

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

DECEMBER 2017

Paper- 6 : LAWS ETHICS AND GOVERNANCE

Time Allowed : 3 Hours

Full Marks : 100

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

SECTION - A

1. Answer all questions:

(a) Multiple Choice questions

1×10=10

- (i) A invites B for his son's wedding. B accepts the invitation. In this case, there is an agreement but no contract since.
- (A) There is no consideration.
 - (B) There is no intention to create legal relationship.
 - (C) There is no written document.
 - (D) There is no formal acceptance of the offer.
- (ii) If P makes an agreement with Q, an artist, to paint a portrait of P for ? 2,000 and Q use his own canvas & paint. Here it is
- (A) Contract of Sale
 - (B) Contract of work and material.
 - (C) Sale on approval
 - (D) Hire Purchase agreement.
- (iii) As per the payment of Wage Act, 1936, no fine can be imposed on a person under the age of _____.
- (A) 13 years
 - (B) 14 years
 - (C) 15 years

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- (D) 16 years
- (iv) Who is an insurable employee under ESI Act, 1948?
- (A) Workers in mines subject to Mines Act, 1952 [Sec 2(12)]
 - (B) Workers in a railway running shed [Sec 2(12)]
 - (C) Any member of [the Indian] naval, military or air forces [Sec 2(9)]
 - (D) All employees in factories or establishments to which this act applies
- (v) Holder in due course means any person
- (A) Drawing the instrument.
 - (B) Who for consideration become the possession of a promissory note.
 - (C) Named in the instrument to whom or to whom order the money is directed to be paid.
 - (D) None of the above
- (vi) Intimation of the reconstitution of change in a registered partnership is to be given to the Registrar of firms:
- (A) No time limit
 - (B) Within 30 days
 - (C) Within 60 days
 - (D) Within 90 days
- (vii) Which one of the following is not correct?
- (A) The articles of the company shall provide for the appointment of Chairman in a meeting.
 - (B) The members personally present at the meeting shall elect one of themselves to be Chairman on a show of hands, if the article does not provide for the same.
 - (C) Managing Director is the Chairman of the meeting.
 - (D) The member selected as Chairman as a result of poll, continue the Chairman, who is elected by show of hands.
- (viii) Who was the Chairman of Turnbull Committee?
- (A) Angel Turnbull
 - (B) Nigel Turnbull
 - (C) Michael Turnbull
 - (D) William Turnbull
- (ix) Law is _____ of ethics.
- (A) No connection
 - (B) decertification
 - (C) codification
 - (D) visualization
- (x) Which of the following threat may not affect the business environment and

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influence finance and accounting professionals?

- (A) Self actualization
- (B) Self Interest
- (C) Advocacy
- (D) Self Review

(b) Fill in the Blanks: 1×5=5

- (i) Agreement by wager is _____.
- (ii) Wages should be paid before the expiry of _____ of the wage period in less than 1000 persons are employed.
- (iii) The liabilities of LLP shall be met out of the properties of _____ partners.
- (iv) The Right to Information Act also provides, in terms of Section 5, for appointment of Public Information Officers and _____ to address requests for information.
- (v) The word ethics stems from the Greek word _____.

(c) State whether the following statements are True or false: 1×5=5

- (i) If the seller wrongfully neglects or refuses to deliver the goods to the buyer, the buyer cannot sue to seller damages for non delivery.
- (ii) Bill of Exchange is an undertaking to pay.
- (iii) Employment in which the ESI is applicable are covered by the Employees Compensation Act, 1923.
- (iv) A one-person company means a company which has only one person as a member.
- (v) Ethics, in the practical sense, is also known as moral action and is an applied discipline.

(d) Match the following: 1×5=5

Column 'A'		Column 'B'	
1.	Quasi contract	(A)	An interest or lien created on the property or assets of a company or any of its undertakings or both as security and including a mortgage.
2.	Doctrine of Implied authority	(B)	Form No. INC-11
3.	Charge	(C)	Accepted behaviour is promoted and elevated.
4.	Certificate of Incorporation	(D)	A fictitious contract created under legal obligations, similar to a valid contract.
5.	A social value	(E)	Acting on behalf of others who is authorised the particular activity.

