

Suggested Answer_Syl12_June2016_Paper_6

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

JUNE 2016

Paper- 6 : LAWS, ETHICS AND GOVERNANCE

Time Allowed : 3 Hours

Full Marks : 100

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

This paper contains four questions.

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

All workings must form a part of your answer.

Assumptions, if any, must be clearly indicated.

Section – A

1. Answer all questions:

1×10=10

(a) Multiple choice questions:

(i) A contract is a combination of

- (a) Agreement and free consent**
- (b) agreement and consideration**
- (c) agreement and enforceability**
- (d) agreement and competence of parties**

(ii) The provisions regarding maximum number of members in a partnership are given in

- (a) The Partnership Act**
- (b) The Companies Act**
- (c) The Societies Registration Act**
- (d) The Co-operative Societies Act**

(iii) X and Y agree to divide the profits of a business in equal shares but the loss if any is to be borne by X only. The partnership agreement is

- (a) void**
- (b) voidable**
- (c) lawful**
- (d) illegal**

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- (iv) First aid boxes or cupboard equipped with prescribed contents and not less than one in number must be provided and maintained in every factory so as to be accessible during all working hours for every
- (a) 200 workers for any time
 - (b) 150 workers for any time
 - (c) 500 workers for any time
 - (d) 30 workers for any time
- (v) XYZ Ltd. do which the payment of Wages Act, 1936 is applicable, fixes the wages period of 36 days. You as a Cost and Management Accountant of the Company, how would advice the company.
- (a) There is no problem in the above act of the Company
 - (b) As per Section 4(2) of the Act, no wage period can exceed 30 days. So the company would be advised accordingly.
 - (c) The wages period can be more than 30 days subject to approval of appropriate Government
 - (d) The company should take permission of Inspector of the factory.
- (vi) Under Section 14 of The Prevention of Money Laundering Act, 2002 gives immunity to _____ against civil proceedings for furnishing information
- (a) an individual
 - (b) a HUF
 - (c) an agency
 - (d) a Banking Company
- (vii) One of the following is not an objective of the RTI Act.
- (a) Accountability
 - (b) Eliminate corruption (responsibility)
 - (c) Freedom to speech
 - (d) Transparency
- (viii) When the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the
- (a) Preceding day
 - (b) Next preceding business day
 - (c) Same day of next week
 - (d) 3rd day following the day holiday
- (ix) In case of an employee who has not completed 15 years of age at the beginning of the Accounting year, the minimum bonus will be
- (a) ₹ 100 or 8.33% of salary or wages whichever is higher.
 - (b) ₹ 60 or 8.33% of salary or wages whichever is higher.
 - (c) ₹ 60 or 8.33% of salary or wages whichever is lower.
 - (d) 8.33% of salary or wages.

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(x) Every LLP firm shall have at least _____ designated partners who are individuals.

- (a) two
- (b) three
- (c) four
- (d) Five

(b) Fill in the blanks

1×5=5

- (i) The maximum number of parties in a contract may be _____.
- (ii) The Primary role of _____ committee is to assist the board in identifying prospective directors.
- (iii) If gratuity is not paid within 30 days from the date it becomes payable simple interest @ _____ p.a. is payable on the expiry of the said period.
- (iv) The appropriate Government may direct that the provision of Minimum Wages Act 1948 will not be applicable in case of wages payable to a _____ person.
- (v) In the case of banking business, the maximum number of legal partners is _____.

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

- (i) All agreements are contracts but all contracts are not agreements.
- (ii) In a contract of guarantee two parties are necessary.
- (iii) Delivery means voluntary transfer of possession of goods from one person to another.
- (iv) Share holders and Stake holders are synonyms.
- (v) Ethics and Law have the same purpose.

(d) Match the following (any five):

1×5=5

	Column 'A'		Column 'B'
1.	Doctrine of Privity of Contract	(A)	Factory Act
2.	Quantum Merruit	(B)	Minimum Wages Act
3.	Relay	(C)	Solomon vs Solomon & Co. Ltd.
4.	Schedule Employment	(D)	Corporate Governance
5.	Lifting of Corporate Veil	(E)	Ethical Conflict
6.	Financial Reporting Council	(F)	Contract Act
7.	Economic cycles	(G)	Sale of goods Act

Answer:

(a)

- (i) (c) Agreement and enforceability.
- (ii) (b) The Companies Act
- (iii) (c) Lawful
- (iv) (b) 150 workers for any time.

