

**INTERMEDIATE EXAMINATION
GROUP I
(SYLLABUS 2012)**

**SUGGESTED ANSWERS TO QUESTIONS
DECEMBER 2016**

Paper-6: LAWS, ETHICS & 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 part of your answer.

Assumptions, if any, must be clearly indicated.

SECTION A

1. Answer all questions:

(a) Multiple choice questions:

1x10=10

(i) A contract creates

- (a) jus in personam.
- (b) jus in rem.
- (c) only rights and no obligations.
- (d) only obligations and no rights.

(ii) Provisions of EPF & misc Prov Act 1952 are applicable to Cinema/Theatre employing

- (a) 10 or more persons.
- (b) 20 or more persons.
- (c) 5 or more persons.
- (d) 15 or more persons.

(iii) In the absence of Partnership agreement, the Partner has

- (a) right to avail interest on advances paid to partnership firm.
- (b) right to avail interest on advances paid to partnership firm provided there is profit.
- (c) has no right to avail interest on advances.
- (d) has right to avail interest on advances even after dissolution of the firm.

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- (iv) A person who is employed by the seller to raise the price by fictitious bids. Such person is known as
- (a) Puffer
 - (b) By bidder
 - (c) Decoy Ducks
 - (d) All of the above
- (v) In case of banker's refusal to honour the cheque inspite of sufficient funds in customer's account, the banker is
- (a) liable to compensate the drawer.
 - (b) not liable to compensate the drawer .
 - (c) criminally liable under section 138.
 - (d) liable to be delisted.
- (vi) Dependants benefit is paid at the rate of
- (a) 60% of wages in the form of monthly payment.
 - (b) 75% of wages in the form of monthly payment.
 - (c) 80% of wages in the form of monthly payment.
 - (d) 90% of wages in the form of monthly payment.
- (vii) Board of Directors of every listed Company shall constitute an Audit Committee which shall consists of a minimum of
- (a) 2 Directors
 - (b) 3 Directors
 - (c) 4 Directors
 - (d) 5 Directors
- (viii) The maximum limit of bonus payable to an employee is fixed by way of percentage of salary or wages earned by the employee during the accounting year, the percentage is:
- (a) 10%
 - (b) 15%
 - (c) 20%
 - (d) 25%
- (ix) Who is the head of Central Information Commission?
- (a) The State Information Commissioner
 - (b) The Chief Information Commissioner
 - (c) The Chief Information Officer
 - (d) The Chairman of Information Commission
- (x) Business Ethics also called as Corporate Ethics is a form of
- (a) Positive Ethics

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- (b) Applied Ethics
- (c) Physical Ethics
- (d) Practical Ethics

Answer:

1. (a) (i) (a) Jus in personam
(ii) (c) 5 or more persons.
(iii) (a) Right to avail interest on Advances paid to Partnership Firm.
(iv) (d) All of the above.
(v) (a) Liable to compensate the drawer.
(vi) (d) 90% of wages in the form of monthly payment.
(vii) (b) 3 Directors.
(viii) (c) 20%
(ix) (b) The chief information commissioner.
(x) (b) Applied ethics.

1. (b) Fill in the blanks:

1×5=5

- (i) All wages payable under Payment of Wages Act, 1936 is required to be paid in current coins or in _____ or both.
- (ii) No adult worker can be allowed to work more than _____ hours in a day.
- (iii) A Meeting of Board of Directors must be held at least once in every _____ months.
- (iv) Only designated partners are liable to obtain unique identification number called as _____.
- (v) Where the paid up share capital of an One Person Company exceeds _____ or its average annual turnover during the relevant period exceeds _____, it shall cease to be entitled to continue as a One Person Company.

Answer:

1. (b) (i) Currency notes.
(ii) Nine.
(iii) Three / Four
(iv) Designated Partner Identification Number (DPIN)
(v) Fifty lakh rupees, two crore rupees.

1. (c) State whether the following statements are True (or) False:

1×5=5

- (i) Broader definitions of Corporate Governance stress a broader level of accountability to shareholders and other stakeholders.

