

Answer to PTP_Intermediate_Syllabus 2012_Jun2014_Set 2

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.

Question No. 1 is compulsory

1. Choose the correct answer from the given four alternatives. 1 x 20 = 20
- (i) Under section 2(b) of the Indian Contract Act, 1872, if the person to whom the proposal is made signifies his assent the proposal is said to have been _____
(a) accepted
(b) agreed
(c) provisionally agreed
(d) tentatively accepted
- (ii) Ethics is a set of _____ of human conduct that govern the behavior of individuals or organizations.
(a) Principles
(b) Standards
(c) Principles or standards
(d) None of the above
- (iii) Which of these is not a negotiable instrument as per the Negotiable Instrument Act, 1881
(a) Bill of exchange
(b) Delivery note
(c) Bearer Cheque
(d) Share Certificate
- (iv) Which one of the following is the correct sequence of steps in the formation and commencement of business of a public limited company?
(a) Memorandum, Issue of Prospectus, Filing of Prospectus, Minimum Subscription
(b) Memorandum, Minimum Subscription, Filing of Prospectus, Issue of Prospectus
(c) Memorandum, Filing of Prospectus, Issue of Prospectus, Minimum Subscription
(d) Memorandum, Issue of Prospectus, Minimum Subscription, Filing of Prospectus
- (v) Which of the following statement is correct?
(a) Every Public Company having capital of ₹ 5 Crore shall constitute Audit Committee
(b) The recommendations of the Audit Committee on any matters relating to Financial Management including the audit report shall be binding on the board.
(c) The audit committee shall meet at least thrice a year.
(d) All of the above.
- (vi) _____ is not a negotiable instrument as per customs and usage
(a) Delivery note
(b) Railway Receipt
(c) Cheque
(d) Government promissory note
- (vii) _____ is key test of existence of partnership.
(a) Mutual agency
(b) Profit sharing

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- (c) Capital contribution
(d) Existence of long term business
- (viii) Dissolution of partnership between all the partners of the firm is called _____
(a) Dissolution of the firm
(b) Dissolution of partnership
(c) Winding up of firm
(d) Termination of firm
- (ix) A factory in Himachal has painted its walls, partitions, ceilings, staircases etc. with washable water paint, they need to be repainted in every period of _____ and washed at least once in every period of _____
(a) Three years; one month
(b) Three years; three months
(c) Three years; six months
(d) Three years; nine months
- (x) Workers will be entitled to overtime wages if they have worked for more than _____
(a) Forty-eight hours in any four week
(b) Forty-eight hours in any three week
(c) Forty-eight hours in any two week
(d) Forty-eight hours in any week
- (xi) The term factory used in the Payment of wages Act, 1936 has the same meaning as in _____
(a) Industrial Dispute Act
(b) The Company Act
(c) Equal Remuneration Act
(d) Section 2(m) of the Factories Act, 1948
- (xii) How many employment are contained in part 2 to schedule 1 of the Minimum Wages Act, 1948
(a) 1
(b) 5
(c) 10
(d) 18
- (xiii) The responsibility for maintenance of register of a child worker lies upon _____
(a) Executive officer
(b) The occupier
(c) Manager
(d) Controlling officer
- (xiv) The society for Business Ethics was started in
(a) 1950
(b) 1960
(c) 1970
(d) 1980
- (xv) Which of the following documents is a document of title to 'goods' within the meaning of section 2(4) of the Sale of Goods Act, 1930
(a) Warehouse keeper's certificate
(b) Warfinger's certificate
(c) Both (a) and (b)
(d) VPP.