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- (v) (b) As per section 4(2) of the Act, no wage period can exceed 30 days. So the company would be advised accordingly.
- (vi) (d) A Banking company.
- (vii) (c) Freedom to speech.
- (viii) (b) Next preceding business day.
- (ix) (b) ₹ 60 or 8.33% of Salary or Wages whichever is higher.
- (x) (a) Two designated partner.

(b)

- (i) Infinite.
- (ii) Nomination
- (iii) 10%
- (iv) Disabled
- (v) 10

(c)

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

(d)

- 1 F
- 2 G
- 3 A
- 4 B
- 5 C
- 6 D
- 7 E

Section – B

2. Answer any three questions:

15x3=45

- (a)(i) What are essential elements of a valid acceptance? 8**
- (ii) What are the different categories of Industrial Disputes? 7**

- (b) (i) Limited Liability Partnerships are body corporate. Do you agree? Justify. 5**
- (ii) The Minimum Wages Act, 1948 prescribes payment of wages in cash only. Comment. 4**
- (iii) State your views on the following: 2x3=6**
 - (a) Consideration for sale of goods must be in terms of money.**
 - (b) In an auction sale, a bid once made cannot be withdrawn by the bidder.**
 - (c) A partner is not an agent of other partners in a partnership firm.**

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- (c) (i) What procedure shall an employee adopt for the recovery of the amount of bonus due to him from his employer under the Payment of Bonus Act 1965? 7
(ii) Under what circumstances the gratuity payable to an employee be forfeited? 8
- (d) (i) State the circumstances under which a banker is bound to refuse the payment of a cheque. 8
(ii) Is the amount standing to the credit of a member of the Provident Fund attachable in the execution of decree or order of the Court? Examine the law, on this point, laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. 7
- (e) (i) X Father promised to pay his son Y a sum of ₹ One lakh if Y (son of X) passed CMA examination in the first attempt. Y passed the CMA examination in his first attempt, but X failed to pay the amount as promised. Y files a suit for recovery of the said amount. State along with reasons whether Y can recover the amount under the Indian Contract Act, 1872. 5
(ii) ABC & Co., a firm consists of three partners A, B and C having one-third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act. 5
(iii) Ram sells 200 bales of cloth to Shyam and sends 100 bales by lorry and 100 bales by Railway. Shyam receives delivery of 100 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. Ram being still unpaid, stops the goods in transit. The official receiver, on Shyam's insolvency claims the goods. Decide the case with reference to the provisions of the Sale of Goods Act, 1930. 5

Answer:

2.(a)(i)

(a)Acceptance must be absolute and unqualified; it must conform to the offer:

As per section 7 in order to convert a proposal into a promise, the acceptance must-

- (1) Be absolute and unqualified:** if the parties are not ad idem on all matters concerning the offer and acceptance, there is no contract. An invitation with variation is no acceptance, it is simply a counter proposal which must be accepted by the original proposer before any contract is made. A counter offer puts an end to the original offer and cannot be revived by subsequent acceptance unless it is renewed. In Hyde v Wrench 1840 3 Bear 334 an offer to sell a car for \$1000 was turned down by the plaintiff who offered \$950 for it. This was rejected by the offeror and then the plaintiff agreed to pay \$1000. It was held that there would undoubtedly have been perfect contract, instead of that the plaintiff made an offer of his own to purchase the property for \$950 and rejected the offer previously made by the defendant. He was not afterwards competent to revive the proposal of the defendant, by tendering an acceptance for it. Thus the suit of the plaintiff was dismissed.

