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Solved Ans. LAW IPCC_Nov.10

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C.A. CPT, PCC, IPCC & FINAL

***Solved Ans Prepared by : C.A Arvind Kumar Jain
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(Disclaimer : Questions asked in the exam may have wrong/inadequate information and/or ambiguous language. In that case the answers provided by institute may differ from this Ideal Answers. If you find any errors, please email the same.)

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Roll No.

Total No. of Questions - 7

Time Allowed - 3 Hours

Total No. of Printed Pages - 7

Maximum Marks - 100

Law IPCC & Pcc

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi Medium. If a candidate has not opted for Hindi medium, his answers in Hindi will not be valued.

Question No. **1** is compulsory.Attempt any **five** questions from the remaining **six** questions.

Qn 1. (a) X sent a consignment of mobile phones worth Rs. 60,000 to Y and obtained a railway receipt therefor. Later, he borrowed a loan of Rs. 40,000 from Star Bank and endorsed the railway receipt in favour of the Bank as security. In transit the consignment of mobile phones was lost. The Bank files a suit against the railway for a claim of Rs. 60,000, the value of the consignment. The railway contended that the Bank is entitled to recover the amount of loan i.e. Rs. 40,000 only. Examining the provisions of the Indian Contract Act, 1872, decide whether the contention of the railway is valid. **[5 marks]**

Ans: In the given case X sent consignment and to secure the bank loan endorsed the railway receipt to bank as security. Star Bank is holder of the document of title and in this capacity entitled to take possession of the goods or to claim damages in case of loss. Bank in this case entitled to claim Rs. 60,000 from the railway and required to handover the excess amount of Rs. 20,000 to X.

(b) (I) State with reasons whether the following statements are correct or incorrect.

(i) A promissory note duly executed in favour of minor is void.

(ii) No consideration is necessary to create an agency.

[2 x 1 = 2 marks]

Ans: (i) Incorrect : As per law a minor is incapable to enter into a contract and incur liability. But law does not prohibit a minor to become a beneficiary under the contract. So, a minor cannot execute a promissory note but a promissory note may be executed in favour of a minor.

(ii) Correct: As per section 185 of the Indian Contract Act no consideration is necessary to create an agency.

(II) Choose the correct answer from the following and give reasons.

(i) Where both the parties to an agreement are under mistake as to a matter of fact, which is essential to the agreement, the agreement is :

- (a) valid
- (b) voidable
- (c) void
- (d) illegal.

Ans: (c) If both the parties are under mistake as to a matter of fact, there would not be consensus add item i.e. both the parties have not consented on the same thing in the same manner. Due to absence of consent contract will become void.

(ii) In a contract of guarantee there are :

- (a) one contract
- (b) two contracts
- (c) three contracts
- (d) four contracts.

Ans: (c) Contract between Principal Debtor and Creditor, Principal Debtor and Surety and Surety and Creditor.

(iii) Cash is withdrawn by the customer of a bank from the automatic teller machine is an example of:

- (a) express contract
- (b) void contract
- (c) tacit contract
- (d) illegal contract.

Ans: (c) By entering the ATM card and providing correct PIN customer by his conduct entered into a contract with bank. **[3 x 1 = 3 marks]**

(c) RSP Limited allotted 500 fully paid-up shares of Rs. 100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Register of members. Later on, the company came to know of this fact. The company cancelled the allotment and struck-off his name from the Register of members and also forfeited his entire share money. He filed a suit against the action of the company. Decide whether Z would be given any relief by the court under the provisions of the Companies Act, 1956. **[5 marks]**

Ans: As per Companies Act, 1956 fully paid up shares can be issued to the minor. In the instant case RSP Limited allotted 500 fully paid-up shares of Rs. 100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the ROM. Since, the shares are fully paid-up, it can be issued to minor. In this case company cannot remove the name of Z from the ROM.

(d) (I) State with reasons whether the following statements are correct or incorrect.

- (i) A company should file its annual return within six months of the closing of the financial year.
- (ii) If company does not receive the minimum subscription, it should refund money received from applicants within 120 days of issue of prospectus. **[2 x 1 = 2 marks]**

Ans (i): Incorrect: The company shall prepare and file the annual return with the Registrar within 60 days from the day of holding the annual general meeting. (Sec 159).

Ans (ii) Correct: If the minimum Subscription not received within one hundred and twenty days(120) after the first issue of the prospectus, all moneys received from applicants for shares shall be forthwith repaid to them without interest; and if any such money is not so repaid within one hundred and thirty days after the issue of the prospectus, the directors, of the company shall be jointly and severally liable to repay that money with interest at the rate of six per cent per annum from the expiry of the one hundred and thirtieth day.

(II) Choose the correct answer from the following and give reasons :

- (i) An index of members must be maintained by a company when its membership exceeds :
 - (a) 20
 - (b) 50
 - (c) 70
 - (d) 80.
- (ii) Unless the Articles provide for a large number, the quorum for a general meeting for a public limited company is
 - (a) 1/3rd of the members
 - (b) 5 members personally present
 - (c) 2 members
 - (d) 7 members.
- (iii) Sources of funds for buy back of shares are :
 - (a) free reserves or securities premium account
 - (b) the proceeds of any shares or other specified securities
 - (c) and (b) both
 - (d) none of the above. **[3 x 1 = 3 marks]**

Ans (i) : (b) As per section 151 of the Companies Act, 1956 every company having more than 50 members shall maintain an index of members.

