

Paper-6: LAWS, ETHICS AND GOVERNANCE

STUDY NOTE 1 - LAWS OF CONTRACTS:

Question 1:

(a) Point out with reasons whether the following agreements are valid or void:

- (i) Kamala promises Ramesh to lend ₹ 50,000 in lieu of consideration that Ramesh gets Kamala's marriage dissolved and he himself marries her.
- (ii) Sohan agrees with Mohan to sell his black horse. Unknown to both the parties, the horse was dead at the time of agreement.
- (iii) Ram sells the goodwill of his shop to Shyam for ₹ 4,00,000 and promises not to carry on such business forever and anywhere in India.
- (iv) In an agreement between Prakash and Girish, there is a condition that they will not institute legal proceeding against each other without consent.
- (v) Ramamurthy, who is a citizen of India, enters into an agreement with an alien friend.

(b) X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ₹ 5,000 per month to N (the sister of the executant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

(c) A hires a carriage of B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.

Answer:

(a)

- (i) Void Agreement: As per Section 23 of the Indian Contract Act, 1872 an agreement is void if the object or consideration is against the public policy.
- (ii) Void Agreement: As per Section 20 of the Indian Contract Act, 1872 the contract caused by mistake of fact are void. There is mistake of fact as to the existence of subject-matter.
- (iii) Void agreement: As per Section 27 of the Indian Contract Act, 1872 an agreement in restraint of trade is void. However, a buyer can put such a condition on the seller of good will, not to carry on same business. However, the conditions must be reasonable regarding the duration and the place of the business.
- (iv) Void agreement: An agreement in restraint of legal proceedings is void as per Section 28 of the Indian Contract Act, 1872.

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(v) Valid agreement: An agreement with alien friend is valid, but an agreement with alien enemy is void.

(b) As per Section 2(d) of the Indian Contract Act, 1872, it is not necessary that consideration must be move from promisor only, thus it may be moved by any other person including a stranger to the transaction.

The problem is based on a case of "Chinnava v Ramawa" is which the Court clearly observed that the consideration need not necessarily move from the party itself, it may move from any person.

Thus M is liable to pay the said sum to N and cannot deny her liability on the ground that consideration did not move from N.

(c) According to Section 150, of the Indian Contract Act, 1872, if the goods are bailed for hire, the bailor is responsible for damages, whether he was aware about the existence of such types of faults in the goods bailed or not.

Thus in given case, B is liable to compensate A for the injuries suffered even if he has no knowledge of the defect in the carriage.

Question 2:

(a) **Mr. Seth an industrialist has been fighting a long drawn litigation with Mr. Raman another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ₹ 5 lakhs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.**

(b) **Y holds agricultural land in Gujarat on a lease granted by X, the owner. The land revenue payable by X to the Government being in arrear, his land is advertised for sale by the Government. Under the Revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the Government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount so paid?**

(c) **X, Y and Z jointly borrowed ₹ 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:**

- (i) **Y can recover the contribution from X and Z,**
- (ii) **legal representatives of X are liable in case of death of X,**
- (iii) **Y can recover the contribution from the assets, in case Z becomes insolvent.**

Answer:

(a) The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void.

Further Contract Act specifies that any agreements in restraint of trade, marriage, legal proceedings etc., are void agreements.

Thus Mr. X cannot recover the amount of ₹ 5 lakhs promised by Mr. Seth because it is an illegal agreement and cannot be enforced by law.

(b) Yes, X is bound to make good to Y the amount so paid. Section 69 of the Indian Contract Act, 1872, provides that "A person who is interested in the payment of money which another is bound by law to pay, and who therefore pays it, is entitled to be reimbursed by the other. In the given case Y has made the payment of lawful dues of X in which Y had an interest. Therefore, Y is entitled to get the reimbursement from X.

(c)

- (i) Y can recover the contribution from X and Z because XYZ are joint promisors.
- (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
- (iii) Y' also can recover the contribution from Z's assets.

Question 3:

(a) A contracted with B to supply him (B) 500 tons of iron-steel @ ₹ 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for the purchase of 500 tons of iron-steel @ ₹ 4,800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered into with B. C failed to perform his contract in due course. Consequently, A could not procure any iron-steel and B rescinded the contract. What would be the amount of damages which A could claim from C in the circumstances? Explain with reference to the provisions of the Indian Contract, 1872.

(b) Mr. Ahuja of Delhi, wanting to buy a house engaged Mr. Singh as his agent in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of a nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same house to Mr. Ahuja for ₹ 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

(c) K is the wife of A. She Purchased a saree on Credit from B. B demanded the amount from A. A refused to make the payment. B filed a suit against A for the same amount. Decide in light of Indian Contract Act, whether B would succeed.

Answer:

(a) The problem in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 73. Section 73 provides that when a contract has been broken the party who suffers loss by such breach is entitled to receive compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it [Hadley v Baxendale]

In the instant case 'A' had intimated to 'C' that he was procuring iron steel from him for the purpose of performing his contract with 'B' Thus, C had the knowledge of the special circumstance. Therefore, 'A' is entitled to claim from 'C' ₹1,00,000 (difference between the procuring price of iron steel and contracted selling price to 'B') being the amount of profit 'A' would have made by the performance of his contract with 'B'.

If A had not told C of B's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default.

(b) Mr. Ahuja is entitled to recover ₹ 6 Lakhs from Mr. Singh.

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Where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:-

1. Repudiate the transaction
2. Claim from the agent any benefit which may have resulted to him from the transaction.

(c) According to Indian Contract Act, 1872, where any husband and wife are living together, the wife is presumed to be an agent of her Husband. Thus, the husband is bound to pay the bills for household credit purchased by her wife provided the following conditions are satisfied:-

1. Husband and wife must be living together
2. They are living in a Domestic establishment of their own and wife should be in charge of domestic establishment.
3. Wife must purchase the Article suited to the style in which they are living

Thus if all above conditions are satisfied wife shall be assumed as an agent and husband is liable.

In given case, K is the wife of A. She purchased a saree on Credit from B. B demanded the amount from A. A refused to make the payment. B filed a suit against A for the same amount. Based upon the assumption that all above conditions are satisfied we may conclude that A is liable to bear the cost of sarees as purchased by his wife K.

Question 4:

(a) M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2014 for ₹ 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for ₹12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. And were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act.

(b) 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.

(c) State with reasons whether the following statement is correct or incorrect:

If the pawnor makes a default in the payment of debt, or performance of duty, as agreed, the pawnee has a right to sell the thing pledged for which no reasonable notice of the sale is required.

Answer:

(a) Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it.

Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach.

Applying the above principle of law to the given case, M Ltd is liable to compensate for the loss of ₹1.25 lakhs (₹12.75 less ₹11.50 i.e. ₹1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date.

If he was aware than M Ltd is also liable to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

(b) 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.

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 and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

(c) Incorrect, As per Section 176 of the Indian Contract Act, 1872 in case of default in payment by Pawnor, Pawnee has a right to sell the thing pledged on giving the pawnor reasonable notice of the sale.

Any sale made by the pawnee without giving a reasonable notice will be void.

STUDY NOTE 2 - LAWS RELATING TO SALE OF GOODS:

Question 5:

(a) "Only the owner of goods can transfer a good title-none else" but there are some exception. Please cite a few of such exceptions with detailed provision.

(b) Write a short note on; Transfer of Property in Unascertained Goods.

(c) Mr. B (a broker) by the order of Mr. A purchases 10 Drums of oil for A from Mr. C. Afterwards Mr. A refuses to receive oil. Mr. C sues. Mr. B defends but failed. Mr. B has to pay cost, damages and incurs expense. Can B recover any amount from A?