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- (ii) According to the Payment of Wages Act, 1936 other deduction cannot be more than 50% of wages.
- (iii) Limited liability Partnership should have a minimum paid up capital of INR 1,00,000.
- (iv) Two thirds of total directors can be given permanent appointment in the company.
- (v) There is a prescribed Performa for RTI application.

Answer:

- 1. (c) (i) True
- (ii) True
- (iii) False
- (iv) False
- (v) False

1. (d) Match the following (any five):

1×5=5

	Column 'A'		Column 'B'
1.	Allocable Surplus	(A)	Indian Contract Act
2.	Cost Audit Methodology	(B)	Payment of Bonus Act
3.	Doctrine of Implied authority	(C)	Sale of Goods Act
4.	Doctrine of Frustration	(D)	Business Ethics
5.	Damping	(E)	Corporate Governance
6.	Consumer Movement	(F)	Indian Partnership Act

Answer:

1. (d)

	Column 'A'		Column 'B'
1.	Allocable Surplus	(B)	Payment of Bonus Act
2.	Cost Audit Methodology	(E)	Corporate Governance
3.	Doctrine of Implied authority	(F)	Indian Partnership Act
4.	Doctrine of Frustration	(A)	Indian Contract Act
5.	Damping	(C)	Sale of Goods Act
6.	Consumer Movement	(D)	Business Ethics

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SECTION - B

2. Answer any three questions:

15×3 = 45

- (a) (i) What are the rights of a finder of goods under the Indian Contract Act, 1872? 4
- (ii) Which are the essential elements of a valid acceptance of a Bill of Exchange? An acceptor accepts a 'Bill of Exchange' but write on it 'Accepted but payment will be made when goods delivered to me is sold.' Decide the validity. 7
- (iii) What are the consequences of 'destruction of goods' under the Sale of Goods Act, 1930, where the goods have been destroyed after the agreement to sell but before the sale is affected. 4

Answer:

2. (a) (i) A finder of goods has the following rights under the Indian Contract Act, 1872
- (1) **Right of lien:** The finder of goods has a right of lien over the goods for his expenses. As such he can retain the goods against the owner until he receives compensation for trouble and expenses incurred in preserving the goods and finding out the owner. But he has no right to sue the owner for any such compensation (Section 168).
 - (2) **Right to sue for reward:** The finder can sue for any specific reward which the owner has offered for the return of the goods. He may also retain the goods until he receives the reward. (Section 168)
 - (3) **Right of resale:** The finder has a right to sell the goods in the following cases:
 - (a) where the goods found is in danger of perishing;
 - (b) where the owner cannot, with reasonable diligence, be found out;
 - (c) where the owner is found out, but he refuses to pay the lawful charges of the finder; and
 - (d) where the lawful charges of the finder, in respect of the goods found, amount to $\frac{2}{3}$ rd of its value.

(ii) **Essentials of a Valid Acceptance of a Bill of Exchange:**

The essentials of a valid acceptance are as follows: ----

1. **Acceptance must be written:** The drawee may use any appropriate word to convey his assent. It may be sufficient acceptance even if just signatures are put without additional words. An oral acceptance is not valid in law.
2. **Acceptance must be signed:** A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance.
3. **Acceptance must be on the bill:** The acceptance should be on the face of the bill normally but it is not necessary. An acceptance written on the back of a bill

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has been held to be sufficient in-law. What is essential is that must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it.

4. **Acceptance must be completed by delivery:** Acceptance would not be complete and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf.
5. **Where a bill is drawn in sets, the acceptance should be put on one part only:** Where the drawee signs his acceptance on two or more parts, he may become liable on each of them separately.
6. **Acceptance may be either general or qualified:** An acceptance is said to be general when the drawee assents without qualification order of the drawer. The qualification may relate to an event, amount, place, time etc. (Explanation to Section 86 of the Negotiable Instruments Act 1881).