Ans(ii) : (b) As per section 174 of the Companies Act quorum for general meeting of a public company is 5 members personally present.

Ans (iii) : (c) company may buy back its own shares or other specified securities from following sources-

- (a) out of its free reserves ; or
- (b) out of the securities premium a/c; or
- (c) out of the proceeds of an earlier issue other than fresh issue of shares made specifically for buy back purposes.

Qn. 2. (a) X was an employee of Universal Limited. He retired from the company on 31st March, 2010 and died after few months. Y, the heir of X, applied within the prescribed time to the company for payment of due bonus of X. The

company refused to pay the bonus. Examine the validity of the company's refusal and also state the procedure to recover the bonus under the provisions of the Payment of Bonus Act, 1965. **[8 marks]**

Ans: Company cannot refuse to pay the bonus amount to the legal heir. Section 19 says that all amounts payable to employee shall be paid in CASH within following time limit :-

- i) Where, there is a dispute pending before any authority u/s 22, then within one month from the date on which award becomes enforceable or settlement comes in operations, in respect of such dispute.
- ii) In any other case, within eight months from the end of accounting year. However, if the employer applies to appropriate government or any authorised officer, and has SUFFICIENT REASONS, then that Govt. or authority may extend this period of eight months upto TWO YEARS.

Section 21 states that money may be due from employer to employee under settlement, award or agreement. Employer may not pay the amount. In such case, employee or any authorised person, or if employee is dead, then his heirs or assignee may make application to APPROPRIATE GOVERNMENT. If appropriate govt. or other authority appointed by appropriate govt. for this purpose is satisfied, that money is so due, it shall issue a CERTIFICATE for that amount to collector, who shall recover the same as land revenue.

Time Limit : The aforesaid application must be made within one year from the date on which money is due from employer to employee. But appropriate govt. may accept the application even after one year if applicant has sufficient cause.

Qn 2 (b) Explain the Social Sins listed by Mahatma Gandhi.

[4 marks]

Ans. Mahatma Gandhi said that seven things will destroy us. Notice that all of them have to do with social and political conditions. Note also that the antidote of each of these "deadly sins" is an explicit external standard or something that is based on natural principles and laws, not on social values.

Wealth Without Work

This refers to the practice of getting something for nothing - manipulating markets and assets so you don't have to work or produce added value, just manipulate people and things. Today there are professions built around making wealth without working, making much money without paying taxes, benefiting from free government programs without carrying a fair share of the financial burdens, and enjoying all the perks of citizenship of country and membership of corporation without assuming any of the risk or responsibility.

Pleasure Without Conscience

The chief query of the immature, greedy, selfish, and sensuous has always been, "What's in it for me? Will this please me? Will it ease me?" Lately many people seem to want these pleasures without conscience or sense of responsibility, even abandoning or utterly neglecting spouses and children in the name of doing their thing. But independence is not the most mature state of being - it's only a middle position on the way to interdependence, the most advanced and mature state. To learn to give and take, to live selflessly, to be sensitive, to be considerate, is our challenge. Otherwise there is no sense of social responsibility or accountability in our pleasurable activities.

The ultimate costs of pleasures without conscience are high as measured in terms of time and money, in terms of reputation and in terms of wounding the hearts and minds of other people who are adversely affected by those who just want to indulge and gratify themselves in the short term. It's dangerous to be pulled or lulled away from natural law without conscience. Conscience is essentially the repository of timeless truths and principles - the internal monitor of natural law.

Knowledge Without Character

As dangerous as a little knowledge is, even more dangerous is much knowledge without a strong, principled character. Purely intellectual development without commensurate internal character development makes as much

sense as putting a high-powered sports car in the hands of a teenager who is high on drugs. Yet all too often in the academic world, that's exactly what we do by not focusing on the character development of young people.

One of the reasons I'm excited about taking the Seven Habits into the schools is that it is character education. Some people don't like character education because, they say, "that's your value system." But you can get a common set of values that everyone agrees on. It is not that difficult to decide, for example, that kindness, fairness, dignity, contribution, and integrity are worth keeping. No one will fight you on those. So let's start with values that are unarguable and infuse them in our education system and in our corporate training and development programs. Let's achieve a better balance between the development of character and intellect.

Commerce (Business) Without Morality (Ethics)

In his book *Moral Sentiment*, which preceded *Wealth of Nations*, Adam Smith explained how foundational to the success of our systems is the moral foundation : how we treat each other, the spirit of benevolence, of service, of contribution. If we ignore the moral foundation and allow economic systems to operate without moral foundation and without continued education, we will soon create an amoral, if not immoral, society and business. Economic and political systems are ultimately based on a moral foundation.

To Adam Smith, every business transaction is a moral challenge to see that both parties come out fairly. Fairness and benevolence in business are the underpinnings of the free enterprise system called capitalism. Our economic system comes out of a constitutional democracy where minority rights are to be attended to as well. The spirit of the Golden Rule or of win-win is a spirit of morality, of mutual benefit, of fairness for all concerned. Paraphrasing one of the mottos of the Rotary Club, "Is it fair and does it serve the interests of all the stakeholders?" That's just a moral sense of stewardship toward all of the stakeholders.

