

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

Answer all questions

Question 1

- (a) Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of the deed, it was stipulated that an annuity of Rs.2, 000 should be paid every year to B, who was the brother of Mr. Singh. On the same day A made a promise to B and executed in his favour an agreement to give effect to the stipulation. A failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no right of action.

Examining the provisions of Indian Contract Act, 1872, decide, whether the contention of A is valid? (5 Marks)

- (b) State with reasons whether the following statements are correct or incorrect.(2×1=2 Marks)

- (i) If the pawnor makes a default in the payment of debt, or performance of duty, as agreed, the pawnee has a right to sell the thing pledged for which no reasonable notice of the sale is required.
- (ii) An "agency coupled with interest" may be terminated, at the instance of the principal at any time.

- (c) Pick out the correct answer from the following and give reasons: (3×1=3 Marks)

- (i) A contracts to save B against the consequences of any proceedings, which C may take against B in respect of a certain sum of 500 rupees. This is a :

- (1) Contract of guarantee
- (2) Quasi contract
- (3) Contract of indemnity
- (4) Void contract.

- (ii) A promises to paint a picture for B by a certain day, at a certain price. A dies before the day. The contract:

- (1) can be enforced by A's representative
- (2) can be enforced by B
- (3) can be enforced either by A's representative or by B
- (4) cannot be enforced either by A's representative or by B

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

(iii) A negotiable instrument drawn in favour of a minor is :

- (1) void
- (2) void but not enforceable
- (3) valid
- (4) None of the above.

Answer

- (a) Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in defining 'consideration' in Section 2(d) ".... the promisee or any other person.....", it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority is the decision of the Madras High Court in Chinnaya Vs. Ramayya (1882) 4 Mad 137., wherein it was held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Singh has entered into a contract with A, but Mr. B has not given any consideration to A but the consideration did flow from Mr. Singh to A and such consideration from third party is sufficient to enforce the promise of A, the daughter, to pay an annuity to B. Further the deed of gift and the promise made by A to B to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it.

- (b) (i) Incorrect: In accordance with the provisions of the Indian Contract Act, 1872 as contained in Section 176, if the pawnor makes any default in payment of the debt or performance of duty as agreed, the pawnee has a right to sell the thing pledged on giving the pawnor reasonable notice of the sale. A sale made by the pawnee without giving a reasonable notice will be void. A reasonable prior notice will confirm a good title on the buyer of such pledged goods.
- (ii) Incorrect: Agency coupled with interest is an agency where the agent has interest in the subject matter of agency. Such agency can not be terminated except where there is an express provision to cause prejudice to the interest of the agent. Also, an agency coupled with interest does not come to an end on the death, insanity or the insolvency of the principal.

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

- (c) (i) Answer: No. (3): 'Contract of Indemnity' : A Contract of indemnity is a Contract by which one party promises to save or indemnify the other from loss caused to him by the promisor himself or by the conduct of any other person (Section 124, Indian Contract Act, 1872).
- (ii) Answer: No. (4): 'Cannot be enforced either by A's representative or by B' : To paint a picture is a personal contract and may be performed only personally. A personal contract can not be performed by anybody other than the promisee. Hence, if A dies, the contract can not be enforced [illustration (b) given in Section 37 of the Indian Contract Act, 1872].
- (iii) Answer: No. 3: 'Valid' : 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 bill of exchange or cheque. A minor may draw, indorse and deliver such instruments so as to bind all parties except himself. Therefore the negotiable instrument drawn in favour of a minor is valid. Section 26 of the Negotiable Instruments Act states that a minor cannot make himself liable as drawer, acceptor or endorser but where the instrument is drawn or endorsed by him, the holder can receive payment from any other party thereto.

Question 2

- (a) Noble Meters Limited was incorporated with the equity share capital of Rs. 50 lakh. The company received the certificate of incorporation on 20th May, 2009. The company issued the prospectus inviting the public to subscribe for its equity shares. Meanwhile, the company intended to commence its business. Whether Noble Meters Ltd. is entitled to commence its business without obtaining the certificate to commencement of Business?