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Answer:

1. (a)

- (i) (B) there is no intention to create legal relationship
- (ii) (B) Contract of work and material.
- (iii) (C) 15 years
- (iv) (D) all employees in factories or establishments to which this act applies
- (v) (B) Who for consideration became the possession of a promissory note.
- (vi) (A) No time limit
- (vii) (C) Managing Director is the Chairman of the meeting
- (viii) (B) Nigel Turnbull
- (ix) (C) codification
- (x) (A) Self actualization

(b)

- (i) void
- (ii) 7th day
- (iii) Designated partners
- (iv) Assistant Public information officer
- (v) Ethike

(c)

- (i) False
- (ii) False
- (iii) False
- (iv) True
- (v) True

(d)

Column 'A'		Column 'B'	
1.	Quasi contract	(D)	A fictitious contract created under legal obligations, similar to a valid contract.
2.	Doctrine of Implied authority	(E)	Acting on behalf of others who is authorised the particular activity.
3.	Charge	(A)	An interest or lien created on the property or assets of a company or any of its undertakings or both as security and including a mortgage.
4.	Certificate of Incorporation	(B)	Form No. INC-11
5.	A social value	(C)	Accepted behaviour is promoted and elevated.

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SECTION - B

2. Answer any three questions:

15×3=45

- (a) (i) P induced Q to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Q complained that there were many defects in the motorcycle. P proposed to get it repaired and promised to pay 40% cost of repairs. After few days, the motorcycle did not work at all. Now Q wants to rescind the contract. Decide giving reasons. 6
- (ii) 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? 5
- (iii) Discuss the Provision for Hours and Period of Work under the Child Labour (Prohibition and Regulation) Act, 1986. 4

Answer:

- (a) (i) According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:
1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case Q could not rescind the contract, as his acceptance to the offer of P to bear 40% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

(ii) 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, then the contract is void ab initio. This section is based on the rule that whether both the parties to a contract are under a mistake as to a matter of fact essential to a contract, the act is void.
- (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

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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 or generic 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.

(iii) Hours and period of work (Sec.7)

- (1) No child shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class of establishments.
- (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 sub-section (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) (i) **Define Misrepresentation under the Indian Contract Act, 1872** **3**
- (ii) **Mr. A was shopping in a self-service super market. He picked up a bottle of cold drink from a shelf. While he was examining the bottle, it exploded in his hand and injured him. He files a suit for damages against the owner of the market on the ground of breach of condition. Decide, under the Sale of Goods Act, 1930, whether Mr. A would succeed in his claim.** **3**
- (iii) **Who is Occupier under the Factories Act, 1948?** **9**

Answer:

(b) (i) Misrepresentation means and includes—

- (1) The positive assertion, in a manner not warranted by the information of the person making it, of that which is not true, though he believes it to be true;
- (2) Any breach of duty which, without an intent to deceive, gains an advantage to the person committing it, or any one claiming under him, by misleading another to his prejudice or to the prejudice, of anyone claiming under him ;
- (3) Causing, however innocently, a party to an agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

(ii) Essentials of Sale

The problem as given in the question is based on Section 16(2) of the Sale of 'Goods

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Act, 1930, which states that where goods are bought by description from a seller who deals in goods of that description (whether he is the manufacturer or producer or not), there is an implied condition that the goods shall be of merchantable quality. Though the term 'merchantable quality' is not defined in the Act, it means that in the present case, the bottle must be properly sealed. In other words, if the goods are purchased for self-use, they should be reasonably fit for the purpose for which it is being used, in the instant case, on an examination of the bottle of cold drink, it exploded and injured the buyer. Applying the provision of Section 16(2). Mr. A would succeed in claim for damages from the-owner of the shop.

(iii) "Occupier of a factory is the person who has ultimate control over the affairs of the factory:

Provided that -

- (i) in the case of a firm or other association of individuals, any one of the individual partners or members thereof shall be deemed to be the occupier;
- (ii) In the case of a company, any one of the directors shall be deemed to be the occupier;
- (iii) In the case of a factory owned or controlled by the Central Government or an) State Government, or any local authority, the person or persons appointed to manage the affairs of the factory by the Central Government, the State Government or the local authority, as the case may be. Shall be deemed to be the occupier:

Provided further that in the case of a ship which is being repaired, or on which maintenance work is being carried out, in a dry dock which is available for hire, -

