Paper 6 – Laws, Ethics and Governance

Paper 6 – Laws, Ethics and Governance

Full Marks :100 **Time allowed: 3 hours**

I. Choose the correct answer from the given four alternatives: [20 × 1 = 20]

(a) Multiple choice questions:

(i) Anchal purchased a motor car from Kamal who had no title to it. Anchal used the motor car for several months. True owner spotted the motor car and demanded it from Anchal. In such case

(a) **Anchal is bound to hand-over the motor car to true owner.**
(b) Anchal is not bound to return the motor car to true owner as he has paid in full settlement to Kamal.
(c) Anchal shall advise true owner to approach Kamal.
(d) True owner has no right to claim either from Anchal or from Kamal.

(ii) Which of the following agreement is wagering agreement under the Indian Contract Act, 1872?

(a) Crossword competition involving application of skill and knowledge.
(b) Contract of Insurance.
(c) **A promise to pay B ₹ 1,000 if it rains on Monday.**
(d) A agrees to pay B ₹ 1,000 if he marries C.

(iii) Under Sale of Goods Act, which of the delivery of goods is called as delivery by attornment?

(a) Actual
(b) Symbolic
(c) **Constructive**
(d) Physical

(iv) Where the price of the goods under a contract of sale is to be fixed by the valuation of a third party who fails to fix the valuation, but goods are supplied to the buyer, under section 10 of the Sale of Goods Act, 1930, the buyer is

(a) **liable to pay the reasonable price of the goods.**
(b) liable to pay the minimum price of the goods.
(c) not liable to pay any price until fixed by the valuer.
(d) liable to pay the maximum retail price.

(v) Under Factories Act, 1948, where work of the same kind is carried out by two or more sets of workers during different period of the day, each of such period is called a

(a) Relay

(b) **Shift**
(c) Recess
(d) Overtime

(vi) Under Payment of Wages Act, 1936, deduction on account of payment to cooperative societies shall not be more than
(a) 50% of wages
(b) **75% of wages**
(c) 90% of wages
(d) 60% of wages

(vii) Under Employee's State Insurance Act, in order to qualify for sickness benefit, the insured worker is required to contribute for
(a) 70 days in a contribution period of 6 months.
(b) 78 days in a contribution period of 3 months.
(c) 91 days in a contribution period of 3 months.
(d) **78 days in a contribution period of 6 months.**

(viii) Ankit purchased goods worth ₹ 20,000 from Anuj. In lieu of cash payment, Ankit accept a bill of exchange of ₹ 20,000 to be payable after three months. This is an example of
(a) Accomodation Bill
(b) Fictitious Bill
(c) **Genuine Bill**
(d) Documentary Bill

(ix) Under the Negotiable Instruments Act, 1881, whether acceptance of a bill of exchange in the following situation shall be treated as 'qualified' acceptance where the acceptor
(a) **undertakes to pay only ₹ 10,000 for a bill drawn for ₹ 15,000.**
(b) declares the payment to be independent of any other event.
(c) writes, 'Accepted, payable at ABC Bank'.
(d) writes, 'Accepted, payable at Delhi'.

(x) When a partnership firm is continued even after the expiry of fixed term is called
(a) Perpetual partnership
(b) Fixed partnership
(c) Contract partnership
(d) **Partnership at will**

(xi) A person who is not a partner of a Partnership Firm, but he may liable for firm's debt as if he was a Partner. Such a person is called
(a) Nominal Partner
(b) Sleeping Partner

(c) **Partner by estoppels**
(d) Partner for profit only

(xii) Any person aggrieved by an order made by the Adjudicating Authority under PMLA 2002, may prefer an appeal to
(a) Civil Court
(b) **Appellate Tribunal**
(c) Special Court
(d) High Court

(xiii) Under Companies (Registration Offices and Fees) Rules, 2014, every foreign company shall file with the Registrar of Companies along with the financial statement in form ———— which belong to the list of all the places of business established by the foreign company in India.
(a) FC 4
(b) FC 2
(c) FC 1
(d) **FC 3**

(xiv) The supervisory board under the German Model is known as
(a) **Aufsichtsrat**
(b) Kiertsu
(c) Vorstand
(d) Kyosei

