

Paper 6 - Laws, Ethics and Governance

Section – A

1. Choose the correct answer from the given four alternatives.
- (i) K owns a residential flat in Chennai. He is entitled to quiet possession and enjoyment of his property. This is called –
(a) Rights in Personam
(b) Rights in Rem
(c) Constitutional Right
(d) There is no right at all
- (ii) A proposal when accepted becomes a promise under section..... of the Indian Contract Act.
(a) Section 2 (b)
(b) Section 2 (c)
(c) Section 2 (d)
(d) Section 2 (e)
- (iii) When the partners carry on business even after the expiry of the agreed fixed period, it becomes
(a) Particular Partnership
(b) Partnership at Will
(c) Undisclosed Partnership
(d) Illegal Association
- (iv) A contract of sale under Section 4 of the Sale of Goods Act
(a) May be conditional
(b) May be absolute
(c) May either be conditional or absolute
(d) Neither (a) nor (b)
- (v) The first Factories Act was enacted in:
(a) 1881
(b) 1895
(c) 1897
(d) 1885
- (vi) Under the provisions of section 143 of the Negotiable Instruments Act, 1881, all offences under the Act are to be tried by:
(a) Any Judicial Magistrate
(b) Judicial Magistrate of the First Class or by a Metropolitan Magistrate
(c) Only a District Judge
(d) None of the above
- (vii) The nominal value of qualification shares of a director should not exceed:
(a) ₹ 7,000
(b) ₹ 5,000
(c) ₹ 10,000
(d) ₹ 8,000

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- (viii) Where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, as the case may be, under section 11 to disclose third party information, the appeal by the concerned third party shall be made within days from the date of order.
- (a) 30 days
 - (b) 45 days
 - (c) 60 days
 - (d) 90 days
- (ix) State as to why a business should behave ethically?
- (a) To unprotect its own interest and of the business community as a whole
 - (b) To keep its commitment to society to act ethically
 - (c) To not meet stakeholder expectations
 - (d) To build distrust with key stakeholder groups
- (x) Business ethics is based on well accepted
- (a) Moral and social values
 - (b) Social values only
 - (c) Moral values only
 - (d) None of the above

Answer.

- (i) (b)
- (ii) (a)
- (iii) (b)
- (iv) (c)
- (v) (a)
- (vi) (b)
- (vii) (b)
- (viii) (a)
- (ix) (b)
- (x) (a)

Section A: Industrial and Economic Laws

2. (a) A student was induced by his teacher to sell his brand new car to the later at less than the Purchase Price to secure more ,arks in the examination. Accordingly, the car was sold. However, the father of the student persuaded to sue his teacher. State whether the student can sue the teacher.

(b) Where there are two debts one for ₹ 1,000 and another for ₹ 1,200 falling due on the same day and if the debtor pays ₹ 800, whether the appropriation can be made pro-rata for the two debts?

(c) Ajay appoints Sunil, a minor, as his Agent to sell his mobile for cash at a price not less than ₹ 5,000. Sunil sells it do Amar for ₹ 3,000. Is the sale valid? Explain the legal position of Sunil and Amar.

Answer

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- (a) A contract is said to be induced by undue influence where the relations subsisting between the parties are such that
- One of the party is in a position to dominate the will of the other and
 - Uses that position to obtain an unfair advantage over the other.

Undue influence means improper or unfair use of one's superior power in order to obtain the consent of a person who is in a weaker position.

When consent to agreement is obtained by undue influence, the agreement is a Contract Voidable at the option of the party whose consent was so obtained. Any such contract may be set aside either absolutely, or if the party has received any benefit under the contract, upon such terms and conditions as the court may deem fit.

So, in the given case the student can sue his teacher on the ground of Undue Influence.

- (b) When a debtor owes several distinct debts to a creditor and makes a payment insufficient to satisfy the whole indebtedness a question arises about the appropriation of the payment. Section 59 to 61 lay down the following three rules in this regard:

- Where the debtor intimates (Sec 59)** – If the debtor expressly intimates at the time of actual payment that the payment should be applied towards the discharge of a particular debt, the creditor must do so.
- Where the debtor does not intimate and the circumstances are not indicative (Sec 60)** – Where the debtor does not expressly intimate or where the circumstances attending on the payment do not indicate any intention, the creditor may apply it at his discretion to pay lawful debt actually due and payable to his from the debtor.
- Where the debtor does not intimate and the creditor fails to appropriate (Sec 61)** – Where the debtor does not expressly intimate and where the creditor fails to make any appropriation, the payment shall be applied in discharge of the debts in chronological order, i.e., in order of time. If the debts are of equal standing, the payment shall be applied in discharge of each proportionately.

So, the given case, as per section 61, the appropriation can be made proportionately, if neither party appropriates specifically.

- (c) Any person who is authorized to act as such may be an agent. As the agent does not make contracts on his own behalf, it is not necessary that he should have contractual capacity. Even a minor may be an agent. If a person who is not-competent to contract is appointed an agent, the principal is liable to the third party for the acts of the agent. Thus as between the principal and a third person any person may become an agent. But no person who is not of the age of majority and of sound mind is responsible to his principal (Sec 184). It is therefore in the interest of the principal that the agent should have contractual capacity.

Thus, in the given case, Amar gets a good title to the mobile. Sunil is not liable to Ajay for his negligence in the performance of his duties.

3. (a) Ten cows were 'exchanged; at an agreed price of ₹ 8,000 each (i.e. aggregating ₹ 80,000). The payment, however, was to be settled partly against the delivery (exchange) of 2,000 kgs of sugar at the rate of ₹ 30 per kg, and the balance amount of ₹ 20,000 was to be paid in cash. Do you think that this will be deemed to be a valid agreement of sale or a case of barter, as the payment is to be made not fully in terms of money but partly in terms of money and partly in kind (i.e. sugar in the instant case). Give reasons for your answer.

(b) Rajesh has agreed to sell to Pran 400 quintals of wheat out of a huge quantity of wheat stored in his godown. The price, however, was to be paid at a later date, as was specified under the

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

contract of sale of goods. Under such circumstances, has the property in the wheat passed on from the seller to the buyer at the time when the contract was entered into between them? Give reasons for your answer.

(c) The seller had sold to the buyer 1,200 tonnes of stainless steel sheets of a specific quality, which was required under the contract for sale of goods, to be shipped at 100 tonnes per month and in equal installments each month. But after 400 tonnes of the total quantity of 1,200 tonnes delivered to and also paid for by the buyer, it was found that the goods which were supplied were not of the agreed quality, and accordingly, he had refused to take any further delivery of the goods. Do you think that the buyer was rightfully entitled to refuse to take any further delivery of the goods? Give reasons for your answer.

Answer.

(a) This will be deemed to be a valid agreement of sale (and not a case of barter) as the payment is to be made not fully in terms of exchange of goods but partly in terms of money and partly in kind (i.e. sugar in the instant case). This is so because, as per the provisions made in the Sale of Goods Act, in case of a sale of any (property in) goods, in consideration of a certain amount of money (cash or cheque or bank draft), and such settled price is paid partly in terms of money and partly by way of some goods (i.e. in kind), such transaction will also be deemed to be a valid sale in the eye of law.

(b) No; the property in the wheat has not passed on from the seller to the buyer at the time when the contract was entered into between them. This is so because the property in the wheat will be passed on from the seller to the buyer only after the required quantity of wheat is segregated from the huge quantity of wheat stored in the seller's godown. This is so because it will be only then that the required quantity of wheat would be deemed to have been ascertained, and only thereafter the property in the wheat will pass on from the seller to the buyer. Until then it will remain in the nature of unascertained or future goods, because, under Section 18 of the Sale of Goods Act, in the case of a contract of sale of 'unascertained or future goods', the property in the goods will not be transferred from the seller to the buyer unless the goods become ascertained.

(c) Yes, the buyer was rightfully entitled to refuse to take any further delivery of the goods, because he was not bound to take the risk of accepting any further delivery of the goods which did not conform to the quality that was contracted for. This is so because though, under the provisions of the Sale of Goods Act, usually, the failure on the part of the seller to deliver any one of the installments to the buyer, or the failure on the part of the buyer to pay for any of the instalments to the seller, does not amount to the repudiation of the contract as a whole, in the cases where the breach is of such a nature that it could be reasonably inferred that a similar breach is most likely to be committed by the defaulting party even in the cases of future transactions, the other party will be entitled to treat the whole contract as repudiated. This contention is also confirmed in a similar case titled Robert A. Munso & Co. vs Meyer [(1930) 2 K.B. 312].

4. (a) Who cannot enter into a contract?

(b) No one can give a better title than he himself has. State the exceptions to the rule.

(c) A bill of exchange is payable to Shyam on order. At maturity another person of the same name wrongfully gets possession of the bill and presents it to the acceptor for payment. After being satisfied that the person presenting is Shyam, the acceptor makes payment on it in due course. Is the acceptor discharged?

Answer

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

(a) Section 11, of the Indian Contract Act, 1872 lays down the qualifications that make a person competent to contract. Accordingly, the following persons cannot enter into a contract:

- (i) Minor, who has not attained 18 years of age.
- (ii) A person with unsound mind - lunatics, idiots, drunken or intoxicated persons.
- (iii) A person who is disqualified by law from contracting partially or wholly.

Incompetency may arise from political status, corporate status or legal status.