Advise the company stating the conditions to be fulfilled for obtaining the certificate to commencement of Business from the Registrar of Companies under Companies Act, 1956. (5 Marks)

- (b) State whether the following statements are true or false and give reasons. (2 × 1 = 2 Marks)
- (i) The Articles of Association of a Company can be altered by passing an ordinary resolution in the meeting of the shareholders.
- (ii) A transferee becomes a member of the company when the instrument of transfer is submitted with the company.
- (c) Pick out the correct answer from the following and give reasons: (3 × 1 = 3 Marks)
- (i) Contracts which are entered into, by agents or trustees on behalf of a prospective company before it has come into existence are called:
- (1) Provisional contracts

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

- (2) Pre-incorporation contracts
 - (3) Both provisional and pre-incorporation contracts
 - (4) None of the above.
- (ii) A prospectus issued by the financial institutions or bank for one or more issues of the securities or class of securities specified in the prospectus is called:
- (1) Deemed prospectus
 - (2) Red-herring prospectus
 - (3) Abridged prospectus
 - (4) Shelf prospectus.
- (iii) The gap between two Annual General Meetings must not be more than
- (1) 12 months
 - (2) 15 months
 - (3) 18 months
 - (4) 15 months as may be extended by Registrar of Companies to 18 months.

Answer

- (a) A private company or a company having no share capital may commence business immediately after its incorporation. The public company having share capital must obtain certificate to commence business from the Registrar of Companies before it commences its business or exercises its borrowing powers. Therefore in the given problem Noble Meters Limited is not entitled to commence business without obtaining the certificate to commence the business from the Registrar of Companies.

In order to obtain this certificate the company has to fulfill the following conditions in compliance with the provisions of Section 149 of the Companies Act, 1956:

- (a) the minimum number of shares which has to be paid for in cash has been subscribed and allotted;
- (b) every director of the company has paid to the company, on each of the shares taken or contracted to be taken by him and for which he is liable to pay in cash, a proportion equal to the proportion payable on application and allotment on the shares offered for public subscription;
- (c) no money is or may become liable to be paid to applicants of any shares or debentures offered for public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any recognised Stock Exchange; and

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

- (d) A statutory declaration by the secretary or one of the directors that the aforesaid requirements have been complied with, is filed with the Registrar of Companies.

If a public company commences business or borrows money without obtaining the certificate, every officer in default shall be punishable with a fine of Rs. 5,000/-.

- (b) (i) Incorrect: As per the provisions of Section 31 of the Companies Act, 1956, a company may, by special resolution, alter its articles. Therefore ordinary resolution will not suffice in this case. The power of alteration of the company is absolute subject to two restrictions viz.

(a) The alteration must not be in contravention of the Companies Act, 1956.

(b) The power of alteration is subjects to the conditions contained in the memorandum of association.

- (ii) Incorrect: A transferee does not become a member of the company only by submitting the instrument of transfer with the company. The company has to approve and register the transfer of shares in the name of the transferee before it becomes effective. Section 206A of the Companies Act, 1956 lays down that where any instrument of transfer of shares has been delivered to the company for registration and the transfer of shares has not been registered by the company, the right to dividend, rights shares and bonus shares shall be kept in abeyance.

- (c) (i) Answer: No.2: Pre-incorporation Contracts. Contracts made by promoters who act as agents or trustees of the company before its incorporation, are called pre-incorporation contracts. Such contracts can not bind the company because the company has no legal status prior to its incorporation. [In Re English and Colonial Produce Co. (1906) 2 Ch. 435].

- (ii) Answer: No.4: Shelf prospectus. According to Section 60A any public financial institution, public sector bank or scheduled bank, whose main object is financing, shall file a shelf prospectus. Such prospectus issued by financial institutions or bank is called shelf prospectus.

