

PAPER – 3 : LAW, ETHICS AND COMMUNICATION

QUESTIONS

BUSINESS LAWS

The Indian Contract Act, 1872

1. Briefly explain the grounds upon which a contract may be discharged under the provisions of Indian Contract Act, 1872.
2. A promised to pay B for his services at his (A) sole discretion which found to be fair and reasonable. However, B dissatisfied with the payment made by A and wanted to sue him. Decide whether B can sue A under the provisions of Indian Contract Act, 1872?
3. Define an offer. Explain the rules of an offer. How an offer is different from an invitation to offer.
4. Explain the concept of 'misrepresentation' in matters of contract. Ajay induced Anil to buy his car saying that it was in a very good condition. After taking the car, Anil complained that there were many defects in the car. Ajay proposed to get it repaired and promised to pay 50% cost of repairs. After a few days, the car did not work at all. Now Anil wants to rescind the contract. Decide giving reasons.
5. X advances to Y Rs.10,000 on the guarantee of Z. The loan carries interest at ten percent per annum. Subsequently, Y becomes financially embarrassed. On Y's request, X reduces the interest to six per cent per annum and does not sue Y for one year after the loan becomes due. Y becomes insolvent. Can X sue Z?

The Negotiable Instruments Act, 1881

6. A bill of exchange is dishonoured by the acceptor. Explain the provisions of "Noting" and "Protest" under the Negotiable Instruments Act, 1881.
7. A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the complaint was lodged against him. Does he liable for an offence under section 138?
8. P owes money to Q. Therefore, he makes a promissory note for the amount in favour of Q, for safety of transmission he cuts the note in half and posts one half to Q. He then changes his mind and calls upon Q to return the half of the note which he had sent. Q requires P to send the other half of the promissory note. Decide how a rights of the parties are to be adjusted.
9. State by and to whom, a notice of dishonour of a negotiable instrument should be given and also state the mode to be followed for giving such notice under the provisions of the Negotiable Instruments Act, 1881.

The Payment of Bonus Act, 1965\

10. Explain the provisions relating to appointment, powers and functions of an Inspector under the Payment of Bonus Act, 1965?
11. Star Ltd. suffered heavy losses during the current accounting year and hence was not able to pay minimum bonus to its workmen. Referring to the provisions of the Payment of Bonus Act, 1965 state whether the company is required to give the minimum bonus irrespective of losses and it can be exempted by from payment of Bonus.
12. Explain the provisions relating to time limit for payment of bonus and maximum amount of bonus to be given to an employee under the Payment of Bonus Act, 1965.

The Employees Provident Fund and Miscellaneous Provisions Act, 1952

13. What are the establishments to which E.P.F. & M.P. Act do not apply? How shall the amount standing to the credit of P.F. etc shall be dealt if the person desires to leave the establishment?
14. X, an employee in ABC Ltd (covered by the EPF and MP Act, 1952) died in an accident. State to whom the amount standing in his account to be payable under the provisions of the Act.
15. What are the establishments, which are exempted from the provisions of the EPF & MP Act, 1952?

The Payment of Gratuity Act, 1972

16. An employee who is governed by the Payment of Gratuity Act, 1972 committed a theft in the course of his employment. And consequently his services was terminated. State in this connection, whether the gratuity payable to him shall be wholly or partly forfeited.
17. Explain the provisions of the Payment of Gratuity Act, 1972 relating to 'forfeiture of the amount of Gratuity' payable to an employee.
18. Explain the manner in which the gratuity payable to employees in a seasonal as well as other establishments is calculated under the Payment of Gratuity Act, 1972. State also the maximum amount of gratuity payable under the act.

The Companies Act, 1956

19. Explain provisions relating to (a) Modification and (b) Satisfaction of charge.
20. Define Minimum Subscription? When it is to be refunded? Can share application money be deposited in any bank?
21. What are the documents that have to be filed at the time of registration of a company to the Registrar?
22. Illustrate, whether a limited company can become partner in a partnership firm?
23. Briefly explain the effects of Irregular allotment under the Companies Act 1956.
24. Mars Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be

made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

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

- (i) When the company has already adopted the contract after incorporation?
 - (ii) When the company makes a fresh contract with the suppliers in terms of pre incorporation contract?
25. What is red-herring prospectus? Briefly explain the information memorandum as inserted by the Companies (Amendment) Act, 2000.
 26. 40 out of 100 members of a company submitted a requisition for holding of an extra ordinary general meeting in order to remove Managing Director from office. On the failure of the company to call the meeting, the requisitionists themselves called the meeting at the registered office of the company. On the appointed day, they could not hold the meeting at the registered office as it was kept under lock and key by the Managing Director himself. The members held the meeting elsewhere and adopted a resolution removing the Managing Director from office. Is the resolution valid?
 27. Explain the meaning of 'Shelf Prospectus'. What are the provisions in the Companies Act, 1956, as amended in 2000, relating to the issue of 'Shelf Prospectus'?
 28. A Public Limited Company wants to increase its subscribed share capital by offering the new shares to the persons who are not the members of the company. Referring to the provisions of the Companies Act, 1956, advise the company about the procedure the company has to adopt to give effect to the above proposal.
 29. Briefly state the circumstances to lift the status of corporate legal entity of company under the Companies Act, 1956?
 30. Board of Directors of PQR Ltd., called for EGM on 14th January, 2008. Mr. X who is newly appointed as Company Secretary is confused over the issue of sending notices to joint shareholders of the company. Advise Mr. X by referring to the provisions of Companies Act, 1956.
 31. Describe the ways to become a member of a company.
A company issued 20 partly paid equity shares and registered them in the name of the minor describing him as minor. The father of the minor signed the application on the minor's behalf. After some time company went into liquidation. The company filed a suit against father of the minor to recover the remaining amount on the shares. Whether the company will succeed? Advice.
 32. A general meeting of a public company was adjourned by the chairman for want of quorum. Fresh notice was not served for the adjourned meeting. Do you feel that notice

is required for the adjourned meeting? Referring to the provisions of the Companies Act, 1956 state the minimum number of members required to be present in the adjourned meeting.

ETHICS

33. List the benefits of ethical business practices.
34. How Corporate Social Responsibility helps in increasing Sales and Customer Loyalty?
35. What are the various guidelines for managing ethics in the workplace?
36. Define the following terms:
 - (i) Ozone Depletion
 - (ii) Acid Rain
37. Distinguish between Public Interest and Consumer Interest.
38. What point should be kept in mind for creating sound ethical environment in any company?
39. Discuss briefly 'Ethical Conflict Resolution'.
40. What are the objects of Central Consumer Protection Council?
41. What do you understand by the term 'Ecological Ethics'?

