INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

JUNE 2014

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.

Please: (i) Answer all bits of a question at one place.
(ii) Open a new page for answer to a new question.
(iii) Attempt the required number of questions only
Question No. 1 is compulsory.

1. Choose the correct answer from the given four alternatives: **1×20 =20**

(i) A party who does not suffer any loss in case of breach of contract is entitled to

(a) Statutory damages
(b) Liquidated damages
(c) Exemplary damages
(d) Nominal damages

(ii) If part of contract is illegal, then the whole contract will be

(a) Voidable
(b) Void
(c) Legal
(d) Illegal

(iii) In which of the following cases, the claim of Quantum Meruit arise

(a) When there is no breach of contract
(b) When a contract is discovered to be valid
(c) Where something has been done non gratuitously
(d) Where the contract is divisible

(iv) Amit tells Bharat in the presence of Chetan that Amit is agent of Chetan. Chetan maintain silence instead of denying it. Later, if Amit sells Chetan's goods to Bharat, Chetan cannot dispute Bharat's title to the goods. This is example of

(a) Sale by official receiver
(b) Sale by a finder of goods
(c) Sale by estoppel
(d) execution of Sale

(v) An act to dissuade the intending buyer from bidding or from raising the price by pointing out defects in the goods or by doing some other acts which prevent persons from forming a fair estimate of the price of the goods is known as

(a) Knock out agreement

(b) Damping

(c) Puffers

(d) None of the above

(vi) If a minor draws, endorses, delivers or negotiates an instrument, such instrument binds

(a) all parties to the instrument including the minor

(b) only the minor and no other parties to the instrument

(c) all parties to the instrument except the minor

(d) None of the above

(vii) In a partnership firm, the decision can be made by rule of majority when decisions relate to

(a) policy matters

(b) ordinary routine matters

(c) financial matters

(d) buying and selling of property

(viii) Power to exempt any LLP or class of LLP for audits of accounts is with

(a) Inspector

(b) Central Government

(c) Any other regulatory authority

(d) None of the above

(ix) Every inspector appointed under the Factories Act or Payment of Wages Act is deemed to be a

(a) Controlling Officer

(b) Labour Welfare Officer

(c) Honorary Magistrate

(d) A Public Servant

(x) No fine can be imposed on any employed person who is under the age of

(a) 10

(b) 12

(c) 15

(d) 18

(xi) In case of employee covered under the ESI, the accident report shall be sent in………….to local office of the ESI to which the company is attached.

(a) Form No. 18

(b) Form No. 18A

(c) Form No. 25

(d) Form No. 16

(xii) Which of the following statement is correct under the Child Labour (Prohibition and Regulation) Act, 1968?

(a) No child shall be permitted to work between 8 P.M. and 7 A.M.

(b) No child shall be permitted to work between 6 P.M. and 8 A.M.

(c) No child shall be permitted to work in any establishment on any day which he has already been working in another establishment.

(d) No child shall work for more than three and half hour before he has had an interval for rest for at least one hour.

(xiii) The first case 'doctrine of frustration' as decided by the Supreme Court of India is

(a) Basanti Bastralaya Vs. River Steam Navigation Co. Ltd.

(b) Raju Dhruv Dev Chand Vs. Raja Harmohinder Singh

(c) Sushila Devi Vs. Hard Singh

(d) Satyabrata Ghosh Vs. Mugneeram

(xiv) Application for Director Identification Number (DIN) is to be made to Central Govt. in Form

(a) DIN-1

(b) DIN-2

(c) DIN-3

(d) None of the above

(xv) Where an appeal is being preferred against an order made by the Public Information Officer under Section 11 to disclose third party information, the appeal by the concerned third party must be made within

(a) 5 days of the order

(b) 15 days of the order

(c) 30 days of the order

(d) 45 days of the order

(xvi) The development of Corporate Governance in the UK was initially the findings of a trilogy of codes. Which of the report is not included in it?

(a) Cadbury Report 1992

(b) Greenburry Report 1995

(c) Trecking Report 1997

(d) Hampel Report 1998

(xvii) Business ethics is based on well accepted

(a) Moral and Social Values

(b) Social Values only

(c) Moral Values only

(d) None of the above

(xviii) Out of seven principles of public life, the principle of objectivity means

(a) holders of public office should take decisions solely in terms of the public interest.

