

INTERMEDIATE EXAMINATION

GROUP I

(SYLLABUS 2012)

SUGGESTED ANSWERS TO QUESTIONS

JUNE 2015

Paper- 6 : LAWS ETHICS AND GOVERNANCE

Time Allowed : 3 Hours

Full Marks : 100

**This paper contains four questions.
All questions are compulsory, subject to instruction provided against each questions.
All workings must form a part of your answer.
Assumptions, if any, must be clearly indicated.**

1. Answer all questions: (Choose the correct answer from the given four alternatives). 2×10=20

- (i) An agreement which is enforceable at the option of one or more parties thereto but not at the option of other or others is called
- (a) Void contract.
 - (b) Voidable contract.
 - (c) Void agreement.
 - (d) Unenforceable contract.
- (ii) Which of the following agency is irrevocable under The Indian Contract Act, 1872?
- (a) Agency for fixed period
 - (b) Agency for single transaction
 - (c) Agency coupled with interest
 - (d) Continuing agency
- (iii) A sort of tacit understanding/agreement among the intending bidders to stifle competition by not bidding against each other in an auction sale is called as
- (a) Damping
 - (b) Knock-out agreement
 - (c) Puffers
 - (d) By-bidders
- (iv) When an instrument is drawn conditionally or for a special purpose as a collateral security and not for the purpose of transferring property therein, it is called
- (a) Ambiguous
 - (b) Inchoate

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- (c) Escrow
(d) Inland
- (v) Which Committee is constituted by the occupier to promote cooperation between the workers and management in maintaining proper safety and health at workplace?
(a) Safety Committee
(b) Health Committee
(c) Management Workers Consultative Committee
(d) Maintenance Committee
- (vi) Under Payment of Bonus Act, 1965, in disputed cases, bonus must be paid
(a) Within 8 months from the close of the accounting year.
(b) Within 1 month from the date on which the award becomes enforceable.
(c) Within 2 months from the date on which the award becomes enforceable.
(d) Within 6 months from the date of closing of the accounting year.
- (vii) Businessmen or industrialists take initiative to form new companies. Their main function is to manage the company after its promotion, they are known as
(a) Particular Promoters
(b) Occasional Promoters
(c) Professional Promoters
(d) General Promoters
- (viii) Which of the following persons are exempted from fees under Right to Information (RTI) Act, 2005?
(a) Foreigners
(b) Young persons
(c) People living below the poverty line
(d) Association of persons
- (ix) The study of ethics can be divided into four operational areas namely meta ethics, normative ethics, descriptive ethics and
(a) Positive ethics
(b) Physical ethics
(c) Applied ethics
(d) Natural ethics
- (x) When a professional promotes a position or opinion to such extent that some objectivity may have to be compromised, this threat is known as
(a) Familiarity threat
(b) Objectivity threat
(c) Advocacy threat
(d) Intimidation threat

Answer:

1. (i) (b) Voidable contract.
(ii) (c) Agency coupled with interest
(iii) (b) Knockout agreement

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- (iv) (c) Escrow
- (v) (a) Safety Committee
- (vi) (b) Within one month from the date on which the award becomes enforceable
- (vii) (d) General promoters
- (viii) (c) People living below the poverty line
- (ix) (c) Applied ethics
- (x) (c) Advocacy threat

2. Answer any four questions:

12x4=48

- (a) (i) Nishant lends a sum of ₹ 8,000 to Prashant on the security of ten shares of XYZ Ltd. on 1st January, 2015. On 25th March 2015, XYZ Ltd. has issued one Bonus share. Prashant return the loan amount of ₹ 8,000 with interest to Nishant. But Nishant returns only ten shares which were pledged and refuse to give one bonus share. Advise, Prashant in the light of the provisions of the Indian Contract Act, 1872. 3
- (ii) With a view to boost the sales, M/s ABC Ltd. sells a new machine to Mr. B on trial basis for a period of three days with a condition that if Mr. B is not satisfied with the performance of the new machine, he can return back the new machine. However, the machine was destroyed in a fire accident at the place of Mr. B before the expiry of three days. Decide whether Mr. B is liable for the loss suffered under Sale of Goods Act, 1930. 3
- (iii) Rohit and Anurag are partners in a firm. They borrowed a sum of ₹ 10,000 from Parul. Later on, Rohit becomes insolvent but his assets are sufficient to payback the loan. Parul compels Anurag for the payment of entire loan. Referring to the provisions of the Indian Partnership Act, 1932, examine the validity of Parul's claim and decide as to who may be held liable for the above loan. 3
- (iv) 'A partial endorsement does not operate as a negotiation of the instrument'. Explain. 3