In the given case, the acceptance is a qualified acceptance since a condition has been attached declaring the payment to be dependent on the happening of an event therein stated. As a rule, acceptance must be general acceptance and therefore, the holder is at liberty to refuse to take a qualified acceptance. Where, he refuse to take it, the bill shall be dishonoured by non-acceptance. But, if he accepts the qualified acceptance, even then it binds only him and the acceptor and not the other parties who do not consent thereto. (Section 86).

(iii) Destruction of Goods-Consequences:

- (i) In accordance with the provisions of the Sale of Goods Act, 1930 as contained in Section 7, a contract for the sale of specific goods is void if at the time when the contract was made; the goods without the knowledge of the seller, perished or become so damaged as no longer to answer to their description in the contract. The rule is based on ground of mutual mistake or impossibility of performance, which is one of the essentials of a valid contract.
- (ii) In a similar way Section 8 provides that an agreement to sell specific goods becomes void if subsequently the goods, without any fault on the part of the seller or buyer, perish or become so damaged as no longer to answer to their description in agreement before the risk passes to the buyer. This rule is also based on the ground of impossibility of performance as stated above.
It may, however, be noted that section 7 & 8 apply only to specific goods and not to unascertained goods. If the agreement is to sell a certain quantity of unascertained goods, the perishing of even the whole quantity of such goods" in the possession of the seller will not relieve him of his obligation to deliver the goods.

2. (b) (i) Explain the 'time limit for payment of bonus' to the employees in different circumstances under the provisions of the Payment of Bonus Act, 1965. 5

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- (ii) Explain the manner in which the gratuity payable to employees in a seasonal establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the Act. 5
- (iii) Explain the meaning of the term 'Money Laundering'. Z, a known smuggler was caught in transfer of funds illegally exporting narcotic drugs from India to some countries in Africa. State the maximum punishment that can be awarded to him under Prevention of Money Laundering Act, 2002. 5

Answer:

2. (b) (i) **Time limit for payment of bonus:** Section 19 of the Payment of Bonus Act, 1965 prescribes the time limit for the payment of bonus under the following conditions:

- (1) Under Section 19 (1) (a) of the said Act, where the dispute is between the employer and the employees regarding the payment of bonus and such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
- (2) Under Section 19 (1) (b) of the said Act, in all other cases, the payment of bonus is to be made within a period of 8 months from closing of the accounting year. But this period of 8 months may be extended up to a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and is satisfied that sufficient reasons exist for granting extension. Moreover, the extension can be made only by an order.

(ii) **Seasonal Establishments** - In the case of seasonal establishment the employees can be classified into 2 groups.

- (a) Those who work throughout the year and
(b) Those who work only during the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months. The latter are entitled to receive gratuity at the rate of 7 days for each season.

Under section 4(3) of the Payment of Gratuity Act, 1972, the amount of gratuity payable to an employee shall not exceed ₹ Ten lakhs.

(iii) **Money Laundering:** Whosoever directly or indirectly attempts to indulge or knowingly assists or knowingly is a party or is actually involved in any process or activity connected with the proceeds of crime and projecting it as untainted property shall be guilty of offence of money laundering. [Section 3 of the Prevention of Money Laundering Act, 2002]

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Paragraph 2 of Part A of the Schedule to the Prevention of Money Laundering Act, 2002, covers Offences under the Narcotic Drugs and Psychotropic Substances Act, 1985. Whereby, Illegal import into India, export from India or transshipment of narcotic drugs and psychotropic substances (Section 23) is covered under paragraph 2 of Part A.

Punishment: Section 4 of the said Act provides for the punishment for Money-Laundering. Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine. But where the proceeds of crime involved in money-laundering relate to any offence specified under paragraph 2 of Part A of the Schedule, the maximum punishment may extend to 10 years instead of 7 years.