- (1) The owner of the dock shall be deemed to be the occupier for the purposes of any matter provided for by or under—
 - (a) Section 6, section 7, section 7A, section 7B, section 11 or section 12;
 - (b) Section 17, in so far as it relates to the providing and maintenance of sufficient and suitable lighting in or around the dock;
 - (c) Section 18, section 19, section 42. Section 46. Section 47 or section 49, in relation to the workers employed on such repair or maintenance;
- (2) The owner of the ship or his agent or master or other officer-in-charge of the ship or any person who contracts with such owner, agent or master or other officer-in-charge to carry out the repair or maintenance work shall be deemed to be the occupier for the purposes of any matter provided for by or under section 13, section 14, section 16 or section 17 (save as otherwise provided in this proviso) or Chapter IV (except section 27) or section 43, section 44 or section 45. Chapter VI, Chapter VII, Chapter VIII] or Chapter IX or section 108, section 109 or section 110, in relation to -
 - (a) The workers employed directly by him, or by or through any agency; and
 - (b) The machinery, plant or premises in use for the purpose of carrying out such repair or maintenance work by such owner, agent, master or other officer-in-charge or person;

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- (c) (i) 'No consideration, no contract'. – state the exceptions to it. 5
- (ii) In what way does the Negotiable Instruments Act, 1881 regulate the determination of the "Date of maturity" of a Bill of Exchange. Ascertain the "Date of maturity" of a bill payable 120 days after the date. The Bill of exchange was drawn on 1st June, 2017. 10

Answer:

(c) (i) There are exceptional cases where a contract is enforceable even through there is no consideration. They are as follows:

1. **Natural Love and affection:** An agreement made without consideration is valid if, "It is expressed in writing and registered and is made on account of nature love and affection between parties standing in a near relation to each other" – [Sec.25 (1)]
2. **Voluntary Compensation:** A promise made without consideration is valid if it is a promise to compensate wholly or in part, a person who has already voluntarily done something for the promisor or something which the promisor was legally compelled to do [Sec.25(2)]
3. **Time Barred Debt:** A promise to pay wholly or in part, a debt which is barred by the law of limitation can be enforced if the promise is in writing and is signed by the debtor or his authorized agent. [Sec.25(3)]
4. No consideration is required to create an **agency** (Sec.185).
5. **Completed Gift:** The rule "No consideration, no contract" does not apply to Completed Gifts. Thus if a person gives certain properties to another according to the provisions of the Transfer of Property Act, he cannot subsequently demand the property back on the ground that there was no consideration.

(ii) **Calculation of maturity of a Bill of Exchange:**

The maturity of a bill, not payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable (Section 22, Para 2 of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of a bill payable on demand, at sight, or presentment. When a bill is made payable as stated number of months after date, the period stated terminates on the day of the month, which corresponds with, the day on which the instrument is dated.

When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance when it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens. (Section - 23).

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When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates within the day of the month which corresponds with the day on which it was so accepted. If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23)

In calculating the date a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which they are expressed to be payable. (Section 22). When the last day of grace falls on a day, which is public holiday, the instrument is due and payable on the preceding business day (Section 25).

Answer to Problem: In this case the day of Presentment for sight is to be excluded i. e. 1st June 2017. The period of 120 days ends on 29th September, 2017 (June 29 days + July 31 days + Aug. 31 days + September 29 days). Three days of grace are to be added. It falls due on 2nd October 2017, which happens to be a public holiday. As such it will fall due on 1st October, 2017 i. e., the preceding Business day.

- (d) (i) **An employee was drawing salary of ₹9,500 per month. He joined his service on January 23rd, 2017 and remained absent from 11th February, 2017 to April 10th, 2017 due to temporary disablement caused by an accident arising out in due course of employment. Examine with reference to the Payment of Bonus Act, 1965, whether he is eligible for bonus for the year 2016-17?** **5**
- (ii) **Discuss, in brief, rules for winding up and dissolution of a LLP.** **10**

Answer

- (d) (i) In accordance with the provisions of Payment of Bonus Act, 1965, as contained in Section 2(13), read with section 8 and section 14, every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than 30 working days in the year on salary less than ₹ 21,000/- per month. Under Section 14 of the Act, the days when an employee has been absent due to temporary disablement caused by an accident arising out of and in the course of his employment will be included in calculating the total working days for the purpose of payment of bonus. In the instant case, the salary is falling within the limit as prescribed under the Act. His accident-leave period shall also be treated as working days for the purpose.