- Contract with a person who is resident of a hostile nation is void.(political status)
- A company cannot enter into a contract which is ultra vires its Memorandum of Association. (Corporate status)
- An insolvent person cannot enter into a contract unless discharged.(legal status)

(b) The exceptions to the rule are given vide Sections 27 to 30 of Sale of Goods Act, 1930 These are as follows:

- (i) Sale by a mercantile agent who is in possession of the goods with consent of the seller and sells the goods in ordinary course of business.
- (ii) Sale by a joint owner in possession of goods with consent of other joint owners. (Sec 28)
- (iii) Sale by a person in possession of goods under a contract which may be voidable on the ground of fraud, misrepresentation, coercion or undue influence provided sale is made before voidable contract is avoided. (Sec 29)
- (iv) Sale by seller who is in possession of the goods after sale but not in capacity of buyer's bailee. The subsequent buyer must buy in good faith and for value. (Sec 30)
- (v) Sale by buyer who is in possession of the goods before actual purchase if the subsequent buyer buys bona fide and for value. (Sec 30(2))
- (vi) Sale made by unpaid seller exercising his right of lien and stoppage in transit. (Sec 54(3))
- (vii) Sale made by finder of lost goods u/s 169 of the Indian Contract Act.
- (viii) Sale by pawnee or pledge u/s 176 of the Indian Contract Act.
- (ix) Sale made by Official Receiver or Official Assignee or Liquidator.

(c) "Payment in due course" means payment in accordance with the apparent tenor of the instrument in good faith and without negligence to any person in possession thereof. The payment to the person in possession of the instrument must be under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount mentioned in the instrument. If, under suspicious circumstances, the person making the payment does not make the necessary inquiry, the payment is not a payment in due course. In the given case, if the acceptor does not make the necessary inquiry before making the payment, it is not a payment in due course. So, he is not discharged.

5. (a) Fancy Furniture, a partnership firm, was getting the supplies of its finished goods from Saharanpur from several suppliers on credit. But, after some time, the firm started facing some financial problems, and thereby its dues to its suppliers had accumulated to a substantial amount over a period of time. Thereupon, an agreement was reached between the partnership firm and its various suppliers to the effect that the firm will pay its due to its creditors out of the profit it would earn from time to time. It was further agreed upon that the firm's business from now onwards will be run under the supervision of the creditors, till such time all their dues were fully paid.

Do you think that, under the aforementioned arrangement, the various creditors of the firm will now be deemed to be the partners of the firm on the ground that they were being paid their dues by the firm out of its profits? Give reasons for your answer.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

(b) Mohan introduced Kabir to Seikh as a partner in his firm named Mohan and Friends. But, in fact, Kabir is not a partner in the firm named . however, despite not being a partner in the firm, Kabir not contradicted the aforementioned statement of Mohan, and had preferred to keep quiet, instead. After a couple of days, Seikh had given a loan of ₹ 1,25,000 to the firm. But, as the firm was not paying back the loan amount, Seikh had approached Kabir for repayment of the loan. At this point of time, Kabir refused to repay the loan on the ground that he was never a partner in the firm, and therefore, he cannot be held responsible for the repayment of the loan given not to him but to the firm of Mohan. Do you think that the contention of Kabir in the instant case is legally justified? Give reasons for your answer.

(c) 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?

Answer

(a) Under the aforementioned arrangement, the various creditors of the firm will not be deemed to be the partners of the firm in any manner, despite the fact that they were now being paid their dues by the firm out of its profits. This is so because, Section 6 has amply clarified that, though the sharing of profit in the business of the partnership firm happens to be one of the most essential elements in any partnership firm, none of the persons will be deemed to be the partners of the firm, just because they are being paid out of the profits earned by the firm. That is, in addition to the element of profit-sharing, the various other essential ingredients of a partnership must also be present, to consider such group of persons as a partnership. Such contention is based on the judgement delivered by the House of Lords in the case titled Cox vs Hickman (1860) 8 HLC, 268.

(b) No, the contention of Kabir in the instant case is not legally justified. This is so because, Kabir, in the instant case, will be considered as partner of the firm by virtue of being a 'partner by holding out', also referred to as a 'partner by estoppel', as per the provisions of Section 28, based on the following circumstances of the case :

- (i) That, Kabir had knowingly permitted himself to be represented, to be a partner of the firm;
- (ii) That, such representation was made by him by his conduct; and
- (iii) That, the other party had given the credit to the firm, based on the faith of such representation.

Accordingly, Kabir cannot be allowed to plead that, in fact, he was not a partner in the firm. Instead, he will have to compensate Seikh by virtue of his being a 'partner by holding out', also referred to as a 'partner by estoppel'.

(c) 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 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.

6. (a) A Promissory Note dated 1st March, payable 3 months after date was presented to the Maker for payment 10 days after maturity. What is the date of maturity? Explain whether the Endorser and the Maker will be discharged by reasons of such delay.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

(b) Tiyasi had come to the office of Tania to collect a cheque from her for the services she had rendered to her last week. Tania had issued a bearer cheque in favour of Tiyasi for ₹ 5,000, and leaving it on her table, she had gone to the account's department for some official work. As it took some time for Tania to come back to her seat, and Tiyasi was in some hurry, she picked up the cheque on her own and left Tania's office. Will Tiyasi get a valid title to the cheque in the instant case? Give reasons for your answer.

(c) Amar pays the arrears or rent of his nephew to his landlord just to avoid tension. Can he recover this amount from his nephew?

Answer

(a) The due date of maturity is 4th June. (i.e., 3rd day after three months).

Promissory notes, bills of exchange and cheques must be presented for payment at the due date of maturity to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder. In default of such presentment, the other parties to the instrument (i.e., parties other than the parties primarily liable) are not liable thereon to such holder. If authorized by agreement or usage, a presentation through the post office by means of a registered letter is sufficient (Section 64).

So, the Endorser is discharged due to delayed presentment for payment, and the primary party (i.e., Maker of the instrument) continues to be liable.

(b) Tiyasi will not get a valid title to the cheque in the instant case. This is so because, in the cases of both the order and bearer cheque, the delivery of the instrument is essential. It should have, therefore, been delivered by the drawer herself, or by her agent, clerk, or servant. Alternatively speaking, if the drawer signs a cheque made payable to a particular person, and leaves it on her table or in her drawer, and if the particular payee herself picks it up on her own, i.e., without it being actually delivered to her by such drawer personally, or by her agent, clerk, or servant on her behalf, the title to the instrument will not legally pass on to the payee, i.e. to Tiyasi in the instant case.

(c) As per Section 69 of the Indian Contract Act, a person who is interested in the payment of money and pays such money, which another is bound by law to pay, is entitled to be reimbursed by the other. So, the reimbursement can be claimed only if

- Person making payment on behalf of another should be interested in such payment of money, i.e., payment was made bona fide, for protection of his own interest.
- Payment should not be voluntary. It should be such that there is some legal or other coercive process compelling the payment.
- Original liability should be of another person
- Payment must be made to another person to whom the party was liable.

As the aforementioned conditions are not fulfilled, Amar cannot recover the amount from his nephew.

7. (a) A company, employing 50 persons, has been incurring losses right from the commencement of its business. Accordingly, it has made an application to the appropriate Government to exempt it from the application of all the provisions of the Payment of Bonus Act. Do you think that the appropriate Government will exempt from the application of all the provisions of the Payment of Bonus Act, and if so, on what grounds? Give reasons for your answer.

(b) X, a minor wanted to become a professional cricket player. He entered into a contract with Y, a cricket coach and agreed to pay him ₹10000/- per month to learn the game. Is X liable to pay the amount?

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

(c) ABC Ltd bought butter from various sources. Butter so bought were sampled chemically, analysed and packed in tins for transportation to various stock points to be sold in market. Does this amount to manufacturing process under the Factories Act, 1948?

Answer

(a) As per Section 36 of the Payment of Bonus Act, the appropriate Government may, having regard to the financial position and other relevant circumstances of any establishment or class of establishments, exempt, by notification in the Official Gazette, such establishment or class of establishments from all or any of the provisions of the Payment of Bonus Act. It may do so if it is of opinion that it will not be in public interest to apply all such establishment or class of establishments from the application of such provisions of the Act for such period as may be specified in the notification and impose such conditions as it may think fit to impose.

As in the given case the company has been incurring losses right from the commencement of its business, goes to indicate that its financial position is weak enough, and accordingly, the appropriate Government is most likely to consider that it would be in the public interest to exempt this company from the application of all or any of the provisions of the Act. However, the appropriate Government, while according such exemption, may impose such conditions on the company, as it may consider fit.

(b) Education in India has been held as a necessity of life and as per to section 68 of the Indian Contract Act 1872, "If a person, incapable of entering into a contract, or any one whom he is legally bound to support, is supplied by another person with necessaries suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person." So X will be liable to pay the amount provided he has properties existing in his name.

(c) As per section 2(k) of The Factories Act, 1948, manufacturing process means any process for-

- (i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
- (ii) Pumping oil, water, sewage or any other substance; or
- (iii) Generating, transforming or transmitting power; or
- (iv) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
- (v) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.)
- (vi) Preserving or storing any article in cold storage;

The process of sampling, analyzing and packing of butter for sale in market is a manufacturing process as per the definition under the Factories Act, 1948. [Shri Laxmi Das Premji Ghee Merchant v. R. Inspector of Factories(1960) I LLJ]

8. (a) DEF Ltd discontinued deduction towards contribution to provident fund from its employees salary and stopped remitting contribution of its share of provident fund when the number of its employees on its roll fell to thirteen. Do the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 cease to be applicable under such circumstances?

