

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

QUESTIONS

A. BUSINESS LAWS

The Indian Contract Act, 1872

1. (a) State with reasons whether there is any contract made in the following cases as per the Indian Contract Act, 1872:
 - (i) R sent his letter of acceptance to J under the address mentioned by J incorrectly in the letter of offer.
 - (ii) A minor borrowed Rs. 5,000 from X to hire an advocate for his defence in charge of committing theft.
 - (iii) An old man A under illness & feebleness endorsed a bill of exchange thinking it to be a mere guarantee.
 - (iv) M promises to sell his car to N for Rs. 2 lacs if he feel like selling it after having a new car.
 - (v) X contracted to sell his land to Y. Before sale could take place, the government took over the land under the law.
- (b)
 - (i) X purchased an old car from Y. Y agreed to repair it for a charge. The car was delivered to X after a part payment. Later on, there was a problem in the car engine and X brought it again to Y. Having obtained the car, Y claimed lien on the car for the unpaid amount. Decide the right of Y in the light of the provisions of the Indian Contract Act, 1872.
 - (ii) 'X' consigns goods to 'Y' a merchant for sale. 'Y' in due course employs an auctioneer of goods to sell goods of 'X' and also allows him to receive the proceeds of sale. The auctioneer becomes insolvent afterwards without handing over the proceeds. Is 'Y' liable to 'X'? Decide .
2. (a) 'A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of Rs.50,000. One month later A revokes the guarantee, when C had lent to B Rs.5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan. What would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. Rs.5,000?
- (b) R is the wife of P. She purchased some sarees on Credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q would succeed?
- (c) Sunil delivered his car to Mahesh for repairs. Mahesh completed the work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of car. In the meantime a big fire occurred in the

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neighbourhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.

The Negotiable Instruments Act, 1881

3. (a) For cognizance of offence for the dishonour of cheque, should the cheque necessarily be presented to the drawee's (payee's) bank or can it be presented before any bank within the stipulated period?
- (b) Mark the correct answer:
- (i) Who cannot draw a negotiable instrument?
- (a) A company
- (b) An agent
- (c) An insolvent
- (d) All of these
- (ii) The presentment for payment is required in case of a:
- (a) Bill of Exchange
- (b) Promissory note
- (c) Cheque
- (d) All of these
- (iii) In case of dishonor of cheque, the holder's remedy is against the:
- (a) Drawee bank
- (b) Drawer of cheque
- (c) Indorsee of cheque
- (d) Both (a) and (c)
- (c) Ram draws a cheque of Rs. 20,000/- in favour of Balram. Ram has sufficient amount in his account with the Bank. The cheque was not presented in due time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether Balram can recover the money from Ram?
4. (a) Mr. A, a legal successor of B (a deceased person) signs a Bill of Exchange in his own name and admitted a liability of Rs.50,000 (i.e. the extent to which he inherits the assets from the deceased payable) to C after 3 months from 1st January, 2004. On maturity, when C presents the bill to A, he (A) refuses to pay for the bill on the ground that since the original liability was that of B, the deceased, therefore he is not liable to pay for the bill. Is A's contention valid?
- (b) Do the following alterations render the negotiable instrument void?
- i. The holder of a bill alters the date of the instrument to accelerate or postpone the time of payment.

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- ii. The drawer of a negotiable instrument draws a bill but forgets to write the words “or order”. Subsequently, the holder of the instrument inserts these words.
 - iii. A bill payable three months after date is altered into a bill payable three months after sight.
 - iv. A bill was dated 2003 instead of 2004 and subsequently the agent of the drawer corrected the mistake.
 - v. A bill is accepted payable at the Union Bank, and the holder, without the consent of the acceptor, scores out the name of the Union Bank and inserts that of the Syndicate Bank.
- (c) 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 complainant was lodged against him. Does he liable for an offence under section 138 of the Negotiable Instruments Act, 1881?

The Payment of Bonus Act, 1965

- 5 (a) Define the terminologies as per the Payment of Bonus Act, 1965:
- (i) Accounting year
 - (ii) Allocable surplus
- (b) Mr. Shriman joined as controller a company on monthly salary of Rs. 9000 on 1. 02. 2010 and resigned from his job on 28. 02. 2010. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. Shriman knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965.
6. (a) On 1st January, 2010, 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 the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 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? In spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.
- (b) Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year –
- (i) overtime allowance,

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- (ii) dearness allowance
- (iii) commission on sales
- (iv) employer's contribution towards pension fund
- (v) value of food.

Examine as to which of the above payments form part of "salary" of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.

- (c) Decide with reasons in the light of the Payment of Bonus Act, 1965 whether the following persons are entitled for bonus:
 - (i) A university teacher,
 - (ii) An employee of the 'NABARD',
 - (iii) A reinstated employee without wages for the period of dismissal.
 - (iv) A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month.
 - (v) An apprentice.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

- 7. (a) 'X', an employee of Steria limited filed a claim for provident fund settlement with the provident fund commissioner. However, he did not get any settlement from the authority even after six month's. Referring to the EPF & MP Act, 1952 guide X, the course of action he can take in this respect.
- (b) Hindustan Group of Industries sold its Manufacturing unit to the other Group of Industries. Hindustan Group contributed 35% of total contribution in Pension Scheme, which was due before sale under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The transferee company refused to pay the remaining 65% contribution in the Pension Scheme. Decide, the liabilities as to payment of the remaining contribution in case of transfer of establishment and upto what extent?
- 8. (a) An employee leaves the establishments in which he was employed and gets employment in another establishment wherein he has been employed. Explain the procedure laid down in the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 in this relation.
- (b) Vimal is an employee in a Company. The following payments were made to him during the previous year:
 - (i) Piece rate wages
 - (ii) Productivity bonus
 - (iii) Additional dearness allowance
 - (iv) Value of Puja gift.

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Examine as to which of the above payments form part of “Basic Wage” of Vimal under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.

- (c) Who determines the money due from an employer under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952? State the factors considered by the authorities at the time of determining the amount.

The Payment of Gratuity Act, 1972

9. (a) An employee who is governed by the Payment of Gratuity Act, 1972 committed a negligence, as a result caused loss to his employer, during the course of his employment. And consequently his services were terminated. State, whether the gratuity payable to him shall be forfeited?
- (b) Discuss the rules relating to penalties for the non-payment of gratuity under the Payment of Gratuity Act, 1972.
10. (a) How will you calculate gratuity?
- (b) How will you calculate the ‘continuous service’?