- (iii) Answer: No.4:15 months as may be extended by Registrar of Companies to 18 months.

According to Section 166 of the Companies Act, 1956 and its proviso, the gap between two Annual General Meetings must not be more than 15 months but the Registrar of Companies may extend it for further three months in special cases.

Question 3

Standard Airways Limited was incorporated at Chennai in the year 2005, employing 125 workmen. Due to strike of workers, mismanagement in the company and accidental loss of the assets the company suffered heavy losses continuously since its incorporation, resulting in a large part of the capital and assets getting wiped out. Consequently, the company moved an

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

application to the Government of Tamilnadu requesting to exempt the company fully from the application of the provisions of the Payment of Bonus Act, 1965.

Decide, whether the Government of Tamilnadu may grant exemption to the Company. State the provisions of law in this regard as stated under the Payment of Bonus Act, 1965. (6 Marks)

Answer

An employer who is unable to comply with the provisions of the Payment of Bonus Act, due to paucity of funds or for other reasons, can make an application to the appropriate Government for exemption fully or partly from the provisions of the Payment of Bonus Act, 1965 under Section 36. If the appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishments, is of the opinion that it will not be in public interest to apply all or any of the provisions of the Act thereto, it may, by notification in official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of the Act. Such relevant considerations for granting exemptions are industrial peace, law and order situation, effect on production of consumer goods, difficulties of management, etc.

Decision under Section 36 must be an objective one. If the employer establishes that losses were being incurred continuously and entire capital and assets have been wiped out, the State Government can not refuse to grant exemption under Section 36 [Nav Bharat Potteries vs. State (1987) ILLN117 (Bombay)]. Employees should be heard before granting such exemption.

The facts of the problem meet the criteria spelt out in Section 36 and hence, Standard Airways may be allowed exemption.

Question 4

'N' is the holder of a bill of exchange made payable to the order of 'P'. The bill of exchange contains the following endorsements in blank:

First endorsement	'P'
Second endorsement	'Q'
Third endorsement	'R'
Fourth endorsement	'S'

'N' strikes out, without S's consent, the endorsements by 'Q' and 'R'. Decide with reasons whether 'N' is entitled to recover anything from 'S' under the provisions of Negotiable Instruments Act, 1881. (5 Marks)

Answer

According to Section 40 of the Negotiable Instruments Act, 1881, where the holder of a Negotiable Instrument without the consent of the endorser destroys or impairs the endorser's remedy against a prior party the endorser is discharged from liability to the holder to the same

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

extent as if the instrument had been paid at maturity. Therefore if the endorsements of 'R' and 'Q' are struck out without the consent of 'S', 'N' will not be entitled to recover anything from 'S', the reason being that as between 'R' and 'S' 'R' is the principal debtor and 'S' is the surety. If 'R' is released by the holder under Section 39 of the Act, 'S' being surety will be discharged. In this given problem, the rule may be stated thus that when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Question 5

Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity.

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972. (5 Marks)

Answer

- (i) 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 under Section 4(1) of the Payment of Gratuity Act, 1972. Further, as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable under intimation to the controlling officer [Section 7(2)].

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

- (ii) If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. X is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. X. On the refusal by the company, Mr. X can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

Question 6

An Executive Committee is to be constituted to assist the Central Board under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. State the composition of such Executive Committee. (5 Marks)

Answer

The Central Government may by notification in the official gazette, constitute with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions under Section 5AA of the Employees' Provident Funds and Miscellaneous Provision Act, 1952.

The Executive committee shall consist of the following persons as members, namely:

- (a) A Chairman appointed by Central Government from amongst the members of the Central Board.
- (b) Two members appointed by the Central Government from amongst the persons referred to in clause (b) of Sub-section 1 of Section 5 A. (These two will actually be Central Government officials as per the aforementioned clause).
- (c) Three persons appointed by the Central Government from amongst the persons referred to in clause (c) of Subsection (1) of Section 5A. (These three will actually be representatives of the State Governments as per the aforementioned clause).
- (d) Three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of subsection (1) of Section 5A.
- (e) Three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of subsection (1) of Section 5A.
- (f) The Central Provident Fund Commissioner, ex officio.