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- (2) **Be expressed in some usual and reasonable manner**, unless the proposal prescribes the manner in which it is to be accepted. If the proposal prescribes a manner in which it is to be accepted, and the acceptance is not made in such a manner, the proposer may, within a reasonable time after the acceptance is communicated to him, insist that his proposal shall be accepted in the prescribed manner, and not otherwise; but if he fails to do so, he accepts the acceptance. In *Surender Nath v Kedar Nath* AIR 1936 Cal 87 the Calcutta High Court held that where an offeror requires that the acceptance should be sent to a particular person in writing, section 7 was not violated when the offeree instead of writing to the particular person, sent his agent in person to communicate the acceptance.
- (b) **Specific offer can be accepted by the person to whom it is made**, whereas general offer can be accepted by anyone competent to contract and meeting the conditions of offer. It was held in *Boulton v Jones* (1857) 27 LJ ex 117 case that a specific offer can be accepted only by the person to whom it is made. A general offer can be accepted by any one as held in case of *Carlill v Carbolic Smoke ball co*, *Harbans Lal v Harbans Lal*,
- (c) **Acceptance may be express or implied**: As per section 9 in so far as the proposal or acceptance of any promise is made in words, the promise is said to be express. In so far as such proposal or acceptance is made otherwise than in words, the promise is said to be implied. It can be inferred from the conduct of the parties. When a person boards in Metro Rail it is an implied acceptance.
- (d) **Acceptance should be of the whole proposal and not in part**; Acceptor should accept the whole proposal in total and not in parts. Part acceptance is no acceptance binding upon the proposer.
- (e) **Acceptance should be according to the mode prescribed or usual and reasonable mode**; acceptor cannot accept the proposal in a manner different from the manner prescribed in the offer. If no such mode is prescribed it should be usual and reasonable mode. Silence cannot be a mode of acceptance. In *Surender Nath v Kedar Nath*, AIR 1936 Cal 87, the Calcutta High court held that where an offeror requires that the acceptance should be sent in writing to a particular person, section 7 of the Contract Act is not violated when the offeree instead of writing to particular person, sent his agent in person to communicate the acceptance.
- (f) **Communication of acceptance is must**; a mental determination to accept unaccompanied by any external indication will not be sufficient acceptance. To constitute an acceptance such acceptance must be communicated to the offeror or his authorized agent. Example: A makes an offer to B to supply certain goods at a certain price. B writes the letter of acceptance and puts the letter in the drawer of his table and forgets all about it. Hence putting the letter of acceptance in the drawer does not amount to communication of acceptance without any external manifestation of the intention to accept the offer (*Brogden v Metropolitan Railway co*, 1877 AC 666). A mere mental assent is not a sufficient acceptance of an offer. To constitute an acceptance such assent must be communicated to the offeror or his authorised agent.

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(g) Acceptance must be given before its lapse; Acceptance must be given before the offer lapses by expiry of time fixed or by expiry of reasonable time if no time is so fixed or before it is withdrawn or revoked by the offeror. In *Ramasgate Victoria Hotel co V Montefoire (1866)LR 1 Exch 109* it was held that a person who applied for shares in a company in June was not bound by any allotment made in November.

2. (a)(ii)

(A) The Second Schedule of the Industrial Disputes Act deals with matters within the jurisdiction of Labour Courts which fall under the category of Rights Disputes. Such disputes are as follows: (1) The propriety or legality of an order passed by an employer under the standing orders; (2) The application and interpretation of standing orders which regulate conditions of employment. (3) Discharge or dismissal of workmen including reinstatement of, or grant of relief to, workmen wrongfully dismissed; (4) Withdrawal of any customary concession or privilege; (5) Illegality or otherwise of a strike or lock-out; and (6) All matters other than those specified in the Third Schedule.

(B) The Third Schedule of the Industrial Disputes Act deals with matters within the jurisdiction of Industrial Tribunals which could be classified as Interest Disputes. These are as follows:- (1) Wages, including the period and mode of payment; (2) Compensatory and other allowances; (3) Hours of work and rest intervals; (4) Leave with wages and holidays; (5) Bonus, profit sharing, provident fund and gratuity; (6) Shift working otherwise than in accordance with standing orders; (7) Classification by grades; (8) Rules of discipline; (9) Rationalization; (10) Retrenchment of workmen and closure of establishment; and (11) Any other matter that may be prescribed.

2. (b)(i)

Limited Liability Partnerships formed and registered under Limited Liability Partnership Act, 2008 are body corporate. All LLPs have the following features:

- (i) A Limited Liability Partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.
- (ii) A limited liability partnership shall have perpetual succession.
- (iii) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.
- (iv) Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.
- (v) Any individual or body corporate may be a partner in a limited liability partnership.