(b) in carrying out public business including making public appointments, holders of public office should make choices on merit.

(c) holders of public office are accountable for their decision and actions to the public.

(d) holders of public office should be as open as possible about all the decisions and actions that they take.

(xix) Who is responsible for ethical behavior?

(a) Lecturers and Supervisors

(b) The Psychologist

(c) The Participants

(d) The psychological Community

(xx) The three C's of business ethics are

(a) Commitment, Contribution and Consequences

(b) Compliance, Contribution and Consequences

(c) Compliance, Customs and Contribution

(d) Codes, Compliance and Contributions

Answer:

1. (i) (d) Nominal damages

(ii) (b) Void

(iii) (d) Where the contract is divisible

(iv) (c) Sale by estoppel

(v) (b) Damping

(vi) (c) all parties to the instrument except the minor

(vii) (b) Ordinary routine matters

(viii) (b) Central Government

(ix) (d) A public servant

(x) (c) 15

(xi) (d) Form No. 16

(xii) (c) No child shall be permitted to work in any establishment on any day which he has already been working in another establishment

(xiii) (d) Satyabrata Ghosh Vs. Mugneeram

(xiv) (a) DIN-1

(xv) (c) 30 days of the order

(xvi) (c) Trecking Report 1997

(xvii) (a) Moral and Social Values

(xviii) (b) In carrying out public business including making public appointments, holders of public office should make choices on merit.

(xix) (b) The Psychologist

(xx) (b) Compliance, Contribution and Consequences

Section A

Attempt any four questions.

2.(a) (i) 'A' contracts with 'B' for a fixed price to construct a house for 'B' with stipulated time. 'B' would supply the necessary material to be used in the construction. 'C guarantees A's performance of the contract. 'B' does not supply the material as per the agreement. Is 'C discharged from his liability? 2

(ii) W offered to sell his house to M for ₹40 lakhs. M replied purporting to accept the offer and enclosed a cheque for ₹20 lakhs. He also promised to pay the balance amount in twenty equal installments. Examine the validity of the contract. 2

(b) Mr. Sharma is a supervisor in a factory drawing salary of ₹3500 pm. In a particular accounting year he was on one month leave with salary. His employer declared minimum bonus payable as per the Payment of Bonus Act, 1965, to all eligible employees. State in this connection:

(i) What shall be the salary that shall be taken into account for the purpose of calculating bonus payable to him?

(ii) What shall be the total bonus payable to him in that accounting year?

(iii) What would be your answer if the company suffer losses in that accounting year?

(iv) Is bonus payable to him if he was illegally terminated? 1×4=4

(c) Briefly explain the difference between Partnership and Co-ownership. 4

Answer:

2.(a) (i) According to the Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B omits to supply the necessary material. Hence C is discharged from his liability.

(ii) Acceptance of an offer must be absolute and unqualified i.e., it must conform to the offer. An acceptance, in order to be binding, must be absolute and unqualified [Sec 7(1)] in respect of all terms of the offer, whether material or immaterial, major or minor. If the parties are not ad item on all matters concerning the offer and acceptance, there is no contract.
In the case provided, the acceptance is a qualified acceptance; hence it would not result in a valid contract.

2.(b) (i) Where the salary or wage of an employee exceeds ₹ 3500 per mensem, the bonus payable to such employee under section 10 or, as the case may be under Section 11, shall be calculated as if his salary and wage were ₹ 3500 per mensem (Section 12). This means employees getting salary or wage upto ₹ 10,000 will be covered by the Act, but for payment of bonus their salary will be taken as ₹ 3500.

(ii) The total bonus payable to him in that accounting year should be ₹ (3500 × 12 × 8.33%) = ₹ 3498.60. For the purpose of calculating the total working days, leave with salary or wages shall be deemed to be working days for the employee. Therefore, Mr. Sharma would be eligible for 12 months bonus.

