Group - I

Paper 6 - Laws, Ethics and Governance

Section A: Industrial and Economic Laws

1. Comment on the following based on legal provisions as per the Indian Contract Act, 1872.

(A) K takes a seat in a bus run by VV Travels. VV travels operate bus service between Kolkata and Durgapur. The bus was standing at its Bay in the Bus Terminus. Examine whether this amounts to a contract under The Indian Contract Act, 1872.

Answer:

There is an implied offer to public at large by a transport company to carry passengers from one destination to another. When K takes a seat in the bus, there is an implied acceptance of the offer on his part, and there comes into existence a valid contract.

(B) R sent a consignment of goods worth ₹ 190,000 by railway and got railway receipt. He obtained an advance of ₹ 160,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ₹1 90,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?

Answer:

As per Sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledge, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. In *Morvi Mercantile Bank Ltd. vs. Union of India*, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledgor. Thus, the bank will succeed in this claim of ₹190,000 against Railway.

(C) A offered to purchase shares of XYZ Ltd on 1st May 2012. The company made allotment of shares on 30th November 2012. A refused to accept the shares. Can it do so?

Answer:

According to Sec 6(2) of the Indian Contract Act, 1872 an offer is revoked by lapse of time prescribed in the proposal or by lapse of reasonable time without communication of acceptance. What is reasonable time is question of fact in each case.

In the given case the offer lapsed as it was not accepted within reasonable time g[*Ramsgate Victoria Hotel Co. vs Montefiore*.]

(D) P, Q and R jointly borrowed ₹500,000 from W. The whole amount was repaid to W by Q. Decide in the light of the Indian Contract Act, 1872 whether:

(i) Q can recover the contribution from P and R,

(ii) Legal representatives of P are liable in case of death of P,

(iii) Q can recover the contribution from the assets, in case R becomes insolvent.

Answer:

Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

(i) Q can recover the contribution from P and R because P,Q, R are joint promisors.

(ii) Legal representative of P are liable to pay the contribution to Q. However, a legal representative is liable only to the extent of property of the deceased received by him.

(iii) 'Q' also can recover the contribution from R's assets.

2. (A) W offered to sell his flat to H for ₹15 lacs. H replied purporting to accept the offer and enclosed a cheque for ₹8 lacs. He also promised to pay the balance of ₹7 lacs in 20 installments of ₹35000 each. Examine the validity of contract.

Answer:

According to Section 7 of the Indian Contract Act, 1872, acceptance must be unqualified and absolute, it must conform to offer. If the parties are not *ad idem* on all matters concerning the offer and acceptance, there is no contract.

In the given case the acceptance is qualified and hence not a valid acceptance. As a result there is no valid contract.

(B) 'S' agreed to become an assistant for 5 years to 'P' who was a Lawyer practicing at Delhi. It was also agreed that during the term of agreement 'S' will not practise on his own account in Delhi. At the end of one year, 'S' left the assistantship of 'P' and began to practise on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'S' could be restrained from doing so?

Answer:

An agreement in restraint of trade/ business/ profession is void under Section 27 of the Indian Contract Act,1872. But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not in restraint of trade. However, in the given case 'S' cannot be restrained by an injunction from doing so.

(C) Minor under the Indian Contract Act, 1872 is always beneficiary.

Answer:

As per the Indian Contract Act, 1872 an agreement with a minor is void ab initio. However there is nothing that debars him from becoming a beneficiary i.e. payee, endorsee or promisee in a contract. The law does not regard him incapable of accepting a benefit.

3. (A) What tests can be applied in determining whether a person is an agent of another?

Answer:

The test for determining whether a person is or is not an agent is whether that person has the capacity to bind the principal and make him answerable to a third person by bringing him (the principal) into legal relations with the third person and thus establish a privity of contract between the party and the principal. If yes, he is agent, otherwise not. This relationship of agency may be created either by express agreement or by implication.

(B) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer:

According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A is not discharged.

(C) R found a purse in MB Shopping Plaza. He deposited the purse to the manager of the mall so that it can be handed over to true owner. However the purse remained unclaimed. R now wants to claim the purse back. Will R succeed in his claim?

Answer:

According to the Indian Contract Act, 1872, till the owner is found out, the property in goods will vest with the finder and he can retain the goods as his own against the whole world (except the owner, of course).

So in the given case R will succeed in his claim.

4. (A) B buys goods from A on payment but leaves the goods in the possession of A. A then

pledges the goods to C who has no notice of the sale to B. State whether the pledge is valid and whether C can enforce it. Decide with reference to the provisions of the Sale of Goods Act, 1930.

Answer:

This is based on the provisions of Section 30 (1) of the Sale of Goods Act, 1930 which provides an exception to the general rule that no one can give a better title than he himself possesses. As per the provisions of the section, if a person has sold goods but continues to be in possession of them or of the documents of title to them, he may pledge them to a third person and if such person obtains them in good faith without notice of the previous sale, he would have good title to them. Accordingly, 'C' the pledgee who obtains the goods in good faith from A without notice of the previous sale, gets a good title. Thus the pledge is valid.

(B) P purchased from Q 5000 tins of canned fruit to be packed in cases, each containing 50 tins but Q supplied cases containing 25 tins. Does P have right to rejects the goods?

Answer:

This is based on the provisions of Section 15 of the Sale of Goods Act, 1930. P is entitled to reject the goods because the goods were not packed according to the description. It is to be noted that if the goods do not correspond with the description but such goods are fit for buyer's purpose, even then the buyer may reject the goods and the seller cannot take defense by saying that the goods will serve buyer's purpose.

(C) 'Risk is transferred only on delivery.' Give your views on the statement in light of the Sale of Goods Act, 1930.

Answer:

Risk is transferred only when sale is complete, irrespective of whether the goods are delivered or not (Sec 26). Sec 26 of the Sale of Goods Act, 1930 provides that , unless otherwise agreed, the goods are at buyer's risk when the property in the goods passes to the buyer whether delivery has been made or not. Until then, buyer is not responsible for loss or damage of goods.

(D) R sells 200 bales of cloth to S and sends 150 bales by lorry and 50 bales by Railway. S receives delivery of 150 bales sent by lorry, but before he receives the delivery of the bales sent by railway, he becomes bankrupt. R being still unpaid, stops the goods in transit. The official receiver, on S's insolvency claims the goods.

Answer:

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

(i) The seller must be unpaid

(ii) He must have parted with the possession of goods

(iii) The goods must be in transit

(iv) The buyer must have become insolvent

(v) The right is subject to the provisions of the Act.

Applying the provisions to the given case, R being still unpaid, can stop the 50 bales of cloth sent by railway as these goods are still in transit.

(E) At an auction sale, F made the highest bid for an article of X. State the legal position in the following cases:

Case I: If F withdrew the bid before the fall of hammer though he knew that one of the condition of the sale was bid once made cannot be withdrawn'.

Case II: If X appointed two persons A and B, to bid on his behalf. The sale was notified subject to a right to bid.

Answer:

Case I: F's bid was an offer to buy and he was entitled to withdraw his bid before the sale is completed as per express provision of Section 64(2). [*Payne* v. *Cave*]

Case II: It amounts to fraud and sale is voidable at the option of the buyer because the seller could appoint only one person to bid on his behalf. [Sec 64(3) and Sec 64(6)]. Here the intention of the seller was not to protect his interest but to raise the price.[*Thornett* v *Haines*]

5. (A) X, Y and Z were joint owners of a bus and possession of the said bus was with Y. P purchased the bus from Y without knowing that X and Z were also owners of the bus. Decide in the light of provisions of the Sale of Goods Act, 1930, whether the sale between Y and P is valid or not?

Answer:

This problem is based on Section 28 of the Sale of Goods Act, 1930 which lays down an exception to the general rule that a person cannot transfer a better title than that he himself possesses. A person who is one of joint owners may transfer a better title that he possesses. Section 28 provides that – "if one of several joint owners of goods has the sole possession of them by permission of the co-owners, the property in goods is transferred to any person who buys them of such joint owner in good faith and has not at the time of the contract of sale notice that the seller has no authority to sell".

