

Suggested Answer_Syl12_Dec2015_Paper 6

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2015

Paper-6: LAWS, ETHICS AND GOVERNANCE

Time Allowed : 3 Hours

Full Marks : 100

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

This paper contains four questions.

All questions are compulsory, subject to instruction provided against each questions.

All workings must form a part of your answer.

Assumptions, if any, must be clearly indicated.

1. Answer all questions (Choose the correct answer from the given four alternatives.):

2×10=20

- (i) Anchal purchased a motor car from Kamal who had no title to it. Anchal used the motor car for several months. True owner spotted the motor car and demanded it from Anchal. In such case
- (a) Anchal is bound to hand-over the motor car to true owner.
 - (b) Anchal is not bound to return the motor car to true owner as he has paid in full settlement to Kamal.
 - (c) Anchal shall advise true owner to approach Kamal.
 - (d) True owner has no right to claim either from Anchal or from Kamal.
- (ii) Which of the following agreement is wagering agreement under the Indian Contract Act, 1872?
- (a) Crossword competition involving application of skill and knowledge.
 - (b) Contract of Insurance.
 - (c) A promise to pay B ₹ 1,000 if it rains on Monday.
 - (d) A agrees to pay B ₹ 1,000 if two straight lines should enclose a space.
- (iii) Under Sale of Goods Act, which of the delivery of goods is called as delivery by attornment?
- (a) Actual
 - (b) Symbolic
 - (c) Constructive

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- (d) Physical
- (iv) Where the price of the goods under a contract of sale is to be fixed by the valuation of a third party who fails to fix the valuation, but goods are supplied to the buyer, under section 10 of the Sale of Goods Act, 1930, the buyer is
- (a) liable to pay the reasonable price of the goods.
 - (b) liable to pay the minimum price of the goods.
 - (c) not liable to pay any price until fixed by the valuer.
 - (d) liable to pay the maximum retail price.
- (v) Under Factories Act, 1948, where work of the same kind is carried out by two or more sets of workers during different period of the day, each of such period is called a
- (a) Relay
 - (b) Shift
 - (c) Recess
 - (d) Overtime
- (vi) Under Payment of Wages Act, 1936, deduction on account of payment to cooperative societies shall not be more than
- (a) 50% of wages
 - (b) 75% of wages
 - (c) 90% of wages
 - (d) 60% of wages
- (vii) Under Employee's State Insurance Act, in order to qualify for sickness benefit, the insured worker is required to contribute for
- (a) 70 days in a contribution period of 6 months.
 - (b) 78 days in a contribution period of 3 months.
 - (c) 91 days in a contribution period of 3 months.
 - (d) 78 days in a contribution period of 6 months.
- (viii) Ankit purchased goods worth ₹ 20,000 from Anuj. In lieu of cash payment, Ankit accept a bill of exchange of ₹ 20,000 to be payable after three months. This is an example of
- (a) Accomodation Bill
 - (b) Fictitious Bill
 - (c) Genuine Bill
 - (d) Documentary Bill
- (ix) Under the Negotiable Instruments Act, 1881, whether acceptance of a bill of exchange in the following situation shall be treated as 'qualified' acceptance where the acceptor
- (a) undertakes to pay only ₹ 10,000 for a bill drawn for ₹ 15,000.
 - (b) declares the payment to be independent of any other event.
 - (c) writes, 'Accepted, payable at ABC Bank'.