(b) 'A' joined FL Engineering Works (P) Ltd. on 5.3.2013 . On 8th December , 2013 he was laid off as the management wanted to slow down due to shortage of power. 'A' was not allowed lay-off compensation on the ground that his period of service was less than one year.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

(c) Write short note on Agency by estoppel

Answer

(a) According to sec 5(1) of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, an establishment to which this Act applies shall continue to be governed by this Act notwithstanding that the number of persons employed therein at any time falls below twenty.

As such the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 continue to be applicable to DEF Ltd.

(b) Under Sec.25-B of Industrial Disputes Act ,1947 , a workman 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 273 days before he was laid off. So he is entitled to lay-off compensation and can claim the same.

(c) The doctrine of estoppel states when a person by his words , spoken or written or by his conduct willfully leads another person to believe about certain state of affairs, and induces the person to act in a particular manner, he is estopped from denying that state of affairs subsequently.

Sec.237 deals with agency by estoppel. According to it, if a person by his conduct leads another to believe that certain person is his agent or his agent is authorized to incur the particular obligation, the principal is bound by acts of the person posing as his agent or where the agent has exceeded his authority.

For e.g. A terminates the services of B, his agent but forgets to give notice of the same. C contracts with B . A is bound by the contract.

9. (a) Lay off and retrenchment have same legal implication under Industrial Dispute Act. Discuss

(b) When is a LLP not bound by act of its members?

(c) X buys goods from Y on payment but leaves the goods in the possession of X. X then pledges the goods to Z who has no notice of the sale to Y. State whether the pledge is valid and whether Z can enforce it as per provisions of the Sale of Goods Act, 1930.

Answer

(a) Lay off and retrenchment carry different meaning under Industrial Dispute Act as follows:

Lay off	Retrenchment
i) Means failure, refusal or inability of an employer to give employment to a workmen whose name appear in master rolls of his establishment and who has not been retrenched.	It is termination of service of a workman for any reason other than as a punishment by way of disciplinary action but does not include: a) VRS b) Retirement on reaching the age of superannuation. c) Termination due to non renewal of contract. d) Termination on the ground of illness.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

ii) U/s 2(kkk) of Industrial Dispute Act	U/s 2(oo) of Industrial Dispute Act
iii) Worker is entitled to compensation which is 50% of Basic + DA payable to him in case he was not laid off for all days of lay-off excluding weekly holidays.	Compensation is 15 days average pay for each year of completed service or part thereof in excess of six months.

(b) A limited liability partnership is not bound by any act of a member in dealing with a person if –

- (i) the member in fact has no authority to act for the limited liability partnership by doing that thing;
- (ii) the person knows that the member has no authority or does not know or believe him to be a member of limited partnership.

(c) The case is based on the provisions of Section 30 (1) of the Sale of Goods Act, 1930 which provides an exception to the general rule that no one can give a better title than he himself possesses. As per the provisions of the section, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may pledge them to a third person and if such person obtains them in good faith without notice of the previous sale, he would have good title to them. Accordingly, Z, the pledgee who obtains the goods in good faith from X without notice of the previous sale, gets a good title. Thus the pledge is valid.

10. (a) X, had undertaken a piece of work in course of his ordinary business. He sub- contracted a part of his work to Y who in turn sub-contracted a part to Z. F a employee of Z got killed in an accident while working at a machine. The widow of F applied to the Commissioner for an order on X under the Workmen's Compensation Act, 1923 to deposit the amount of compensation for the death of her husband. Comment.

(b) FBG(P) Ltd. imposed a fine on Q, one of its employees for regularly reporting late for work. The fine was imposed on 4th April, 2013. The management wanted to recover the amount in September, 2013 during half yearly increment. Can the Company recover as per the Payment of Wages Act, 1936 ?

(c) Normal wages of X along with his colleagues were reduced by his employer for a particular day in a month. The reason provided by management was that as they had worked for less than normal working hours on account of power failure, their wages have been proportionately reduced. Explain the rule in this context as per the Minimum Wages Act, 1948.

Answer

(a) As per Sec. 12, where an employer (known as principal) takes help of a contractor in order to engage some workmen, a workman is entitled to claim compensation from principal if he satisfies the following conditions :

- (i) The principal must have contracted with contractor for execution by latter of whole or any part of work of the principal.
- (ii) Such work must ordinarily be a part of the trade or business of the principal.
- (iii) The workman employed in the execution of work must have been injured by accident arising out of and in course of his employment.
- (iv) Injury must have been caused to the workman within or about the vicinity of the employer's premises.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

Where the principal is liable to pay compensation, he is entitled to be indemnified by the contractor.

Further, nothing in this section shall be construed as preventing a workman from recovering compensation from the contractor instead of the principal.

In the given case, X is liable to pay compensation but he can recover it from Y or Z. If X recovers the amount from Y, Y can recover the same from Z.

(b) As per Sec. 8(7) of The Payment of Wages Act, 1936 no fines can be recovered after expiry of 90 days from the date on which it is imposed. So FBG (P) Ltd. will not be able to recover the fine in September, 2013 as the gap exceeded 90 days.

(c) As per Sec.15 of Minimum Wages Act, an employee is entitled to receive the minimum wages fixed for the day even if he has worked for less than requisite number of hours constituting a normal working day except –

- (i) where his failure to work was result of his unwillingness to work;
- (ii) such other cases as may be prescribed.

So the employer cannot reduce the minimum rate of wages fixed for a day at his will.

11. (a) What is the difference between holder and holder-in-due-course?

(b) Define an “Establishment in public sector”. What are the circumstances when the Payment of Bonus Act, 1965 becomes applicable to such an establishment?

(c) What is not included in ‘wages’ as per the Employees’ State Insurance Act, 1948 ?

Answer

(a)

Holder	Holder in due course
(1) Holder is entitled in his own name to possess the instrument and the amount thereon from parties involved.	Holder in due course possesses the instrument for consideration before maturity and in good faith.
(2) Title of the holder is subject to title of the transferor.	Holder in due course gets a better title than transferor.
(3) Holder may receive the instrument without consideration.	Holder in due course always receives the instrument for consideration.
(4) Holder does not get certain privileges available to the holder in due course.	Holder in due course always gets privileges not available to holder.

(b) Section 2(16) of the Payment of Bonus Act, 1965 defines ‘establishment in public sector’ to mean an establishment owned, controlled or managed by:

- (i) a Government company as defined in Section 617 of the Companies Act, 1956;
- (ii) a Corporation in which not less than 40% of its capital is held (whether singly or taken together) by -
 - the Government; or
 - the Reserve Bank of India; or
 - a Corporation owned by the Government or the Reserve Bank of India.

The provisions of the Payment of Bonus Act, 1965 do not ordinarily apply to an establishment in public sector. However, if the following two conditions are satisfied by such establishment in any accounting year, the provisions of the Act shall apply to such establishment as they apply to an establishment in the private sector:

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- (i) If in any accounting year, an establishment in the public sector sells goods produced or manufactured by it or renders any services, in competition with an establishment in private sector; and
- (ii) the income from such sale or services is not less than 20% of the gross income of the establishment in public sector in that year. (Section 20)

(c) 'Wages' does not include

- Any contribution paid by the employer to any pension fund or provident fund under the Act;
- Any travelling allowance or value of any travelling concession;
- Any sum paid to the person employed to defray special expenses entailed on him by the nature of his employment; or
- Any gratuity payable on discharge

12. (a) Who are not an insurable employee under the Employees' State Insurance Act, 1948 ?

(b) Mr. Chalbaz has been arrested for a cognizable and non bailable offence punishable for a term of imprisonment for more than three years under the Prevention of Money Laundering Act, 2002. Advise, as to how can he be released on bail in this case ?

(c) (i) Sunil & Friends, a registered partnership firm, has published a copy of a public notice in the local official gazette, and in only one vernacular newspaper circulating in the district, where the firm has its principal place of business located.

(ii) Kamal & Brothers, an unregistered partnership firm, has published a copy of a public notice in the local official gazette, and in only two vernacular newspaper circulating in the district, where the firm has its principal place of business located.

Do you think that both the aforementioned public notices will be deemed to have been given in compliance of all the procedures, laid down in the Indian Partnership Act? Give reasons for your answer in each case.

Answer

(a) Every 'employee' of a 'factory or establishment' to which the Act applies is an insurable person. Section 38 states that subject to the provisions of the Act, all employees in factories or establishments to which the Act applies shall be insured in the manner provided by the Act. Bearing in mind the definitions of the terms 'employee' and 'factory' or 'establishment', the following persons are not insurable and the Act confers no benefit on them :

- (i) Employees in mines subject to the Mines Act, 1952.
- (ii) Employees in railway running sheds.
- (iii) Members of the Indian naval, military or air forces.
- (iv) Employees whose wages (excluding remuneration for overtime) exceed such wages as may be prescribed by the Central Government.

(b) A person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall not be released on bail or on his own bond unless

- The Public Prosecutor has been given an opportunity to oppose the application, for such release, and
- Where the Public Prosecutor opposes the application, the Court is satisfied that there are reasonable grounds for believing that –
 - ✓ He is not guilty of such offence, and
 - ✓ He is not likely to commit any offence while on bail.