(B) Sometimes 'breach of condition' is treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930? Under what circumstances?

Answer:

According to Section 13 of the Sale of Goods Act, 1930 a breach of condition may be treated as breach of warranty in following circumstances:

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

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

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

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

(C) A contracts to sell B, by showing sample, certain quantity of fairness lotion described as 'Imported'. The lotion when delivered matches with the sample, but is not 'imported' but 'Made in India' of the same company. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to B.

Answer:

B has a remedy to repudiate the contract. According to section 15 of the Sale of Goods Act, 1930, when the goods are sold by sample as well as by description, there shall be an implied condition that the goods shall correspond to the sample as well as description. In this case, A supplied fairness lotion which did correspond with the sample but was not correspond to the description of '*Imported*'. Hence the B has the right to repudiate the contract.

(D) K the owner of a Maruti Santro car wants to sell his car. For this purpose he hand over the car to M, a mercantile agent for sale at a price not less than ₹150, 000. The agent sells the car for ₹90, 000 to B, who buys the car in good faith and without notice of any fraud. M misappropriated the money also. K sues B to recover the Car. Decide given reasons whether K would succeed.

Answer:

The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods form a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

(1) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.

(2) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.

(3) The buyer should act in good faith.

(4) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, M, the agent, was in the possession of the car with K's consent for the purpose of sale. B, the buyer, therefore obtained a good title to the car. Hence, K in this

case, cannot recover the car from B. A similar decision, in analogous circumstances, was taken in *Folkes v. King*

(E) X buys synthetic pearls for a high price thinking that they are natural pearls. The seller though understood X's intention, kept silent. Examine the remedies X has against the seller as per the Sale of Goods Act, 1930.

Answer:

X has no remedy against the seller as the doctrine of Caveat Emptor will apply.

'Caveat emptor' means "let the buyer beware", i.e. in sale of goods the seller is under no duty to reveal unflattering truths about the goods sold. Therefore, when a person buys some goods, he must examine them thoroughly. If the goods turn out to be defective or do not suit his purpose, or if he depends upon his skill and judgment and makes a bad selection, he cannot blame anybody excepting himself.

The rule is enunciated in the opening words of section 16 of the Sale of Goods Act, 1930 which runs thus: "Subject to the provisions of this Act and of any other law for the time being in force, there is no implied warranty or condition as to the quality or fitness for any particular purpose of goods supplied under a contract of sale"

6. Examine the following cases in light of laws relating to employees:

(A) Employees of an electricity generation station claimed that their unit is covered under the definition of 'factory' considering the process of transforming and transmission of electricity generated at the power station as a 'manufacturing process. Will their claim succeed?

Answer:

As per section 2(k) of The Factories Act, 1948, manufacturing process means any process for-

(i) Making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing, or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal, or
(ii) Pumping oil, water, sewage or any other substance; or;
(iii) Generating, transforming or transmitting power; or
(iii) Composing types for printing, printing by letter press, lithography, photogravure or other similar process or book binding;
(iv) Constructing, reconstructing, repairing, refitting, finishing or breaking up ships or vessels; (Inserted by the Factories (Amendment) Act, 1976, w.e.f. 26-10-1976.)
(v) Preserving or storing any article in cold storage;

Process undertaken at electricity generating station, substation transferring and transmitting electricity is not a manufacturing process and are not thus factory- [*Delhi Electricity Supply Undertaking vs. Management of DESU, AIR(1973)SCC 365]*

(B) 'D' joined BE Engineering Works (P) Ltd. on 5.3.2012. On 8th December, 2012 he was laid off as the management wanted to slow down due to shortage of power. 'X' was not allowed lay-off

compensation on the ground that his period of service was less than one year. Is the claim of management valid under the Industrial Disputes Act, 1947?

Answer:

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

'D' has worked for 273 days before he was laid off. So he is entitled to lay-off compensation and can claim the same.

(C) Y, a laboratory assistant consumes a chemical during the night shift and dies. The chemical was not of the laboratory kit. His wife claimed compensation under the Employees Compensation Act,1923.

Answer:

The Employer is not liable to pay compensation as it is a case of suicide by the employee. The apex court observed in Mackenzie & Co. v. Ibrahim Mohammad Isaac(1970) S C 1906 that the words 'in course of employment' means in course of the work which the employee who is employed to do and which is incidental to it. Further the words 'during the course of employment' the injury should result from some risk incidental to duties of service owing to the employer. If the accident is inclined with some risk situated with employment, then the employee would succeed in getting compensation.

7. State your views on the following in light of laws relating to employees:

(A) XYZ(P) Ltd. imposed a fine on P, one of its employees for regularly reporting late for work. The fine was imposed on 4th April, 2013. The management wanted to recover the amount in September, 2013 during half yearly increment. Can the Company recover as per the Payment of Wages Act,1936?

Answer:

As per Sec. 8(7) of The Payment of Wages Act, 1936 no fines can be recovered after expiry of 90 days from the date on which it is imposed. So XYZ (P) Ltd. will not be able to recover the fine in September, 2013 as the gap exceeded 90 days.

(B) X is engaged in two types of job in a factory, that of a mechanic and watchman. The wage rates are different for two different jobs. The employer calculates his minimum wage at an average rate. State whether this is correct as per the Minimum Wages Act, 1948?

Answer:

Where an employee does two or more classes of work to each of which a different minimum rate of wages is applicable, the employer shall pay to such employee in respect of the time respectively occupied in each such class of work, wages at not less than the minimum rate in force in respect of each such class. Thus employer just cannot pay him at simple average rate of both wages of both classes of job.

(C) The payment of contribution to provident fund of an employee, to be made by his employer, who has become insolvent, a preferential payment as per the provisions of the Employees Provident fund and Miscellaneous Provisions Act, 1952.

Answer:

According to Section 11 of the Employee's Provident Fund and Miscellaneous Provisions Act 1952, if the employer is adjudged as insolvent or if the employer is a company and an order winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or employer's contribution must be included among the debts which are to be paid in priority to all other debts in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be a preferential payment provided the liability thereof has accrued before this order of adjudication or winding up is made.

8. (A) Y is working as a marketing personnel in a company . The following payments were made to him by the company during the previous financial year –

(i) overtime allowance,

(ii) dearness allowance

(iii) commission on sales

(iv) employer's contribution towards pension fund

(v) value of food.

Examine as to which of the above payments form part of "salary" of WX under the provisions of the *Payment of Bonus Act, 1965.*

Answer:

According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment. It includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

(i) Any other allowance which the employee is for the time being entitled to;

(ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service or of any concessional supply of food grains or other articles;

(iii) Any traveling concession;

(iv) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.

(v) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and

(vi) Any commission payable to the employee.

It may be noted that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Y while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds does not form part of his salary.

(B) Gratuity can be withheld by the employer non-vacation of official quarter by the employee under the Payment of Gratuity Act, 1972.

Answer:

Gratuity cannot be withheld for non-vacation of service quarters by retiring employees. Gratuity can only be forfeited to the extent of damage or loss where services have been terminated for any act of willful omission or negligence causing damage /loss/destruction of employer's property and not for non-vacation of service quarters.

Gratuity is exempted from attachment in execution of any decree or order in any Civil, Revenue or Criminal Court.

(C) AKB Mall maintains a canteen and car parking place through private contractors. Regional director, ESI Corporation sent notices to management of the Mall for contribution of the employees engaged in the canteen and the car parking place. The management contends that they are not employees but are employees of contractor. Hence, management is not liable for them. Will the management succeed in its contention?

Answer:

As per Section 2(9) of the ESI Act, 1948" employee" means any person employed for wages in or in connection with the work of a factory or establishment to which this Act applies and--

(i) who is directly employed by the principal employer on any work of, or incidental or preliminary to or connected with the work of, the factory or establishment, whether such work is done by the employee in the factory or establishment or elsewhere; or

(ii) who is employed by or through an immediate employer on the premises of the factory or establishment or under the supervision of the principal employer or his agent on work which is ordinarily part of the work of the factory or establishment or which is preliminary to the work carried on in or incidental to the purpose of the factory or establishment; or

(iii) whose services are temporarily lent or let on hire to the principal employer by the person with whom the person whose services are so lent or let on hire has entered into a contract of service.