(xv) An audit committee has four fold relationship and therefore has to interact with management, internal auditor, public and
(a) Cost auditor
(b) **Statutory auditor**
(c) Tax auditor
(d) Management auditor

(xvi) Which one of the following categories of person have the right to information under section 3 of Right to Information Act, 2005?
(a) Only aggrieved persons
(b) All the Indian Resident and Foreign National staying in India
(c) **All the citizens of India**
(d) Non Resident Indians

(xvii) Business ethics are needed to create a faith about the quality, quantity, price etc. of products. The customers have more trust and faith in the businessmen who follow ethical rules. They feel that such businessmen would not cheat them. Which one of the following is appropriate for it?
(a) Sefeguarding consumers' right

(b) **Improve customers' confidence**
(c) Survival of business
(d) Consumer movement

(xviii) Holders of public office should not place themselves under any financial or other obligation to outside individuals or organizations that might influence them in the performance or their official duties. This principle of public life is called
(a) Selflessness
(b) Honesty
(c) Objectivity
(d) **Integrity**

(xix) There are many types of ethical conflicts in the
(a) Business place
(b) Office place
(c) **Work place**
(d) Public place

(xx) Which one of the following is said to be "unethical behavior"?
(a) Encouraging communication
(b) **Adulteration**
(c) Employees awareness
(d) Objectivity

(b) Match the following: **[5 × 1 = 5]**

	Column I		Column II
1	Designated Partner	A	Quorum for meetings
2	Business Ethics	B	Claim for necessaries supplied to person incapable of contracting,
3	Negotiation	C	Stop malpractices
4	Section 68 of Contract Act	D	At least two
5	Section 103 of Companies Act, 2013	E	Transfer

Answer:

	Column I		Column II
1	Designated Partner	D	At least two
2	Business Ethics	C	Stop malpractices
3	Negotiation	E	Transfer
4	Section 68 of Contract Act	B	Claim for necessaries supplied to person incapable of contracting,
5	Section 103 of Companies Act, 2013	A	Quorum for meetings

2. Answer any Three questions: [3 × 15 = 45]

(a) (i) "No Consideration – No Contract" State the exceptions to it. [8]
(ii) Explain the differences between Sale and Agreement to Sell [7]

Answer:

2. (a)(i)

The general rule is ex-nudopacto non oritur action i.e. an agreement made without consideration is void. For example if A promises to pay B ₹ 1000 without any obligation from B. This is a void agreement for want of consideration. However, the Act itself provides exceptions to this rule in section 25 itself. As per section 25, an agreement made without consideration is not void in the following circumstances:

1. **Promise made on account of natural love and affection.**
   If an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents, and is made on account of natural love and affection between parties standing in a near relation to each other, it is valid despite being void of consideration. The expression the parties standing in near relation to each other means the parties are related to each other by blood relations. Nearness of relations does not always mean natural love and affection.

2. **Promise to compensate for voluntary services.**
   If it is a promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, or something which the promisor was legally compellable to do, it is a good agreement despite no consideration from other party. In order to claim exemption under section 25 on this account the following conditions must be satisfied:
   (a) The act must have been done voluntarily and not at the request of any party.
   (b) Act must have been done for the promisor who must be in existence at the time when the act was done.
   (c) The act must have been done for the promissory who must be competent to contract at the time when the act was done.
   (d) The intention of the promisor should be to compensate the promise
   (e) The services rendered must be legal.

3. **Promise made to pay a time barred debt.**
   If it is a promise, made in writing and signed by the person to be charged therewith, or by his agent generally or specially authorized in that behalf, to pay wholly or in part a debt of which the creditor might have enforced payment but for the law for the limitation of suits. In order to claim exemption under section 25(3) the following conditions should be satisfied:

(a) The debt of the creditor must be enforceable but for limitation period.
(b) There must be a promise to pay the debt and not merely an acknowledgement of debt.
(c) The promise must be in writing and signed by the debtor or his agent.
(d) The promise must be given by the person to be charged therewith and not by anybody else.

4. **Gift actually made:**
Explanation 1 to section 25 provides that absence of consideration does not affect the validity of any gift between donor and done if actually made.

5. **Creation of agency:**
Section 185 of the Act provides that no consideration is required to create Agency.