Answer:

2. (a) (i) As per the provisions of Section 163(4) of the Indian Contract Act, 1872 "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, or according to his directions any increase or profit which may have accrued from the goods bailed". Applying the provisions to the instant case, the bonus share is an increase on the shares pledged by Prashant to Nishant. So Nishant is liable to return the shares along with bonus share and hence Prashant the bailor, is entitled to receive the bonus share also from Nishant (Motilal VS Bai Mani).
- (ii) The problem as asked in the question is based on the provisions of the Sale of Goods Act, 1930 as contained in Section 8. Where there is an agreement to sell specific goods and subsequently the goods without any fault on the part of the seller or buyer perish or become so damaged as no longer to answer to their description in the agreement before the risk passes to the buyer, the agreement

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is thereby avoided. In the given case that the subject matter of the contract i.e., new machine was destroyed before the transfer of property from the seller to the buyer. Thus the risk passes only when the ownership is transferred to the buyer. Therefore, in the present case Mr. B is not liable for the loss suffered due to the fire accident over which B has no control. Thus M/s. ABC Ltd will have to bear whatever loss that has taken place due to the fire accident.

(iii) The present problem is concerned with the contractual liability of the Partners. As stated in the section 25 of the Indian Partnership Act, 1932, in partnership the liability of the partners is unlimited. The share of each partner in the partnership property along with his private property is liable for the discharge of partnership liabilities. The liability of the partners is not only unlimited but is also stated that a partner is both jointly and severally liable to third parties. However, every partner is liable jointly with other partner and also severally for the acts of the firm done while he is a partner. On the basis of above provisions, Parul can compel Anurag for the payment of entire loan. Anurag must pay the said loan and then he can recover the share of Rohit's loan from his property.

(iv) Section 56 provides that a negotiable instrument cannot be endorsed for a part of the amount appearing to be due on the instrument. In other words, a partial endorsement which transfers the right to receive only a part payment of the amount due on the instrument is invalid. Such an endorsement has been declared invalid because it would subject the prior parties to plurality of actions (one action by holder for part value and another action by endorsee for part value) and will thus cause inconvenience to them. Moreover, it would also interfere with the free circulation of negotiable instruments. It may be noted that an endorsement which purports to transfer the instrument to two or more endorsees separately and not jointly as also treated as partial endorsement and hence would be invalid. Thus, where A holds a bill for ₹ 2,000 and endorses it in favour of B for ₹ 1,000 and in favour of C for the remaining ₹ 1,000, the endorsement is partial and invalid.

Section 56, however further provides that where an instrument has been paid in part, a note to that effect may be endorsed on the instrument and it may then be negotiated for the balance. Thus, if in the above illustration the acceptor has already paid ₹ 1,000 to A, the holder of the bill, A can then make an endorsement saying "pay B or order ₹ 1,000 being the unpaid residue of the bill". Such an endorsement would be valid.

(b) (i) Abhay, UG degree student was induced by his lecturer to sell his brand new car to the later at less the purchase price to secure more marks in the University examination. Accordingly the car was sold. However, the father of Abhay persuaded him to sue his lecturer. State whether Abhay can sue against the lecturer?

3

(ii) Angel agrees to sell to Peter his two Mercedes cars on the terms that the price was to be fixed by David. Peter takes the delivery of one car immediately. David refuses to oblige Angel and Peter and fixes no price. Angel asks for the return of

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the car already delivered whereas Peter insisted on the delivery of the second car to him for a reasonable price of both the cars. Decide the case. 3

(iii) Amrut draws a cheque payable to 'self or order'. Before he could encash the cheque, one of his creditors, Bihari approaches him for payment. Amrut endorses the same cheque in Bihari's favour. The banker refuses payment to Bihari on account of insufficiency of funds in the account. Can Amrut be made liable to penalties for dishonor of cheque due to insufficiency of funds in the account under section 138? 3

(iv) What tests would apply for determining the existence of partnership? Discuss. 3

Answer:

(b) (i) Yes, Abhay can sue against his lecturer on the ground of influence under the provisions of the Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud, misrepresentation would be voidable at the option of the person whose consent was caused. As per Sec. 19-A when consent to an agreement is caused by undue influence, the agreement is a contract voidable at the option of the party whose consent was so caused. Any such contract may be set aside either absolutely or, if the party who was entitled to avoid it has received any benefit there-under, upon such terms and conditions as the court may seem just.