2. (c) (i) **A, aged 16 years, was studying in an engineering college. On 1 June, 2015 he took a loan of ₹ 2 Lakhs from B for the payment of his college fee and agreed to pay by 31st July 2016. A possesses assets worth ₹ 20 Lakhs. On due date, A fails to pay back the loan to B. B now wants to recover the loan from A out of his assets. Whether B would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872. 5**
- (ii) **A delivered some diamonds to B on sale or return basis. B delivered the diamonds to C and C to D on similar terms. The diamonds were stolen while in the custody of D. Who shall suffer the loss? 5**
- (iii) **X and Y were partners carrying on a banking business. X had committed adultery on several women in the city and his wife had left on this ground. Y applied to the court for dissolution of the firm on this ground. Will he succeed? 5**

Answer:

2. (c) (i) The problem in question is covered under the exceptions. As per Section 68 of the Indian Contract Act, 1872 though a minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, this supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/tender is based on the principle of equity. Thus, according to the above provision, B will be entitled to recover the amount of loan given to A for payment of college fees from the property of A, the minor.
- (ii) In this case, B has adopted the transaction by delivering the diamonds to C and thus is liable to pay the price to A. Similarly C has adopted the transaction by further delivery to D and thus is liable to pay the price to B. As between C and D, the

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transaction was still of sale or return which was not adopted by D, either expressly or impliedly, and thus the ownership had not passed to D at the time of loss. Hence C shall suffer the loss of diamonds.

(iii) As per section 44(c) of Indian Partnership Act, 1932 sometimes, a partner is guilty of misconduct. When the court is satisfied that the misconduct adversely affect the partnership business the court may allow the dissolution of the firm. B will not succeed. In this case, though A is guilty of misconduct but his misconduct does not have any adverse affect on their business as bankers [Snow v. Milform (1868) 18 LT 142]. In this case, the court observed that how can it be said that a man's money is less safe because one of the partner commits adultery. It was further observed that in those cases where the moral conduct of a partner would affect the firm business, it can be a ground for dissolution of the firm. e.g. where a medical man had entered into partnership with another and it was found that his conduct was very immoral towards some of his patients, the firm can be dissolved on the ground of misconduct by the partner.

2. (d) (i) **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 under Factories Act, 1948.** 6
- (ii) **List the circumstances under which a LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal.** 6
- (iii) **X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930.** 3

Answer:

2. (d) (i) 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;
 - (vi) Preserving or storing any article in cold storage;

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Process undertaken at electricity generating station, sub-station is 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].

- (ii) A limited liability partnership may be wound up by the Tribunal, if:
- (i) The limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
 - (ii) If, for a period of more than six month, the number of partners of the limited liability partnership is reduced below two;
 - (iii) If the limited liability partnership is unable to pay its debts;
 - (iv) If the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
 - (v) If the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
 - (vi) If the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.
- (iii) X has no remedy against the seller as the doctrine of Caveat Emptor will apply.

"Caveat emptor" means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

2. (e) (i) **What are the regulations of hours and period of the work of children under the provisions of the Child Labour (Prohibition and Regulation) Act, 1986.** 7
- (ii) **Employees provident funds and Miscellaneous Provisions Act, 1952 is not applicable to certain establishments. List out those establishments.** 5
- (iii) **A workmen employed in an industrial establishment can be retrenched any time under the provisions of the Industrial Dispute Act, 1947. Comment.** 3

Answer:

2. (e) (i) REGULATION OF CONDITIONS OF WORK OF CHILDREN

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(A) Hours and period of work (Sec7)

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

(B) Weekly holidays (Sec 8)

Every child employed in an establishment shall be allowed in each week, a holiday of one whole day, which day shall be specified by the occupier in a notice permanently exhibited in a conspicuous place in the establishment and the day so specified shall not be altered by the occupier more than once in three months.

(ii) The Employees Provident Fund and Miscellaneous Provisions Act, 1952 does not apply to certain establishments as specified under Section 16 of the said Act. They are as follows:

- (a) Any establishment registered Under the Co-operative Societies Act 1912 or under any other law for the time being in force in any state relating to co-operative societies employing less than 50 persons and working Without the aid of power or
- (b) To any establishment belonging to or under the Control of the Central Government or a State Government and whose employees are entitled to the benefit of Contributory Provident Fund or old age pension. Or
- (c) Any other establishment set up under any Central Provincial or State Act and whose employees are entitled to any Contributory provident fund or old age pension.
- (d) Any newly setup establishment (less than 3 years).