Science Without Humanity

If science becomes all technique and technology, it quickly degenerates into man against humanity. Technologies come from the paradigms of science. And if there's very little understanding of the higher human purposes that the technology is striving to serve, we become victims of our own technocracy. We see otherwise highly educated people climbing the scientific ladder of success, even though it's often missing the rung called humanity and leaning against the wrong wall.

Religion Without Sacrifice

Without sacrifice we may become active in a church but remain inactive in its gospel. In other words, we go for the social facade of religion and the piety of religious practices. There is no real walking with people or going the second mile or trying to deal with our social problems that may eventually undo our economic system. It takes sacrifice to serve the needs of other people - the sacrifice of our own pride and prejudice, among other things.

If a church or religion is seen as just another hierarchical system, its members won't have a sense of service or inner worship. Instead they will be into outward observances and all the visible accoutrements of religion. But they are neither God-centered nor principle-centered.

Politics Without Principle



If there is no principle, there is no true north, nothing you can depend upon. The focus on the personality ethic is the instant creation of an image that sells well in the social and economic marketplace.

You see politicians spending millions of dollars to create an image, even though it's superficial, lacking substance, in order to get votes and gain office. And when it works, it leads to a political system operating independently of the natural laws that should govern - - that are built into the Declaration of Independence : "We hold these Truths to be self-evident, that all Men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty, and the Pursuit of Happiness "

In other words, they are describing self-evident, external, observable, natural, unarguable, self-evident laws: "We hold these Truths to be self-evident." The key to a healthy society is to get the social will, the value system, aligned with correct principles. You then have the compass needle pointing to true north - true north representing the external or the natural law - and the indicator says that is what we are building our value system on : they are aligned.

But if you get a sick social will behind the political will that is independent of principle, you could have a very sick organization or society with distorted values. For instance, the professed mission and shared values of criminals who rape, rob and plunder might sound very much like many corporate mission statements, using such words as "teamwork," "cooperation," "loyalty," "profitability," "innovation," and "creativity." The problem is that their value system is not based on a natural law.

Figuratively, inside many corporations with lofty mission statements, many people are being mugged in broad daylight in front of witnesses. Or they are being robbed of self-esteem, money, or position without due process. And if there is no social will behind the principles of due process, and if you can't get due process, you have to go to the jury of your peers and engage in counterculture sabotage.

In the movie The Ten Commandments, Moses says to the pharaoh, "We are to be governed by God's law, not by you." In effect he's saying, "We will not be governed by a person unless that person embodies the law." In the best societies and organizations, natural laws and principles govern - that's the Constitution - and even the top people must bow to the principle. No one is above it.

Qn 2 (c) MNP Limited was incorporated in September 2010. Now the company wants to hold its first meeting of the Board of Directors. Draft a notice of the said meeting along with agenda. **[4 marks]**

Ans. 2 (c) Notice of Annual General Meeting

MNP Limited

Regd office : MNP Limited notice is hereby given that the 1st Annual General Meeting (AGM) of the members of MNP Limited will be held on At 10:30 a.m. at the registered office of the company at to transact the following business.

Ordinary Business :

1. To receive, consider and adopt the Audited Balance Sheet of the company as the 31st March and the profit and loss account for the year ended on that date together with the reports of the Board of Directors and Auditors thereon.

Qn 3. (a) K is an employee of RST Limited, a software company which works five days in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether K is entitled to gratuity payable under the Act. Would your answer remain the same in case RST Limited works six days in a week ?
[8 marks]

Ans: For the purposes of Gratuity Act, - (1) an employee shall be said to be in continuous service for a period if he has, for that period, been in uninterrupted service, including service which may be interrupted on account of sickness, accident, leave, absence from duty without leave (not being absence in respect of which an order treating the absence as break in service has been passed in accordance with the standing order, rules or regulations governing the employees of the establishment), lay off, strike or a lock-out or cessation of work not due to any fault of the employee, whether such uninterrupted or interrupted service was rendered before or after the commencement of this Act.

(2) where an employee (not being an employee employed in a seasonal establishment) is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer - (a) for the said period of one year, if the employee during the period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than - (i) one hundred and ninety days, in the case of an employee employed below the ground in a mine or in an establishment which works for less than six days in a week; and (ii) two hundred and forty days, in any other case;

Explanation : For the purpose of clause (2), the number of days on which an employee has actually worked under an employer shall include the days on which - (i) he has been laid-off under an agreement or as permitted by standing orders made under the Industrial Employment (Standing Order's) Act, 1946 (20 of 1946), or under the Industrial Disputes Act, 1947 (14 of 1947), or under any other law applicable to the establishment;

(ii) he has been on leave with full wages, earned in the previous year;

(iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and

(iv) in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does not exceed twelve weeks.

In the given case K is an employee of RST Limited, a software company which works five days in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. As per the explanation given above she has worked for 200 days (150 + 50) and shall be deemed to be in continuous service.

No, if RST Limited works 6 days in a week our answer will be changed. Now she has to work at least 240 days in the year to become eligible for gratuity.

Qn 3. (b) Explain the fundamental principles relating to ethics. [4 marks]

Ans. 3 (b) MORALS AND ETHICS :- Moral is "concerned with principles of right and wrong or conforming to standards of behavior and character based on those principles." Though on the face of it moral and ethics seem to be similar, there is a distinction.