(ii) As per section 10 of the Sale of Goods Act, the parties to the contract of sales may agree to the valuation done by the third party which have no interest in the contract except making a fair valuation of the subject matter of sales. It is quite possible that the third party may not do the valuation due to his own inability or due to fault of either of the parties to the contract. If the third party did not make any valuation for the reasons not attributable to any party, the contract is void. If non valuation of the goods by the third party is attributed to any fault on the part of any party to the contract, the aggrieved party i.e., party not at fault may sue the party at fault for breach of contract and even demand damages from him. This case is governed by Section 10 which provides that if the third party refuses to fix the price, the contract becomes void except as to part of goods delivered and accepted pay as regards which the buyer must pay a reasonable price. Thus as regards the car already delivered, Angel cannot ask for its return and must accept a reasonable price for that. As regards the second car, Peter cannot insist on its delivery to him since the contract has become void.

(iii) Section 138 of Negotiable Instrument Act 1881, creates statutory offence in the matter of dishonor of cheques on the ground of insufficiency of funds in the account maintained by a person with the banker. Section 138 of the Act can be said to be falling either in the acts which are not criminal offense in real sense, but are acts which in public interest are prohibited under the penalty or those where although the proceeding may be in criminal form, they are really only a summary mode of enforcing a civil right. Normally in criminal law existence of guilty intent is an essential ingredient of a crime. However the Legislature can always create an offence of absolute liability or strict liability where 'mens rea' is

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not at all necessary.

No, Amrut cannot be made liable to penalties for dishonor of cheque due to insufficiency of funds in the account since the cheque was not originally drawn payable to another person. A cheque drawn payable to self and later endorsed in favor of another person does not seem to fall within the purview of the provisions of Section 138 which lay down that the cheque should have been drawn for payment to another person.

- (iv) As must be clear from the discussion of various elements of partnership, there is no single test of partnership. For example, in one case there may be sharing of profits but may not be any business, in the other case there may be business but there may not be sharing of profits, in yet another case there may be both business and sharing of profits but the relationship between persons sharing the profits may not be that of principal and agent. And in either case, therefore, there is no partnership. Thus, all the essential elements of partnership must coexist in order to constitute a partnership. To emphasize this fact, Section 6 expressly provides that "in determining whether a group of persons is or is not a firm or whether a person is or is not a partner in a firm, regard shall be given to the real relation between the parties, as shown by all relevant facts taken together." Thus, the existence of partnership has to be determined with reference to the real intention of the parties, which must be gathered from all the facts of the case and the surrounding circumstances.

- (c) (i) 'The responsibility for payment of wages is that of employer'. Explain. 3**
- (ii) Mr. Jatin found a wrist watch in shopping mall. He made all efforts to trace the true owner of the wrist watch but could not find him. He sold the same to Nifin, who buys without any knowledge that Jatin is merely a finder. Is sale by Jatin to Nifin valid? Decide. 3**
- (iii) Arun, Varun and Tarun started a Kirana business in Chennai on 1st January, 2012 for a period of five years. The business resulted in a loss of ₹ 20,000 in the first year, ₹ 25,000 in the second year and ₹ 35,000 in the third year, Varun and Tarun wish to dissolve the firm while Arun wants to continue the business. Advise Varun and Tarun. 2**
- (iv) Amit signs, as maker, a blank stamped paper and gives it to Sumit and authorizes him to fill it as a note for ₹ 500, to secure an advance which Namit is to make to Sumit. Sumit fraudulently fills it up as a note for ₹ 2,000, payable to Namit who has in good faith advanced ₹ 2,000. Decide, with reasons, whether Namit is entitled to recover the amount, and if so, upto what extent? 4**

Answer:

- (c) (i) Sec. 3 of Payment of Wages Act 1936, lays down that every employer shall be responsible for the payment to persons employed by him of all wages required to be paid under this Act. In addition to the employer, the following persons shall also be responsible for the payment of wages.

