking supervision cannot function effectively if sound corporate governance is not in place and, consequently, banking supervisors have a strong interest in ensuring that there is effective corporate governance at every banking organisation. Supervisory experience underscores the necessity of having the appropriate levels of accountability and checks

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and balances within each bank. Put plainly, sound corporate governance makes the work of supervisors infinitely easier. Sound corporate governance can contribute to a collaborative working relationship between bank management and bank supervisors.

Question 25:

(a) "Business Ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed". Explain.

(b) What are the pros and cons of adopting Corporate Social Responsibility?

Answer:

(a) Business Ethics also called Corporate Ethics is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct, and is relevant to the conduct of individuals and the entire organisations. Business ethics concerns itself with adhering to the social principles of the situations in which business takes place. No matter how hard one tries, it is impossible to separate life from business. For a businessman, business is life. Mahatma Gandhi (1948) said, 'It is difficult but not impossible to conduct strictly honest business. What is true is that honesty is incompatible with amassing of large fortune'. The business world is an important part of society, as it is concerned with the livelihoods of people. Business activity too is subjected to the code of conduct without any exception. People expect businessmen to possess the same rationality as any other citizen. Therefore, there is no separate business ethics for businessmen, as ethics applies to all the activities of people. Consequently, we have to keep business within the bounds of ethics.

(b) Corporate social responsibility refers to a method of running a company that seeks to address not only profitability, but also the environmental and social consequences of the business. While most corporate social responsibility concerns are directed at very large businesses, even small and medium-sized businesses that employ a large number of local residents or participate in environmentally problematic industries can face pressure to adopt corporate social responsibility.

Costs - Cons

Cost represents one of the biggest arguments against adopting corporate social responsibility as a policy. Programs to reduce environmental impact often require expensive changes in equipment or ongoing costs without any clear way to recoup those losses. The decision to maintain domestic production facilities or call centers or to buy from domestic producers rather than outsource or move production overseas can drive up costs for a

business. Additionally, there is no clear evidence that adhering to a policy of corporate social responsibility generates a significant increase in sales or profit.

Improved Company Reputation - Pros

Embracing a policy of corporate social responsibility, paired with genuine action, can serve to build or improve the reputation of a business. If a company's behavior creates a negative backlash that leads to lost profitability --over environmental issues, for example --corporate social responsibility becomes a method to repair reputation damage and restore profitability. In other cases, adopting such a policy works as part of a business' essential brand, and consumers often demonstrate more loyalty to brands that can demonstrate a commitment to environmental concerns.

Shareholder Resistance - Cons

Some investors do look to acquire stock in socially responsible corporations, but, on the whole, investors purchase stock on the expectations of turning a profit. While some companies, such as Toyota and GE, have profited from corporate social responsibility, companies that adopt such policies often prove as likely to lose money. Given the spotty track record of corporate social responsibility in demonstrating profit increase, investors may resist attempts by executives to move a company in that direction.

Better Customer Relations - Pros

One of the hallmarks of corporate social responsibility is staying involved in the communities where the business operates. This community involvement goes a long way toward building trust between customers and the business. If a business builds trust with its customers, they tend to give the business the benefit of the doubt if something goes wrong, rather than assuming malicious intent or raw negligence. Customers also tend to stick with businesses they trust, rather than actively seeking out new companies, which helps keep a business profitable over the long haul.

Question 26:

(a) "Good business ethics promotes good business"— Explain.

(b) "If consumer interest is achieved, then public interest is also achieved". Comment.

Answer:

(a) There is a growing realization all over the world that ethics is vitally important for any business and for the progress of any society. Ethics makes for an efficient economy; ethics alone, not government or laws, can protect society; ethics is good in itself; ethics and profits go together in the long-run. An ethically responsible company is one which has developed a

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culture of caring for people and for the environment; a culture which flows downwards from the top managers and leaders.

