

PAPER – 3 : LAW, ETHICS AND COMMUNICATION

PART - I

Question Nos. 1 and 2 are compulsory.
Attempt any eight questions from rest

Question 1

- (a) A gives to C a continuing guarantee to the extent of Rs. 5000 for the vegetables to be supplied by C to B from time to time on credit. Afterwards, B became embarrassed, and without the knowledge of A, B and C contract that C shall continue to supply B with vegetables for ready money, and that the payments shall be applied to the then existing debts between B and C.

Examining the provision of the Indian Contract Act, 1872, decide whether A is liable on his guarantee given to C. (5 Marks)

- (b) State with reasons whether the following statements are correct or incorrect:

- (i) In case of alternative promise one branch of which is legal and the other illegal, the whole contract can not be performed.
- (ii) The contract of Insurance is not fully covered under the contract of Indemnity.

(2×1=2 Marks)

- (c) Pick-up the correct answer from the following and give reasons:

- (i) When a person without expressing his final willingness proposes certain terms on which he is willing to negotiate he makes:

- 1. Counter offer
- 2. Standing offer
- 3. Offer
- 4. Invitation to an offer.

- (ii) The principle that no one shall be allowed to enrich himself at the expense of another is known as:

- 1. Quantum Meruit
- 2. Nudem Pactum
- 3. Quasi-contract
- 4. None of these.

- (iii) A negotiable instrument that is payable to order can be transferred by:

- 1. Simple delivery
- 2. Endorsement and delivery
- 3. Endorsement
- 4. Registered Post

(3×1=3 Marks)

Answer

- (a) The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

In the given problem all the above requirements are fulfilled. Therefore, A is not liable on his guarantee for the vegetable supplied after this new arrangements. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there and he is not liable on the altered contract because it is different from the contract made by him.

- (b) i. Incorrect : In accordance with the provision of the Indian Contract Act, 1872 as contained in under section 58 in the case of an alternative promise one branch of which is legal and the other illegal, the legal branch alone can be performed. On this point the decision given by court in Mahadeo Prasad Singh Vs Mathura 132 L.C. 321A is relevant in which the court has followed the above provision and decided accordingly.
- ii. Correct : Contract of Insurance is contract of indemnity, but not fully covered under Indian Contract Act, 1872 as the loss can happen due to any reason, while in the contract of indemnity, under section 124 of the Indian Contract Act ,1872 loss should occur due to conduct of promisor or some other person. Loss due to natural calamities are not covered in this definition as per the Indian Contract Act, 1872.
- (c) (i) Correct answer is (1) i.e “counter offer” : Any departure from the terms of the offer or any qualification vitiates the acceptance unless it is agreed to by the person from whom the offer comes. It is treated as a counter offer and amounts to rejection of the original offer.
- (ii) Correct answer is (3) i.e. “Quasi Contract” : In certain situations, a person is obliged to compensate another although the basis of this obligation is neither a contract between the parties nor any tort on the part of the person who is bound to compensate. The basis of the obligation is that no one should have unjust benefit at the cost of the other. It is based on equity. These obligations relate to money and such other benefits, which the party under obligation has benefited from the other.

Alternative Answer

As the question concerns the principle ‘Quantum Meruit’, choice (i) can also be a right answer. The object of quantum merit is also to restore what one person may have unjustly benefited at the expense of another. In those instance, where one party has benefited at the expense of another, quantum meruit comes into operation where a contract had been pre-existing but now has been nullified, while quasi-contract comes into operation in select enumerated circumstances, despite absence of specific contractual obligations between those parties.

- (iii) Correct answer is (2) i.e. "Endorsement and delivery" : In accordance with the provisions of section 58 of the Negotiable Instrument Act, 1881, a promissory note, bill of exchange or cheque payable to order, is negotiable by the holder by endorsement and delivery thereof under section 48. Section 58 lays down that if a negotiable instrument is lost or has been obtained by fraud or unlawful consideration only holder in due course is entitled to get amount.

Question 2

- (a) STD Ltd. convened its Board of Directors meeting on 1st August, 2008. During the course of the meeting the date for calling annual general meeting was discussed but no decision could be taken on it in the meeting. However, the Secretary of the company issued the notice for calling the annual general meeting of the shareholders without taking any authorization from the Board of Directors.