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- (a) In factories, the person named as manager,
 - (b) In industrial or other establishments, the person, if any, who is responsible to the employer for the supervision and control of the industrial or other establishments;
 - (c) Upon railways otherwise than in factories, the person nominated by the railway administration in this behalf for the local area concerned;
 - (d) In case of a contractor, a person designated by such contractor;
 - (e) In any other case, a person designated as responsible for complying with the provisions of the Act.
- (ii) When thing which is commonly the subject of sale is lost, if the owner cannot with reasonable diligence be found, or if he refuses upon demand, to pay the lawful charges of the finder, the finder may sell it:
The finder of goods can sell the goods only in the circumstances permitted under section 169 of the Indian Contract Act, 1872 which are as under:
- (a) If the goods are in danger of perishing or losing the greater part of their value, the finder can sell the goods.
 - (b) If the lawful charges of the finder in respect of the goods amount to a minimum of two-third of the value then the finder can sell the goods.
- In the present case, the sale by the finder will not be valid as it does not seem to fall in any of the above stated circumstances. Hence, the sale by Jatin to Nitin is invalid.
- (iii) As per provisions of Sec 44(f) of Indian Partnership Act, 1932, Varun and Tarun are advised to make a petition to the court for the dissolution of the firm on the ground that the firm cannot be carried on except at a loss. Since the firm was constituted for fixed term of five years it cannot be dissolved without the consent of all the partners and as such Varun and Tarun cannot compel Arun to dissolve the firm.
- (iv) A duly signed blank stamped instrument is called an inchoate instrument. According to Section 20 of the Negotiable Instruments Act, an Inchoate instrument is an incomplete Instrument in some respect. When a person signs and delivers blank or incomplete stamped paper to another, such other is authorized to complete it for any amount not exceeding the amount covered by the stamp. The person so signing is liable upon such instrument, to any holder in due course for any amount. But any other person can't claim more than the amount intended by the drawer of the instrument.
Thus, for Namit's claim to be valid and enforceable, two things are important:
- (a) That Namit is a holder in due course, i.e., there should be valid consideration and he would have obtained it in good faith and before maturity.
 - (b) The amount filled in i.e., ₹ 2,000 is covered by stamp amount.
- In Negotiable Instruments Act every holder is deemed to be a holder in due course. Thus, the other party has to establish that Namit is not a holder in due course.

(d) (i) Anita and Binita are friends, Binita treats Anita during Anita's illness. Binita does

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- not accept payment from Anita for treatment and Anita promises Binita's son Sunit to pay him ₹ 12,000. Anita being in poor circumstances is unable to pay. Sunit sues Anita for the money. Can Sunit recover? 3
- (ii) A worker was caught red handed for theft and was suspended for four days after proper enquiry. Is he entitled to bonus payable to an employee under The Payment of Bonus Act, 1965? 2
- (iii) Explain the right of workers to warn about imminent danger under the Factories Act, 1948. 3
- (iv) State the salient features of 'The Child Labour Technical Advisory Committee' formed to assist Central Government for the purpose of addition of any occupation or processes. 4

Answer:

- (d) (i) No, Sunit cannot recover the money from Anita. The agreement between Sunit and Anita is not a contract in the absence of consideration. In this case, Sunit's mother, Binita, voluntarily treats Anita during her illness. Apparently it is not a valid consideration because it is voluntary whereas consideration to be valid must be given at the desire of the promisor-void Section 2(d). The question now is whether this case is covered by the exception given in Section 25(2) which inter-alia provides: "If it is a promise to compensate a person who has already voluntarily done something for the promisor" Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor. As Binita's son, Sunit to whom the promise was made, did nothing for Anita, So Anita's promise is not enforceable even under the exception.
- (ii) As per section 9 of Payment of Bonus Act, notwithstanding anything contained in this Act, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for-
- (a) Fraud; or
 - (b) Riotous/violent behavior while on the premises of the establishment; or
 - (c) Theft, misappropriation or sabotage of any property of the establishment.
- In the given case, though the employee was proved guilty, was not dismissed from the service and hence he is entitled to get bonus.
- (iii) As per section 41H of The Factories Act, 1948, it is the right of workers to warn about imminent danger
- (1) Where the workers employed in any factory engaged in a hazardous process have reasonable apprehension that there is a likelihood of imminent danger to their lives or health due to any accident, they may bring the same to the notice of the occupier, agent, manager or any other person who is in-charge of the factory or the process concerned directly or through their representatives in the safety Committee and simultaneously bring the same to the notice of the Inspector.
 - (2) It shall be the duty of such occupier, agent, manager or the person incharge

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of the factory or process to take immediate remedial action if he is satisfied about the existence of such imminent danger and send a report forthwith the action taken to the nearest Inspector.

(3) If the occupier, agent manager or the person incharge referred to in sub-section (2) is not satisfied about the existence of any imminent danger as apprehended by the workers, he shall, nevertheless, refer the matter forthwith to the nearest Inspector whose decision on the question of the existence of such imminent danger shall be final.

(iv) In the exercise of the power so conferred upon the Central Government, the Central Government is assisted by an advisory committee called "The Child Labour Technical Advisory Committee" to advice for the purpose of addition of any occupation or processes to the schedule (Sec. 5).