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- (d) writes, 'Accepted, payable at Delhi'.
- (x) When a partnership firm is continued even after the expiry of fixed term is called
- (a) Perpetual partnership
 - (b) Fixed partnership
 - (c) Contract partnership
 - (d) Partnership at will
- (xi) A person who is not a partner of a Partnership Firm, but he may liable for firm's debt as if he was a Partner. Such a person is called
- (a) Nominal Partner
 - (b) Sleeping Partner
 - (c) Partner by estoppels
 - (d) Partner for profit only
- (xii) Any person aggrieved by an order made by the Adjudicating Authority under PMLA 2002, may prefer an appeal to
- (a) Civil Court
 - (b) Appellate Tribunal
 - (c) Special Court
 - (d) High Court
- (xiii) Under Companies (Registration Offices and Fees) Rules, 2014, every foreign company shall file with the Registrar of Companies along with the financial statement in form _____ which belong to the list of all the places of business established by the foreign company in India.
- (a) FC 4
 - (b) FC 2
 - (c) FC 1
 - (d) FC 3
- (xiv) The supervisory board under the German Model is known as
- (a) Aufsichtsrat
 - (b) Kiertsu
 - (c) Vorstand
 - (d) Kyosei
- (xv) An audit committee has four fold relationship and therefore has to interact with management, internal auditor, public and
- (a) Cost auditor
 - (b) Statutory auditor
 - (c) Tax auditor
 - (d) Management auditor

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(xvi) Which one of the following categories of person have the right to information under section 3 of Right to Information Act, 2005?

- (a) Only aggrieved persons
- (b) All the Indian Resident and Foreign National staying in India
- (c) All the citizens of India
- (d) Non Resident Indians

(xvii) Business ethics are needed to create a faith about the quality, quantity, price etc. of products. The customers have more trust and faith in the businessmen who follow ethical rules. They feel that such businessmen would not cheat them. Which one of the following is appropriate for it?

- (a) Sefeguarding consumers' right
- (b) Improve customers' confidence
- (c) Survival of business
- (d) Consumer movement

(xviii) Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance or their official duties. This principle of public life is called

- (a) Selflessness
- (b) Honesty
- (c) Objectivity
- (d) Integrity

(xix) There are many types of ethical conflicts in the

- (a) Business place
- (b) Office place
- (c) Work place
- (d) Public place

(xx) Which one of the following is said to be "unethical behavior"?

- (a) Encouraging communication
- (b) Economic cycles
- (c) Employees awareness
- (d) Objectivity

Answer:

1. (i) (a) Anchal is bound to hand-over the car to true owner.
- (ii) (c) A promise to pay B ₹ 1000 if it rains on Monday.
- (iii) (c) Constructive
- (iv) (a) Liable to pay the reasonable price of the goods
- (v) (b) Shift
- (vi) (b) 75% of wages
- (vii) (d) 78 days in a contribution period of 6 months.

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- (viii) (c) Genuine Bill
- (ix) (a) Undertakes to pay only ₹ 10,000 for a bill drawn for ₹ 15,000;
- (x) (d) Partnership at will
- (xi) (c) Partner by estoppels
- (xii) (b) Appellate Tribunal
- (xiii) (d) FC3
- (xiv) (a) Aufsichtsrat
- (xv) (b) Statutory auditor
- (xvi) (c) All the citizens of India.
- (xvii) (b) Improve customers confidence.
- (xviii) (d) Integrity
- (xix) (c) Work place
- (xx) (b) Economic cycles

2. Answer any four questions:

12×4=48

- (a) (i) Kavita falsely representing herself as the wife of a millionaire, takes a necklace from a jeweller's shop for the approval of her husband. She pledges it with a pawn broker who in good faith and without notice of the fraud pays her ₹1,00,000. Can the jeweller recover the necklace from the pawn broker? 3
- (ii) For the purpose of making uniform for the employees, Amit bought dark blue coloured cloth from Bhagat, but did not disclose to the seller the purpose of said purchase. When uniforms were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps, boots and carriage lining. Advise Amit whether he is entitled to have any remedy under the Sale of Goods Act, 1930? 3
- (iii) Akash, Ashish and Anil were partners in a firm. By his willful neglect and misconduct Anil caused serious loss to the business of the firm. After several warnings to Anil, Akash and Ashish passed a resolution expelling Anil from the firm. By another resolution they admitted Abhishek as a partner in place of Anil. Anil objects to his expulsion as also to the admission of Abhishek. Is he justified in his objections? 3
- (iv) "A cheque is a specie of a bill of exchange with two additional qualifications." Explain. 3

Answer:

2. (a) (i) The necklace cannot be recovered from the pawn broker. The jeweller intended to contract with the person present before him. He was not mistaken about his identity but only about his attributes. His intention was to sell to the person present i.e., there was consent, but it was vitiated by fraud. Hence the contract is voidable and not void. In case of a voidable contract, before it is repudiated,

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one can pass a good title to the pledgee or purchaser in good faith. Thus, in the instant case, the pledge is valid.