State who is the proper authority to issue the notice for calling the annual general meeting and to whom such notice is to be given. (5 Marks)

- (b) State whether the following statements are True or False and give reasons:

- (i) An ultra-vires transaction will not affect the right of a Company to acquire property.
(ii) Reserve Capital of a Public Company may be called at any time. (2×1=2 Marks)

- (c) Pick-up the correct answer from the following and give reasons:

- (i) If a company does not receive the minimum subscription, it should refund all money received from applicants for shares without interest:

1. Within 30 days of issue of prospectus
2. Within 60 days of issue of prospectus
3. Within 90 days of issue of prospectus
4. Within 120 days of issue of prospectus.

- (ii) A small depositor means a depositor who has deposited in a financial year a sum not exceeding:

1. Ten thousand rupees
2. Fifteen thousand rupees
3. Twenty thousand rupees
4. Fifty thousand rupees.

- (iii) An extra ordinary general meeting may be convened by:

1. Board of Directors
2. Requisitionists
3. Company Law Board/Tribunal
4. All the above.

(3×1=3 Marks)

Answer

- (a) The Annual General Meeting of a company can be called by a proper authority. Obviously the only proper authority is the Board of Directors. It may be called by passing necessary resolution in the Board meeting or by circular resolution. The notice for it must be given by the proper authority i.e. Board of Directors.

It cannot be called by any individual director or some of the directors or by Secretary. Therefore, in this case the secretary of the STD Ltd. is not authorised to call Annual General Meeting of the company. The proper authority to call and to issue the notice of such meeting is the Board of Directors. If however a notice has been issued without authority such a notice may be ratified by the Board of Directors before the meeting.

Whom to send notice of AGM?: Notice of AGM must be in writing and should be given to:

- (a) every member of the company
- (b) In case of insolvent member, to his assignee
- (c) In case of deceased member to his representative.
- (d) Auditors {Section 172 (2)}.
- (e) A legally entitled representative
- (f) In case of joint holders, that joint holder whose name is first in the register of members or in record of depository {Section 53 (4)}.
- (g) Stock exchange, in case the company is a listed company.

In addition to the above the copy of notice is to be sent to Financial Institutions, foreign collaborators, trustees for holders of debentures, if company has entered into any agreement with them, which may provide for sending of notices of general meeting to them.

- (b) (i) Correct :- If a company's money has been spent ultra vires in purchasing some property, the company's right over that property must be held secure. For the assets, though wrongly acquired, represent the corporate capital. In *Ad Sait vs. Bank of Mysore, 1930*, the Madras High Court held that property legally and by formal transfer to a corporation is in law duly vested in such corporation, even though the corporation was not empowered to acquire such property.
- (ii) Incorrect : As per Section 99 of the Companies Act, 1956 a limited company may, by special resolution determine that any portion of its share capital which has not been called up shall not be capable of being called up except in the event and for the purposes of the company being wound-up. Therefore, the reserve share capital cannot be called up by the company at any time except at winding up.
- (c) (i) Correct answer is (4) i.e. If the minimum subscription is not received within 120 days after the first issue of the prospectus all moneys received must be repaid to

applicants forthwith without interest according to Section 69 (4) of the Companies Act, 1956. (Infact upto 130 days, a company may refund the money received without interest, though 120 days is the period for closing of minimum subscription).

- (ii) Correct answer is (3) i.e., the reason being as per explanation of Section 58B a small depositor means a depositor who has deposited in a financial year a sum not exceeding twenty thousand rupees in a company and includes his successors, nominees and legal representatives.
- (iii) Correct answer is (4) i.e. An extraordinary meeting may be called by Board of Directors, requisitionists, Company Law Board or Tribunal under Section 169 of Companies Act, 1956 and table(A) given in the schedule of the Companies Act, 1956.

Question 3

ABC Textiles Ltd. employed 20 full-time and 5 part-time employees who were drawing salary of less than Rs.10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned, to the remaining full-time employees and to the part-time employees. Against the decision, all the employees applied to the authorities for relief.