- The Committee shall consist of a Chairman and such other members not exceeding ten, as may be appointed by the Central Government.
- The Committee shall meet as often as it may consider necessary and shall have power to regulate its own procedure.
- The Committee may, if it deems it necessary so to do, constitute one or more sub-committees and may appoint to any such sub-committee, whether generally or for the consideration of any particular matter, any person who is not a member of the committee.
- The term of office of, the manner of filling casual vacancies in the office of, and the allowance, if any, payable to the Chairman and other members of the committee, and the conditions and restrictions subject to which the committee may appoint any person who is not a member of the committee as a member of any of its sub-committees shall be such as may be prescribed.

(e) (i) Arvinda took a bet of ₹ 20,000 with Bannerjee that a certain horse would win the race. Arvinda and Bannerjee both residents of Kolkata. Arvinda borrowed ₹ 20,000 from his friend Chatterjee for this purpose. Arvinda lost the bet and paid ₹ 20,000 to Bannerjee. Can Chatterjee recover the loan amount from Arvinda? Give reasons. What would have been the difference had the transaction took place in Ahemdabad between the parties residing there? 3

(ii) Explain the extent of liability of limited liability partnership under section 26 of LLP Act. 3

(iii) A person was declared insolvent and the Court ordered attachment of all his properties. State whether he accumulations in the Provident Fund Account of the person is attachable. 3

(iv) Mr. F has been arrested for a cognizable and non-bailable offence punishable for a term of imprisonment for more than three years under PMLA, 2002. Advice, as how can he be released on bail in this case? 3

Answer:

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- (e) (i) Yes, Chatterjee can recover the loan amount from Arvinda. The transaction between Arvinda and Chatterjee is a collateral transaction which is valid, though the main transaction between Arvinda and Bannerjee is void, being a wager. Had the transaction took place in Ahmedabad, Chatterjee could not have recovered the loan as in Ahmedabad the wager transactions are illegal and a transaction collateral to it is also void on the ground of illegality.
- (ii) Section 27 of LLP Act, provides
- (1) A LLP is not bound by anything done, a partner in a dealing with a particular person if –
 - (a) the partner in fact has no authority to act for the LLP in doing a particular act; and
 - (b) the person knows that he has no authority or does not know or believe him to be a partner of the LLP
 - (2) The LLP is liable if a partner of a LLP is liable to any person as a result of wrongful act or omission on his part in the course of the business of the LLP or with its authority
 - (3) An obligation of LLP whether arising in contract or otherwise, shall be solely the obligation of the LLP
 - (4) The liabilities of LLP shall be met out of the property of the LLP.
- (iii) According to Sec. 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 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 order of any court in respect of any debt or liability incurred by the member or exempted employee and neither the Official Assignee or any Receiver appointed under respective Acts shall be entitled to or have any claim on any such amount. The said treatment will also hold good in case of the death of the person and accumulated amount is payable to his nominee.
- (iv) As per Section 45 of PMLA, 2002,
1. Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974),-
 - a. every offence punishable under this Act shall be cognizable;
 - b. no person accused of an offence punishable for a term of imprisonment of more than three years under Part A of the Schedule shall be released on bail or on his own bond unless-
 - i. the Public Prosecutor has been given an opportunity to oppose the application for such release; and
 - ii. where the Public Prosecutor opposes the application, the court is satisfied that there are reasonable grounds for believing that he is not guilty of such offence and that he is not likely to commit any offence while on bail: Provided that a person, who, is under the age of sixteen

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years, or is a woman or is sick or infirm, may be released on bail, if the Special Court so directs: Provided further that the Special Court shall not take cognizance of any offence punishable under section 4 except upon a complaint in writing made by-

- a. the Director; or
 - b. any officer of the Central Government or a State Government authorised in writing in this behalf by the Central Government by a general or special order made in this behalf by that Government.
2. The limitation on granting of bail specified in clause (b) of sub-section (1) is in addition to the limitations under the Code of Criminal Procedure, 1973 (2 of 1974) or any other law for the time being in force on granting of bail.

3. Answer any two questions:

8×2=16

(a) (i) A company wants to buy back its own shares in the current financial year. State the defaults which make the company ineligible to buy back its own shares as outlined in the companies Act, 2013. 4

(ii) What do you mean by 'Third Party Information' as per RTI Act, 2005? 4

Answer:

3. (a) (i) As per Sec. 70 of the Companies Act, 2013, no company shall directly or indirectly purchase its own shares or other specified securities –
- (a) Through any subsidiary company including its own subsidiary companies;
 - (b) Through any investment company or group of investment companies; or
 - (c) If a default, is made by the company, in the repayment of deposits accepted either before or after the commencement of this Act, interest payment thereon, redemption of debentures of preference shares or payment of dividend to any shareholder, or repayment of any term loan or interest payable thereon to any financial institution or banking company:
 - (1) Provided that the buy-back is not prohibited, if the default is remedied and a period of three years has lapsed after such default ceased to subsist.
 - (2) No company shall, directly or indirectly, purchase its own shares or other specified securities in case such company has not complied with the provisions of section 92 (submit annual return), section 123 (declare dividend), section 127 (failure to distribute dividend) and section 129 (contravention of provisions of financial statement).
- (ii) Third Party Information [Section 11 of Right to information Act, 2005]
- (1) Where a Central Public Information Officer or a State Public Information Officer, as the case may be intends to disclose any information or record, or part thereof on a request made under this Act, which relates to or has been

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supplied by a third party and has been treated as confidential by that third party, the Central Public Information Officer or State Public Information Officer, as the case may be, shall, within five days from the receipt of the request, give a written notice to such third party of the request and of the fact that the Central Public Information Officer or State Public Information Officer, as the case may be, intends to disclose the information or record, or part thereof, and invite the third party to make a submission in writing or orally, regarding whether the information should be disclosed, and such submission of the third party shall be kept in view while taking a decision about disclosure of information.

- (2) Where a notice is served by the Central Public Information Officer or State Public Information Officer, as the case may be, under sub-section (1) to a third party in respect of any information or record or part thereof, the third party shall, within ten days from the date of receipt of such notice, be given the opportunity to make representation against the proposed disclosure.
- (3) Notwithstanding anything contained in section 7, the Central Public Information Officer or State Public Information Officer, as the case may be, shall within forty days after receipt of the request under section 6, if the third party has been given an opportunity to make representation under sub-section (2) make a decision as to whether or not to disclose the information or record or part thereof and give in writing the notice of his decision to the third party.
- (4) A notice given under sub-section (3) shall include a statement that the third party to whom the notice is given is entitled to prefer an appeal under section 19 against the decision.

(b) (i) Mr. Joseph is the director of a Public Limited Company. He has been removed by the company before the expiry of his term, by passing an ordinary resolution in general meeting. Is the company justified in its action? Is Mr. Joseph entitled to claim compensation for loss of his office? 3

(ii) 'Financial Reporting Council (FRC) is responsible for promoting high standards of Corporate Governance'. Explain his statement alongwith the aims of FRC. 5

Answer:

- (b) (i) (a) Yes, the company is justified in this action;
- (b) As per section 169 of Companies Act, 2013, a company has the power to remove a director by ordinary resolution before the expiry of his office. Mr. Joseph is not entitled to claim any compensation for loss of his office. As per Section 202, a director is not entitled to any compensation for loss of office. In the present case Mr. Joseph is removed by passing an ordinary resolution, and such removal is valid being authorized under Section 169. There is no entitlement of a director to claim compensation for such removal in view of section 202. Only a managing director, or a director holding office of manager, or a director in whole time employment are entitled to compensation for loss of office [Section 202].

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(ii) The Financial Reporting Council (FRC) has six operating bodies; the Accounting Standards Board (ASB), the Auditing Practices Board (APB), the Board for Actuarial Standards (BAS), the Professional oversight Board, the Financial Reporting Review Panel (FRRP), and the Accountancy and Actuarial Discipline Board (AADB). The importance placed on corporate governance is evidenced by the fact that, in March 2004, the FRC set up a new committee to lead its work on corporate governance.

Overall, the FRC is responsible for promoting high standards of corporate governance. It aims to do so by:

- Maintaining an effective Combined Code on Corporate Governance and promoting its widespread application;
- Ensuring that related guidance, such as that on internal control, is current and relevant,
- Influencing EU and Global Corporate Governance developments;
- Helping to promote boardroom professionalism and diversity;
- Encouraging constructive interaction between company boards and institutional shareholders.

(c) (i) What are the aspects to be taken into account with regard to the follow-up of the Audit Report? 4

(ii) Explain 'Right to information' under RTI Act, 2005? 2

(iii) What is the time limit within which the Board has to appoint an Independent director and at which meeting the Independent director is appointed under the Companies Act, 2013? 2

Answer:

(c) (i) Following are the aspects to be taken into account with regard to the follow-up of the Audit Report –

- (a) Action taken on report-implementation of recommendations;
- (b) Difficulties faced by auditee in implementing audit recommendations;
- (c) Importance of follow-up.