In the given case, there was a canteen and a car parking space run by contractors. This is similar ton that of Royal Talkies, Hyderabad v ESI Corporation, AIR 1978 SC 1478 where the Supreme Court ruled that employees of contractors to whom space was leased are employees within the meaning of Section 2(9) of the ESI Act, 1948.

Therefore in the given problem the Mall owner as principal owner is liable for the payment of ESI contribution to its employees in canteen/parking space.

(D) How does the Child Labour (Prohibition and Regulation) Act, 1986 define 'a child'? How is this definition different from that under the Factories Act, 1948?

Answer:

Under the Child Labour (Prohibition and Regulation) Act, 1986 a child means a person who has not completed his fourteen years of age.

However the Factories Act, 1948 defines a child as a person who has not completed his fifteenth year of age which is different from the definition mentioned under the Child Labour(Prohibition and Regulation) Act, 1986.

9. (A) P draws a cheque of ₹15000 in favour of Q in lieu of payment of debt. P after issuing the cheque to Q instructed the bank for stop payment in respect of the cheque issued. Is this an offence under the Negotiable Instruments Act, 1881?

Answer:

Section 138 of the Negotiable Instruments Act, 1881 states that where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid either because of the amount of money standing to the credit of that account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence .

Asking payee not to present the cheque or issuing 'Stop Payment' instructions to the Banker gets covered u/s 138. Hence P is deemed to have committed offence.

(B) Would the answer differ in (A) if P had made a gift to Q?

Answer:

If cheque is issued only as a gift and not in discharge of any debt, P cannot be booked u/s 138 of the Negotiable Instruments Act, 1881. But onus of proof lies only on P. If he fails to prove, presumption u/s 139 of the Negotiable Instruments Act, 1881 shall be extended.

Section 139 in The Negotiable Instruments Act, 1881 states It shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge, in whole or in part, of any debt or other liability.

Stop Payment instructions shall not preclude him from his liability.

(C) A promissory note is made without specifying the time for payment. The holder added 'on demand' on face of the instrument. Does that amount to changing character of the instrument as per the Negotiable Instrument Act,1881?

Answer:

A promissory note made without specifying time is payable on demand. So adding "on demand' on face of the instrument does not change the character of the instrument.

10. (A) X has balance of ₹5500/- in YZ Bank. He draws a cheque of ₹20,000 in favour of C knowing fully that he has no O/D facility. The cheque is dishonoured. Is notice of dishonour to X necessary?

Answer:

Notice of dishonour is not necessary when the party charged could not suffer damage for want of notice. As such notice of dishonour to X is not necessary.

(B) P draws a bill on Q. Q accepts the bill without any consideration. The bill is transferred to R without consideration. R transferred it to S for value. Can S sue the prior parties of the bill?

Answer:

Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

In the given case, P has drawn a bill on Q and Q accepted the bill without consideration and transferred it to R without consideration. Later on in the next transfer by R to S is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to S with consideration. Therefore, S can sue any of the parties i.e. P, Q or R, as S obtained a good title on it being taken with consideration.

(C) P, a major, and Q, a minor, executed a promissory note in favour of R. Examine with reference to the provisions of the Negotiable Instruments Act,1881 the validity of the promissory note and whether it is binding on P and Q.

Answer:

Every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque (Section 26, para 1, Negotiable Instrument Act, 1881).

As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).

In view of the provisions of Section 26 explained above, the promissory note executed by P and Q is valid even though a minor is a party to it. Q, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely P from liability.

11. (A) Ascertain the date of maturity of a bill payable hundred days after sight and which is presented for sight on 4th September, 2013.

Answer:

In this case the day of presentment for sight is to be excluded i.e. 4th September, 2013. The period of 100 days ends on 13th December, 2013 (September 27 days + October 31 days + November 30 days + December 13 days). Three days of grace are to be added. It falls due on 16th December, 2013.

(B) A bill is drawn in UK on M, a trader in India and accepted payable in Kolkata. Whether it is an inland bill or foreign instrument?

Answer:

The bill is a foreign instrument since it is drawn outside India.

(C) X promises to pay Y, by a Promissory note,` 5000 and all other sums, which shall be due. Examine the validity of the promissory note.

Answer:

The sum payable is not certain within the meaning of Section 4 of the Negotiable Instruments Act, 1881. Hence the Promissory Note is not a valid one.

(D) P by inducing Q obtains a Bill of Exchange from him fraudulently in his (P) favour. Later, he enters into a commercial deal and endorses the bill to R towards consideration to him (R) for the deal. R takes the bill as a Holder-in-due-course. R subsequently endorses the bill to P for value, as consideration to P for some other deal. On maturity the bill is dishonoured. P sues Q for the recovery of the money.

With reference to the provisions of the Negotiable Instruments Act, 1881 decide whether P will succeed in the case?

Answer:

The problem stated in the question is based on the provisions of the Negotiable Instruments Act as contained in Section 53. The section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53).

Thus applying the above provisions it is quite clear that P who originally induced Q in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as P himself was a party to the fraud.

12. (A) "Mere sharing in the profits of a business is not a conclusive proof of existence of partnership."- Comment.

Answer:

According to Section 4 of the Indian Partnership Act,1932, "Partnership is the relation between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". This clearly reveals that sharing of profits of a business is an important criterion of partnership. But in determining whether it is conclusive evidence of partnership or not, the regard shall be had to the real relations between the parties, as shown by all relevant facts taken together. Section 6 of the Indian Partnership Act, 1932, categorically lays down that receipt by a person of a share of the profits of a business does not by itself make him a partner with the persons carrying on the business as there are number of cases where the persons sharing the profits do not have relationship of partners.

For instance, in the following cases partnership relation does not exist:-

1. Joint owners of some property in sharing of profits or gross returns arising from the property.
2. A widow or child of a deceased partner who receives a share of profit.
3. A servant or agent who receives a share of profit as part of his remuneration.
5. A person who receives a share of profit in consideration of sale of business or goodwill of the business.

Hence, mere participation in the profits of a trade is not a conclusive evidence of partnership.

Thus test of partnership can be analyzed as under:

i) The partnership is determined by real relation among partners and relation must show existence of mutual agency.
ii) The sharing of profit is prima facie evidence but not conclusive evidence of partnership.

(B) 'Power to expel a partner must be exercised in good faith.' State your views.

Answer:

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

(i) power of expulsion should exist in the partnership deed (contract between the partners.

(ii) power has been exercised by the majority of the partners in good faith.

The test of good faith includes:

(a) that the expulsion must be in the interest of the partnership;

(b) that the partner to be expelled is served with a notice; and

(c) that the partner has been given an opportunity of being heard.

If a partner is otherwise expelled, the expulsion is null and void.

Thus the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

(C) A, B and C were partners in ABC &Co.. During the course of partnership, the firm ordered SS Ltd. to supply a machine to the firm. Before the machine was delivered, A expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to SS Ltd.

Explain with reasons:

(i) Whether A's private estate is liable for the price of the machine purchased by the firm?

(ii) Against whom can the creditor obtain a decree for the recovery of the price?

Answer:

The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Therefore, considering the above provisions, the problem may be answered as follows:

(i) A's estate in this case will not be liable for the price of the Machinery purchased. *[Bagel Vs. Willer]*

(ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was not debt due in respect of the goods in A's life time. *[Bagel Vs. Willer]*.

13. (A) P and Q entered into an agreement to carry on a business of manufacturing and selling toys. Each one of them contributed ₹50 lacs as their capital with a condition that P and Q will share the profits equally, but the loss, if any is to be borne by P alone. Referring to the provisions of the Indian Partnership Act, 1932 decide whether there exists a partnership between P and Q.