The Companies Act, 1956

11. (a) The Memorandum of Association of a company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a certificate of incorporation. The plaintiff contended that (i) conditions of registration were not duly complied with, and (ii) that there were no seven subscribers to the Memorandum. Will the Court uphold his contention?
- (b) A limited company issued certain number of shares as fully paid up to a subscriber to the memorandum on the basis of promissory note executed by him as consideration towards the shares. Since no money was paid towards the allotment, the company after five years from the date of allotment wants to forfeit those shares and reissue. Can the company do so?
- (c) The number of members in the public company were reduced to six and the company continued to carry on its business. State in this connection, whether the remaining persons will be liable and under what circumstances?
- (d) A company wants to shift some of its objects from ‘other objects’ to the main objects. State whether it is a permissible alteration?
- (e) In what way does the Companies Act, 1956 regulate and restrict the following in respect of a company going/or public issue of shares :
- (i) Minimum Subscription, and
- (ii) Application Money payable on shares being issued ? Explain.
12. (a) A solicitor prepared a necessary document for the incorporation of a company and made payment of the required registration fee and other expenses. He claimed for expenses. Decide the case in the light of the Companies Act, 1956.

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- (b) ABC Limited realised on 2nd May, 2010 that particulars of charge created on 12th March, 2010 in favour of a Bank were not filed with the Registrar of Companies for Registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2010 instead of 12th March, 2010? Explain with reference to the relevant provisions of the Companies Act, 1956.
- (c) XYZ Co. 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?
- (d) After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 1956. Comment.
- (e) The Directors of a company registered and incorporated in the name "Mars Textile India Ltd.", desire to change the name of the company entitled "National Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 1956?
13. (a) What is the extent of liability of an expert, in relation to publication of prospectus, for any mis-statement in the report given by him?
- (b) M/s Low Esteem Infotech Ltd., was incorporated on 1.4.2010. No general meeting of the company has been held so far. Explain the provisions of the Companies Act, 1956 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the first annual general meeting.
- (c) Dev Limited issued a notice for holding of its annual general meeting on 7th July, 2010. The notice was posted to the members on 16.06.2010. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 1956 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Companies Act, 1956 decide:
- (i) Whether the meeting has been validly called?

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- (ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?
- (iii) Can the short fall, if any, be condoned?
- (d) State whether the following statements are correct or incorrect. Give reasons:
 - (i) Right shares means shares which are issued by a newly formed company.
 - (ii) A company should file its annual return within six month of the close of the financial year.
 - (iii) A bearer of a share warrant of a company is not member of the company.
 - (iv) The shareholder of the company in general meeting can increase the rate of dividend recommended by the Board of Directors.
 - (v) Debenture with voting rights can be issued only if permitted by the Articles of Association.
- (e) State the legal position in the following circumstances with reference to the provisions in the Companies Act, 1956.

‘At an adjourned extraordinary general meeting of a Public Ltd. Company adjourned for want of quorum, only 3 members are personally present’.
- 14. Venus Pvt. Ltd., owed to Mr. X, Rs. 2,000. On becoming this debt payable, the company offered Mr. X, 10 shares of Rs. 200 each in full settlement of the debt. The said shares were fully paid and were allotted to Mr. X.

Examine the validity of these allotments in the light of the provisions of the Companies Act, 1956.
- 15. “If an applicant had offered to take shares on the condition that he was to be employed as a cashier in the company”. Comment on the following statement in the light of the Companies Act, 1956
- 16. State the validity of the following statements with reasons:
 - (a) Amway Ltd. has its registered office at Rajasthan. The company desires to hold an extra ordinary general meeting in New Delhi.
 - (b) Once the dividend is declared, it cannot be revoked.
- 17. The articles of Okara group Ltd., provide that, in the event of the quorum being not present within half-an- hour- from the time scheduled for the annual general meeting, the meeting shall stand dissolved and then quorum is not formed within half-an-hour from the time fixed therefor.

State, what will be the position of retiring directors-will they cease to be directors from the date on which the general meeting could not be held for want of quorum and consequently stood dissolved as per the articles as aforesaid or will they remain directors till the date of the fresh annual general meeting which was convened subsequent to the first one?

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B ETHICS

18. (a) 'Business ethics help to promote a strong public image'. Explain.
(b) In what ways 'Ethics' differs from 'Morals'.
19. (a) How 'increase in stakeholder activism' is accountable for the development of the CSR(Corporate Social Responsibility)?
(b) Bring out some examples of ethical issues faced by an individual in a work place.
20. Write short notes:
 - (a) Sustainable Development
 - (b) Ethics and Marketing
 - (c) Competition
 - (d) Corporate Governance
21. (a) Discuss the factors required for creating a sound ethical environment in any company.
(b) What factors influence Ethical behavior at work?

C COMMUNICATION

22. Elaborate and discuss types of grapevine chains.
23. Comment on the following:
 - (a) Groupthink
 - (b) Ethical dilemmas in communication
24. (a) Draft a press release on the Easy Exit Scheme, 2010 introduced by the Ministry of Corporate Affairs.
(b) Draft a specimen notice for the 2nd AGM of ABC Ltd., whose main agenda includes only 'ordinary business'.
25. Draft an affidavit certifying that the company XYZ Ltd does not have any tax dues to the Government.

SUGGESTED ANSWERS / HINTS

1. (a) (i) As per the Section 4 of the Indian Contract Act, 1872, offeror is bound by acceptance as soon as the letter is posted, but the acceptor himself is bound only when it comes to the knowledge of offeror. So, in spite of delay or loss of acceptance, the acceptance will be effective and the contract shall emerge. But ,it is necessary the letter is correctly addressed, sufficiently stamped and duly posted. In the given instant, according to R, the address given by J on the letter of offer was presumed to be correct. So mentioning of the given address

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by R on the letter of acceptance , which J had supplied give rise to valid acceptance and thus the contract.

- (ii) As per Section 68 of the Indian Contract Act, 1872, any person supplying necessities of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. This is termed as quasi contract. Thus according to the above provision giving of Rs. 5000 to the minor for hiring an advocate for his defence, entitles X to get reimbursed from the property of minor, and so giving rise to a contract.
 - (iii) As per Section 22 of the Indian Contract Act, 1872 ,where a person has been led to make a mistake as to an essential matter of fact by the other person, there the law save such person who is giving the consent. There such an unilateral mistake about a fundamental matter shall make the contract voidable. Thus in the given case, it's a voidable contract because there is a unilateral mistake on the part of A who endorsed a bill of exchange thinking it to be a mere guarantee.
 - (iv) 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. Thus in the problem, there is no contract because the agreement made is vague and uncertain in meaning and even not capable of being made certain ,so it is a void agreement.
 - (v) It is a void contract due to supervening impossibility of the performance of the contract as per Section 56 of the Indian Contract Act,1872. A contract to do an act which, after the contract is made, become impossible, or, unlawful, becomes void when the act becomes impossible or unlawful. Here in the given instant performance of a contract became impossible due to change in law subsequently.
- (b) (i) As per the provisions relating to the rights of bailee for the possession of goods i.e., right of lien ,given under the Section 170 of the Indian Contract Act,1872, where the lawful charges of the bailee in respect of the goods bailed are not paid, he has the right to exercise lien on the goods bailed. Lien is a possessory right. If a possession is lost even once, the lien is lost altogether.
- Thus in the given problem ,Y cannot claim lien on the ground that earlier delivery of the car to X marked an end of the lien, and repossession was for a fresh repair only for which no amount was agreed to be paid(*Eduljee vs café John Bros ILR[1944]Nag 37*).
- (ii) As per the provision given in the Section 194 of the Indian Contract Act, 1872, substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub agent but only as an agent of the original principal. While selecting a 'substituted agent' the agent is bound to exercise same amount of

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diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent (Section 195)

Thus in the given problem, 'Y' will not be responsible to 'X' as he has discharged his duties as a man of ordinary prudence and diligence.