(iii) The bonus shall have to be paid by the employer notwithstanding anything contained in section 10(1), but this payment is subject to the other provisions of the

Act. And even if the employer suffers loss during the accounting year, he is bound to pay the minimum bonus as prescribed in Sec 10 [State vs Sardar Dalip Singh Majhithia, 1979]

(iv) Disqualifications for payment of Bonus: (Sec 9) Notwithstanding anything contained in the Act, an employee shall be disqualified from receiving bonus under the Act, if he is dismissed from services for –
  a. Fraud
  b. Riotous or violent behavior while on the premises of the establishment or
  c. Theft, misappropriation or sabotage of any property of the establishment.

Where an employee was prevented from working by reason of an illegal order, he would be eligible for bonus.

(c) Difference between Partnership and Co-ownership.

	Basis of Distinction	Partnership	Co-ownership
1	Agreement	It arises from an agreement	It may or may not arise from an agreement
2	Business	It is formed to carry on a business	It may or may not involve carrying on a business
3	Profit or Loss	It involves profit or loss.	It may or may not involve profit or loss.
4	Mutual agency	Partners have a mutual agency relationship.	Co-owners do not have a mutual agency relationship.
5	Name of persons involved	The persons who form partnership are called partners.	The persons who own some property jointly are called owners.
6	Maximum limit	The Maximum limit of partners is 10 for a banking business and 20 for any other business	There is no maximum limit of owners.
7	Transfer of Interest	A partner cannot transfer his share to a stranger without the consent of other partners.	A co-owner can transfer his share to a stranger without the consent of other co-owners
8	Right to claim partition	A partner has no right to claim partition of property but he can sue the other partners for the dissolution of the firm and accounts.	A co-owner has the right to claim partition of property.
9	Lien on property	A partner has a lien on the partnership property for expenses incurred by him on behalf of the firm.	A co-owner has no such lien.

3.(a) (i) Explain the concept of 'whistle blowing' with respect to the Limited Liability Partnership Act, 2008. 3

(ii) X buys from Y a painting which both believe to be work of an old masterpiece and for which X pays a high price. The painting turns out to be only a modern copy. Discuss the validity of the contract. 2

(b) 'A' issue an open 'bearer' cheque for ₹10,000 in favour of 'B' who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to 'C and 'D'. When it is finally presented by D's banker, it is returned with remarks 'payment

countermanded' by drawer. In response to this legal notice from 'D', A pleads that 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, discuss whether A's argument is valid or not. **3**

(c) Under what circumstances breach of condition is treated as breach of warranty under the provisions of The Sale of Goods Act, 1930? **4**

Answer:

3.(a)(i) The concept has been discussed in sec.31 of the Limited Liability Partnership Act,2008.

As per the sec-

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

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

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

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

(ii) The Contract is absolutely void as there is a mutual mistake of both the parties as to the substance or quality of the subject-matter going to be the very root of the contract. In case of bilateral mistake of essential fact, the agreement is void ab-initio, as per section 20 of the Indian Contract Act,1872,

(b)

Effects of striking off the word bearer	❖ It amounts to a material alteration. ❖ However, such material alteration is authorized by the Act. ❖ Therefore, the cheque is not discharged; it remains valid
Effects of crossing the cheque	❖ It amounts to a material alteration. ❖ However, such material alteration is authorized by the Act. Therefore, the cheque is not discharged; it remains valid.
A's argument is not valid	❖ Since the reason for dishonor of cheque is not 'material alteration' but 'payment countermanded by drawer.' ❖ Therefore, A is liable for the payment of the cheque and he shall also be liable for dishonor of cheque in accordance with the provisions of Sec. 138.

(c) According to section 13 of the sale of the Goods Act,1930 a breach of condition may be treated as breach of warranty in the following circumstances:

(i) Where a contract of sale is subject to any condition to be fulfilled by the seller, the buyer may waive the condition.

(ii) Where the buyer elects to treat the breach of condition as breach of a warranty

(iii) Where the contract of sale is non-severable and the buyer has accepted the whole goods of any part thereof.

(iv) Where the fulfillment of any condition or warranty is excused by law, by reason of impossibility or otherwise.