Decide, stating the provisions of the Payment of Bonus Act, 1956, whether the employees, who resigned, remaining full-time employees and part-time employees will get relief. (5 Marks)

Answer

In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding Rs.10,000 (by notification dated 15th Nov. 2007) per mensem in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or electrical work for hire or reward whether the terms of employment be express or implied is eligible for bonus. Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every employee of an establishment covered under the Act 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.10,000 per month.

The problem as asked is based on the above provisions of the Act and the answer may be given as follows:

- (a) As regards the employees who resigned : The employees who have resigned are not entitled to bonus because they have given their services only for 28 days in an accounting year although they are drawing salary less than Rs.10,000 per mensem.
- (b) As regards full time remaining employees: These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.

As regards part time employees: Even a part time employee is also entitled to bonus on the basis of total number of days worked by him in an accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as they fulfil all the requirements stated above (Automobile Karmchari Sangh vs. Industrial Tribunal (1971).

Question 4

B issued a cheque for Rs.1,25,000 in favour of S. B had sufficient amount in his account with the Bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank in the meantime, became insolvent.

Decide, under the provisions of the Negotiable Instrument Act, 1881 whether S can recover the money from B. (5 Marks)

Answer

The problem as asked in the question is based on Sections 72 and 74 of the Negotiable Instrument Act, 1881.

As per Section 72, it is the duty of the holder of a cheque to present the same to the bank for payment before the relationship between the bank and drawer is spoilt. It is only if he does so that he can hold the drawer liable in case of non payment and not otherwise.

As per Section 74, if the cheque is not presented by the holder for payment within reasonable time and meanwhile the relation between drawer/customer of the bank is spoilt and if the bank refuses to make payment or is incapable of making such payment, then the drawer cannot be held liable for such dishonour.

Hence applying the above provisions, S cannot recover the money from B.

Question 5

E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company - Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company.

Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972. (5 Marks)

Answer

According to Section 4 (1) of the Payment of Gratuity Act, 1972, 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 super annuation, 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 of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section. Disablement means such disablement as incapacitates an employee

for the work which he was capable of performing before the accident or disease resulting in such disablement.

The given problem fulfils all the above requirements as stated. Therefore, E is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case. Hence, the company can not refuse to pay gratuity on the ground that he has served only for a year.

Question 6

Discuss under the Employees Provident Funds and Miscellaneous Act, 1952 as whether the Provident fund contribution is a preferential payment in case of the employer being declared insolvent. (5 Marks)

Answer

In accordance with the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, as provided in Section 11 of the said Act, if the employer is declared an insolvent or if the employer is a company and an order for winding-up thereof has been made the amount due from the employer whether in respect of the employees' contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under both the Insolvency Act i.e. Presidency Towns Insolvency Act, 1902 (Section 49) and Provincial Insolvency Act, 1920 (under section 61). Hence, this payment will be preferential payment provided the liability therefor, has accrued before this order of adjudication or winding up is made.

Question 7

Describe in brief the advantages and protections available to a "holder in due course" under the provisions of the Negotiable Instruments Act, 1881. (5 Marks)

Answer

In accordance with the provisions of Section 9 of the Negotiable Instruments Act, 1881, 'holder in due course' means a person who for consideration became the possessor of a promissory note, bill of exchange or cheque if payable to bearer or the payee or indorsee thereof, if payable to order, before the amount mentioned in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

The holder in due course gets better title even if there was defect in title of transferor. In fact all defects are cleansed when the bill goes in the hands of holder in due course except in case where signature of endorser or maker or drawee was forged.

Hence the holder in due course has following advantages and protections:

- (a) A person who had signed an inchoate instrument is liable to holder in due course for full value as provided under Section 20.
- (b) Every prior party to the instrument is liable to holder in due course (section 36).