Question 7

The United Traders Association was constituted by two joint Hindu Families consisting of 21 major and 5 minor members. The Association was carrying on the business of trading as retailers with the object for acquisition of gains. The Association was not registered as a company under the Companies Act, 1956 or any other law.

State whether United Traders Association is having any legal status? Will there be any change in the status of this Association if the members of the United Traders Association subsequently were reduced to 15? (5 Marks)

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

Answer

Section 11 of the Companies Act, 1956 provides that no company, association or partnership consisting of more than 10 persons for the purpose of carrying on the business of banking and more than 20 persons for the purpose of carrying on any other business can be formed unless it is registered under the Companies Act or is formed in pursuance of some other Indian Law. Thus if such an association violates the provisions of Section 11 it is an “Illegal Association” although none of the objects for which it may have been formed is illegal.

This Section does not apply to a joint Hindu family but where the business is being carried on by two or more joint Hindu families the provisions of Section 11 shall be applicable. For computing the number of members for this purpose, minor members of such families shall be excluded.

Hence, the United Traders Association constituted by two joint Hindu Families is an Illegal Association according to the provisions of Section 11 as stated above.

Further such Association of more than 20 persons, if unregistered is invalid at its inception and cannot be validated by subsequent reduction in the number of members to below 20 (Madan Lal vs. Janki Prasad 4 All 319).

Question 8

Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company in his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares. (5 Marks)

Answer

According to Section 84(1) of the Companies Act, 1956, a share certificate once issued amounts to a declaration by the company to all the world that the person in whose name the certificate is made out and to whom it is given is a share holder in the company; in other words the company is estopped from denying his title to the shares. However, a forged transfer is a nullity. It does not give the transferee (Y) any title to the shares. If the company acts on a forged transfer and removes the name of the real owner (X) from the Register of Members, then the company is bound to restore the name of X as the holder of the shares and to pay him any dividends which he ought to have received (Barton v. North Staffordshire Railway Co. 38 Ch D 456).

In the above case, 'Z' being the bona fide purchaser must be compensated by the company. 'Z' shall have therefore a right to claim the market price of those shares at that time. However 'Z' cannot insist on being placed on the register of members to which 'X' alone is eligible as he cannot be said to have consented to the transfer. 'Y' shall of course be liable to the company to indemnify the loss on account of payment to 'Z'. A similar decision was given in Dixon v. Kennaway.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

Question 9

Modern Furnitures Limited was willing to purchase teakwood estate in Chhattisgarh State. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh State. The report was found inaccurate. Mr. 'X' purchased the shares of Modern Furnitures Limited on the basis of the above statement in the prospectus. Will Mr. 'X' have any remedy against the company? When will an expert not be liable? State the provisions of the Companies Act, 1956 in this respect. (5 Mark)

Answer

In the event of any mis-statement in a prospectus, the allottees have certain remedies against the company as well as against those who were responsible for the issue of such a prospectus. Thus, in the present case the allottee Mr. X shall have the right to claim compensation from Modern Furnitures Ltd., for any loss that he might have sustained in terms of the value of shares. But his claim against those responsible for issue of prospectus shall not succeed since they made the statement on the basis of the report of an expert whom they believed to be competent. Section 62(2) of the Companies Act, 1956 provides that in such circumstances, one shall not incur liability. However, the expert can be proceeded against, for the inaccurate report which he had made.

An expert shall not be liable if he proves:

- (i) that having given his consent, he withdrew it in writing before delivery of the copy of prospectus for registration or
- (ii) that after delivery of prospectus for registration and before allotment he became aware of the untrue statement and withdrew his consent in writing and gave reasonable public notice of the withdrawal and his reasons therefor; or
- (iii) that he was competent to make the statement and believed on reasonable grounds that it was true.