BUSINESS COMMUNICATION

42. What is Chronemics?
43. Elaborate the merits and demerits of the grapevine communication.
44. Explain the main barriers to communication.
45. What are the principles of inter-personal communication?
46. What are the salient characteristics of groups in an organization?
47. Suggest guidelines to handle communication ethics dilemmas.
48. What qualities should a sustainable innovation organization possess?
49. What is the content of Annual Report of a company?
50. Explain lease deed.

SUGGESTED ANSWERS/HINTS

BUSINESS LAWS

1. Discharge of a Contract:

A Contract may be discharged either by an act of parties or by an operation of law which may be enumerated as follows:

- (1) Discharge by performance which may be actual performance or tender of performance. Actual performance is said to have taken place, when each of the parties has done what he had agreed to do under the agreement. When the promisor offers to perform his obligation, but the promisee refuses to accept the performance. It amounts to attempted performance or tender :
- (2) Discharge by mutual agreement: Section 62 of the Indian Contract Act, 1872 provides if the parties to a contract agree to substitute a new contract for it or to refund or remit or alter it, the original contract need not to be performed. Novation, Rescission, Alteration and Remission are also the same ground of this nature.
- (3) Discharge by impossibility of performance: The impossibility may exist from its initiation. Alternatively, it may be supervening impossibility which may take place owing to (a). unforeseen change in law (b). The destruction of subject matter (c). The non-existence or non-occurrence of particular state of things d). the declaration of war (Section 56).
- (4) Discharge by lapse of time: A contract should be performed within a specific period as prescribed in the Law of Limitation Act, 1963. If it is not performed the party is deprived of remedy at law.
- (5) Discharge by operation of law: It may occur by death of the promisor, by insolvency etc.
- (6) Discharge by breach of contract: Breach of contract may be actual breach of contract or anticipatory breach of contract. When a person repudiates a contract before the stipulated time, for its performance has arrived, it is an anticipatory breach. If one of the parties to a contract breaks the contract the party injured thereby has a right of action for damages as well as he is also discharged from performing his part of the contract (Section 64).
- (7) A promisee may dispense with or remit the performance of the promise made to him or may accept any satisfaction he thinks fit. In the first case, the contract will be discharged by remission and in the second it is accord and satisfaction (Section 63).
- (8) When a promisee neglects or refuses to afford the promisor reasonable facilities for the performance of the promise, the promisor is excused by such neglect or refusal (Section 67).

2. B's suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract. As per section 29 of

the Indian Contract Act, 1872 – agreements, the meaning of which is not certain, or capable of being made certain, are void”.

3. Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a), Indian Contract Act, 1872 as when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Rules: The following are the important rules of an offer: -

- ◆ Must be capable of creating legal relation.
- ◆ Must be certain, definite and not vague.
- ◆ May be expressed or implied.
- ◆ May be general or specific.
- ◆ Must be communicated.

Offer and an Invitation to an offer

An offer is definite and capable of converting an intention into a contract. Where as, an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result contract and only an offer emerges in the process of negotiation.

4. According to Section 18 of the Indian Contract Act, 1872, misrepresentation is there:
 1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true.
 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice.
 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement.

Problem:

The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case Anil could not rescind the contract, as his acceptance to the offer of Ajay to bear 50% of the cost of repairs impliedly amount to final acceptance of the sale [Long v. Lloyd, (1958)].

5. X cannot sue Z, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety (Sec.133, Indian Contract Act, 1872).

6. The law related to the noting and protest of negotiable instruments is enshrined in Section 99 to 104A of the Negotiable Instruments Act, 1881.

Noting: According to section 99, when a promissory note or bill of exchange has been dishonoured by non-acceptance, or non-payment the holder may cause such dishonour to be noted by a notary public upon the instrument, or on a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason for the dishonour or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonour and the notary's charges.

Protest: According to section 100, when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

The contents of a protest are laid down in section 101 of the Act. According to section 102, when a promissory note or bill of exchange is required to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary making the protest. Under section 103, all bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentation to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Neither noting nor protesting is compulsory in the case of inland bills. But under section 104, every foreign bill must be protested for dishonour, when such protest is required by law of the country where the bill was drawn. The merit of protest and noting is that it would become good prima-facie evidence in a court of law that the instrument has been dishonoured. It is pertinent to note that as per section 119 the court is bound to recognise a protest, but it may or not recognise noting.

7. According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138.
8. The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to Q. Under Section 46 of the N.I. Act, 1881, the making of a P/N is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half

instrument cannot be treated as constructive delivery of the whole. So the claim of Q to have the other half the P/N sent to him is not maintainable. P is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the P/N.

9. It is provided in section 93 of the Negotiable Instruments Act, 1881 that when a promissory note, bill of exchange or cheque is dishonoured by non-acceptance, or non-payment, the holder thereof, or some party thereto who remains liable thereon, must give notice that the instrument has been dishonoured to all other parties whom the holder seeks to make severally liable thereon, and to some one of several parties whom he seeks to make jointly liable thereon.

Further, section 94 enshrines the law with regard to the mode of giving notice of dishonour. Notice of dishonour may be given to a duly authorised agent of the person to whom it is required to be given, or where he has died to his legal representatives, or where he has been declared an insolvent, to his assignee. The notice may be oral or written, may if written, be sent by post and may be in any form, but it must inform the party to whom it is given, either in express terms or by reasonable intendment that the instrument has been dishonoured, and in what way, and that he will be held liable thereon, and it must be given within a reasonable time after dishonour, at the place of business, or (in case of such party has no place of business) at the residence of the party for whom it is intended.

If the notice is duly directed and sent by post and miscarries, such miscarriage does not render the notice invalid.

10. Appointment of powers and functions of the Inspectors: Section 27 of the Payment of Bonus Act, 1965 provides that the appropriate Government may, by notification in the Official Gazette, appoint such persons as it thinks fit to be inspectors for the purposes of this Act and may define the limits within which they shall exercise jurisdiction.

An inspector thus appointed has to ascertain whether any of the provisions of this Act has been complied with. And for this purpose, he may:-

- (i) Require an employer to furnish such information as he may consider necessary;
- (ii) At any reasonable time and with assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require any one found in charge thereof to produce before him for examination any account books, register and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment;
- (iii) Examine, with respect to any matter relevant to any of the purpose aforesaid, the employer, his agent or servant or any other person found in charge of the establishment or any premises connected therewith or any person whom the inspector has reasonable cause to believe to be or to have been reasonable cause to believe to be or to have been an employee in the establishment;

- (iv) Make copies of or take extract from, any book, register or other document maintained in relation to the establishment; and
- (v) Exercise such other powers as may be prescribed.

The inspector appointed as aforesaid is deemed to be a public servant under the Indian Penal Code.

Any person, whom an Inspector calls upon to produce any account book register or other document or to give information, shall be legally bound to do so.

The provisions of Section 27 do not empower an inspector to require a banking company to furnish or disclose any statement or information or to produce or give inspection of, any of its books of accounts or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under Section 34A of the Banking Regulation Act, 1949.