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- (xvi) European business schools adopted business ethics after _____ commencing with the European Business Ethics Network (EBEN) in _____ when the first single-authored books in the field appeared.
- (a) 1987,1982
 - (b) 1980,1982
 - (c) 1982,1980
 - (d) 1977,1984
- (xvii) Goods displayed in a shop with a price tag is an _____
- (a) offer
 - (b) invitation to offer
 - (c) counter offer
 - (d) none of the above
- (xviii) _____ is a set of principles and expectations that are considered binding on any person who is member of a particular group.
- (a) Code of conduct
 - (b) Code of ethics
 - (c) Code of practice
 - (d) Any of the above
- (xix) The Right to Information Act, 2005 confers on all citizens a right to receive information. This is now a _____
- (a) Legal right
 - (b) Constitutional right
 - (c) Fundamental right
 - (d) Human right
- (xx) Every Company must submit Annual return to Registrar of Companies within _____ days of Annual General Meeting.
- (a) 30
 - (b) 60
 - (c) 90
 - (d) 120

Answer: 1.

- (i) (a) accepted
- (ii) (c) Principles or standards
- (iii) (d) Share certificate
- (iv) (c) Memorandum, Filing of Prospectus, Issue of Prospectus, Minimum Subscription
- (v) (d) All of the above
- (vi) (c) Cheque
- (vii) (a) Mutual agency
- (viii) (a) Dissolution of the firm
- (ix) (c) Three years; six months
- (x) (d) Forty eight hours in any week.
- (xi) (d) Section 2(m) of the Factories Act, 1948
- (xii) (a) 1
- (xiii) (b) The occupier
- (xiv) (d) 1980
- (xv) (c) Both (a) and (b)
- (xvi) (a) 1987,1982
- (xvii) (b) invitation offer
- (xviii) (a) Code of conduct

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- (xix) (a) Legal right
(xx) (b) 60

SECTION A

Attempt any four questions.

- 2 (a) R of New Delhi send his agent M to purchase certain goods from Global Enterprise, Mumbai on credit for him. Later on R pays the amount for the goods purchased. On another occasion, he again sends M to purchase goods but this time pays sufficient cash to M for the purpose. M, however again purchases the goods from Global Enterprises but on credit and soon thereafter he dies. Global Enterprise files a suit against R for recovery of the said amount. State whether Global Enterprise would be given any relief by the Court under the provisions of the Indian Contract Act, 1872.
- (b) Examine the entitlement of a dismissed employee to receive bonus under the Payment of Bonus Act, 1965.
- (c) A lady buys synthetic pearls for a high price thinking that they are natural pearls. The seller does not correct her mistake. Has she any remedies against the seller? Would your decision be different if the lady had told the seller; "I think they are natural pearls and, therefore, agree to buy them at your price," and the seller was silent?
- (d) What is the punishment for false statement under the Employees' State Insurance Act?

[2+5+2+3]

Answer: (a)

R is liable to Global Enterprise for goods purchased by M	<ul style="list-style-type: none">• since the principal is bound to third parties for all such acts of the agent as are within the scope of authority of the agent;• since on a previous occasion, purchase of goods by M on behalf of R, and subsequent payment for such goods by R, established that it was within the scope of authority of M to purchase goods on credit on behalf of R.
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- (b) As per section 9 of the Payment of Bonus Act, 1965, an employee shall be disqualified from receiving bonus, if the following two conditions are satisfied:
- (i) The employee has been dismissed from service.
 - (ii) The employee was dismissed because –
 - he had committed fraud; or
 - of his riotous or violent behaviour while on the premises of the establishment;or
 - theft, misappropriation or sabotage of any property of the establishment.

It is evident that every case of dismissal of an employee does not disentitle him to receive bonus **under section 9**. Section 9 is attracted only if an employee is dismissed from service as a consequence of such reasons as are specifically mentioned under section 9.

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Conclusion: A dismissed employee is not entitled to bonus. However, if an employee is dismissed for any reason other than the reasons given under section 9, he shall be entitled to bonus provided he is employed on a salary or wage not exceeding ₹ 10,000 and he has worked in the establishment for 30 days or more.