Central Government having regard to the financial position of any class of establishment or other circumstances of the case may exempt that class of establishment from the operation of this Act for such period as specified in the notification Issued for this purpose.

(iii) Retrenchment:

An workman employed in an industrial establishment and rendered not less than one

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year service cannot be retrenched without 3 (three) months notice in writing indicating the reasons for retrenchment and prior permission of the Appropriate Government is obtained.

Any retrenchment without permission of the Appropriate Government is punishable with the imprisonment for a term which may extend to one month or with fine which may extend to INR 1000 or both.

SECTION - C

3. Answer any one question:

15×1 = 15

- | | |
|---|---|
| (a) (i) Enumerate the provision relating to ACT NOT TO APPLY TO CERTAIN ORGANIZATIONS under the Right to Information Act, 2005? | 5 |
| (ii) What are the areas of operations by an Internal Audit involved? | 5 |
| (iii) Explain Red Herring Prospectus under the Companies Act, 2013. | 5 |

Answer:

3. (a) (i) According to the Section 24 of the Right to Information Act 2005, ACT NOT TO APPLY TO CERTAIN ORGANIZATIONS as follows:

(1) Nothing contained in this Act shall apply to the intelligence and security organisations specified in the Second Schedule, being organisations established by the Central Government or any information furnished by such organisations to that Government:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the Central Information Commission, and notwithstanding anything contained in section 7; such information shall be provided within forty-five days from the date of the receipt of request.

(2) The Central Government may, by notification in the Official Gazette, amend the Schedule by including therein any other intelligence or security organisation established by that Government or omitting therefrom any organisation already specified therein and on the publication of such notification, such organisation shall be deemed to be included in or, as the case may be, omitted from the Schedule.

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(3) Every notification issued under sub-section (2) shall be laid before each House of Parliament.

(4) Nothing contained in this Act shall apply to such intelligence and security organisation being organisations established by the State Government, as that Government may, from time to time, by notification in the Official Gazette, specify:

Provided that the information pertaining to the allegations of corruption and human rights violations shall not be excluded under this sub-section:

Provided further that in the case of information sought for is in respect of allegations of violation of human rights, the information shall only be provided after the approval of the State Information Commission and, notwithstanding anything contained in section 7, such information shall be provided within forty-five days from the date of the receipt of request.

(5) Every notification issued under sub-section (4) shall be laid before the State Legislature.

(ii) According to The Institute of Internal Auditors, internal audit involves five areas of operations, which may 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.

(iii) Red Herring Prospectus [Section 32 of the Companies Act, 2013]

- (1) A company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus.

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- (2) A company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.
- (3) A red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.
- (4) Upon the closing of the offer of securities under this section, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

Explanation - For the purposes of this section, the expression "red herring prospectus" means a prospectus which does not include complete particulars of the quantum or price of the securities included therein.

3. (b) (i) **How many Independent Directors have to be appointed in a company under the Companies Act, 2013?** 5
- (ii) **State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013.** 5
- (iii) **AB Ltd. has advanced a loan of ₹ 2,00,000 to one of its directors in Contravention of the provision of Section 185 of the Companies Act, 2013. State the consequences of such contravention.** 5

Answer:

3. (b) (i) Number of Independent Directors

The following class or classes of companies shall have at least two directors as independent directors –

- (i) the Public Companies having paid up share capital of ten crore rupees or more; or
- (ii) the Public Companies having turnover of one hundred crore rupees or more; or
- (iii) the Public Companies which have, in aggregate, outstanding loans, debentures and deposits, exceeding fifty crore rupees.

Provided that in case a company covered under this rule is required to appoint a higher number of independent directors due to composition of its audit committee, such higher number of independent directors shall be applicable to it.

Provided further that any intermittent vacancy of an independent director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy, whichever is later.