11. Payment of minimum bonus (Section 10)

Subject to the other provisions of the Payment of Bonus Act, every employer shall be bound to pay to every employee in respect of every accounting year, minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs.100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. But if the employee has not completed 15 years of age at the beginning of the accounting year he will be entitled to a minimum bonus which shall be 8.33% of the salary or wage during the accounting year Rs.60/- whichever is higher.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by Section 10 [State vs. Sardar Dalip Singh Majilhia, 1979, Lab. I.C. (913)(All)].

Power of Exemption (Section 36)

Though the Act creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10, the obligation and right is subject to exemption under Section 36. If the appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishment is of opinion that it will not be a public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act.

There are two stages in Section 36.

- (1) The Government shall consider the financial position and other relevant circumstances of an establishment or class of establishment.
- (2) It should be of the opinion that it would not be in the public interest to apply all or any of the provisions of the Act.

The expression 'financial position' include loss suffered by the establishment during the accounting year. The expression 'other relevant circumstances' will include every consideration as to whether the workmen had principally contributed to the financial loss of the company during that accounting year.

If the bonus liability is negligible compared to loss suffered, company should not be relieved of liability to pay minimum bonus.

If the losses sustained by the employer is not due to any misconduct on the part of employees, the employer is liable to pay statutory minimum bonus. [J.K. Chemicals Ltd vs. Govt. of Maharashtra (1996) Bombay H.C.].

12. Time Limit: All amounts payable to an employee by way of bonus shall be as per Section 19 of the Payment of Bonus Act, 1965.

Maximum Bonus

According to Section 11 where, in respect of any accounting year referred to in Section 10, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, The employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

13. Transfer of account of an employee under E.P.F.:Section 17A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides for the transfer of accounts of an employee in case of his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which the Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee.

Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the Act does not apply, the amount of accumulations to the credit of such employee in the Fund or, as the case may be, in the provident fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desire and the rules in relation to that provident fund permit such transfer. This transfer has to be made within such time as may be specified by the Central Government in this behalf. (Sub-section 1).

14. The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules vest in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. (Section 10, EPF & MP Act, 1952).
15. The EPF & MP Act, 1952 is not applicable to the following establishments:
 - (i) any establishment registered under the Co-operative Societies Act, 1912, or under any other law for the time being in force in any state relating to co-operative

societies, in any state, employing less than fifty person and working without the aid of power; or,

- (ii) any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits, or
- (iii) any other establishment set up under any Central, Provincial, or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rules framed under the Act governing such benefits, or
- (iv) any other establishment newly set-up, until the expiry of a period of three years from the date on which such establishment is, or has been set up.
- (v) section 16(2) lays down that if the Central Government is of the opinion that having regard to the financial position of any class of establishments or other circumstances of the case, it is necessary or expedient so to do, it may exempt that class of establishments from the operation of this Act for such period as may be specified in the notification in the official gazette. The exemption can be granted only through notification in the official gazette.

16. Reduction and forfeiture of Gratuity: Under Section 4 of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall stand forfeited. The gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of: (i) riotous or disorderly conduct or act of violence; or (ii) committing an offence involving moral turpitude in the course of his employment. Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(60)(b)(ii). [Bharat Gold Mines Ltd. vs. Regional Labour Commissioner 1986 Lab. I.C. 1976 (Kar.)]

17. Forfeiture of Gratuity: Section 4(6) of Gratuity Act, 1972 deals with cases in which gratuity payable to an employee may be forfeited.

According to it, the gratuity of an employee whose service have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

The gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for-

- (i) his riotous or disorderly conduct or any other act of violence on his part or

- (ii) any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

18. Computation of gratuity amount: Section 4 of the Payment to Gratuity Act, 1972 stipulates the manner in which the amount of gratuity payable to an employee will be calculated.

In the case of establishments other than seasonal establishments, the employer shall pay the gratuity to an employee at the rate of 15 days wages based on the rate of wages last drawn by the employee concerned for every completed year of service or part thereof in excess of 6 months. In the case of piece rated employees, daily wages, shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment and for this purpose the wages paid for any overtime work shall not be taken into account.

In the case of a monthly rated employee 15 days wages shall be calculated by dividing the monthly rate of wages last drawn by 26 and by multiplying the quotient by 15.

In the case of seasonal establishment the employees can be classified into 2 groups.

- (i) Those who work throughout the year and
- (ii) Those who work only during the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of 6 months. The later are entitled to receive gratuity at the rate of 7 days for each season.

The amount of gratuity payable shall not exceed Rs. 3,50,000.

19. The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.

What constitutes modification?

Modification constitutes:

1. Where the charge is modified by varying any terms and conditions of the existing charge by agreement;
2. Where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
3. Where the modification is by ceding a pari passu charge;
4. Change in rate of interest (other than bank rate);
5. Change in repayment schedule of loan; (this is not applicable in working capital loans which are repayable on demand) and
6. Partial release of the charge on a particular asset or property.

Satisfaction of Charge: Whenever any charge is created by a company and registered with the Registrar at the instance of the company or the charge holder and is satisfied in full, the company shall give an intimation thereof to the Registrar as to the payment and satisfaction in full of the said charge within 30 days from the date of such payment or satisfaction, upon which the Registrar will send a notice to the holder of the charge to show cause why payment or satisfaction, as notified by the company should not be recorded. The best procedure for notifying satisfaction of the charge to the Registrar by the company (in Form No.17) is to attach with the form a certified copy of the charge holder's letter confirming the date of the satisfaction of the charge. Part payment or satisfaction of charge need not be intimated to the Registrar.

20. Minimum subscription is the minimum amount as stated in the prospectus, which in the opinion of directors must be raised by the issue of share capital to start with. The amount shall be utilised to meet the following expenditure:
 1. Purchase price of the property bought or to be bought.
 2. Any preliminary expenses.
 3. Underwriting commission.
 4. The repayment of money borrowed by the company for the above purposes.
 5. Working capital and
 6. Any other expenditure stating the nature and purpose with estimated amount in each case.

In terms of section 69(1) of the Act, every prospectus for shares must contain an indication, as to the minimum amount which in the opinion of the Board of Directors must be raised. The amount so stated in the prospectus which shall be reckoned exclusively of any amount payable otherwise than in money is referred to as the "minimum subscription". The amount payable on application of each share shall not be less than 5% of the nominal amount of the l,share.

If the applications are not received by the company for such quantum of shares for making the minimum subscription, within 120 days of the issue of prospectus, all moneys received from the applicants for shares shall be repaid without interest. If any such money is not repaid within 130 days after the issue of prospectus, moneys will be repaid with interest at the rate of 6% p.a. from the expiry of 130 days.

