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PAPER – 3 : LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any five questions from the remaining six questions.

Question 1

- (a) *Explain in brief the rules relating to 'Acceptance' of an offer under the provisions of the Indian Contract Act, 1872. (5 Marks)*
- (b) *Explain the provisions of the Companies Act, 1956, relating to the utilization, by a company, of the amount standing to the credit of Securities Premium Account. (5 Marks)*
- (c) *State with reasons whether the following statements are correct or incorrect:*
 - (1) *Fairness and honesty are the pillars of success in the business.*
 - (2) *Ethical behaviour is essential to working environment at the working place.*

(2 × 2 ½ = 5 Marks)
- (d) *Explain the socio-psychological barriers of communication in relation to an organization. (5 Marks)*

Answer

- (a) Following are the general rules regarding acceptance under the Indian Contract Act, 1872.
 - (i) Acceptance must be absolute and unqualified. As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified or unconditional.
 - (ii) Acceptance must be in the prescribed manner. If the offer is not accepted in the prescribed manner, then the offeror may reject the acceptance within a reasonable time.
 - (iii) Acceptance must be communicated to the offeror. If acceptance is communicated to the person, other than the offeror, it will not create any legal relationship. Thus, to conclude a contract between the parties, the acceptance must be communicated in some perceptible form.
 - (iv) Acceptance must be given by the party to whom the offer is made.
 - (v) Acceptance must be given within the prescribed time or within a reasonable time.
 - (vi) Acceptance cannot be given before communication of an offer
 - (vii) Acceptance must be made before the offer lapses or is withdrawn.
 - (viii) Acceptance must show intention to fulfill the promise.
 - (ix) Acceptance cannot be presumed from silence

- (x) Acceptance by conduct/performance of condition: Acceptance may also be by performance of some condition / act as required by the Offeror.

(b) Securities Premium Account – Utilization

In accordance with the provisions of the Companies Act, 1956, as contained in section 78 (2), the amount standing to the credit of the Share Premium Account can be utilized by a company for the following purposes :

- a. in paying up un-issued securities of the company to be issued to members of the company as fully paid bonus shares;
- b. in writing off the Preliminary Expenses of the company;
- c. in writing off the expenses of or commission paid or discount allowed on any issue of shares or debentures of the company;
- d. in providing for premium payable on the redemption of any redeemable preference shares or of any debentures of the company.

- (c) (1) **Correct.** The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. The business professionals and persons are expected to follow all applicable rules and regulations, without causing harm to the customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination. One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. Another aspect of fairness relates to competition. Although, numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition. Therefore, we may say that fairness and honesty are the pillars of success in the business.
- (2) **Correct.** Every organization, whether a business or a Government agency is first and foremost a human society. In all these setups ethical behavior is essential to working environment. If an employer does not take steps to create a working environment where the employees have a clear, common understanding of what is right and wrong, and feel free to discuss and ask questions about ethical issues and report violations, significant problems may arise. Lacking of ethical behavior in working environment may give rise to some significant problems, namely :
- (i) Increases risk of making unethical decisions by employees
 - (ii) Increases tendency of employees to report violations to outside regulatory authorities (whistle blowing) because of lacking of an adequate internal forum.
 - (iii) Inability to recruit and retain top people
 - (iv) Diminishes reputation in the industry and the community

- (v) Significant legal exposure and loss of competitive advantage in the market place

Therefore, ethical behavior is essential to working environment at the workplace

- (d) **Socio – Psychological barriers of Communication:** The attitudes and opinions, place in society and status consciousness arising from one's position in the hierarchical structure of the organization, one's relations with peers, seniors, juniors and family background – all these deeply affect one's ability to communicate both as a sender and receiver. Status consciousness is widely known to be a serious communication barrier in organizations. It leads to psychological distancing which further leads to breakdown of communication or miscommunication. Often, it is seen that a man high up in an organization builds up a wall around himself. This restricts participation of the less powerful in decision making. In the same way, one's family background formulates one's attitude and communication skills.

Frame of reference is another barrier to clear communication. Every individual has a unique frame of reference formed by a combination of his experiences, education, culture, attitude and other elements, resulting in biases and different experiences in a communication situation.

Emotions play a very important role in communication. Both encoding and decoding of messages are influenced by our emotions. A message received when we are emotionally worked up will have a different meaning for us than when we are calm and composed.

Perception provides each of us with a unique view of the world – a view sometimes related to, but not necessarily identical with that held by others. Selective perception means that the receivers selectively see and hear depending upon their needs, background, motivations, experience and other personal characteristics.