Answer:

(a)

(i) Sale by mercantile agent: Besides owner, good title can be transferred in following cases by mercantile agent who is in possession of either the goods or documents of titles to the goods with the consent of the owner and sells the goods in the ordinary course of business as a mercantile agent. The buyer gets good title provided the buyer buys in good faith and for value.

(ii) Sale by one of Joint owners: Where one of the several joint owners of goods has the sole possession thereof with permission of the co-owners the property in goods is transferred to any person who buys them in good faith and has not at the time of contract of sale notice that the seller has no authority to sell.

(iii) Sale by a person in possession under voidable contract - A person who obtained possession

of goods under voidable contract on the ground of fraud, misrepresentation, coercion or undue influence can pass on good title provided the buyer buys in good faith and without notice of seller's defect of title.

(iv) Sale by seller in possession of goods after sell - where a seller having sold goods continues in possession thereof or of documents of title to the goods, the delivery or transfer by such person or by a mercantile agent acting for such person of the goods by way of sale, pledge or other disposition will pass a good title to transferee provided he buys in good faith and without notice of previous sale.

(v) Sale by buyer in possession of goods.

(vi) Sale by unpaid seller (54(3)).

(vii) Sale by a finder of lost goods (Section 169).

(viii) Sale by Pawnee (Section 176)

(ix) Sale by an official receiver or official assignee or liquidator of the Company.

(b) Transfer of Property of Unascertained Goods: (Section 23 of the Sale of Goods Act, 1930)

Where there is a contract for the sale of unascertained or future goods by description and the goods of that description and in a deliverable state are unconditionally appropriated to the contract, either by the seller with the consent of the buyer or by the buyer with the consent of seller, the property in the goods there up on passes to the buyer. Such assent may be expressed or implied, and may be given either before or after the appropriation is made.

As per section 18 of Sale of Goods Act where there is a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. 'Ascertainment' is the process by which the goods answering the description are identified and set apart.

(c) In this case 'A' is liable to 'B' for such damages, costs and expenses because the Employer or an agent is bound to indemnify him against the consequences of all lawful acts done by such agent in exercise of the Authorities conferred upon him. 'B' acted on the instruction of 'A'.

Question 6:

(a) A seller may deliver goods to a carrier with a right of disposal. Comment

(b) Justify the following:

(i) On 30.11.13 Mr. Sham agrees to sell a painting to Mr. Ram for ₹ 5,000 but Mr. Sham died on 8.12.13. Mr. Sham's son claimed ₹ 10,000, Can Mr. Ram obtain the painting at ₹ 5,000 which was agreed to by Mr. Sham?

(ii) Mr. Sham informs Mr. Ram that Mr. Sham's estate is free from encumbrances. Mr. Ram buys the property fully relating on Mr. Sham. Subsequently it revealed that the estate was mortgaged. What will be the position of Mr. Ram?

(iii) Mr. Ram gives diamond to Mr. Sham on "sale or return" basis on the same day; Mr. Sham gives those diamonds to Mr. Jadu on "sale or return" basis. Those diamonds were lost from Mr. Jadu on the same day, who will the loss?

(iv) Mr. Sham orders on Mr. Ram to deliver certain goods at Mumbai. While the goods are lying at

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Mumbai Railway Station. The Station Master informs Mr. Sham that the goods are held at station at Mr. Sham's risk, but Mr. Sham became insolvent. Has Mr. Ram has any right as an unpaid seller?

(c) M/s. Wholesaler agreed to supply 1,000 Pcs. of Cotton Shirts to M/s. Retailer at ₹300 per shirt by 31.05.2014. On 01.02.2014 M/s. Wholesaler informs the Retailer that he is not willing to supply the shirt as the price of shirt increased to ₹350 each. Examine the right of M/s. Retailer.

Answer:

(a) Where there is a contract for the sale of specific goods or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until certain conditions are fulfilled. In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled.

(b)

(i) A contract of sale of goods is a contract where by the seller transfer or agrees to transfer the property in goods to the buyer for price.

A contract may provide for payment by installment or that the delivery or payment or both shall be postponed.

Subject to the provisions of any law for the time being in force, a contract of sale may be made in writing or by word of mouth.

In this case although the contract was not executed but in view of above, Ram, may enforce 'Sham's heirs for the painting at ₹ 5000 which was agreed to by 'Sham'.

(ii) In this the contract is voidable at the option of Ram, he may avoid the contract. He may insist on its being carried out and the mortgaged debt redeemed.

(iii) Ownership under sale on return remains with seller until it passes to buyer. Mr. Sham, giving diamonds to Jadu, acquires ownership. Although the diamonds were lost from Mr. Jadu's custody on the same day but he was not owner in this case. The owner i.e. Sham shall bear the loss i.e. Mr. Sham shall pay to Mr. Ram.

(iv) Mr. Ram has lost his right of stoppage in transit; the intimation by the station master that the goods are held at the Station at Mr. Sham's rights has transformed the position of station master into a bailee of Mr. Sham instead of Mr. Ram. The transit has thus come to an end.

An unpaid seller can stop the goods in transit in the event of buyers' insolvency. The transit being over, the right is thus lost.

(c) In terms of the provisions of Section 32 and 33 of the Sale of Goods Act, 1930; unless otherwise agreed, delivery of the goods and payment of the price are concurrent conditions, that is to say, the- seller shall be ready and willing to give possession of the goods to the buyer in exchange for the price, and the buyer shall be ready and willing to pay the price in exchange for possession of the goods.

Rights of the Buyer according to the Sale of Goods Act, 1930 include:

- (1) To have delivery of the goods as per contract. (Sec. 31 & 32);
- (2) To sue the seller for recovery of the price, if already paid, when the seller fails to deliver the goods;
- (3) To sue the seller for damages if the seller wrongfully neglects or refuses to deliver the goods

to the buyer (Sec 57);

- (4) To sue the seller for specific performance;
- (5) To sue the seller for damages for breach of a warranty or for breach of a condition treated as breach of a warranty (Sec 59);
- (6) To sue the seller the damages for anticipatory breach of contract (Sec 60)

In the instant case M/s. Retailer can exercise any of his rights discussed above.

STUDY NOTE 3 - LAWS RELATING TO EMPLOYEES:

FACTORIES ACT:

Question 7:

(a) Employees of an electricity generation station claimed that their unit is covered under the definition of "factory" considering the process of transforming and transmission of electricity generated at the power station as a manufacturing process. Will their claim succeed?

(b) Pragma Ltd. is a navratna undertaking having its factories throughout India. The company has an impeccable record of best welfare measures and working conditions. Does the company require appointing welfare officers?

(c) Discuss the general duties of an 'occupier' under the Factories Act, 1948

Answer:

(a) 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;

Process undertaken at electricity generating station, substation transferring and transmitting electricity is not a manufacturing process and are not thus factory-[Delhi Electricity Supply Undertaking vs. Management of DESU, AIR (1973) SCC 365]

(b) According to Section 49(1) of The Factories Act, 1948, in every factory wherein five hundred or more workers are ordinarily employed the occupier shall employ in the factory such number

of Welfare officers as may be prescribed. The State Government may prescribe the duties, qualifications and Conditions of service of officers employed under sub-section (1). [Sec 49(2)].

In the given question Pragya Ltd. is a navratna undertaking having its factories throughout India. If the company has five hundred or more workers it is required to appoint welfare officers.

(c) General duties of an 'occupier' are discussed in sec 7A of the Factories Act, 1948. These are as follows:

Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.

Without prejudice to the generality of the provisions of sub-section (1), the matters to which such duty extends, shall include –

- (i) the provision and maintenance of plant and systems of work in the factory that are safe and without risks to health;
- (ii) the arrangements in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances;
- (iii) the provision of such information, instruction, training and supervision as are necessary to ensure the health and safety, of all workers at work;
- (iv) the maintenance of all places of work in the factory in a condition that is safe and without risks to health and the provision and maintenance of such means of access to, and egress from, such places as are safe and without such risks;
- (v) the provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risks to health and adequate as regards facilities and arrangements for their welfare at work.