- (c) Even if drawer is fictitious, acceptor is liable to holder in due course if signature of drawer and endorser as appearing in the bill tallies (section 42).
- (d) Parties to instrument are liable to holder in due course or against subsequent holder even if it was an accommodation bill but the liability stands only to the consideration paid by him and not the full amount (section 43).
- (e) Even if Bill of Exchange was delivered conditionally or for a specific purpose and not for purpose of transferring property in the bill absolutely, the holder in due course is still entitled for the amount of the Bill (section 46 para 3).
- (f) Even if Bill was lost or was obtained from maker/acceptor/holder by offence or fraud for unlawful consideration the holder in due course is still entitled to get full amount of bill (Section 58).
- (g) In a suit by holder in due course, maker of promissory note, drawer of bill of exchange or cheque and acceptor of bill for honour of drawer cannot deny validity of the instrument as originally drawn (Section 120).
- (h) In a suit filed by holder in due course, maker of promissory note and acceptor of bill payable to order can not deny payee's capacity to indorse the promissory note or bill (Section 121).
- (i) Endorser can not deny signature or capacity of any prior party to the instrument (Section 122).

Question 8

What will be the consequence in case a Private Company incorporated under the provisions of Indian Companies Act, 1956 defaults in complying with conditions constituting Private Company in terms of Section 3 (1) (iii) of the Companies Act, 1956. (5 Marks)

Answer

Consequence in case of private company acting in contravention of Section 3 (1) (iii) of the Indian Companies Act 1956:

A private company which has been constituted under Section 3(1) (iii) has the following characteristics :

- ◆ minimum 2 members
- ◆ maximum 50, excluding employees and ex-employees who had become members when they were employees
- ◆ minimum 2 directors
- ◆ with restrictions on transferability of shares
- ◆ restrained from inviting public for share capital and from issuing prospectus

- ◆ with minimum paid up capital of Rs.1 lakh
- ◆ prohibited from accepting deposits from persons other than its members, directors and their relatives.

Some other procedural concessions are also given under Indian Companies Act, 1956.

In accordance with the provisions of Section 43 of the Indian Companies Act, 1956, if contravention is made against complying with the provisions contained in Section 3 (1) (iii), the company shall lose all the privileges and exemptions conferred on it by the Act, and the provisions of the Act shall apply to it as if it were not a private company. But the Company Law Board may relieve the company from such a consequence if it is satisfied that the failure in compliance with the said requirement was not deliberate but was accidental or inadvertent or that on other grounds it is just and equitable to grant relief.

Question 9

Developers Ltd. hold a General Meeting of shareholders for passing a special resolution regarding alteration of Articles of Association. Out of the members present in the meeting 20 voted in favour, 4 against and 8 members did not vote and remained absent from voting. The Chairman of the meeting declared the resolution as passed. Is it a valid resolution as per the provisions of the Indian Companies Act, 1956 ? (5 Marks)

Answer

In accordance with Section 189 (2) of the Companies Act, 1956 the votes cast in favour of a resolution (whether by show of hands or in a poll as the case may be) by members who, being entitled so to do, vote in person or where proxies are allowed, by proxy, are not less than three times the number of votes if any, cast against the resolution by members so entitled and voting is called special resolution.

Hence in accordance with the above mentioned provisions, the resolution passed in the general meeting of the Developers Ltd is a valid resolution since the vote cast in favour of the resolution are more than 3 times the number of votes cast against the resolution.

Question 10

The Articles of a Public Company clearly stated that Mr. A will be the solicitor of the company. The Company in its general meeting of the shareholders resolved unanimously to appoint B in place of A as the solicitor of the company by altering the articles of association. Examine, whether the company can do so ? State the reasons clearly. (5 Marks)

Answer

According to Section 36(1) of the Indian Companies Act, 1956, the memorandum and articles shall, when registered, bind the company and the members thereof to the same extent as if they respectively had been signed by the company and by each member and combined covenants on its and his part to observe all the provisions of the memorandum and articles. Section 36 creates an obligation binding on the company in its dealings with the members but the word "members" in this Section means members in their capacity as members, that is,

excluding any relationship which does not flow from the membership itself. Therefore even a member cannot enforce the provisions of articles for his benefit in some other capacity than that of a member.

Section 31 also provides that the company may by special resolution alter its articles. In the given problem the company has changed its articles by passing resolution unanimously and therefore the company can change its articles. The provision of memorandum and articles will bind the members but in the capacity of a member only and even a member may be treated as an outsider. Therefore a member cannot enforce the provisions of articles for his benefit in some other capacity than that of a member. In the given case A will not succeed and the company is empowered to appoint B as a solicitor of the company and may change the articles accordingly. The problem is based upon the decision held in *Eley vs. Positive Govt. Security Life Assurance Co.* (1876).