4.(a) (i) 'Money laundering can provide short term benefits to economy'. Comment. 3

(ii) Ram is employed in Sweet Sugar factory, a seasonal establishment. The factory was in operation for four months only during the financial years 2011-12. Ram was not in continuous service during this period. However, he has worked only 60 days. Referring to the provisions of The Payment of Gratuity Act, 1972, decide whether Ram is entitled to gratuity payable under the Act. Would your answer be the same in case Ram works for 100 days? 2

(b) Mr. Z bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e., whether it is fit to make ice. After using the same, Mr. Z came to know that the refrigerator was unfit for the purpose. State giving reasons as per the provisions of The Sale of Goods Act, 1930, is the dealer liable to refund the price? 4

(c) D joined Be Engineering Works (P) Ltd. on 05.03.2012. On 8th he was laid off as the management wanted to slow down due to shortage of power. 'X' was not allowed lay-off compensation on the ground that his period of service was less than one year. Is the claim of management valid under the Industrial Disputes Act, 1947? 3

Answer:

4.(a)(i)The statement is not true. The genesis of money laundering is the practice of concealing identity, source or destination of illegally gained money. Money laundering from illegal activities directly affects the freedom of access to investment, affecting the labor market laws, marketing, consumption and production itself. Money laundering is conversion of 'dirty' money to 'clean' money and therefore illegal.

(ii) Ram is not entitled to gratuity, since he has actually worked for less than 75% of the number of days on which the establishment was in operation during such period. If Ram had worked for 100 days, then he would have been entitled to gratuity since the number of days on which he would have worked, in that case, would have been 75% or more of the number of days on which the establishment was in operation.

(b) As per the Rule of Implied Condition, [Sec. 16 (1)]: There is no implied condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale. In other words, the buyer must satisfy himself about the quality as well as the suitability of the goods. This is expressed by the maxim caveat emptor (let the buyer beware). But there is exception to this rule of Condition as to Quality or Fitness: There is an implied Condition that the good shall be reasonably fit for a particular purpose described if the three conditions are satisfied-

(i) The particular purpose for which goods are required must have been disclosed (expressly or impliedly) by the buyer to the seller.

(ii) The buyer must have relied upon the seller's skill or judgment.

(iii)The seller's business must be to sell such goods.

Note: This condition cannot be invoked against a casual seller.

In the given case, Mr. 'Z' bought a refrigerator from a dealer's shop. But he did not mention the required purpose i.e. whether it is fit to make ice. After using the same Mr. 'Z' came to know that the refrigerator was unfit for the purpose. The dealer is liable to refund the price because refrigerator was unfit for the purpose for which it was meant for and the buyer was not required to disclose this particular purpose. [Evens v. Stelle Benjamin].

(c) Under Sec. 25-B of Industrial Disputes Act, 1947, an employee shall deemed to be in continuous service of one year if has worked for at least 240 days during the period of 12 months preceding the reference date of calculation.

'D' has worked for 3 days before he was laid off. So he is not entitled to lay-off compensation and can claim the same.

5.(a) (i) Explain Cost of living Index Number under The Minimum Wages Act, 1948. 2

(ii) State the nature of dispute as to gratuity that may be decided by the Controlling Authority. 3

(b) On a Bill of Exchange for Rupees one lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from customer for value and in good faith before the bill becomes payable. State with reasons whether 'A' can be considered as a "Holder in due course" and whether he can receive the amount of the Bill from 'X'? 4

(c) A, B and C were partner in a firm of drapers. The partnership deed authorized the expulsion of a partner when he was found guilty of flagrant breach of duty. A was convicted of travelling without ticket. On this ground, he was expelled by the other partners B and C. Is the expulsion justified? 3

Answer:

5. (a)

(i) "Cost of living Index Number" in relation to employees in any scheduled employment in respect of which minimum rates of wages have been fixed, means the Index Number ascertained and declared by the Competent Authority by notification in the official gazette to be the cost of living index number applicable to employee in such employment.