Position as per SEBI Guidelines : As per SEBI Guidelines, the minimum subscription in respect public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities. In case of non-receipt by the company of 90% of the issued amount from public subscription plus accepted devolvement from underwriters or from other sources in case of under subscribed issues, within 60 days from the date of closure of the issue, the company shall refund forth with the subscription amount in full without interest and with interest @ 15% p.a. if not paid within 10 days after the expiry of the said 60 days.

The issuer company cannot use the moneys received with the applications and kept deposited with the bankers to the issue until the date the shares or debentures are allotted.

21. Documents to be filed: After getting the name approved, the following documents along with the application and prescribed fees, are to be filed with the Registrar:
 - (1) Memorandum of Association [Section 33(1)(a)].
 - (2) Articles of Association, if any [Section 33(1)(b)].
 - (3) The agreement, if any, which the company proposed to enter into with any individual for appointment as its managing or whole time director or manager [Section 33(1)(c)].
 - (4) A declaration that the requirements of the Act and the rules framed there under have been complied with. This declaration is required to be signed by an advocate of the Supreme Court or High Court or an attorney or a pleader having the right to appear before High Court or a secretary, or a chartered accountant in whole time practice in India who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company [Section 33(2)].
 - (5) In case of a public company having share capital, where the articles name a person as director/directors, the list of the directors and their written consent in prescribed form to act as directors and take up qualification shares [Section 266].

Besides the aforementioned documents, the company must give a notice regarding the situation of its registered office under Section 146 within 30 days of registration.

22. One of the important features of a company is an artificial juristic person. Being a juristic person, company is capable of entering contract in its own name. According to Section 4 of the Partnership Act, 1932, partnership is a contractual relationship between persons; therefore, there should not be any objection to a company in becoming partner. Further, the limited liability element of a limited company is also do not restrict a company in becoming a partner in a unlimited liability of a partnership firm, because, it is limited liability of members of a limited company and not the company itself. However, the Department of Company Affairs (now Ministry ...) is in the opinion that, a company may become a partner if the Memorandum of Association specifically allows it.
23. Effect of Irregular allotment: When the shares are not allotted in pursuance of Section 69 and 70 (i.e. without receiving the minimum subscription and without filing a prospectus or statement in lieu of prospectus to the registrar before the allotment) such an allotment is an irregular allotment. In spite of the stringent provision of Section 69 and 70 one may find that allotment has been made in utter contravention thereof. The directors may choose to take a chance and proceed to allot shares although minimum subscription has not reached or a prospectus or statement in lieu of prospectus has not been filed. Such an allotment is not void initio but as irregular.

The applicant for the shares may avoid the allotment, if he does so within the time specified by Section 71, namely:

- (a) where the allotment was made before the statutory meeting within 2 months after the holding of statutory meeting of the company and not later; or
- (b) where no statutory meeting is required to be held by the company, within 2 months after the date of allotment and not later; or
- (c) where the allotment was made after the statutory meeting, within 2 months of allotment (and not later) the allotment shall be voidable despite the fact that the company is in the course of being wound up.

Within the aforesaid period, the allottee must intimate to the company that he wants to avoid the allotment. If legal proceedings are required to be taken, these need not be within the period of two months provided the notice of avoidance was served on the company within the aforesaid time but they should be reasonably prompt thereafter if they are required to be brought.

Furthermore, Section 71(3) makes every director of a company, who knowingly contravenes or authorizes the contravention of any of the provisions of Section 69 or Section 70 with respect to allotment, liable to compensate the company and the allottee for any loss, damages or costs which they have sustained or incurred thereby. But the proceedings for such compensation can only be taken within 2 years from the date of allotment. As the allotment is voidable at the option of the shareholder, the shareholder may keep the shares and yet sue the directors who have knowingly contravene either of the two sections i.e. 69 and 70 to compel them to make good the loss to him as a result of the irregular allotment.

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

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

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

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other

parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

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

- (i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.
 - (ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.
25. "Red-herring prospectus" means a prospectus which does into have complete particular on the price of the securities offered and the quantum of securities offered.
- (1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.
 - (2) A Company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.
 - (3) The information memorandum and re-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.
 - (4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.
 - (5) Every variation as made and highlighted in accordance with Sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.
 - (6) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.
26. Section 169 of the Companies Act, 1956 contains provisions regarding holding of extraordinary general meetings. It provides that if directors fail to call a properly requisitioned meeting, the requisitionists or such of the requisitionists as represent not less than 1/10th of the total voting rights of all the members may call a meeting to be held on a date fixed within 3 months of the date of the requisition.

Where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in *R. Chettair v. M. Chettair* that the meeting may be held anywhere also.

Further, resolutions properly passed at such a meeting, are binding on the company.

27. Shelf Prospectus: According to Section 60-A (as inserted by the Companies (Amendment) Act, 2000) 'Shelf Prospectus' means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

Any public financial institution, a public sector bank or scheduled bank whose main object is financing, shall file a shelf prospectus. 'Financing means making loans to or subscribing in the capital of, a private industrial enterprise engaged in infrastructural financing, or such, other company as the Central Government may notify in this behalf.

A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus. It shall be required to file an information memorandum. On all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within the time prescribed by the Central Government, prior to making of a second or subsequent offer of securities under the shelf prospectus.

An information memorandum shall be issued to the public along with shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue securities under that prospectus.

Where an update of information memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall constitute the prospectus.

28. Issue of Shares to Non-member: As per the provisions of the Companies Act, 1956 contained in Section 81(1) to (3) the directors of the company are under obligation to make offer of the new shares (known as rights shares) to the existing members of the company in proportion to their share holding. These shares can be offered to the persons who are not the members of the company or to the outsiders or any persons (including the equity shareholders) if the following procedure has been adopted:
1. A special resolution has been passed to that effect by the shareholders in general meeting
 2. If an ordinary resolution is passed and the approval of the Central Government is obtained. The Central Government will accord its approval if it is satisfied that the proposal is most beneficial to the company.
 3. If any shareholder to whom the shares are offered declines to accept the shares. In such a case the Board of directors of the company may dispose of the shares in such manner as they think most beneficial to the company.

4. If the new shares are issued within 2 years from the formation of the company or 1 year of the allotment made for the first time.