It may be noted that in the given case if Kavita would have falsely represented herself as the wife of a certain well known millionaire, it would have been a case of mistake as to the identity of person contracted with, rendering the agreement void ab-initio, thereby enabling the jeweller to recover the necklace from the pawn broker.

(ii) As per the provision of Section 16(1) of the Sale of Goods Act, 1930, an implied condition in a contract of sale is that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business. In this case, the cloth supplied is capable of being applied to a variety of purposes, the buyer should have told the seller the specific purpose for which he required the goods. But he did not do so. Therefore, the implied condition as to the fitness for the purpose does not apply. Hence, the buyer will not succeed in getting any remedy from the seller under the Sale of Goods Act [Jones v. Padgett. 14 Q.B.D. 650].

(iii) A partner may be expelled from a firm by majority of the partners only if, (a) the power to expel has been conferred by contract between the partners, and (b) such a power has been exercised in good faith for the benefit of the firm. The partner who is being expelled must be given reasonable notice and opportunity to explain his position and to remove the cause of his expulsion. Yes, Anil is justified in his objections. In the absence of an express agreement authorizing expulsion, the expulsion of a partner is not proper and is without any legal effect. [Section 33(1)] Anil's objection to the admission of Abhishek is also justified as a new partner can be admitted only with the consent of all the partners. [Section 31 (1)]

(iv) According to Sec 6 of Negotiable Instrument Act, "A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand."

A cheque is a bill of exchange with the following two distinctive features which are additional qualifications viz. :

- (i) A cheque is always on a specified banker.
- (ii) A cheque is always payable on demand.

Thus, a cheque is a bill of exchange drawn on a bank payable on demand.

All cheques are bills of exchange, but all bills of exchange are not cheques. A cheque must have all the essential requisites of a bills of exchange.

(b) (i) Bimal at Durgapur under instruction from Amal of Kolkata contracts with Kamal to deliver electric oven to him. Amal does not send the oven to Bimal and Kamal sues Bimal for breach of contract. Bimal informs Amal of the suit and as per

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Amal's advise Bimal defend the suit. Bimal compelled to pay damages, costs and incurs expenses Amal refuse. Advise Bimal. 3

(ii) Mahendra made a hire-purchase agreement with Narendra for a car of which Narendra was described as the owner. Mahendra paid four of the twelve monthly instalments and then learnt that Jitendra claimed to be the owner of the car. He nevertheless paid the balance of instalment and exercised his option to purchase. Jitendra then demanded the car and Mahendra gave it up to him. Mahendra then sued Narendra to recover the full price and Narendra counter claimed for a reasonable sum as hiring charges for the car during the period it was with Mahendra. Decide. 3

(iii) ABC Ltd. carrying manufacturing activities with aid of power and with eight workers for last two years ending on 31.03.2014. Three more workers were appointed on 01.04.2014, two workmen left the company on 30.04.2014. Thereafter no workman was employed nor any workmen left. Mr. Basant, one of the workman demanded that Factories Act, 1948 shall be applicable to this company but the management denied. Give your opinion. 3

(iv) Explain the powers of director to impose fine under section 13 of PMLA. 3

Answer:

(b) (i) As per Section 222 of the Indian Contract Act 1872, the principal is bound to indemnify an Agent against the consequences of all Lawful acts done by the agent in exercise of authority conferred upon him. Sec 223 further provides where one person employs another to do an act, and the agent does the act in good faith, the employer is liable to indemnify the agent against the consequences of that act, though it causes an injury to the rights of third persons. In view of above, Amal is liable to Bimal for such damage, cost & expenses.