The importance and necessity of follow-up arises due to the fact that human tendencies is "resistance to change" and to delay the adoption of audit recommendations. That is why, to reap the full benefits of audit, recommendations are to be implemented without any loss of time. The sooner the recommendations are put to action the better for all in the organization. Unless the observations and recommendations are considered, the objective of appraisal is dissipated. To avoid such unhealthy tendencies, the auditor will have a close and constant follow-up so that:

- (1) Challenging the validity of recommendations may receive due and timely attention by the auditor.
- (2) If the auditee finds practical difficulties in implementing audit suggestions may come out with his facts and figures for discussion with his superiors and the internal auditor.

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(3) Deficiencies and lack of control measures may be rectified without putting the organization into loss monetarily or otherwise.

To ensure that the recommendations being actually put into action, the internal auditor may have to pay a visit to the department/location, which is known as "follow-up visit" if the circumstances warrant.

It must be remembered in this connection, that the auditor does not have line authority to enforce the recommendations. Hence, the auditor in the case adhered of follow up has to act in an advisory capacity, i.e., auditor is to pursue that the recommendations are to if the management so desired.

(ii) "Right to Information" means the right to information accessible under this Act which is held by or under the control of any public authority and includes the right to -

(i) Inspection of works, documents, records;

(ii) Taking notes, extracts or certified copies of documents or records;

(iii) Taking certified samples of material;

(iv) Obtaining information in the form of diskettes, floppies, tapes, video cassettes or in any other electronic mode or through printouts where such information is stored in a computer or in any other device;

(iii) Section 149(5) of the Companies Act, 2013 inter alia provides that company existing on before the commencement of this Act, which are falling within the ambit of section 149(4), shall have to appoint Independent Directors within one year from the commencement of Companies Act, 2013 or rules made in this behalf, as may be applicable.

Further, as per section 152(2) read with Schedule IV to the Companies Act, 2013, inter alia provides that, the appointment of the Independent Director shall be approved by the Company in its meeting of shareholders.

4. Answer any two questions:

8x2=16

(a) (i) 'The ethics of business is the ethics of responsibility. The businessman must promise that he will not harm knowingly'. Explain. 4

(ii) What is ethical dilemma? List the guidelines one could follow to address an ethical dilemma. 4

Answer:

4. (a) (i) Over a period of time, business has developed a code of conduct that creates greatest good and least harm to its pillars of support viz. customers, employees, shareholders and community. Apparently, there is a contradiction between ethics and motive of profit. It is now well accepted a fact that ethical behavior creates a positive reputation that expands the opportunities for profit. A business is not restricted to its various assets viz. Building, Machine, Working Capital only but is having a vision and a role, present or prospective to play in the society. To achieve such goal it needs to make a number of sacrifices and take responsibilities such as:

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- (a) Creation of awareness within the organization how its products and services are accepted to the consumer, the industry and the society at large.
 - (b) Sacrifice a part of profit to satisfy legal or other commitment for corporate social responsibility.
 - (c) An organizational culture most likely to encourage high ethical standard of risk tolerance, control and conflict tolerance.
 - (d) Spend on research and other innovations for protecting environmental needs to carry out business / industrial operations.
- (ii) Many business issues may seem straight forward and easy to resolve by choosing the one option which appears to be the clear choice but in reality one is faced with having to make a choice from various alternatives resulting in an ethical dilemma. Some guidelines which one can address to ease ethical dilemmas are:-
- (i) Define the problem clearly.
 - (ii) How it is related to other parties?
 - (iii) To situation arise over which issue?
 - (iv) To whom are you bound to be loyal as person & as a member of organization.
 - (v) What will you look at while making decisions?
 - (vi) What are the expected results & how they are comparable with actual results?
 - (vii) Whom could your decisions or main results of actions injure?
 - (viii) Can you save the problem by discussing it with other affected parties?
 - (ix) Are you confident that your position will be as valid over long period of time as it seems or means?
 - (x) Can you ask your boss, CEO, your family, society as a whole to look upon your decisions?
 - (xi) What are the various potentials of your actions?
 - (xii) Under what conditions would you allow exceptions to your stand?

(b) (i) Explain Ethics as principle. 4

(ii) What are the consequences of unethical behavior? 4

Answer:

- (b) (i) We have established that social evolution has developed definite principles of civic behavior, which have attained the status of principles. By principle, we understand that something proceeds and depends on it for its cause. For instance, when one kicks a football, force is the principle that propels it into motion and the ball remains in motion till the force lasts. In other words, the physical world functions strictly according to the laws of physics. It is expected that people also submit their behavior, both in thoughts and in actions, to these principles. An action is valid as long as it reflects the principle, just as the speed of the moving ball depends on the force it receives.