Answer:

Yes, it is a case of partnership between P and Q as sharing losses is not an essential condition to create a partnership. Section 13(b) of the Indian Partnership act 1932 provides that subject to the contract between the partners, the partners are entitled to share equally in the profits earned, and shall contribute equally to the losses sustained by the firm. In the given case the partners make a contract contrary to this provision where P agrees to bear all the losses of the business.

(B) P, Q and R are partners in a firm called PQR & Co. P, with the intention of deceiving D, a dealer of office furniture, buys certain furniture on behalf of the PQR &Co. The furniture is of

use in the ordinary course of the firm's business. A does not give the furniture to the firm, instead brings it to his own use. The dealer D, who is unaware of the private use of furniture by P, claims the price from the firm. The firm refuses to pay for the price, on the ground that the furniture was never received by it (firm). Referring to the provisions of the Indian Partnership Act, 1932 decide:

Whether the Firm's contention shall be tenable?

Answer:

The problem in the question is based on the 'Implied Authority' of a partner provided in Section 19 of the Indian Partnership Act 1932. The section provides that subject to the provisions of Section 22 of the Act, the act of a partner, which is done to carry on, in the usual way, business of the kind carried on by the firm, binds the firm. The authority of a partner to bind the firm conferred by this section is called his 'Implied Authority' [Sub-Section (i) of section 19]. Furthermore, every partner is in contemplation of law the general and accredited agent of the partnership and may consequently bind all the other partners by his acts in all matters which are within the scope and object of the partnership.

Considering the above provisions and explanation, the questions as asked in the problem may be answered as under:

The firm's contention is not tenable, for the reason that the partner, in the usual course of the business on behalf of the firm has an implied authority to bind the firm. The firm is, therefore, liable for the price of the furniture.

However, the firm PQR can take action against P, the partner but it has to pay the price of furniture to the dealer D.

(C) "Implied authority of a partner can be extended or restricted". Discuss the above statement in the light of the provisions of the Indian Partnership Act, 1932.

Answer:

Section 19 (2) of the Indian Partnership Act, 1932, provides that the act of a partner which is done to carry on the usual way, business of the kind carried on by the firm bind the firm, provided the act is done in the firm's name or in any manner expressing or implying an intention to bind the firm. The implied authority of a partner extends only to such acts which are common in the type of business carried on by the firm and are done by him in usual way of carrying on the firm's business. Thus, if it is usual to give credit to customers, in a particular business, the giving of credit by a partner to a customer will bind the firm. However, if a usual act is done in an unusual manner, this must raise a suspicion as to the authority of a partner and the protection on the ground of implied authority may not the available.

14. (A) X, Y and Z are partners in a firm. As per terms of the partnership deed, X is entitled to 20 percent of the partnership property and profits. X retires from the firm and dies after 15 days. Y and Z continue business of the firm without settling accounts. What are the rights of X's legal representatives against the firm under the Indian Partnership Act, 1932?

Answer:

Section 37 of the Indian Partnership Act, 1932 provides that where a partner dies or otherwise ceases to be a partner and there is no final settlement of account between the legal representatives of the deceased partner or the firms with the property of the firm, then, in the absence of a contract to the contrary, the legal representatives of the deceased partner or the retired partner are entitled to claim either.

(i) Such shares of the profits earned after the death or retirement of the partner which is attributable to the use of his share in the property of the firm; or

(ii) Interest at the rate of 6 per cent annum on the amount of his share in the property.

Based on the aforesaid provisions of Section 37 of the Indian Partnership Act, 1932 A, in the given problem, A shall be entitled, at his option to:

(i) the 20% shares of profits (as per the partnership deed); or

(ii) interest at the rate of 6 per cent per annum on the amount of X's share in the property.

(B) E and F, co-owners of a house, let it out to a paying guest. They divide the net rent between them. Examine in light of the Partnership Act, 1932 whether they are partners.

Answer:

Joint owners of property sharing returns arising from the property do not become partner (Ex 1 to sec 6 of the Indian Partnership Act, 1932)

E and F are not partners since a very essential element that partners must be engaged in carrying on some business is lacking.

(C) 'X' a publisher, agrees to publish at his own expense a book written by 'Y' and to pay 'Y' half of the net profits. Does this create a relationship of partnership between 'X' and 'Y'?

Answer:

Section 4 of the Indian Partnership Act,1932 defines Partnership as " partnership is the relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all------"

Thus there exists a relation of mutual agency between partners. In the given case, this essential relation is absent. So there does not exists any partnership.

15. (A) A buys certain goods worth ₹60,000 from an unregistered firm B & Co. B & Co. has to pay ₹70,000 to A for the goods purchased by the firm in the past. Referring to the provisions of the Indian Partnership Act, 1932 decide whether B & Co. can compel A to accept ₹10,000 i.e. the difference between ₹70,000 and ₹60,000 as the final settlement?

Answer:

Section 69 of the Indian Partnership Act, 1932 provides that an unregistered firm cannot claim a set off exceeding ₹100 in value. In the given case the difference between ₹70,000

and ₹60,000 is of ₹10,000 for which the right of set off is not available. Therefore, B & Co cannot compel A to accept ₹10,000 as the final settlement.

(B) When is a LLP not bound by act of its members?

Answer:

A limited liability partnership is not bound by any act of a member in dealing with a person if –

i) the member in fact has no authority to act for the limited liability partnership by doing that thing;
ii) the person knows that the member has no authority or does not know or believe him to be a member of limited partnership.

(C) A Limited Liability Partnership is a body corporate, so shall have perpetual succession and can carry on business with any number of partners under the Limited Liability Partnership Act, 2008. Do you agree?

Answer:

This is discussed in Section 6 of the Limited Liability Partnership Act, 2008.As per the section –
(1) Every limited liability partnership shall have at least two partners.
(2) If at any time the number of partners of a limited liability partnership is reduced below two and the limited liability partnership carries on business for more than six months while the number is so reduced, the person, who is the only partner of the limited liability partnership during the time that it so carries on business after those six months and has the knowledge of the fact that it is carrying on business with him alone, shall be liable personally for the obligations of the limited liability partnership incurred during that period.

16. (A) List the circumstances under which an LLP formed under the Limited Liability Partnership Act, 2008 may be wound up by tribunal?

Answer:

A limited liability partnership may be wound up by the Tribunal,—
(i) the limited liability partnership decides that limited liability partnership be wound up by the Tribunal;
(ii) If, for a period of more than six month, the number of partners of the limited liability partnership is reduced below two;
(iii) if the limited liability partnership is unable to pay its debts;
(iv) if the limited liability partnership has acted against the interests of the sovereignty and integrity of India, the security of the State or public order;
(v) if the limited liability partnership has made a default in filing with the Registrar the Statement of Account and Solvency or annual return for any five consecutive financial years; or
(vi) if the Tribunal is of the opinion that it is just and equitable that the limited liability partnership be wound up.

(B) Limited Liability Partnerships are body corporate. Do you agree? Justify.

Answer:

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

(i) A limited liability partnership is a body corporate formed and incorporated under this Act and is legal entity separate from that of its partners.

(ii) A limited liability partnership shall have perpetual succession.

(iii) Any change in the partners of a limited liability partnership shall not affect the existence, rights or liabilities of the limited liability partnership.

(iv) Save as otherwise provided, the provisions of the Indian Partnership Act, 1932 shall not apply to a limited liability partnership.

(v) Any individual or body corporate may be a partner in a limited liability partnership.

(C) Explain the concept of 'whistle blowing' with respect to the Limited liability Partnership Act, 2008.

Answer:

The concept has been discussed in Sec 31 of the Limited liability Partnership Act, 2008.As per the sec-

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

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

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

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

17. (A)'Money laundering is a national phenomenon and appropriate measures at national level are required. State your views.

