

1. (a) State, in brief, the grounds on the basis of which a contract is discharged under the provisions of the Indian Contract Act, 1872. 5

Answer: **Grounds for Discharge of Contract:** A contract may be discharged in following eight ways:

- (i) Discharge by performance, may be actual or attempted.
- (ii) Discharge by lapse of time.
- (iii) Discharge by operation of law. Example: death, insolvency, unauthorized material alteration or merger of rights.
- (iv) Discharge by impossibility of performance. (Sec. 56)
- (v) Discharge by mutual agreement (Sec. 62): by Novation, Rescission or Alteration
- (vi) Discharge by waiver or remission of performance of promise. (Sec. 63)
- (vii) Discharge by breach of contract. (Sec. 64)
- (viii) Discharge due to neglect or refusal of promisee. (Sec. 67).

1 (b) What is the law and procedure for issuing a duplicate share certificate under the provisions of the Companies Act, 1956 in case the original share certificate is lost or destroyed? 5

Answer: **Issue of Duplicate Share Certificate:**

(a) Section 84(2) provides that a company may renew or issue a duplicate certificate if such certificate:

- is proved to have been lost or destroyed, or
- Having been defaced, mutilated or torn, after the certificate is surrendered to the company.

(b) A Company can issue duplicate share certificate only to a registered shareholder.

Section 84 (4) makes it obligatory for companies to follow the rules prescribed by the Government in regard to the following matters:

Procedure for issue of Duplicate Share Certificate:

1. The duplicate share certificate must not be issued in lieu of the of the lost or destroyed share certificate, without prior consent of the Board having been obtained or without payment having been made of prescribed fees and on such reasonable terms as regards evidence, as the Board thinks fit.
2. Where a certificate has been issued in replacement of an old certificate, such a fact must be entered on the face of the certificates and against the counterfoil.
3. When a certificate is issued in lieu of one lost or destroyed, it must contain the statement "Duplicate issued in lieu of certificate No.....". In addition, the word 'duplicate' shall be stamped or punched in bold letters across the face of the share certificate.
4. Share certificate must be issued under the common seal of the company which must be affixed in the presence of directors or their attorneys and the secretary or any other person appointed for the purpose by the Board. Also, all these persons must sign the share certificate.
5. Entries must be made in respect of certificates issue in a register of renewed and duplicate certificates indicating against the names of members, the number and date of issue of certificate, in lieu whereof the new certificate has been issued.

- 1 (c) State with reasons whether the following statements are correct or incorrect : (2 x 2 $\frac{1}{2}$ = 5)
- (i) Business ethics helps to promote public reputation.
- (ii) A nation should satisfy its social and economic requirements without damaging the interest of future generations.

Answer:

- (i) Correct, 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.
- (ii) Correct, an element of resource regeneration and positive approach to environment have to be incorporated in developmental programmes, because increased development and higher GNP are related to environmental damage and resource depletion.

- 1 (d) What do you understand by “ethical communication”? What are its elements? 5

Answer: Ethical Communication:

Ethics are those most principles which guide the conduct of individuals and in the organisation's context, ethical behavior implies such decisions which are taken after giving due thought to their impact on the stakeholder and society as a whole.

Ethical communication means communicating with a sense of responsibility towards various stakeholders. Ethical communication is fundamental to responsible thinking, decision-making, and the development of relationships.

Ethical communication requires one to be honest and truthful with employees, clients and others.

Elements of Ethical Communication: An ethical communication must:

- (i) Include all relevant information.
- (ii) Be true in every sense and not deceptive in any way.
- (iii) Accurate and sincere.
- (iv) Not hide any information which can be strategic to the decision
- (v) Not state opinions as facts.
- (vi) Portray graphic data, if any, in a fair manner.

2. (a) (i) What is the amount of minimum bonus to be paid to the employees under the provisions of the Payment of Bonus Act, 1956? 4
- (ii) What is the law relating to recovery of amount of gratuity under the payment of Gratuity Act, 1972 in case the said amount is not paid by the employer? 4

Answer:

(i) **Minimum Bonus:**

- (a) As per Sec. 10 of payment of Bonus Act, 1956, every employer is bound to pay to every eligible employee in respect of each Accounting year minimum bonus as follows:
- For employee aged ≥ 15 years: Higher of - 8.33% of salary or wage or Rs. 100
 - For employee aged < 15 years: Higher of - 8.33% of salary or wage or Rs. 60
- (b) The minimum Bonus is payable irrespective, whether or not the employer has allocable surplus.
- (c) As per Sec. 13, where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs. 100 or Rs. 60, as the case may be, if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year shall be proportionately reduced.