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All moral actions are directed towards their object, the good, which is the principle of all happiness. This is not only the sole purpose of our existence but our co-existence with others as well. We cannot be happy alone; we can only be happy together. The universal idea of the good is applied to individual instances. Individuals are good in their own particular way, and are good in so far as they share the essence of goodness. The universal good is a pure or general idea. It is formed through a process of abstraction of the essence from individuals or particulars.

- (ii) Unethical behavior has adverse effects on business. Moreover, working for an unethical, deceptive, unfair or dishonest organization requires one to take unethical or compromised decisions which also takes a toll on physical, mental and emotional health of individuals. Firstly, if a company is unethical, the word spreads fast, and the reputation and goodwill of the company is at stake. Such impact can be of a permanent nature destroying the company's reputation possibly forever. Secondly, unethical behavior can also have a detrimental impact on the productivity of a company due to mistrust and lack of faith among the employees. Thirdly, unethical behavior can, not only cause a company to lose good and valuable employees, but also it can be quite difficult to find new employees. Moreover, indulgence in unethical behavior shall not only be instrumental in expediting the cost of training of new employees in terms of money, but also loss of valuable time which could be spent in production. Such disruptions or slowing down of production will result in unethical behavior of authorities across the states. An Accountant is often compelled to do injustice to his professional ethics. Such compulsion include
- (1) Acts contrary to law and regulation.
 - (2) Acts contrary to ethics or professional standards.
 - (3) To facilitate unethical or illegal management strategies.
 - (4) Give wrong information or mislead statutory authorities like Auditor or Regulators.
 - (5) Issue or report misleading information to the Regulators, Government, Tax and various revenue collecting authorities.

(c) (i) What are the seven principles of Public life? Explain. 4

(ii) A Cost and Management Accountant has certain professional ethics to follow while working in the company. Briefly state the obligations performed and threats faced by the Accountant. 4

Answer:

(c) (i) The Seven Principles of Public Life are as follows:

| | |
|--------------|--|
| Selflessness | Holders of public office should take decisions solely in tells of the public interest. They should not do so in order to gain financial or other material benefits for themselves, their family, or their friends. |
| Integrity | Holders of public office should not place themselves under any financial or other obligation to outside individuals or |

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| | organizations that might influence them in the performance or their official duties. |
| Objectivity | In carrying out public business including making public appointments, awarding contracts, or recommending individuals for rewards and benefits, holders of public office should make choices on merit. |
| Accountability | Holders of public office are accountable for their decisions and actions to the public and must submit themselves to whatever scrutiny is appropriate to their office. |
| Openness | Holders of public office should be as open as possible about all the decisions and actions that they take. They should give reasons for their decisions and restrict information only when the wider public interest clearly demands. |
| Honesty | Holders of public office have a duty to declare any private interests relating to their public duties and to take steps to resolve any conflicts arising in a way that protects the public interest. |
| Leadership | Holders of public office should promote and support these principles by sound leadership and prove to be an example in whatever they perform. |

(ii) The obligation performed by a CMA may be enumerated as follows:

1. Investor Protection – The finance and accounting professionals are entrusted with the duty to provide an assurance to the investors regarding the credibility of the financial information of the business enterprise.
If these professionals do not behave ethically the investors are at the risk of being cheated.
2. Stock Markets – Every fraud has a negative impact on investors and stock markets. If accounting professionals do not conform to the ethical behavior, it would result in more accounting frauds and scams resulting in negative market sentiments, downfall of stock markets and ultimately hampering the growth of the economy.
3. Prevention of scams - Scams has always shaken the confidence of public in finance and accounting professionals. Ethical behavior is required on the part of the professionals so as to restore public confidence.
4. Public interest – The working of finance and accounting professionals affects, not just one individual, department or organization, but all the stake-holders, the public at large and the confidence of the general public in the corporations.
The professionals are expected to serve in public interest. They must carry out their duties diligently ignoring their personal interests.

The threats faced in carrying out their obligations are:

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1. Self-interest threats – These threats arise where a professional's financial interest conflicts with his professional duties.
E.g.: Incentive based remuneration.
2. Self-review threats – These threats occur when the same professional is required to review any work who actually carried out that work. Such threats attack the objectivity of the professional.
E.g.: Detection of error after submission of work.
3. Advocacy threats – These are when a professional is required to give his submission with respect to his client's position such that the professional's objectivity may be compromised.
E.g.: A professional working as an employee, also promotes its shares.
4. Familiarity threats – Familiarity threats occur where a professional too readily accepts his client's view-point even though he has not gathered sufficient appropriate audit evidence, because of the reason of his close relationship or trust on the client.
5. Intimidation threats – These arise when a professional is threatened not to perform his duties or to reduce the scope of his work.