(ii) The "Nemo dat quod non habet" rule protects the true owner (Jitendra) and the buyer (Mahendra) who was aware of Narendra's defective rights after paying the fourth installments, would not get any right or title out of his ineffective hire purchase agreement with Narendra. Because Narendra was neither owner nor an authorized person to put the car on hire-purchase and for the same reason, he is not entitled to receive any money under the agreement. However, Mahendra may be asked by Jitendra to pay a reasonable rent for the use of the car and Mahendra can recover the amount paid by him to Narendra.

(iii) According to Sec 2 (m) of the Factories Act, 1948, 'factory' means any premises including the precincts thereof –

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

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(ii) Wherein 20 or more workers are working or were working on any day of the preceding 12 months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on.

In the given case, during the period 01.04.2014 to 30.04.2014, there were 11 workers carrying manufacturing activities with aid of power. So, the Factories Act, 1948 is applicable on ABC Ltd. Mr. Basant is correct.

(iv) Powers of Directors to impose fine (Sec 13)

1. The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-section (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.
2. If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

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

(c) (i) Parag issues an open 'bearer' cheque for ₹10,000 in favour of Qadir who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to Raman and Suman. When it is finally presented by Suman's banker, it is returned with remarks 'payment countermanded' by drawer. In response to a legal notice from Suman, Parag pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, decide, whether Parag's argument is valid or not?

3

(ii) Mayur and Nupur purchased a taxi to ply it in partnership. They had done business for about a year when Mayur, without the consent of Nupur, disposed of the taxi. Nupur brought an action to recover his share in the sale proceeds. Mayur's only defence was that the firm was not registered. Will Nupur succeed in her suit?

3

(iii) Sushil retired from the services of ABC Limited, on 31st March, 2014. He had a sum of ₹ 10 lakhs in his Provident Fund Account. It has become due for payment to Sushil on 30th April, 2014, but the company made the payment of the said amount after one year. Sushil claimed for the payment of interest on due amount at the rate of 15 per cent per-annum for one year. Decide, whether the claim of

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Sushil is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. 3

(iv) Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948. 3

Answer:

(c) (i) The cheque bears two alterations when it is presented to the paying banker. One, the word 'bearer' has been struck off and two, the cheque has been crossed. Although both the alterations amount to material alterations but such alterations are authorized by the Act. So, it can be said that, both of these alterations do not amount to material alteration under the provisions of the Act and hence the liability of any including the drawer is not at all affected. Parag is liable to pay the amount of the cheque to the holder.

(ii) As per Section 69(3) of Indian Partnership Act, the term set off may be defined as the adjustment of debts by one party due to him from the other party who files a suit against him. It is another disability of the partners and of an unregistered firm that it cannot claim a set-off when a suit is filed against it.

Yes, Nupur will succeed in her suit. As the business had been closed on the sale of the taxi, the suit in the question is for claiming share of the assets of a dissolved firm.

Section 69(3) specially protects the right of a partner of an unregistered firm to sue for the realization of the property of a dissolved firm.

(iii) According to Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment.

However, the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest charged by any scheduled bank. As per above provision, Sushil can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate Sushil can claim only 12 percent per annum interest on the due amount. Hence claim of Sushil for interest rate 15% is not tenable.

(iv) **Procedure for Fixing and revising Minimum Wages (Sec 5)**

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) **Appointment of committees.** The appropriate Government shall appoint as

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many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

(b) **Publication of proposals in the Official Gazette.** The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec. 5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

(d) (i) **Abir agreed to sell his cow to Bashir for ₹50,000 on 1st December, 2014. But before this date, Abir repudiated the contract by informing Bashir that he would not sell his cow at all. However, Bashir did not accept the refusal and kept the contract alive till 1st December, 2014. The cow died before this date, but on 1st December, 2014, Bashir filed a suit against Abir for damages for breach of contract. Will he succeed? Give reasons. Would your answer change had the cow died on 5th December, 2014?** 3

(ii) **After serving 15 years, Mr. Anand died on 30.09.2015 when his last twelve months average monthly wages was ₹ 5,000. Calculate the amount of Employees Linked Deposit Insurance (ELDI) which can be paid to nominee of Anand.** 3