The provisions of Section 81, however, do not apply:

1. to a private company.
 2. to the increase of the subscribed capital of a company caused by the exercise of an option attached to debentures issued or loans raised by the company to convert such debentures or loans into shares in the company, or to subscribe for shares in the company. But the terms of issue of such debentures or the terms of such loans should include a term providing for such option and such term:
 - (i) either has been approved by the Central Government before the issue of debentures or the raising of the loans, or is in conformity with the rules, if any, made by the Central Government in this behalf, and
 - (ii) in the case of debentures or loans (other than debentures issued to, or loans obtained from, the government or any institution specified by the Central Government) has also been approved by a special resolution passed by the company in general meeting before the issue of the debentures or the raising of the loans.
29. The following are the circumstances where the law disregards the principle of corporate personality and have, therefore, lifts the corporate veil treating the company separate from its shareholders or members:
- (a) In the law relating to trading with the enemy where the test of control is adopted. *Daimler Co. Ltd. v. Continental Tyres & Rubber (Co.)*. if the public interest is not likely to be in jeopardy, the Court may not be willing to crack the corporate shell. But it may rend the veil for ascertaining whether a company is an enemy company. It is true that, unlike a natural person, a company has no mind or conscience, therefore, it cannot be a friend or foe. It may, however, be characterized as an enemy company, if its affairs are under the control of people of an enemy country. For the purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
 - (b) In certain matters concerning the law of taxes, death duties and stamps, particularly where the question of the controlling interest is in issue (*S. Berendsen Ltd. v. Commissioner of Inland Revenue*). Where corporate entity is used to evade or circumvent tax, the Court can disregard the corporate entity (*Juggilal v. Commissioner of Income Tax*).
 - (c) Where companies form other companies as their subsidiaries to act as their agent. The application of the doctrine may operate in favour of such companies depending upon the acts of a particular case.
 - (d) Where the benefit of limited liability of shareholders is destroyed and each shareholder's liability has been unlimited. This happens when the number of

members of a public company or a private company falls below 7 or 2 respectively, and business is carried on for more than 6 months. In such a situation, every person who is a member and is cognizant of the fact shall be severally liable for the payment of the whole debts of the company incurred during that time.

- (e) Under the law relating to exchange control.
 - (f) Where the device of incorporation is adopted for some illegal or improper purpose e.g. to defeat or circumvent law, to defraud creditors or to avoid legal obligation.
30. In the case of joint shareholders, notices and other documents required to be served by a company will be deemed to be properly served if the service is effected on the first named of the joint holders as entered in the register of members [Section 53(4)]. But this does not prevent the company from issuing notice or other document to the other joint holders also at its discretion, if the circumstances of any case require the same.
31. The membership of a company may be acquired in the following ways :
- 1. By subscribing to memorandum (Section 41): This section provides that the subscribers of the memorandum of association shall be deemed to have agreed to become the members of the company and on its registration shall be entered as members in the register of members.
 - 2. By allotment: A person may become a shareholder by agreeing to take shares in the company by allotment.
 - 3. By transfer: Section 41 says that every subscribers to the memorandum of a company and every other person who agrees in writing to become a member of the company and whose name is entered in its register of members. Thus it requires two thing a) an agreement in writing to become a member and b) an entry in the register.
 - 4. By transmission: Here a person may become a shareholder by transmission of shares through death, lunacy or insolvency.
 - 5. By estoppel: This arises when a person holds himself out as a member or knowingly allows his name to remain on the register when he has actually parted with his shares. In the event of winding up he will be liable like other genuine members as a contributory (Hansraj A. Ashtana). However, he may escape liquidity by applying for removal of his name under Section 155.

Answer to the problem:

Every person who is competent to contract may become a member. A minor and a person of unsound mind, being incompetent to contract, cannot be members of the company. It has been held in *Mohiri Bibi vs. Dharmadas Ghose* (1930) that since a minor has no contractual capacity, the agreement with the minor is void ab initio.

The Companies Act, 1956 prescribes no qualification for membership. Therefore, in India, the minor may be allotted shares. His name may remain on a company's register of members, but during minority he incurs no liability. In the given problem the company

issued 20 partly paid shares and registered it in the minor's name. The transaction was void and the father who signed the application on the minor's behalf could not be treated as having contracted for the shares; as such he could not be placed on the list of contributions when the company goes in liquidation. The facts of this problem are related to Palaniappa B. Official Liquidator AIR 1942 Mod. 470).

32. As per section 174 of the companies Act, 1956, if within half an hour from the time appointed for holding a meeting for the company quorum is not present, the meeting, shall stand adjourned to the same day in the next week, at the same time and place unless the directors determine otherwise. No fresh notice is, therefore, required to hold the adjourned meeting. Besides, no quorum is necessary in the adjourned meeting. Thus, the adjourned meeting in question is valid.

ETHICS

33. There are many benefits of attention to business ethics for any business enterprise.. The following list describes various benefits of business ethics.

1. Attention to business ethics has substantially improved society:

A few decades ago, children and workers were ruthlessly exploited. Trusts controlled some markets to the extent that prices were fixed and small businesses choked out. Price fixing crippled normal market forces. Employees were terminated based on personalities. Influence was applied through intimidation and harassment. Then society reacted and demanded that businesses place high value on fairness and equal rights. Anti-trust laws were instituted. Government agencies were established. Unions were organized. Laws and regulations were established.

2. Ethics programs help maintain a moral course in turbulent times

Attention to business ethics is critical during times of fundamental change - times like those faced presently by businesses, whether non profit or for-profit. During times of change, there is often no clear moral compass to guide leaders through complex conflicts about what is right or wrong. Continuing attention to ethics in the workplace sensitizes leaders and staff for maintaining consistency in their actions.

3. Ethics programs cultivate strong teamwork and productivity

Usually, an organization finds surprising disparity between its preferred values and the values actually reflected by behaviors in the workplace. Ongoing attention and dialogue regarding values in the workplace builds openness, integrity and community, all critical ingredients of strong teams in the workplace. Employees feel strong alignment between their values and those of the organization. They react with strong motivation and performance.

4. Ethics support employee growth.

Attention to ethics in the workplace helps employees face reality, both good and bad, in the organization and gain the confidence of dealing with complex work situations.

5. Ethics programs help ensure that policies are legal.

A major intent of well-designed personnel policies is to ensure ethical treatment of employees, e.g., in matters of hiring, evaluating, disciplining, firing, etc., an employer can be subject to suit for breach of contract for failure to comply with any promise it made, so the gap between stated corporate culture and actual practice has significant legal, as well as ethical implications. Attention to ethics ensures highly ethical policies and procedures in the workplace. Most organizations feel that it is far better to incur the cost of mechanisms to ensure ethical practices than to incur costs of litigation later.

6. Ethics programs help avoid criminal acts “of omission” and can lower fines.

Ethics programs tend to detect ethical issues and violations early, so they can be reported or addressed.

7. Ethics programs help to manage values associated with quality management, strategic planning and diversity management .

Ethics programs help identifying preferred values and ensuring that organizational behaviors are aligned with those values. This effort includes recording the values, developing policies and procedures to align behaviours with preferred values, and then training all personnel about the policies and procedures. This overall effort is very useful for several other programs in the workplace that require behaviors to be aligned with values, including quality management, strategic planning and diversity management. For example, Total Quality Management initiatives include high priority on certain operating values, e.g., trust among stakeholders, performance, reliability, measurement, and feedback. Ethics management programs are also useful in managing diversity. Diversity programs require recognizing and applying diverse values and perspectives which are the basis of a sound ethics management program.