(ii) **Law relating to recovery of Gratuity:**

Sec. 8 of Payment of Gratuity Act. 1972 provides the provisions relating to recovery of gratuity. Accordingly:

1. If the employer fails to pay the gratuity within the prescribed time (i.e., within 30 days of termination of employment), the controlling authority is empowered to issue a certificate to the collector to recover the amount of gratuity.
2. Before issue of such certificate, the controlling authority shall give the employer a reasonable opportunity of being heard.
3. The employer shall also be liable to pay compound interest at such rate as may be notified by Central Government from time to time.
4. The interest shall be paid starting from the date of expiry of prescribed period for payment of gratuity and ending with the actual date of payment of gratuity.
5. However, the interest payable shall not exceed the amount of gratuity payable.
6. The gratuity shall be recovered by the collector in the same manner as if it were arrears of land revenue. The gratuity so recovered shall be paid to the person entitled to payment of gratuity.

2 (b) What are the differences between “Morals” and “Ethics”?

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Answer: **Morals vs. Ethics**

<i>Ethics</i>	<i>Morals</i>
1. 'Ethics' is derived from the Greek word 'Ethos' which means character.	1. 'Moral' is derived from another Greek word 'Mos' which means customs.
2. Character is a personal attribute.	2. Custom is set by a group over a period of time. The group may have cultural or religious authority.
3. 'Ethics' is the response of an individual to a specific situation, <i>for example</i> , in a given situation, whether it will be ethical to state the truth?	3. 'Morals' are expressed as general principles and statements, <i>for example</i> , "one should always speak the truth".
4. 'Ethics' has a much wider scope. Ethics examine the moral standards of a group or society to determine their relevance in specific situations and specific issues.	4. 'Morals' address human needs for belonging and emulation. Thus, they work on a smaller scale than Ethics.

2 (c) Explain are the significance of “active listening” in inter- personal communication skills.

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Answer: **Significance of Active Listening in Inter Personal communication Skills:**

Significance of Active listening in inter-personal communication lies in the following points:

- (a) It helps the organisation in carrying out its mission.
- (b) It helps individuals to advance in their careers.
- (c) It provides information that helps them to learn about important happenings in the organisation.
- (d) It enables them to do their own job well.
- (e) It also helps in building strong personal relationships.

3

3. (a) What do you understand by “coercion” and “undue influence” under the provisions of the Indian Contract Act, 1872? What are the differences between them? 8Answer: **Coercion and Undue Influence:**

Coercion – Sec. 15: Committing or threatening to commit any act forbidden by the Indian Penal Code, 1860 or the unlawful detaining, or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement.

Undue Influence – Sec. 16: A Contract is said to be induced by “undue influence” where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage of the other.

Coercion vs Undue Influence:

<u>Basis of distinction</u>	<u>Coercion</u>	<u>Undue Influence</u>
Nature of Action	Coercion involves physical force and some time only threat	Undue influence involves only moral pressure
Involvement of criminal action	Coercion involves committing or threatening to commit any act prohibited forbidden by law or detain or threatening to detain a person or property	No such illegal act involved in undue influence.
Relationship between parties	In coercion there need not be any relationship between parties	There must exist some relationship between parties which is to exercise undue influence over the other.
Exercise by whom	Coercion need not proceed from the promisor. It also need not be directed against the promisee.	Undue influence is always exercised by one, on the other, both of whom are parties to a contract.
Enforceability	Where there is coercion, the contract is voidable.	Where there is undue influence the contract is voidable or court may set it aside or enforce it in a modified form.
Position of benefits	Where the contract is rescinded by the aggrieved party any benefit received	The court has discretion to pass orders for return of any such benefit

3 (b) State the “Common Corporate Social Responsibility” (CSR) policies for business organizations. 4Answer: **CSR Policies**

Corporate Social Responsibility (CSR) refers to operating a business in a manner that accounts for the social and environmental impact created by the business. CSR means a commitment to developing policies that integrate responsible practices into daily business operations, and to reporting on progress made toward implementing these practices.