Question 2

- (a) (i) *Explain the provisions of the Payment of Bonus Act, 1965 relating to the time limit within which an employer must pay the amount of bonus due to an employee.*
(4 Marks)
- (ii) *Explain as to when is the gratuity payable to an employee of an establishment, under the provisions of the Payment of Gratuity Act, 1972.*
(4 Marks)
- (b) *What reasons force a marketing executive to adopt ethical practices in marketing? Explain.*
(4 Marks)
- (c) *In what way is the 'Ethical Communication' advantageous to a business establishment? Explain.*
(4 Marks)

Answer

- (a) (i) As per section 19 of the Payment of Bonus Act, 1965, the employer is bound to pay his employee bonus within one month from the date on which the award becomes enforceable or the settlement comes into operation, if a dispute regarding payment of bonus is pending before any authority under Section 22 of the Act.

In other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting year. But this period of 8 months may be extended upto a maximum of 2 years by the Appropriate Government or by any authority specified by the Appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

- (ii) According to section 4 (1) of the Payment of Gratuity Act, 1972, Gratuity shall be payable to an 'employee' on the termination of his employment after he has rendered continuous services for not less than 5 years:

On his superannuation, or

On his retirement or resignation, or

On his death or disablement due to accident or disease

The condition of the completion of five years continuous service is not essential in case of the termination of the employment of any employee due to death or disablement.

Generally, gratuity is payable to the employee himself. However, in case of death of the employee, it shall be paid to his nominee or if no nomination has been made, to his legal heirs.

The payability of gratuity to the employee is his right as well as the obligation of the employer. By the change of ownership, the relationship of employer and employees subsist and the new employer cannot escape from the liability of payment of gratuity to the employees. (*Pattathurila K. Damodharan Vs M. Kassin Kanju, 1993*).

An employee resigning from service is also entitled to gratuity (*Texmaco Ltd. Vs Sri Ram Dham, 1992*) and non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity (*Mathur Spinning Mills Vs Deputy Commissioner of Labour, 1983*).

- (b) **Behaving Ethically in Marketing:** Marketing Executives should practice ethical behavior because it is morally correct. While this is simple and beautiful in concept, it is not sufficient motivation for everyone. So let us consider four pragmatic reasons for ethical behavior :-

- (i) *To reverse dealing public confidence in marketing:* periodically we hear about misleading package labels, false claims in ads, phony list prices and infringement of well established trademarks. Though, such practices are limited to only a small

proportion of all marketing, the reputation of all marketers is damaged. To reverse this situation, business leaders must demonstrate convincingly, that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them.

- (ii) *To avoid increase in Government regulation:* Business apathy, resistance or token responses to unethical behavior simply increase the probability of more Government regulation. Indeed, most of Governmental limitations on marketing are the result of managements' failure to live up to ethical responsibilities at one time or other. Moreover, once some form of Government control has been introduced, it is rarely removed.
 - (iii) *To regain the power granted by society:* Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
 - (iv) *To protect the image of the organization:* Buyers often form an impression of an entire organization based on their contact with one person i.e. salesman or marketing executive. A customer's opinion of a retail store is based on the behaviour of single sales clerk as observed by Procter and Gamble.
- (c) **Advantages of ethical communication:** Ethical Communication promotes long term business success and profit. However, improving profits isn't reason enough to be ethical; as soon as the cost of being ethical outweighed the benefits, ethical choices would no longer be possible. Surveys report that all employees want to work for organizations with high ethical standards because ethical communication is fundamental to responsible thinking, decision making and the development of relationship and communities within and across contexts, cultures, channels and media. Further, it enhances human worth and dignity by fostering truthfulness, fairness, responsibility, personal integrity and respect for self and others.

Competent people are likely to search for organizations that maintain high ethical standards. When competent people migrate towards ethical firms, everyone benefits because both, competence and ethics go hand in hand. They know that ethical practices are the only way to meet the level of ethical awareness that has risen over the last few years. Many companies are reassessing their communication budgets, moving away from traditional, functional approaches to public relations and public affairs and pursuing internal and external corporate communication strategies. The theory and practice arising from corporate communications lies at the heart of effective strategic management, planning and control. New digital media technologies are having greater impact on managements and the monitoring and evaluation of corporate identity, corporate advertising, organizational reputation and overall performance.