8. Ethics promote a strong public image

Attention to ethics is also strong public relations, although managing ethics should not be done primarily for reasons of public relations. But, the fact that an organization regularly gives attention to its ethics can portray a strong and positive image to the public. People see such organizations as valuing people more than profit and striving to operate with the utmost of integrity and honor.

Thus managing ethical values in businesses legitimizes managerial actions, strengthens the coherence and balance of the organization’s culture, improves trust in relationships between individuals and groups, supports greater consistency in standards and qualities of products, and cultivates greater sensitivity to the impact of the enterprise’s values and messages. Finally and most essentially, formal attention to business ethics is the right thing to do.

34. How CSR helps in Increasing sales and customer loyalty: A number of studies have suggested a large and growing market for the products and services of companies

perceived to be socially responsible. While businesses must first satisfy customers' key buying criteria, such as price, quality, availability, safety and convenience; studies also show a growing desire to buy (or not buy) because of other values-based criteria, such as "sweatshop-free" and "child-labour-free" clothing, lower environmental impact, and absence of genetically-modified materials or ingredients.

35. The focus on core values and sound ethics, the hallmark of ethical management, is being recognized as an important way to ensure the long-term effectiveness of governance structures and procedures, and avoid the need for whistle-blowing. Employers who understands the importance of workplace ethics, provide their workforce with an effective framework and guiding principles to identify and address ethical issues as they arise.
 - (1) Codes of Conduct and Ethics: A code of ethics specifies the ethical rules of operation in an organization. Codes of conduct specify actions in the workplace and codes of ethics are general guides to decisions about those actions. Examples of topics typically addressed by codes of conduct include: preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts and so on. Codes are insufficient if intended only to ensure that policies are legal. All staff must see the ethics program being driven by top management.
 - (2) Establish Open Communication: Instead of just creating and distributing an ethics policy, it is important that take the time to explain the reasons for the policy and review the guidelines and conduct formal or informal training to further sensitise employees to potential ethical issues. Many of the ethical problems arising in a business are not clear-cut, but involve "grey areas," where the proper course of action may be ambiguous and uncertain. It is necessary to create a work environment where employees understand that it is acceptable to have an ethical dilemma, and give workers the resources to help resolve such situations.
 - (3) Make ethics decisions in groups, and make decisions public, as appropriate. This usually produces better quality decisions by including diverse interests and perspectives, and increases the credibility of the decision process and outcome by reducing suspicion of unfair bias.
 - (4) Integrate ethics management with other management practices. When developing the values statement during strategic planning, include ethical values preferred in the workplace. When developing personnel policies, reflect on what ethical values you'd like to be most prominent in the organization's culture and then design policies to produce these behaviours.
 - (5) Use of cross-functional teams when developing and implementing the ethics management program. It's vital that the organization's employees feel a sense of participation and ownership in the program if they are to adhere to its ethical values. Therefore, include employees in developing and operating the program.
 - (6) Appointing an ombudsperson: The ombudsperson is responsible to help coordinate development of the policies and procedures to institutionalise moral values in the

workplace. This establishes a point of contact where employees can go to ask questions in confidence about the work situations they confront and seek advice.

- (7) Creating an atmosphere of trust is also critical in encouraging employees to report ethical violations they observe this function might best be provided by an outside consultant, e.g., lawyer, clergyperson, etc. Or, provide a “tip” box in which personnel can report suspected unethical activities, and do so safely on an anonymous basis.
 - (8) Regularly update policies and procedures to produce behaviours preferred from the code of conduct, job descriptions, performance appraisal forms, management-by-objectives expectations, standard forms, checklists, budget report formats, and other relevant control instruments to ensure conformance to the code of conduct. There are numerous examples of how organizations manage values through use of policies and procedures. For example, we are most familiar with the value of social responsibility. To instil behaviours aligned with this value, organizations often institute policies such as recycling waste, donating to charities or paying employees to participate in community events. In another example, a high value on responsiveness to customers might be implemented by instituting policies to return phone calls or to repair defective equipment within a certain period of time.
 - (9) Include a grievance policy for employees to use to resolve disagreements with supervisors and staff.
 - (10) Set an example from the top: Executives and managers not only need to endorse strict standards of conduct, but should also ensure that they follow it themselves. They must stress to employees that dishonest or unethical conduct will not be tolerated, and that they are expected to report any wrongdoing they encounter; showing through actions as well as words that the company relies on, rather than discriminates against, those who come forward concerning ethical breaches.
36. Ozone Depletion: A layer of ozone in the lower stratosphere screens all life on earth from harmful ultraviolet radiation. This ozone layer, however, is destroyed by CFC gases, which have been used in aerosol cans, refrigerators, air conditioners, industrial solvents, and industrial foam blowers. When released into the air, CFC gases rise; in 7 to 10 years, they reach the stratosphere, where they destroy ozone molecules and remain for 75 to 130 years, continuing all the while to break down additional ozone molecules. Shrinking of the ozone layer resulting in the subsequent increase of ultraviolet rays will cause several hundred thousand new cases of skin cancer and may cause considerable destruction of the 75 percent of the world's major crops that are sensitive to ultraviolet light.

Acid Rain: Like global warming, acid rain is a threat to the environment that is closely related to the combustion of fossil fuels (oil, coal, and natural gas), which are heavily used by utilities to produce electricity. Burning fossil fuels, particularly coal containing high levels of sulphur, releases large quantities of sulphur oxides and nitrogen oxides into the atmosphere. When these gases are carried into the air, they combine with water vapour in clouds to form nitric acid and sulphuric acid. These acids are then carried down

in rain, which often falls hundreds of miles away from the original sources of the oxides raising the acidity of the water sources. It also soaks into soils and falls directly on trees and other vegetation. Numerous studies have shown that many fish populations and other aquatic organisms are unable to survive in lakes and rivers that have become highly acidic due to acid rain. Other studies have shown that acid rain directly damages forests and indirectly destroys the wildlife and species that depend on forests for food and breeding. Acidic rainwater can also leach toxic metals from soil and carry these into waterways, where they contaminate drinking water. Acid rain can corrode and damage buildings, statues, and other objects, particularly those made of iron, limestone, and marble.