Therefore, in the given Case since the salary is falling the limit (i.e. not exceeding

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₹21,000/-per month), the employee is eligible for bonus for the year 2016-17. The leave period will be treated as working days (i. e. more than 30 working day)

(ii) **Dissolution of LLP-** Rules for winding up and dissolution

Central Government has power to make rules for dissolution and winding up of a LLP.

A perusal of the LLP Act 2008 shows that the provisions relating to dissolution of a LLP are more or less the same as provided in the Partnership Act, 1932 for dissolution of a Partnership firm. (Sec 65)

A partner may lend money to and transact other business with the limited liability partnership and has the same rights and obligations with respect to the loan or other transactions as a person who is not a partner (sec 66).

Application of the provisions of the Companies Act: As per section 67 the Central Government has power to direct by notification in the official gazette specify the provision of Companies Act, 1956 which will be applicable to a LLP or applicable to a LLP with such modification or adaption as may be specified in the notification. A copy of such notification is required to be laid in draft before each house of Parliament, and such notification shall be issued only in such form as may be agreed upon by both the houses of Parliament.

By virtue of the power conferred upon the Central Government, the Central Government has from time to time issued order for application of various provisions of the Companies Act, 1956 as such of with some modification to the LLP.

Section 68 contains provisions regarding filing, recording or registered under this Act to be so filed, recorded or registered in such manner and subject to such conditions as may be prescribed.

A copy of or an extract from any document electronically filed with or submitted to the Registrar which is supplied or issued by the Registrar and certified through affixing digital signature as per the Information Technology Act, 2000 to be a true copy of or extract from such document shall, in any proceeding, be admissible in evidence as of equal validity with the original document.

As per sub section 3 of section 68 any information supplied by the Registrar that is certified by the Registrar through affixing digital signature to be true extract from any document filed with or submitted to the Registrar shall, in any proceeding, be admissible in evidence and be presumed, unless evidence to the contrary is adduced to be a true extract from such document.

Section 69 allow a LLP to file any belated document or return not filed or registered to be filed or registered within three hundred days from the date within which it should have been filed on payment of additional fee of one hundred rupee for every day of

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such delay in addition to any fee as is payable for filing of such documents or returns. Such documents or return may without prejudice to any other action or liability under this Act, also be filed after such period of three hundred days on payment of fee and additional fee specified in this Act.

- (e) (i) **A is employed in XYZ Ltd., which is a seasonal establishment. The factory was in operation for five months during the financial year of 2016-17. A was not in continuous service during this period. However, he was worked for sixty days only. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether A is entitled to gratuity payable under the Act. Would your answer be the same in case A works for 100 days?** **4**
- (ii) **Distinguish between Bill of Exchange and Promissory Note.** **7**
- (iii) **Define workman under Industrial Disputes Act.** **4**

Answer:

- (e) (i) As per the provision given under the section 2A of the Payment of Gratuity Act, 1972, where an employee is employed in an seasonal establishment and is not in continuous service for any period of one year or six months, there such an employee shall deemed to be in continuous service under the employer for such period if he has actually worked not less than seventy-five percent of the number of days on which the establishment was in operation during such period.

In the given problem, as per the above provisions of the Act, A has worked has worked only for 60 days which is less than 75% of the number of days on which the establishment was in operation during such period, i.e. 150 days. Therefore A shall not be eligible for getting any gratuity in the first case.

In the second case also A would not eligible for gratuity for the same reasons, though he had worked for 100 days

- (ii) Distinguish between Bill of Exchange and Promissory Note.

The following are the points of differences between a Bill of Exchange and Promissory note:

1. **Number of Parties:** In a Bill of Exchange there are three parties - the drawer, the drawer and the payee. In a promissory note, there are 2 parties - the maker and the payee.
2. **Promise and Order:** in a Bill of Exchange, there is an order to pay. in a Promissorynote there is a promise to pay.
3. **Acceptance:** A bin needs acceptance but a promissory note does not require acceptance.