In Greek moral means character and ethics means custom. Character is a personal attribute and is associated with people. However, ethics is the accepted norms by a group of people and reflects the views of the society. Therefore, defining right and wrong on the basis of character and custom provide two very different angles and depending on a case to case basis, character and custom are appropriate for certain situations.

ETHICAL DILEMMAS :- An ethical dilemma is a situation that will often involve an apparent conflict between moral imperatives, in which to obey one, would result in transgressing another. This is also called an ethical paradox, since in moral philosophy, paradox plays a central role in ethics debates.

Codes of ethics have been drafted to influence moral behaviour of a group having a long tradition. They set formalised rules and standards that communicate their ethical standards to the employees and establish what the company expects from them.

Qn 3. (c) A, B and C are partners of a firm. A retires from the firm by mutual consent due to sickness. Remaining partners (B and C) decide to admit D as a new partner in their firm. Draft a deed for reconstitution of partnership.

[4 marks]

Ans. 3 (c) Simple Deed of Partnership

THIS DEED OF PARTNERSHIP is executed on this _____ day of _____ between:

- a. Sh. _____, s/o Sh. _____, r/o of _____, hereinafter referred to as the "First Party" and
- b. Sh. _____, s/o Sh. _____, r/o of _____, hereinafter referred to as the "Second Party" and
- c. Sh. _____, s/o Sh. _____, r/o of _____, hereinafter referred to as the "Third Party" and

The Party of the First Part, Second Part and the Third Part hereinafter collectively referred to as the "Parties".

WHEREAS all the Parties are desirous of joining hands to carry on the business of _____ in Partnership, it has been mutually decided to reduce into writing the terms and conditions of the Partnership.

NOW THIS DEED OF PARTNERSHIP WITNESSETH AS UNDER:

a) Name

That the business of the Partnership shall be carried on under the name and style of _____.

b) Term of Partnership

That the Partnership shall be deemed to have commenced from _____ and shall continue unless otherwise determined by the Parties.

c) Place of Carrying Business

That the business of Partnership shall be carried from _____ or any other place as may be agreed upon by the Parties.

d) Profit Sharing Ratio

That irrespective of capital investment, profits or losses of Partnership (including losses of capital nature, if any) shall be divided amongst and borne by the Parties as under:

First Party 33 1/3%

Second Party 33 1/3%

Third Party 33 1/3%

(It has been assumed that the partnership is an equal partnership)

e) Capital Contribution & Interest on Capital

That the necessary capital as well as further funds required for the purpose of Partnership business shall be contributed or arranged by the Parties in such manner as may be mutually agreed upon by and between the Parties from time to time. Interest at the rate of ___ percent per annum or as may be prescribed under Section 40 (b) of the Income Tax Act, 1961 or any other applicable provisions as may be in force under the Income tax assessment of Partnership firm for the relevant accounting period shall be payable to the Parties on account standing to the credit of the account of the Parties. Such interest shall be calculated and credited to the account of each partner at the close of each accounting year. However, in case of loss or lower income, rate of interest can be nil or lower than ___ percent as may be agreed upon by and between the Parties from time to time.

f) Remuneration

That all the Parties shall be working partner in the firm. It is hereby agreed that in consideration of the Parties working in the Partnership they will be entitled to remuneration as under: -

i. (The remuneration here in above has been fixed assuming equal partnership among partners and keeping in view the provisions of the Income Tax Act, 1961. The same may, however, vary depending upon understanding between the parties)

ii. The Parties will not be entitled to draw any remuneration in the accounting period in which the Partnership firm has suffered loss on the basis of the Income as computed under the provisions of the Income Tax Act, 1961 referred to in (a) above.

iii. The remuneration payable to the Parties shall be credited to their account at the close of the accounting period when final accounts of the Partnership are made up and the amount of the remuneration shall fall due to them as determined in the above manner.

iv. The Parties shall be entitled to draw remuneration at the end of the relevant accounting year. However, nothing herein contained shall preclude the Parties from withdrawing any amount from the Partnership firm against the amount standing to their capital and/or current or loan account or their shares of profit for the relevant accounting year in such manner as may be determined by mutual consent of the Parties.

v. The Parties shall be entitled to increase or reduce the above remuneration and may also agree to revise the mode of calculating the above-said remuneration as may be agreed upon from time to time by and between the parties.

g) Maintenance of Accounts

That regular books of accounts shall be maintained during the course of the business and these shall be closed on the 31st March each year and shall be opened to inspection of the parties to this deed at all reasonable hours at the Principal place of business.

h) Operation of Bank Accounts

That the bank account(s) of the firm will be operated by the Parties jointly or any two of them jointly.

i) Partners to work in the interests of Partnership

That all the Parties to this Deed shall work honestly, diligently and shall devote their whole time and attention to the business of the firm and shall do nothing to harm the interests of the Partnership.

j) Partners not to do certain Acts

Neither partner shall, without the consent of all other partners

- i. Engage or be concerned or interested in any other business or occupation either directly or indirectly;
- ii. Take any apprentice or hire or dismiss any agent or servant of the firm;
- iii. Lend any of the moneys or deliver, upon credit, any of the goods of the firm to any person or persons whom the other partner shall have previously in writing forbidden him to trust;
- iv. Except in the ordinary course of business give any security or promise for the payment of money on account of the firm;
- v. Draw or accept or endorse any bill of exchange or promissory note on account of the firm;
- vi. Remit the whole or any part of any debt or sum due to the firm;

k) Discharge of Personal debts

That the Parties shall punctually pay and discharge their personal debts and liabilities.