Question 3

- (a) *What do you understand by the term 'Consideration'? Are there any circumstances under which a contract, under the provisions of the Indian Contract Act, 1872, without consideration is valid? Explain.* (8 Marks)
- (b) *State the special responsibilities of industries that are based on natural resources. How does the adoption of 'Green Accounting System' help in avoiding policy decisions which are non-sustainable for the country? Explain.* (4 Marks)
- (c) *What do you understand by non-verbal communication? Explain its methods in brief.* (4 Marks)

Answer

- (a) **Meaning of consideration :** The expression 'consideration' in general means price paid for an obligation. According to Section 2 (d) of the Indian Contract Act, 1872 when at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise. Thus, on analyzing the above definition, the following ingredients are essential in understanding the meaning of the term consideration :-

- (i) An act i.e. doing something
- (ii) An abstinence or forbearance i.e. abstaining or refraining from doing something, and
- (iii) A return promise.

The general rule is that an agreement made without consideration is void. Sections 25 and 185 of the Indian Contract Act, 1872, provide for exceptions to this rule where an agreement without consideration is valid. These are :

- (1) *Love & Affection [Section 25 (1)]*

Where an agreement is expressed in writing and registered under the law for the time being in force for the registration of documents and is made on account of natural love and affection between the parties standing in near relation to each other, the agreement is enforceable, even though, the consideration is absent.

- (2) *Compensation for voluntary service [Section 25 (2)]*

A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable even without consideration.

- (3) *Promise to pay, a time – barred Debt [Section 25 (3)]*

The agreement is valid provided it is made in writing and is signed by the debtor or by his agent authorized in that behalf.

(4) *Completed Gift – [Explanation 1 to Section 25]*

As per explanation 1 to section 25, nothing in section 25 shall affect the validity as between donor and donee, on any gift actually made.

(5) *Agency (Section 185)*

No consideration is necessary to create an agency.

(b) Special responsibilities of the industries based on natural resources : Industries that are based on natural resources like minerals, timber, fiber and foodstuffs etc., have a special responsibility for :

- (i) Adopting practices that have built-in environmental considerations.
- (ii) Introducing processes that minimize the use of natural resources and energy, reduce waste and prevent pollution.
- (iii) Making products that are 'environment-friendly' with minimum adverse impact on people and ecosystem.

Green Accounting Systems: Conventional accounts may result in policy decisions which are non- sustainable for the country. Green accounting, on the other hand is, focused on addressing such deficiencies in conventional accounts with respect to environment. If the environmental costs are properly reflected in the prices paid for goods and services, then companies and ultimately the consumer would adjust market behavior in a way that would reduce damage to environment, pollution and waste production. Such measures would facilitate the approach of 'polluter pays principle'. Removing subsidies that encourage environmental damage is another measure.

(c) **Non verbal communication:** Words are not the only way we communicate. Even while we use language to communicate explicit information and message content, we use non-verbal communication along with it to convey relational messages, our feelings about another person as well as status and power. Methods of non-verbal communication :

- (i) *Kinesics or Body language:* It must be noted, though it is known to almost all, that all our bodily movements, gestures, postures etc., are guided by our feelings and thought processes. The nodding of our head, blinking of our eyes, waving of our hands, shrugging of our shoulders etc., are expressions of our thought and feelings. All these movements are the signals that our body sends out to communicate. That is why this area of study has been called 'body language'.
- (ii) *Paralanguage:* The term 'Paralanguage' is used to describe a wide range of vocal characteristics like tone, pitch and speed etc., Vocal cues that accompany spoken language which help to express and reflect the speaker's attitude are termed as paralanguage. It consists of pitch variation, speaking speed, pause, word stress etc.,

- (iii) *Artificial communication* : Sometimes we react to people on the basis of their appearance. The use of personal adornment like clothing, accessories, makeup, hairstyle etc., provides important non verbal cues about one's age, social and economic status, education level and personality etc.,
- (iv) *Proxemics*: It refers to the space that exists between us when we talk or relate to each other as well as the way we organize space around us. We can also call it 'space language'.
- (v) *Chronemics or time language*: It is the study of how we use time to communicate. Punctuality is an important factor in time communication. Misunderstandings or disagreements involving time can create communication and relationship problems.
- (vi) *Haptics*: It is communication through touch. The impact of touch sends important messages about us. It reveals our perception of status, our attitudes and even our needs.
- (vi) *Silence*: The absence of paralinguistic and verbal cues also serves important communicative functions.