(iii) **A workshop is employing 50 workmen. A shop-supervisor is drawing a monthly wages of ₹ 9,000. HRD paid bonus to all employees except the supervisor. The supervisor contends that he is also entitled to bonus. Referring to the provisions of Payment of Bonus Act, 1965, decide whether HRD's action is correct?** 2

(iv) **Explain the procedure for fixing and revising minimum wages under Minimum Wages Act 1948.** 4

Answer:

(d) (i) No, Bashir will not succeed in his action. In this case, since Bashir kept the contract alive, the contract would be treated as discharged by death of cow on the ground of impossibility of performance. However, in case, the cow dying on 5th

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December, 2014, Bashir would be entitled to recover from Abir, the damages for breach of contract. In that event, Abir would be guilty of breach and the plea of impossibility of performance would not be available to him as the cow had died after the due date of performance.

- (ii) As per current amendment [The Employees Deposit Linked Insurance Scheme, 1976 as amended by the Employees Deposit Linked Insurance (Amendment) Scheme, 2011], higher of the below mentioned would be paid to the nominee of the deceased.

(A) Average monthly wages drawn (upto ₹ 6500) during the twelve months preceding the month of death, multiplied by twenty. (Maximum amount payable is ₹ 1,30,000)

Or

(B) An amount equal to average balance in the accounts of the deceased in the fund where average balance exceeds ₹ 50,000, the amount payable shall be ₹ 50,000 plus 40% of the amount in excess of ₹ 50,000 (subject to maximum benefit of ₹ 1,00,000). [In this case it is assumed that the average Fund balance ₹ 1,00,000]

Hence,

Option A = $5000 \times 20 = ₹ 1,00,000$

Option B = $50000 + 40\% \text{ of } 50000 = ₹ 70,000$

Therefore, amount to be paid to the nominee of Mr. Anand (Higher of A and B) is ₹ 1,00,000

- (iii) No, HRD's action is not correct. The upper limit of salary fixed in section 2 (13) has been increased from ₹ 3500 to ₹ 10,000 p.m. by the Payment of Bonus (Amendment) Act, 2007. Every employee whose gross salary is less than ₹ 10,000 shall be entitled to be paid bonus by his employer provided he has worked in the establishment for not less than thirty working days. In view of this, the supervisor drawing monthly salary of ₹ 9000 is entitled to receive bonus from the company.

- (iv) **Procedure for Fixing and revising Minimum Wages (Sec 5)**

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the following 2 methods:

(a) **Appointment of committees.** The appropriate Government shall appoint as many committees and sub-committees as it considers necessary to hold inquiries and advise it in respect of fixation or revision of minimum rates of wages, as the case may be [Sec. 5(1)(a)] ; or

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(b) **Publication of proposals in the Official Gazette.** The appropriate Government shall, by notification in the Official Gazette, publish its proposals for the information of persons likely to be affected by the fixation or revision of minimum rates of wages. It shall also specify a date on which the proposals will be taken into consideration. The date so specified shall not be less than 2 months from the date of the notification [Sec. 5(1)(b)].

After considering the advice of the committee or committees [under Sec. 5(1)(a)] or all representations received by it before the date specified in the notification [under Sec. 5(1)(b)], the appropriate Government shall, by notification in the Official Gazette, fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of 3 months from the date of the issue of notification, unless the notification otherwise provides [Sec. 5(2)]. The power of the Government under Sec. 5 (2) to issue notification revising minimum wages includes power to give retrospective effect to notification

(e) (i) The father of a minor girl, Anu, entered into an agreement for her marriage with Vishal. Afterwards, Vishal refused to marry Anu. On attaining majority, Anu filed a suit against Vishal for damages for breach of promises to marry. Vishal contended that Anu cannot enforce the contract as she was not a party to the agreement between him and Anu's father. Is Vishal's contention valid? 3

(ii) A cheque payable to bearer is crossed generally and is marked 'not negotiable'. The cheque is lost and comes into the possession of Baldev, who takes it in good faith and for value. Baldev deposits the cheque into his own account and his banker collects the same. Discuss the liability of collecting banker and paying banker. Can Baldev be compelled to refund the money to the true owner of the cheque? 3