l) Dissolution of Partnership

- i. That the Partnership is at will and may be dissolved at any time mutually or by giving one month notice in writing by the outgoing party to the others. In the event of death of a partner, the Partnership shall continue with the nominee/ legal heir of such Partner, joining the firm.
- ii. That in the case of dissolution of the firm the net realization on the sale of assets shall be distributed amongst the Parties equally after meeting the liabilities of the firm.

m) Arbitration Clause

Every dispute or difference arising between the partners as to the interpretation, operation, or effect of any clause in the partnership which cannot be mutually resolved, shall be referred to the arbitration of _____ (name of the Arbitrator) failing him, to any other arbitrator chosen by the partners in writing. The decision of such an arbitrator shall be binding on the partners. Subject as aforesaid the Arbitration and Conciliation Act, 1996 and the rules made thereunder shall apply to the arbitration proceedings under this clause.

n) Governing Law

Except as aforesaid, the Partnership shall further abide by the provisions of the Indian Partnership Act, 1932.

IN WITNESS WHEREOF, the parties have set their hands this _____ day of

First Party

Second Party

Third Party

Witnesses:

- 1.
- 2.

Qn. 4. (a) Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 1956. **[8 marks]**

Ans: As per section 76 The amount of commission should not exceed in case of shares, 5% of price at which shares have been issued or rate authorised by AOA/LOWER, and incase of debentures, 2.5% of issue price or AOA/LOWER.

In the given case, the company proposes to pay underwriting commission at the rate of 2.5% of issue price of shares. However, the maximum rate of commission as permitted by the articles is 2% of issue price.

Conclusion

- (a) The company cannot pay more than 2% of the issue price of shares as underwriting commission (being the maximum rate permitted by the articles). Therefore, the decision of the Board to pay 2.5% of the issue price as underwriting commission is not valid.
- (b) There is no condition that underwriting commission cannot be paid in kind. Therefore, Company may pay underwriting commission in the form of flats.

(b) State some examples of ethical issues faced by an individual at the workplace.

[4 marks]

Ans. 4 (b) Some ethical issues faced by an individual at the workplace are as follows :

An ethical dilemma is one where a person has to make a decision among two perplexing alternatives. Employees at work place face many situations where they have to make quick decisions from two such alternatives, where one would appear to be the obvious choice. However, what appears to be the most obvious choice, may not necessarily be so. Also some dilemmas faced are such which has no clear alternatives, as both the alternatives appear to be right and the interests of many parties are involved.

Business relationships, i.e. relationships with customers, suppliers and others in the work place also have ethical concerns. Ethical behaviour in the business involves meeting obligations and responsibilities duly on time, keeping company secrets and avoiding undue pressure that may force others to act unethically.

The managers and other superiors can use their authority to influence the employees and make them act in an unethical manner. In the process, the manager may tell the employees to adopt unethical tactics which the employee may not be willing to adopt.

A conflict of interest is a situation in which someone has to make a decision when such person, in official capacity stands to profit personally from the decision.

Eg : A judge who rules on a case involving a corporation in which he or she owns stock has a conflict of interest.

There are several other cases where personal interest precedes the interest of the organisation.

Eg : Several Sandia National Laboratories employees withheld crucial terrorist-fighting technology from Nanodetex in an attempt to illegally take the technology and start their own company.

Almost all companies small and big have a clause in their code of conduct where they mention that conflicts of interest should be avoided and company interests should precede that of the individuals. Employees must find a balance between personal interests and business dealings to overcome conflicts of interest

Fairness and honesty go a long way in helping a business achieve success, breaking the legal norms may lead to temporary success, but, in the long run firms which follow the path of fairness and honesty are destined to succeed. Practising strong business ethics is a win-win for everyone.

The business persons can at the least abstain from breaking laws, if not set new examples for honesty and fairness. They should follow all the laws and regulations applicable to them.

Communications is another area where companies often indulge in unethical practices. One can come across several cases of false and misleading advertisements where the company either make exaggerated claims or where they hide certain essential facts in order to boost their sales. The customers are empowered to know all the correct information regarding product safety, quality, price and quantity. However, in actuality some advertisements fail to provide subtle differences about the product which can have a huge impact on the desirability of the product by consumers.

Harass' means torment by subjecting to constant interference or by bullying which is prohibited by the law. It creates a very negative work environment where work is extracted from the employees by intimidating them and using coercive measures to get the job done.

Harassment in business can be of any of the following forms:

1. Racial Harassment

Racial or colour harassment includes offensive written or physical conduct, directed at the characteristics of a person's race, ethnic or national origin name or colour. It includes emphasising stereotypes, racial slurs and racial origins, ridicule based on cultural grounds, derogatory name calling, racist jokes and incitement of others to commit any of the above. Racial harassment is not as rare as one perceives it to be in today's work environment, and is quite prevalent. It is considered anti-social and is a highly condemnable action.