Provided also that where a company ceases to fulfill any of three conditions laid

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down in sub-rule (1) for three consecutive years, it shall not be required to comply with these provisions until such time as it meets any of such conditions.

Explanation - For the purposes of this rule, it is here by clarified that, the paid up share capital or turnover or outstanding loans, debentures and deposits, as the case may be, as existing on the last date of latest audited financial statements shall be taken into account.

Provided that a company belonging to any class of companies for which a higher number of independent directors has been specified in the law for the time being in force shall comply with the requirements specified in such law.

(ii) Procedure for shifting the registered office from one state to another state (Section 13, of the Companies Act, 2013):

In order to shift the registered office from one state to another the following procedure will have to be followed:

- (i) Hold a Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office from one state to another will have to be approved;
- (ii) The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from one state to another as required by section 13 (1) of the Companies Act 2013.
- (iii) Make an application to the Central Government in such form and manner as may be prescribed, for getting its approval under section 13 (4) of the Companies Act 2013.
- (iv) Under section 13 (7) of the Companies Act 2013, where an alteration of the Memorandum results in the transfer of the registered office of the company from one state to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the registrar of each of the states, within such time and in such manner as may be prescribed, and the registrars shall register the same. The registrar of the state where the registered office is being shifted to shall issue a fresh certificate of incorporation indicating the alteration.
- (v) The change in name will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to.

(iii) Loans to Directors (Sec. 185 of Companies Act 2013)

According to Sec. 185 (1) no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt, to any of its directors or to any other person in whom the director is interested or give any guarantee or provide any security in connection with any loan taken by him or such other person.

Contravention: If any loan is advanced or a guarantee or security is given or

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provided in contravention of the provisions of sub-section (1), the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty five lakh rupees, and the directors or the other person to whom any loan is advanced or guarantee or security is given or provided in connection with any loan taken by him or the other person, shall be punishable with imprisonment which may extend to six months or with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees, or with both.

SECTION - D

4. Answer any one questions: 15×1 = 15
- (a) (i) What is the difference between morals and ethics? 7
- (ii) Explain the safeguards which may be created by business enterprise to overcome various threats faced by accounting & finance professionals. 8

Answer:

4. (a) (i) First of all analysis of the key terms 'ethics' and 'morals' is to be done. The linguistic use of the terms, they seem as if they are in the plural form, just as 'economies' or 'polities', but we treat them as singular. Generally, ethics and morals are used as synonyms. There is nothing wrong in such a usage, for after all, the meanings of all words depend on their common usage. However, in formal study, we need to understand the meaning of the terms in a qualified way so as to make our subject of study precise and well defined.

Meaning: 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 ethike, 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.

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Thus, both these terms have their unique characteristics and applications.

Usage: However, the terms are intrinsically not different. Both of them refer to the same reality of human actions, which may be characterized as morally or ethically positive or negative as the case may be. It may be true that the terms (ethics and morals) sound different but they refer to the same social reality wherein a certain body of accepted norms forms a code of conduct in society. The actions of the members are described as 'moral' or 'ethical' depending on the linguistic nuances of the meaning in a particular case as well as on the conventional use of the terms. It is in the use of the words in a given context, that the meaning becomes clear.

In academic usage, however, moral behavior refers to a concrete behavior such as showing respect to elders. Ethics, on the other hand, is used to mean a discipline or a systematic study of moral behavior such as justice. People's behavior in a society can be morally characterized in their day to day actions. It is in the classroom that we analyse the ethical significance of these actions.

These terms are generally interchanged with one and the same meaning, that is, to determine whether some human action is right or wrong. They deal with the application of a socially accepted code of conduct. This conduct may be termed as either moral conduct or ethical conduct.

(ii) It is important to have safeguards created by the Finance and Accounting Profession, to entify or deter unethical behavior. Such safeguards to eliminate or reduce threats may 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.