(c) The lady has no remedy against the seller as the doctrine of caveat emptor applies in this case. In the latter case, she can avoid the contract as there is a breach of condition as to quality (Sec. 16 (1).]

(d) If any person knowingly makes or causes to be made any false statement or representation, for the purpose of—

(a) causing any increase in payment or benefit under the Act, or

(b) causing any payment or benefit to be made where no payment or benefit is authorised by or under the Act, or

(c) avoiding any payment to be made by himself under the Act or enabling any other person to avoid any such payment, he shall be punishable with imprisonment for a term which may extend to 6 months, or with fine not exceeding ₹ 2,000.

3. (a) A, B and C are partners in a firm. They jointly promise to pay ₹ 1,50,000 to P. C became insolvent and his private assets are sufficient to pay only 1/5 of his share of debts. A is compelled to pay the whole amount to P. Examining the provisions of the Indian Contract Act, 1872, state the extent to which A can recover the amount from B.

(b) A and B purchased a taxi to ply it in partnership. They plied the taxi for about a year when A, without the consent of B, disposed of the taxi. B brought an action to recover his share in the sale proceeds. A resisted B's claim on the plea that the firm was not registered. Will B succeed in his claim?

(c) What are the Rights and duties of partners after a change in the constitution of the firm under Section 17 of the Partnership Act?

(d) Distinguish between lock-out and closure?

[2+2+4+4]

Answer: (a)

Liability of A, B and C	is ₹ 50,000 each since joint promisors are jointly liable to fulfill the promise.
Payment made by C	is ₹ 10,000 only.
Deficiency of C to be shared by A and B	is ₹ 20,000 each.
Amount recoverable from B by A	is ₹ 70,000 only.

(b) As per section 69(1) of the Indian Partnership Act, 1932, a person suing as a partner of an unregistered firm cannot sue the firm or any partners of the firm to enforce a right arising from a contract or conferred by the Partnership Act. He can do so if –

- the firm is registered, and

- the person suing is or has been shown in the Register of Firms as a partner in the firm.

So, in the given case, B will succeed in his claim as the action now was for the realization of the assets of a dissolved firm.

(c) Where a change occurs in the constitution of a firm. Subject to contract between the partners, where a change occurs in the constitution of a firm, the mutual rights and duties of the partners in the reconstituted firm remain the same as they were immediately before the change, as far as may be [Sec. 17 (a)].

After the expiry of the term of the firm. Subject to contract between the partners, where a firm constituted for a fixed term continues to carry on business after the expiry of that term, the mutual rights and duties of the partners remain the same as they were before the expiry so far as they may be consistent with the incidents of a partnership-at-will [Sec. 17 (b)].

Where additional undertakings or adventures are carried out. Subject to contract between the partners, where a firm constituted to carry out one or more adventures or undertakings carries out other adventures or undertakings, the mutual rights and duties of the partners in respect of the other adventures or undertakings are the same as those in respect of the original adventures or undertakings [Sec. 17 (c)].

(d) The points of difference between a lock-out and closure are as follows:

- (1) In the case of lock-out it is only the place of business which is closed (and not the business itself), while in the case of closure of a business not only the place of business but the business itself is closed [**Express Newspapers (Pvt.) Ltd. v. Their Workmen, A.I.R. (1963) S.C. 569**]. The closure of a business indicates the final and irrevocable termination of the business itself. Lock-out, on the other hand, indicates the closure of the place of business or the place of employment and not the closure of the business itself.
- (2) Lock-out is a weapon of coercion in the hands of employer; closure is generally for trade reasons.
- (3) In closure there is severance of employment relationship whereas in lock-out there is no severance but only suspension of such relationship.
- (4) A lock-out is caused by the existence or apprehension of an industrial dispute whereas a closure need not be in consequence of an industrial dispute.

4. (a) In an Auction sale, a bid once made can be withdrawn by the Bidder. Comment citing rules.

(b) Has the property in the goods passed in the following cases?