2. (a) The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice : A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

The liability of the surety for previous transactions however remains.

Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.

Answer in the second case would differ i.e. A is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

- (b) Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessities. But the legal presumption can be rebutted in the following cases:

- (i) Where the goods purchased on credit are not necessities.
- (ii) Where the wife is given sufficient money for purchasing necessities.
- (iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
- (iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in cases (iii) and (iv).

Applying the above conditions in the given case 'Q' will succeed. He can recover the said amount from 'P' if sarees purchased by 'R' are necessities for her.

- (c) The problem asked in the question is based on the provisions of Section 160 and 161 of the Indian Contract Act, 1872. Accordingly, it is the duty of the bailee to return or deliver the goods bailed according to the bailor's directions, without

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demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed for any loss, destruction of the goods from that time (Section 161), notwithstanding the exercise of reasonable care on his part.

Therefore, applying the above provisions in the given case, Mahesh is liable for the loss, although he was not negligent, but because of his failure to deliver the car within a reasonable time (*Shaw & Co. v. Symmons & Sons*).

3. (a) "The bank" referred to in clause (a) to the proviso to Section 138 of the Negotiable Instruments Act, 1881, mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present, the cheque in any bank including the collecting bank where he has his account, but to attract the criminal liability of the drawer of the cheque, such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque drawn within the period of six months from the date on which it is shown to have been issued. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque, of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt that the law mandates the cheque to be presented at the bank on which it is drawn, if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn whether presented personally, or through another bank, namely, the collecting bank of the payee[*Shri Ishar Alloy Steels Ltd. (v) Jayaswals Neco. Ltd. (2001) LCLJ 18 (SC)*]
- (b) (i) (c) is the correct answer as per the Section 26 of the Negotiable Instruments Act, 1881, According to which every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.
- So, Minors, Company and an agent can draw a negotiable instruments according to the law to which they are subject. However, insolvent is not allowed to draw, make, accept or indorse a negotiable instrument because it will bind his estate which is now vested in the Official Receiver.
- (ii) (d) is the correct answer as per Section 64 of the Negotiable Instruments Act, 1881. According to which Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf of the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.
- (iii) (b) is the correct answer as per the section 92 of the Negotiable Instruments Act, 1881. According to which when a Negotiable Instrument becomes

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dishonored either by non acceptance or by non- payment, its holder becomes entitled to sue the parties liable to pay thereon. Thus in the given instant according to the above provision drawer of cheque is liable to the holder for dishonor of cheque.

- (c) The problem as asked in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 84. The Section provides that where a cheque is not presented by the holder for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged from liability to the extent of such damage. In determining what is reasonable time, regard shall be had to the nature of the instrument, the usage of trade and bankers, and the facts of the particular case. Accordingly, in the given case, the drawer(Ram) is discharged from the liability to pay the amount of cheque to Balram. However, Balram can sue against the bank for the amount of the cheque applying the above provisions.
4. (a) The problem is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 29. A legal representative of a deceased person who signs his own name on a negotiable instrument is personally liable for the entire amount thereon, unless he expressly limits his liability to the extent of the assets received by him as such. Applying the above provisions to the given problem C is entitled to recover Rs.50,000/- from A. A cannot refuse to pay the amount since he has inherited the assets of the deceased. He will be liable to the extent of the full amount of the bill, even if he inherits the property valued less than the amount of the bill. Thus in the first case he will be liable to full amount of Rs.50,000/-. In the second case since he has made a limit in the instrument itself before signing on it, his liability will be only to the extent of Rs.50,000/- and not to the extent of the full amount as given on the instrument though he might have inherited the property value greater in amount than that of the instrument.
- (b) (i) Yes.
(ii) No.
(iii) Yes.
(iv) No.
(v) Yes.

According to Section 87 of the Negotiable Instrument Act,1881, any material alteration of a negotiable instrument renders the same void as against any one who is party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties and any such alteration, if made by an endorse discharges endorser from all liability to him in respect of the consideration thereof. The alteration must be so material that it alters the character of the instrument, to a great extent. Alterations of the date, amount payable, time, place of payment are regarded as material alterations.

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- (c) 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.
5. (a) (i) *Accounting year [Section 2(1)]* : It means, (a) in relation to a corporation, the year ending on the day on which the books of accounts of the corporation are to be closed and balanced.
- (b) in relation to a company, this term means a period in respect of which any profit or loss account of the company laid before it in an annual general meeting is made up whether that period is a year or not.
- (c) in any other case (a) the year commencing on the first day of April, or (b) if the accounts of an establishment maintained by the company thereof are closed and balanced on any day other than the 31st day of March then at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.
- If, however, the said option is once exercised by the employer, it cannot be exercised once again, except with the permission in writing of the prescribed authority and upon such conditions as that authority may think fit. In other words, the exercise of the said option can only take place on obtaining the previous written permission of the prescribed authority, and the prescribed authority may impose such conditions as it may think fit.
- (ii) *Allocable surplus [Section 2(4)]* : This expression means 67% of the available surplus in an accounting year, in relation to an employer, being a company, other than a banking company, which has not made the arrangements prescribed under the Income-tax Act, for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act. In any other case, the allocable surplus means 60% of such available surplus.
- (b) As per proviso of Section 2(13) of the Payment of Bonus Act, 1965 an employee means only person on a salary or wage not exceeding ten thousand rupees per month.
- Further, Section 8 provides that an employee to be entitled for bonus in the accounting year should have worked in the establishment for not less than thirty working days in that year.

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Thus, in view of the above Mr. Shriman is not entitled for Bonus, as he has not worked for 30 days in the accounting year.

6. (a) Problem relating to bonus linked with production or productivity (Section 31A)

As per Section 31A of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, as is payable under the Act. Accordingly, when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restriction imposed by Section 31A:

- (i) any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.
- (ii) If the bonus payable under such agreement exceed 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

In the given case Aryan Textile Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of based on profits subject to the limit of 30% of their salary/ wages during the relevant accounting year. According to Section 31A the maximum bonus under this provision can be given which should not exceed 20% of the salary/wages earned by the employee during the relevant accounting year. Hence, the maximum bonus may be paid upto 20% of the salary/wages. If the company agrees to pay more than 20% then it will be against the provisions of the Payment of Bonus Act, 1965.

The employees of Aryan Textiles also agreed not to claim minimum bonus stated in Section 10 of the Payment of Bonus Act, 1965 such an agreement shall be null and void as it purports to deprive the employees of their right of receiving minimum bonus. Hence, the relief may be given by the court, as regards to the payment of bonus to the employees, based on the production or productivity, if it is agreed, subject to a maximum of 20%. The employees will also be entitled legally to claim bonus which is minimum prescribed under Section 10 of the Act, even though they have relinquished such right as per the agreement.