(ii) The Controlling Authority may decide the following disputes:-

a) Dispute as to amount of gratuity payable to an employee under the Payment of Gratuity Act.

b) Dispute as to the admissibility of any claim of, or in relation to an employer for payment of gratuity.

c) Dispute as to the person entitled to receive gratuity (Sec. 7(4)(a)]

(b) According to the section 9 of the Negotiable Instruments Act, 1881 "holder in due course' means any person who for consideration becomes the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or endorsee thereof, if payable to order, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case prima facie became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course. But where a signature on the Negotiable Instruments is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment inspite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. The principle is universal in character; by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence "A' cannot receive the amount on the bill.

(c) Yes, the expulsion is justified. In this case, the partnership deed authorized expulsion on the ground of flagrant breach of duty. Doing an act which brings a partner within the penalties of criminal law is flagrant breach of duty. Also, the expulsion decision was taken by majority of partners (Carmichel Vs. Evans (1904) 90 LT573).

6. (a) Explain basic wages under The Employees Providend Fund Act, 1952. Enumerate the items which are not included in it. 3

(b) (i) Deposit of money in a bank does not constitute bailment. Justify. 2

(ii) Does a laundry attached to the hospital (main Institution) used for washing linen used in the hospital is factory within the meaning of the Factories Act, 1948? 3

(c) (i) A Limited Liability Partnership is not bound by any act of its member. Justify. 2

(ii) In a contract of Guarantee, A surety is discharged from his liability where there is a failure of consideration between the creditor and the principal debtors. Comment. 2

Answer:

6. (a) Basic wages: As per Section 2(b) of the Employees Provident Funds and Miscellaneous Provision Act, 1952, the "Basic Wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concessions,

(ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment,

or

(iii) any presents made by the employer.

(b) (i) Bailment is concerned with only moveable goods. Money is not included in the category in moveable goods. As such deposit of money is not bailment.

(ii) In Dr. PSS Sundar Rao, GS v Inspector of Factories Vellore 1984 II LLJ 237 Mad, the question was whether a laundry attached to the Christian Medical College & Hospital, Vellore is Factory within the meaning of this Act. The Madras High Court held that the laundry run by the hospital cannot be separated from the main Institution. In order to ensure high degree of hygienic standard the Hospital is having its own laundry for washing the linen used in the hospital. Therefore, laundry is only subsidiary, minor or incidental establishment of the hospital which is not a factory. One department of the Hospital established for the efficient functioning of the Hospital cannot be therefore be disjoined from the main institution and termed to be a factory. The paramount or the primary character of the main institution alone has to be taken into consideration and when the main institution is not a factory; a department thereof cannot become so, even though a manufacturing process is carried on there.

(c) (i) A limited liability partnership is not bound by any act of a member in dealing with persons if-

(a) The member in fact has no authority to act for the limited liability partnership by doing that thing.

(b) The person knows that the members has no authority or does not know or believe him to be a member of limited partnership.

(ii) According to the provisions of the Indian Contract Act, presence of consideration is an essential element for a valid contract. Therefore, where in a contract of guarantee, there is a failure of consideration between the creditor and the

Principal Debtor, the surety is discharged.

Section B

Attempt any two questions.

7. (a) In a public company the total number of Directors are 9 and 2 offices of the Directors have fallen vacant. Referring to the relevant provisions of the Companies Act, 1956:

(i) What would be the quorum for the Board Meeting?

(ii) Can the articles of a company fix the quorum (higher or lower) for the Board Meeting? 2

(b) Explain briefly the need for Corporate Governance in India. 3

(c) Explain the objectives of Right to Information Act, 2005. 3

Answer:

7.(a) Where the total number of Directors are 9 and 2 offices of the Directors have fallen vacant, the number of directors remaining is 7. Therefore, quorum is to be calculated with reference to 7.

(i) As per section 287, quorum shall be 1/3rd of total strength of the directors and any fraction shall be rounded off to next full figure. In the given case 1/3rd is 2.33. Therefore, where the total strength is 7, the quorum shall be 3.

(ii) The articles of the company may fix a quorum higher than 1/3rd of total strength but not lower than that. If it is fixed on lower side, it will be void.

(b) Need for Corporate Governance

Corporate Governance is integral to the existence of the company. It is needed to create a corporate culture of transparency, accountability and disclosure.