2. (b)(ii)

- (1) Minimum wages payable under this Act shall be paid in cash.
- (2) Where it has been the custom to pay wages wholly or partly in kind, the Appropriate Government being of the opinion that it is necessary in the circumstances of the case

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may by notification in the Official Gazette authorise the payment of minimum wages either wholly or partly in kind

- (3) If Appropriate Government is of the opinion that provision should be made for the supply at essential commodities at concession rates the Appropriate Government may by notification in the Official Gazette authorise the provision of such supplies at concessional rates.
- (4) The cash value of wages in kind and of concessions in respect of supplies of essential commodities at concessional rates authorised under sub-sections (2) and (3) shall be estimated in the prescribed manner.

2. (b)(iii)

- (a) Correct: It is one of the essentials of the contract of sale, that price must be paid in terms of money.
- (b) Incorrect: The bidder can withdraw his bid any time before the fall of the hammer i.e., completion of sale.
- (c) Incorrect: The basis of the partnership is mutual agency, hence a partner is an agent of all other partners.

2. (c)(i)

Recovery of bonus due from an employer

In those cases where any money by way of bonus is due to an employee from his employer under a settlement or an award or agreement, the employee is entitled to recover the same by following the procedure prescribed in section 21 of the act. It is important to note here that the mode of recovery of bonus prescribed under this section shall be available only if the bonus sought to be recovered is due under a settlement or an award or an agreement. It will not apply to recovery of bonus which is payable under the act.

The provisions relating to the recovery of bonus, as contained in section 21, are as under:

- (1) The bonus due to an employee from his employer under a settlement or an award or agreement, can be recovered by him by making an application to the Appropriate Government for the recovery of the same.
- (2) The application may be made by the employee himself or by any person authorised by him in writing. In case of death of the employee, such an application may be made by his assignee or heirs.
- (3) On receipt of the application, if the Appropriate Government is satisfied that any money is so due to the employee, it shall issue the certificate for that amount to the collector, and the collector shall proceed to recover the same in the same manner as an arrear of land revenue.
- (4) The application to the Appropriate Government should be made within one 'year' from the date on which the money became due to the employee from the employer. However, the Government may entertain such application even after the expiry of said period of one year, if it is satisfied that the applicant had sufficient cause for not making the application within the prescribed period of one year.

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2. (c)(ii)

Forfeiture of gratuity

The legal provisions relating to the forfeiture of gratuity are contained in section 4(6) of the Payment of Gratuity Act, 1972 and may be summed up as under:

1. The gratuity payable to an employee shall be forfeited where the services of an employee have been terminated due to any act, willful omission or negligence on the part of the employee and employee's such act etc. has caused:

- (a) damage or loss to the property belonging to the employer, or
- (b) destruction of the property belonging to the employer.

In this case, the gratuity payable to the employee shall be forfeited to the extent of the damage or loss caused to employer's property due to employee's act, omission or negligence [Section 4(6)(a)]

2. The gratuity payable to an employee may be forfeited:

- (a) If the services of such employee have been terminated for his riotous or disorderly conduct or any other act of violence on his part, or
- (b) If the services of such employee have been terminated for any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

In the above stated cases, the gratuity payable to an employee may be forfeited wholly or partially. [Section 4(6)(b)]

Following judicial decisions are important to note in connection with the forfeiture of gratuity by the employer:

(i) The right of the employer to forfeit the amount of gratuity of an employee whose services were terminated due to any act, willful omission or negligence causing any damage to the employer's property is limited to the extent of damage and the proof of such damage.

[Permal Wallance Ltd. V. state of M.P. (1996) 111 LLJ 515 (MP)].

(ii) The right of the employer to forfeit the gratuity is available only in the circumstances enumerated in section 4(6), as stated in points (1) and (2) above, and is not available in any other circumstances as employee's right to gratuity is the statutory right.

[K.C. Mathew v. Plantation Corpn. Of Kerala Ltd. (2001) LLR 123 (Ker.)].

(iii) The refusal by the employees to surrender land belonging to the employer is not a ground for forfeiture of gratuity.

[Travancore Plywood Industries Ltd. V. Regional Joint Labour Co. mmmr, (1996) 111 LLJ 85 (Ker.)].