Question 4

- (a) Explain the doctrine of 'Indoor Management' as applicable in case of companies. Explain also the circumstances in which an outsider dealing with a company cannot claim any relief on the basis of doctrine of 'Indoor Management'. (8 Marks)
- (b) What do you understand by the term 'discrimination' in employment as sometime found in an establishment ? Explain the basic elements of 'discrimination'. (4 Marks)
- (c) Why is the 'Active Listening' important for an individual? State the guidelines for 'Active Listening'. (4 Marks)

Answer

- (a) **Doctrine of Indoor Management & Exceptions**: One limitation to the doctrine of constructive notice of the memorandum and articles of a company is the doctrine of indoor management. According to the doctrine of indoor management, the outsider, dealing with the company is entitled to assume that as far as the internal proceedings of the company are concerned, everything has been regularly done. They are bound to read the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more; they need not inquire into the regularity of the internal proceedings as required by the Memorandum and Articles. This limitation of the doctrine of constructive notice is known as the 'Doctrine of Indoor Management', popularly known as rule in '*Royal British Bank v/s Turquand*'. Thus, the doctrine of indoor management aims to protect outsiders against the company.

Exceptions: In the following circumstances an outsider dealing with the company cannot claim any relief on the ground of 'Indoor Management'.

- (i) *Knowledge of irregularity*: Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of Indoor Management (*T.R. Pratt, Bombay Ltd., V/s E.D. Sassoon & Co. Ltd.*).
 - (ii) *Negligence*: Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry and the outsider dealing with the company does not make proper inquiry (*Anand Bihari Ltd., V/s. Dinshaw & Co.*). Also, the case of *Underwood V/s. Bank of Liverpool*.
 - (iii) *Act void ab initio and forgery*: Where the acts done in the name of a company are void ab initio, the doctrine of indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction. It does not apply to a forgery. A company can never be held liable for forgeries committed by its officers (*Ruben V/s. Great Fingall Consolidated Co.*)
 - (iv) *Acts outside the scope of apparent authority*: If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound (*Kreditbank Cassel V/s. Schenkers Ltd.*)
 - (v) A person having no knowledge of articles cannot seek protection under Indoor Management.
- (b) The root meaning of the term discriminate is "to distinguish one object from another". Employment discrimination is treating one person better than another because of their age, gender, race, religion or other protected class of status. Discrimination in employment is wrong because it violates the basic principle of equality. Discrimination is to treat people differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit.

Discrimination in employment involves the following three basic elements:

- (i) It is a decision against one or more employees (or prospective employees) that is not based on individual merit, such as the ability to perform a given job, seniority or other morally legitimate qualifications.
 - (ii) The decision derives solely or in part from racial or sexual prejudice, false stereotypes or some other kind of morally unjustified attitude against members of the class to which employee belongs.
 - (iii) The decision has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions, or better pay.
- (c) **Importance of Active Listening:**
Active listening is important for several reasons :-

- (i) It aids the organization in carrying out its mission
- (ii) It helps individuals to advance in their careers
- (iii) It provides information that helps them to learn about important happenings in the organization, as well as assisting them in doing their own jobs well.
- (iv) It also helps to build strong personal relationships.

Guidelines for Active Listening:

- (i) Look at the person and suspend other things you are doing in order to understand the other person's concerns, intentions.
- (ii) Be interested in what the person is saying. If you just can't make yourself interested, you will lose important information, so try taking notes. Doing so will keep your body and mind active.
- (iii) Listen to the tone of voice and inflections; look at gestures and body language, these may carry an unspoken message.
- (iv) Restate what the person said. Restating their meaning is a way for you to make sure you understand the person clearly.
- (v) Ask questions once in a while to clarify meaning. Doing so, will keep you alert and let the other person know you have been listening and are interested in getting all the facts and ramifications.
- (vi) Be aware of your own feelings and opinions.

Question 5

- (a) *Examining the provisions of the Negotiable Instruments Act, 1881, distinguish between a 'Bill of Exchange' and a 'Promissory Note'.* (8 Marks)
- (b) *What do you understand by the term 'Floating charge'? State the circumstances under which 'Floating charge' becomes 'Fixed charge'.* (4 Marks)
- (c) *Mr. X has received a cheque book from his bank (Sun Bank) where he (X) has his savings account. Write a letter to the Bank acknowledging the receipt of the cheque book.* (4 Marks)

Answer

- (a) **Distinction between a Promissory Note and a Bill of Exchange:** The distinctive features of these two types of negotiable instruments are tabulated below:-