Except in such cases as may be prescribed, every occupier shall prepare, and, as often as may be appropriate, revise, a written statement of his general policy with respect to the health and safety of the workers at work and the organisation and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

INDUSTRIAL DISPUTE ACT:

Question 8:

(a) Discuss Adjudication as a method of settling industrial disputes under the Industrial Dispute Act, 1947

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

(c) Explain the term 'Conciliation' for resolution of industrial dispute under the Industrial Dispute Act, 1947.

Answer:

(a) The Industrial Dispute Act, 1947 provides for three tier system of adjudication of industrial disputes. The cases either may be referred by government to court after the receipt of failure report from conciliation officer or directly by any party. Labour courts and Industrial Tribunal may be constituted by State Governments while National Tribunal is constituted by Central Government.

Labour Courts (Sec 7)

The appropriate Government may, by notification in the Official Gazette, constitute one or more Labour Courts for the adjudication of industrial disputes relating to any matter specified in the Second Schedule and for performing such other functions as may be assigned to them -, under this Act.

Industrial Tribunal (Sec 7A)

The appropriate Government may, by notification in the Official Gazette, constitute one or more Industrial Tribunals for the adjudication of industrial disputes relating to any matter, whether specified in the Second Schedule or the Third Schedule and for performing such other functions as may be assigned to them under this Act.

National Tribunal (Sec 7B)

The Central Government may, by notification in the Official Gazette, constitute one or more National Industrial Tribunals for the adjudication of industrial disputes which, in the opinion of the Central Government, involve questions of national importance or are of such a nature that industrial establishments situated in more than one State are likely to be interested in, or affected by, such disputes

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

In the given problem, because of continuous losses, the company's financial position worsened. The company declared lay-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.

(c) 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.

The conciliation officer however has no power to force a settlement. He can only persuade and assist the parties to reach an agreement. The Industrial Disputes Act prohibits strikes and lockouts during that time when the conciliation proceedings are in progress.

WORKMEN COMPENSATION ACT:

Question 9:

(a) How do you define 'disablement' under the Workmen's Compensation Act, 1923?

(b) Explain the method of calculation of wages as per Workmen Compensation Act, 1923.

Answer:

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

Permanent partial disablement reduces the earning capacity in every employment the worker was capable of doing at the time of employment.

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

(b) As per section 5 of Workmen Compensation Act, 1923, the expression "monthly wages" means the amount of wages deemed to be payable for a month's service (whether the wages are payable by the month or by whatever other period or at piece rates), and calculated] as follows, namely:—

- (i) where the workman has, during a continuous period of not less than twelve months immediately preceding the accident, been in the service of the employer who is liable to pay compensation, the monthly wages of the workman shall be one-twelfth of the total wages which have fallen due for payment to him by the employer in the last twelve months of that period;
- (ii) where the whole of the continuous period of service immediately preceding the accident during which the workman was in the service of the employer who is liable to pay the compensation was less than one month, the monthly wages of the workman shall be the average monthly amount which, during the twelve months immediately preceding the accident, was being earned by a workman employed on the same work by the same employer, or, if there was no workman so employed, by a workman employed on similar work in the same locality;]
- (iii) in other cases [including cases in which it is not possible for want of necessary information to calculate the monthly wages under clause (b)], the monthly wages shall be thirty times the

total wages earned in respect of the last continuous period of service immediately preceding the accident from the employer who is liable to pay compensation, divided by the number of days comprising such period.

PAYMENT OF WAGES ACT & MINIMUM WAGES ACT:

Question 10:

(a) What do you understand by the term 'Industrial establishment' under the Payment of Wages Act, 1936?

(b) With whom does the responsibility of fixing minimum rates of wages lie?

(c) Define the term 'Cost of living index number' in relation to Minimum Wages Act, 1948.

Answer:

(a) According to Section 2(ii) of the Payment of Wages Act, 1923, "industrial or other establishment" means any –

(a) tramway service or motor transport service engaged in carrying passengers or goods or both by road for hire or reward;

(aa) air transport service other than such service belonging to or exclusively employed in the military naval or air forces of the Union or the Civil Aviation Department of the Government of India;

(b) dock wharf or jetty;

(c) Inland vessel mechanically propelled;

(d) mine quarry or oil-field;

(e) plantation;

(f) workshop or other establishment in which articles are produced adapted or manufactured with a view to their use transport or sale;

(g) establishment in which any work relating to the construction development or maintenance of buildings roads bridges or canals or relating to operations connected with navigation irrigation or to the supply of water or relating to the generation transmission and distribution of electricity or any other form of power is being carried on;

(h) any other establishment or class of establishments which the Central Government or a State Government may having regard to the nature thereof the need for protection of persons employed therein and other relevant circumstances specify by notification in the Official Gazette.

(b) This is provided in Sec 3 of the Minimum Wages Act, 1948.

The responsibility of fixing minimum wages lies with appropriate government. The appropriate government shall in the manner hereinafter provided-

(a) fix the minimum rates of wages payable to employees employed in an employment specified in Part I or Part II of the Schedule and in an employment added to either Part by notification under section 27:

Provided that the appropriate government may in respect of employees employed in an employment specified in Part II of the Schedule instead of fixing minimum rates of wages under

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this clause for the whole State fix such rates for a part of the State or for any specified class or classes of such employment in the whole State or part thereof;

(b) review at such intervals as it may think fit such intervals not exceeding five years the minimum rates of wages so fixed and revise the minimum rates if necessary:

Provided that where for any reason the appropriate government has not reviewed the minimum rates of wages fixed by it in respect of any scheduled employment within any interval of five years nothing contained in this clause shall be deemed to prevent it from reviewing the minimum rates after the expiry of the said period of five years and revising them if necessary and until they are so revised the minimum rates in force immediately before the expiry of the said period of five years shall continue in force.

(c) According to Sec 2(d) of the Minimum Wages Act, 1948, 'Cost of living index number' in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed means the index number ascertained and declared by the competent authority by notification in the Official Gazette to be the cost of living index number applicable to employee in such employment.

PAYMENT OF BONUS ACT:

Question 11:

(a) **Notun Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?**

(b) **Abhay Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary of less than ₹ 10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1965, whether the employees, who resigned, remaining full-time employees and part-time employees will get relief.**

(c) **The management of Shanti Mills Ltd. entered into an agreement with their employees to pay them bonus based on production in lieu of Bonus based on profits, from the accounting year 2013. The employees further agreed to forego their right to receive minimum bonus and instead accept 25% of their salary/wage as bonus based on productivity. Is such an agreement valid? Examine in the light of the provisions of the Payment of Bonus Act, 1965.**

Answer:

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

Employees of the unit which is incurring losses:

- are not entitled to claim bonus on the ground that the unit incurring loss is a part of one

single establishment;

- are entitled to minimum bonus as per the provisions of Sec. 10, 12, 13 and 14 of the Act, since minimum bonus is payable whether or not there is any allocable surplus (and whether the establishment has made a profit or incurred a loss).
- However, for the purpose of computation of bonus, the amount of allocable surplus shall be taken for that particular unit only, and not of all the 3 units taken together.

(b) The Act is applicable to the establishment since the establishment has employed 20 or more persons during any day of the AY; and *if* the provisions of the Act become applicable to an establishment once, they shall continue to be applicable notwithstanding subsequent reduction in the number of persons employed (Sec. 1).

20 full-time and 5 part-time employees are 'employees' within the definition of 'employee' [Sec. 2(13)].