(iv) In case of termination of services on account of offence involving moral turpitude the gratuity may be wholly or partially forfeited. In this regard, the Karnataka High Court has held that when an offence of theft under law involves moral turpitude, gratuity stands wholly forfeited in view of section 4 (6) of the Act.

[Bharat Gas Mines Ltd. V. Regional Labour Commr. (Central) (1987) 70 FJR 11 (Karn)].

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2. (d)(i)

Circumstances when the banker must refuse the payment

Following are the circumstances in which the banker is bound to refuse the payment of a cheque:

- (1) When the customer has countermanded payment.** The term 'countermand' means the issue of instruction to the banker not to pay a particular cheque. Thus, where a customer issues instructions to the banker not to make the payment of a particular cheque, the banker must not make the payment. A cheque, the payment of which is stopped by the customer is known as a 'stopped cheque'. And a stopped cheque is a piece of waste paper in the hands of payee. It is, however, necessary that a countermand to be effective must reach the banker before he had paid the cheque in the ordinary course. It may also be noted that the countermand notice must be duly signed by the customer and give correct particulars of the cheque.
- (2) When the customer has died.** Sometimes, the banker receives notice of customer's death. In such cases, he must refuse the payment of the cheque presented after the notice of death. However, if the payment is made before the banker receives the notice of death, the payment is valid and banker is justified in making such payment.
- (3) When the customer has become insolvent.** Sometimes, the banker receive; the notice of customer's insolvency. In such cases also he must refuse the payment of the cheques presented after the notice.
- (4) When the customer has become a person of unsound mind** (i.e. insane). Sometimes, the banker receives the notice that his customer has become insane. In such cases also, he must refuse payment of the cheque presented after the notice.
- (5) When a garnishee order has been received by the banker.** The term Garnishee order may be defined as a court order attaching the balance in customer's account. When the banker receives such order then he is bound to refuse the payment of the customer's cheque.
- (6) When the cheque is lost.** Sometimes, the drawer informs the banker that a particular cheque is lost. In such cases, banker must refuse the payment of that cheque.
- (7) When the account is closed.** Sometimes the customer closes his account and gives notice to the banker. In such cases the banker must not pay any cheque of the customer after the closure of the account.
- (8) When holder's title is defective.** Sometimes, the banker comes to know of any defect in the title of the person presenting the cheque. In such cases, he must refuse the payment of the cheque.

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(9) When a customer gives notice of assignment of credit balance in his account, the banker must refuse the payment of cheque.

2. (d)(ii)

Attachment of Provident Fund:

According to Section 10 of E.P.F. & M.P. Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act nor any receiver appointed under the Provincial Insolvency Act shall be entitled to or have any claim on, any such amount.

The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

2. (e)(i)

Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreement of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour vs. Balfour. Accordingly, applying the provisions and the case decision, in the case Y cannot recover the amount of Rupees One lakh from X for the reasons explained above.

2. (e)(ii)

Normally it is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:

- (i) power of expulsion should exist in the partnership deed (contract between the partners).
- (ii) power has been exercised by the majority of the partners in good faith.

The test of good faith includes:

- (a) that the expulsion must be in the interest of the partnership;
- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed. Further the

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invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as before.

2. (e)(iii)

Right of stoppage of goods in transit

The problem is based on section 50 of the Sale of Goods Act, 1930 dealing with the right of stoppage of the goods in transit available to an unpaid seller. The section states that the right is exercisable by the seller only if the following conditions are fulfilled.

- (i) The seller must be unpaid
- (ii) He must have parted with the possession of goods
- (iii) The goods must be in transit
- (iv) The buyer must have become insolvent
- (v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, Ram being still unpaid, can stop the 100 bales of cloth sent by railway as these goods are still in transit.