Sl. No.	Promissory Note	Bill of Exchange
1.	It contains a promise to pay	It contains an order to pay
2.	The liability of the maker of a note is primary and absolute	The liability of the drawer of a bill is secondary and conditional. He would be liable if the drawee, after

		accepting the bill fails to pay the money due upon it provided notice of dishonor is given to the drawer within the prescribed time.
3.	It is presented for payment without any previous acceptance by maker	If a bill is payable sometime after sight, it is required to be accepted either by the drawee himself or by someone else on his behalf, before it can be presented for payment.
4.	The maker of a promissory note stands in immediate relationship with the payee and is primarily liable to the payee or the holder.	The maker or drawer of an accepted bill stands in immediate relationship with the acceptor and the payee
5.	It cannot be made payable to the maker himself, that is the maker and the payee cannot be the same person	In the case of bill, the drawer and payee or the drawee and the payee may be the same person.
6.	In the case of a promissory note there are only two parties, viz. the maker (debtor) and the payee (creditor).	In the case of a bill of exchange, there are three parties, viz., drawer, drawee and payee, and any two of these three capacities can be filled by one and the same person.
7.	A promissory note cannot be drawn in sets	The bills can be drawn in sets
8.	A promissory note can never be conditional	A bill of exchange too cannot be drawn conditionally, but it can be accepted conditionally with the consent of the holder. It should be noted that neither a promissory note nor a bill of exchange can be made payable to bearer on demand.

- (b) A floating charge is an equitable charge which is not a specific charge on any property of the company. It is a charge on a class of assets, which may be present or future and which changes from time to time in the ordinary course of business, for example – Stock in trade. Thus, the company may, despite of the charge, deal with any of the assets in the ordinary course of business. It is of the essence of a floating charge that it remains dormant until the undertaking charged ceases to be a going concern or until the person in whose favour the charge created, intervenes.

Process of conversion of floating charge into a fixed charge is termed as Crystallization which is subject to the same restrictions as the fixed charge. A floating charge crystallizes or get fixed under the following circumstances.

- (i) When the company goes into liquidation or
- (ii) When the company ceases to carry on business or
- (iii) When receiver is appointed or
- (iv) When default is made in paying the principal and / or interest and the holder of the charge brings an action to enforce his security.

(c) The Manager

Sun Bank

Mumbai

Date :

Dear Sir,

This is to acknowledge the receipt of the cheque book containing 20 cheques from No. 123450 to 123469 which I found to be correct.

Yours faithfully,

X

(Customer)

Question 6

- (a) *Explain the procedure for change of name of a company, as provided in the Companies Act, 1956.* (8 Marks)
- (b) *Mr. V is a shareholder of M/s Brown Limited, holding 150 Equity Shares of ₹ 10 each, on which the company has declared a total dividend of ₹ 1,500 for the year 2011-12. Mr. V did not receive the dividend warrant sent by the company.*
Draft an 'Indemnity Bond' to be sent to the company requesting the company to issue a duplicate dividend warrant. (4 Marks)
- (c) *State whether the following statements are correct or incorrect* (4 x 1 = 4 Marks)
 - (i) *'An agreement with an alien friend is valid but an agreement with an alien enemy is void'.*
 - (ii) *'All contracts are agreements, but all agreements may not be contracts'.*
 - (iii) *'A private limited company must have a minimum of two directors, while a public limited company must have atleast three directors,*

(iv) 'A holder of share-warrant of a company is not a member of the company'.

Answer

- (a) Procedure for the Change of name under the Companies Act, 1956: According to Section 21 of the Companies Act, 1956, a company may, by special resolution, and with the approval of the Central Government, signified in writing, change its name. This power has been delegated to the Registrar of Companies. The application for change of name is required to be made to Registrar of Companies in form IA with a fee of Rs. 500. Where the Registrar is satisfied with the company's proposal, he may accord to the proposal which will be valid for a period of six months.

However, such an approval of the Central Government would not be necessary where the only change in the name of the company is the addition thereto or the deletion there from of the words 'private' consequent upon the conversion as per the provisions of this Act of a public company into a private company or vice versa (Proviso to Section 21).

Further, according to Section 22 of the above Act, if through inadvertence etc., the name is identical with, or too nearly resembles, the name by which a company, in existence, has been previously registered, it may be changed by ordinary resolution with the sanction of the Central Government within twelve months of the registration. The company shall make the change by ordinary resolution and with the previous approval of the Central Government within three months of the date of the direction of the Central Government being received or such longer period as the Central Government may deem fit to allow.