Common CSR policies include:

- Adoption of internal controls reform in the wake of Enron and other accounting scandals;
- Commitment to diversity in hiring employees and barring discrimination;
- Management teams that view employees as assets rather than costs;
- High performance workplaces that integrate the views of line employees into decision making processes;
- Adoption of operating policies that exceed compliance with social and environmental laws;
- Advanced resource productivity, focused on the use of natural resources in a more productive, efficient and profitable fashion (Such as recycled content and product recycling); and
- Taking responsibility for conditions under which goods are produced directly or by contract employees domestically or abroad.

3 (c) Point out the factors which lead to grapevine communication.**4**Answer: **Factors leading to Grapevine communication:**

The grapevine becomes active when the following factors are present :

- (a) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.
- (b) Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.
- (c) Formation of a favored group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like minded companions, at whatever level they may be.

4. (a) What is the importance of registered office of a company? State the procedure for shifting of registered office of the company from one State to another State under the provisions of the Companies Act, 1956.**8**

Answer: **Importance of Registered Office of Company:** Registered Office of a company has its importance due to the following:

- (i) It ascertains the domicile and the nationality of the company.
- (ii) It is a place where various registers relating to the company are kept and to which all the notices must be sent.

Procedure for shifting of registered office from one State to another State

- (i) Hold a Board meeting and fix time, date and venue for general meeting.
- (ii) Hold the General Meeting pass the special resolution for altering the memorandum of association so as to change the situation of its registered office.
- (iii) File Form No. 23 with certified copy of special resolution with the ROC.

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- (iv) To give an advertisement in two newspapers one in English language and the other in local language indicating the change and any member/creditor having objection can write to the Company Law Board
- (v) After expiry of thirty days of such advertisement, file a Petition before the Central Government.
- (vi) A copy of the petition shall also be served on concerned ROC having jurisdiction over the company.
- (vii) On receipt of order of the C.G. confirming the alteration, company should file Form No. 21 along with a certified copy of the order with the concerned ROC and Registrar shall register the same and certify the registration under his hand within one month of filing of copy of the order.
- (viii) Within 30 days from the date when the change becomes effective, the company shall file with the ROC notice of change in Form No. 18.

4 (b) Explain the concept of "Sexual harassment" in relation to work place.

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Answer: **Sexual Harassment:**

- Situations in which an employee is coerced into giving into another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise, or even the job.
- This kind of degrading coercion exerted on employees who are vulnerable and defenseless inflicts great psychological harm on the employee, violates the employee's most basic right to freedom and dignity and is an unjust misuse of the unequal power that an employer can exercise over the employee.
- Sexual harassment is prohibited, and an employer is held responsible for all sexual harassment engaged in by employees. "Regardless of whether the employer knew or should have known" the harassment was occurring and regardless of whether it was "forbidden by the employer."

4 (c) What are the features of 'groups' in the organization?

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Answer: **Features of Groups:** A group consists of two or more than two persons who interact with each other consciously for the achievement of some common objectives. It is not a random collection of independent individuals - it is composed of individuals who interact with each other, occupy certain roles with respect to one another, and cooperate to accomplish a definite goal. On account of continuous interactions between members, a Group develops its own style or 'Personality'. The features of Group Personality include:

1. **Spirit of Conformity:** Individual members soon realize that in order to gain recognition, admiration and respect from others, they have to achieve a spirit of Conformity, i.e. abiding by Group Norms.
2. **Respects for Group Values:** Every Group maintains certain values and ideals, which makes it different from others.
3. **Resistance to Change:** Generally, a Group does not take kindly / respond to social changes. However, the Group may bring about its own changes, whether by the influence of its leader or by consensus among Group members.
4. **Group Prejudice:** Groups have their own clearly evident prejudices in relation to race, religion, nationality, etc.
5. **Collective Power:** Group are always more powerful than individuals.

5. (a) State, in brief, the grounds on the basis of which a banker can dishonor a cheque under the provisions of the Negotiable Instruments Act, 1881 **8**Answer: **Grounds in which banker can dishonor a cheque:**

1. In reference to payment of a post-dated cheque presented for payment before its ostensible date;
2. The banker is bound to pay a cheque only when it has 'sufficient funds of the drawer in his hands' otherwise not.
3. Customer's funds are not 'properly applicable to the payment of such cheques'.
4. Cheque which is irregular, or ambiguous, or drawn in a form of doubtful legality;
5. Cheque drawn upon another branch of the same bank.
6. If banker receives notice of customer's insolvency or lunacy.
7. If the customer countermands payment of cheque;
8. If banker's receives notice of death of the customer;
9. If garnishee or other legal order from a court attaching or otherwise dealing with money in the hands of the banker, is served on the banker.
10. If it contains material alterations, irregular signature or irregular endorsement.
11. If it is stale, that is if it has not been presented within reasonable period.