Answer:
Today, globalization and economic and financial crisis are the terms used to describe changes in society and the world economy. It is widely agreed that globalization has increased

international trade and cultural exchanges, removing economic barriers. Increasing interdependence in international relations, besides positive aspects undoubtedly bring some negative aspects related to economy and security and public order. An economic and financial crisis that occurs in a country directly affects not only this country but the entire geographic region and even the world economy as a whole.
Globalization in the current economic crisis will always lead to economic recession, lower loan rates, low budget world countries, the general economic downturn, which favors the growth of the underground economy and crime especially the phenomena of money laundering.
Thus money laundering is not national but international phenomenon.

(B) 'Money laundering can provide short term benefits to economy.' Comment.

Answer:

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

18. (A) On whom does the burden of proof vest under the PMLA, 2002?

Answer:

When a person is accused of having committed the offence under section 3, the burden of proving that proceeds of crime are untainted property shall be on the accused. [Sec 24, The PMLA, 2002]

B) What are the obligations of banking companies under the PMLA, 2002?

Answer:

Section 12 of the Prevention of Money Laundering Act, 22, cast a duty upon every banking company, financial institution and intermediary to –

(a) Maintain a record of all transaction, the nature and value of which may be prescribed whether such transactions comprise of a single transaction or a series of transactions integrally connected to each other and where such series of transactions take place within a month. Such record should be maintained for a period of ten years from the date of transaction between the clients and the banking company or financial institution or intermediary as the case may be;

(b) Furnish information of transactions referred to in clause (a) to the Director within such time as may be prescribed;

(c) Verify and maintain the records of the identity of all its clients in such a manner as may be prescribed.

(C) What is the objective of Know Your Customer(KYC) guidelines?

Answer:

Know your customer (KYC) refers to due diligence activities that financial institutions and other regulated companies must perform to ascertain relevant information from their clients for the purpose of doing business with them.

The objective of KYC guidelines is to prevent banks from being used, intentionally or unintentionally, by criminal elements for money laundering activities. Related procedures also enable banks to know or understand their customers, and their financial dealings better. This helps them manage their risks prudently. Banks usually frame their KYC policies incorporating the following four key elements:

- Customer Acceptance Policy;
- Customer Identification Procedures;
- Monitoring of Transactions; and
- Risk management.

Section B – Corporate Laws and Governance

19. (A) X, a minor was gifted 100 shares of TMP Ltd by his father Y. In light of the Companies Act, 1956, decide how far can a minor become a member of a company under the Companies Act, 1956?

Answer:

The Company Law Board has laid down in *Nandita Jain v. Bennet Coleman & Co. Ltd.* that a minor can become a member provided four conditions are fulfilled:

(a) Company must be a Co. Ltd. by shares.

(b) Shares are fully paid up.

(c) Application for transfer is made on behalf of minor by lawful guardian.

(d) The transfer is manifestly for the benefit of the minor.

This was also confirmed in S.L. Bagree v. Britannia Industries.

In also *Diwan Singh v. Minerva Films Ltd. [(3958) 28 Comp. Cases 191 (Punj.), (1959) 29 Comp. Cases 263 (Punj.)],* the Punjab High Court held that there is no legal bar to minor becoming a member of a company by acquiring shares (by way of transfer) provided the shares are fully paid and no further obligation or liability is attached to them.

Minor can become member by transfer or transmission, but a company may not allow a minor to be a member by allotment.

(B) PQR Ltd was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of office equipments by the company after incorporation. The company was incorporated and the office equipments were used by it. Shortly after incorporation, the company went into liquidation and the debt could not he paid by the

company for the purchase of above office equipments. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can he held liable for payment under the following situations:

(i) When the company has already adopted the contract after incorporation?'

(ii) When the company makes a fresh contract with the suppliers in terms of pre-incorporation contract?

Answer:

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

(i) the promoters in the first case will be liable to the suppliers of office equipments . There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.

(ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

(C) The Directors of SS Global Ltd wants to change the name of the Company to IT Sunshine Ltd. What is the procedure to be followed under the Companies Act, 1956?

Answer:

According to Sec 21 of the Indian Companies Act of 1956, a company can change its name with the approval of the Central Government.

It must be made in writing and must be made through a special resolution. The steps are as follows:

1. Board meeting for deciding the agenda for change in name citing the reasons for the proposed change in name of the company.

2. Seeking name availability for proposed new name from the Registrar of Companies.

3. Approval of members in general meeting as per Sec. 21 as the name change will involve amendments in the Memorandum of Association and Articles of Association. So special resolutions are required to be passed.

4. Registration of special Resolution with Registrar of Companies through Form-23 (Sec. 192)

5. Filing of form-1B with Registrar of Companies under Sec. 21.

There can be continuation of all legal proceedings (if any) by or against the company with the new name.

(D) The Articles of Association of KBC Ltd. required all deeds to be signed by the Managing Director and the Secretary of the company. Y accepted a deed of mortgage signed by the Secretary and a Working Director. Is the company liable?

Answer:

In consequences of registration of the Memorandum and Articles of Association of a Company with the Registrar of Companies where all persons dealing with a company are deemed (or "construed") to have knowledge of the company's Articles of association and Memorandum of Association. This is called the Doctrine of Constructive Notice.

In the given case the company is not liable and Y cannot claim under this deed.

20. (A) XYZ Ltd issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. S, an allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide in light of the Companies Act, 1956.

Answer:

Any person who takes shares on the faith of statement of facts contained in a prospectus can rescind the contract if those statements are false or untrue. The words 'untrue statement' have to be construed as explained in Section 65(1)(a), which says that a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included. Again, where the omission from a

prospectus of any matter is calculated to mislead, the prospectus is deemed, in respect of such omission to be a prospectus in which an untrue statement is included [Section 65(1)(b)].

In this case, the fact that dividends were paid out of capital profit and not out of trading profits was not disclosed in the prospectus and to that extent the prospectus contained a material misrepresentation of a fact giving a false impression that the company was a profitable one. Hence S can avoid the contract of allotment of shares. (Rex V. Lord Kylsant).

(B) Some of the creditors of QRB Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 1956. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.

Answer:

After incorporation the company in the eyes of law is a different person altogether from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though the shareholders control the entire share capita! of the company. This is popularly known as Corporate Veil. In certain circumstances the courts are empowered to lift or pierce the corporate veil by ignoring the company and directly examine the promoters and others who have managed the affairs of the company after its incorporation. Thus, when the corporate veil is lifted by the courts, (i.e., the courts have disregarded the company as an entity), the promoters can be made personally liable for the debts of the company. In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

(i) Trading with enemy country.

(ii) Evasion of taxes.

(iii) Forming a subsidiary company to act as its agent.

(iv) The benefit of limited liability is destroyed by reducing the number of members below 7 in the case of public company and 2 in the case of private company for more than six months.

(v) Under law relating to exchange control.

(vi) Device of incorporation is adopted to defraud creditors or to avoid legal obligations.

(C) UVW Ltd. was incorporated on 1.4.2012. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 1956 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

Answer:

According to Section 166 of the Companies Act, 1956, every company shall hold its first annual general meeting within a period of 18 months from the date of incorporation. Since UVW Ltd. was incorporated on 1.4.2012, the first annual general meeting of the company should be held on or before 30th September, 2013. Even though the Registrar of Companies is

empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meeting, such a power is not available to the Registrar in the case of the first annual general meeting. Thus, the company and its directors will be liable for the default if the annual general meeting is held after 30th September 2013.

(D) The Board of Directors of RKLS Ltd. have allotted shares to the investors of the company without issuing a prospectus or filing a statement in lieu of prospectus with the Registrar of Companies, Kolkata. Explain the remedies available to the investors in this regard.

Answer:

According to the provisions of Section 70 and 71 of the Companies Act, 1956, any allotment of shares by a company without filing a prospectus or statement in lieu of prospectus will become irregular allotment. The effect of it is that the allotment made by RKLS Ltd will become voidable at the instance of the allottee i.e., the applicant for the shares within a period of two months from the date of allotment. The allotment is voidable at the option of the investor applicant even if the company is in the course of winding up. Further, the directors liable for the default are also liable to compensate the company and the allottee respectively for any loss to which the company may have sustained or incurred thereby. There is a time limit of two years for claiming damages for loss etc., by the investors.