(iii) For any contravention of provisions of the LLP Act or LLP agreement, all the partners of LLP are liable for all penalties. Offer your views based on Limited Liability Partnership Act, 2008. 3

(iv) Ajit an employee of Supertech Copper Ltd., continued to occupy the quarter of the company for eight months after superannuation, company decided to forfeit the amount of gratuity of Ajit. Examine the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. 3

Answer:

(e) (i) An agreement is made in connection with marriage, partition or other family arrangements, and a provision is made for the benefit of some person. In such cases, a person, for whose benefit the provision is made in such family arrangements, can enforce the agreement even if he is not a party to it. It may, however, be noted that provision must be made for the benefit of the person who

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wants to enforce such marriage arrangements. No, Vishal's consent is not valid. The marriage agreement or other family arrangements where a provision is made for the benefit of some person can be enforced by the beneficiary even if he is not a party to the same.

- (ii) Neither the collecting banker nor the paying banker incurs any liability to anyone because of special protection granted to the bankers under the Act. Yes, the true owner can compel Baldev to refund the money because the cheque bears 'not negotiable' crossing as a result of which the transferee cannot get a better title than that of the transferor.
- (iii) False, it is the designated partner who is responsible for doing all acts matters and things as are required to be done by LLP as per the Act or as specified in the LLP agreement, Unless expressly provided otherwise in this Act, a designated partner shall be responsible for doing of all acts, matters and things as are required to be done by the limited liability partnership in respect of compliance of the provisions of this Act including filing of any document, return, statement and the like report pursuant to the provisions of this Act and as may be specified in the limited liability partnership agreement; and liable to all penalties imposed on the limited liability partnership for any contravention of those provisions.
- (iv) The gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, can be forfeited to the extent of the damage or loss so caused. The gratuity payable to an employee may be wholly or partially forfeited:- (i) if the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part or (ii) if the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.
- It is not a valid ground for forfeiture of entire gratuity. In such a case, the company is entitled to charge the quarter rent as per rules and after adjustment of such charges, Ajit is entitled to receive the balance gratuity.

3. Answer any two questions:

8×2=16

(a) (i) The management of Ambika Properties Ltd., has decided to take up the business of chemical processing activity because of the downward trend in real estate business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause in the light of Companies Act, 2013. 5

(ii) What do you mean by 'Public authority' as per RTI Act, 2005?

3

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Answer:

3. (a) (i) According to Section 13(8) of the Companies Act, 2013, a company, which has raised money from public through prospectus and still has any unutilized amount out of the money so raised, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and-
- (i) The prescribed details in respect of such resolution are published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and are also placed on the website of the company, if any, indicating herein the justification for such change;
 - (ii) The dissenting shareholders shall be given a opportunity to exit by the promoters and shareholders having control in accordance with regulations to be specified by the Securities and Exchange Board.
The Registrar shall register the alteration of the memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution.
It may be noted that no alteration with respect to objects shall have any effect until it has been registered as aforesaid [Section 13(10)].
- (ii) "Public authority" means any authority or body or institution of self-government established or constituted-
- (a) By or under the Constitution;
 - (b) By any other law made by Parliament;
 - (c) By any other law made by State Legislature;
 - (d) By notification issued or order made by the appropriate Government, and includes any-
 - (i) body owned, controlled or substantially financed;
 - (ii) non-government organization substantially financed, directly or indirectly by funds provided by the appropriate Government;
- (b) (i) Atul was appointed director of the company in its Annual General Meeting. He took over the office and started acting on behalf of the company as its director. Subsequently, it was found that the appointment of the director was not valid because in the meeting where he was appointed, certain members who had voted were not qualified to vote and certain members had voted twice by mistake. There were also certain mistakes in the counting of votes. As such, the appointment of the director was held to be invalid. Would the acts of Atul, done by him as director, be valid and binding upon the company? 3**
- (ii) According to the Institute of Internal auditors, 'Internal audit involves five areas of operation'. Explain this statement. 5**

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Answer:

(b) (i) According to Sec. 176 of Companies Act 2013, all acts of the director are valid notwithstanding the fact that his appointment is afterwards discovered to be invalid, the reason of any defect in his appointment. This is to protect outsiders as well as members dealing with the company. In this case the defects in the appointment of the director were found out subsequent to his appointment. The director had no knowledge of the defects until he had started acting as a director. The validity of the acts of the director cannot be questioned just on the basis of irregularities subsequently discovered in the appointment of the director.