SECTION - C

3. Answer any one question:

15x1=15

- (a) (i) Can a non-profit organisation be registered as a company under the companies Act, 2013? If so, what procedure does it have to adopt? 7
- (ii) ABC Limited decides to buy-back its own shares. Advise the Company's Board of Directors about the sources of which the company can buy-back its own shares. 4
- (iii) Briefly explain the provisions relating to submission of Cost Audit Report to the Board of Directors as per the Companies Act, 2013. 4
- (b) (i) What is meant by Corporate Governance? State the measures of Corporate Governance' with reference to Indian Companies. 6
- (ii) Define the term 'Small Company' as contained in the Companies Act, 2013. 5
- (iii) MB Pvt. Ltd. Company having outstanding loans or borrowing from banks exceeding one hundred crore rupees wants to appoint Internal Auditor. Please guide him who can be appointed as Internal Auditor. 4

Answer:

3.(a)(i)

Registration of a non-profit organisation as a company:

According to section 8 (1) of the Companies Act, 2013, the Central Government may allow a person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research,

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social welfare, religion, charity, protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

Procedure: An association of persons intending to carry any or all or some of the activities mentioned in section 8(1) as mentioned above, has to apply to the Central Government seeking its permission for being set up as a company under the Act. The Central Government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8(1) without the addition of word "Limited" or words "Private Limited" as the case may be, to its name.

After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribed form after which the Registrar will register the association of persons as a company under section 8(1). Under section 8(2) a company registered under section 8(1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity to it to be represented and heard in the matter.

3.(a)(ii)

Sources of funds for buy-back of shares:

Under section 68 (1) of the Companies Act, 2013 a company can purchase its own shares or other specified securities. The purchase should be out of:

- (i) its free reserves: or
- (ii) the securities premium account: or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

'Specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time. [Explanation (1) under Section, 68].

3. (a)(iii)

Manner of Submission of Cost Audit Report to the Board

The cost auditor shall submit the cost audit report along with his or its reservations or qualifications or observations or suggestions, if any, in Form CRA-3. He shall forward his report

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to the Board of Directors of the company within a period of 180 days from the closure of the financial year to which the report relates and the Board of Directors shall consider and examine such report particularly any reservation or qualification contained therein.

3.(b)(i)

MEANING: Corporate governance is about promoting corporate fairness, transparency and accountability. It is concerned with the structures and processes for decision-making accountability, control and behavior at the top level of organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized.

MEASURES: In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration, as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethical and/or social responsibility committees on their Boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and Boards, some companies have adopted guidelines governing their own policies around such issues like board diversity, independence, and compensation, Indian companies are also required to comply with Clause 49 of the listing agreement.

3. (b)(ii)

SMALL COMPANY:

Under Section 2(85) of the Companies Act, 2013, "small company means a company, other than a public company:-

- (i) having PAID-UP SHARE CAPITAL not exceeding fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; or
- (ii) having TURNOVER as per its last profit and loss account not exceeding two crore rupees or such higher amount as may be prescribed which shall not be more than twenty crore rupees.

EXCEPTIONS: This section shall not apply to:

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8, or
- (C) a company or body corporate governed by any special Act.

3. (b)(iii)

Applicability of Internal Audit:

Section 138 of the Companies Act, 2013 states that every private limited company is required to conduct internal audit if its outstanding loans or borrowings from banks or public financial institutions exceeding one hundred crore rupees or more at any point of time during the preceding financial year.

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In view of above provisions, M. B. Pvt. Ltd. is under compulsion to conduct internal audit as its loans or borrowings are falling under the prescribed limit.

Who can be appointed as Internal Auditor- The internal auditor shall either be a chartered accountant, whether engaged in practice or not, or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the companies.

The internal auditor may or may not be an employee of the company.

SECTION –D

4. Answer any one questions:	15x1=15
(a) (i) What is 'Business Ethics'?	7
(ii) What are circumstances leading to actual happening of threats for an Accounting professionals working as Consultants or Auditors?	8
(b) (i) What are the fundamental principles of ethical behaviour?	7
(ii) Explain the reasons for unethical behaviour among finance and accounting professionals.	8

Answer:

4.(a)(i)

According to Andrew Crane "Business ethics is the study of business situations, activities and decisions where issues of right and wrong are addressed.

Raymond C. Baumhart contend – "The ethics of business is the ethics of responsibility. The businessman must promise that he will not harm knowingly".

Business ethics concerns itself with adhering to the social principles of the situations in which business takes place. The analysis of this definition leads us to the following discussion.

Thus, 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 organizations. It deals with morality in business environment. It involves moral judgment based on understanding of the society. It extends beyond the legal questions and involves moral judgment based on understanding of the society. It extends beyond the legal questions and involves goodness and badness of an act.