21. (A) The management of XYZ Ltd., has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the object clauses of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause.

Answer:

Section 17(1) of the Companies Act, 1956 permits a company to alter its objects for the under mentioned purposes:

(1) to carry on business more economically;

(2) to attain the main purpose of the company by new and improved means;

(3) to carry on some business which the existing circumstances may conveniently or advantageously the combined with be existing business;

(4) to change and enlarge the local area of operations;

(5) to restrict or abandon any of the existing objects;

(6) to sell or dispose of the whole or any part of the undertaking;

(7) to amalgamate with any other company or body of persons.

The case of the company is covered under point No. 3 above and therefore the company can amend its object clause to take up the business of Food Processing activity.

For change in objects, the following are the steps:

(1) Hold Board meeting for approval of changed object and for notice for holding AGM and authorise one director or secretary to deal with ROC in this regard.

(2) Hold the general meeting and pass the special resolution.

(3) File form 23 with ROC with amended MOA.

(4) Get the form registered and get a certificate for registration.

(B) "Every shareholder of a company is also known as a member, while every member may not be known as a shareholder." Examine the validity of the statement and point out the difference between a 'member' and a 'shareholder'.

Answer:

Member' or 'Shareholders' of a company are the persons who collectively constitute the company as a corporate. Entry, the terms 'Member' and 'Shareholder' and 'holder of a share' are used interchangeable. *(Balkrishan Gupta v. Swadeshi Polytex Ltd.)* They are synonymous in the case of a company limited by shares, a company limited by guarantee and having a share capital and on unlimited company whose capital is held in definite shares. But in the case of an unlimited company or a company limited by guarantee, a Member may not be a shareholder, for such a company may not have a share capital.

A shareholder may be distinguished from a Member as follows:

(1) A registered shareholder is a member but a registered member may not be a shareholder because the company may not have a share capital.

(2) A person who owns a bearer share warrant is a shareholder but he is not a member as his name is struck off the register of members. [Section 115(i)]. This means that a person can be a holder of shares without being a member.

(3) A legal Representative of a deceased Member is not a member until he applies for registration. He is, however, a shareholder even though his name does not appear on the register of members.

(4) A person who subscribes to the Memorandum of Association immediately becomes the member, even though no shares are allotted to him. Till shares are allotted to the subscriber, he is a member but not a shareholder of the company.

(5) A person who has transferred his shares ceases to be a holder of those shares from the date of the transfer, but he continues to be a member till such time the transfer is registered in the name of the transfers in the books of the company.

(C) Advise the ABC Ltd. with reference to the relevant provisions of the Companies Act, 1956 about sending notice of board meetings to the following directors:

(i) Mr. X a director, who intimates his inability to attend the next board meeting.

(ii) Mr. Y, who has gone abroad for four months and an alternate director has been appointed in his place.

(iii) Mr. Z is a director residing abroad representing the foreign collaborator and the Articles of Association of the company provide for sending notice to such directors.

Answer:

According to Section 286 of the Companies Act, 1956 notice of every board meeting shall be given in writing to every Director for the time being in India and at his usual address in India to every other Director.

(i) Notice should be given even if Mr. X expressed his inability to attend the next board meeting. Otherwise Section 286(i) will be violated.

(ii) Although there is no legal precedent in this regard, it would be a prudent practice (under section 286)that notice should be served to both, the alternative director as well as the original director Mr. Y, who is outside India, at his usual address in India.

(iii) In the case of a company having foreign collaboration, Articles generally provide that notice of Board Meeting should be sent by Air Mail. But a question crops up whether such provisions are valid, as section 286(1) requires services of such notice to a Director to be sent at his usual address in India. Despite provision contained in the Articles and in the Act, 1956, it is advisable as a good secretarial practice and taking into account the fact that it is a foreign collaboration agreement, and to avoid unnecessary legal tangles the company may also send notice of the Board Meeting to the director residing abroad.

(D) Due to internal disputes in the working of BCA Ltd., Mr. X, the Executive Director, and Mr. Y, a Director, have submitted their resignations and decided to dissociate themselves with the working of the company. Mr. Z, the Managing Director, decides to refuse their resignations. Examine whether the Managing Director can compel Mr. X and Mr. Y to continue as per the provisions of the Companies Act, 1956.

Answer:

There is no provision in the Companies Act, 1956 relating to the resignation of his office by a director. If there is any provision in the articles giving the right to a director to resign at any time, the resignation shall take effect without any need for its acceptance by the Board or the Company in General Meeting. However, it is not clear what will be the position if the articles do not contain any provision relating to resignation of directors. One view is that the ordinary rule of common law as regards resignation by an officer or agent must be followed namely, resignation by notice given either to the Company or the Board and acceptance of the same. *(Glossop V. Glossop; Latchford Premier Cinema Ltd. V. Ennion)*. Another view is where the resignation says that it is to take effect immediately, acceptance is not necessary unless the Articles or any provision of law makes it necessary. Further the directors do not have the power to refuse the resignation of the co-director unless such a provision is there in the Articles of Association. *(Re. Neokratine Safety Explosives Co. of New Ltd. (1891)*. Hence in the absence of contrary provisions in Articles, the Company (i.e., Mr. Z) can not compel Mr. Y to continue as a director.

However, the position is somewhat different in the case of a managing or whole time director. In such a case a formal acceptance of resignation by the company is essential so as to make it compete and effective. This is because the managing/ wholetime director occupies two positions (i) one that of a director and (ii) the other that of a whole time employee.

An employee cannot give up office at his pleasure simply by giving notice. The notice or letter of resignation is required to be accepted by the company and the officer concerned has to be relieved of his duties and responsibilities, attaching to the office which he has resigned from. [*Achutha Pai Vs. Registrar of Companies (1956) 36 comp. Case 598*]. Thus as the Executive Director, Mr. X is full time employee of the company, the Managing Director (Mr. Z) can compel him to work as per the terms of employment agreed into at the time of appointment.

22. (A) Mr. X is already a director of 19 companies. He is being appointed as a director of another company named LMP Ltd. Advise Mr. X in regard to the following:

(i) Restrictions on the number of directorships to be held by an individual and whether he can accept the new appointment in view thereof.

(ii) What are the companies to be excluded for the purpose of calculating the ceiling on the appointment of directors?

Answer:

(i) After the commencement of the Companies (Amendment) Act, 2000, (i.e, w.e.f. 14.12.2000), no person, shall save as otherwise provided in section 276, hold office at the same time as director in more than 15 companies (Section 275). Earlier the limit was 20 companies.

For calculating the limit certain companies are to be excluded as provided in section 278(1).

In view of the above, it is not possible for Mr. X to be a director in 19 companies after excluding the companies listed in section 278 (1). In the absence of information about companies, it is not possible to ascertain the exact number of directorship held by Mr. X for the purpose of section 275.

There are two possibilities. Either Mr. X is a director in less than 15 companies (say 14 Companies) or 15 Companies. If he is a director in 14 Companies he can accept the directorship of LMP Limited. If he is already a director in 15 companies, he must within 15 days of his appointment as a director in LMP Ltd., relinquish any of his directorship. If he does not exercise the option within 15 days and does not vacate his directorship in any of the 15 companies, the appointment in LMP Ltd., shall become void immediately on the expiry of the 15 days [Section 277(1)].

(ii) For calculating the limit of 15 companies the following companies can be excluded:

(a) a private company which is neither a subsidiary nor a holding company of a public company.

(b) An unlimited company.

(c) An association not carrying on business for profit or which prohibits the payment of a dividend.

(d) A company in which the person is only acting as alternate director.[Section 278(1)].

In making the above said calculation, any company referred to in (a), (b) & (c) above shall be excluded for a period of 33 months from the date on which the company ceases to fall within the purview of these clauses [Section 278(2)].

(B) A meeting of the Board of Directors of PQR. Ltd. due to be held on 30.6.2013 did not take place for want of quorum. As a result, the Company did not hold any Board meeting for the quarter ended 30.6.2013 and there is a complaint that the Company has violated the provisions of the Act in this regard.