Question 10

M. H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M. H. Company Limited complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M. H. Company Limited regarding issue of sweat equity shares valid according to the provisions of the Companies Act, 1956? Explain in detail. (5 Marks)

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

Answer

Section 173 of the Companies Act, 1956 requires a company to annex an explanatory statement to every notice for a meeting of the company at which some special business is to be transacted. This explanatory statement is to bring to the notice of members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting other than (i) consideration and approval of the annual accounts of the company (ii) declaration of dividend (iii) appointment of directors in place of those retiring and (iv) appointment of auditors including the fixing of their remuneration is regarded as special business. Therefore, the complaint of Mr. A, the shareholder is valid, since the details on the item regarding issue of sweat equity shares to be considered is lacking. The information about the issue of sweat equity shares is a material fact. The notice given by M. H. Ltd. of the General Meeting of the shareholders is not a valid notice under Section 173 of the Companies Act, 1956.

PART – II

Question 11

- (a) Explain the importance of ethical behaviour at the workplace. (5 Marks)
- (b) Explain the meaning of the "Iron Law of Responsibility". State the resulting benefits which may be acquired by achieving the long-term objectives through the business activities. (5 Marks)

Answer

- (a) An organisation, whether a business or government agency is first and foremost a human society. If an employer does not take steps to create a work environment where the employees have a clear, common understanding of what is right and wrong and feel free to discuss and ask questions about ethical issues and report violations, significant problems could arise, including:
- increased risk of employees making unethical decisions;
 - increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum;
 - inability to recruit and retain top executives;
 - diminished reputation in the industry and the community; and
 - significant legal exposure and loss of competitive advantage in the market place.
- (b) The Iron Law of Responsibility: The institution of business exists only because it performs invaluable services for society. Society gives business its license to exist and this can be amended or revoked at any time if it fails to live up to society's expectations. Therefore, if a business intends to retain its existing social role and power, it must respond to society's needs constructively. This is known as the "Iron Law of

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

Responsibility". In the long-term those who do not use power in a manner that society considers responsible, will tend to lose it.

Businesses have been delegated economic power and have access to productive resources of a community. They are obliged to use these resources for the common good of society so that more wealth for its betterment may be generated. Technical and creative resources are also helpful to it. A business organisation sensitive to community needs would in its own self interest like to have a better community within which the business may be conducted. This way, the resulting benefits would be:

- (a) Decrease in crime
- (b) Easier labour recruitment
- (c) Reduced employee absenteeism.
- (d) Easier access to international capital, better conditions for loans on international money markets.
- (e) Dependable and preferred as supplier, exporter, importer and retailer of responsibly manufactured components and products.

This way a better society would produce a better environment in which the business may gain long term profit maximisation.

Question 12

Explain the pragmatic reasons for maintaining ethical behaviour in marketing through marketing executives. (5 Marks)

Answer

Pragmatic reasons for maintaining ethical behaviour: Marketing executives should practice ethical behaviour because it is morally correct. To maintain ethical behaviour in marketing, the following positive reasons may be useful to the marketing executives:

1. To reverse declining public confidence in marketing: Sometime misleading package labels, false claim in advertisement, phony list prices, infringement of trademarks pervert the market trends and such behaviour damages the marketers' reputation. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well being of consumers, since they are the lifeblood of a business.
2. To avoid increase in government regulation: Business apathy, resistance, or token responses to unethical behaviour increase the probability of more governmental regulation. The governmental limitations may also result from management's failure to live up to its ethical responsibilities. Moreover, once the government control is introduced, it is rarely removed.

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

3. To retain power granted by society: Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is a responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
4. To protect the image of the organisation: Buyers often form an impression of an entire organisation based on their contact with one person. That person represents the marketing function. Some times a single sales clerk may pervert the market opinion in relation to that company which he represents.