2. Sexual Harassment

Sexual harassment is defined as "a continuum of behaviours that intimidate, demean, humiliate, or coerce". These behaviours range from the subtle forms that can accumulate into a hostile working environment to the most severe forms of stalking, assault, or rape. Employees at work use their authority to coerce, intimidate those employees at a lower level to give into their sexual demands or face the risk of either losing their job or pay hikes, demotion. It puts a massive dent to the psychology of the employee. It is also a highly condemnable offence and is prevalent in business organisations. The employers are held responsible for any acts of sexual harassment in the organisation irrespective of the fact that they are aware of it or not or if it were "forbidden by the employers"

(c) Explain the various forms of formal communication.

[4 marks]

Ans. 4 (c) Formal communication refers to official communication which takes place following the chain of command. A formal communication flows only through prescribed channels and the organizational members are obliged to follow. The organisation structure reflecting superior-sub-ordinate relationship determines the flow of formal communication. Thus, this hierarchical system of authority established by the organisation provides the channels for all official communication between members of the organisation and parties outside the organisation such as government, customers etc.

Formal communication usually takes the form of written communication such as notes, memos, letters, reports and statements. Formal communication can be verbal or through gestures also. Teleconferencing is also becoming increasingly popular.

i) Direction of flow of formal communication

- Downward
- Upward
- Horizontal
- Diagonal or Crosswise Communication

Communication between individuals and groups which are not officially recognised is known as Informal communication. It consists of exchange of ideas and information resulting from social interaction among the members of an organisation.

The main objective of Informal communication is to achieve the major objective which formal communication fails to address i.e. necessity of informal communication arises among people to satisfy their social needs. It may involve work related matter or other matters of mutual interest to the parties.

Qn. 5. (a) P draws a bill on Q for Rs. 10,000. Q accepts the bill. On maturity the bill was dishonoured by non-payment. P files a suit against Q for payment of Rs. 10,000. Q proved that the bill was accepted for value of Rs. 7,000 and as an accommodation to the plaintiff for the balance amount i.e. Rs. 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill.

[8 marks]

Ans: Consideration is presumed under Negotiable Instrument Act. But this can be rebutted contrary. Again in case of accommodation bill liability of acceptor is primary against third party. But if bill is held by the accommodated party acceptor will not be liable to pay the bill amount if it has been proved to be an accommodation bill.

In the given case P draws a bill on Q for Rs. 10,000. Q accepts the bill. On maturity the bill was dishonoured by non-payment. P files a suit against Q for payment of Rs. 10,000. Q proved that the bill was accepted for value of Rs. 7,000 and as an accommodation to the plaintiff for the balance amount i.e. Rs. 3,000. Since, actual liability is only for Rs. 7000/- whole amount cannot be recovered by P.

(b) State with reasons whether the following statements are correct or incorrect.

[2 x 2 = 4 marks]

(i) Business and industry are closely linked with environment and resource utilization.

Ans. 5 (b) (i) Business and Industry rely heavily on the environment to satisfy their wants and achieve their goals. So, it would seem obvious that they should play a part in conserving it for their own sake apart from the environment's sake. Eco-friendly technologies and novel production methods, which do not affect the environment, play a very important role in the conservation of the environment.

Accordingly waste management can be done through following systems:

a) *Increased recycling of the wastes:*

It is the collection and separation of materials from waste and subsequent processing to produce marketable products.

b) *Composting of the wastes:*

The process of composting is one of biological decomposition under aerobic (open air) and thermophilic (at or above 70°C) conditions, which breaks down organic material to leave a humus rich residue, the compost. Compost is a valuable soil conditioner for agriculture, gardening and forestry.

c) Reducing the release of wastes as a result of the production processes.

d) Promoting environmentally sound disposal practices.

Economic progress and environmental protection are often considered conflicting propositions, but that is not necessarily the case. Companies can re-design their products by adopting latest technologies and help in reduction of wastage and depletion. For this to happen there needs to be a change at the organizational structure, finance, marketing and all related disciplines. Good environmental practices have even led to saving of costs for many companies. The markets coming in the future will have to be thought around the principles of sustainable development as unsustainable products will be obsolete.

(ii) Trusteeship provides a means of transforming the present capitalist order of society into an egalitarian one

Ans. 5 b (ii):

Trusteeship provides a means of transforming the present capitalist order of society into an egalitarian one. It gives no quarter to capitalism, but gives the present owning class a chance of reforming itself. It is based on the faith that human nature is never beyond redemption.

It does not recognize any right of private ownership of property except so far as it may be permitted by society for its own welfare.

It does not exclude legislative regulation of the ownership and use of wealth. Thus under State-regulated trusteeship, an individual will not be free to hold or use his wealth for selfish satisfaction or in disregard of the interests of society.

Just as it is proposed to fix a decent minimum living wage, even so a limit should be fixed for the maximum income that would be allowed to any person in society. The difference between such minimum and maximum incomes should be reasonable and equitable and variable from time to time so much so that the tendency would be towards obliteration of the difference.

Under the Gandhian economic order the character of production will be determined by social necessity and not by personal whim or greed.

(c) State the reasons for acceptance of change in an organisation.