Answer:

According to the provisions contained in Section 288(2) of the Companies Act, 1956, the provisions of Section 285 relating to the holding of at least one Board meeting in a quarter cannot be deemed to have been contravened merely by reason of the fact that a Board meeting which had been called in compliance with the terms of the said section could not be held for want of a quorum. Thus the allegation that the company has contravened the provisions of Section 285 in the matter of holding the Board meeting is not correct.

(C) Mr. L, a Director of XYZ Limited proceeding on a long foreign tour, appointed Mr. M as an alternate director to act for him during his absence. The articles of the company provide for appointment of alternate directors. Mr. L claims that he has a right to appoint alternate director

Answer:

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

23. (A) PIO under the RTI Act, 2005 rejected X's application because he wanted too many information which PIO found difficult to handle. Explain the provision.

Answer:

The RTI Act, 2005 does not permit rejection of application simply because it relates to large number of documents. In any case, in practice officials should consider the processing of applications as a cooperative activity, such that the official should work with the applicants to assist them to get information they need. If a large number of records are involved in relation to a request, the PIO can contact the requestor and clarify their request to see if they can reach a mediated solution that will give the requestor what they want without unnecessarily burdening the PIO. This recognises that in some cases at least, a broad application may be simply because the requestor was not sure what was available. No penalty is shall lie against PIO for anything

which is in good faith done or intended to be done under this Act or any rule made thereunder.(Sec 21)

If some information requested work relates to the work of another public authority within the same department or in another department, The PIO has the power to transfer those parts of the application to such public authority under Sec 6(3) of the Act.

(B) The residents of HBC locality wanted one street in the area to be repaired before monsoon which was in highly dilapidated state. They approached the local MLA who expressed inability due to exhaustion of MLA Funds. The residents refuse to believe. Advice them in context of Right to Information Act, 2005.

Answer:

The resident may apply to Public Information Officer under RTI Act, 2005 in writing or through electronic means in English or Hindi or in the official language of the area, to the PIO, specifying the list of works sanctioned using their MLA's funds and also the balance amount enclosing the prescribed fee.

The PIO is required to supply information within 30 days from the date of application. Based on information supplied the residents can satisfy themselves about the truth of their MLA's statement.

(C) Is the Assistant Public Information Officer (APIO) as assistant to the Public Information Officer (PIO)?

Answer:

No, the APIO is not an assistant to the PIO. An APIO may be appointed at the sub-district or sub-divisional level where a public authority may not have an office or administrative unit. This is particularly useful for Departments of the Government of India which are rarely found below the district level. Appointment of APIOs may also be useful in States which have human habitats situated in difficult, remote and inaccessible terrain.

An(y) APIO, like the PIO is an independent information officer in an administrative jurisdiction / office and will have all the powers (and be responsible for all the functions) as ordained for a PIO, under the RTI, 2005 Act.

(D) What does Right to Information mean under the RTI Act, 2005?

Answer:

Sec 2(j) of the RTI Act, 2005, states:

"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 work, 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.

(E) Annual Confidential Reports are confidential and need not be communicated to employees. State your views quoting a case law in this regard.

Answer:

Annual Confidential Reports:

Judgment of the Supreme Court – In the case of Dev Dutt Vs Union of India - 2008 – TIOL - SC - Service - Dated 12-05-2008 - "Good" entry in ACR - Denial of promotion because only four "very good" out of five years – E very entry in ACR of a government servant must be communicated to him within a reasonable time - whether it is poor, fair, average, good or very good - Otherwise adverse effect on two counts: If he knows: He could improve his performance in future or he can represent against a lower entry - Non-communication is an arbitrary act violating Article 14 of the Constitution.

So justice cannot be denied and ACR need to be communicated to employees.

24. (A) What are the key corporate governance lessons from the financial crisis? What issues need the most urgent attention?

Answer:

The most obvious lesson from financial crisis is that corporate governance matters. The financial crisis revealed severe shortcomings in corporate governance. When most needed, existing standards failed to provide the checks and balances that companies need in order to cultivate sound business practices.

In 2008, the OECD launched an ambitious action plan to develop a set of recommendations for improvements in priority areas such as remuneration, risk management, board practices and the exercise of shareholder rights. These recommendations also address how the implementation of already-agreed standards can be improved.

Company executives, policy makers, regulators and shareholders need to pay more attention to corporate governance. When times were good, it seems that many took their eye off the ball

and now we see the consequences. A firm's rising share price is not necessarily a sign of good corporate governance. History tells us that it could actually be the opposite.

There are four key areas: corporate risk management, pay and bonuses, the performance of board directors, and the need for shareholders to be more proactive in their role as owners.

(B) How are corporate managers required to respond to Internal Audit findings and recommendations?

Answer:

Internal audit reports are only of value when managers address the problems and deficiencies identified by the audits or make informed decisions to accept the risks. Audit Committees and senior management play an important role by monitoring and enforcing commitments to take corrective action.

The Chief Audit Executive establishes and maintains a formal follow-up process for monitoring and ensuring that management actions have been effectively implemented. Senior management, the CFO and the CEO periodically review high-risk outstanding audit recommendations as part of a management process. The CEO (or whoever performs this role with the Chief Audit Executive) meets periodically with the Chief Audit Executive to review audit reports and outstanding recommendations, and to obtain input on risk and controls.
The Audit Committee receives periodic reports on high-risk audit recommendations that have not been resolved.

(C) How do you assess the effectiveness of your Internal Audit function?

Answer:

Good internal audit functions have processes for assessing their own effectiveness. They use the results, together with feedback from the external auditors and other stakeholders, to monitor trends over time and achieve continuous improvement in their practices and performance.

The Chief Audit Executive develops performance measures for the internal audit function and agrees them with the Audit Committee. Examples of measurement techniques include: customer satisfaction surveys, post audit debriefing and internal quality assurance reviews.

(D) How far effective legal frame work is necessary for e-Governance?

Answer:

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

Moving to a digital government required supporting laws; for example, governments need to enact usage of digital authentication and digital signatures as legally valid. However, this is not an easy task as enacting laws alone is not sufficient. Implementing a digital signature and

approval systems (OECD, 1998) within government organisations can be implemented in a fast way but implementing a Public Key Infrastructure (PKI) for issuing digital signatures for all citizens may prove difficult and/or expensive. This is especially true for developing countries with a large population base like India. Existing laws in most developing countries still require the presence of physical files for decision-making. This is due to the more formalistic nature of public organizations and related requirement to have a high level of work related record keeping (Welch & Pandey, 2006). However, lack of necessary legal support for digital files will add an additional layer of complexity during the implementation of e-governance projects as government staff will be forced to maintain both physical and digital files.

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

(E) What do you understand by Corporate Governance? Explain, how the provisions of the Companies Act, 1956 relating to Audit Committee will help in achieving some of the objectives of Corporate Governance.

Answer:

The vast amount of literature available on the subject ensures that there exist innumerable definitions of corporate governance. To get a fair view on the subject it would be prudent to give a narrow as well as a broad definition of corporate governance.

In a narrow sense, corporate governance involves a set of relationships amongst the company's management, its board of directors, its shareholders, its auditors and other stakeholders. These relationships, which involve various rules and incentives, provide the structure through which the objectives of the company are set, and the means of attaining these objectives as well as monitoring performance are determined. Thus, the key aspects of good corporate governance include transparency of corporate structures and operations, the accountability of managers and the boards to shareholders, and corporate responsibility towards stakeholders.

In a broader sense, however, good corporate governance, the extent to which companies are run in an open and honest manner, is important for overall market confidence, the efficiency of capital allocation, the growth and development of countries' industrial bases, and ultimately the nations' overall wealth and welfare.

Audit Committee

For better corporate governance, the concept of Audit Committee for companies was introduced by section 292A of the Companies Act, 1956. Every public company having paid up capital of not less than ₹5.00 Crores must have an Audit Committee.

The auditors, the internal auditor, if any, and the director-in-charge of finance shall attend and participate at meetings of the Audit Committee [Section 292A(5)].