6. **Charitable subscription**
No consideration is required where promise is for some charitable purpose.

2. (a)(ii)

Differences between Sale and Agreement to Sell:

S.N.	Sale	Agreement to Sell
1.	Sale is an executed contract. Property in the goods passes from seller to buyer.	It is an executory contract. Transfer of property in goods is to take place at a future date subject to fulfillment of certain conditions.
2.	If goods are destroyed, the loss will be borne by the buyer even though they may be in possession of the seller.	The loss will be borne by the seller even though the goods may be in possession of the buyer.
3.	A sale gives right to the buyer to enjoy the goods against the whole world including the seller.	The buyer only can sue the seller for damages.
4.	In case of sale, the buyer can be sued for price of goods.	The buyer can be sued only for damages.
5.	If buyer becomes insolvent before payment is made, the seller has to deliver the goods to the official receiver unless he has lien on them.	Seller may refuse to deliver the goods to the official receiver.
6.	If the seller becomes insolvent after payment of price, the buyer can claim the goods from the official receiver.	The buyer cannot claim the goods. He can only claim ratable dividend for the amount paid by him.

7.	The seller cannot resale the goods.	In this case, if the subsequent buyer takes in good faith and for consideration, he gets a good title. The original buyer may only sue the seller for damages.

(b) (i) State how contributions are made under Employees State Insurance Act, 1948. [9]

(ii) Under what circumstances pension under E.P.F can be applied for by an employee? [6]

Answer:

2. (b)(i)

Definition of Contribution:
According to Section 2(4) of the Act, Contribution means "The sum of money payable to the corporation by the principal employer in respect of an employee and include any amount payable by or on behalf of the employee in accordance with the provisions of this Act".

Rules relating to Contribution:
The rules relating to contributions are as follows;

1. **Contribution**:
   The contribution payable under the Act in respect of an employee shall comprise employer's contribution and employee's contribution.

2. **Rate of contribution:**
   According to rule 51, the amount of contribution for a wage period shall be paid at a fixed percentage of wages, i.e. it shall be in respect of –
   (a) Employer's contribution – a sum equal to 4.75% of the total wage bill of all the employees
   (b) Employee's contribution – a sum equal to 1.75% of his wages.

3. **Unit of payment:**
   The wage period in relation to an employee shall be the unit in respect of which all contributions shall be payable under the Act. The contributions payable in respect of each wage period shall ordinarily fall due on the last day of the wage period.

4. **Default in payment of contribution:**
   If any contribution payable under this Act is not paid by the principal employer on the date on which such contribution has become due, he shall be liable to pay simple interest at a rate of 12% p.a. or at such higher rates as may be specified in the regulations till the date of its actual payment.

5. **Payment of contribution:**

Principal employer to pay both his contribution and employee's contribution. The principal employer can deduct employee's contribution from his wages. But employer's contribution not to be deducted from employee's wages.

6. **Method of payment of contribution:**
   Subject to the payment and collection of contributions payable under ESI Corporation may make regulations for:
   (a) Any matter relating or incidental to the payment and collection of contributions payable under the Act;
   (b) The manner and time of payment of contribution
   (c) The payment of contribution by means of adhesive or other stamps affixed to or impressed upon books, cards or otherwise and regulating the manner, time and conditions in, at and under which such stamps are to be affixed or impressed.
   (d) The date by which evidence of contribution having been paid is to be received by ESI corporation
   (e) The entry in or upon books or cards of particulars of contributions paid and benefits distributed in the case of the insured persons to whom such books or cards relate; and
   (f) The issue, sale, custody and production, inspection and delivery of books or cards and its replacement.

7. **Expenses of Remittance:**
   The principal employer shall bear the expenses of remitting the contributions to the ESI Corporation.

2. (b)(ii)

The circumstances are as follows:
(a) On Superannuation.
(b) Before Superannuation.
(c) Death
(d) Permanent Disablement.

(a) On Superannuation:
Superannuation means reaching the retirement age with at least 10 years of service.

(b) Before Superannuation:
On attaining the age between 50 and retirement age and at least ten years of service.

(c) Death:
Death while in service or while not in service.

(d) Permanent disablement:
On becoming permanently unfit for employment which the person was doing at the

time of such disablement.