Ans. 5 (c) It is important to understand the reason due to which people resist change at the outset and plan changes in such a manner where the employees are eased into the changed environment & feel the change as beneficiary. While implementing a change, just like one encounters resistance from some quarters, there are people who accept the change and some who even welcome it. If one knows the reasons for acceptance of the change it is easier to draft a plan to foster acceptance.

i. Personal Gain

People accept change if they feel they have a chance to grow in any of the following areas:

- ◆ Increased Security
- ◆ Financial Benefits
- ◆ Increased Authority
- ◆ Increased Status/Prestige
- ◆ Better working conditions, which facilitates work to be completed with lesser time and efforts
- ◆ Self-satisfaction
- ◆ Better personal contacts

ii. Other Factors

Other factors which lead people to accept changes are:

- ◆ The excitement of a new challenge
- ◆ Likes/Respects the source implementing the change
- ◆ The method in which the change is communicated
- ◆ Provides opportunity for input to the change
- ◆ Provides a path for a bright future

- ♦ Perception that the change is necessary [4 marks]

Qn 6. (a) In a General Meeting of PQR Limited the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide whether the contention of M is maintainable under the provisions of the Companies Act, 1956. [8 marks]

Ans: Minute should contain a "Fair and Correct" Summary of the proceedings. The chairman may exclude from the minutes any matters which are defamatory, irrelevant or immaterial or which are detrimental to the interests of the company. The discretion of the Chairman with regard to the inclusion or exclusion of any matter is absolute and unfettered. This view is also supported by Secretarial Standard issued by The Institute of Companies Secretaries of India.

In the given case in General Meeting of PQR Limited the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Contention of shareholder is not maintainable under the Companies Act, 1956.

(b) State the objectives of the Central Consumer Protection Council in India. [4 marks]

Ans. 6 (b) The objects of the Consumer Protection Councils shall be to promote and protect the rights of the consumers at their respective levels which are as follows;

Rights of the Consumers

- i. Right of protection against marketing of goods which are hazardous to life and property
- ii. Right of information about the quality, quantity, potency, purity, standard and price of goods and services
- iii. Right of access to a variety of goods and services at competitive prices
- iv. Right of redressal against unfair trade practices
- v. Right of consumer education
- vi. Right to be heard and to be assured that consumer's interest will receive due consideration

(c) Explain the basic principles of interpersonal communication. [4 marks]

Ans. 6 (c) Communication between individuals and groups which are not officially recognised is known as Informal communication. It consists of exchange of ideas and information resulting from social interaction among the members of an organisation.

The main objective of Informal communication is to achieve the major objective which formal communication fails to address i.e. necessity of informal communication arises among people to satisfy their social needs. It may involve work related matter or other matters of mutual interest to the parties.

Qn 7 (a) S retired from the services of PQR Limited on 31st March, 2009. He had a sum of Rs. 5 lac in his Provident Fund Account. It has become due for payment to S on 30th April, 2009 but the company made the payment of the said amount after one year. S claimed for the payment of interest on due amount at the rate of 15 percent per-annum for one year. Decide whether the claim of S is tenable under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952. [4 marks]

Ans: 7 (a) where any amount is in arrears from an employer, the Authorised officer may issue, to the Recovery Officer a certificate under his signature specifying the amount of arrears. On receipt of such certificate, the Recover officer shall proceed to recover the amount from the establishment or the employer by one or more of modes mentioned below -

- Attachment and sale of the movable or immovable property of the establishment or the employer.
- Arrest of the employer and his detention in prison
- Appointing a receiver for the management of the movable or the immovable properties of the establishments or the employers.

In case of delay by the company for payment of any amount due to an employee the company shall not be liable to pay any interest for the amount due to the interest for the amount due to the employee. Hence the claim of S is not tenable.

(b) RSP Limited is a Public Limited Company with a limited liability of its members by guarantee of Rs. 10 lac to each member. The company increases the liability of the members from Rs. 10 to 15 lac by an alteration made in the liability clause of the Memorandum of Association. Referring to the provisions of the Companies Act, 1956 decide whether the members of the company are liable for the increased liability. **[4 marks]**

Ans: 7 (b) A limited liability company can impose upon members additional liability or compel them to take additional shares, if the company do following two acts -

- i) alter its MOA or AOA ; and
- ii) all the members whose liability is to be increased, agree in WRITING to such change either before or after the change.

In the light of the above provision it is clear that members of the company will be liable only if consent in writing from all members will be obtained by the company.

OR

The Board of Directors of XYZ Private Limited, a subsidiary of SRN Limited, decides to grant a loan of Rs. 2.00 lac to P, the Finance Manager of the company getting salary of Rs. 30,000 per month, to buy 400 partly paid-up equity share of Rs. 1,000 each of XYZ Limited. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 1956. **[4 marks]**

Ans: Section 77 (1) states that a company can't buy its own shares. Furthermore a public company or its subsidiary [Whether public or private] must not finance any other person to purchase its own shares or its holding company. This section is not applicable to an unlimited company.

Following are the exception to above rule :-

- (a) Redemption of redeemable pref share u/s 80.
- (b) Lending of money by a banking company in the ordinary course of business.
- (c) Provision of financial assistance by a company :-
 - (i) In accordance with a scheme, for the purchase of fully paid shares by trustee to be held for benefit of employee of company including directors holding salaries post.
 - (ii) in the form of loan to bonafide employees of company, other than director or manager, to enable them to purchase fully paid up shares to be held by themselves, but amount of such loan shall not exceed six months salary or wages of such employee.
- (d) A company can buy its own shares from any member under court order u/s 402.
- (e) Forfeiture of shares or valued surrender of shares is not reduction/ purchase of share.
- (f) a company can reduce its capital u/s 100.