- (b) Computation of Salary / Wages:** According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment. It includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

- (i) Any other allowance which the employee is for the time being entitled to;

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- (ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service or of any concessional supply of food grains or other articles;
- (iii) Any traveling concession;
- (iv) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.
- (v) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and
- (vi) Any commission payable to the employee.

It may be noted that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Prakash Chandra while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds does not form part of his salary.

- (c) Every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year on a salary less than Rs. 3,500 per month. [Section 2(13) and Section 8] **(Note: This amount has been revised to Rs. 10,000 now)**

In the given problem a University teacher and an employee of the NABARD are not entitled for bonus because the employees of Universities and other educational institutions and employees of the Agricultural Refinance Corporation are excluded from the operation of the Act as per Section 32 of the Payment of Bonus Act, 1965.

A reinstated employee without wages for the period of dismissal is also not entitled for bonus because only a dismissed employee reinstated with back wages is entitled to bonus. [*Gannon India Ltd. Vs. Niranjan Das* [1984] 2LLJ 223]. In this case the employee has been reinstated without wages.

A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month is also not entitled for bonus because he has worked for qualifying days i.e. 30 days but his salary is higher than prescribed limit (Rs. 3500 per month) in the Act. **(Under the revised wage ceiling mentioned in the note above, this employee will be eligible for bonus).**

An apprentice is not entitled to bonus [*Wheel & Rim Co. vs. Government of Tamil Nadu* (1971)].

- 7. (a) As per the Notification given on August 26, 1997 in relation to Employees' Deposit-Linked Insurance Scheme given under the section 6(c) of the Employees' Provident

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Funds and Miscellaneous Provisions Act, 1952, the Provident Fund claims complete in all respects submitted along with the requisite documents shall be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner. Here X can claim interest on the benefit amount from the commissioner at the rate of 12% per annum.

- (b) The problem as asked in the question is based on the provisions of section 17(B) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly or severally liable to pay the contribution and other sums due from the employer under the provisions of this Act of the scheme or pension scheme, as the case may be, in respect of the period upto the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

It would be thus evident from the aforesaid provisions that 17-B deals with the liability of transferor and transferee in regard to the money due under (a) the Act or (b) the scheme (c) and pension scheme. In the case of the transfer of the establishment brought in by sale, gift, lease etc. The liability of the transferor and transferee is joint and several, but it is limited to the period upto the date of transfer.

Therefore applying the above provisions in the given case the transferor Hindustan Group of industries, the transferor has paid only 35% of the total liability as contribution in pension scheme before sale of the establishment. With regards to remaining 65% liability both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable, The liability is limited upto the date of transfer and upto remaining amount. Further, the liability of the transferee i.e. the other Group of Industries, is limited to the extent of assets obtained by it from the transfer of the establishment.'

8. (a) **Transfer of accumulated amount to the credit of Employees' Provident Fund on change of employment:** Section 17-A 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 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

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does not apply, the amount of accumulations to the credit of such employees 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 desires and the rules in relation to that provident fund permit such transfer. The transfer has to be made within such time as may be specified by the Central Govt. in this behalf [Sub-Section (1)].

Conversely, when an employee of an establishment to which the Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is employed [Sub-Section (2)].

(b) Basic Wages

As per Section 2 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the “Basic Wages” means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- (i) the cash value of any food concessions;
- (ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment; or
- (iii) any presents made by the employer.

Applying the above provisions of the Act to the given problem, the Basic wages of X will include only piece rate wages but it excludes the Productivity bonus, additional dearness allowance and value of puja gift.

(c) Determination of moneys due from employer (Section 7A, E.P.F. & M.P Act, 1952):

Authorities empowered to determine the amount due from an employer under the provisions of the Act and the scheme include Central P.F. Commissioner, Deputy P.F. Commissioner, Assistant P.F. Commissioner & Regional P.F. Commissioner.

This involves decisions on:

- (i) amount due as contribution
- (ii) date from which same is due
- (iii) administration charges

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(iv) amount to be transferred under Section 15 or 17 of Act.

(v) any other charges payable by employer,

The authorities may conduct such inquiries as necessary and have powers such as are vested in Court.

Employer must be given a reasonable opportunity of representing his case.

Where any party fails to appear etc., the officer may decide on basis of evidence and documents put before him.

An *ex parte* order against employer may be set aside on application within 3 months of receiving order by him by showing sufficient cause. A fresh date shall be given for proceeding with inquiry.

As the above "proceedings are of quasi-judicial in nature and vitally affect and vitally affect the rights of parties, the principles of natural justice must be strictly followed in deciding the dispute.

9. (a) **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.

In the given case, the employer has a right to forfeit the amount of earned gratuity of an employee whose services were terminated for any act, willful omission, or negligence causing any damage to the employer is limited to the extent of the damage, and the proof of such damage in view of Section 4(6)(a) [*Parmali Wallance Limited Vs State of M.P.*, (1996) 11 LLJ 515 (MP)].

- (b) **Offence relating to non-payment of gratuity** – If the contravention relates to non-payment of any gratuity payable under the Payment of Gratuity Act, 1972 the term of imprisonment shall be minimum six months and maximum two years. The Court can impose a lesser term of imprisonment, if the Court is of the opinion that a lesser term of imprisonment would meet the ends of justice [proviso to Section 9(2) of the Payment of Gratuity Act, 1972]. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed.

10. (a) **Calculation of gratuity amount payable [Section 4(2)]**

In the 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 case of piece rated employee, daily wages, shall be computed on the average of the total wages received by him for a period of three 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 case of an employee who is employed in a seasonal establishment can be classified

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into two groups-

- those who work throughout the year &
- 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 six months. The latter are, however, entitled to receive gratuity at the rate of seven days for each season.

In case of a monthly rated employee; the fifteen days' wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen. In order to arrive at the figure of daily wage for the purpose of Section 4(2) of the Act, monthly wages are to be divided by 26 [*Hindustan Lever Ltd. Vs Kasargoe Devidas Rao*, (1990) 61FLR 6231 (BOM)]

- (b) Gratuity shall be payable to an 'employee' on the termination of his employment after he has rendered continuous service for not less than five years .
- On his superannuation, or
 - On his retirement or resignation, or
 - On his death or disablement due to accident or disease;

The condition of the completion of five years continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. Generally, it is payable to the employee himself. However, in case of death of the employee it shall be paid to his nominee.

11. (a) No, the court will not uphold this contention because it is presumed that the certificate of incorporation is conclusive for all purposes. According to Section 35 of the Companies Act, 1956 a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereof, and that the association is a company authorised to be registered and duly registered under this Act.
- (b) Normally in the case of allotment of shares, a company may call for the entire face value of the shares on allotment or it may call for a portion of the face value. In case where a company has allotted shares for part of the face value, it issues call notice for the balance money in one or more installments.