Question 11

The Articles of Association of MSW Ltd. contained a provision that upto 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The Board of directors decided to pay 5% underwriting commission. Can the Board of directors do so ? State the provisions of law in this regard as stated under the Indian Companies Act, 1956.

(5 Marks)

Answer

According to the provisions of Section 76 (1) of the Companies Act, 1956 a company may pay a commission to any person who agrees to subscribe or procure subscription for an agreed number of shares or debentures of the company. Such commission may be paid to the underwriters who offer guarantee to procure applications for certain number of shares and guarantee to purchase the balance quantity of shares. For this, the underwriter gets underwriting commission. Maximum total commission payable cannot exceed 5% of the price of shares or the underwriter may be paid a lower rate if so prescribed by articles. In case of debentures it is 2½% or a lower rate if so prescribed in the articles.

In the given problem the articles of MSW Ltd has prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission. The directors cannot do so because under Section 76 (1) as aforesaid, such commission cannot be more than that prescribed in the articles. Therefore the directors are not empowered to do so. Further, such amount of commission payable must be authorized by articles. The agreed commission should be disclosed in the prospectus or the statement in lieu of prospectus. Copy of the contract for payment of commission must be filed with Registrar of companies at the time of the delivery of the prospectus or letter of offer. [Section 76 (1)]. An underwriter must be also registered with SEBI.

Question 12

What is meant by "Shelf prospectus" ? Who can file a "Shelf prospectus" with the Registrar of Companies? Stating the provisions of Companies Act, 1956 point out the circumstances under which such prospectus is required to be filed with the Registrar of Companies. (5 Marks)

Answer

Section 60 A of the Companies Act, 1956 lays down the provisions as regards shelf prospectus. According to it, the shelf prospectus means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

Therefore, any public financial institution, public sector bank or schedule bank whose main object is financing shall file a shelf prospectus. A company filing a shelf prospectus with the registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within the period of validity of such self prospectus.

A company filing a shelf prospectus shall be required to file an information memorandum on all material facts relating to charges created, and changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by Central Government prior to making of a second or subsequent offer of securities under the shelf prospectus.

An information memorandum shall be filed along with such prospectus, which will remain valid for one year from the date of opening of the first issue of securities under that prospectus. Updated information memoranda filed with the shelf prospectus shall constitute the prospectus. Here financing means making loans or subscribing in the capital of a private industrial enterprise engaged in infrastructural financing or such other company which the Central Government may so notify in this behalf.

PART-II

Question No. 13 is compulsory.
Attempt any two questions from rest.

Question 13

- (a) To pay proper attention to business ethics is certainly beneficial in the interest of business. Describe four such benefits which may be obtained by paying attention to business ethics.
- (b) Explain how corporate social responsibility minimises the ecological damage and helps in achieving long-term objectives, so that the business may gain long-term profit maximization. (5+5=10 Marks)

Answer

- (a) Benefits which may be obtained by paying attention to business ethics: Ethics is the concern for good behaviour – doing the right thing. In business, self interest prevails

and there is always inconsistency between ethics and business. But it is a well settled principle that ethical behaviour creates a positive reputation that expands the opportunities for profit. The awareness regarding products and services of an organization, and the actions of its employees can affects its stakeholders and society as a whole. Therefore to pay proper attention to business ethics may be beneficial in the interest of business. These benefits may be enumerated as follows:

- (1) In the recent past ruthless exploitation of children and workers, trust control over the market, termination of employees based on personalities and other factors had affected society and a demand arose to place a high value on ethics, fairness and equal rights resulting in framing of anti-trust laws, establishment of governmental agencies and recognition of labour unions.
- (2) Easier change management: Attention to business ethics is also critical during times of fundamental change. The apparent dilemma may be whether to be non profit or for profit. In such situations, often there is no clear moral compass to guide leaders about what is right or wrong. Continuing attention to ethics in the workplace sensitises leaders and staff for maintaining consistency in their actions.
- (3) Strong team work and greater productivity: Ongoing attention and dialogues regarding ethical values in the workplace builds openness, integrity and a sense of community which leads to, among the employees, a strong alignment between their values and those of the organisation resulting in strong motivation and better performance.
- (4) Enhanced employee growth: Attention to ethics in the workplace helps employees face the reality both good and bad in the organisation and gain the confidence of dealing with complex work situations.
- (5) Ethical programmes help guarantee that personnel policies are legal: A major objective of personnel policies is to ensure ethical treatment of employees. In matters of hiring, evaluating, disciplining and firing etc, an employer can be sued for breach of contract for failure to comply with any promise. The gap between corporate culture and actual practice have significant legal and ethical implications. Attention to ethics ensures highly ethical policies and procedures in the work place. Ethics management programmes are useful in managing diversity. Such programmes require the recognition and application of diverse values and perspectives which are the basis of a sound ethics management programme. Most organisations feel that cost of mechanisms to ensure ethical programme may be more helpful in minimizing the costs of litigations.
- (6) Ethical programmes help to detect ethical issues and violations early so that criminal acts “of omission” may be avoided.
- (7) Ethical values help to manage values associated with quality management, strategic planning and diversity management.

(b) Corporate social responsibility and ecological damage

The business institution exists and flourishes only because it performs invaluable services to society. Society gives business its license to exist which may be revoked and amended at any time if they do not fulfil the society's expectations. Therefore, if a business intends to retain its existing social role and power, it must serve society's needs constructively.

A business organization acts in its own self interest and uses natural resources also. The effluents of many businesses damage the surrounding environment. By their own socially responsible behaviour, they can prevent government intervention if they are proactive in recognizing their ecological responsibility towards society. Companies must recognize that a strategy for corporate responsibility can play a valuable role not only in meeting the challenges of globalization by mitigating risks domestically and internationally, but also in providing benefits beyond risk management.

Question 14

A retailer was purchasing goods regularly from XYZ Ltd. for the purpose of resale. There were defects in the goods in one of the purchase lot and as a result the retailer suffered loss of his share in competition. The retailer sued the said company for this reason. The company contended that the goods were purchased for the purpose of resale and therefore, not bound. Is it a valid contention ? Explain clearly the provisions of Competition Act, 2002 in this regard.

(5 Marks)

Answer

The problem as asked in the question is based on the provisions of Section 2(f) of the Competition Act, 2002. The Section provides that "consumer" means any person who buys any goods for a consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence Section 2(f) of the Competition Act, 2002 provides that whether purchase of goods is for resale or for any commercial purpose or for personal use, the purchaser is a consumer. Thus consumer will also include a person who purchases goods for re-sale. Therefore the contention of XYZ Ltd. is not valid and not tenable.

Question 15

Answer any two out of four. You are required to state whether the statement is correct or incorrect with brief reasons:

(a) The Governance Model positions management as accountable solely to investors.

- (b) Business does not sub-serve environmental ethics.
- (c) Consumer for personal use and consumer for commercial use are synonymous.
- (d) Water pollution is also a kind of resource depletion. (5 Marks)

Answer

- (a) Incorrect : The traditional governance model positions management as accountable to investors only but a growing number of corporations in the late part of the 20th century accept that constituents like employees, trade unions, customers, suppliers along with the investors are affected by corporate activity and therefore the corporates must be answerable to them also. Such constituents of an organization are also called the stakeholders.
- (b) Incorrect : Previously the business concerns were mainly concerned with only good business in economic sense. The conservation of natural resources was a motive of more economic gains. But now due to awareness of social responsibility and ethical norms the motive of business is not only concerned with business interest of the shareholders but also a general concern for the community. Now the business houses have realized that environmental ethics make good business sense if quality, ethics and environmental standards are maintained.
- (c) Incorrect : It seems that the definition of “consumer” under Competition Act, 2002 and under Consumer Protection Act, 1986 are substantially the same. But there is difference between the two and that difference is that under clause (1) of Section 2(f) in Competition Act, the words used are “whether such purchase of goods is for the resale of for any commercial purpose or for personal use” in place of the words “but does not include a person who obtains such goods for resale of for any commercial purpose” as in the Consumer Protection Act. Likewise in clause (ii) the words used in the Competition Act are “Whether such hiring or availing of services is for any commercial purpose or for personal use” in place of the words “but does not include a person who avails of such services for any commercial purpose” as in the Consumer Protection Act. Thus in case of Competition Act the word consumer includes both consumer for personal use and for commercial use but it is not so in the case of Consumer Protection Act.
- (d) Correct : Water pollution is also a kind of resource depletion because contamination of air, water or land diminishes their beneficial qualities. Oceanographers have found traces of plutonium, cesium and other radioactive materials in seawater that have apparently leaked from the sealed drums in which radioactive wastes are disposed. An increase in population and economic activity in urban area has also resulted in increased demands of water. The ground water is also shrinking because of the decreasing rainfall and wasting of water are also goods for certain reasons.