5 (b) Distinguish between "pre- incorporation contracts" and "provisional contracts" under the companies Act, 1956. **4**Answer: **Pre-incorporation Contracts vs. Provisional Contracts:**

1. Contracts which are made before the company comes into existence are called pre-incorporation contracts, while contracts which are entered into by a public company after obtaining the certificate of incorporation but before getting the certificate to commence business are known as provisional contracts.
2. The company is not bound by the pre-incorporation contracts unless the company adopts the same after incorporation. But provisional contracts shall be binding on the company from the date on which the company is entitled to commence business.
3. Pre-incorporation contracts can be enforced against the company if it is warranted by the terms of incorporation of the company and for the purposes of the company, while the provisional contracts cannot be enforced should the company go into liquidation without commencing business.

5 (c) Draft a business letter, presuming your facts that you have received the goods from the company and you are sending payments. **4**

XYZ Ltd.

Address: XXXXXXXXXXXXXXXXXXXX

Ph. XXXXXXXXXXXXXXXXXXXX

No. 1234/2011

Date: 04/11/2011

ABC Ltd.

Karol bagh, New Delhi.

For the attention of Mr. Mehta

Dear Mr. Mehta

Sub.: Receipt of Goods and Payment for the same.

We hereby acknowledges the receipt and delivery of the goods as depicted on the invoice no. 234/2011 and furthermore agree that the specified goods have been inspected and declared as in good condition with no defectives.

Enclosed here is cheque No. 123446 for Rs. 5,00,000, Drawn on ICICI Bank, towards full payment on invoice No. 234/2011.

Yours Sincerely,

Chetanya Garg.

Purchase Manager, XYZ Ltd.

Encl: Cheque No. 123446

6. (a) Examine the position of a minor in relation to obtaining membership in a company under the provisions of the companies Act, 1956. 8

Answer: **Position of Minor in relation to obtaining Membership in a company:**

- (a) The Companies Act, 1956 does not prescribe any qualification for membership. Membership entails an agreement enforceable in a court of law. It was held in the case of **Mohri Bibi Vs. Dharmadas Ghose** that since minor has no contractual capacity, the agreement with a minor is void.
- (b) Therefore, **a minor or a lunatic cannot enter into an agreement to become a member of the company.**
- (c) However, notice that in some later decisions, a minor has been permitted to be a shareholder. The Company Law Board has laid down in **Nandita Jain v. Bennet Coleman & Co. Ltd.** that a **minor can become a member** provided **four conditions** are fulfilled:
- Company must be a Co. **Ltd.** by shares.
 - Shares are **fully paid up.**
 - Application for transfer is made on behalf of minor by **lawful guardian.**
 - The transfer is manifestly for the **benefit of the minor.**

- 6 (b) Which parameters are applicable in relation to Competition Law in India? 4

Answer: **Parameters of Competition Law**

- **Prohibition of certain agreements**, which are considered to be anti-competitive in nature. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anticompetitive if they cause or likely to cause an appreciable adverse effect on competition within India.
- **Abuse of dominant position** by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market excess or through in any other mode are prohibited.
- **Regulation of combinations** which cause or likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

- 6 (c) State whether the following statements are correct or incorrect: (4 x 1 = 4)

1. A specific offer can be accepted only by that person to whom offer has been made.
2. In case of breach of contract, the court awards remote damages to the aggrieved party.
3. A company is a legal person but not a citizen
4. If the central government permits, a public company can be converted into a private company.

Answer:

1. Correct, a specific offer is made to a specified person and can only be accepted by that person.
2. Incorrect, in case of breach of contract, court awards the damages which arise in the usual course of things from breach of contract. The measure of damage is the difference between the contract price and market price on the date of breach.
3. Correct, a company is a artificial legal person in the eyes of law, but do not have citizenship status.
4. True, to convert a public company into a private company, permission of Central Government is required.