Therefore, in the normal course, no share is allotted unless otherwise allotment money is received and the question of forfeiture would arise only when on the basis of call made for the balance amount, the same is not paid by the shareholder. In the instant unique case, the consideration for the shares has been received by the company in a form other than cash (i.e., Promissory Note).

If the concerned shareholder has not paid any money as per the promissory note, the course of action for the company would be to initiate legal proceedings for

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realising the money. It cannot forfeit those shares after 5 years from the date of allotment [K. Md. Farooq Ahmed v. F.C. Electronics (P.) Ltd. & Others [1997] 2 CLJ 234 CLB].

- (c) The problem in question relates to reduction of membership below the statutory minimum. Section 12 of the Companies Act requires a public company to have a minimum of seven members. If at any time the membership of a public company falls below seven and it continues its business for more than six months, then according to section 45 of the Companies Act, 1956 every such member who was aware of this fact, would be individually (personally) liable for all debts contracted after six months.

Thus, in the above problem, the remaining six members shall incur personal liability for the debts contracted by the company.

- (i) If they continued to carry on the business of the company with that reduced membership (i.e., 6) beyond six month period;
 - (ii) Only those members who knew of this fact of reduced membership shall be liable, for instance, if one of the members who was abroad and thus not aware of those developments, shall not be liable.
 - (iii) The liability shall extend only to the debts contracted after six months.
- (d) The Company Law Board which was faced with the aforesaid issue in the case of *Mafatlal Consultancy Services (India) Ltd. In re* [1995] 17 C.L.A. 385 answered it in the negative.

Rejecting the petition the CLB held that —

Section 17 of the Companies Act provides that a company may alter its memorandum of association with respect to its 'objects clause' to enable it to — (a) to carry on its business more economically or more efficiently; (b) to attain its main purpose by new or improved means; (c) to enlarge or change the local area of its operations; (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; (e) to restrict or abandon any of the objects specified in the memorandum; (f) to sell or dispose of the whole or any part of the undertaking or of any of the undertakings of the company; or (g) to amalgamate with any other company or body of persons.

In the instant case the proposal of the company did not fall under any of these clauses. Therefore the request of the company could not be acceded to.

All the clauses of the 'object clause', whether stated under Part A or Part C are the objects of the company and a company is empowered to take up activities covered under any one of them and in fact it was already carrying on the business as per clause 70A. The company now sought to shift clause 70A in Part C to Part A. Such a transposition could not be deemed to be alteration as permissible under section 17.

- (e) The Companies Act, 1956 by virtue of provisions as contained in Section 69 (1) and Section 69 (3) to (6) regulate and restrict the minimum subscription and the

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application money payable on shares being issued by a company going for public issue of shares. These sections provide as under:

Minimum subscription [Section 69 (1)]

No Allotment shall be made of any share capital of a company offered to the public for subscription; unless; -

- (i) the amount stated in the prospectus as the minimum amount has been subscribed, provided that such amount shall not be less than 5% of the nominal amount of the shares being issued; and
- (ii) the sum payable on application for such amount has been paid to and received by the company-

If the application are not received by the company for such quantum of shares for making the minimum subscription, within 120 days after the issue of prospectus, all money received from the applicants for share 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% from the expiry of 130 days.

Application money:

Section 69 (3) provides that the amount payable on application on each share shall not be less than 5% of the nominal amount of the share. All moneys received from application for shares shall be deposited and kept deposited in a Schedule Bank:

- (i) until the certificate to commence business is obtained under Section 149, or
- (ii) where such certificate has already been obtained, until the entire amount payable on application for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time on the expiry of which the moneys received from the applicant for shares are required to be repaid without interest under Sub-section (5), all moneys received from applications for shares shall be returned in accordance with the provisions of that sub-section, as stated above.

12. (a) As per the provision given in the Section 149(4) of the companies act, 1956 any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date on which trading certificate is issued , and on that date it shall become binding. As such any preliminary expenses incurred on behalf of the company to be incorporated cannot be recovered (*Re National Motor Co. 908 2 Ch. 228*).

Thus, in the given problem solicitor will not be allowed since the company was not in existence at the time when the expenses were incurred and no ratification was possible.

- (b) **Registration of charge** : The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof

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shall be filed with the Registrar within 30 days after the date of the creation of charge. [Section 125 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under proviso to section 125 (1) to extend the period of 30 days by another 30 days on payment of such additional fee not exceeding 10 times the amount of fee specified on Schedule X as the Registrar may determine. Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

If the charge was created on 12th Feb., 2010, then the company has to apply to the Company Law Board (Now tribunal) under Section 341 and seek extension of time for filing the particulars for registration. The company must satisfy the Company Law Board (Now tribunal) (a) that the omission was accidental or due to inadvertence or due to some other sufficient cause or was not of the nature to prejudice the position of creditors or shareholders of the company, or that it is just and equitable to grant relief on the other grounds. On such satisfaction, the Company Law Board (Now tribunal) may extend the term for the registration of charge or; such terms and conditions as it may think expedient. Once the time is extended and it is made out that the particulars have been filed within the extended time, the registrar is bound to register the charge.

- (c) 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

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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.

(d) Allotment of Shares

The company has received 80% of the minimum subscription as stated in the prospectus. Hence the allotment is in contravention of section 69(1) of the Companies Act and the allotment is irregular attracting the provisions of Section 71 of the Companies Act 1956.

The consequences of such irregular allotment are as follows:

The allotment is rendered voidable at the option of the applicant. The option must however be exercised -

- (i) Within 2 months after the holding of the statutory meeting of the Company; or
- (ii) Where the Company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within 2 months after the date of allotment [Section 71(1)].

The irregular allotment is voidable even if the company goes into liquidation on the meantime [section 71(2)].

In view of the above, refusal by 'X' to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act is valid provided he has exercised his option to avoid the allotment within the period mentioned in Section 71(1) of the Companies Act.

The Company has also violated the provisions of Section 69(4) of the Companies Act in withdrawing 50% of the amount deposited with the bank before receiving the entire amount payable on application for shares in respect of the minimum subscription.

(e) Change in the Name of Company:

In the first instance, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd. is available or not. For this purpose, the company should file the prescribed Form

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No.1A with the Registrar along with the necessary fees. The Registrar after examination will inform whether the new name is available or not for registration.

In case the name is available, the company has to pass a special resolution approving the change of name to National Textiles and Industries Ltd.

Thereafter the approval of the Central Government should be obtained as provided in Section 21 of the Companies Act, 1956. The power of Central Government in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name. The change of name shall be complete and effective only on the issue of a fresh certificate of incorporation by the Registrar. The Registrar shall enter the new name in the Register in place of the former name. The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it.

13. (a) A prospectus may contain a statement purporting to be made by an expert. The term expert includes an engineer, a valuer, an accountant, and any other person whose profession gives authority to a statement made by him [section 59 (2) of Companies Act, 1956].

An expert is considered liable for any mis-statement given by him in his report in relation to publication of the prospectus, unless

- (i) he has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of the copy of the prospectus to the Registrar for Registration and
- (ii) Unless a statement as to his consent and non-withdrawal of it appears in the prospectus (Section 58).