- (i) B offers for a specific horse ₹ 20,000, the horse to be delivered on 5th January, and the price to be paid on the 1st February following
- (ii) B orders A, a boat-builder, to make him a boat. While the boat is being built, B pays to A money from time to time on account of price.
- (iii) A, having a quantity of sugar which is more than twenty quintals, contracts to sell to B ten quintals out of it. Afterwards A puts ten quintals of sugar in sacks and gives notice to B that the sugar is ready and requires him to take it away, B says he will take it as soon as he can.

(c) Mr. "E" joined as supervisor on monthly salary of ₹ 9,900 on 01.02.2013 and resigned from his job on 28.02.2013. The company declared a bonus of 20% to all eligible employees and paid to on time. Mr. "E" knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the payment of Bonus Act, 1965.

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(d) X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay sum of ₹ 5,000 per month to N (the sister of the expectant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. State with reasons under the provision of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

(e) List out the objectives of the Money Laundering Act? [2+3+2+3+2]

Answer:

(a) In the case of sale by Auction, the sale is complete only when the auctioneer announce its completions by the fall of a hammer or in other customary manner and until such announcement is made any bidder may retract/withdraw his bid.

(b)

- (i) The property in the horse would pass to B as soon as the seller accepts the offer. The fact that the time of delivery and of payment of price is postponed does not prevent the property from passing at once (Sec. 20).
- (ii) No. The property in the boat would pass to B when the boat is ready and A gives a notice to B to this effect (Sec. 21).
- (iii) Yes. The property in sugar passes to B when A gives notice to B (Sec. 21).

(c)

The claim of Mr. E is not valid	<ul style="list-style-type: none">• Since he has not worked for at least 30 working days in the Accounting Year 2012-13 (Sec. 8);• Although he is covered in the definition of 'employee', i.e., he is employed on a salary or wage not exceeding ₹ 10,000 per month [Sec. 2(13)].
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(d)

M is liable to pay to N the amount of ₹ 5,000 per month	<ul style="list-style-type: none">• Since there is a contract between M and N;• Since in consideration of payment of ₹ 5,000 per month to N, M has received house of X;• Since M has received consideration, although she has not received such consideration from the other party to the contract, viz. N;• Since privity of consideration is not required, i.e., consideration need not move from the other party to the contract;• Since the same decision was given in Chinnaya v Rammaya on the same facts as in the given case.
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(e) The Act aims to-

- (i) Prevent money-laundering;
- (ii) Combat channelling of money into illegal activities and economic crimes;
- (iii) Provide for confiscation of property derived from, or involved in, money-laundering;
- (iv) Provide for matters connected therewith or incidental thereto.

5. (a) A issues an open 'bearer' cheque for ₹ 10,000 in favour of B who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to C and D. When it is finally presented by D's banker, it is returned with remarks 'payment countermanded' by drawer. In response to this legal notice from D, A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the

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cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, state whether A's argument is valid or not?

(b) State the grounds upon which a contract may be discharged under the provisions of the Indian Contract Act, 1872?

(c) What is the minimum and maximum punishment for offence of money laundering?

(d) State eligibility and disqualification for bonus under the Payment of Bonus Act, 1965.

[3+2+3+4]

Answer:

(a)

Effects of striking off the word 'bearer'	<ul style="list-style-type: none">• It amounts to a material alteration.• However, such material alteration is authorised by the Act.• Therefore, the cheque is not discharged; it remains valid.
Effects of crossing the cheque	<ul style="list-style-type: none">• It amounts to a material alteration.• However, such material alteration is authorised by the Act.• Therefore, the cheque is not discharged; it remains valid.
A's argument is not valid	<ul style="list-style-type: none">• since the reason for dishonour of cheque is not 'material alteration', but 'payment countermanded by drawer'.• Therefore, A is liable for the payment of the cheque, and he shall also be liable for dishonour of cheque in accordance with the provisions of Sec. 138.