The following persons may be released on bail, if the Special Court so directs –

- (i) Person who is under 16 years of age, or

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- (ii) A woman, or
- (iii) Person who is sick or infirm

The limitation on granting bail specified above is in addition to the limitations under Code of Criminal Procedure, 1973 or any law for the time being in force.

(c) (i) In the case of Sunil & Friends, a registered partnership firm, another essential procedure, i.e., of sending a copy of the notice to the Registrar of Firms, has not complied with. The publication of a copy of a public notice in the local official gazette, and in just one vernacular newspaper is in order, because under Section 72, the words used are 'at least in one vernacular newspaper'.

(ii) As against this, the procedures adopted by Kamal & Brothers, an unregistered partnership firm, are complete and in order, because in the case of an unregistered partnership firm, no copy of the notice is required to be sent to any of the Registrar of Firms, as it is not registered with any of them. Further, as the publication of the notice is required to be published in 'at least in one vernacular newspaper', its publication in two of them is also all right.

13. (a) Sutapa had sold some goods to Sumita. The payment, however, was made by Sumita by means of a cheque. Subsequently, before the cheque could be realized by Sutapa, Sumita had become insolvent. Can, in such circumstances, Sutapa exercise her rights of 'unpaid seller's lien' on the respective goods, which were still in transit, on the ground that the cheque had not yet been realised by her? Give reasons for your answer.

(b) Ashu is 7 years old. Can he be a beneficiary to any contract?

(c) C delivered furniture items to AB Transport Co. for transporting the goods from Asansol to Kolkata. On the way the truck carrying the items met with an accident due to rash driving on part of the driver and the goods got damaged. C sued the owner of the Co. for the loss.

(d) Akhilesh entered into an agreement with Shekhar to deliver him (Shekhar) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Akhilesh failed to supply the said bags to Shekhar. Decide whether Akhilesh can be exempted from liability under the provisions of the Indian Contract Act, 1872.

Answer

(a) In the instant case, Sutapa cannot exercise her rights of 'unpaid seller's lien' on the respective goods. But then, by virtue of the fact that the goods were still in transit, she can exercise her right of stoppage – in- transit, instead. Here, we may stress that the stoppage-in-transit involves stopping of the sold goods from their being delivered to the buyer thereof, and regaining their possession, only while the sold goods are still in transit. Further, as provided in the Sale of Goods Act, the seller can retain those goods with herself till their price is paid or tendered to her by the buyer. Further, the seller becomes entitled to exercise her right of stoppage –in-transit only when she loses her right to exercise her lien on the sold goods, and that too, only in the cases where she has lost her right to exercise her right of lien, on account of the buyer, becoming insolvent after the sale of the goods.

Thus, as the sold goods are still in transit and Sumita has become insolvent, Sutapa can exercise her right of stoppage-in-transit, though not the right of unpaid seller's lien.

(b) As per Indian Contract Act , 1872 an agreement with a minor is void ab initio. However there is nothing that debars him from becoming a beneficiary i.e. payee, endorsee or promisee in a contract. The law does not regard him incapable of accepting a benefit. It should be

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

however remembered that his property is liable for meeting the liability arising out contracts to supply him his necessaries.

(c) The position of owner of the transport company is that of a bailee. He is responsible to take reasonable care of the goods. The goods got damaged due to negligence of his employed driver. So he is liable to pay C for the loss.

(d) According to Section 56 (Para 2) of Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (Budget V Bennington; Jacobs V Credit Lyonnais).

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 (Para 2) and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

14. (a) Who is a 'occupier' under Factories Act, 1948?

(b) Akshaye 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 that term under the Factories Act, 1948 ?

(c) "Minimum wage rate may vary". Discuss with the provisions of The Workmen Compensation Act, 1923.

(d) 'Some contracts are valid without consideration'. Justify

Answer

(a) 'Occupier' of Factory implies the person who has ultimate control over the affairs of the factory. Provided that:

- i. In case of a firm or AOP any partner or member shall deemed to be occupier.
- ii. In case of a company, the directors are occupiers.
- iii. In case of a factory owned by Central or State Government or Local Authority, the persons employed to manage the affairs of the factory will deemed to be the occupiers.

In short, an occupier may be owner, lessee or licensee but he should have the right to occupy the property and dictate terms of management. An employee charged with specific machinery, workers or office is not an occupier.

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

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- 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.

- (c)** As per Sec.3(3)(a) of Minimum Wages Act, 1948 minimum wage rate may vary depending on different variables like:
- 1) Scheduled employment
 - 2) Classes of work in same scheduled employment
 - 3) Locality

- (d)** A contract without consideration is valid only in certain cases as mentioned below.
- i. it is in writing;
 - ii. it is registered;
 - iii. made on account of natural love and affection;[Sec 25(1)]
 - iv. the parties stand in near relation to each other.

15. (a) 'A minor can become a partner'. Discuss, with provisions of Indian Partnership Act, 1932

(b) Firm A and firm B decided to be partners. Discuss the legal provisions relating to it.

(c) Discuss about the different kinds of contracts.

Answer

(a) A minor cannot become a partner in a firm. According to section 30 of the Indian Partnership Act, a person who is a minor, according to the law to which he is subject may not be a partner in a firm, but with the consent of all the partners, a minor can be admitted to the benefits of partnership. The rights and liabilities of a minor partner are defined in section 30 as follows;

1. He has a right to such share of property and of the profits of the firm as may be agreed between the partners
2. He may have access to and inspect and copy any of the accounts of the firm.
3. Minors' share in the property and the profits of the firm is liable for the acts of the firm, but not personally liable for any such acts.
4. During continuance of a partner he has no right to file a suit against other partners for accounts or for payment of his share in the profits or the property of the firm, However, he can file suit only when he want to sever his connection with the firm
5. At any time within six months of his attaining majority or of his obtaining the knowledge that he had been admitted to the benefits of the partnership, whichever date is later, he may give a public notice that he has elected to become or not elected to become partner of the firm.

It may be noted that if he elects to become partner or decides to not to be partner but does not give a notice thereof, he would be liable for the debts of the firm contracted since the time he was admitted to the benefits of the partnership.

Revisionary Test Paper_ Intermediate_ Syllabus 2012_ Jun2014

It may further be noted that on attaining age of majority if a minor elect to continue a partner, his rights and duties are similar to those of a full-fledged partner. He will be personally liable for all the acts of the firm done since he was first admitted to the benefits of the firm. His share in the property and profits remains the same as was before unless altered by agreements. However, if he elects not to be a partner, his rights and liabilities shall continue to be those of a minor up to the date of public notice, his share shall not be liable for any acts of the firm done after the date of his notice and he shall be entitled to sue the partners for his share of property and profits.

(b) A firm is not a legal person except for income tax, sales tax purpose. A firm is not a person. At best it is only a collective name of those individuals who constitute the firm. (Dulichand Laxminarayan v CIT(1956)29ITR-535AIR1956SC354). Hence firm A and firm B cannot be partners.

(c) Classification of Contract:

Contracts can be classified in terms of their Enforceability or form or extent of performance.

1. Based on Enforceability:

(i) Valid Contract: An agreement enforceable by law is a valid contract. In other words it satisfies all the requirements of a valid contract as laid down in section 10. If any of the essential requirement is missing it becomes a void contract.

(ii) Void agreement: An agreement not enforceable by law is said to a void. A void agreement has no legal consequences.

(iii) Voidable contract: An agreement which is enforceable at the option of one or more parties thereto but not at the option of other or others is a voidable contract.

(iv) Void contract: A Contract which ceases to be enforceable by law becomes void when it ceases to be so enforceable. Void agreement and void contract are different. Void agreement is void ab-initio but void contract is a valid contract at the beginning but subsequently becomes void when it ceases to be enforceable.

(v) Unenforceable contracts: These are the contracts which cannot be enforced in a court of law because of some technical defects, these contracts becomes fully enforceable if the technical defects are removed.

(vi) Illegal Contracts: An illegal agreement is destitute of any legal effect from the very beginning. All illegal agreements are void agreements but all void agreements are not illegal.

2. Based on method of formation:

(a) Formal contracts: This term is usually found in English laws. Validity of these contracts depends upon their form. They are valid even if they lack consideration. These contracts are of two types; Contract under seal and contract of Records. Contract under seal are in writing and signed by the parties to them. Contract of Records includes the court judgements and recognisance, obligations in such cases arise out of judgement and not under the contract.

(b) Simple Contract: All contracts other than formal are called simple contracts or parole contracts.

3. Based on extent of performance:

(a) Executed Contracts: An executed contract is one which has been completely completed by both the parties.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

(b) Executory contracts: It is a contract which is wholly unperformed. If one party has performed his part of obligation but the other party has not yet completed his obligation on the contract, the contract still remains executory contract.

3. Based on Obligation:

(a) Unilateral contract: Under this type of contract there is an obligation only on the part of only one party when the contract is concluded.

(b) Bilateral Contract: Here there is an obligation on both the parties to the contract.

16. (a) Parag and Ganesh were partners in a business of letting lock up garages and requiring cars. Ganesh was a sleeping partner. A clause in the partnership deed prohibited partners from buying and selling cars on behalf of the firm. P the acting partner, sold a car to which the firm had no title and obtained ₹ 7 lacs. When the buyer found that the seller had no title to sell, he claimed ₹ 7 lacs from Ganesh the sleeping partner. Would Ganesh be liable?

(b) When does an agent incur personal liability?