The 10 full-time employees who resigned are not eligible for bonus since they have not worked for 30 days (Sec. 8).

The remaining 10 full-time employees and all the 5 part time employees are eligible for bonus, since they have worked for 30 days or more during the AY (Sec. 8) and even a part-time employee is entitled to bonus (Automobile Karmchari Sangh v Industrial Tribunal).

(c) The agreement of Shanti Mills Ltd. with its employees is void in so far as it purports to deprive the employee of their right to minimum bonus; and in so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.

The employees are entitled to receive minimum bonus.

PAYMENT OF GRATUITY ACT:

Question 12:

(a) Seema is employed in ABC Ltd., a seasonable establishment. The factory was in operation for four months during the financial year 2013-14. Seema was not in continuous service during this period. However, she has worked for sixty days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether Seema is entitled to gratuity payable under the act. Would your answer be the same in case Seema works for 100 days?

(b) How is the amount of Gratuity determined in case of the following employees:

- (i) A monthly rated employee
- (ii) A piece rated employee
- (iii) An employee of a seasonal establishment

(c) Aswani who was an employee of Sun Televisions Limited, retired on 1st January, 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December, 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972 whether Aswani will succeed in his claim?

Answer:

(a) Seema is not entitled to since she has not actually worked for not less than 75% of the number of days on which the gratuity establishment was in operation during such period.

If Seema had worked for 100 days then she would have been entitled to gratuity since the number of days on which she would 100 days have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation

(b) Calculation of amount of gratuity:

(i) In case of monthly rated employee:

- The gratuity shall be payable @ 15 days wages for every completed year of service or part thereof in excess of 6 months.
- 'Wages' means last drawn wages.
- 'Month' means a period of 26 days.
- Thus, gratuity shall be computed as follows:
- Last drawn wages x $15/26$ x Completed years of service (including a part of year in excess of 6 months).

(ii) In case of piece rated employee:

- Gratuity shall be computed as follows:
- Last drawn wages x $15/26$ x Completed years of service (including a part of year in excess of 6 months).
- Last drawn wages shall be computed by taking average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment. While computing daily wages, the total wages of last 3 months is to be divided by number of days the employee actually worked, and not by the number of days or the number of working days in the said period of 3 months.
- For the purpose of computation of last drawn wages, wages paid for overtime work shall not be included in 'wages'.

(iii) In the case of an employee of a seasonal establishment:

- Such an employee shall be paid gratuity at the rate of 7 days' wages for each season.

(c) If the employer fails to pay the gratuity within the prescribed time (i.e., within 30 days of termination of employment), the controlling authority is empowered to issue a certificate, known as the recovery certificate to the collector to recover the amount of gratuity.

Before issue of such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.

The employer shall also be liable to pay compound interest at such rate as may be notified by CG from time to time. The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity. However, the interest payable shall not exceed the amount of gratuity payable.

The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity.

Hence Aswani may follow the above rules for settlement of his claim.

EMPLOYEE STATE INSURANCE ACT:

Question 13:

(a) Explain the composition of Medical benefit council, under Employees State Insurance Act, 1948.

(b) State how contributions are made under Employees State Insurance Act, 1948.

Answer:

- (a)** As per section 10 of Employees State insurance Act, 1948, the Central Government shall constitute a Medical Benefit Council consisting of:
1. the Director General, Health Services, ex officio, as Chairman;
 2. a Deputy Director General, Health Services, to be appointed by the Central Government;
 3. the medical commissioner of the Corporation, ex officio;
 4. one member each representing each of the States (other than Union Territories) in which this Act is in force to be appointed by the State Government concerned;
 5. three members representing employers to be appointed by the Central Government in consultation with such organizations of employers as may be recognized for the purpose by the Central Government;
 6. three members representing employees to be appointed by the Central Government in consultation with such organizations of employees as may be recognized for the purpose by the Central Government; and
 7. Three members, of whom not less than one shall be a woman, representing the medical profession, to be appointed by the Central Government in consultation with such organizations of medical practitioners as may be recognized for the purpose by the Central Government.

(b) As per section 39 of Employees State Insurance Act, 1948, the contribution payable under this Act in respect of an employee shall comprise contribution payable by the employer and contribution payable by the employee and shall be paid to the Corporation. The contributions shall be paid at such rates as may be prescribed by the Central Government. The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under this Act. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period. If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at the rate of twelve per cent per annum or at such higher rate as may be specified in the regulations till the date of its actual payment.

EMPLOYEES' PROVIDENT FUND AND MISCELLANEOUS PROVISIONS ACT:

Question 14:

(a) Examine with reasons, the validity of the following nominations made under the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952:

1. J nominated N (his son) as a nominee.
2. M nominated S (his wife) and K (a friend) as nominees.
3. R who does not have a family nominated A (a close relative) as a nominee.
4. G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

(b) M Group of Industries sold its textile unit to G Group of Industries. M Group contributed 25% of total contribution in Pension Scheme, which was due before sale under the provisions of Employees Provident Fund and Miscellaneous Provisions Act, 1952. The transferee company (G Group of Industries) refused to bear the remaining 75% contribution in the Pension Scheme. Decide, in the light of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto

what extent?

(c) R, a 57 years old district judge was appointed by Central Government as presiding Officer of the Employees Provident Funds Appellate Tribunal from a period of five years. After three years, he (R) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of R's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.

Answer:

(a)

1. Nomination by J in favour of N is valid, since N is a member of the family of J (since son is covered under the definition of 'family').

2. Nomination by M in favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family'); But in favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

3. Nomination by R in favour of A is valid although A is not covered under the definition of family; but if the employee does not have a family, then, nomination may be made in favour of any person.

4. Nomination by G in favour of N is valid but it becomes void immediately on marriage since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.

(b) Joint and several liability: M Group of Industries and G Group of Industries shall be jointly and severally liable to pay the remaining 75% liability on account of contribution due under the pension scheme.

Limitation of liability: Liability of G Group of Industries shall be limited to the value of assets obtained by it under the transfer of the establishment.

(c) R continues to be in office till the remaining period of his office, viz. 2 years; or till his successor enters upon his office; or till the expiry of 3 months from the date of resignation; whichever is the earliest.

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

CHILD LABOUR (PROHIBITION AND REGULATION) ACT:

Question 15:

(a) Mr. Zee, an occupier wants to send a notice to the inspector in relation to his establishment. State the provisions that Mr. Zee has to follow in this respect, as per Child Labour (Prohibition and regulation) Act, 1986.

(b) State the "power to remove difficulties" as per Child Labour (Prohibition and regulation) Act, 1986.

Answer:

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(a) As per section 9 of Child Labour (Prohibition and regulation) Act, 1986, every occupier, in relation to an establishment, who employs, or permits to work, any child after the date of commencement of this Act in relation to such establishment, shall, within a period of thirty days from the date of such employment, send to the Inspector within whose local limits the establishment is situated, a written notice containing the particulars as are mentioned under:

1. The name and situation of the establishment;
2. The name of the person in actual management of the establishment;
3. The address to which communications relating to the establishment should be sent; and
4. The nature of the occupation or process carried on in the establishment.

(b) As per section 9 of Child Labour (Prohibition and regulation) Act, 1986, if any difficulty arises in giving effect to the provisions of this Act, the Central Government may, by order published in the official Gazette, make such provisions not inconsistent with the provisions of this Act as appear to it to be necessary or expedient for removal of the difficulty : Provided that no such order shall be made after the expiry of a period of three years from the date on which this Act receives the assent of the President. Every order made under this section shall, as soon as may be after it is made, be laid before the Houses of Parliament.