(b)

- (i) Discharge by performance
- (ii) Discharge by impossibility of performance
- (iii) Discharge by mutual agreement
- (iv) Discharge by lapse of time
- (v) Discharge by operation of law
- (vi) Discharge by breach of contract

(c) The punishment for money laundering is explained below:

Imprisonment upto 7 years (Section 4):

Whoever commits the offence of money-laundering shall be punishable with rigorous imprisonment for a term which shall not be less than 3 years but which may extend to 7 years and shall also be liable to fine which may extend to ₹ 5 lakh.

Imprisonment upto 10 years (Proviso to Section 4):

However, if the proceeds of crime involved in money-laundering relates to any offence specified under paragraph 2 of Part A of the Schedule, the provisions of this section shall have effect as if for the words 'which may extend to 7 years', the words 'which may extend to 10 years' had been substituted.

(d) **Eligibility for bonus (Sec. 8).** Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of the Act, provided he has worked in the establishment for not less than 30 working days in that year (Sec. 8). Where an employee has not worked for all the working days in any accounting year, the bonus payable to him under Sec. 10 shall be proportionately reduced (Sec. 13).

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Disqualification for bonus (Sec. 9). Notwithstanding anything contained in the Act, an employee shall be disqualified from receiving bonus under the Act, if he is dismissed from service for

- (a) fraud, or
- (b) riotous or violent behaviour while on the premises of the establishment, or
- (c) theft, misappropriation or sabotage of any property of the establishment.

6. (a) What is not included in the term 'industry' under the Industrial Disputes Act, 1947?

(b) S is employed in Golden ice-cream factory, a seasonal establishment. The factory was in operation for four months only during the Financial year 2009-10. S was not in continuous service during this period. However, he has worked only sixty days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether S is entitled to gratuity payable under the Act, would your answer be the same in case S works for 100 days?

(c) State the provisions of the Employees' (Provident Funds and Miscellaneous Provisions Act, 1952 regarding the following:

- (i) rate of interest on amount due from the employer under the Act
- (ii) maximum limit of interest rate
- (iii) the period for which the employer is liable to pay the said interest. [6+3+3]

Answer:

(a) 'Industry' does not include -

- (1) any agricultural operation except where such agricultural operation is carried on in an integrated manner with any other systematic activity and such other activity is the predominant one ; or
'Agricultural operation' does not include any activity carried on in a plantation as defined in Sec. 2 (f) of the Plantations Labour Act, 1951.
- (2) hospitals or dispensaries ; or
- (3) educational, scientific, research or training institutions ; or
- (4) institutions owned or managed by organisations wholly or substantially engaged in any charitable, social or philanthropic service ; or
- (5) khadi or village industries ; or
According to new clause (kka) as introduced in Sec. 2 by the Amendment Act of 1982, 'khadi' has the meaning assigned to it in Sec. 2 (d) of the Khadi and Village Industries Commission Act, 1956.
- (6) any activity of the Government relatable to the sovereign functions of the Government including all the activities carried on by the departments of the Central Government dealing with defence research, atomic energy and space ; or
- (7) any domestic service ; or
- (8) any activity, being a profession practised by an individual or body of individuals, if the number of persons employed in relation to such profession is less than 10 ; or
- (9) any activity, being an activity carried on by a co-operative society or a club or any other like body of individuals, if the number of persons employed in relation to such activity is less than 10.

(b)

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

Rate of interest for delayed payment	For any delay in payment of any amount due from the employer, the employer shall be liable to pay simple interest at the rate of 12% p.a. or at such higher rate as may be specified in the Scheme.
Maximum limit on rate of interest	The higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.
Period for which interest is payable	The interest is payable from the date on which the amount has become due till the date of its actual payment.

SECTION B

Attempt any two questions.