- Corporate Performance: Improved governance structures and processes help ensure quality decision making, encourage effective succession planning for senior management.
- Enhanced Investor trust: Investors consider Corporate Governance as important as financial performance when evaluating companies for investment.
- Combating Corruption: Companies that are transparent, and have sound system that provide full disclosure of accounting and auditing procedures, allow transparency in all business transactions.
- Better Access to Global Market: Good Corporate Governance system attracts investment from global investors, which subsequently leads to greater efficiencies in the financial sector.
- Enhancing Enterprise Valuation: Improved management accountability and operational transparency fulfill investors' expectations and confidence on management.
- Accountability: Investors' relations are essential part of good Corporate Governance.
- Easy Finance form Institutions: Evidence indicates that well governed companies receive higher market valuations.
- Reduced Risk of Corporate Crisis and Scandals: Effective Corporate Governance

ensures efficient risk mitigation system in place.

(c) The objectives of the Act are to-

(i) Give effect to the Fundamental Right to Information, which will contribute to strengthening democracy, improving governance, increasing public participation, promoting transparency and accountability and reducing corruption

(ii) Establish voluntary and mandatory mechanisms or procedures to give effect to right to information in a manner which enables persons to obtain access to records of public authorities in a swift, effective, inexpensive and reasonable manner,

(iii) Promote transparency, accountability and effective governance of all public authorities by, including but not limited to, empowering and educating all persons to:

- Understand their rights in terms of this Act in order to exercise their rights in relation to public authorities;
- Understand the functions and operation of public authorities; and effectively participating in decision making by public authorities that affects their rights.

8.(a) Mr. Lalit, a Director of XY Limited proceeding on a long foreign tour, appointed Mr. Mohan as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. Lalit claims that he has a right to appoint alternate director. State whether Mr. Lalit is correct based on legal provision? 3

(b) How far effective legal framework is necessary for e-Governance? 5

Answer:

8.(a) Section 313 of the Companies Act, 1956 provides that the Board of Directors of a company may, if authorized by its Articles or by resolution passed by the company in general meeting, appoint an alternate director to act for a director during his absence for a period of not less than 3 months from the State in which the meetings of the Board are ordinarily held. The alternate director can be appointed only by the Board of Directors and only in cases where the Board is authorized by Articles or by the company in general meeting. Hence Mr. Lalit the director in question, is not competent to appoint alternate director and the appointment of Mr. Mohan as alternate director is not valid.

(b) Implementation of a supporting legal framework is a basic requirement for successful implementation of e-Governance.

Moving to a digital government required supporting laws, for example, governments need to enact usage of digital authentication and digital signatures as legally valid. However this is not easy task as enacting laws alone is not sufficient. Implementing a digital signature and approval systems (OECD, 1998) within government organisations can be implemented in a fast way but implementing a Public Key Infrastructure (PKI) for issuing digital signatures for all citizens may prove difficult and/ or expensive. This is especially true for developing countries with a large population base like India. Existing laws in most developing countries still require the presence of physical files for decision making. This is due to the more formalistic nature of public organisations and related requirement to have a high level of work related record keeping (Welch & Pandey, 2006). However, lack of necessary legal support for digital files will add an additional layer of complexity during the implementation of e-governance projects as government staff will be forced to maintain both physical and digital files.

The Government of India now recognizes the requirement to provide a necessary legal framework for efficient delivery of government services. Electronic Service Delivery Bill, 2011 aims to cut red tape and corruption by delivering all public services to citizens through electronic mode. Implementation of the bill will enhance transparency, efficiency, accountability, accessibility and reliability and by eliminating paperwork on a massive scale, (Electronic Service Delivery Bill, 2011).

9. (a) The MOA of a Company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a certificate of incorporation. The plaintiff contented that (a) conditions of registration were not duly compiled with, (b) that there were no seven subscribers to the MOA. Will the Court upheld his contention? 3

(b) "The German Corporate Governance System is based on a dual board system". Explain. 3

(c) Explain the meaning of Competent Authority under Right to Information Act, 2005. 2

Answer:

9.(a) No. The certificate of incorporation is conclusive for all purposes. According to the section 35 of the Companies Act, 1956 a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all requirements of this Act have been compiled with in respect of registration and matters precedent and incidental thereof, and that the association is a company authorized to be registered and duly registered under this Act.

