

LAW, ETHICS & COMMUNICATION

SUGGESTED ANSWERS TO PCC & IPCC NOV. 09

Answer to Q. No. 1:

- (a) **Flow of Consideration**: Sec. 2(d) defines consideration as “When at the desire of the promisor, the promisee or any other person has done or abstained from doing, or does or abstains from doing or promises to do or abstain from doing something, such an act or abstinence or promise is called consideration for the promise.
- Hence based on the definition, consideration may flow either from the promisee or any other person. The facts of this case are similar to “**Chinnaya vs. Ramaya**” wherein the court held that the consideration need not necessarily move from the promisee, it may move from any other person.
- Hence, contention of A is not valid
- (b) (i) **Right of pawnee to sell the goods**: The statement is incorrect, Sec. 176 of Indian Contract Act provides that if pawnor fails to redeem the debt or perform the promise, the pawnee has a right to sue the pawnor. Alternatively, he can sell the goods after giving a reasonable notice, to the pawnor.
- (ii) **Termination of Agency coupled with interest**: Statement is incorrect, as agency coupled with interest can not be terminated at the instance of Principal.
- (c) (i) The correct answer is (3), contract of indemnity by virtue of definition of contract of indemnity as provided in Sec. 124 of Indian Contract Act.
- (ii) The correct answer is (4), can not be enforced either by A’s representative or by B, as a contract which involves the use of personal skill or is founded on personal considerations, **comes to an end** on the death of the promisor.
- (iii) The correct answer is (3) Valid, as though minor is incompetent to contract, nothing in the contract Act prevents him from making other party bound to the minor.

Answer to Q. No. 2:

- (a) **Commencement of Business**: A private company can begin its business immediately after getting the certificate of Incorporation. Whereas, a public company cannot start its business after incorporation unless it has obtained a certificate of commencement from the registrar. For obtaining this certificate, the company must comply with the provision of sec. 149 of the companies Act. Hence Noble Meters Ltd., being a public company is not entitled to commence its business.
- Conditions to be satisfied for obtaining a Certificate of Commencement of Business**: [Sec. 149(1)]
- (a) Shares up to the amount of minimum subscription have been allotted by the company.
- (b) Every director has paid the application and allotment money on the shares taken.
- (c) No money is liable to be repaid to the applicants for failure by company to apply or obtain permission for the shares to be dealt in any recognized stock exchange.
- (d) A statutory declaration duly verified by one of the directors or secretary of the company or CS in practice that the above conditions has been complied with.

- (b) (i) The statement is incorrect, because as per Sec. 31 of Companies Act, 1956 Articles of Association can be altered by passing a **Special Resolution**.
- (ii) The statement is incorrect, as the transferee can not become a member until his name is entered by the company in the Register of Member.
- (c) (i) The correct answer is (2), as the contracts entered into before the company comes into existence are known as Pre-incorporation contracts whereas contracts entered after the company comes into existence, but before getting the Certificate of Commencement of Business are known as Provisional contracts.
- (ii) The Correct Answer is (4), the Shelf Prospectus, by virtue of definition of Shelf prospectus as provided in Sec. 60A of Companies Act, 1956.
- (iii) The correct answer is (2), 15 Months, as provided in Sec. 166 of Companies act, 1956.

Answer to Q. No. 3:

Exemption from the Provisions of Bonus Law:

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 in public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Official Gazettee, 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.

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.

Hence, under the present circumstances, Government of Tamilnadu may sought for granting exemption to the company.

Answer to Q. No. 4:

Sec. 40 of the Negotiable Instruments Act 1881 provides that where the holder of an negotiable instrument without the consent of the indorser, destroys or impairs the indorser's remedy against a prior party, the indorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Therefore, if the endorsements of 'Q' and 'R' are struck out without the consent of 'S', N will not be entitled to recover anything from S.

Answer to Q. No. 5:

Recovery of Gratuity:

Sec. 8 of Payment of Gratuity Act, 1972 deals with the provisions regarding recovery of gratuity. Accordingly:

- If the employer fails to pay the gratuity within the prescribed time (i.e., within 30 days of termination of employment), the controlling authority is empowered to issue a certificate to the collector to recover the amount of gratuity.

- Before issue of such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.
- The employer shall also be liable to pay compound interest at such rate as may be notified by Central Government from time to time.
- The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity.
- However, the interest payable shall not exceed the amount of gratuity payable.
- The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity.