7. (a) In respect of The Right to Information Act, give the definition of the following:
- Competent Authority
 - Appropriate Government
- (b) What is a fictitious name? If a person has two or more names, how can he apply for shares?
- (c) The Registrar of Companies on examining the statutory report filed with him by M/s Jyothi Company Ltd. finds that the report has been certified as correct, by all the directors of the Company, except the Managing Director. The Registrar refuses to register said document on the ground that it was not signed by the Managing Director of the Company.
- Answer the following in the light of the Companies Act, 1956:
- Whether the Registrar of Companies can hold the officers of the Company liable?
 - What provisions of the Companies Act have not been complied with by the company and its officers?
 - To what penalties are the Company and its officers liable? [[2+1)+2+3]

Answer: (a)

- "Competent Authority" means—
 - the Speaker in the case of the House of the People or the Legislative Assembly of a State or a Union territory having such Assembly and the Chairman in the case of the Council of States or Legislative Council of a State;
 - the Chief Justice of India in the case of the Supreme Court;
 - the Chief Justice of the High Court in the case of a High Court;
 - the President or the Governor, as the case may be, in the case of other authorities established or constituted by or under the Constitution;
 - the administrator appointed under article 239 of the Constitution
- "Appropriate Government" means in relation to a public authority which is established, constituted, owned, controlled or substantially financed by funds provided directly or indirectly
 - by the Central Government or the Union territory administration, the Central Government;

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(b) by the State Government, the State Government

(b) A name would be fictitious if it is used with a view to concealing reality. For example, the use of name of a non-existing persons or of an existing person who is not the applicant, or with altered spelling or title, would ordinarily constitute a fictitious name. On the other hand, mere technical errors in the name or in spelling or in the title or description without any intention of concealing reality or any intention to defraud would not constitute the use of a "fictitious name". A person may commonly be known by two or more names. He may indicate his aliases in the share application. If a person wants to change his name, he should do so in proper legal manner.

It should be remembered that Section 68A is a penal section and has therefore to be construed strictly. An innocent change in the style of writing the name or use of a fictitious name inadvertently would not be sufficient to convict a person unless mal-intention or dishonest motive is established.

(c) (i) The officers of the company are liable

- since the statutory report has not been certified as correct by the managing director
- since as per Sec. 165(4), the statutory report is to be certified as correct by not less than two directors of the company one of whom shall be a managing director, where there is one.

(ii) The company has contravened

- Sec. 165(4) of the Companies Act, 1956.

(iii) Every officer who is in default is liable

- to a fine not exceeding ₹ 5,000 as per Sec. 165(9).

8. (a) The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however entered into an agreement with Q to supply 100 laptops of worth ₹ 5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act, 1956.

(b) Where the articles of association of private company do not contain any provision as to the retirement of the directors, is it necessary for at least 1/3rd of the directors of such a company to retire at its each annual meeting?

(c) While a managing director can act in more than one company, can a whole-time director work for more than one company within the same group without the previous approval of the government or of the members who approved payment of his remuneration? [3+2+3]

Answer:

(a) A Company cannot effectively do anything beyond the powers expressly or impliedly conferred upon it by the Statue of its Memorandum of Association. Any purported activity beyond the powers conferred by MOA will be ineffective even if agreed to by all the Members. This rule of commonly known as 'Doctrine of Ultra Vires'. Ultra means "beyond" and Vires means "powers".

So, in the given case, the contract to purchase laptops is an ultra vires contract, and is therefore, void ab initio. 'Q' cannot enforce the contract against RST Limited. The Court

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may order RST Limited to deliver back the laptops to Q if the laptops are still in the possession of the company and if the Court, applying the principle of equity, deems it fit considering the circumstances of the case.

(b) There is no necessity for directors to retire by rotation in case of a private limited company if its articles of association do not provide for retirement by rotation. The appointment and retirement of directors in case of a private company are to be decided on the basis of articles alone.