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4. **Liability:** The drawer of a bill is liable only when the drawer does not accept the bill or pay the money due. But the maker of a Promissory note is primarily liable on the instrument.
5. **Relationship:** In a Bill of Exchange, a drawer stands in an immediate relationship with the acceptor; But the maker of the Promissory note stands in an immediate relationship to the payee
6. **Notice:** In case of non-acceptance or non-payment of a bill of notice must be given to all persons liable to pay. This is called 'Notice of Dishonor', in the case of a Promissory note, no 'Notice of Dishonor' is necessary.
7. In case of dishonor, foreign bill must not be protested; in case of promissory note, protest is not necessary.

(iii) **Workman under the Industrial Disputes Act.**

“Workman” means any person (including an apprentice employed in any industry to do any manual, unskilled, skilled, technical, operational, clerical or supervisory work for hire or reward, whether the terms of employment be express or implied, and for the purposes of any proceeding under this Act in relation to an industrial dispute, includes any such person who has been dismissed, discharged or retrenched in connection with, or as a consequence of, that dispute, or whose dismissal, discharge or retrenchment has led to that dispute, but does not include any such person-

- (i) who is subject to the Air Force Act, 1950 (45 of 1950), or the Army Act, 1950 (46 of 1950), or the Navy Act, 1957 (62 of 1957); or
- (ii) who is employed in the police service or as an officer or other employee of a prison; or
- (iii) who is employed mainly in a managerial or administrative capacity; or
- (iv) who, being employed in a supervisory capacity, draws wages exceeding ten thousand rupees per mensem or exercises, either by the nature of the duties attached to the office or by reason of the powers vested in him, function mainly of a managerial nature.

SECTION – C

3. **Answer any one questions:** **15×1=15**

(a) (i) **Discuss the shifting of registered office within the same state.** **5**

(ii) **What information's are exempted from disclosure under Right to Information Act,2005?**

10

Answer:

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(a) (i) **The Shifting of registered office within the same State.**

A. An application seeking confirmation from the Regional Director for shifting the registered office within the same State from the jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies, shall be filed by the company with the Regional Director in Form no.INC.23 along with the fee.

B. The company shall, not less than one month before filing any application with the Regional Director for the change of registered office.-

(a) publish a notice, at least once in a daily newspaper published in English and in the principal language of that district in which the registered office of the company is situated and circulating in that district; and

(b) serve individual notice on each debenture holder, depositor and creditor of the company, clearly indicating the matter of application and stating that any person whose interest is likely to be affected by the proposed alteration of the memorandum may intimate his nature of interest and grounds of opposition to the Regional Director with a copy to the company within twenty one days of the date of publication of that notice:

Provided that in case no objection is received by the Regional Director within twenty one days from the date of service or publication of the notice, the person concerned shall be deemed to have given his consent to the change of registered office proposed in the application.

Provided further that the shifting of registered office shall not be allowed if any inquiry, inspection or investigation has been initiated against the company or any prosecution is pending against the company under the Act.

C. The confirmation referred to in sub-section (5) of section 12 shall be communicated within a period of thirty days from the date of receipt of application by the Regional Director to the company and the company shall file the confirmation with the Registrar within a period of sixty days of the date of confirmation who shall register the same and certify the registration within a period of thirty days from the date of filing of such confirmation.

(ii) The following are exempt from disclosure under Section 8 of Right to Information Act,2005

- information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence
- information which has been expressly forbidden to be published by any court of

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law or tribunal or the disclosure of which may constitute contempt of court;

- information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- information received in confidence from foreign Government;
- information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- information which would impede the process of investigation or apprehension or prosecution of offenders;
- cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers;
- information which relates to personal information the disclosure of which has no relationship to any public activity or interest or which would cause unwarranted invasion of the privacy of the individual;
- Notwithstanding any of the exemptions listed above, a public authority may allow access to information, if public interest in disclosure outweighs the harm to the protected interests.

(b) (i) Write notes on the maintenance of register of Members under the Companies Act, 2013.

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(ii) What is the role of the Audit Committee under corporate Governance in India?