Answer to Q. No. 6

Composition of Executive Committee:

- Executive Committee is constituted by Central Government by notification in the Official Gazette.
- Executive committee shall consist of 13 members.
- The members of the Executive Committee are selected out of the members of the Central Board.
- The Executive Committee consists of the following members:

Chairman	from amongst the members of the Central Board	Appointed by CG.
2 persons	from amongst the representatives of Central Government elected to the Central Board	
3 persons	from amongst the representatives of State Government elected to the Central Board	
3 persons	from amongst the representatives of employers elected to the Central Board	Elected by the Central Board
3 persons	from amongst the representatives of employees elected to the Central Board	
Central Provident Fund Commissioner		

Answer to Q. No. 7:

Illegal Association: Sec. 11 of Companies Act, 1956 provides that No Company, Association or Partnership consisting of more than 10 persons for the purpose of carrying on Banking Business and more than 20 persons for carrying on any other business, can be formed unless it is registered under the Companies Act or is formed in pursuance of some other Indian Law.

However this provision is not applicable to joint Hindu family carrying on a business. But where two or more joint families are carrying on a business, the provision will be applicable, and the association requires registration. For this purpose, only major members of the family will be considered.

In the present case, the association is an illegal association and do not have any legal existence.

Subsequent reduction: As association of more than 20 persons, if unregistered, is invalid at its inception and cannot be validated by subsequent reduction in the number of members below 20. [Madanlal vs. Janakiprasad]

Answer to Q. No. 8:

Rights of parties in case of forged transfers:

(a) **Remedies available to X:**

Since a forged transfer is nullity, it does not pass any legal title to the transferee. The true owner can have his name restored on the register of member. A forged document can never have any legal effect. He can also claim any dividend, which may not have been paid to him during the intervention period. (Barton V North Staffordshire)

(b) **Remedies available to Y:**

A person who presents a transfer of shares for registration by a company thereby representing that the instrument is genuine, and if it turns out to be a forgery, the company is not estopped from denying his title to the shares, even though he did not know that the transfer was forged when he presented it. Therefore, Mr. Y is not entitled to the shares, on the contrary, he is liable to indemnify the company against the consequences of the damages which may have to be paid by the company to the true owner of the shares.

(c) **Remedy available to Z:**

If by forgery a person obtains a certificate of transfer of shares from a company and transfers the shares to a purchaser for value acting in good faith i.e. without the knowledge of forgery, such purchaser does not get good title to the shares so transferred because a forged transfer is a nullity and cannot be a source of a valid transfer of title. But the company shall be liable to compensate the purchaser in so far as the company had issued a certificate to transfer and was therefore, estopped from denying the liability accruing from his own act, therefore, if Z has suffered any loss, he can claim it from the company in this case.

Answer to Q. No. 9:

Remedy against company for inaccurate statement:

1. **Recession of the contract to take shares:** This right entitles the allottee to repudiate the contract to take shares, the immediate removal of his name from the register of members and repayment of amount paid on the shares. The contract can be repudiated if the following conditions are satisfied:
 - (a) the statement must be a material misrepresentation of facts;
 - (b) the statement must have induced the shareholders to take the shares;
 - (c) the statement must be untrue;
 - (d) the deceived shareholder is an allottee and he must have relied on the statement;
 - (e) the omission of the material facts must be misleading before rescission is granted;
 - (f) the proceedings for rescission must be started as soon as the allottee comes to know of a misleading statement in the prospectus on the faith of which he had subscribed for shares and before the company goes into liquidation.

2. Right to claim damages: The allottee is also entitled to sue the company for damages. But in order to succeed, fraudulent misrepresentation must be proved. If the allottee wishes to claim damages, he must surrender the shares to the company. He cannot both retain the shares and claim damages.

Circumstances when expert can not be held liable:

As per Sec. 62(3), an expert who would be liable by reason of having given his consent u/s 58 to the issue of the prospectus containing a statement made by him would not be liable if he can prove:

- that having given his consent to the issue of the prospectus, withdrew it in writing before the delivery of a copy of the prospectus for registration, or
- that after the delivery of a copy of the prospectus for registration but before allotment, he on becoming aware of the untrue statement withdrew his consent in writing and gave reasonable public notice thereof and the reasons therefore; or
- that he was competent to make the statement and he had reasonable ground to believe, and did up to the time of allotment of the shares and debentures believe that the statement was true.