Section 59(1) provides a penalty of fine extending to Rs.50,000/- for the company and any other persons who is knowingly a party to the issue of a prospectus in contravention of these provisions.

- (b) According to Section 166 of the Companies Act, 1956, every company shall hold its first annual general meeting within a period of 18 months from the date of incorporation. Since M/s Low Esteem Infotech Ltd was incorporated on 1.4.2010, the first annual general meeting of the company should be held on or before 30th September, 2010. Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meeting, such a power is not available to the Registrar in the case of the first annual general meeting. Thus, the company and its directors will be liable for the default if the annual general meeting was held after 30th September, 2010.
- (c) (i) 21 Days clear notice of an AGM must be given [Section 171, Companies Act, 1956]: In case of notice by post, section 53(2) provides that the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting. Besides, for working out clear 21 days, the day of the notice and the

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day of the meeting shall be excluded. Accordingly, 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is, therefore, not validly convened.

- (ii) worked as per (i) above, notice falls short by 2 days.
- (iii) according to Section 171(2), on AGM called at a notice shorter than 21 clear days shall be valid if consent is accorded thereto by all the members entitled to vote thereat. Thus, if all the members of the company approve the shorter notice, shortfall may be condoned.

(d) (i) Right shares

According to section 81 of the Companies Act, 1956 where the shares are offered to the existing shareholders who have pre-emptive right to purchase the additional shares of the company to expand its activities or it may stand in need of more financial resources, it is called right issue.

Hence the given statement is incorrect.

(ii) Filing of annual return

Section 159 of the Companies Act, 1956 states that a company should file its annual return within sixty days from the date the Annual General Meeting is held.

Hence the given statement is incorrect.

(iii) Share warrant

According to the provision relevant to share warrant, it has been mentioned that the bearer of a share warrant of a company can be a member only if the articles so provide. This says that the bearer is not a member of the company unless and until the articles of a company may provide that the bearer of a share warrant shall be deemed to be a member of the company for the purposes defined by the articles.

So the given statement is correct.

(iv) Dividend

The shareholders can decrease the rate of the dividend but cannot increase in the general meeting. Hence the given statement is incorrect.

(v) Debentures with voting rights

As given under section 117 of the Companies Act, 1956 no company can issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of any particular classes of business.

Hence the given statement is incorrect.

(e) Quorum

Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. Thus the meeting cannot

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proceed with business in the absence of quorum unless the articles of the company provide otherwise.

As per Section 174(5) of the Companies Act, 1956, if a meeting is adjourned for want of quorum and at the adjourned meeting also quorum is not present, within half an hour from the time appointed for holding the meeting, the members present shall be quorum. Assuming here, that the adjournment of meeting is called because of absence of quorum, the above-stated provision will prevail. Accordingly, three members who are personally present can validly conduct the meeting. But if the adjournment has taken place for any reason other than absence of quorum, the quorum as per articles or at least five members as per Section 174(1), must be present.

14. **Allotment of Shares:** As per the Section 75 of the Companies Act, 1956 when shares are allowed to a person by a company, payment may be made – (i) in cash, or (ii) in kind (with the consent of the company).

‘Cash’ here does not necessarily mean the current coin of the country. It means “such transaction as would in an action at law for calls, support a plea of payment.”

On the basis of the above provision and decision of the related case *Coregam Gold Mining Co. of India V. Roper*, (1892), A.C. 125, the allotment of fully paid up shares in full satisfaction of Mr. X’s debt is valid.

15. As per the provision given under the Section 72 relating to allotment of shares under the Companies Act, 1956, the allotment of shares can be done only when there has been a written application to take shares. The application for shares would contain various terms of allotment. The company must make allotment of shares while accepting all those terms and should also not add new terms from its side.

Thus on the basis of above provision in the given statement, the company must appoint an applicant as cashier, otherwise, an applicant has a right to reject the allotment (*Ramanbhai vs Ghasiram*[1918]ILR 42 Bom 595)

16. (a) The holding of the extra-ordinary general meeting by the company at any place is valid. Section 166(2) of the Companies Act, 1956 mentions the place for an AGM only. It says that Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. Section 172(1) too contains no reference to any particular place for meeting. This section says that every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.
- (b) This is a valid statement. Ordinarily, once the dividend is declared with the approval of the general meeting, it cannot be revoked. However, as per section 205(1A) of the Companies Act, 1956 a resolution at the general meeting may be passed to revoke the declaration before the amount is credited to the shareholders (*Kishinchand Chellaram vs CIT*). Similarly, the interim dividend

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declared by the Board may be revoked by the general meeting.

17. As per the Provision given under Section 174 of the Companies Act, 1956, if the newly convened annual general meeting is held well within the statutory period, then the rotational directors may remain in office till the date of the second meeting so held. If, however, the meeting is called on the last day of the statutory prescribed period and the meeting could not be held for want of quorum and a fresh annual general meeting is convened as a result, then the rotational directors might be allowed to retain their office till the date of the second meeting with the prior permission of the registrar of Companies.
18. (a) An organization that pays 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 integrity and honor. Thus managing ethical values in businesses besides optimizing profit generation in the long term, 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, proper attention to business ethics is the right thing to do.
- (b) The word 'Ethics' is derived from the Ancient Greek *ēthikos*- meaning character is the essence of values and habits of a person or group. It covers the analysis and employment of concepts such as right and wrong, good and evil, and acting with responsibility. It has many definitions. According to one, ethics are the principles of conduct governing an individual or a group. Another describes, ethics as relating to what is good or bad, and having to do with moral duty and obligation.

Let us draw a distinction between Ethics and Morals. The word 'Moral' is defined as relating to principles of right and wrong. Although both words are broadly defined in contemporary English as having to do with right and wrong conduct, the root word for ethics is the Greek "ethos," meaning "character", while the root word for Moral is Latin "mos," meaning "custom." Character and custom, however, provide two very different standards for defining what is right and what is wrong. Character is a personal attribute, while custom is defined by a group over time. People have character. Societies have custom. To violate either can be said to be wrong, within its appropriate frame of reference. Another way to look at the distinction is to say that morals are accepted from an authority (cultural, religious, etc.), while ethics are accepted because they follow from personally accepted principles. For example, if one accepts the authority of a religion, and that religion forbids stealing, then stealing would be immoral. An ethical view might be based on an idea of personal property that should not be taken without social consent (like a court order).

Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'. and are typically first absorbed as a child from family, friends, school, religious teachings and other associations. Morals work on a smaller scale

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than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.