Therefore, the ethical behaviour in marketing may be strengthened only through the behaviour of the marketing executives.

Question 13

State with reasons whether the following statements are correct or incorrect.

- (a) Fairness and honesty are the pillars of success in business. (2 ½ Marks)
- (b) There is no difference between ethics and morals. (2 ½ Marks)

Answer

- (a) Correct: The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision makers. At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination.

One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. For example, Mitsubishi Motors, a Japanese automaker, faced criminal charges and negative publicity after executives admitted that the company had systematically covered up customer complaints about tens of thousands of defective automobiles over a 20 year period in order to avoid expensive and embarrassing product recalls.

Another aspect of fairness relates to competition. Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition.

Rivals of Microsoft, for example, accused the software giant of using unfair and monopolistic practices to maintain market dominance with its Internet Explorer browser.

These aforesaid examples show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. Therefore we may say that fairness and honesty are the pillars of success in the business.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

- (b) Incorrect: There is a fine distinction between ethics and morals which may be enumerated as follows:
- (1) The word 'Moral' is defined as relating to principles of right and wrong. The root word for moral is Latin word 'mos' meaning custom while the root word for ethics is the Greek word 'ethos' meaning character. Custom and character however provide two different standards for defining what is wrong and what is right. Character is a personal attribute while custom is defined by a group over time and people have character while societies have custom.
 - (2) Morals are accepted from an authority i.e. culture, religion etc. while ethics are accepted because they follow from personally accepted principles.
 - (3) Morals work on a smaller scale than ethics, more reliably but by addressing human needs for belonging and emulation, while ethics has much wider scope.

PART – III

Question 14

- (a) What are the merits and demerits of grape-vine form of Communication. (5 Marks)
- (b) TKR Limited wants to hold its statutory meeting on 20th December, 2009 to discuss the matters relating to formation of the company and incidental matters thereto.

Draft a notice along with notes in brief for calling statutory meeting of the company. (5 Marks)

Answer

- (a) Merits of the Grapevine phenomenon:
- (a) Speedy transmission: It transmits information very speedily. A rumour spreads like wild fire.
 - (b) Feedback value: The managers or top bosses of an organisation get the feedback regarding their policies, decisions memos etc. Feedback reaches then much faster.
 - (c) Support to other channels: It is a supplementary or parallel channel of communication
 - (d) Psychological satisfaction: It gives immense psychological satisfaction to the workers and strengthens their solidarity,
 - (e) It is less credible: It cannot always be taken seriously.
 - (f) It does not always carry the complete information
 - (g) It often distorts the picture or often misinforms.

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

(b) Notice of Statutory Meeting

TKR Limited

Regd. Office

Notice is hereby given that the statutory meeting of the company, will be held at the registered office of the company at -----on -----20-----at A.M / P.M for considering the statutory report and for conducting any other business which ought to be considered at that meeting.

Please find enclosed a copy of the statutory report

By order of the Board

For TKR Company Ltd.

Date:

Sd/

Place:

Company Secretary

Note:

Note:

A member entitled to attend and vote at the meeting is entitled one or more proxies to attend and vote instead of himself and a proxy need not be a member. The instrument, appointing a proxy should be deposited at the registered office of the company not less than 48 hours of the commencement of the meeting.

Question 15

Fifth Annual General Meeting of the shareholders of Devrishi Limited was held on 20th August, 2009 at its registered office at Mumbai. 55 shareholders attended the meeting in person and 6 shareholders in proxy. Several ordinary business regarding adoption of audited Balance Sheet, declaration of dividend, appointment and re-appointment of directors and auditors were transacted at the meeting.

Draft the minutes of the Fifth Annual General Meeting of the shareholders of Devrishi Limited.

(5 Marks)

Answer

Devrishi Ltd.

Minutes of 5th Annual General Meeting

Fifth annual general meeting held at

25th Devrishi Apartment Andheri East Mumbai, 20th September 2008. At 11 AM.