(c) Whole-time means such time as is necessary for the work of the company. Generally no director can work for whole time for two companies unless the nature of the work of the companies is such as can permit the same director to hold two whole-time offices e.g., where the company's work requires limited time or where the timings are different as in the case of a cinema company, the evening time may be the usual working time. Leaving such exceptional cases no director can work as a whole-time director of two companies whether it belongs to the same group or not and in any case, if it is possible to do so, it is necessary to obtain the central government's approval as to the appointment, remuneration etc., in case of public limited companies and their subsidiaries.

9. (a) **Noble Meters Limited was incorporated with the equity share capital of ₹ 50 lakh. The company received the Certificate of Incorporation on 20th May, 2013. The company issued the prospectus inviting the public to subscribe for its equity shares. Meanwhile, the company intended to commence its business. Whether Noble Meters Ltd. is entitled to commence its business without obtaining the Certificate to Commencement of Business?**

Advice the company stating the conditions to be fulfilled for obtaining the Certificate to Commencement of Business from the Registrar of Companies under Companies Act, 1956.

(b) **Can the board of directors delegate to its committees any of its powers, (i) which are specifically required to be done by the board under the Companies Act, 1956, (ii) which are specifically required to be done by the company under the said Act but not in the general meeting and hence, by the board under Section 291 of the said Act? Can other powers which the board exercises and the Act do not provide for specific delegation be delegated to a committee of the board? [5+3]**

Answer:

Noble Meters Ltd. is not entitled to commence business

- since it has not obtained certificate of commencement of business;
- since it is a public company having share capital;
- since a public company having share capital cannot commence its business unless it has obtained certificate of commencement of business.

Conditions to be satisfied for obtaining certificate of commencement of business

Where a company issues a prospectus, the certificate of commencement of business shall be issued only if the following conditions, as given u/s 149(1) are satisfied:

- (i) The company must apply to one or more stock exchanges for listing of its shares. If any of these stock exchanges refuse to list the shares of the company, the company shall have to refund the entire amount received from the applicants, and the company shall be issued a certificate of commencement of business.

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- (ii) Where shares have been allotted to the directors and manager, the company must have received the amount due on application and allotment from every such director or manager.
 - (iii) The company must have received the minimum subscription. Further, the company must have made the allotment of such number of shares as are not less than the minimum subscription.
 - (iv) The company shall file a declaration with the Registrar that all the requirements of Sec.149(1) have been duly complied with.
- (b)** Only those powers which are not specifically required under the Act to be exercised by the board or the company in general meeting can be delegated by the board to its committees. Under Section 291 of the Act, anything which a company is required to do, can be done by the board, unless otherwise stated in the Act or in the company's memorandum or articles of association. But that does not mean that the board cannot delegate certain powers to its committees, if the Act does not require them specifically to be exercised by the board. In that case, only the board alone can exercise these powers, otherwise there is no bar to delegation. There will, however, be power for such delegation in the company's articles of association.

SECTION C

Attempt any two questions.

10. What are the reason and consequences of Unethical Behavior?

[8]

Answer:

The reasons for which unethical behavior might arise in the organization are:

- (i) Over Emphasis on Short Term Profitability: Manipulating accounting entries to show better profitability (window dressing) to raise further capital from the market.
- (ii) Ignoring small unethical issues: Companies need to develop an environment where small ethical lapses are taken seriously so that they do not recur in the future.
- (iii) Economic cycles: when the company is doing well, no one is bothered to understand its actual financial position. However, when the economy takes a downward turn, finance and accounting managers may take decisions by compromising over the established principles. To prevent disclosure of unethical problems in times of depression, companies need to be careful and vigilant also during prosperous time periods.
- (iv) Market complexity: In the era of globalization and massive cross border flow of capital, accounting rules have become more complex. The complexity of principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behavior.
- (v) Money - Mindedness: Most business organizations try to display better financial condition by window dressing. Following such a principle towards "showing profits" rather than "earning profits" leads to unethical accounting and financial practices.