19. (a) Increased Stakeholder Activism: Corporate accounting scandals have focused attention more than ever on companies, commitment to ethical and socially responsible behaviour. The public and various stakeholders are increasingly seeking assistance of the private sector to help with myriad complex and pressing social and economic issues. There is a growing ability and sophistication of activist groups to target corporations they perceive as not being socially responsible, through actions such as public demonstrations, public exposes, boycotts, shareholders, resolutions, and even 'denial of service' attacks on company websites. Companies are therefore focusing on meaningfully engaging with their various stakeholders. Companies and stakeholders have, in many cases, progressed beyond 'dialogue for dialogue's sake, and are looking to rationalize the process.
- (b) Some examples of ethical issues faced by an individual in the workplace are:
- (1) *Relationships with suppliers and business partners:*
 - (a) Bribery and immoral entertainment
 - (b) Discrimination between suppliers
 - (c) Dishonesty in making and keeping contracts
 - (2) *Relationship with customers*
 - (a) Unfair pricing
 - (b) Cheating customers
 - (c) Dishonest advertising
 - (d) Research confidentiality
 - (3) *Relationship with employees*
 - (a) Discrimination in hiring and treatment of employees
 - (4) *Management of resources*
 - (a) Misuse of organisational funds
 - (b) Tax evasion
20. (a) The Concept of sustainable development was brought into focus by Brundtland Report, which stated that economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. One must realize that increased development and higher GNP are related to environmental damage and resource depletion. Therefore, an element of resource regeneration and positive approach to environment have to be incorporated in developmental programmes. Literally sustainable development refers to maintaining development over time. Most widely cited definition of sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet

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their own needs. A nation or society should satisfy its requirements- social, economic and others without jeopardizing the interest of future generations. High economic growth means high rate of extraction, transformation and utilization of non-renewable resources. There is no doubt that twenty first century markets shall be driven by the requirements of sustainable environments.

- (b) The task of marketers is to influence the behaviour of customers. To accomplish this goal, marketers have a variety of tools at their disposal. Broadly speaking, these tools include the design of a product, the price at which it is offered, the message used to describe it, and the place in which it is made available. Ethics are standards of moral conduct. To act in an ethical fashion is to conform to an accepted standard of moral behavior. Undoubtedly, virtually all people prefer to act ethically. It is easy to be ethical when no hardship is involved, when a person is winning and life is going well. The test comes when things are not going well, when pressures build. These pressures arise in all walks of life, and marketing is no exception. Marketing executives face the challenge of balancing their own best interests in the form of recognition, pay, and promotion, with the best interests of consumers, their organizations, and society into a workable guide for their daily activities. In any situation they must be able to distinguish what is ethical from what is unethical and act accordingly, regardless of the possible consequences.
- (c) A broad definition of Competition is .a situation in a market in which firms or sellers independently strike for the buyers. patronage in order to achieve a particular business objective, for example profit, sales or market share. (World Bank, 1999). A pre-requisite for a good competition is trade, trade is the unrestricted liberty of every man to buy, sell and barter, when, where and how, of whom and to whom he pleases. For a free market to be in existence the handicap is that for a given distribution of income of those who can pay the highest price will most be able to purchase the goods regardless their relative needs. However, the real culprit is income distribution system and not the competitive system. In an unregulated free market, in certain circumstances it could be of greater benefit to the owner to withhold goods from market in order to extract a higher price. Despite the efforts to regulate prices which have been unsuccessful, the caution in a free market as compared to the problems in an unregulated market can be overcome by posturing competition by which the ultimate *raison d'être* of competition, namely the, interest of the consumer can be protected.
- (d) **Corporate Governance**

"Corporate governance is about promoting corporate fairness, transparency and accountability". It is concerned with structures and processes for decision making, accountability, control and behaviour at the top level of organisations. It influences how the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized.

The term Corporate Governance is not easy to define. The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and

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ensures proper accountability for management in the interest of all stakeholders. It is a system through which an organisation is guided and directed. On the basis of the definition given in the Cadbury Report, 1992, the core objectives of Corporate Governance are focus, predictability, transparency, participation, accountability, efficiency & effectiveness and stakeholder satisfaction.

Corporate Governance can also be defined as the formal system of accountability and control for ethical and socially responsible organisational decisions and use of resources.

- ◆ Accountability relates to how well the content of workplace decisions is aligned with the organisation's stated strategic direction.
- ◆ Control involves the process of auditing and improving organisational decisions and actions.

Corporate governance arrangements are key determinants of an organization's relationship with the world and encompass:

1. The power given to management;
2. Control over management's use of power (e.g. through institutions such as Boards of Directors);
3. Management's accountability to stakeholders; and
4. The formal and informal processes by which stakeholders influence management decisions.

21. (a) In light of the various corporate scandals giving rise to potential conflicts, the following three points need to be addressed for creating a sound ethical environment in any company. They are,

- i. *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.

- ii. *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

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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.

iii. *Ensuring fair treatment to those who act as whistle blowers.*

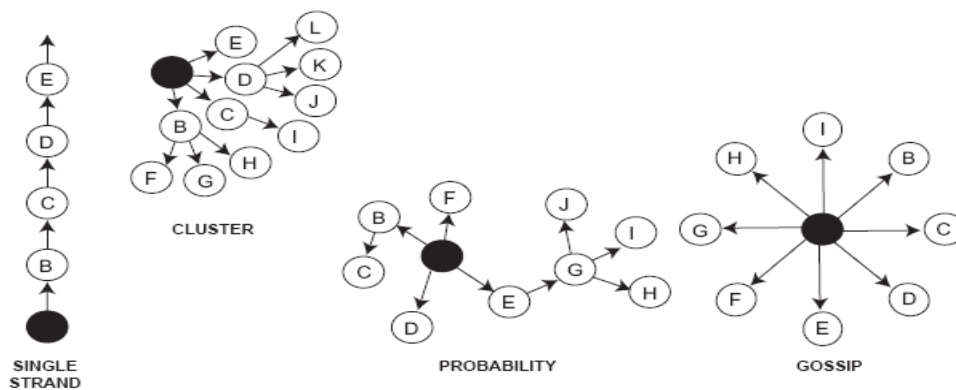
This is perhaps the most important and sensitive issue. When Sherron had raised questions at Enron, she was demoted. Similar fate would have met all those who had followed Sherron. Fair treatment to whistle blowers is a basic necessity to check fraud. It is reassuring that two of the three persons of 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.

- (b) Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and co-workers, and the opportunity to engage in misconduct. While one may have great control over personal ethics outside the workplace, co-workers and management through authority for example, exerts significant control on one's choices at work. In fact, the activities and examples set by co-workers, along with rules and policies established by the firm, are critical in gaining consistent ethical compliance in an organization. If a company fails to provide good examples and direction for appropriate conduct; confusion and conflict will develop and result in the opportunity for unethical behaviour. For example if the boss or co-workers leave work early, one may be tempted to do so as well. If one sees co-workers making personal long-distance phone calls at work and charging them to the company, then one may be more likely to do so also. In addition, having sound personal values contributes to an ethical workplace.

22. Types of grapevine chains: Specialists in this field have identified four types of grapevine chains:

- (a) **Single Strand Chain:** In this type of chain, 'A' tells something to 'B' who tells it to 'C' and so on. This type of chain is the least accurate in passing on the information or message.
- (b) **Gossip Chain:** In it, a person seeks out and tells everyone the information he has obtained. This chain is often used when information or a message regarding a 'not-on-job' nature is being conveyed.
- (c) **Probability Chain :** In it, individuals are indifferent to the persons to whom they are passing some information. This chain is found when the information is somewhat interesting but not really significant.
- (d) **Cluster Chain:** In this type of chain, 'A' tells something to a few selected individuals and then some of these individuals inform a few other selected individuals.