Present:

1. Shri Devrishi M.D in the chair
2. Shri X Director

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

3. Shri Y Director
4. Shri Z Director
5. Shri T Director
6. Shri R Director
7. Shri Alok representative of Alok & Co. Chartered Accountant
8. Shri S. Secretary of the Company

55 Shareholders attended the meeting in person and 6 shareholders in proxy.

1. Notice: The notice of convening the meeting was read by the Secretary of the company.
2. Director's Report and Accounts: With the consent of the members present the Director's Report and Accounts having already been circulated to the members were taken as read.
3. Auditor's Report: The Auditor's Report was read.
4. Adoption of Director's Report, etc: The Chairman the invited queries from the members present on Director's Report, Accounts and audit and Auditor's Report but there was no query. Thereafter the chairman proposed the following resolution which was recommended by some of the members namely.

"Resolved that the Director's Report audited Balance Sheet as on 31th March, 2008 and profit and loss account for the year ended 31st March 2008 and auditor's report thereon be and the same are hereby received considered and adopted."

Carried unanimously.

5. Dividend: Proposed by Shri Devrishi M.D seconded by Shri X Y Directors

"Resolved that the dividend as recommended by the Board of Directors for the year ended 31st March, 2008 at the rate of Rs.5/- per share on the equity share capital of the company subject to deduction of tax at source be and is hereby declared for payment for those shareholders whose name appeared on the Register of Members as on2008.

Carried unanimously.

6. Directors:

Proposed by.....

Seconded by.....

"Resolved that Shri Y who retires by rotation and is eligible for reappointment to and is hereby reappointed a director of the company."

Carried unanimously

PAPER – 2 : BUSINESS LAW, ETHICS & COMMUNICATION

7. Auditors:

Proposed byX Director of the Company.

Seconded by.....A,B shareholders of the Company

"Resolved that M/s Alok & Company Chartered Accountants be and are hereby appointed Auditors of the company to hold office from the conclusion of this meeting until the conclusion of the next Annual General Meeting at a remuneration of Rs.50,000/-"

Carried unanimously

The meeting ended with the vote of thanks to the chair.

Dated 20th sept., 200

Sd.

Chairman

Question 16

A partnership firm was constituted by A, B and C. A, the partner of the firm, expressed his desire to retire from the partnership firm by Mutual consent.

Draft a "Partnership Retirement Deed".

(5 Marks)

Answer

Partnership Retirement Deed.

1. This retirement deed partnership executed on the..... between Mr. X aged about 45 years S/o....Y residing at Kanpur here in after called the first party.
2. Mr. A aged about 40 years S/o B residing at Kanpur herein after called the second party, and
3. Mr. R aged about 51 year S/o S residing at Kanpur herein after called the third party.

Witnesseth as follows,

Whereas the aforesaid parties were carrying on business in partnership under an instrument of partnership the last of which is datedand where as the first party having expressed a desire to retire from the partnership by mutual consent the terms of retirement are hereby agreed to as follows:

1. Mr. X, will retire from the partnership effective from close of business on.....
2. The firm is free to continue the business with all its assets and liabilities and use the same firm name with the remaining partners.
3. The accounts of the retiring partner is settled in accordance with the looks of accounts or in full and final settlement of his account..... party has been given the following assets i.e. Rs....

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2009

4. The retiring partner X is hereby authorises the continuing partners A and R to collect all debts of the firm or realize or sell any asset of the firm including any immovable property.
5. In consideration of moneys received the X party hereby releases all his rights little and interest in the balance of assets of the firm including the goodwill.
6. The continuing partners A and R release X party of all debts and obligations including taxes due from the firm as on the date of this deed to third parties.
7. The parties hereby agree to execute such other document S that may be necessary to give effect to this partnership retirement agreement.

Witness

1..... Signature of the first party

2.....Signature of the second party