6

Answer:

(b) (i) Maintenance of Register of members etc.,

As per section 88 of Companies Act, 2013

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- (1) Every company shall keep and maintain the following registers in such form and in such manner as may be prescribed, namely:—
 - (a) register of members indicating separately for each class of equity and preference shares held by each member residing in or outside India;
 - (b) register of debenture-holders; and
 - (c) register of any other security holders.
 - (2) Every register maintained under sub-section (1) shall include an index of the names included therein.
 - (3) The register and index of beneficial owners maintained by a depository under section 11 of the Depositories Act, 1996, shall be deemed to be the corresponding register and index for the purposes of this Act.
 - (4) A company may, if so authorised by its articles, keep in any country outside India, in such manner as may be prescribed, a part of the register referred to in sub-section (1), called "foreign register" containing the names and particulars of the members, debenture holders, other security holders or beneficial owners residing outside India.
 - (5) If a company does not maintain a register of members or debenture-holders or other security holders or fails to maintain them in accordance with the provisions of sub-section (1) or sub-section (2), the company and every officer of the company who is in default shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day, after the first during which the failure continues.
- (b) (ii) The role of the Audit committee shall include the following:
1. Oversight of the company's financial reporting process and the disclosure of its financial information to ensure to ensure that the financial statement is correct, sufficient and credible;
 2. Recommendation for appointment, remuneration and terms of appointment of auditors of the company;
 3. Approval of payment to statutory auditors for any other services rendered by the statutory auditors;
 4. Reviewing, with the management, the annual financial statements and auditor's report there on before submission to the board for approval, with particular reference to:
 - (a) Matters required to be included in the Director's Responsibility Statement to be included in the Board's report in terms of clause (c) of sub-section 3 of section 134 of the Companies Act, 2013
 - (b) Changes, if any in accounting policies and practices and reasons for the same

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- (c) Major accounting entries involving estimates based on the exercise of judgment by management
 - (d) Significant adjustments made in the financial statements arising out of audit findings
 - (e) Compliance with listing and other legal requirements relating to financial statements
 - (f) Disclosure of any related party transactions
 - (g) Qualifications in the draft audit report
5. Reviewing, with the management, the quarterly financial statements before submission to the board for approval;
6. Reviewing, with the management, the statement of uses /application of funds raised through an issue (public issue, rights issue, preferential issue, etc.). the statement of funds utilized for purposes other than those stated in the offer document / prospectus / notice and the report submitted by the monitoring" agency monitoring the utilisation of proceeds of a public or rights, issue, and making appropriate recommendations to the Board to take up steps in this matter;

SECTION - D

4. Answer any one questions:

15×1=15

(a) (i) Why a good understanding of business ethics is important?

10

(ii) What are the various ethical threats faced by a finance and accounting professional?

5

Answer:

- (a) (i) Some of the major reasons why a good understanding of business ethics is important can be stated as follows:-

Stop business malpractices: Some unscrupulous businessmen do business malpractices by indulging in unfair trade practices like black-marketing, artificial high pricing, adulteration. cheating in weights and measures, selling of duplicate and harmful products, hoarding, false claims or representations about their products etc. These business malpractices are harmful to the consumers. Business ethics help, to stop these business malpractices.

Improve customers' confidence: Business ethics are needed to improve the customers' confidence about the quality, quantity, price. – etc, of the products. The customers have more trust and confidence in the businessmen who follow ethical rules, they feel that such businessmen will not cheat them.

Survival of business: Business ethics are mandatory for the survival of business. The

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businessmen who do not follow it will have short-term success, but they will fail in the long run. This is because they can cheat a consumer only once. After that, the consumer will not buy goods from that businessman, he will also tell others not to buy from that businessman. So this will defame his image and provoke a negative publicity. This will result in failure of the business. Therefore, if the businessmen do not follow ethical rules, he will fail in the market. So, it is always better to follow appropriate code of conduct to survive in the market.

Safeguarding consumer's rights: Consumer sovereignty cannot be either ruled out or denied. Business can survive so long it enjoys the patronage of consumer. The consumer has many rights such as right to health and safety, right to be informed, right to choose, right to be heard right to redress, etc. But many businessmen do not respect and protect these rights. Business ethics are must to safeguard these rights of the consumers.

Protecting employees and shareholders: Business ethics are required to protect the interest of and image for the business and businessmen. If the businessmen follow all ethical rules, then he will be fully accepted and not criticized by the society. The society will always support in the businessmen who follow this necessary code of conduct.

Develops good relations: Business ethics are important to develop good and friendly relations between business and society. This will result in a supply of good quality goods and service at low prices to the society. It will also result in profits for the businesses there by resulting in growth of economy.