STUDY NOTE 4 - NEGOTIABLE INSTRUMENTS ACT:

Question 16:

(a) Calculate the date of maturity of the following bills of exchange explaining the relevant rules relating to determination of the date of maturity as provided in the Negotiable instruments Act, 1881:

- (i)** A Bill of Exchange dated 31st August, 2014 is made payable three months after date.
- (ii)** A Bill of Exchange drawn on 15th October, 2014 is payable twenty days after sight and the bill is presented for acceptance on 31st October, 2014.

(b) J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it returned the bill to J. J tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?

(c) The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forges his name and pays the cheque into his own bank. Whether 'D' can recover the amount of the cheque from 'A's banker. Justify.

Answer:

(a)

(i)

Date of the bill	31.08.2014
Nature of bill	Time bill - Payable 3 months after date.
Corresponding day after 3 months	30.11.2014 (Corresponding day of the relevant month (i.e., Date on which negotiable instrument is drawn + stated number of months) + 3rd day. However, if in the relevant month, there is no corresponding day, the last day of such month shall be taken).

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Days of grace	3 days (added to 30.11.2014).
3 months + days of grace calculated from 31.08.2014	03.12.2014.
Date of maturity	03.12.2014.

(ii)

Date of the bill	15.10.2014.
Nature of bill	Time bill - Payable 20 days after sight.
Date of presentation of bill for acceptance	31.10.2014.
Days to be excluded	The date on which the bill is presented for acceptance, viz., 31.10.2014 shall be excluded.
20 days from 31.10.2014	20.11.2014.
Days of grace	3 days (added to 20.11.2014).
20 days + days of grace calculated from 31.10.2014	23.11.2014.
Date of maturity	23.11.2014.

(b) L is a holder in due course, since he acquired the bill in good faith and for value; and since he became the possessor of the bill payable to bearer (assumed that the bill was payable to bearer) (Sec. 9)

J cannot deny the validity of the bill, since no drawer or acceptor of a bill shall, in a suit by a holder in due course, be permitted to deny the validity of the bill as originally drawn, and thus, L who is the holder in due course, acquires a good title to the bill (Sec. 120).

L is entitled to recover the payment of the bill from J and all prior parties, since a holder in due course has the right to sue all the prior parties (Sec. 36)

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

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

STUDY NOTE 5 – LAWS RELATED TO PARTNERSHIP:

Question 17:

(a) ABC LLP had 3 partners A, B, and C. C died on 3rd January 2014. The firm continued with the same name. H extended a loan to the firm on basis of the goodwill of the firm. Are legal representatives of C liable to H? Explain the position with respect to the Limited Liability Partnership Act, 2008.

(b) How can an existing partner cease to be a partner of LLP?

(c) Explain the concept of 'whistle blowing' with respect to the Limited liability Partnership Act, 2008.

(d) "Partnership is not created by status". Comment, based on Indian Partnership Act, 1932

(e) State the rules of partnership by holding out, as per Indian Partnership Act, 1932.

Answer:

(a) According to Sec 29(2) of the Limited Liability Partnership Act, 2008, where after a partner's death the business is continued in the same limited liability partnership name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the limited liability partnership done after his death.

(b) According to Sec 24(1) of the Limited Liability Partnership Act, 2008, A person may cease to be a partner of a limited liability partnership in accordance with an agreement with the other partners or, in the absence of agreement with the other partners as to cessation of being a partner, by giving a notice in writing of not less than thirty days to the other partners of his intention to resign as partner. Sec 24(2) of the Act states the additional ground on which a partner ceases to be a partner; A person shall cease to be a partner of a limited liability partnership-

(a) on his death or dissolution of the limited liability partnership; or

(b) if he is declared to be of unsound mind by a competent court; or

(c) if he has applied to be adjudged as an insolvent or declared as an insolvent.

Notice is required to be given to ROC when a person becomes or ceases to be partner or for any change in partners.

(c) The concept has been discussed in Sec 31 of the Limited liability Partnership Act, 2008. As per the sec-

(1) The Court or Tribunal may reduce or waive any penalty leviable against any partner or employee of a limited liability partnership, if it is satisfied that-

(a) such partner or employee of a limited liability partnership has provided useful information during investigation of such limited liability partnership; or

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

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

(d) As per section 5 of Indian Partnership Act, 1932, the relation of partnership arises from contract and not from status; and, in particular, the members of a Hindu undivided family carrying on a family business as such, or a Burmese Buddhist husband and wife carrying business as such, are not partners in such business. Hence the statement is true.

(e) As per section 28 of Indian Partnership Act, 1932, partnership by holding out would occur if,

1. Anyone who by words spoken or written or by conduct represents himself or knowingly permits himself to be represented, to be a partner in a firm, is liable as a partner in that firm to anyone who has on the faith of any such representation given credit to the firm, whether the person representing himself or represented to be a partner does or does not know that the representation has reached the person so giving credit.

2. Where after a partner's death the business is continued in the old firm name, the continued use of that name or of the deceased partner's name as a part thereof shall not of itself make his legal representative or his estate liable for any act of the firm done after his death.

STUDY NOTE 6 - PREVENTION OF MONEY LAUNDERING ACT:

Question 18:

- (a) “Money laundering and siphoning of funds are same”. Comment.
- (b) State the procedure adopted by Appellate Tribunal in deciding appeals under the Prevention of Money Laundering Act, 2011.

Answer:

(a) The statement is false. Mere earning of money or income or deriving any property by committing a crime does not amount to money laundering, though it may amount to siphoning of funds. Deriving or obtaining any property by committing a crime which amounts to a schedule offence, and then projecting such property as untainted property amounts to money laundering.

(b) The procedure adopted by Appellate Tribunal in deciding appeal is explained below:

1. CPC not to apply to Appellate Tribunal [Section 35(1)]

The Appellate Tribunal shall not be bound by the procedure laid down by the Code of Civil Procedure, 1908 but shall be guided by the principles of natural justice and, subject to the other provisions of this Act, the Appellate Tribunal shall have powers to regulate its own procedure.

2. Powers of Appellate Tribunal [Section 35(2)]

The Appellate Tribunal shall have, for the purposes of discharging its functions under this Act, the same powers as are vested in a civil court under the Code of Civil Procedure, 1908 while trying a suit, in respect of the following matters, namely:

- (a) summoning and enforcing the attendance of any person and examining him on oath;
- (b) requiring the discovery and production of documents;
- (c) receiving evidence on affidavits;
- (d) subject to the provisions of sections 123 and 124 of the Indian Evidence Act, 1872, requisitioning any public record or document or copy of such record or document from any office;
- (e) issuing commissions for the examination of witnesses or documents;
- (f) reviewing its decisions;
- (g) dismissing a representation for default or deciding it ex parte;
- (h) setting aside any order of dismissal of any representation for default or any order passed by it ex parte; and
- (i) any other matter, which may be, prescribed by the Central Government.

3. Execution of orders of Appellate Tribunal [Section 35(3)]

An order made by the Appellate Tribunal under this Act shall be executable by the Appellate Tribunal as a decree of civil court and, for this purpose, the Appellate Tribunal shall have all the powers of a civil court.

4. Transmission of order by Appellate Tribunal to Court [Section 35(4)]

Notwithstanding anything contained in sub-section (3), the Appellate Tribunal may transmit any order made by it to a civil court having a local jurisdiction and such civil court shall execute the order as if it were a decree made by that court.

STUDY NOTE 7 - ESSENTIALS OF CORPORATE LAWS:

Question 19:

- (a) Can company registered under the Companies Act, 2013 commence business of banking in India? Comment.
- (b) Two or more Hindu joint families decided to form partnership and carry out a non-banking business. Total number of members in the partnership is 25 and 4 are minors. Does it contravene provisions of the Companies Act, 2013? Comment.
- (c) "Separate personality of a company is a special privilege. In case of dishonest or fraudulent use of this privilege, corporate veil can be lifted". Comment.