(1) Business ethics refers to the application of everyday moral or ethical norms to business. It requires an awareness of how the products and services of an organizations and the action of its employees, can affect its stakeholders and society as a whole, either

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positively or negatively.

- (2) Ethics in business organization relates to a corporate culture of values, leadership program and enforcement.
- (3) It is that set of principles or reasons which governs the conduct of business at the individual or collective level by the application of ethical reasoning to specific business situations and activities.

4.(a)(ii)

Sl. No.	Types of threats	Accounting professional working as Consultants or Auditors
1.	Self interest threat	(i) A financial interest in a client. (ii) Undue dependence on fees from a client. (iii) Close business relationship with a client. (iv) Fear of losing a client. (v) Potential employment with a client. (vi) Contingent fees relating to an assurance engagement.
2.	Self review threat	(i) Discovery of a significant error of the work of the professional. (ii) Reporting on the operation of the designed financial systems. (iii) Being a Director or Officer of the client. (iv) Being employed by the client in a position to exert influence over the subject-matter of the engagement.
3.	Advocacy threat	(i) Promoting shares in a Listed Entity of a client. (ii) Acting as an advocate on behalf of client in litigation or disputes with third parties
4.	Familiarity threat	(i) Close relationship with a Director or Officer of the client (ii) Accepting gifts or preferential treatment from a client
5.	Intimidation threat	(i) Being threatened with litigation. (ii) Fear of losing work from client. (iii) Being threatened with replacement.

4.(b)(i)

Certain fundamental principles need to be followed so that ethical environment prevails. These principles include:

1. **The principle of integrity:**The principle of integrity calls upon all accounting and finance professionals to adhere to honesty and straight forwardness while discharging their respective professional duties.

Besides, practice of the following guidelines may help:

- (a) do not get involved in activities which are likely to adversely affect the goodwill of the company.
- (b) communicate adverse information to the concerned persons
- (c) refuse any gift or favour which could influence decision.

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- (d) Do not get involved in any activity which may adversely affect the achievement of organizational objective.
- (e) Avoid conflicts of interest.

2. **The Principle of objectivity:** This principle requires accounting and finance professionals to stick to their professional and financial judgement. They should not allow bias, conflicting interests or undue influence of others to override their judgements. They should communicate all the information in an objective and fair manner to the end user.
3. **The principle of confidentiality:** Accounting and finance professional do get to know strategic information with respect to the company they work with. Bartering such information is highly unethical and may prove detrimental to the interest of the company. They should, therefore, practice complete confidentiality except where legally obliged to disclose.
4. **The principle of professional competence and due care:** Present day environment has become extremely volatile. Changes are coming very fast. Professional in the area of accounting and finance need to remain updated with respect to these developments. Accounting standards, for example, in India are changing and being enlarged to meet the situations created through globalization. Indian Accounting Standards are being brought at par with International Accounting Standards. Professional who do not keep pace with these developments will not be able to serve their companies and the society in an appropriate manner.
5. **The principle of Professional Behavior:** This principle requires accounting and finance professionals to comply with relevant laws and regulations and avoid such actions which may result into discrediting and professional.

4.(b)(ii)

In order to create an ethical environment, it is necessary to know the reasons for unethical behavior. Finance and accounting professionals may indulge in unethical practices because of the following reasons:

- (1) **Emphasis on short term results:** This is one of the reasons that have led to the downfall of many companies. Enron, WorldCom and Satyam manipulated accounting entries to depict good profitability with a view to raise further capital from the market.
- (2) **Overlooking small ethical lapses:** Most of the major scandals have their genesis in small lapses. Companies and managers overlook minor lapses which later assume serious proportions. Companies, therefore, ought to develop an environment where small ethical lapses are taken note of and not allowed to be repeated.
- (3) **Economic cycles:** When Enron was doing well, no one had bothered to understand its actual financial position. There were no question marks on its financial statements.

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However, when the economy took a downward turn, finance and accounting managers took decisions which were compromises over the established code of conduct. This was done to reflect a financial position which would keep the investors in the market satisfied. All this resulted in a huge crisis and ultimate fall of this US Giant. Thus, special care is needed to check unethical practices during depression.

- (4) Complex accounting rule:** In the era of globalization and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements resulting in unethical practices. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behavior.