Answer to Q. No. 10:

Validity of Notice:

Section 173 of the Companies Act, 1956 requires a company to annex an explanatory statement to every notice for a meeting of company, at which some 'special business' is to be transacted. This explanatory statement is to bring to the notice of members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting is regarded as special business.

Further sec. 79a requires that to resolution proposing issue of Sweat Equity Shares should specify the number of shares, current market price, consideration, if any, and the class or classes of directors or employees.

Thus, the objection of the shareholder is valid since the details on the issue of sweat equity shares are lacking. The notice is, therefore, not a valid notice u/s 173.

PART – II

Answer to Q. No. 11:

- (a) Importance of Ethical Behaviours at Workplace: An organization, whether a business or a government agency, is first and foremost a human society. If an employer does not take steps to create a work environment where the employees have a clear, common understanding of what is right and wrong, and feel free to discuss and ask questions about ethical issues and report violations, significant problems could arise, including:

- (a) Increased risk of employees making unethical decisions
- (b) Increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum
- (c) Inability to recruit and retain top people
- (d) Diminished reputation in the industry and the community
- (e) Significant legal exposure and loss of competitive advantage in the marketplace.

- (b) **Iron Law of Responsibility**: Society gives business its charter to exist and that charter can be amended or revoked as and when business fails to live up to society's expectations. Hence, in order to retain social role and social power, business must respond to society's needs constructively. This is called the Iron Law of Responsibility.

Benefits acquired:

- (a) **Improved Financial Performance**: Socially responsible business practices are linked to positive financial performance.
- (b) **Operating Cost Reduction**: CSR initiatives can help to reduce operating costs.
- (c) **Brand Image and Reputation**: A Company considered socially responsible can benefit both from its enhanced reputation with the public as well as its reputation within the business community, increasing the Company's ability to attract trading partners.
- (d) **Increased Sales & Customer Loyalty**: Businesses must first satisfy customer's key buying criteria, i.e., price, quality, safety and convenience.
- (e) **Productivity and Quality**: Improved working conditions, reduced environmental impacts or increased employee involvement in decision-making, leads to (a) increased productivity, and (b) reduced errors.
- (f) **Ability to attract and retain employees**: Companies perceived to have strong CSR commitments. Find it easier to recruit and retain employees, resulting in reduction in turnover and associated recruitment and training costs.
- (g) **Reduced Government Regulations and Controls**.
- (h) **Achievement of certain other objectives like easier access to capital including international capital.**

Answer to Q. No. 12:

Pragmatic reasons for maintaining ethical behaviour:

- (a) **To reverse declining public confidence in marketing**: Periodically we hear about misleading package labels, false claims in ads, phony list prices, and infringements of well established trademarks. Though such practices are limited to only a small proportion of all marketing, the reputations of all marketers are damaged. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well-being of consumers, since they are the lifeblood of a business.
- (b) **To avoid increases in government regulation**: Our economic freedoms sometimes have a high price, just as our political freedoms do. Business apathy, resistance, or token responses to unethical behavior simply increase the probability of more government regulation. Indeed, most of the governmental limitations on marketing are the result of management's failure to live up to its ethical responsibilities at one time or other. Moreover, once some form of government control has been introduced, it is rarely removed.

- (c) **To regain the power granted by society:** Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
- (d) **To protect the image of the organization:** Buyers often form an impression of an entire organization based on their contact with one person. More often than not, that person represents the marketing function. You may base your opinion of a retail store on the behavior of a single sales clerk. As Procter & Gamble put it in an annual report: "When a Procter & Gamble sales person walks into a customer's place of business that sales person not only represents Procter & Gamble, but in a very real sense, that person is Procter & Gamble."

Answer to Q. No. 13:

- (a) True, Fairness and honesty are at the heart of business ethics and relate to the general values of decision makers. One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. Another aspect of fairness relates to competition.
- (b) Wrong, 'Ethics' is the response of an individual to a specific situation, *for example*, in a given situation, whether it will be ethical to state the truth? 'Morals' are expressed as general principles and statements, *for example*, "one should always speak the truth".