Answer:

(a) No, "company registered" under the Companies Act, 2013 or any act prior to it cannot commence business of banking in India. As per the RBI Act, it is mandatory for a bank to get itself registered with the RBI. This registration authorizes it to conduct its business as a bank. For the registration with the RBI, a company incorporated under the Companies Act, 2013 or any act prior to it and desirous of commencing business of banking, should have an initial minimum paid-up capital of ₹ 200 crore which is to be raised to ₹ 300 crore within three years of commencement of business. The promoters' contribution shall be a minimum of 40% of the paid-up capital of the bank at any point of time. This promoters' contribution of 40% of the initial capital shall be locked in for a period of five years from the date of licensing of the bank.

(b) As provided in section 464 of the Companies Act, 2013, no association or partnership consisting of more than such number of persons as may be prescribed shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under this Act or is formed under any other law for the time being in force. The number of persons shall not exceed 50, as per Rule 10 of Companies (Miscellaneous) Rules, 2014. This shall not apply to (a) a Hindu undivided family carrying on any business; or (b) an association or partnership, if it is formed by professionals who are governed by special Acts. Since the number of adults are below 50, hence it does not contravene the provisions of Companies Act, 2013.

(c) A company on incorporation becomes a legal person in the eyes of law quite distinct from the individuals who are its members unlike a partnership firm which has no existence apart from its partners. The historic judgment in the Salomon v. Salomon & Co. Ltd. 1897, AC 22 established this principle of corporate personality of the companies. In reality, however the doctrine of juristic personality of a company has been subject to certain exceptions. The courts have in many cases disregarded the corporate façade to look at the facts actually exists behind the corporate veil. Various legislations have been made to avoid the corporate legal entity. When the courts have done it, it has very often been described as lifting the veil or piercing of the veil. Where the legislations have done it, the doctrine is more popularly known as 'Creating the corporate veil.'

Question 20:

- (a) The entire assets of a company are acquired by another company. Will it constitute taking over the management of the company? Why?

(b) An association of 65 members (not being HUF) started banking business without being registered. After one year, sixteen members retired. Thereafter, three members instituted a suit for partition of assets of the association. Discuss the fate of such a suit, as per Companies Act, 2013.

(c) It is always mandatory for an unlimited company to have share capital?

Answer:

(a) In the case of Gopalpur Tea Co. Ltd. v. Peshok Tea Co. Ltd (1982) 52 Comp Cas 239 (Cal) the Court observed that the Company has an identity and existence independent of the estate and undertaking owned by it, so that, even if the estate is taken over by the Company, that does not constitute a taking over the management of the Company. As such, even if the entire estate or assets are taken over by the Government by an order such action does not constitute taking over of the management of the company.

(b) An illegal association cannot become a legal association even if later on the number of members falls below the required numbers. It was held in the case of MST Kumarswami Chettiar v. MSM Chinnathambi Chettiar, 1950 that an association contravening Section 464 of the Companies Act, 2013 is an illegal association and it cannot sue on a contract made by it. Its members will be individually liable on such contract. There can be no cause of action on the basis of an illegal association. In the given case, the association will remain illegal notwithstanding the fact that its number has fallen below 50. Therefore, the suit will not be tenable.

(c) It is always mandatory for an unlimited company to have share capital. An unlimited company may be having share capital or a guarantee company. As per Section 2(92) of the Companies Act, 2013, a company not having any limit on the liability of its members is an unlimited company. That means in case of winding up of the company, the members are liable to pay the full amount to meet its obligations and there is no limitation to amount, which is to be paid by the members. An unlimited company may be converted into a limited company as per Section 18 of the Act, 2013 subject however to that such registration shall not affect any debt, liabilities, obligations or contracts incurred or entered into by, to, with or on behalf of the company before the registration. The debts, liabilities or obligations may be enforced in the manner as a registered company.

Question 21:

(a) "A company does not have unlimited powers to alter its articles of association." Comment.

(b) Distinguish between a 'First director' and 'a director appointed in a casual vacancy'.

Answer:

(a) According to Section 2(5) of the Companies Act, 2013, article means the article of association of a company as originally framed or as altered from time to time in pursuance of a previous company's law or of this act. It also includes the regulations contained in Tables in Schedule I of the Act.

The Articles or its alteration should not be inconsistent with the Companies Memorandum or any other statute. It should not be illegal or should not oppose to any public policy or order of the court. The alteration of Article should be for the benefit of the company and should not be

detrimental to the minority interest. The alteration should not be done so as to do away from any contractual lie or to have any retrospective effect.

(b) 'First directors' are usually directors who assume office from the date of incorporation of a company and are named in Articles of company as First Directors or in the manner provided therein.

Where Articles do not provide for the appointment of first directors, subscribers to the Memorandum of Association who are individual shall be deemed to be first directors subject to the regulations of the company's articles. The first directors can hold office until the directors are duly appointed in accordance with provisions of sections 152 of Companies Act, 2013.

Director appointed in casual is a director appointed on death or resignation of a director originally appointed in a general meeting to fill up the vacancy so caused. [Section 161(4)] of Companies Act, 2013.

Question 22:

(a) What is the 'doctrine of constructive notice'? Explain with case law.

(b) The appointment of several directors cannot be clubbed together. Comment.

Answer:

(a) A company being an artificial person acts through the instrumentality of its agents/authorized representatives. The sphere or gamut of permissible activities of a company is specified by its Memorandum of Association. The memorandum and articles of association of a company, when registered, become public documents and can be inspected by anyone on payment of nominal fee to the Registrar of Companies. Therefore, every person who intends to entering into a contract with a company has the means of ascertaining and is consequently presumed to know, not only the exact powers of the company but also the extent to which these powers could be delegated to the directors, and of any limitations placed upon the exercise of these powers. In other words, every person dealing with the company is deemed to have a "constructive notice" of the contents of its memorandum and articles. In fact, he is regarded not only as having read those documents but also as having understood them according to their proper meaning [Griffith v. Paget, (1877) Ch. D.517]. For example, if the articles provide that a bill of exchange to be effective must be signed by two directors, a person dealing with the company must see that it so signed; otherwise he cannot claim under it. Consequently, if a person enters into a contract which is beyond the powers of the company, as defined in the memorandum or outside the limits set on the authority of the directors, he cannot as a general rule acquire any right under the contract against the company [Mohony v. East Holyfrod Mining Co. (1875) L.R.7HL. 869]. The concept of constructive notice was established in Kotla Venkataswami v. Ram Murti AIR (1932) All 141.

(b) According to Section 162 of the Companies Act, 2013 at a general meeting, a motion for the appointment of two or more persons as directors by a single resolution shall not be moved unless a proposal to move such a motion has first been agreed to at the meeting without any vote being cast against it. A resolution moved in contravention shall be void.

STUDY NOTE 8 - RIGHT TO INFORMATION ACT:

Question 23:

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

(b) Explain the term 'right to information' under the RTI Act, 2005.

(c) How is Central Information Commission constituted under the RTI Act, 2005?

Answer:

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

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

(b) Sec 2(j) of the Right to Information Act, 2005 states "right to information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to—

(i) inspection of work, documents, records;

(ii) taking notes, extracts or certified copies of documents or records;

(iii) taking certified samples of material;

(iv) obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(c) This is discussed under Section 12 of the RTI Act, 2005.

(i) Central Information Commission to be constituted by the Central Government through a Gazette Notification.

(ii) Commission includes 1 Chief Information Commissioner (CIC) and not more than 10 Information Commissioners (IC) who will be appointed by the President of India.

(iii) Oath of Office will be administered by the President of India according to the form set out in the First Schedule.