As per section 292A(6) of the said Act, the function of the Audit Committee includes the following:

(a) The Audit Committee should discuss with the auditors periodically about internal control systems, the scope of audit including the observations of the auditors.

(b) The Audit Committee should review half yearly and annual financial statements before submission to the Board.

(c) The Audit Committee should ensure compliance of internal control systems.

The Audit Committee shall have authority to investigate into any matter in relation to the items specified in this section or referred to it by the Board and for this purpose, shall have full access to information contained in the records of the company and external professional advice, if necessary. [Section 292A(7)].

The recommendations of the Audit Committee on any matter relating to financial management including the audit report, shall be binding on the Board and if the Board does not accept the recommendations of the Audit Committee, it shall record the reasons therefore and communicate such reasons to the shareholders. [Section 292A(8) & (9)].

The above provisions of law relating to powers and functions of the Audit Committee relating to financial statements will help in achieving one of the objectives of corporate governance, i.e., accountability and avoidance of poor financial reporting. It also ensures that the companies are managed in clean and transparent manner.

(F) How does XBRL Web Services change the nature of information sharing and, by extension, assurance needs?

Answer:

First, as a universal information-format standard for business data, XBRL Web services provides a platform for establishing common definitions and contexts for each piece of business data across supply chains, industries and even nations.

Second, XBRL is a critical tool for re-engineering reporting processes within companies and across the corporate reporting supply chain. The purpose is to help them achieve faster, more controlled and accurate, and, thereby, more reliable information consolidation and exchange needed in today's business world.

Third, XBRL Web services enabled information can be made to appear as if it is contained in a familiar "report" format, recipients may never even see the entire report but only the information they ask for and receive in their own desktop analytical software.

This means assurance must be enhanced to address the attributes of a format in which information is instantly accessible and re-usable in an automated manner. In addition to market and regulatory information demands, we understand managers' own needs to get more of the information resident in company systems and, further, to broaden their analyses to include specific measurements and non-financial value drivers that are difficult, if not impossible to obtain today in a timely and effective manner.

Fourth, XBRL enabled information is ready-to-use upon publication in a Web services environment.

This means the job of ensuring data efficacy and accuracy is moving from the current periodic model to one that is more continuous. We are working on relevant standards for this purpose.

Fifth, XBRL encompasses the entire corporate reporting supply chain—accountants included. If the rest of the supply chain is moving at the speed of business, accountants cannot expect to continue using manual, paper based processes to provide assurance. Accountants will need to enable their own tools and systems to quickly absorb and process information in an XBRL Web services environment. This will make them more effective in their roles of handling, aggregating, analyzing, reporting on and assuring business information.

New capabilities in business-information exchange are transforming the business world. Through XBRL Web services, reporting processes will be more efficient and information will be more accessible. The change will impact the way business works across the entire corporate reporting supply chain—including the accounting industry.

Section C – Ethics

25. (A) What is the difference between business ethics and an ethical business?

Answer:

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.

(B) How does business ethics relate to Corporate Social Responsibility (CSR)?

Answer:

An organisation's core ethical values and standards should underpin everything that it does and the way its employees conduct their everyday business. Business ethics is about "doing things ethically". How an organisation approaches the social and environmental impacts of its business operations and its voluntary contribution to the wellbeing of the global and local communities in which it operates, is often known as Corporate Social Responsibility (CSR); it is often about "doing

ethical things. An organisation cannot be genuinely responsible without an embedded and inherent culture that is based on ethical values such as trust, openness, respect and integrity.

If business ethics is about the application of ethical values, CR is the expression of those values both within core business strategies and as a set of commitments and obligations made to its stakeholders. CR is about an organisation's approach to what it is responsible for, to whom it is responsible, and why, and this will be underpinned by its ethical values and by the policies and programmes in place to make those values operational.

26. (A) * From an ethical standpoint, what should the relationship between a senior and others down the line consist of? Express your views.

Answer:

The relationship should be an honest, open, and trusting one where questions can be asked and opinions can be expressed without concern of retaliation.

(B) * How far is too far do you think for monitoring employee movement, within and outside the confines of the office?

Answer:

There should be a balance between the need to know information about the whereabouts of employees and the need for privacy. Employee handbook policies and laws concerning this matter should be referred.

27. (A) *Is it possible to have single right answer to all ethical issues?

Answer:

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.

(B) *'X' have just starting working for a plc and all his colleagues have warned him that his predecessor was asked to inflate the value of products, as well as to overvalue stock, when reporting.

This, was to benefit the director's bonus. To date 'X' has not been asked to do anything untoward, but wonder how best he can approach the issue should he be put in this position. Share your views with him.

Answer:

At present what he has been told is hearsay, so he needs to be sure of any facts. Being new to a post sets him in a stronger position to professionally guide future action should a similar request be made of him.

He needs to consider threats and safeguards within the company) as well as options for resolution. Misleading reporting is a clear breach of overall integrity and in particular principles for preparation and reporting of information.

He needs to remember that once he has breached an ethical line, it is harder the next time to push back.

28. (A) * 'P' is the financial manager for KBC Ltd. He has worked there for three years and it has been doing well.

One of the directors is also a director at another firm. He has been asked to transfer a large sum of money between the two – unrelated – companies.

Although he has requested further information, as he do not feel comfortable, he has been asked to "sign off" the transfer urgently. He has been verbally told that it is in the business's interest and has the support of the Board.

But he does not want to be responsible for approving such a transfer without the appropriate paperwork and feels awkward questioning the director's decision again. Advise him

Answer:

He has to consider carefully how you are implicated in this transaction.

The fundamental principle of professional behaviour, as well as objectivity, is at stake. Potential conflicts of interest exist, as a result of either intimidation or familiarity, depending on his relationship with the director.

Safeguards would include referring to the compliance systems that should be in place within a listed company – have all policies and procedures been followed? He needs to be sure that he is in no way acting contrary to any law or regulation, technical or professional standards, or is facilitating any unethical management strategies.

How would the transfer be explained to an auditor? When there is conflict within the organisation, a professional accountant should consider consulting with those charged with the governance of the organisation. It is in his interest to document the substance of the issue, the details of any discussions, and decisions made. Should pressure continue after such dialogue, he should consider seeking legal advice.

(B) * '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 a professional brethren.

Answer:

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.

29. (A) * '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. State your views.

Answer:

'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.

What are the internal polices 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 .

(B) * 'O' , a CMA is Finance Manager of QRB Ltd. He has been asked to conduct an activity-based costing with a very short deadline and too few resources. He thinks that his CEO may be planning to use this information to restructure the company – including making redundancies. He is not confident that this work will be robust enough, given the timescale, to inform such a big business decision, but feels under pressure to "deliver". Advice him.

Answer:

At the moment he is not sure how his CEO wishes to use the information, and in relation to ethical dilemmas he should try to work from facts. However, he has been asked to do something that may undermine his obligations of professional competence and due care, given the insufficient timeframe and inadequate resource for the proper performance of the duty. He should raise his concerns verbally with his line manager and/or CEO and follow up by email so that everyone's expectations are clarified. By explaining possible consequences, he should try to seek agreement for both a longer timeframe and further resources to provide information that will help them in the long term.

30. (A) What are the reason and consequences of Unethical Behavior?

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, 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.

(B) What are the types of threats that may affect the business environment and influence finance and Accounting professionals?

Answer:

(a) Self-Interest Threats: Occur as a result of the financial or other interest of Finance and Accounting professional or personal interest of key personnel.
(b) Self-Review Threats: When a previous judgment of the Finance and accounting Professional is to be re-evaluated.
(c) Advocacy Threats: When a professional promotes a position o r opinion to such extent that some objectivity may have to be compromised.
(d) Familiarity Threats: When a professional has close relationships with the work environment which may impair r his selfless attitude towards work.
(e) Intimidation Threats: when a professional may be prohibited from acting objectively by actual or perceived threat.

*Note: There are no right or wrong answer. Students need to justify their views.