Consequences of Unethical Behavior -

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 take 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,

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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 greater customer dissatisfaction and fewer new customers. It is proved that good ethics carries many benefits, and its violations – penalties, and therefore refraining from unethical behavior should be the sine-qua-non consideration for an organization.

11. (a) Mention the process of conflict resolution by finance and accounting professional.

(b) Is it possible to have single right answer to all ethical issues?

[3+5]

Answer:

(a) A finance and accounting professional should determine:

1. The appropriate course of action,
2. Weigh the consequences of each possible course of action:
 - a. If the matter remains unresolved, the professional should consult with other appropriate persons within the firm and if required, with persons responsible for governance of the organisation (e.g. Board of Directors).
 - b. The following steps are suggested to resolve the issues:
 - i. **Documentation:** He should document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.
 - ii. **Legal Advice:** If a significant conflict cannot be resolved, a professional may obtain advice from the relevant professional body or legal advisors without breach of confidentiality.
 - iii. **Withdrawal:** If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict, withdraw from the engagement team or specific assignment or resign from the employing organization.

(b) Ethics doesn't always show the right answer to moral problems.

Indeed more and more people think that for many ethical issues there isn't a single right answer - just a set of principles that can be applied to particular cases to give those involved some clear choices.

Some philosophers go further and say that all ethics can do is eliminate confusion and clarify the issues. After that it's up to each individual to come to their own conclusions. Ethics can give several answers.

Many people want there to be a single right answer to ethical questions. They find moral ambiguity hard to live with because they genuinely want to do the 'right' thing, and even if they can't work out what that right thing is, they like the idea that 'somewhere' there is one right answer.

But often there isn't one right answer - there may be several right answers, or just some least worst answers - and the individual must choose between them.

For others moral ambiguity is difficult because it forces them to take responsibility for their own choices and actions, rather than falling back on convenient rules and customs.

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12. (a) 'R' a CMA has recently been appointed as manager of finance of XYZ Ltd. and is responsible for the year-end accounts.
His salary and related bonus is based on the outcome of this. This was established as a *key performance indicator* of his predecessor.
Although, from what he can tell, the accounts and reporting have been solid in the past few years, he does feel that this is an inappropriate indicator, but his CEO and HR want to retain it. He seeks your advice as professional brethren.
- (b) 'M' is a management accountant working for KBC Ltd.
While the finance director is on leave, he was in charge of the finances. The managing director has a director's loan account and has asked him to make transactions on it, some of which are prior to the year end.
He has said this has been agreed by the other directors. He does not feel comfortable authorising this and also feels that it will not reflect well on company's year end results. State your views.
- (c) What is the difference between business ethics and an ethical business? [3+3+2]

Answer:

- (a) Although one can imagine why management might want to set this indicator, it is short-sighted. For his compensation to be tied to the outcome of the accounts could create a risk for the management, and for him.
Such tying to reward could create a conflict of interest as in his position there is potential to alter the outcome of the accounts and undermine objectivity and professional judgment in his work.
Threats in this regard are explicit .He should talk it through with his CEO with a view to agreeing a more productive indicator to be tied to compensation.
- (b) 'M' needs to consider all affected parties and whether he is obliged to keep them informed.
He might also want to consider what impact this may have on the year end results.
What are the internal policies in this regard? If there is no written authorisation from the other directors this is something he could query – and then document.
In this situation he needs to be sure that he is upholding his objectivity, his obligations with regard to preparation and reporting of information , and bear in mind any threats and safeguards .
- (c) Business ethics relates to how any organisation conducts its business in order to make profit or achieve other goals. Any organisation can seek to do business in a way that is guided by ethical values. Whether an organisation is judged to be an **ethical business** however, may involve a subjective assessment of any of the following: the products and services it offers, its founding priorities, goals and values, its philanthropy, its reputation among its stakeholders, the way it treats customers and staff etc.