(b) The German Corporate Governance system is based around a dual board system, and essentially, the dual board system comprises a management board (Vorstand) and a supervisory board (Aufsichtsrat). The management board is responsible for managing the enterprise. Its members are jointly accountable for the management of the enterprise and the chairman of the management board coordinates the work of the management board. On the other hand, the supervisory board appoints, supervises and advises the members of the management board and is directly involved in decisions of fundamental importance to the enterprise. The chairman of the supervisory board coordinates the work of the supervisory board. The members of the supervisory board are elected by the shareholders in general meetings. The co-determination principle provides for compulsory employees representation. So, for firms or companies which have more than five hundred or two thousand employees in Germany, employees are also represented in the supervisory board which then comprises one third employee representative or one half employee representative respectively. The representatives elected by the shareholders and representatives of the employees are equally obliged to act in the enterprise's best interests.

(c) "Competent Authority" means-

(i) The Speaker in the case of the House of the People or the Legislative Assembly and the Chairman in the case of the Council of States or the Legislative Council :

(ii) The Chief Justice of India in the case of the Supreme Court,

(iii) The Chief Justice of the High Court in the case of a High Court,

(iv) The President or the Governor, as the case may be, in case of other authorities constituted or established by or under the Constitution,

(v) The administrator appointed under article 239 of the Constitution.

Section C

Attempt any two questions.

10. (a) "Business Ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed". Explain. 4

(b) Discuss the important principles of Ethical Behaviour. 4

Answer:

10.(a) Business Ethics also called Corporate Ethics is a form of applied ethics or professional ethics that examines ethical principles and moral or ethical problems that arise in a business environment. It applies to all aspects of business conduct, and is relevant to the conduct of individuals and the entire organisations. Business ethics concerns itself with adhering to the social principles of the situations in which business takes place. No matter how hard one tries, it is impossible to separate life from business. For a businessman, business is life. Mahatma Gandhi (1948) said, 'It is difficult but not impossible to conduct strictly honest business. What is true is that honesty is incompatible with amassing of large fortune'. The business world is an important part of society, as it is concerned with the livelihoods of people. Business activity too is subjected to the code of conduct without any exception. People expect businessmen to possess the same rationality as any other citizen. Therefore, there is no separate business ethics for businessmen, as ethics applies to all the activities of people. Consequently, we have to keep business within the bounds of ethics.

(b) The following are the fundamental principles of ethical behavior:

(i) **Integrity:** The principle calls upon all accounting and finance professionals to adhere to honesty and firmness while discharging their respective professional duties. This principle therefore, encourages professionals to

(a) Avoid being involved in activities which would impair the goodwill of the organization.

(b) Communicate adverse as well as favorable information with those concerned.

(ii) **Objectivity:** This principle calls upon professionals to communicate information fairly and objectively in a transparent manner.

(iii) **Confidentiality**: Under this principle, Accounting and Financial management should refrain from disclosing confidential information acquired during their work. Utmost care should be taken that ultimate confidentiality is maintained.

(iv) **Professional Competence**: This principle calls for Finance and Accounting professionals 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 development in the related areas.

(v) **Obedience to Rules:** Accounting and Finance professionals should comply with relevant laws and regulations and avoid such actions which may result into discrediting the progression.

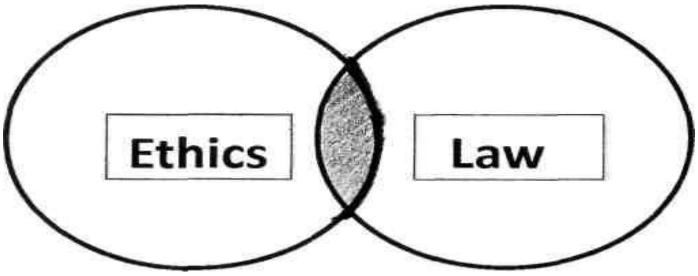
11. (a) Explain the interface between Ethics and Laws. 3

(b) Discuss the different types of Ethical issues. 5

Answer:

11.(a) Ethics and Law- The Interface

Law is essentially an institutionalization or codification of ethics into specific social rules, regulations and prescriptions. Perhaps the best way of visualizing ethics and law is in terms of two intersecting domains as depicted in the following figure:



Thus, in one sense, business ethics can be said to begin where law ends. Business Ethics is primarily concerned with those issues not completely covered by law, or where there is no definite consensus on whether something is right or wrong. Hence, it is often remarked, that business ethics is about the "grey areas" of business where values are in conflict.