(c) 'Agreements by way of Wager are void'. Discuss.

Answer

(a) Section 20 provides that "the partners in a firm, by contract between the partners, extend or restrict the implied authority of any partner, but such restrictions still binds the firm unless the person with whom the partner is dealing knows of such restriction or does not know or believe that partner to be a partner of the firm.

In other words, if an act in question is within the scope of implied authority of a partner but restricted by an agreement between the partners, the firm is bound unless it can be shown –

(a) that the person contracting with the partner had knowledge of the restriction or

(b) that he did not know or believe the partner to be a partner.

G would be held liable. Garage owners usually sell second-hand cars. The act was therefore within the scope of the implied authority. The Plaintiff did not know of any restrictions in the deed and he did know that he was dealing with a partner within the scope of his usual authority. [Mercantile Credit Co Ltd v Garrod (1962) 3 All ER 1103]

(b) An agent becomes personally liable for his act in the following cases:

- i) When he represents that he has authority to act on behalf of his principal, but who does not actually possess such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
- ii) Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to require performance of it.
- iii) Where the contract expressly provides for the personal liability of the agent.
- iv) When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
- v) Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
- vi) Where the agent works for a foreign principal.
- vii) Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India, In such a case the suit against the agent can be instituted by the third party only and not by the principal (Chatturbhuj v. Moheshwar).

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

viii) Where according to the usage of trade in certain kinds of business, agents are personally liable.

(c) Agreements by way of wager are void; and no suit shall be brought for recovering anything alleged to be won on any wager, or entrusted to a person to abide by the result of any game or other uncertain event on which any wager is made.

Exception in favour of certain prizes for horse-racing.—This section shall not be deemed to render unlawful a subscription, or contribution, or agreement to subscribe or contribute, made or entered into for or toward any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner or winners of any horse-race.

Section 294A of the Indian Penal Code not affected.—Nothing in this section shall be deemed to legalize any transaction connected with horse-racing, to which the provisions of section 294A of the Indian Penal Code, (45 of 1860) apply.

17. (a) Explain the terms 'Arbitration' and 'Conciliation' for resolution of industrial dispute under the Industrial Dispute Act, 1947.

(b) An employee committed an act in respect of which a fine was imposed. No prior notice specifying this particular act in respect of which fine could be imposed had been exhibited. The employer deducted the fine in 4 installments from the wages of the employee. What provisions of the Act does the employer violates?

(c) A watchman, whose duty was to guard the property of the premises of arrest house, had his quarters within the premises of the rest house. His duty ended at 11 p.m. At 2.30 a.m. (i.e. within 3.5 hours of the said 11 p.m.) he was found murdered near his quarters. Is the employer liable to pay compensation?

Answer

Arbitration:

A process in which a neutral third party listens to the disputing parties, gathers information about the dispute, and then takes a decision which is binding on both the parties. The conciliator simply assists the parties to come to a settlement, whereas the arbitrator listens to both the parties and then gives his judgement.

Advantages of Arbitration :

- It is established by the parties themselves and therefore both parties have good faith in the arbitration process.
- The process is informal and flexible in nature.
- It is based on mutual consent of the parties and therefore helps in building healthy Industrial Relations.

Disadvantages :

- Delay often occurs in settlement of disputes.
- Arbitration is an expensive procedure and the expenses are to be shared by the labour and the management.
- Judgment can become arbitrary when the arbitrator is incompetent or biased.

There are two types of arbitration:

Voluntary Arbitration: In voluntary arbitration the arbitrator is appointed by both the parties through mutual consent and the arbitrator acts only when the dispute is referred to him.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

Compulsory Arbitration: Implies that the parties are required to refer the dispute to the arbitrator whether they like him or not. Usually, when the parties fail to arrive at a settlement voluntarily, or when there is some other strong reason, the appropriate government can force the parties to refer the dispute to an arbitrator.

Conciliation refers to the process by which representatives of employees and employers are brought together before a third party with a view to discuss, reconcile their differences and arrive at an agreement through mutual consent. The third party acts as a facilitator in this process. Conciliation is a type of state intervention in settling the Industrial Disputes. The Industrial Disputes Act empowers the Central & State governments to appoint conciliation officers and a Board of Conciliation as and when the situation demands.

Conciliation Officer :

The appropriate government may, by notification in the official gazette, appoint such number of persons as it thinks fit to be the conciliation officer. The duties of a conciliation officer are :

- (i) To hold conciliation proceedings with a view to arrive at amicable settlement between the parties concerned.
- (ii) To investigate the dispute in order to bring about the settlement between the parties concerned.
- (iii) To send a report and memorandum of settlement to the appropriate government.
- (iv) To send a report to the government stating forth the steps taken by him in case no settlement has been reached at.

(b) An employer can deduct the fine imposed on any employee from the wages of the same. But as per Section 8(2) the notice specifying the acts and omissions for which fines may be imposed shall be exhibited in the prescribed manner on the premises (and in case of persons employed upon a railway, at the prescribed place or places) in which employment is carried on. Similarly section 8(6) provides that such a fine shall not be recovered from the employed person by installments or after expiry of 90 days from the day on which it was imposed.

(c) Yes, as the accident arise out of and in the course of employment. When a person is employed on a duty of this kind his actual employment does not cease within the specified hours of duty but he is in a way in constant employment since it can by no means be said that if a watchman detected a thief at a time he was not actually on duty, he would not be required to resist and obstruct the thief and that it would be no part of his duty to do so.

18. (a) Freedom 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?

(b) 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 Workmen Compensation Act, 1923?

(c) X, an out worker prepared goods at his residence and later on supplied these goods to the M/s ABC . Is he an employee under the Minimum Wages Act, 1948?

Answer

- (a)** 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-

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- (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-off 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 Hosiery vs. LAT of India.

(b) According to Section 3 of the Workmen 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]

(c) As per section 2(i) of the Minimum Wages Act, 1948 an "employee" means any person who is employed for hire or reward to do any work, skilled or unskilled, manual or clerical, in a scheduled employment in respect of which minimum rates of wages have been fixed; and includes an out- worker to whom any articles or materials are given out by another person to be made up, cleaned, washed, altered, ornamented, finished, repaired, adapted or otherwise processed for sale for the purposes of the trade or business of that other person where the process is to be carried out either in the home of the out- worker or in some other premises not being premises under the control and management of that other person; and also includes an employee declared to be an employee by the appropriate Government; but does not include any member of the Armed Forces of the 2 [Union].

So X is an employee under the Minimum Wages Act, 1948.

Section – B

19. (a) UMC Limited has only 7 shareholders having fully paid-up shares. On 30th April, all the shares of X (a shareholder of the company) are sold to Y (another shareholder of the Company) in an auction by the order of the court. Z, (a shareholder of the company) was in USA for a business trip from January and thus he was not aware of the developments. The company continues to carry on its business thereafter. In December, the company borrowed a sum of ₹ 5 Lac from the Unique Bank. Later, the company was wound up and the Assets of the company were not sufficient for the payment of its Liabilities. The Bank filed a suit against y and Z for recovery of the said loan from them, decide the Liabilities of Y and Z under the provisions of Companies Act, 1956. Would your answer be the same, if the said loan was taken in the month of March?

(b) Fortune Traders Limited was registered as a public company. There are 64 members in the company as noted below:

(i) Directors and their relatives	34
(ii) Employees	10
(iii) Ex-employees (shares were allotted when they were employees)	5
(iv) 5 couples holding shares jointly in the names of husband and wife (5 x 2)	10
(v) Others	5
Total number of members	64

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

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

(c) The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities the company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not.

Answer

1. Y is personally liable for loan taken from Unique Bank

- since the number of members has reduced below statutory minimum, viz. 7;
- since the company continues to carry on business for more than 6 months.
- since y is cognizant of the fact of reduction in number of members;
- since loan from Unique Bank was taken by the company after 6 months of the date the number of members was reduced below 7.

2. Z is not personally liable for loan taken from Unique Bank

- Since Z was not cognizant of the fact of reduction in number of members, as he was not in India.

3. Limitation on liability of y and Z

- Y shall be liable only for such of the debts as have been incurred by the company after a period of 6 months, viz. after 31st October.

4. Y shall not be personally liable

- if the loan was obtained by the company in March,
- since the personal liability u/s 45 arises only for such of the debts as are incurred by the company after a period of 6 months from the date of reduction in number of members below statutory minimum.

(b)

1. Total no. of members as per Sec. 3(1)(iii)

(i) Directors and their relatives	34
(ii) Employees [Since employees are not considered while computing the limit of 50 members given u/s 3(1)(iii)].	0
(iii) Ex-employees [Since past employees are not considered while computing the limit of 50 members given u/s 3(1)(iii), if shares were allotted to them while they were in the employment of the company]	0
(iv) 5 couples holding shares jointly in the names of husband and wife [Since joint shareholders are considered as one member only for the purpose of Sec. 3(1)(iii)]	5
(v) Others	5

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

Total

44

2. Reduction in no. of members is not required

- since the number of members after conversion into a private company would not be more than 50.

3. Steps required for conversion into a private company are

- Pass SR for amendment of the articles so as to include the four restrictions specified u/s 3(1)(iii);
- Pass SR for adding the word 'private' at the end of the name of the company;
- Within 3 months of alteration of articles, apply to CG for obtaining its approval;
- Within 1 month of receipt of approval of CG, file with the registrar an amended copy of the articles.