(iv) Commission shall have its Headquarters in Delhi. Other offices may be established in other parts of the country with the approval of the Central Government.

(v) Commission will exercise its powers without being subjected to directions by any other authority.

STUDY NOTE 9 - GOVERNANCE:

Question 24:

(a) Explain the need for Accounting Standard, in present India.

(b) Are ethics and values needed in corporate governance?

Answer:

(a) Accounting Standards is another area which needs to be attended to for bringing about further improvements in Corporate Governance in India. There are some gaps in Accounting Standards, which need to be closed or narrowed down for better transparency. One of the first and foremost demands of good corporate governance is to let investors know how their money has been used to further the interests of the company they have invested in.

The question that assumes importance here is how effectively the resources of the company are utilized for strengthening the organization. The only available source of information regarding the affairs of a company appears to be its Balance Sheet. Yet, for obvious reasons, the Balance Sheet remains the most abused statement of several companies.

The common methods by which companies hide their wrongful practices, which are all too well known, are to use legal and accounting jargon, non-disclosure, and selective adoption of only those policies that are mandatory in nature. Only a handful of qualified persons, primarily the accountants and other knowledgeable people, can get to the picture behind the scenes and unmask the actual from the portrayed picture. It is in this context that the adoption of United States Generally Accepted Accounting Principles (US-GAAP), which provides for rigorous accounting standards and disclosures, assumes relevance.

There are many areas such as consolidation of accounts, treatment of fixed assets, depreciation, and R&D costs where Indian Accounting Standards (IAS) are at variance with US-GAAP. However, it is heartening to note that things appear to be changing for the better on the Indian turf; thanks to the impetus towards a more transparent accounting system shown by market leaders. Recently, the Institute of Chartered Accountants of India (ICAI) issued the Accounting Standard 21 (AS-21) for consolidation of accounts whereby accounts of companies will be presented along with those of their subsidiaries. This would meet the long pending demand of investors on greater transparency and disclosure.

(b) No discussion on public affairs will be complete without a reference to ethics and values. The quality of corporate governance also is determined by the manner in which top management, particularly the Board of Directors, allocates the financial resources of the company between themselves and other interest groups such as employees, customers, and government. The basic qualities invariably expected in this regard are trust, honesty, integrity, transparency and compliance with the laws of the land. There is an increasing body of public opinion that would expect a business enterprise not only to be a mere economic unit but also to be a good corporate citizen. For this, its corporate governance must be based on a genuine respect for business ethics and values.

STUDY NOTE 10 - ETHICS & BUSINESS:

Question 25:

(a) What are the major attributes of Ethics?

(b) Explain the factors that influence Ethics.

Answer:

(a) The major attributes of ethics are as follows:

Concept: The field of ethics may be conceived as a discipline, science, study or evaluation.

Content: The subject matter of ethics is concerned with what is good or bad, and right or wrong.

Judgment: Judgment is required to determine whether human action is ethical or not. It is concerned with the overt act, not the motivations behind it. Behaviour and its cause are judged.

Standards: Judgment is based on standards which are, in turn, based on values.

Values: The final element of ethics, therefore, is the set of values and criteria used as standards for judging human conduct.

(b) Ethical considerations vary by class, structure, economic group, industry, professional group, and so on. Business ethics has to be on par with the ethical code of the society in which it operates and it is essential that a business enterprise adhere to well-established ethics. The factors that create the basis for ethical consideration are: (i) values, (ii) culture, and (iii) transformation. These are now briefly described.

Values:

Values are additions or accretions to the image. They are not fixed. They undergo change along with the society and its constituents, and consequently, substance the culture. Values are so crucially in business relationships as also for the success a business. They create credibility with the public. They will certainly add value to the concern and create more credibility by its moral responsibility and accountability. This creates confidence in those who are directly and indirectly involved. An organisation perceived by the public to be ethically and socially concerned will be honoured and respected even by those who have no intimate knowledge of its actual functioning. This will enhance the credibility within both the organisation and with its employees. It creates a feeling of oneness among employees having a common goal. An individual, derives business values from a multitude of sources such as the mission of business as a social institution, the nation where the business is located, the type of industry in which it is active, and its nature.

Over a period of time, values have become institutionalised with regard to business and society. These values perform two important functions: (i) form as a guide to business environment and (ii) become strong motivators for people in business. They become the key factor in the system relationship of business with society. Business has certain rights, but it also has certain responsibilities to society and, in turn, society has certain rights and responsibilities in regard to business activity. Value-ethical attitude helps management in better decision-making. Ethical decisions are always in the best interests of public, society and environment. Value addition based ethical decision-making will enable an organisation and its decision-maker to look into the economic, social, and politico-legal aspects of the company's decision-making.

Culture:

Culture is described as the environment of humans. The system aspect of culture is the set of relationships that make it possible for human beings to create a society to pass the accumulated learning of the species from one generation to the other and continue to make the accumulations of learning. Culture refers to activities, thoughts, and feelings which a man acquires as a member of the society. Cultural differences separate the ethical attitude of different people. Much more emphasis is given to building and developing relationship while much less emphasis is given to the abstract concept issues.

Transformation:

Transformation is yet another reason for the change in culture and values. Transformation in relation to communication, viewing, travelling, shopping, working and playing envisages a change in the ethics and ethical practices. The phenomenal growth and developments in these areas have brought about a social change amongst public, society and business. These have improved the life style and the quality of life which, in turn, has created a change in the culture and cultural values by effecting a revolutionary change in ethical standards. According to Alwin Boskoff, "Social change refers to intelligible process in which we discover significant alterations in the structure and functioning of determinate social system. Change is the only permanent feature on man's social life and social system in the form of transformation.

Question 26:

(a) Explain the importance of ethics.

(b) Can ethics be used in management? Explain.

Answer:

(a) The importance of ethics can be discussed as follows:

(i) Basic human needs: Ethics corresponds to basic human needs. Most people want to be ethical not only in their private lives but also in their business affairs. They want to be a part of the organisation because they perceive its purpose and activity to be beneficial to society. The basic ethical needs are probably one of the most cogent reasons for ethical concern on the part of organisations.

(ii) Credibility among the public: Ethics creates credibility with the public. A company perceived by the public to be ethically and socially concerned will be honoured and respected even by those who have no intimate knowledge of its actual working. Gaining the confidence of the community is vital to the business sector. Public opinion is the most powerful force in a democratic society. It is a way of achieving higher standards of ethical behaviour.

(iii) Credibility with the employees: Ethics provides a common language for aligning a company's leadership and its people. Ethics, when perceived by employees as genuine, creates common goals, values, and language. The management has credibility with its employees because it enjoys the same with the public. It creates harmony and oneness among the employees.

(iv) Better decision-making: Ethics helps in better decision-making. Ethical decisions made by the company will always be in the interest of the shareholders, others stakeholders, public, and their employees. This is because respect for ethics will force the management to consider all aspects of a question—economic, social and ethical.

(b) Ethics are principles of conduct used to govern the decision-making and behaviour of an individual or group of individuals. The management is concerned with making decisions within an organisation. Ethics of the individual or group who make decisions have significant implications for the organisation's stakeholders, employees, customers, shareholders, suppliers, the government, and the public at large. It is important to develop a code of ethics for decision-making. A code of ethics is a written document that outlines the principles of conduct to be used in making decisions. It is based on philosophical approaches: such as justice, individual rights and utilitarianism. The principle of justice involves making decisions based on truth, without

bias and with consistency. The laws speak about consumer protection, product safety, shareholders' and other stakeholders' rights, and environmental protection.