(c) (i) Discuss the general duties of an "occupier" under the Factories Act, 1948. [7]
(ii) Explain the rules for Payment of Wages under Payment of Wages Act, 1936. [8]

Answer:

2. (c)(i)

General Duties of the Occupier:
Sec. 7A of the Factories Act, 1948 narrates the general duties of the Occupier as follows:

1. Every occupier shall ensure, so far as is reasonably practicable, the health, safety and welfare of all workers while they are at work in the factory.
2. Without prejudice to the generality of the provisions of Sub-Section (1), the matters to which such duty extends shall include:
    (a) The provision and maintenance of plant and systems of work in the factory that are safe and without risks to health.
    (b) The arrangement in the factory for ensuring safety and absence of risks to health in connection with the use, handling, storage and transport of articles and substances.
    (c) The provisions of such information, instruction, training and supervision as are necessary to ensure the health and safety of all workers at work.
    (d) The maintenance of all places of work in the factory in a condition that is safe and without risks to health and provisions and maintenance of such means of access to, and agrees from, such places as are safe and without such risks;
    (e) The provision, maintenance or monitoring of such working environment in the factory for the workers that is safe, without risk to health and adequate as regards facilities and arrangements for their welfare at work.
3. Except in such cases as may be prescribed, every occupier shall prepare, and as often as may be appropriate revise, a written statement of his general policy with respect to the health and safety of the workers at work and organization and arrangements for the time being in force for carrying out that policy, and to bring the statement and any revision thereof to the notice of all the workers in such manner as may be prescribed.

2. (c)(ii)

Responsibility for Payment of Wages (Sec 3)

(1) Every employer shall be responsible for the payment of all wages required to be paid under this Act to person employed by him and in case of persons employed
    (a) in factories if a person has been named as the manager of the factory under clause (t) of sub section 7 of the Factories Act 1948
    (b) in industrial or other establishments if there is a person responsible to the

employer for the supervision and control of the industrial or other establishments;

(c) upon railways (otherwise than in factories) if the employer is the railway administration and the railway administration has nominated a person in this behalf for the local area concerned.

(d) in the case of contractor a person designated by such contractor who is directly under his charge and

(e) in any other case a person designated by the employer as a person responsible for complying with the provision of the Act

The person so named the person so responsible to the employer or the person so nominated or the person so designated as the case may be shall also be responsible for such payment.

(2) Notwithstanding anything contained in sub section (1) it shall be the responsibility of the employer to make payment of all wages required to be made under this Act in case the contractor or the person designated by the employer fails to make such payment.

Fixation of Wage-Periods (Sec 4)

(1) Every person responsible for the payment of wages under section 3 shall fix periods (in this Act referred to as wage-periods) in respect of which such wages shall be payable;

(2) No wage-period shall exceed one month.

(d) (i) Explain the powers of director to impose fine under section 13 of PMLA. [5]

(ii) Parag issues an open 'bearer' cheque for ₹10,000 in favour of Qadir who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to Raman and Suman. When it is finally presented by Suman's banker, it is returned with remarks 'payment countermanded' by drawer. In response to a legal notice from Suman, Parag pleads that the 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, decide, whether Parag's argument is valid or not? [5]

(iii) Mayur and Nupur purchased a taxi to ply it in partnership. They had done business for about a year when Mayur, without the consent of Nupur, disposed of the taxi. Nupur brought an action to recover his share in the sale proceeds. Mayur's only defence was that the firm was not registered. Will Nupur succeed in her suit? [5]

Answer:

2. (d)(i)

Powers of Directors to impose fine (Sec 13)

1. The Director may, either of his own motion or on an application made by any authority, officer or person, call for records referred to in sub-sction (1) of section 12 and may make such inquiry or cause such inquiry to be made, as he thinks fit.

2. If the Director, in the course of any inquiry, finds that a banking company, financial institution or an intermediary or any of its officers has failed to comply with the provisions contained in section 12, then, without prejudice to any other action that may be taken under any other provisions of this Act, he may, by an order, levy a fine on such banking company or financial institution or intermediary which shall not be less than ten thousand rupees but may extend to one lakh rupees for each failure.

   The Director shall forward a copy of the order passed under sub-section (2) to every banking company, financial institution or intermediary or person who is a party to the proceedings under that sub-section.