(b) Ethical dilemma exists in all walks of business. Business situations are highly complex with no clear guidelines and equally justifiable alternatives. Hence, ethical dilemma should be dealt carefully. They arise when there are conflict in values with superiors in the area of strategy, goals, policy and administration. Ethical issues get categorized in the following four main areas:

(i) **Business Relationships**: i.e. relationships with customers, suppliers and others in the work place also have ethical concerns. Ethical behavior in the business involves meeting obligations and responsibilities duly on time, keeping company secrets and avoiding undue pressure that may force others to act unethically. The managers and other superiors can use their authority to influence the employees and make them act in an unethical manner. In the process, the manager may tell the employees to adopt unethical practices which the employee may not be willing to adopt. The ethical practices of the business must be focused on customer needs as the customer is the life line of the business. Organisations that cater to customer needs by adopting an honest and ethical approach make the customer feel that they are important and this in turn guarantees the success of the organization in the long run.

(ii) **Conflict of interest**: Conflict of interest exists when a person has to decide whether to proceed with his own personal interest or in the interest of the organization. Example: Bribe is a conflict of interest because it benefits the individual but harms the organisation and the society.

Conflict of interest can be managed in an effective manner when employees are able to separate either personal interests from their business dealings. Sam Walton, the late founder of Wal-Mart, banned company buyers from accepting even a cup of coffee from suppliers. It is not always necessary that conflict of interest should be financial.

(iii) **Fairness and honesty**: Fairness and honesty are difficult principles of business ethics, which an organization is expected to follow. It is not enough for a company to ensure compliance with applicable laws and regulations, it should not cause any harm to employees, customers, competitors knowingly by means of unfair and deceptive trade practices. Disclosure of potential harm caused by product use is an example of "fairness and honesty". Though the legal system encourages competition and prevents monopoly, business organisations continue doing activities causing harm to the competition. Thus, ethical conduct of business depends on their Commitment to fairness and honesty.

(iv) **Communication:** Organisations need to communicate with its environment to sustain and grow. They have to give true and correct information about their products and services. Nowadays, false and misleading advertisements occupy the business world. Consumers have a right to know full and true information about product's quality, price and safety. Manufacturers often fail to communicate the differences or similarities between products.

12. (a) What are the different types of threat that may affect the business environment and influence financial and accounting professionals? 4

(b) What is Ethical Conflict? What are the aspects to be considered to resolve the conflict? 4

Answer:

12.(a) The following types of threats may affect the business environment and thus, can influence Finance and Accounting professionals:

i. **Self-Interest Threats:** These threats occur as a result of financial or other interest of Financial and Accounting professionals or personal interest of key personnel.

ii. **Self-Review Threats:** When a previous judgment of the finance and professional is to be re-evaluated.

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

iv. **Familiarity Threats:** When a professional has close relationship with the work environment, thereby impacting his or her selfless attitude towards work.

v. **Intimidation Threats:** When a professional may be prohibited from acting objectively by actual or perceived threats.

(b) Ethical conflict is a situation where the professionals have to decide between compliance with principles and actions which are beneficial to the business organisation. An ethical conflict is a complex situation that often involves an apparent mental conflict between moral imperatives, in which to obey one would result in transgressing another. This is also called an ethical paradox since in moral philosophy, paradox often plays a central role in ethics debates.

To resolve the conflict, following aspects should be considered:

a) Relevant facts;

b) Ethical issues involved;

c) Fundamental principles related to the matter in question;

d) Established internal procedures; and

e) Alternative courses of action