37. Consumer Interest and Public Interest

1. Often, consumer interest and public interest are considered synonymous. But they are not and need to be distinguished. In the name of public interest, many Governmental policies are formulated which are either anti-competitive in nature or which manifest themselves in anti-competitive behaviour. If the consumer is at the fulcrum, consumer interest and consumer welfare should have primacy in all Governmental policy formulations.
2. Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. Consumers are affected by pricing policies, financing practices, quality of goods and services and various trade practices. They are clearly distinguishable from manufacturers, who produce goods and wholesalers or retailers, who sell goods.
3. Public interest, on the other hand, is something in which society as a whole has some interest, not fully captured, by a competitive market. It is an externality. However, there is a justifiable apprehension that in the name of "public interest", Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. The asymmetry arises from the fact that all producers are consumers but most are producers as well. What is desirable for them in one capacity may be inimical in the other capacity. A simple example will make the point clear. A farmer wants the price of goods he consumes to be as cheap as possible but wants the highest price for his produce. A Government wishing to encourage agriculture for self-sufficiency in food as a national security measure faces the conflict: should it support high prices to encourage production or low prices to protect the consumer? This is a characteristic public interest-consumer interest conflict. In general, it can be stated that buyers want competition and sellers monopoly. The economists' answer is that there are in a society too many such divergent interests and therefore the resolution is best left to markets without Government intervention. They are all too conscious of the possibility of abuse of the expression "public interest" by vested interests.

38. In light of the various corporate scandals mentioned above, the following three points need to be addressed for creating a sound ethical environment in any company. They are,

1. Ensuring that employees are aware of their legal and ethical responsibilities.

Ethical organisations would have policies to train and motivate employees toward ethical behaviour. This would require initiation from the top. A number of companies, both in the West and in India have been known for their quality and soundness of their Ethics programmes. Companies like Raytheon make ethics training compulsory for everyone. Similarly Texas Instruments has a well drafted Ethics programme from as long as 1961. In India Wipro was amongst the pioneers to establish an organised set of beliefs which would guide business conduct. This was done as early as 1970s. In the process the company has established an Integrity manual which helps employees take ethical decisions when faced with choices.

2. Providing a communication system between the management and the employees so that any one in the company can report about fraud and mismanagement without the fear of being reprimanded

Ethical organisations need to provide facilities for employees through which they could communicate with responsible positions for reporting frauds, mismanagement or any other form of non routine detrimental behaviour. In India Wipro has introduced a helpline comprising of senior members of the company who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.

3. Ensuring fair treatment to those who act as whistle blowers.

This is perhaps the most important and sensitive issue. When Sherron had raised questions at Enron, she was demoted. Similar fate would have met all those who had followed Sherron. Fair treatment to whistle blowers is a basic necessity to check fraud. It is reassuring that two of the three persons of the year, selected by the popular Time magazine were accountants from Enron and World Com who had dared to blow the whistle, however, needless to say that the appreciation is much more needed from within the company rather than outside.

39. Ethical Conflict Resolution

While evaluating compliance with the fundamental principles, a finance and accounting professional may be required to resolve a conflict in the application of fundamental principles. The following needs to be considered, either individually or together with others, during a conflict resolution process,

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;

- (d) Established internal procedures; and
- (e) Alternative courses of action.

Having considered these issues, a finance and accounting professional should determine the appropriate course of action that is consistent with the fundamental principles identified. The professional should also weigh the consequences of each possible course of action. If the matter remains unresolved, the professional should consult with other appropriate persons within the firm* or employing organization for help in obtaining resolution. During times where a matter involves a conflict with, or within, an organization, finance and accounting professional should also consider consulting with those charged with governance of the organisation, such as the board of directors

It may be in the best interests of the professional to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

If a significant conflict cannot be resolved, a professional may wish to obtain professional advice from the relevant professional body or legal advisors, and thereby obtain guidance on ethical issues without breaching confidentiality. For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant should consider obtaining legal advice to determine whether there is a requirement to report.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict. The professional may determine that, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

40. The Central Consumer Protection Council: The objects of the Central Council shall be to promote and protect the rights of the consumers such as,-
 - (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
 - (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods{or services, as the case may be} so as to protect the consumer against unfair trade practices;
 - (c) the right to be assured, wherever possible, access to a variety of goods, and services at competitive prices;
 - (d) the right to be heard and to be assured that consumer's interest will receive due consideration at appropriate terms;
 - (e) the right to seek redressal against unfair trade practices {or restrictive trade practices or unscrupulous exploitation of consumers; and}
 - (f) the right to consumer education.

41. **Ecological Ethics:** The problem of pollution and other environmental issues can best be framed in terms of our duty to recognize and preserve the ecological systems within which we live. An ecological system is an interrelated and interdependent set of organisms and environments, such as a lake, in which the fish depend on small aquatic organisms, which in turn live off decaying plant and fish waste products. Since the various parts of an ecological system are interrelated, the activities of one of its parts will affect all the other parts. Business firms (and all other social institutions) are parts of a larger ecological system. Business firms depend on the natural environment for their energy, material resources, and waste disposal, and that environment in turn is affected by the commercial activities of business firms. For example, the activities of 18th century European manufacturers of beaver hats led to the wholesale destruction of beavers (a semi aquatic large furry rodent) in the United States, which in turn led to the drying up of the innumerable swamp lands that had been created by beavers. Unless businesses recognize the interrelationships and interdependencies of the ecological systems within which they operate and unless they ensure that their activities will not seriously injure these systems one cannot hope to deal with the problem of pollution.

This resolve is called ecological ethics and is based on the idea that the environment should be protected not only for the sake of human beings but also for its own sake.

BUSINESS COMMUNICATION

42. **Chronemics** is the study of how we use time to communicate. The meaning of time differs around the world. While some are preoccupied with time, others waste it regularly. While some people function better in the morning, others perform better at night. Punctuality is an important factor in time communication. Misunderstandings or disagreements involving time can create communication and relationship problems.
43. Following are the merits of grapevine communication:
- (a) **Speedy Transaction:** Under this channel of communication, information flows very fast. A rumors spreads like wild fire. Hence, information spreads in no time.
 - (b) **Valuable Feedback:** The feedback reaches much faster through informal channel than the formal channel. Managers can obtain useful feedback concerning their decisions and actions through the grapevine.
 - (c) **Psychological Satisfaction:** The grapevine provides psychological satisfaction to the employees and strengthens their solidarity. It draws employees close to each other and inculcates in them a sense of belonging.
 - (d) **Supplementary Channel:** The grapevine channel of communication functions as a supplementary channel of communication. The formal channels not only consume more time but also put certain constraints on the process of communication. So, whatever is deemed not suitable for the formal channels can be successfully transmitted through grapevine.

Demerits of the Grapevine Communication

- (a) Less credible: The information spread through the grapevine is less credible than the one given by the formal channel. As the information spreads through the word of mouth, it can not always be taken seriously.
 - (b) Distorts image of organizations: The grapevine communication may distort the true picture of an organization. As its origin lies in the rumours and gossips, so it may spread any kind of stories about responsible people. Thus, it may spoil the image of the management as well as of the organization.
 - (c) Incomplete information: The grapevine communication does not always carry the complete information and incomplete information may create misunderstanding.
44. A communication of the message is successful only when both the sender and the receiver perceive it in the same manner. Quite often, there is miscommunication due to one barrier or the other. Barriers or problems can arise at any stage of the communication process. It is very important to understand the causes of communication breakdown.