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- Appropriate disciplinary processes.
- Leadership for cultivating ethical behavior to encourage employees to act in ethical manner.
- Policies and procedures to implement and monitor the quality of employee performance.
- Timely communication of organization's policies and procedures.
- Employee training and education on policies and procedures.
- Encourage employees to communicate ethical issues without fear of retribution.
- Organization's system of corporate overview.

4. (b) (i) Explain in brief the measures to ensure ethics in the work place. 8
(ii) Explain the need of ethics for a finance and accounting professionals. 7

Answer:

4. (b) (i) An ethical company may develop certain basic principles which will guide its employees in dealing with ethical issues at the workplace. A set of such principles is given below:
1. **Codes of Ethics and Conduct:** A code of ethics specifies the company's rules regarding ethical behaviour in the workplace. For e.g., company's code may prohibit employees from accepting gifts from suppliers and clients. Code becomes more effective when the top management actively supports and applies it.
 2. **Establish open communication:** Most ethical issues in business are ambiguous and uncertain. Therefore, there is need to create work environment in which employees feel free to discuss ethical dilemmas. Management should explain the purpose and contents of ethical policy. Training is required to sensitize employees to potential ethical issues. Necessary resources and support need to be provided to help employees to resolve ethical dilemmas.
 3. **Appoint an ombudsman:** Ombudsman serves as a point of reference. Employees can go to him and discuss ethical issues in confidence.
 4. **Leadership by example:** Ethical behavior is best taught by example. A father who insults his parents cannot expect respect from his children. Top management should themselves follow ethical practices and also create an impression that unethical behavior will not be tolerated.
 5. **Integrate ethics management with other management practices:** When

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developing the values statement during strategic planning, ethical value should be preferred in the workplace. When developing personnel policies, reflect on what ethical value, you'd like to be most prominent in the organization's culture and then design policies to produce these behaviours.

6. **Group decision making:** If ethical issues are decided in groups, diverse interests and perspectives can be considered. The decision process becomes more acceptable.
7. **Suggestion system:** A suggestion box may be installed so that employees may report suspended unethical activities in an anonymous manner. This will encourage employees to report ethical violations.
8. **Grievance Procedure:** An appropriate grievance redressal system may be created. This will help to resolve disagreements between employees and their supervisors on ethical issues.
9. **Regularly update policies and procedure:** Policies and procedures concerning ethics at the workplace need to be reviewed and updated on regular basis.

(ii) Need for Professional Values and Attitudes of Accountants

Finance and accounts are primary business functions with responsibility to function in public interest.

Finance and accounting professionals are regarded very high in terms of professional ethics. However, various accounting scams witnessed during the past few years have cast clouds on the role of finance and accounting professionals in providing right information both within and outside their respective organizations.

Importance of Ethics for a Finance and Accounting Professionals are:

- A. **Need:** Finance and accounting professionals are responsible to act in public interest, not restricted to satisfy the needs of any particular individual or organization. They have to follow ethical principles to achieve their objective of "service in public interest".
- B. **Role:** Accounting scandals, use of false and misappropriated accounting information, direct involvement in detrimental activities, refusing to identify frauds and embezzlements reported by employees etc. have led to failure of high-profile organizations. These failures may lead to the negligence of finance and accounting professionals and their ethical conduct may be subjected to sharp criticism.

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The International Accounting Educations Standards Board has released for public exposure a proposed revision of values and attitudes of professional accountants. It prescribes the attitudes that professional accountants should acquire during the education programme leading to qualification. The regular review and updating of professional values, ethics and attitudes is essential to the development and maintenance of competence. Moreover, increasing competence, improves the quality of financial information - a key component of business decision making. The coverage of values and attitudes in education programs for professional accountants should lead to commitment towards:-

- (a) Public interest and sensitivity to social responsibilities.
- (b) Continual improvement and lifelong learning.

Professional accountants need to operate in dynamic world of change. Good governance, both corporate and public, depends greatly on adherence to a strict code of professional values and attitudes. In such circumstances understanding of ethical principles is essential to enable them to operate effectively with integrity and discernment in an ever changing business environment. The purpose of professional standard bodies is to assist members in such tasks.