PART – III

Answer to Q. No. 14:

(a) **Merits of Grapevine**

1. **Speedy transmission:** The greatest merit of informal communication is that it transmits information very speedily. If a worker comes to learn any secret or confidential information, he takes extra pains to transmit the same to other members of his group. Each member of the informal group also has links with other group members, the information spreads like wild fire.
2. **Feedback value:** Managers use this channel to get feedback regarding their policies, decisions, etc. Feedback through this route not only reaches much faster than the formal route, it is much more authentic and genuine.
3. **Psychological satisfaction:** Informal groups lend immense psychological satisfaction to their members. They get an outlet to vent their grievances against the superiors, their attitude, policies, etc.
4. **Support to formal channels:** Everything cannot be put through formal channels since not only formal channels are more time consuming, they also involve the risk of directions being misunderstood or information being leaked out. Informal channels thus support formal channels of communication.

Demerits of Grapevine

1. **Spread rumours:** Since no body assumes any responsibility, many a time information circulated through informal channels is no more than rumours. People add their own inferences before passing on the information.

2. Less credible: The information is spread through word of mouth. The information takes a different colour after passing through a number of persons, each person adding his/her own spice, emphasis, etc.
3. Incomplete information: Grapevine does not always carry the complete information. Incomplete information at times is more dangerous than no information.

(b) **Notice for Calling Statutory Meeting:**

NOTICE OF STATUTORY MEETING

TKR Limited

Registered Office _____

Notice is hereby given that the Statutory Meeting of TKR Limited will be held on 20th day of December 2009 at the registered office of the Company at 10 a.m. to present the following business:

1. To consider and approve the Statutory Report made upto 30th June 2009.
2. To consider any other matter with the approval of chair.

The Statutory Report dated _____ is enclosed.

By order of the Board of Directors

Sd/-

Company Secretary

Place: _____

Date: _____

NOTES:

- (1) A member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and proxy need not be a member of the company.
- (2) The Explanatory Statement pursuant to Sec. 173(2) of the Companies Act, 1956 relating to the business to be transacted at the meeting is annexed.

Answer to Q. No. 15:

MINUTES OF THE ANNUAL GENERAL MEETING

Minutes of 3rd Annual General Meeting of the shareholders of ABC Ltd held atp.m. on 28th September, 2007.

Present

1. 30 members in proxy.
2. Director
3.Chartered Accountant
4.Secretary.

Mr., Chairman took the chair, in accordance with articles of the company. The quorum being present, chairman called the meeting to order. The notice convening the meeting was read by the Secretary. The auditors report was read by the Secretary.

Adoption of Accounts

The Chairman then invited queries from the members present on Directors report, accounts and auditor and auditors, report, but there was no query. Thereafter, the Chairmen proposed the following resolution which was recoded by

“Resolved that the Directors' Report audited balance sheet as on 31st March, 2007 and profit and loss account for the year ended 31st March, 2007 and auditors report thereon be the same are hereby received, considered and adopted.

Carried unanimously_____

The meeting conducted and end with a vote of thanks to the Chair.

Dated2009

Answer to Q. No. 16:

PARTNERSHIP RETIREMENT DEED

This Deed of Retirement of Partnership executed on this Day of between the following parties –

Names of Partners:

- (i) Mr. A son/daughter/wife of aged Years, residing at
(hereinafter called the First Party)
- (ii) Mr. B son/daughter/wife of aged Years, residing at
(hereinafter called the Second Party)
- (ii) Mr. C son/daughter/wife of aged Years, residing at
(hereinafter called the Third Party)

This Deed witnesses as follows:

WHEREAS the aforesaid parties were carrying on business in partnership under an instrument of partnership, the last of which is dated AND

WHEREAS the First Party, having expressed a desire to retire from the partnership by mutual consent, the terms of retirement are hereby agreed to as follows:

1. The retirement will be effective from close of business on
2. The firm is free to continue the business in the same name with all its assets and liabilities.
3. In full and final settlement of his account, the retiring partner has been given the following:
Cash: _____
Assets: _____
4. The retiring partner hereby releases all his rights, title and interest in the balance of assets of firm including the goodwill.
5. The continuing partners release the retiring partner of all debts and obligations including taxes due from the firm as on the date of this deed to third parties.
6. The retiring partner hereby authorizes the continuing partner to collect all debts of the firm or realise or sell any asset of the firm including any immovable property.

In witness thereof the parties have signed this out of mutual consent.

WITNESS

1.

Signature of First party

2.

Signature of Second party

Signature of Third party