According to Section 23 of the above Act, where the name of a company has been changed, the Registrar of Companies shall issue fresh certificate with the change embodied therein. The change in name shall not affect any of the company's rights or obligations of the company or render defective any legal proceedings by or against it. Any legal proceedings, which might have been continued or commenced by or against the company by its former name, may be continued by its name.

- (b) Indemnity Bond

I, Mr. V, S/o -----resident of ----- do hereby agree to indemnify the M/s. Brown Ltd., for any loss that may occur for seeking release of dividend for 150 shares of Rs. 1,500/-. I further declare that personally I have not received the dividend warrant in question.

Mr. V

(Signature)

Date :

Place :

- (c) Correct / Incorrect

(i) Correct

- (ii) Correct
- (iii) Correct
- (iv) Correct

Question 7

Answer any FOUR of the following:

- (a) Explain clearly the meaning of the term 'Basic wages' as defined under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. State also what is not included in the term 'Basic Wages'. (4 Marks)
- (b) In what way a 'Member' of a company is different from that of a 'shareholder' of the company? (4 Marks)
- (c) State the ordinary business which may be transacted at an Annual General Meeting of a public limited company incorporated under the Companies Act, 1956. (4 Marks)
- (d) Explain the role played by different committees in regulating the 'Corporate Governance'. (4 Marks)
- (e) Explain the importance of 'Ethics' for finance and accounting professionals. (4 Marks)

Answer

- (a) As per section 2 (b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, 'Basic Wages' means all emoluments which are earned by an employee while on duty or on leave or holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include :-
 - (i) the cash value of any food concessions
 - (ii) any dearness allowance (that is to say all cash payments by whatever name is called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment or
 - (iii) any presents made by the employer.
- (b) Members or share holders of a company are the persons who collectively constitute the company as a corporate entity. They are synonymous in the case of a company limited by shares, a company limited by guarantee and having a share capital and 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 or may not have a share capital. However, in certain respect members and shareholders are separate. They are as follows:-
 - (i) A registered shareholder is a member but a registered member may not be a shareholder because the company may not have a share capital.

- (ii) A person who owns a bearer share warrant is a shareholder but he is not a member as his name is struck off from the register of members [Section 115 (1)]. This means that a person can be a holder of shares without being a member.
- (iii) 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.
- (iv) 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.
- (v) 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 books of the company.

(c) Ordinary Business to be transacted at an Annual General Meeting.

The following business is called the ordinary business, which is transacted at the Annual General Meeting of a company :-

- (1) Consideration of Annual Accounts, Balance sheet & the Reports of the Board of Directors and Auditors
- (2) Declaration of Dividend
- (3) Appointment of directors in place of those retiring
- (4) Appointment of and fixation of remuneration of auditors

Any business other than the above shall be called special business.

(d) Role of different committees in regulating Corporate Governance :

The core roles of the various committees in regulation of Corporate Governance are as follows :-

- (1) *Board of directors*: The Board's role is that of trusteeship to protect and enhance shareholders value through strategic supervision. The strategy should aim at accountability and fulfillment of goals.
- (2) *'Audit committee*: They have to provide assurance to Board on adequacy of internal control systems and financial disclosures.
- (3) *Compensation Committee*: The committee has to recommend to the Board compensation terms for Executive Directors and the senior most level of management below the Executive Director.
- (4) *Nomination committee*: It is to recommend to the Board nominations for membership of the Corporate Management Committee and the Board and oversee succession to the senior most level of management below the Executive Director.

- (5) *Corporate management committee*: Its primary role is strategic management of company's business within Board's approved direction.
 - (6) *Investor services committee*: It is to look into redressal of shareholders and investors grievances, approval of transmissions, sub division of shares, issue of duplicate shares etc.,
 - (7) *Divisional Management Committee*: It is to realize tactical and strategic objectives in accordance with Corporate Management Committee / Board approved plan.
- (e) Finance and Accounts is perhaps the only business function which accepts responsibility to act in public interest. Hence, a finance and accounting professional's responsibility is not restricted to satisfy the needs of any particular individual or organization. While acting in public interest, it becomes imperative that the finance and accounting professional adheres to certain basic ethics in order to achieve his objectives.

Until recently, various surveys conducted globally had ranked finance and accounting professionals very high in terms of professional ethics. However, various accounting scandals witnessed during the past few years have put a serious question mark on the role of the finance and accounting professional in providing the right information for decision making both within and outside their respective organizations. As these finance and accounting professionals are in public practice, they should take reasonable steps to identify circumstances that could pose the conflict of interest and thus leading to follow unethical behavior.