2. (d)(ii)

The cheque bears two alterations when it is presented to the paying banker. One, the word 'bearer' has been struck off and two, the cheque has been crossed. Although both the alterations amount to material alterations but such alterations are authorized by the Act. So, it can be said that, both of these alterations do not amount to material alteration under the provisions of the Act and hence the liability of any including the drawer is not at all affected. Parag is liable to pay the amount of the cheque to the holder.

2. (d)(iii)

As per Section 69(3) of Indian Partnership Act, the term set off may be defined as the adjustment of debts by one party due to him from the other party who files a suit against him. It is another disability of the partners and of an unregistered firm that it cannot claim a set-off when a suit is filed against it.

Yes, Nupur will succeed in her suit. As the business had been closed on the sale of the taxi, the suit in the question is for claiming share of the assets of a dissolved firm.

Section 69(3) specially protects the right of a partner of an unregistered firm to sue for the realization of the property of a dissolved firm.

(e) (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]

Answer:

2. (e)(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.

2. (e)(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 employees 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 [Section 4(6)(b)]

3. Answer any one question: [1 × 15 = 15]

(a) (i) 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. [6]

(ii) Explain briefly the need for Corporate Governance in India. [9]

Answer:

3. (a) (i)

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)(ii)

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.

(b) (i) Explain the objectives of Right to Information Act, 2005. [6]

(ii) Can a non-profit organisation be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt? [9]

Answer:

3. (b) (i)

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.

3.(b)(ii)

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, 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 prescribe 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 lo it to be represented and heard in the matter.

4. Answer any one question: [1 × 15 = 15]

(a) (i) 'The terms ethics and morals are etymologically different'. Explain. [6]

(ii) Explain the potential conflicts faced by a finance and accounting professional in the role of independent consultant and employee. [9]

Answer:

4. (a) (i)

The terms 'ethics' and morals are etymologically, that is, from their very roots or terms, different. The word moral(s) is derived from the Latin root moralis, which implies custom. In other words, it refers to a behavior that is accepted or rejected due to an accepted social custom. The word ethics stems from the Greek word ethikos, which attributes to a social environment, referred to as ethos or social milieu. This latter meaning embraces much more than mere custom. It refers to everything that is part and parcel of society and not just what is allowed or forbidden. Morality is more concerned with the norms, values and beliefs embedded in social processes which define what is right or wrong for an individual or community.

Another point of difference between the two refers to their usage in ordinary language. For instance, a lawyer defending an alleged rapist would accuse the victim as 'morally fallen' and not as 'ethically fallen'. On the other hand, a committee that is formed to probe the behavior of the members of Parliament would be called 'ethics committee', not 'moral committee'. The meaning of the word is in its usage. Thus, both these terms have their unique characteristics and applications.

4. (a) (ii)

A finance and accounting professional has a professional obligation to comply with certain fundamental principles. A 'conflict of interest' arise where the professional have to decide between compliance with principles and actions which are beneficial to the business organization at large.

A. In the role of an Independent Consultant:
   A finance and accounting professional in public practice should take reasonable steps to identify circumstances that could pose a conflict of interest. Such circumstances may sometimes even give rise to threats to compliance with the fundamental principles.

B. In the role of an employee
   A finance and accounting professional working as employee, should support the legitimate and ethical objectives established by the organization and the rules and procedure drawn up in support of those objectives. He may be pressurized to act or behave in ways which directly or indirectly threaten the fundamental principles. Such pressure may be:
   (A) Explicit or implicit,
   (B) From a Manager, director or any other concerned person.

   A finance and accounting professional may face pressure to:
   (i) Act contrary to law or regulation
   (ii) Act contrary to technical or professional standards.
   (iii) Facilitate unethical or illegal earnings management strategies
   (iv) Lie to, or otherwise intentionally mislead
   (v) Issue, or otherwise be associated with, a financial or non-fictional report, that materially misrepresents the facts.

(b) (i) What are the fundamental principles of ethical behaviour? [8]
(ii) Explain the reasons for unethical behaviour among finance and accounting professionals. [7]

Answer:

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.

   (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 world 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, or example, in India and changing and being enlarged to meet the situations created through globalization. Indian Accounting Standards are being bought at far 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, WordCom 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. 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.