(c) The company's contention is not correct

- since, as per Sec. 35, certificate of incorporation is conclusive, but not memorandum, and accordingly any illegal object contained in the object clause of memorandum does not become a legal object because of operation of Sec. 35.
- Thus, if the business carried on by the company is an illegal one, the company, its directors, officers shall be liable for penalties as per law, and it shall not be a defense for the company that such business is contained in the memorandum of association.

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

Advise the management of India Computers Ltd. about the remedies available to them under the provisions of the Companies Act, 1956.

(b) The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of ₹ 2 lakhs for arranging the finance. The Memorandum of Association of the company authorises the company to carry on any other trade or business which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 1956 examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd.

(c) Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures.

The company further decides to pay underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 1956.

Answer

(a)

1. The name 'All India Computers Ltd.' is undesirable

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- Since it too nearly resembles with the name by which a company in existence has been previously registered (viz., 'India Computers Ltd.').

2. Advice to 'India Computers Ltd.'

- Make an application to CG seeking a direction from CG to 'All India Computers Ltd.' to rectify its name.
- On issue of such a direction by CG, 'All India Computers Ltd.' shall be bound to rectify its name within 3 months of receipt of the direction of CG.

(b)

1. Arranging finance or financier is an ultra vires act
 - since it falls outside the object clause of memorandum;
 - since an object contained in the object clause is not valid if it authorises the company to carry on any other trade or business which can be advantageously carried on by the company.
2. The contract entered into by the company is ultra vires
 - since the company has no power to arrange finance or financier;
 - since the Board cannot take the defence that the memorandum authorises the company to carry on any business which can be advantageously carried on in connection with company's present business (since, it is a 'specified purpose' given u/s 17 for alteration of object clause, but it cannot be the ground or basis for carrying on a business which is outside the object clause);
 - unless the memorandum is first altered by complying with the requirements of Sec. 17, and afterwards the business of arranging finance is carried on.

(c)

1. The company cannot pay underwriting commission of 2.5%
 - since the rate of underwriting commission cannot be more than 2.5% of issue price of debentures or such lower rate as prescribed under the articles (2% in the present case);
 - since the maximum permissible underwriting commission in this case is 2%.
2. Payment of underwriting commission in the form of flats is permissible
 - since underwriting commission may be paid in cash or in kind or in lump sum or by way of a percentage [Booth v New Africander Gold Mining Co.];
 - since there is no prohibition on payment of underwriting commission in kind.

21. (a) Mars India Ltd. owed to Sunil ₹ 1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹ 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.

Examine the validity of this allotment in the light of the provisions of the 'Companies Act, 1956.

(b) Moonstar Ltd. is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'A', a shareholder of the Moonstar Ltd., deposits in advance the remaining amount due on his shares without any calls made by Moonstar Ltd.

Referring to the provisions of the Companies Act, 1956, state the rights and liabilities of Mr. A, which will arise on the payment of calls made in advance.

(c) The Board of Directors of M/s Reckless Investments Ltd. has allotted shares to the investors of the company without issuing a prospectus or filing a statement in lieu of prospectus

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

with the Registrar of Companies, Mumbai. Explain the remedies available to the investors in this regard.

Answer

(a)

1. Allotment may be made
 - for cash; or
 - for consideration other than cash.
2. The allotment of fully paid shares in full settlement of Sunil's claim is valid
 - a. since cancellation of a genuine debt by mutual consent is treated as payment in cash;
 - b. since cash does not necessarily mean the current coin of the country; it means such transaction as would support a plea for payment.

(b)

Acceptance of calls in advance by Moonstar Ltd. is valid (Sec. 92)

- since Moonstar Ltd. has express provision in the articles authorising it to accept calls in advance;
- since the power to receive calls in advance has been exercised for the benefit of the company.

Rights and liabilities of A

- A shall not be entitled to any voting rights in respect of 'calls in advance' until the call becomes presently payable (Sec. 92).
- A shall not be entitled to any voting rights in respect of 'calls in advance' until the call becomes presently payable (Sec. 92).
- The dividend is paid on the nominal value of a share. However, Moonstar Ltd. shall pay dividend in proportion to the paid up capital held by each member, if the articles so provide (Sec. 93).
- Interest on calls in advance shall be paid to A at such rate as may be specified in the articles.
- A becomes an unsecured creditor of the company. The amount paid as calls in advance is non-refundable.
- The liability of A to pay the future calls is extinguished to the extent of calls paid in advance by him.
- In case of surplus in winding up, before repayment of capital to the members, the amount paid as calls in advance along with interest shall be repaid to A.

(c) The allottees may avoid the allotment and claim damages from the defaulting directors

- since allotment of shares by a company without filing a prospectus or statement in lieu of prospectus amounts to irregular allotment, and is voidable at the option of the allottee of shares.

22. (a) XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 1956 for shifting its registered office as stated above? Explain.

(b) Gold Limited invited applications for the issue of 5,00,000 Equity shares of ₹ 10 each through a public issue. As per prospectus, applicants were required to pay only ₹ 2 on

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

application. 'A' applies for 500 shares and deposits ₹ 5,000 to the company because he did not properly go through the terms of the offer. Later, he applies to the company seeking refund of the excess amount paid by him. Referring to the provisions of Companies Act, 1956, decide whether the company is bound to refund the excess money to 'A'.

(c) Mr. Y, the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. Y after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. Y and 'Z' were not aware of the forgery. State the rights of Mr. 'X', Y, and 'Z' against the company with reference to the aforesaid shares.

(d) RSP Limited allotted 500 fully paid-up shares of ₹ 100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Register of members. Later on, the company came to know of the fact. The company cancelled the allotment and struck-off his name from the Register of members and also forfeited his entire share money. He filed a suit against the action of the company. Decide whether Z would be given any relief by the court under the provisions of the Companies Act, 1956.

Answer

(a)

1. Shifting of registered office from Mumbai to Pune requires compliance of Sec. 17A and 146
 - since it involves change of registered office from jurisdiction of one ROC (ROC, Mumbai) to another ROC (ROC, Pune) within the same State (State of Maharashtra).
2. Formalities required u/s 17A and 146
 - (a) Pass SR (since registered office is to be shifted outside the local limits of the city, town or village in which the registered office is, at present, situated).
 - (b) Make an application to RD.
 - (c) RD shall confirm the alteration within 4 weeks.
 - (d) Within 2 months, the company shall file with the Registrar -
 - a copy of the confirmation; and
 - a copy of memorandum, as altered.
 - (e) Within 1 month, the Registrar shall register the change and give a certificate of registration of change of registered office.
 - (f) The company shall change the registered office.
 - (g) The company shall give a notice of new address of the registered office to the new Registrar, within 30 days of change.

(b) Mr. A can claim refund of ₹ 4,000

- since the excess amount of ₹ 4,000 has been paid by Mr. A by mistake;
- since the excess amount of ₹ 4,000 cannot be treated as 'calls in advance' as the concept of 'calls in advance' applies only in respect of shares held by a member, but in the given case, Mr. A is not a member holding 1,000 shares as on the date of payment of ₹ 4,000.

(c) **Rights of Mr. 'X'**

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

Liabilities of Mr. Y

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

Rights of Mr. 'Z'

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

(d) The cancellation of allotment of shares to minor is not valid

- since a minor can become a member, if the shares are fully paid up;
- since there is no question of liability of minor if the shares are fully paid up.

Forfeiture of money paid by the minor is not valid

- since the company has no right to cancel the allotment to minor;
- since, even in a case where partly paid shares are allotted to a minor, and afterwards such allotment is repudiated by the company, the company has no right to forfeit the money paid by the minor, i.e. the minor is entitled to receive back the money paid by him.

23. (a) Discuss the Right to information and obligation of Public Authorities as per RTI Act, 2005 (b) State the term of office and condition of service in State Information Commission.

Answer

(a) Subject to the provisions of the said Act, all citizens shall have the right to information.

1. Every public authority shall—

(a) maintain all its records duly catalogued and indexed in a manner and the form which facilitates the right to information under this Act and ensure that all records that are appropriate to be computerised are, within a reasonable time and subject to availability of resources, computerized and connected through a network all over the country on different systems so that access to such records is facilitated;

(b) Publish within one hundred and twenty days from the enactment of this Act,—

- i. the particulars of its organisation, functions and duties;
- ii. the powers and duties of its officers and employees;
- iii. the procedure followed in the decision making process, including channels of supervision and accountability;
- iv. the norms set by it for the discharge of its functions;
- v. the rules, regulations, instructions, manuals and records, held by it or under its control or used by its employees for discharging its functions;
- vi. a statement of the categories of documents that are held by it or under its control;
- vii. the particulars of any arrangement that exists for consultation with, or representation by, the members of the public in relation to the formulation of its policy or implementation thereof;
- viii. a statement of the boards, councils, committees and other bodies consisting of two or more persons constituted as its part or for the purpose of its advice, and as to whether

- meetings of those boards, councils, committees and other bodies are open to the public, or the minutes of such meetings are accessible for public;
- ix. a directory of its officers and employees;
 - x. the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
 - xi. the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
 - xii. the manner of execution of subsidy programmes, including the amounts allocated and the details of beneficiaries of such programmes;
 - xiii. particulars of recipients of concessions, permits or authorisations granted by it;
 - xiv. details in respect of the information, available to or held by it, reduced in an electronic form;
 - xv. the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
 - xvi. the names, designations and other particulars of the Public Information Officers;
 - xvii. such other information as may be prescribed; and thereafter update these publications every year;

(c) Publish all relevant facts while formulating important policies or announcing the decisions which affect public;

(d) Provide reasons for its administrative or quasi-judicial decisions to affected persons.