Thus, business ethics is vital and plays a key role in success of any business. Prof. Robert Day has said that when ethical conduct is displayed, it puts some kind of trust and confidence in relationship. Adopting ethical behaviour in an organization not only increase its goodwill but also leads to positive consequences in the long run. Business ethics protects the interest of all stakeholders. Businessman who follows business ethics gets self satisfaction and motivates others also to follow the same principles. So in the era of global economy, for a successful business he has to follow sound ethical practices. Ethics are important not only in business but in all aspects of life because it is an essential part of the foundation on which civilized society is built. A business or society that lacks ethical principles is bound to fail sooner or later.

An organization that has a strong ethical program in place with certainly help in reducing the burden on the employees while deciding on such alternatives, Ethics help employees in developing a rationale behind the actions that they undertake in the efficient performance of their duties. It will certainly help in reducing unnecessary tensions and unavoidable thoughts that an individual gets surrounded with when he is faced such kind of problems. This helps him in concentrating more on his work and less on the indecisive thoughts that come to his mind.

(b) Apparently it seems that public interest and consumer interest are synonymous but it is not so. They may be differentiated as under :-

In the name of public interest, many governmental policies are formulated which manifest themselves in anti-competitive behavior. If the consumer is at the fulcrum, consumer interest and welfare should have primacy in all governmental policy formulations.

Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. They are being affected by pricing policy, financing practice, quality of goods, services and trade practices. They are clearly distinguished from manufacturers who produce goods for wholesalers, retailers who sell goods in public interest.

Public interest is something in which the society as a whole has some interest and is seen as an externality to competitive markets. There is also a justifiable apprehension that in the name of public interest, Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. In fact, in such situations, there is a possibility that a conflict could arise between public interest and consumer interest.

Question 27:

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- (a) Analyse the advantages which may be accrue by paying attention to business ethics.
- (b) Mr. Sunny, has been hired as a junior manager at an Multinational Company. Post joining the new office, he has been noticing that people are not paying heed to his instructions. He thinks there is lacunae in his oral communication which he wants to improve. He seeks your advice in this regard.

Answer:

- (a) Ethics is an important aspect of any business decision. If ethics is properly imbibed in an organisation, it yields many advantages, some of which are as follows:
- (i) **Improved society:** In the recent past ruthless exploitation of children and workers, trust control over the market, termination of employees based on personalities and other factors had affected society and a demand arose to place a high value on ethics, fairness and equal rights resulting in framing of anti-trust laws, establishment of governmental agencies and recognition of labour unions.
 - (ii) **Easier change management:** Attention to business ethics is also critical during times of fundamental change. The apparent dilemma may be whether to be non profit or for profit. In such situations often there is no clear moral compass to guide leaders about what is right or wrong. Continuing attention to ethics in the workplace sensitizes leaders and staff for maintaining consistency in their actions.
 - (iii) **Strong team work and greater productivity:** Ongoing attention and dialogues regarding ethical values in the workplace builds openness, integrity and a sense of community which leads to, among the employees, a strong alignment between their values and those of the organization resulting in strong motivation and better performance.
 - (iv) **Enhanced employee growth:** Attention to ethics in the workplace helps employees face the reality- both good and bad in the organization and gain the confidence of dealing with complex work situations.
 - (v) **Ethical programmes help guarantee that personnel policies are legal:** A major objective of personnel policies is to ensure ethical treatment of employees. In matters of hiring, evaluating, disciplining, firing etc. An employer can be sued for breach of contract for failure to comply with any promise. The gap between corporate culture and actual practice has significant legal and ethical implications. Attention to ethics ensure highly ethical policies and procedure in the work place. Ethics management programmes are useful in managing diversity. Such programmes require the recognition and application of diverse values and perspectives which are the basis of a sound ethics management

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programme. Most organizations feel that the cost of mechanisms to ensure ethical programme may be more helpful in minimizing the cost of litigations.

(vi) Ethical programmes help to **detect ethical issues and violations early**, so that criminal acts "of omission" may be avoided.