(ii) According to the Institute of Internal Auditors, internal audit involves five areas of operations, which can be discussed as follows-

(a) **Reliability and Integrity of Financial and operating Information:** Internal Auditors should review the reliability and integrity of financial and operating information and the means used to identify, measure, classify and report such information.

(b) **Economical and Efficient Use of Resources:** Internal auditor should ensure the economic and efficient use of resources available.

(c) **Compliance with Laws, Policies, Plans, Procedures, regulations:** Internal auditor should review the systems established to ensure compliance with those policies, plans and procedures, law and regulations which could have a significant impact on operations and should determine whether the organization is in compliance thereof.

(d) **Accomplishment of established goals for operations:** Internal auditor should review operations, programmes to ascertain whether results are consistent with established objectives and goals and whether the operations or programmes are being carried out as planned.

(e) **Safeguarding of assets:** Internal auditor should verify the existence of assets and should review means of safeguarding assets.

(c) (i) **Manish, a textiles dealer, supplied certain bales of cloth to the company which is duly incorporated has obtained a certificate of incorporation. However, the company went into liquidation before it could obtain certificate to commence business. Can Manish claim the price of bales of cloth in liquidation proceedings?** **2**

(ii) **Describe Cost Audit Methodology in Corporate Governance.** **3**

(iii) **Under what conditions complaints can be made under RTI Act?** **3**

Answer:

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- (c) (i) No, as all contracts, after incorporation but before obtaining certificate to commence business are provisional and not binding on the company till such certificate is obtained.

[**Note:** The answer is given as per Section 149(4) of Companies Act, 1956, which is replaced by section 11 of Companies Act, 2013. As per Companies (Amended) Act, 2015 section 11 stands omitted]

- (ii) The cost audit methodology as structured originally under section 233B of the bill has the following two perspectives:

- The attestation of cost structure
- The efficiency review perspective, which is more methodology driven.

In a period of price control and administered interventions attested cost structure had a major role to play and hence the attestation perspective got the emphasis. The profession had to play a major role of verifying and validating the cost figures in the selected industries before they were submitted to the government. The efficiency review was relatively less emphasized and therefore, did not receive much impetus in the form of new auditing techniques and methodology. We now need to develop a new vision and strategy for cost audit mechanism.

With the economy moving away from being a centrally controlled model to competitive, relatively free market model, the role of cost quality and timely delivery have become the basis for survival. The role of efficiency review from angles of quality, cost and delivery has assumed utmost importance today.

- (iii) If any person is unable to submit a request to a Public Information Officer either by reason that such an officer has not been appointed by the concerned public authority; or the Assistant Public Information Officer has refused to accept his or her application or appeal for forwarding the same to the Public Information Officer or the appellate authority, as the case may be; or he has been refused access to any information requested by him under the RTI Act; or he has not been given a response to a request for information within the time limit specified in the Act; or he has been required to pay an amount of fee which he considers unreasonable; or he believes that he has been given incomplete, misleading or false information, he can make a complaint to the Information Commission.

4. Answer any two questions:

8×2=16

- (a) (i) 'The terms ethics and morals are etymologically different'. Explain.**

3

- (ii) Explain the potential conflicts faced by a finance and accounting professional in the role of independent consultant and employee.**

5

Answer:

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4. (a) (i) The terms 'ethics' and morals are etymologically, that is, from their very roots or terms, different. The word moral(s) is derived from the Latin root moralis, which implies custom. In other words, it refers to a behavior that is accepted or rejected due to an accepted social custom. The word ethics stems from the Greek word ethikos, which attributes to a social environment, referred to as ethos or social milieu. This latter meaning embraces much more than mere custom. It refers to everything that is part and parcel of society and not just what is allowed or forbidden. Morality is more concerned with the norms, values and beliefs embedded in social processes which define what is right or wrong for an individual or community.