Following are the main barriers to communication:

- (a) Noise: Noise refers to the distracting element that breaks the concentration of the sender or receiver and prevents him/her from paying attention to the content of the message. Distraction (noise) can be either physical or psychological. Noise can lead to miscommunication and measures must be taken to overcome it.
- (b) Distance and Time: Physical distance between the sender and the receiver becomes a big barrier to the smooth flow of communication. Time is also a major barrier to communication. Delayed message creates confusion and misunderstanding.
- (c) Overloaded Information: If there is excess of information than the receiver can not be able to comprehend and absorb beyond his/her mental capacity. One must be precise and brief in sending messages.
- (d) Semantic Barriers: Semantic refers to the study of meanings of words and signs. Semantic barrier occurs due to:
 - (i) Sender and receiver interpret same words in different manner.
 - (ii) Words carry different nuances, shades and flavours to the sender and receiver.
 - (iii) Faulty translation.
 - (iv) Poor expression power or ability.
- (e) Cultural Barrier: We live in a globalised world and may encounter individuals of different races, religions and nationalities. The same category of words, phrases, symbols, actions, colours mean different things to people of different cultural background e.g. in the United States of America, people like to be called by their

first name, while in Britain and to a large extent also in India, people like to be addressed by their surname.

- (d) Attitudes and Opinions: Personal attitudes and opinions often interfere with communication process. Self-centered attitudes prevent smooth flow of communication.
- (e) Emotions: Emotions play a very vital role in our life. Both encoding and decoding of messages are influenced by our emotions. A message received when we are emotionally charged up will have a different meaning for us than when we are calm and composed.
- (f) Closed Mind: A person may have a closed mind due to deep rooted prejudices, superiority complex, limited intellectual background and narrow mental make-up etc. Such a person is not willing to listen and is not prepared to reconsider other's opinion.
- (g) Poor Retention: In the process of transmission, a part of the message is lost. At every level, the message is screened and only a part of it is transmitted further. It is observed that in oral communication; about 30% of the information is lost in each transmission.
- (h) Status Consciousness: Subordinates are either too conscious of their low status or too afraid of being snubbed. At the same time, many executives keep distance from their juniors thinking that consulting subordinates is something below their dignity.
- (i) Distrust: Communication is likely to collapse when the receiver has a suspicion about the source of information. A manager may not believe and rely upon a news coming from the grapevine but may believe it if the same one comes from a trusted colleague.
- (j) Poor Listening: Poor listening may lead to serious communication problems. Too many people are interested in talking and mostly talking about themselves. Poor listening accounts for incomplete information and also for poor retention.

45. The following principles are key to interpersonal communication:

Interpersonal communication is inescapable: We cannot keep ourselves away from communication. The very attempt not to communicate, communicates something. Not only through words but also through the tone of voice and gestures, postures, facial expressions etc, we constantly communicate to others.

Interpersonal communication is irreversible: It is rightly said that a word uttered once can not be taken back.

Interpersonal communication is complicated: No form of communication is simple due to the number of variables involved; even simple requests can be extremely complex.

Interpersonal communication is contextual: Communication does not take place in isolation. They are context specific:

Psychological context: It refers to who the communicators are and what they bring to the interaction? Their needs, desires, values, personality etc all form the psychological context.

Relational context: This is concerning the nature of interaction and reactions and the way it all affects the communication process.

Situational context: Refers to social concept of communication viz. an interaction that takes place in a classroom will be very different from one that takes place in a board room.

Environmental context: It is all about the surroundings in which communication takes place e.g. Furniture location, noise level, temperature, season, time of day etc. are all examples of elements in the environmental context.

Cultural context: Includes all the learned behaviours and rules that affect the interaction. If one comes from a culture where it is considered rude to establish long, direct eye contact, one will out of politeness avoid eye contact. If the other person comes from a culture where long direct eye contact signals trustworthiness, then we have a basis for misunderstanding.

46. Following are the salient characteristics of groups in an organization:
 - (a) Group Goal: Every group establishes its own group goals that provide motivation for their existence.
 - (b) Group Structure: It is based on the roles to be performed.
 - (c) Group Patterns of Communication: It is the pattern of message flow in a group.
 - (d) Group Climate: It is the emotional environment of a group based on:
 - (e) Bonding and trust among members
 - (f) Participative spirit
 - (g) Openness and
 - (h) High performance goals
47. Guidelines to handle communication ethics dilemmas:
 - (a) Maintain candour: Candour refers to truthfulness, honesty, frankness and one should stick to these elements while communicating with others.
 - (b) Keep message accurate: At the time of relaying information from one source to another, communicate the original message as accurately as possible.
 - (c) Secrecy: One has to maintain secrecy and confidence in communication. So one should not divulge such information to others
 - (d) Ensure timeliness of communication: The timing of messages can be critical. Delay in sending messages can be assumed unethical.

- (e) Avoid deception: Ethical communicators are always vigilant in their quest to avoid deception, fabrication, intentional distortion or withholding of information in their communication.
 - (f) Confront unethical behaviour: One must confront an unethical behaviour in order to ensure a consistent ethical view point.
48. A sustainable innovation organisation should have:
- (a) Vision and strategy for innovation
 - (b) Culture supporting innovation
 - (c) Processes, practices and systems supporting innovation
 - (d) Top management team leading to innovation.
 - (e) Effective cross-financial teams.
 - (f) Empowered employees driving innovation.
 - (g) Finding the right balance between bureaucracy and chaos.
49. Content of Annual Report:
- Company information
 - Organizational structure
 - Leadership team
 - People
 - Technology
 - International operations
 - Corporate Social Responsibility (CSR)
 - Directors report
 - Independent financials – 10 years highlights
 - Consolidated financials – 5 years highlights
 - Graphs – Independent financials
 - Management discussions and analysis
 - Auditors report
 - Balance Sheet
 - Profit and Loss Account
 - Cash Flow Statements
 - Schedules forming part of accounts
 - Notes forming part of accounts
 - Statement pursuant to Section 212 of the Companies Act, 1956.

- Information on subsidiary companies
 - Auditors reports on consolidated financial statement
 - Consolidated Balance Sheet
 - Consolidated Profit and Loss Account
 - Consolidated Cash Flow Statement
 - Schedules forming part of consolidated accounts
 - Notes forming part of consolidated accounts.
50. A lease is defined under Section 105 of the transfer of enjoyment of immovable property by the lesser to the lessee in consideration of a premium that means a price paid or promised on rent that may be periodical payment of money, share of crops or rendering of services. In order to constitute the valid lease, there must be a transfer of right to enjoyment of immovable property though delivery of possession of the property. However, this is not a condition preceded for operation of a lease. The term of lease including the period of lease, amount of rent etc. are contained in a leased agreement or deed duly executed and signed by both the lesser and lessee.