(2) It shall be a constant endeavor of every public authority to take steps in accordance with the requirements of clause (b) of sub-section (1) to provide as much information suo motu to the public at regular intervals through various means of communications, including internet, so that the public have minimum resort to the use of this Act to obtain information.

(3) For the purposes of sub-section (1) all information shall be disseminated widely and in such form and manner which is easily accessible to the public.

(4) All materials shall be disseminated taking into consideration the cost effectiveness, local language and the most effective method of communication in that local area and the information should be easily accessible, to the extent possible in electronic format with the Central Public Information Officer or State Public Information Officer, as the case may be, available free or at such cost of the medium or the print cost price as may be prescribed.

(b) The term of office and condition of service in State Information Commission:

- i. The State Chief Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office and shall not be eligible for reappointment: Provided that no State Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.
- ii. Every State Information Commissioner shall hold office for a term of five years from the date on which he enters upon his office or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such State Information Commissioner: Provided that every State Information Commissioner shall, on vacating his office under this subsection, be eligible for appointment as the State Chief Information Commissioner in the manner specified in sub-section (3) of section 15: Provided further that where the State Information Commissioner is appointed as the State Chief Information Commissioner, his term of office shall not be more than five years in

- aggregate as the State Information Commissioner and the State Chief Information Commissioner.
- iii. The State Chief Information Commissioner or a State Information Commissioner shall before he enters upon his office make and subscribe before the Governor or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.
 - iv. The State Chief Information Commissioner or a State Information Commissioner may, at any time, by writing under his hand addressed to the Governor, resign from his office: Provided that the State Chief Information Commissioner or a State Information Commissioner may be removed in the manner specified under section 17.
 - v. The salaries and allowances payable to and other terms and conditions of service of—
 - (a) the State Chief Information Commissioner shall be the same as that of an Election Commissioner;
 - (b) the State Information Commissioner shall be the same as that of the Chief Secretary to the State Government:Provided that if the State Chief Information Commissioner or a State Information Commissioner, at the time of his appointment is, in receipt of a pension, other than a disability or wound pension, in respect of any previous service under the Government of India or under the Government of a State, his salary in respect of the service as the State Chief Information Commissioner or a State Information Commissioner shall be reduced by the amount of that pension including any portion of pension which was commuted and pension equivalent of other forms of retirement benefits excluding pension equivalent of retirement gratuity:
Provided further that where the State Chief Information Commissioner or a State Information Commissioner if, at the time of his appointment is, in receipt of retirement benefits in respect of any previous service rendered in a Corporation established by or under any Central Act or State Act or a Government company owned or controlled by the Central Government or the State Government, his salary in respect of the service as the State Chief Information Commissioner or the State Information Commissioner shall be reduced by the amount of pension equivalent to the retirement benefits: Provided also that the salaries, allowances and other conditions of service of the State Chief Information Commissioner and the State Information Commissioners shall not be varied to their disadvantage after their appointment.
 - vi. The State Government shall provide the State Chief Information Commissioner and the State Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

- 24. (a) Write a short note on Financial Reporting Council.**
(b) Discuss the benefits of XBRL web services deployment.

Answer

(a) Financial Reporting Council

The Financial Reporting Council (FRC) has six operating bodies: the Accounting Standards Board (ASB), the Auditing Practices Board (APB), and the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP), and the Accountancy and Actuarial Discipline Board (AADB).

The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance. Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- ensuring that related guidance, such as that on internal control, is current and relevant;
- influencing EU and Global Corporate Governance developments;
- helping to promote boardroom professionalism and diversity;
- encouraging constructive interaction between company boards and institutional shareholders.

The FRC has carried out several consultative reviews of the Combined Code which led to the amended Combined Code in 2006, and subsequently in 2008 (discussed earlier). The latest review took place in 2009. The frequency of the reviews are both an indicator of the FRC's responsibility for corporate governance of UK companies which involves leading public debate in the area and its response to the global financial crisis which has, in turn, affected confidence in aspects of corporate governance. The FRC website mentions the independent review of the governance of banks and other financial institutions carried out by Sir David Walker. The Walker Review published its draft recommendations Governance in July 2009, some of the recommendations could be taken forward through amendments to the Combined Code. The FRC is considering the extent to which the Walker Review recommendations may be applicable for some or all listed companies in other sectors.

(b) Implementing XBRL Web services offers regulators and other government entities the following benefits:

- Automated and more reliable exchange of regulatory and financial information across all software formats and technologies, including the internet.
- Reduced or eliminated manual data re-entry, lowering risks associated with transcription errors.
- Lowered costs of preparing and distributing regulatory reports and related information, such as instructions, definitions, etc.
- Improved access to financial information reported by regulated entities through a format which enhances information re-usability.
- Lowered production costs, greater reliability and faster processing speed for more timely, accurate and informed regulatory assessments.
- Increased efficiency of regulatory assessments and analytics.
- Accelerated changes to and adoption of reporting standards and requirements through an extensible, flexible platform that facilitates and thereby accelerates changes in and adoption of reporting standards.
- Collaborative nature of XBRL process provides regulators with input on the standards via enhanced communication and cooperation between regulators and respective industry organisations.
- Reduced cost of regulation by spreading development and maintenance among collaborating organizations.

XBRL Web services are currently being used in the US, Europe and Asia for several different types of regulatory reporting, including:

- Bank position reports consisting of thousands of individual data points collected by regulatory authorities
- Company financial reports consisting not only of individual data points, but also text disclosures of policies, tabular schedules of assets, consolidations and a myriad of notes under a variety of accounting standards.
- Business statistical information

As regulatory communication with regulated entities, industry groups, the markets and other regulators becomes increasingly critical to the global economy, XBRL Web services offers a

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

compelling alternative to proprietary information standards that isolate agencies from the larger flow of information based on open, collaborative standards.

Section – C

25. (a) “Business Ethics is of utmost importance in today’s business environment”. Discuss.
(b) Write a note on Audit Programme.

Answer

(a) Need For Business Ethics In Today's Business Environment:

Business ethics is currently a very prominent business topic, and the debates and dilemmas surrounding business ethics have attracted enormous amount of attention from different quarters of organizations and society. Hence, it has emerged as an increasingly important area of study. Some of the major reasons why a good understanding of business ethics is important can be stated as follows:-

- Stop business malpractices : Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration, cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help to stop these business malpractices.
- Improve customers' confidence: Business ethics are needed to improve the customers' confidence about the quality, quantity, price, etc. of the products. The customers have more trust and confidence in the businessmen who follow ethical rules. They feel that such businessmen will not cheat them.
- Survival of business: Business ethics are mandatory for the survival of business. The businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman. He will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.
- Safeguarding consumers' rights: Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard, right to redress, etc. But many businessmen do not respect and protect these rights. Business ethics are must to safeguard these rights of the consumers.
- Protecting employees and shareholders: Business ethics are required to protect the interest of employees, shareholders, competitors, dealers, suppliers, etc. It protects them from exploitation through unfair trade practices.
- Develops good relations: Business ethics are important to develop good and friendly relations between business and society. This will result in a regular supply of good quality goods and services at low prices to the society. It will also result in profits for the businesses thereby resulting in growth of economy.
- Creates good image: Business ethics create a good image for the business and businessmen. If the businessmen follow all ethical rules, then they will be fully accepted and not criticised by the society. The society will always support those businessmen who follow this necessary code of conduct.
- Smooth functioning: If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. So they will give full cooperation to the business. This will result in smooth functioning of the business. So, the business will grow, expand and diversify easily and quickly. It will have more sales and more profits.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- Consumer movement: Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, the consumers are aware of their rights and well informed as well as well organised. Now they are more organised and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high-priced and counterfeit (duplicate) goods. Therefore, the only way to survive in business is to be honest and fair. Consumer forums and Consumer Associations are more active and vocal now.
- Consumer satisfaction: Today, the consumer is the king of the market. Any business simply cannot survive without the consumers. Therefore, the main aim or objective of business is consumer satisfaction. If the consumer is not satisfied, then there will be no sales and thus no profits too. Consumer will be satisfied only if the business follows all the business ethics, and hence are highly needed.
- Importance of labour: Labour, i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions. There must be good relations between employer and employees. The employees must also be given proper welfare facilities.
- Healthy competition: The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency, breaks compliancy and leads to optimal utilisation of scarce resources, hence is always welcome. They must not do cut-throat competition. Similarly, they must give equal opportunities to small-scale

(b) An Audit Programme is a detailed plan of audit assignment to be completed, specifying the methods and procedures to be followed for completing the work of vouching and verification satisfactorily by available staff within stipulated period of time Audit Programme is nothing but a plan or programme prepared by auditor for completion of audit specifying the responsibilities of each staff.

In short, before the work of an audit commenced, the auditor should chalk out a programme as to what work is to be done by his assistants and by himself and the time by which the work is to be finished.

Audit Programme is a guideline to the internal auditor wherein he wishes out for himself his strategies i.e. how to go about the audit work he is going to perform. The Audit Programme serves as a guide in developing the appraisal and review techniques suitable to meet the organizational objectives and results expected by the top management.