Creates good image: Business ethics create a good image for the business and businessmen. If the businessman follows all ethical rules, then they will be fully accepted and not criticized by the society. The society will always support those businessmen who follow this necessary code of conduct.

Smooth functioning: If the business follows all the business ethics, then the employees, shareholders, consumers, dealers and suppliers will all be happy. So they will give full cooperation to the business. This will result in smooth functioning of the business. So, the business will grow, expand and diversify easily and quickly. It will have more sales and more profits.

Consumer movement: Business ethics are gaining importance because of the growth of the consumer movement. Gone are the days when the consumer can be taken for ride by the unscrupulous business by their false propaganda and false claims, unfair trade practices. Today, The consumers are aware of their rights and well informed as well as well organized. Now they are more organized and hence cannot be cheated easily. They take actions against those businessmen who indulge in bad business practices. They boycott poor quality, harmful, high-priced and counterfeit (duplicate) goods. Therefore, the only way to survive in business is to be honest and fair.

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Consumer forums and Consumer Associations are more active and vocal now.

Consumer satisfaction: Today, the consumer is the king of the market. Any business simply cannot survive-without the consumers. Therefore, the main aim or objective of business is consumer satisfaction. If the consumer is not satisfied, then there will be no sales and thus no profits too. Consumer will be satisfied only if the business follows all the business ethics, and hence are highly needed.

Importance of labour: Labour, i.e. employees or workers play a very crucial role in the success of a business. Therefore, business must use business ethics while dealing with the employees. The business must give them proper wages and salaries and provide them with better working conditions. There must be good relations between employer and employees. The employees must also be given proper welfare facilities.

Healthy competition: The business must use business ethics while dealing with the competitors. They must have healthy competition with the competitors. Healthy competition brings about efficiency, break compliancy and leads to optimal utilization of scare resources, hence is always welcome. They must not do cut-throat competition. Similarly, they must give equal opportunities to small- scale business. They must avoid monopoly. This is because a monopoly is harmful to the consumers.

(ii) The following types of threats may affect the business environment and influence finance and Accounting professionals.

(a) Self – Interest Threats: Occur as a result of the financial or other interest of Finance and Accounting professional or personal interest of key personnel.

(b) Self- review Threats: When a previous judgment of the Finance and accounting Professional is to be re-evaluated.

(c) Advocacy Threats: When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised.

(d) Familiarity Threats: When a professional has close relationships with the work environment which may impair his selfless attitude towards work.

(e) Intimidation Threats: when a professional may be prohibited from acting objectively by actual or perceived threat

- (b) (i) Discuss the fundamental principles of Ethical Behaviour. 7**
(ii) What are the reasons for which unethical behavior might arise in the organization? 8

Answer:

(b) (i) FUNDAMENTAL PRINCIPLES OF ETHICAL BEHAVIOUR

1. **Integrity:** The principle calls upon all accounting and finance professional adhere to honesty and firmness while discharging their respective professional duties:
 - a. Avoid being involved in activities which would impair the goodwill of the organization.

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- b. Communicate adverse as well as favorable information with those concerned
 - c. Refuse any favour which could influence his actions in a negative way.
 - d. Refuse to get involved in any activity which would adversely affect objectivity.
 - e. Avoid conflicts and advise related parties on imminent conflicts.
2. **Objectivity:** Communicate information fairly and objectively in a transparent manner.
 3. **Confidentiality:** Accounting and financial management should refrain from disclosing confidential information acquired during their work. When such information are to be disclosed to their subordinates in course of their normal work, care should be taken that ultimate confidentiality is maintained. However, an organization must to submit information required under a legal obligation or statutory ruling.
 4. **Professional competence:** Finance and accounting professionals need to update their professional skills from time to time. it has to be ensured that the client or employer receives competent professional services based upon current and contemporary developments in the related areas.
 5. **Obedience to Rules:** Accounting and finance professionals should comply with relevant laws and regulations and avoid such actions which may result into discrediting the profession.
- (ii) The reasons for which unethical behavior might arise in the organization are:
- A. **Over Emphasis on Short Term Profitability:** Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.
 - B. **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.
 - C. **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. To prevent disclosure of unethical problems in limes of depression, companies need to be careful and vigilant also during prosperous time periods.
 - D. **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.
 - E. **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.