Chartered Accountancy- Professional Competence Course (PCC)

Subject: Law, Ethics and Communication --- Important Areas for November 2009

PART-A: Business Laws

1) The Indian Contract Act, 1872

Agency (especially agency by ratification and irrevocable agency)

Contract of Indemnity and Guarantee (especially rights of surety)

Breach of Contract (especially anticipatory breach of contract)

Contingent and Special contracts (especially quasi contract, types)

1 *Practical based* question carrying 5 marks

Void vs. Voidable Contract

CARILL vs. CARBOLIC SMOKEBALL CO case law

Revocation of Offer

"No Consideration, no Contract" – exceptions to this rule

Coercion vs. Undue influence

Misrepresentation

Impossibility of performance: Supervening Impossibility

Quantum Meruit

General Lien vs. Particular Lien

Objective type questions carrying 1 mark each

2) The Negotiable Instruments Act, 1881

-Transfer by negotiation vs. Transfer by assignment

-When notice of dishonour not necessary or excused

-Meaning and Essentials of a Valid Acceptance

-Payment in due course-meaning, conditions

-Circumstances under which a banker is justified/bound to dishonour the cheque

-Provisions of NI Act regarding Rules of presumption and Rules of Estoppel

-When a bill may be dishonoured by non-acceptance or non-payment. Role of Drawee in case of need.

-Rights and obligations of a person:

(a) who is a finder of a lost instrument

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(b) who has obtained an instrument by unlawful means

- Discharge of party Vs. Discharge of instrument. Different modes of discharge of an instrument

- When shall a holder be considered as a holder in due course?

Practical Questions for NI Act

1) A is the holder of a bill of exchange made payable to the order B. The bill of exchange contains the following endorsements in blank:
   First endorsement: B
   Second endorsement: C
   Third endorsement: D
   Fourth Endorsement: E
   A strikes out, without E's consent the endorsement by C and D.
   Decide with reasons whether A is entitled to recover anything from E? [Section 40] (99)
2) The drawer D is induced by A to draw a cheque in favour of P, who is an existing person. A instead of sending the cheque to P forges his name and pays the cheque into his own bank. Whether D can recover the amount of the cheque from A's banker? Decide. [Sec 42] (02)
3) P, the holder of a bill of exchange transfers it to Q without consideration. Q also transfers it to R without consideration. R transfers it to X for consideration. X transfers it to Y without consideration. State giving reasons whether Y can recover the amount on such instrument from X or P? [Sec 43] (98)
4) A is a payee holder of a bill of exchange. He endorses it in blank and delivers it to B. B endorses it in full to C or order. C without endorsement transfers the bill to D. State giving reasons whether D as bearer of the bill of exchange is entitled to recover the payment from A or B or C. [Sec 55] (98)
5) A signs as maker, a blank stamped paper and gives it to B and authorises him to fill it as a note for Rs 500, to secure an advance which C is to make to B. B fraudulently fills it up as a note for Rs 2000, payable to C who has in good faith advanced Rs 2000. Decide, with reasons, whether C is entitled to recover the amount, and if so upto wat extent?[Sec20](99)
6) A bill is dishonoured by non-acceptance. The bill is endorsed to A. A endorses it to B. As between A and B the bill is subject to an agreement as to the discharge of A. The bill is afterwards endorsed to C who takes it with notice of dishonour. Decide with reasons whether C is entitled to accept the bill in the capacity of a holder in due course [Sec 59] (99)
7) Promissory note dated 1st February 2001 payable two months after date was presented to the maker for payment 10 days after maturity. What is the date of maturity? Explain with reference to the relevant provisions of the NI Act 1881 whether the endorser and the maker will be discharged by reason of such delay. [Sec 23,64,66] (01)
8) X by inducing Y obtains a bill of exchange from him fraudulently in his(X) favour. Later, he enters into a commercial deal and endorses the bill to Z towards consideration to him (Z) for the deal. Z takes the bill as a holder in due course. Z subsequently endorses the bill to X for value, as consideration to X for some other deal. On maturity the bill is dishonoured. X sues Y for the recovery of the money. With reference to the provisions of the NI Act 1881, decide whether X will succeed in the case. [Sec 53] (01)

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9) A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words "SANS RECOURS" [Sec 52] (01)
10) A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his bankers. B the drawer wants to recover the amount from C's bankers. Decide in light of the provisions of NI Act, 1881-
    a) Whether B the drawer can recover the amount of the cheque from C's bankers?
    b) Whether C is the fictitious payee?
    c) Would your answer be still the same in case C is a fictitious person? [Sec 42] (04)
11) A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B. Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the NI Act, 1881. [Sec 128,129,131] (05)
12) J, a shareholder of a company purchased for his personal use certain goods from a Mall on credit. He sent a cheque drawn on the company's account to the Mall towards the full payment of the bills. The cheque was dishonoured by the company's bank .J, the shareholder of the company was neither a director nor a person in-charge of the company. Examining the provisions of the NI Act, 1881 state whether J has committed an offence under Sec 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchased from the Mall. [Sec138] (06)
13) B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the NI Act, decide whether D can recover the money from A in the given case. [Sec 53] (06)

3) <u>The Payment of Bonus Act, 1965</u>

-Sec-2(13), Sec 12, Sec 32(vi) –*AMENDED IN 2007* (don't read from old book)

-Eligibility to get bonus – Sec-2(13) read along with Sec-8

-Whether the following persons are entitled to get bonus?

a) A piece rated worker
b) A temporary workman
c) An apprentice
d) A probationer
e) An employee who committed fraud
f) An employee who is found guilty of misconduct causing financial loss to the employer
g) A dismissed employee
h) A retrenched employee
i) An employee employed through contractors on building operations.