In the given case XYZ Private limited is subsidiary of a public limited company hence cannot finance any person to purchase its shares. Further more the intended shares are partly paid-up hence the exception provided under section 77 will not applicable. So, Board's decision is not inline with the Companies Act.

(c) Explain briefly the key strategies which can be used at the time of implementation of Corporate Social Responsibility policies and practices in a company. **[4 marks]**

Ans. 7 (c) Key strategies in implementing CSR policies and practices:

1. Mission, Vision and Value statements

The vision of socially responsible business organization goes beyond making profits and seeks to make decisions that balance the needs of the stakeholders. Therefore, such statements play a role in implementing policies and practices.

2. Cultural values

There must be a commitment to close the gap between what the company says it stands for and the reality of its actual performance. Goals and aspirations should be ambitious but care should be exercised that it does not go beyond the cultural values of the society.

3. Structure of management

Many companies have taken steps to create a system by transferring CSR to a committee or a single or a group of executives, who can recognize key issues, evaluate, and develop a structure for long term integration of social values. The structure has to be decided considering the company's mission, size, sector, culture, risk areas and level of commitment.

4. Strategic planning

Strategy in CSR implementation has to be planned cautiously identifying specific goals and measures for the progress of the organization.

5. General accountability

Every single person in the organization is accountable and one major step in implementing CSR is making them to realize their accountability and by this way company can make a good progress in achieving CSR.

6. Employee recognition and rewards

Companies can encourage employees, who voluntarily accept CSR in their area and who make an active participation by recognizing and rewarding them suitably.

7. Communication

Communication, education and training of employees in corporate social responsibility will enhance the knowledge and decision making processes of the employees.

8. Reporting

Finally, CSR reporting will help the stakeholders to know the performance of organizations in fulfilling their responsibilities towards the society. Therefore, companies should provide detailed information and assessment reports of its CSR activities.

OR

Write a note on harassment at workplace.

[4 marks]

Ans. 7 (c) Harass' means torment by subjecting to constant interference or by bullying which is prohibited by the law. It creates a very negative work environment where work is extracted from the employees by intimidating them and using coercive measures to get the job done.

Harassment in business can be of any of the following forms:

1. Racial Harassment

Racial or colour harassment includes offensive written or physical conduct, directed at the characteristics of a person's race, ethnic or national origin name or colour. It includes emphasising stereotypes, racial slurs and racial origins, ridicule based on cultural grounds, derogatory name calling, racist jokes and incitement of others to commit any of the above. Racial harassment is not as rare as one perceives it to be in today's work environment, and is quite prevalent. It is considered anti-social and is a highly condemnable action.

2. Sexual Harassment

Sexual harassment is defined as "a continuum, of behaviours that intimidate, demean, humiliate, or coerce". These behaviours range from the subtle forms that can accumulate into a hostile working environment to the most severe forms of stalking, assault, or rape. Employees at work use their authority to coerce, intimidate those employees at a lower level to give into their sexual demands or face the risk of either losing their job or pay hikes, demotion. It puts a massive dent to the psychology of the employee. It is also a highly condemnable offence and is prevalent in business organisations. The employers are held responsible for any acts of sexual harassment in the organisation irrespective of the fact that they are aware of it or not or if it were "forbidden by the employers".

(d) State reasons for selecting the oral mode of communication instead of. The written mode of communication.

[4 marks]

Ans. 7 (d) This is a face to face communication with others, with oral communication people can interact, ask for clarification. By changing facial expressions, eye contact, tone of voice, gesture, postures etc the speaker can make his speech effective and interesting. Oral communication acts as a binding factor between one person and another.

The reasons for the popularity of oral communication are as follows:

i. Advantages

- Immediate feedback
Foremost advantage is that it provides immediate feedback. While engaged in conversation with someone, we can ask for clarifications or further elaboration, justification etc.
- Time saving
Oral communication is time saving, as it eliminates the time consumed for encoding, decoding the message by the receiver and receiving feedback as in the case of written communication.
- Healthy relation between superiors and subordinates
Oral communication between colleagues builds up healthy climate between superiors & subordinates.
- Economical
It is economical as it saves the money spent on stationery by organization.
- Effective tool of persuasion

It provides an opportunity for the speaker to correct himself according to the responses/ reaction from the listeners/audience by changing his voice, tone, pitch and is useful in persuading many business deals.

OR

X desires to gift his flat to Y. Draft a gift deed.

[4 marks]

Ans. 7 (d) Gift Deed

KNOW ALL MEN BY THESE PRESENTS that I, X S/o Sh. ABC r/o MUMBAI, transfers voluntarily, the property bearing no. 243 situated at MUMBAI (more particularly described in the schedule annexed hereto), the estimated value of which is Rs. 5,00,000 (Rupees Five lacs only) to my friend Y w/o of Sh. _____ (hereinafter referred to as "the donee") To Hold the same to the donee absolutely forever. I further declare that the said gift has been made by me out of my natural love and affection for the donee and the same has been accepted by the donee.

IN WITNESS WHEREOF, I have executed this deed this _____ day of _____

Witness :

1. DONOR
2. DONEE

I, Sh. Y, the donee hereby accept the gift of the said property.