Another point of difference between the two refers to their usage in ordinary language. For instance, a lawyer defending an alleged rapist would accuse the victim as 'morally fallen' and not as 'ethically fallen'. On the other hand, a committee that is formed to probe the behavior of the members of Parliament would be called 'ethics committee', not 'moral committee'. The meaning of the word is in its usage. Thus, both these terms have their unique characteristics and applications.

(ii) A finance and accounting professional has a professional obligation to comply with certain fundamental principles. A 'conflict of interest' arise where the professional have to decide between compliance with principles and actions which are beneficial to the business organization at large.

A. In the role of an Independent Consultant:

A finance and accounting professional in public practice should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may sometimes even give rise to threats to compliance with the fundamental principles.

B. In the role of an employee

A finance and accounting professional working as employee, should support the legitimate and ethical objectives established by the organization and the rules and procedure drawn up in support of those objectives. He may be pressurized to act or behave in ways which directly or indirectly threaten the fundamental principles. Such pressure may be:

(A) Explicit or implicit,

(B) From a Manager, director or any other concerned person.

A finance and accounting professional may face pressure to:

(i) Act contrary to law or regulation

(ii) Act contrary to technical or professional standards.

(iii) Facilitate unethical or illegal earnings management strategies

(iv) Lie to, or otherwise intentionally mislead

(v) Issue, or otherwise be associated with, a financial or non-fictional report, that materially misrepresents the facts.

(b) (i) State the evolution of ethics.

3

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- (ii) Explain two broad categories of safeguards created by business enterprise to eliminate threats. 5

Answer:

(b) (i) Social conduct has evolved along with the evolution of society. When our elders tell us '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. The laws of 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.

(ii) It is important to have safeguards created by the Finance and Accounting profession, to identify or deter unethical behavior. Such safeguards to eliminate or reduce threats may be classified in two broad categories:

- Safeguards created by the Finance and Accounting profession, Legislation or Regulation.
- Safeguards in the work environment.

(A) Safeguards created by the Finance and Accounting profession, Legislation or Regulation:

- Educational, training and experience requirements for entry into the profession.
- Continuing professional development requirements.
- Corporate Governance Regulations.
- Professional standards.
- Professional or regulatory monitoring and disciplinary procedures.
- External review of reports by a legally empowered third party.

(B) Safeguards in the work environment:

- The employing organization's ethics and conduct programs.
- Employing competent staff.
- Strong internal controls.
- Appropriate disciplinary processes.
- Leadership or cultivating ethical behavior to encourage employees to act in ethical manner.

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- Policies and procedures to implement and monitor the quality of employee performance.
- Timely communication of organisation's policies and procedures.
- Employee training and education on policies and procedures.
- Encourage employees to communicate ethical issues without fear of retribution, organisation's system of corporate overview.

(c) (i) 'Fairness and honesty are the pillars of success in business'. Comment. 4

(ii) What is meant by Conflicts Resolution Process? What steps should be taken to resolve the conflict issues? 4

Answer:

(c) (i) The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination. One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. Another aspect of fairness relates to competition. Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition.

Rivals of Microsoft, for example, accused the software giants of using unfair and monopolistic practices to maintain market dominance with its Internet explorer browser.

These aforesaid examples show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. Therefore we may say that fairness and honesty are the pillars of success in the business.

(ii) A finance and accounting professional should determine the appropriate course of action and weigh the consequences of each possible course of action. If the matter remains unresolved, the professional should consult with other appropriate persons within the firm and if required, with persons responsible for governance of the organisation (e.g. Board of Directors).

The following steps are suggested to resolve the issues:

(a) **Documentation:** He should document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

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- (b) **Legal Advice:** If a significant conflict cannot be resolved, a professional may obtain advice from the relevant professional body or legal advisors without breach of confidentiality.

- (c) **Withdrawal:** If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict, withdraw from the engagement team or specific assignment or resign from the employing organization.