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- Definition of salary/wage [salary excludes what and includes what] – Section 2(21)
- Procedure relating to computation of "Working Days" for payment of bonus-Sec 14
- Proportionate reduction in bonus- Sec 13
- Time limit for payment of bonus- Sec 19
- Set on and set off of allocable surplus- Sec 15
- Special provisions with respect to bonus linked with productivity –Sec 31A

Practical Questions for The payment of Bonus Act, 1965

1) X, a temporary employee drawing a salary of Rs 3000 per month in an establishment to which the Payment of Bonus Act, 1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002, pending certain enquiry. Since there were no adverse findings X was re-instated in service, later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to X, even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act,1965 examine the validity of employer's refusal to pay bonus to X [Sec 2(13), 8 and ONGC Vs. Shan Kumar Sahegal] ,(02)
2) On 1st January, 2002, Aryan Textiles Ltd agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary/ wages during relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated u/s 10 of the payment of bonus Act 1965. As per the agreement the employees of Aryan Textiles Ltd claimed annual bonus linked with production or productivity in the relevant accounting year. On refusal of the company, the employees of the company moved to the court for relief. Decide in reference to the provisions of the payment of bonus act 1965, whether the employees will get the relief? Inspite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus. [Sec 10 & 31A] ,(04)
3) The Model Mills, Nagpur refused to pay bonus to its employees on the ground that its management was controlled by an authorised controller appointed by the Government and as such it was entitled to exemption from the liability to pay bonus. Decide. [Sec 32(iv), RMS Vs The Model Mills]

4) The Employees Provident Fund and Miscellaneous Provisions Act, 1952

- Liability in case of transfer of establishment – Sec 17B
- Authorising certain employers to maintain PF Accounts- Sec 16A
- Composition of Central Board of Trustees- Sec 5A
- Composition of Executive committee-Sec 5AAA
- Determination of moneys due from employer-Sec 7A
- Mode of recovery of money due from employer- Sec 8, Sec 8B-8G
- Recovery of moneys by employers and contractors –Sec 8A
- Act not to apply to certain establishments-Sec 16
- Employees' Family Pension Scheme- Sec 6A
- Employees Deposit linked Insurance Scheme- Sec 6C

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5) <u>The Payment of Gratuity Act, 1972</u>

- Definition of employee as amended in 2009 -Sec 2(e) (don't read from old book)
- Definition of continuous service – Sec 2(c)
- Explanation to Section 2A –Page 5.6 of ICAI Study Mat
- Payability of gratuity- Sec 4(1)
- Calculation of gratuity amount payable- Sec 4(2)
- Computation of gratuity of employee- Sec 4(4)
- Bharat Commerce and Industries Vs. Ram Prasad-Page 5.9 of ICAI Study Mat
- Compulsory Insurance- Sec 4(A)
- Nominations for gratuity- Sec 6
- Powers of Inspectors –Sec 7(B)

<u>PART-B: COMPANY LAW</u> (Bold ones are more important)

- Conversion of public company into a private company
- Conversion of private company into a public company
- ***Doctrine of Indoor Management-exceptions***
- ***Pre-incorporation contracts***
- Provisional contracts
- ***National Company Law Tribunal***
- ***Information Memorandum***
- ***Mis-statement in Prospectus- its consequences***
- Minimum Subscription and refund
- ***Irregular allotment- its effects***
- Membership
- ***Acceptance of deposits, Companies(Acceptance of deposits) Rules, 1975***
- Section 81 of the Companies Act, 1956
- Steps to be taken by a company in respect of issue further shares
- ***How nomination facility shall operate in case of transmission of shares***
- Refuse to register transfer and appeal against refusal –Sec 111
- ***Transfer of securities of a public company***
- Certification of transfer –Sec 112
- ***Forged transfers-consequences***
- ***AGM***
- EGM
- ***Notice***
- Special and ordinary business
- ***Quorum***
- Resolution
- ***Passing of resolution by postal ballot- Sec 192A***
- ***Minutes***

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- ***Company Law in a computerised environment-MCA 21, e-filing.***

PART-C: BUSINESS ETHICS (Remember the *SATYAM SCANDAL*)

- Ethical dilemmas
- Benefits of business ethics
- Development of corporate governance-both in India and abroad
- Benefits of corporate governance
- Key developments of Corporate Social Responsibility- factors
- Key strategies companies can use when implementing CSR policies
- International mechanisms(initiatives taken) for strengthening CSR
- Importance of ethical behaviour at the workplace
- Sustainable development
- Business and environmental ethics
- Eco-friendly business practices
- Consumer Protection councils in India
- Fundamental Principles relating to ethics
- Potential Conflicts
- Threats-examples of circumstances creating threats

PART-D: BUSINESS COMMUNICATION

- Communication Media
- Barriers to effective communication
- Parts of a business letter
- Checklist for composing business messages
- Principles and functions of Inter personal communication
- Competencies associated with Emotional Intelligence
- Consensus Building
- Factors influencing ethical communication
- Ethical Dilemmas in Communication
- Guidelines to handle Communication Ethics Dilemma
- Resistance to change
- Key elements in the innovation framework and building an innovative organisation.
- Drafting of:
  a) Minutes of AGM
  b) Notice of AGM
  c) Notice of EOGM
  d) Corporate Announcements by Stock Exchange
  e) Power of Attorney
  f) Lease Deed
  g) Affidavit
  h) Gift Deed

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