7. Answer any four of the following:**4 x 4 = 16**

- (a) The Employees' Deposit Linked Insurance Scheme, under Section 6C of the Employees' Provident funds and Miscellaneous Provisions Act, 1952 has been amended by the central Government. State these amendments.** **4**

Answer: **Amendments by Central Government in EDLI Scheme:**

In the Employees' Deposit Linked Insurance Scheme, 1976, in paragraph 22, after sub-paragraph (2), the sub-paragraph 22A has been added which states as under:

"On the death of an employee, who is member of the Fund or of a PF exempted u/s Section 17 of the Act, as the case may be, who was in the employment of the same establishment for a continuous period of 12 months, preceding the month in which he died, the persons entitled to receive the PF accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to higher of the following:

- (i) the average monthly wages drawn (subject to a maximum of Rs. 6500), during the 12 months preceding the month in which he died, multiplied by 20 times or;
- (ii) the amount of benefit under sub-paragraph (1).

It has been explained further that in the case of a part-time employee who is a member of the Fund or of a provident fund exempted u/s 17 of the Act, as the case may be, who was serving in more than one factory or establishment for a continuous period of 12 months, preceding the month in which he died, the quantum of benefit under this Scheme shall be determined with reference to the average wages of the aggregate of all the wages wherever he was continuously working for more than 12 months, subject to the wage ceiling of Rs. 6500."

- 7 (b) State the conditions which are applicable for the purpose of commencement of business by a public company under the companies Act, 1956.** **4**

Answer: **Conditions for the purpose of commencement of a business:**

For a company having share capital and issued a prospectus [Sec. 149(1)]

- (a) Shares up to the amount of minimum subscription have been allotted by the company.
- (b) Every director has paid the application and allotment money on the shares taken.
- (c) No money is liable to be repaid to the applicants for failure by company to apply or obtain permission for the shares to be dealt in any recognized stock exchange.
- (d) A statutory declaration duly verified by one of the Directors or Secretary of the company or CS in practice that the above conditions have been complied with.

For a company having share capital, but not issued a prospectus [Sec. 149(2)]

- (a) Statement in lieu of prospectus has been filed with the Registrar.
- (b) Every director has paid in cash the application and allotment money on the shares taken by him.
- (c) A statutory declaration duly verified by one of the Directors or the Secretary or a CS in whole time practice in the prescribed form, that the above conditions have been complied with.

7 (c) What is the law relating to criminal liability for mis- statement in the prospectus u/s 63 of the companies Act, 1956? 4

Answer: **Criminal Liability for Mis-statement in the Prospectus:**

Section 63 of Companies Act, 1956 provides the provisions in relation to criminal liability for misstatement in the prospectus. Accordingly:

- Liability arise on the person who authorizes the issue of prospectus containing an untrue statement
- Punishment is by way of Imprisonment for a term upto 2 years, or fine upto Rs. 50,000, or both can be imposed.
- However, liability will not arise if he proves that the statement was immaterial or that he had reasonable ground to believe, and did up to the time of the issue of the prospectus believe, that the statement was true.

7 (d) Write a short note on “Social Accountability – 8000”. 4

Answer: **Social Accountability – 8000:**

- SA 8000 is a comprehensive, global, verifiable performance standard for auditing and certifying compliance with corporate responsibility. SA8000 is an international standard for improving working conditions.
- The heart of the standard is the belief that all workplaces should be managed in such a manner that basic human rights are supported and that management is prepared to accept accountability for this.
- This standard is based on the principles of the international human rights norms as described in International Labor Organisation conventions, the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights.
- The requirements of this standard apply regardless of geographic location, industry sector, or company size.

7 (e) What do you understand by the Semantic Barriers to communication 4

Answer: Semantic Barriers to Communication: Purpose of communication is to get a message across to others successfully. A message is successful only when the receiver perceives it in the same way as the sender. However, many a time it does not happen because of one or the other reason. Misunderstanding or misinterpretation may arise because of a variety of reasons. These are called - barriers to effective communication.

Semantics Barrier: Semantics is the systematic study of meaning. Oral or written communication is based on words. Certain words have different meanings in different disciplines. Thus, where the persons involved belong to different backgrounds, they may interpret the message differently. For example, the word 'critical' when used by a medical practitioner while referring to the condition of a patient shall mean that he is in a very serious condition. But, when the same word 'critical' is used by a nuclear scientist while referring to the condition of a rocket to be fired, it means that it is in excellent shape - ready to take off. Similarly, the word 'cost' has a different meaning for a financial accountant, a cost accountant and an economist.

The sender has to take care that the receiver does not misconstrue his message, and gets the intended meaning. It can be ensured only if we aim at clarity, simplicity and brevity so that the receiver gets the intended meaning.