(vii) Ethical values help to manage values associated with quality management strategic planning and diversity management.

(viii) Ethics help to promote a strong public image: An organization that pays attention to its ethics can portray a strong and positive image to the public. People see such organizations as valuing people more than profit and striving to operate with the integrity and honesty

(b) Factors to be considered for effective oral communication: Oral communication, which is face-to-face communication with others, has its own benefits. The only shortcoming of oral communication is that it is spontaneous and if one communicates incorrectly, the message will not get understood. It is primarily due to this reason one needs to develop effective oral communication skills as a message, if not understood at appropriate time, can lead to disaster. In order to provide a fair and candid exchange of ideas, the following factors to be considered to make the oral communication effective:

- Consider the objective
- Think about the interest level of the receiver
- Be sincere
- Use simple language, familiar words
- Be brief and precise
- Avoid vagueness and generalities
- Give full facts
- Assume nothing
- Use polite words and tone
- Cut out insulting message
- Say something interesting and pleasing to the recipient
- Allow time to respond

To make the oral communication effective, the speaker should converse slowly with proper semantic pauses to enable the listener receive and register in mind whatever is said by the speaker and there should be a due correlation between the pace of speaking and the rate of listening.

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Question 28:

(c) Discuss the different types of Ethical issues.

(d) What do you understand by “Discrimination”? Which basic elements are involved in discrimination in employment?

Answer:

(a) Ethical dilemma exists in all walks of business. Business situations are highly complex with no clear guidelines and equally justifiable alternatives. Hence, ethical dilemma should be dealt carefully. They arise when there are conflict in values with superiors in the area of strategy, goals, policy and administration. Ethical issues get categorized in the following four main areas:

Business Relationships i.e. relationships with customers, suppliers and others in the work place also have ethical concerns. Ethical behavior in the business involves meeting obligations and responsibilities duly on time, keeping company secrets and avoiding undue pressure that may force others to act unethically. The managers and other superiors can use their authority to influence the employees and make them act in an unethical manner. In the process, the manager may tell the employees to adopt unethical practices which the employee may not be willing to adopt. The ethical practices of the business must be focused on customer needs as the customer is the life line of the business. Organisations that cater to customer needs by adopting an honest and ethical approach make the customer feel that they are important and this in turn guarantees the success of the organization in the long run.

Conflict of interest: Conflict of interest exists when a person has to decide whether to proceed with his own personal interest or in the interest of the organization.

Example: Bribe is a conflict of interest because it benefits the individual but harms the organisation and the society. Conflict of interest can be managed in an effective manner when employees are able to separate either personal interests from their business dealings. Sam Walton, the late founder of Wal-Mart, banned company buyers from accepting even a cup of coffee from suppliers. It is not always necessary that conflict of interest should be financial.

Fairness and honesty: Fairness and honesty are difficult principles of business ethics, which an organization is expected to follow. It is not enough for a company to ensure compliance with applicable laws and regulations, it should not cause any harm to employees, customers, competitors knowingly by means of unfair and deceptive trade practices. Disclosure of potential harm caused by product use is an example of "fairness and honesty". Though the

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legal system encourages competition and prevents monopoly, business organisations continue doing activities causing harm to the competition. Thus, ethical conduct of business depends on their Commitment to fairness and honesty.

Communication: Organisations need to communicate with its environment to sustain and grow. They have to give true and correct information about their products and services. Nowadays, false and misleading advertisements occupy the business world. Consumers have a right to know full and true information about product's quality, price and safety. Manufacturers often fail to communicate the differences or similarities between products.

- (b)** The root meaning of the term discriminate is “to distinguish one object from another” Discrimination is treating people differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit. Employment discrimination is treating one person better than another because of their age, gender, race, religion or other protected class status. Another approach to the morality of discrimination that also views it as a form of injustice is based on the formal “principle of equality” Discrimination in employment involves three basic elements.