Because of the organizational objectives and results expected by the top management. Because of the usefulness it also serves as permanent comparison to indicate the lines on which management can implement and exercise overall controls.

26. (a) Justify with reasons the following statements:

- "Knowledge without morality is a sin"**
- The governance Model positions management as accountable solely to investors.**
- 'Fairness and honesty are the pillars of success in business'**

Answer

- Knowledge without morality is a social sin.
 - Business ethics means application of ethical norms to business. Business ethics encompass all those principles and standards that determine acceptable conduct.
 - Application of scientific and technical knowledge in the conduct of business brings efficiency in business. However, at the same time the interests of all the stakeholders must also be protected.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- A business which uses knowledge for maximisation of profits by harming the interests of consumers, employees, environment, public interest or society at large, is not contributing anything to the society.
- As such, use of knowledge in business also requires consideration of ethical principles.

Thus, it is correct to say that knowledge without morality is a social sin.

ii. The governance Model positions management as accountable solely to investors.

- As per the 'shareholders' approach' (the Traditional Governance Model), the primary and only objective of a business organisation is to maximise the profit.
- However, as per 'stakeholders' approach', every business has the responsibility towards all the stakeholders.
- A business that is responsive to the demands of all of its stakeholders is better positioned to achieve long-term financial success.
- The 'stakeholder approach' requires the business to balance the needs of all the stakeholders, viz. reward the shareholders adequately and at the same time protect and promote the interests of all the stakeholders.

Thus the statement "The Governance Model positions Management as accountable solely to investors" is incorrect.

iii. Fairness and honesty are the pillars of success in business

- 'Fairness' means to deal fairly and honestly with all the stakeholders, including the shareholders, creditors, lenders, suppliers, customers and employees.
- 'Fairness and honesty' requires complying with all the applicable laws and regulations, not to cheat or deceive customers, not to carry on anti-competitive practices, creating an environment free from discrimination, exploitation and harassment and so on.
- It is in the long term interest of a business organisation to observe business ethics. Adhering to the principles of business ethics creates a positive environment for the long term prosperity of the business. In other words, there is a positive correlation between fairness and honesty and long term profitability.
- Thus, the statement "Fairness and honesty are the pillars of success in business" is correct.

27. (a) 'Approaches towards Ethical Standards'. Discuss.

(b) Explain the features of Good Corporate Governance.

Answer

(a)

1. The Utilitarian approach
 - This approach takes into account the consequences of an action in determining as to whether such action is ethical or not.
 - This approach suggests that an ethical action is one which has the maximum utility, i.e. which maximises the good and minimizes the harm. Thus, an ethical action is one which produces the greatest good and does the least harm to all those who are affected by it. (e.g. shareholders, workers, customers, local community).

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

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|-------------------------------------|---|
| 2. The Rights approach | <ul style="list-style-type: none"> • This approach suggests that an ethical action is one which respects and protects the rights of all those who are affected by such action. • Every individual has a right to decide as to what way he wants to lead his life, right to know the truth, right to privacy, right not to be injured etc. An ethical action is one which protects his rights. |
| 3. The Fairness or Justice approach | <ul style="list-style-type: none"> • This approach suggests that an ethical action is one which treats all equals equally, i.e. no discrimination and no differential treatment. • Since all human beings are equal, applying this principle, all human beings should be treated equally. • However, some humans may be treated unequally, but in that case the treatment should be fair based on some valid standard. |
| 4. The Common Good approach | <ul style="list-style-type: none"> • This approach suggests that an ethical action is one which results in common good, i.e. welfare of others. • If an action improves the life of others, it is ethical. |
| 5. The Virtue approach | <ul style="list-style-type: none"> • This approach suggests that an ethical action is one which is consistent with certain virtues that are responsible for the development of the humanity. • These virtues include values like honesty, fairness, generosity, tolerance, love, self- control etc. |

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

1. Participation	All the stakeholders must be given an opportunity to participate. The participation may be either direct or through legitimate representatives.
2. Equity and inclusiveness	All the stakeholders should have an opportunity to express their concerns in the business decisions.
3. 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.
4. Responsiveness	The management should address the concerns of all the stakeholders.
5. Accountability	The management should develop effective checks and controls so as to prevent any possible abuse of power.
6. Transparency	The governance should be such that the investors and other stakeholders get a true picture of entity's financial and non-financial aspects.
7. Follows the rule of law	The decisions taken and their implementation should be in total compliance with the laws, rules and regulations.
8. Effectiveness and efficiency	The governance should enable the organisation to achieve its goals and meet the needs of the society as well.

28. (a) 'In the long run those business firms who do not respond to society's needs favourably will survive'. Discuss, with reference to Corporate Social Responsibility.

(b) Corporate Social Responsibility is closely linked with the principles of sustainable development.

Answer

(a) In the long run those business firms who do not respond to society's needs favourably will survive.

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

- 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.

(b) Corporate Social Responsibility is closely linked with the principles of sustainable development.

- World Business Council for Sustainable Development defines Corporate Social Responsibility as follows:
- "Corporate social responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large."
- CSR advocates moving away from a 'shareholder alone' focus to a 'multi-stakeholder' focus.
- Sustainable Development is 'development that meets the needs of the present without compromising the ability of future generations to meet their own needs'.
- A business organisation which employs eco-friendly business practices is, no doubt, socially responsible as it takes into account the interest of its stakeholders, viz. the environment and the society at large. As a corollary, a business organisation which is socially responsible would, no doubt, employ eco-friendly business practices.
- A business organisation which is socially responsible would adopt the principles of sustainable development (viz. environment protection, employing eco-friendly business practices, energy conservation, waste reduction and waste management, pollution prevention, using renewable sources of energy).
- Thus, it is correct to say that "Corporate Social Responsibility is closely linked with the principles of sustainable development".

29. (a) Discuss the 'Golden Parachute' proposal.

(b) Development of Cost Audit vis-à-vis internal audit in India.

Answer

(a) The Dodd-Frank Act requires companies to hold separate shareholder votes on potential "golden parachute" payments when they seek approval for mergers, sales and certain other transactions. In determining the recommendation with respect to a golden parachute proposal, the 2013 Updates include the consideration of any existing change-in-control arrangements maintained with named executive officers, rather than focusing only on the new or extended arrangements. The list of features considered problematic has been refined. Recent amendments that incorporate problematic features will tend to carry more weight in the overall analysis. However, close scrutiny will also be given if multiple legacy problematic features are present.

(b) The subject matter of cost audit can never be studied independently of the cost accounting framework. The evolution of cost management domain in our country can be traced to four stages in brief:

(i) The first stage was the decade of 1950 and 1950s: This was the period of setting up of industrial activities and cost plus regime. The genesis was the demand for very many products for which the government administered Fair Prices. This was the time when the Bureau of industrial costs and Prices (Now-known as Tariff Commission) was set up by the government. The ICAI itself came into being during this time. In the matter of fixation of administrative prices the

Revisionary Test Paper_Intermediate_Syllabus 2012_Jun2014

Government was advised by the then Bureau of Industrial Costs and prices (BICP) now the role of BICP is taken over by the Tariff commission and the National Pharmaceutical Pricing Authority (NPPA since 1997 for advising the Government in fixation of prices of Bulk drugs and their formulations)

(ii) The second stage was between of 1970 and 1985s: The period between 1970s and mid-1980s was an era of cost, volume and profit analysis, as an integral part of the cost accounting function. This was the time when the country was in sellers' market.

(iii) The third stage was between of 1985 and 1990s: During the period between mid-1980s, the concept of Zero Based Budgeting, Capacity Utilisation and Product Profitability gained importance with the onset of global competition. This was also a period when the quality movement started gaining momentum with an entirely structured methodology departing from a quality control syndrome to a quality management paradigm.

(iv) The fourth stage is since 1991: The period starting from early 1990s onwards witnessed the dawn of an era of liberalization and global competition in the strictest sense. This brought in the necessity to move towards market-driven prices, where the end price was determined by the customer in the domestic and international markets.

The now well-known target costing became the mantra in business and industry in the domestic as well as international markets. The full impact of global competition came into play during this period and what we find today is that the entire business activity revolves around cost, quality and delivery – be it manufactured goods or services. The country is already on its mission of restructuring on the above parameters for being on world class wavelength.

30. (a) State the objectives of Statutory Audit.

(b) Write a note on the difference between e-governance and e-government.

Answer

(a) Objectives of Statutory Audit:

- i. Generally the firm will follow the following steps :
- ii. Getting appointment letter and Board resolution copy.
- iii. Getting noc from previous auditor.
- iv. Filling the firm's no disqualification status to the company.
- v. Filling of Form 23B to roc
- vi. Getting Letter of engagement.
- vii. Assessment of internal control
- viii. Formulation of internal control action plan and calendar.
- ix. Conduction audit as per IGAAP companies act ICAI accounting standards and auditing Standards.
- x. Forming an opinion of financial statement prepared by the company.
- xi. Reporting to shareholders.
- xii. Attending AGM.

(b) Difference Between E-Governance And E-Government

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

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

Establishing the identity of the end beneficiary is a true challenge in all citizen-centric services. Statistical information published by governments and world bodies do not always reveal the facts. Best form of E-governance cuts down on unwanted interference of too many layers while delivering governmental services. it depends on good infrastructural setup with the support of local processes and parameters

for governments to reach their citizens or end beneficiaries. Budget for planning, development and growth can be derived from well laid out E-governance systems.