It has been found out that the cluster chain is the dominant grapevine pattern in an organization. Most informal communication flows through this chain.



Transmission Of Information Along Grapevine

23. (a) **Groupthink:** Groupthink is the tendency of group members to seek agreement solely for agreement's sake. A group gripped by groupthink fails to be creative, explore alternative solutions, problems, or concerns in an effort to present a united or cohesive front to outsiders. Group members must question themselves and their actions to ensure high-quality decision making. There are several ways to reduce the tendency toward groupthink. One technique that encourages open discussion is to have the group leader ask each member to assume the role of critical evaluator. It should be stressed that the role is that of constructive rather than destructive questioner. Another technique is to have the group from time to time divide into subgroups with similar tasks leading to fresh perspectives. A third technique conducive to warding off groupthink is to have each group member discuss the group's communications and actions with trusted outsiders to obtain an objective viewpoint. A fourth way to avoid groupthink is to have the group hold a special meeting where all misgivings, second-guessing, and objections are aired. At such a meeting, each member is encouraged to express any doubts she or he may have, about any phase of the group's deliberation. A special method of minimizing groupthink is to have a measure of cultural diversity within a group leading to emergence of diverse ideas, opinions, and arguments which can counteract the effects of groupthink.
- (b) **Ethical dilemmas in communication:** Some of the ethical dilemmas faced while communicating are:
- Secrecy:** Secrets are kept for both honourable and dishonourable reasons; may be used to guard intimacy or to invade it. Here then lies the challenge for the manager, to determine when secrets are justifiable and when they are not.
 - Whistle-blowing:** Any employee who goes public with information about corporate abuses or negligence is known as a whistle-blower. Corporations and managers legitimately expect employee loyalty. Greed, jealousy, and revenge motivate some whistle-blowers.
 - Leaks:** A leak is like anonymous whistle-blowing; one distinction being the propriety of the leak; namely, that the person who leaks information cannot be

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cross-examined. Leaks may cause organizational plans to be altered or forgone altogether.

- (iv) Rumour and gossip: Rumours and gossip seem to be an inevitable part of everyday corporate life. Even though managers usually treat the information as "yet to be confirmed," it may cloud judgments about that employee.
- (v) Lying: A lie is a false statement intended to deceive. Lying breaks down the trust between individuals, shaking the foundation of ethical communication.
- (vi) Ambiguity: Ambiguity, like secrecy, can be used for ethical or unethical purposes. So by using words in certain ways, one can influence others behaviour and expectations.

24. (a) A press note on the Easy Exit Scheme, 2010 introduced by the Ministry of Corporate Affairs:

F. No. 2/7/2010-CL V

Government of India

Ministry of Corporate Affairs

Press No- 06/2010

28th May, 2010

Subject: Easy Exit Scheme, 2010.

1. In order to give an opportunity to the defunct companies, for getting their names struck off from the Register of Companies, the Ministry has decided to introduce a Scheme namely, "Easy Exit Scheme, 2010" under Section 560 of the Companies Act, 1956.
2. The Scheme does not inter-alia cover the listed companies, section 25 companies, vanishing companies, companies under inspection/investigation, companies against which prosecution for a non-compoundable offence is pending in court, companies having outstanding public deposits or secured loan or dues towards banks and financial institutions or any other Government Departments etc. or having management dispute or company in respect of which filing of documents have been stayed by court or CLB or Central Government or any other competent authority.
3. Any defunct company desirous of getting its name struck off the Register under Section 560 of the Companies Act, 1956 shall make an application without fee in the Form EES, 2010 electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in along with affidavit, Indemnity Bond and a Statement of Account duly certified by the statutory auditor or a Chartered Accountant in whole time practice.
4. The scheme will be in operation from 30th May, 2010 to 31st Aug, 2010.
5. For details refer General Circular No: 2/2010 dated 26.05.2010 available on the website of the Ministry i.e. www.mca.gov.in.
6. Availing the benefit of the Scheme will prevent companies from prosecution and other legal action.

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- (b) Notice is hereby given that the 10th Annual General Meeting of the Members of XYZ Ltd. Will be held on Thursday, the 15th day of September, 2006, at the Registered Office of the Company at Plot Nos. 16-18, New Electronics Complex, Chambaghat, Distt. Solan (HP), at 10.00 a.m. to transact the following business .

Ordinary Business:

1. To receive, consider and adopt the Audited Balance Sheet of the company as on 31st March, 2006 and the Profit & Loss Account for the year ended on that date and Auditor's and Directors. Reports thereon.
2. To declare dividend for the year ending 31st March, 2006.
3. To appoint a director in place of Mr. who retires by rotation and being eligible, offers himself for re-appointment.
4. To appoint a Director in place of Mr. who retires by rotation and begin eligible, offers himself for re-appointment.
5. To appoint Statutory Auditors of the company; and fix their remuneration.

Regd. Office:

For and on behalf of Board of Directors

16-18, New Electronics Complex

Chambaghat

Distt: Solan (HP)

Chairman of the Meeting

25. An affidavit certifying that the company XYZ Ltd., does not have any tax dues to the government:

I, Mr. A son of Mr. B aged 50 years residing at 15, Vasant Kunj, New Delhi-110070 hereby affirm that the Company XYZ Ltd. does not have any dues towards Income Tax /Sales Tax/Central Excise/Banks and Financial Institutions; any other Central or State Government Departments/ Authorities or any Local Authorities.

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature:-----

(Deponent)

Verification

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place:-----

Signature:-----

Date:-----

(Deponent)

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UPDATES IN BUSINESS LAWS

S.No.	Name of the Act	Gist of the Updates	Reference to the Updates	Applicability for the November 2010 Exam
Business Laws				
1	The Employees' Provident Funds and Miscellaneous Provisions Act, 1952	The Central Government amended the Employees' Deposit Linked Insurance Scheme, 1976 by Employees' Deposit Linked Insurance (Amendment) Scheme, 2010. According to which on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of Rupees one lakh.	Notification No. G.S.R. 523(E) of Ministry of Labour and Employment www.labour.nic.in	Not Applicable
2	The Payment of Gratuity Act, 1972	The Payment of Gratuity (Amendment) Act, 2010 has amended the limit of amount of gratuity payable to an employee from rupees 3.5 lakhs to rupees 10 lakhs.	Notification No. S.O.1217(E) of Ministry of Labour and Employment www.labour.nic.in	Not Applicable

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Company Law				
3	The Companies Act, 1956			
	Companies Bill, 2009	The Companies Bill, 2009 which was introduced in the Lok Sabha has made extensive changes in the existing Companies Act, 1956. At present, it is in the form of a Bill only and pending before parliamentary Standing Committee on Finance.	www.mca.gov.in	Not Applicable