First, it is decision against one or more employees (or prospective employees) that is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications.

Second, the decision derives solely or in part from racial or sexual prejudice, false stereotypes, or some other kind of morally unjustified attitude against members of the class to which the employee(s) belongs.

Third, the decision (or set of decisions) has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions, or better pay. Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or sex) that are not relevant to the tasks they must perform.

Question 29:

- (a) Discuss the relationship between Corporate Social Responsibility and sustainable development.**
- (b) What are the safe-guards that an accounting and finance profession should undertake to overcome the threats faced by him?**

Answer:

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- (a)** Corporate Social Responsibility is closely linked with the principles of sustainable development. Corporate Social Responsibility (CSR) is a concept that organizations, have an obligation to consider the interests of customers, employees, shareholders, communities and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, but also based on the immediate and long-term social and environmental consequences of their activities. It is an integrated combination of policies, programs, education, and practices that extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society.
- (b)** The following safeguards may reduce the threats faced by an accounting and finance professional to an acceptable level.

Safeguards created by the profession, legislation or regulation are as follows:

- Educational, training and experience requirements for entry into the profession.
- Continuing professional development requirements.
- Corporate governance regulations.
- Professional standards.
- Professional or regulatory monitoring and disciplinary procedures.
- External review by a legally empowered third party of the reports, returns, communications or information produced by concerned professionals.

Safeguards in the work environment are as follows:

- The employing organization's systems of corporate oversight or other oversight structures.
- The employing organisation's ethics and conduct programs.
- Recruitment procedures in the employing organisation emphasizing the importance of employing high caliber competent staff.
- Strong internal controls.

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- Appropriate disciplinary processes.
- Leadership that stresses the importance of ethical behavior and the expectation the employees will act in any ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.
- Timely communication of the employing organisation's policies and procedures, including any changes thereto, to all employees and appropriate training and education on such policies and procedures.

Question 30:

(a) Explain the basic principles of interpersonal communication.

(b) State the reasons for acceptance of change in an organisation.

(c) State some examples of ethical issues faced by an individual at the workplace.

Answer:

(a) The basic principles of interpersonal communication are as follows:

- (i) Interpersonal Communication is Inescapable:** It is a continuous process. We constantly communicate to others and also receive communication from others through not only words but through tone of voice and through gesture, posture, facial expressions etc.
- (ii) Interpersonal Communication is Irreversible:** It deals with proper speaking. "Once a word goes out your mouth, you can never swallow it again." The effect will inevitably remain forever.
- (iii) Interpersonal Communication is Complicated:** It is extremely complicated. A message or communication may be simple but it involves a number of variables.
- (iv) Interpersonal Communication Contextual:** In other words, communication does not happen in isolation. There are so many contexts in communication such as psychological context, relational context, situational context, environmental context and cultural context etc.

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(b) Generally, people resist change in an organization. Even after there are some people who accept or welcome change due to the following reasons:

1. **Personal Gain:** People will be more likely to accept change when they see the possibility that they will gain in some of the following areas:-

- Increased security
- Money
- More authority
- Status/Prestige
- Better Working Conditions
- Self-Satisfaction
- Better Personal Contracts
- Less time and efforts

2. **Other factors:**

- Provide a new challenge
- Respects/like the source
- Likes the way change is being communicated
- Reduces boredom
- Provides opportunity for input
- Improve future
- Perception, that the change is necessary

(c) Some examples of ethical issues faced by an individual at the workplace are:

1. Relationship with suppliers and business partners:

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- Bribery and immoral entertainment
 - Discrimination between suppliers
 - Dishonesty in making and keeping contracts
- 2.** Relationship with customers:
- Unfair pricing
 - Cheating customers
 - Dishonest advertising
 - Research Confidentiality
- 3.** Relationship with employees:
- Discrimination in hiring and treatment of employees,
 - Lack of good behaviour with employees
- 4.** Management of resources:
- Misuse of organizational funds
 - Tax evasion