Ethics focuses on solving not only the problems of the concern but the society at large. First, the organisational revolution led to increase in number, size and power of organisations of all types. Second, the corporate revolution expanded the scale of business enterprise and led to dominate modern big business corporations. Third, the managerial revolution saw the emergence of a class of professional managers who took over active control of large corporations. Fourth, the property revolution separated ownership and management and diffused property rights within the corporation. Finally, the capitalist revolution brought about a change in the moral order of capitalism and greatly enlarged the public role of business and the economic role of government.

In this changed socio-economic environment, the focus of business ethics is on social responsibility. Social responsibility is a reaction to the goals of the society and the economic, technological, social and political forces that mould the society.

Question 27:

(a) Describe the importance of Ethics in organizations.

(b) Explain the concept of Institutionalization of Ethics.

Answer:

(a) The word 'organisation' originated from the word 'organism' which implies a structure of interrelated and integrated parts. The business environments, together with individuals and the society or community, form an organisation to perform an activity. One cannot imagine a world without organization—no schools to get a formal education, no hospital and medical clinics to get medical attention, no clubs or association, no political parties, no government, no firms! There would be only two extremes—community and society. The gap between the two is wide. Organisation is needed to narrow down the gap. It is one of the vital social inventions of mankind and an enormous number and variety of organisations characterise modern societies.

The organisations definitely have objectives or goals, according to the purpose for which they are formed. All organisations are formed with a purpose, for the people, society or community taking into account the environments such as economic, social, political, and legal. Organizations, are so crucial and invariably affect the quality of human life in contemporary society. Their study, thus, is an important aspect of human life. Thus, an organisation may be defined as a human group deliberately and consciously created for the attainment of certain goals with rational coordination of closely relevant activities. Otherwise, they are the major mechanisms for achieving man's goals. The minimal characteristics of an organisation are hierarchy of authority, rules, procedures, techniques and controls; formal interpersonal communications; specialisation of functions; division of labour; and organisational membership. Organisations have no boundaries, nor are they completely independent. They are the primary means by which society gets its work done and its needs satisfied. They vitally affect lives of millions of people who work in varied capacities.

Chris Argyris (1956) perceives that all organisations have three core activities:

1. Achieving objective—values
2. Maintaining the internal system—viability

3. Adapting to external environment—public viability

Change is a necessary way of life for all organisations. The number of decisions the organisation has to make increases day by day. Their impact is growing. The fundamental determinants of the relationship between business, society and organisation are the values and culture. The areas of change are:

1. Technological innovations
2. Shifts in market patterns
3. Greater competition both national and international
4. Changes in governmental regulations
5. New management tools
6. Changes in background, especially social environment.

The need for constant innovation is inevitable. Changes also are inevitable; however, resistance to change is endemic. Response to change is conditioned by the individual's attitude. A successful change includes three aspects: (i) unfreezing the present level, (ii) moving to a new level, and (iii) freezing group or individual in new level. An organisational change focuses on the group and not on the individual.

(b) A business that seriously desires to operate in an ethical environment has to institutionalize ethics by drawing up a policy and code of ethics, familiarising all concerned at all levels with it and ensuring the implementation. Code of ethics is nothing but a blueprint of what is going to be followed and adopted. The ethical code should be printed and circulated to all those concerned. An ethics committee may be appointed for offering training within and outside. The committee not only has to report periodically to the top management and offer suggestions for betterment but also has to review the code from time to time keeping pace with the changes. Business ethics has to be practised and preached. Ethics and morality have to be internalised so that they become part of the stream.

STUDY NOTE 11 - ETHICAL CONFLICT:

Question 28:

(a) State the steps in development of a programme of ethics.

(b) Explain the facets of business ethics.

Answer:

(a) Merely endorsing a standard code or copying that of another will not suffice. It is important to find out in what areas the employees require guidance. In this connection, the steps to be followed are:

- Select a prominent personality to endorse the business ethics policy.
- Choose a framework, which addresses issues as they affect different constituents or shareholders of the company. The usual ones are: shareholders, employees, customers, suppliers, and local/national community. Some might even include competitors.
- The code needs piloting—perhaps with a sample drawn from all levels from different locations.
- The code of conduct framed should be distributed in booklet form.
- The code should be published and sent to all concerned.

- Values and ethics are matters of governance. The Board should be notified to involve themselves for ethical policing.
- Practical examples of the code in action should be introduced in all areas.
- Training programmes for all concerned.
- Review mechanism should be established.
- A code master needs to be appointed.

(b) The Facets of Business Ethics can be discussed as follows:

- (i)** Stakeholders/shareholders or other providers of money: Transparency and openness in all dealings, providing adequate information to the shareholders/stakeholders, and investment protection and return on investment.
- (ii)** Employees: How does the business value employees? The company's policies should be focused on: working conditions, recruitment, development and training, rewards, health, safety and security, equal opportunities, retirement, redundancy, discrimination, and harassment.
- (iii)** Customer relations: These include customer satisfaction, quality of product or service dealt, fair pricing, and after-sales service.
- (iv)** Society/community: The laws of society and community are to be respected. Environmental protection, pollution abatement, and energy conservation are to be followed. In short, standard and quality of life are to be improved.
- (v)** Government: Business ethics, from the point of view of business and businessmen, are (i) to provide information to the government on all required matters, (ii) follow the guidelines, policies and standards set up by the government, and (iii) Pay taxes that are legitimately due to the government.

Question 29:

(a) Do ethics has a global role?

(b) Write a note on Ethics and Ethical Dilemma.

Answer:

(a) The world has entered a century with unprecedented changes for peace and progress. Globalisation is the buzzword today. Business is the silken thread that binds the whole world. Therefore, globalization of ethics is needed. The need is envisaged in the following areas:

- Stable and honest governments
- Transparency and openness to promote honesty in governments
- Commitment to internationally recognised human rights
- Developmental programmes for environmental protection, pollution control, and energy conservation
- Evolution of a world code of ethics for business.

Factors influencing businessmen to make ethical decisions

- A man's personal code of ethics
- Government regulations

- Ethical environment of the industry
- Company's policies and procedures
- Behaviour of superiors in the company
- Behaviour and attitude of associates in the company
- Professionalism in management

Factors influencing businessmen to make unethical decisions

- High tax rates of the government
- Ethical climate of the industry
- Financial stress
- Behaviour of superiors in the company

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

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

Eg:

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

Question 30:

(a) Write a note on Evolution of Ethics.

(b) State the reasons for Unethical Behaviour.

Answer:

(a) Social conduct has evolved along with the evolution of society. When your elders tell you “Do not cheat”, they are referring to a social code of conduct. Social conduct has developed in society over hundreds of years. The codes of conduct have been passed down from generation to generation, and there is a pattern to the evolution of such codes. Acceptable behaviour is promoted and elevated as a social value, and unacceptable behaviour is rejected and condemned. In ancient India, there was no moral problem with the custom of sati-

immolating the wife on the funeral pyre of the deceased husband. But society has evolved humanely and has condemned the act as unacceptable and morally reprehensible.

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

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

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

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

(b) The reasons for which unethical behavior might arise in the organization are:

1. Over Emphasis on Short Term profitability: Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.
2. Ignoring small unethical issues: Companies need to develop an environment where small ethical lapses are taken seriously so that they do not recur in the future.
3. Economic cycles: When the company is doing well, no one is bothered to understand its actual financial position. However, when the economy takes a downward turn, finance and accounting managers may take decisions by compromising over the established principles.
4. To prevent disclosure of unethical problems in times of depression, companies need to be careful and vigilant also during prosperous time periods.
5. Market complexity: In the era of globalization and massive cross border flow of capital, accounting rules have become more complex. The complexity of principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behavior.
6. Money-Mindedness: Most business organizations try to display better financial condition by window dressing. Following such a principle towards “showing profits” rather than “earning profits” leads to unethical accounting and financial practices.