Question 16

State, how far a sound ethical environment in a company may be created and corporate scandals may be avoided. (5 Marks)

Answer

Creating an ethical environment in company : A sound ethical environment in a company may be created and corporate scandals may be avoided by adopting the following methods :

1. Ensuring that employees are aware of their legal and ethical responsibilities.

Some ethical organisations are having policies to train and motivate employees towards ethical behaviour. To start with, such initiation should be from the top. A number of companies in India and abroad are being known for their quality and soundness of their ethics programmes. Companies like Raytheon, Texas Instruments, Wipro are pioneers in establishing ethical environment among the employees enabling them to take ethical decisions.

2. Providing a communication system between the management and employees so that any one in the company can report fraud and mismanagement without the fear of being reprimanded.

In 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.

3. Ensuring fair treatment to those who act as whistle blowers :

This is perhaps the most important and sensitive issue. Fair treatment to whistle blowers is a basic necessity to check fraud. Some acts must be appreciated and that appreciation should be extended from within the company rather than outside.

PART III

Question Nos. 17 is compulsory.
Attempt any two questions from rest.

Question 17

- (a) Explain clearly the advantages of a formal communication.
- (b) As a secretary of AB forgings Ltd., draft a notice of a board of directors meeting to consider any five items as agenda of the meeting, to be held on November 15, 2008 at the registered office of the Company at Mysore.

Answer

- (a) Advantages of a formal communication:

Communication is the principal means by which members of an organization work together. It helps to bind them together, enabling them to react to and influence each other.

Formal communication:- A formal communication flows along prescribed channels which all organizational members desirous of communicating with one another are obliged to follow. Every organization has a built in hierarchal system that can be compared to a pyramid. It can, therefore, be understood that communication normally flows top downwards. But it is not always so. Communication in an organization is multidimensional and multidirectional .

Advantages of formal communication:

- (a) The formal channels account for most of the effectiveness of communication. Therefore, a great care has to be taken in sending across any letter or report through the proper formal channels.
 - (b) Formal channels cover an ever – widening distance as organization grows. Through them, it is easier to reach out to the branches of an organization spread far and wide.
 - (c) Formal channels, because of their tendency to filter information, keep the higher level managers from bogged down.
 - (d) Formal channels of communication consolidate the organization and satisfy the people in managerial position.
- (b) Notice of a board meeting

AB forgings Limited

Ph. No-

Saiyaji Road

Fax -

Mysore – 32

Ref. No.

October 10, 2008

(Notice regarding meeting of director)

Dear sir/ Madam

This is to inform you that a meeting of the board of director will be held on November 15, 2008 at the registered office of the company, 281 Saiyaji Road, Mysore- 32 at 11. 30 AM to consider the following:

1. To approve the minutes of the last meeting
2. To consider matters arising out of the minutes.
3. To consider and pass the statement of accounts for payment
4. To approve transfer of shares

5. To sanction an interim dividend @ 10% (tax free) on the equity shares of Rs 10/- each. Rs 8/- per shares paid up
6. To consider any other matter with the permission of the chair and
7. To fix the date and time of the next meeting.

To _____

Yours faithfully

(Ajay Garg)

Company Secretary

Question 18

What is meant by "Negotiation"? Name the various steps which can be identified in the process of negotiation from start to the completion of the process. (5 Marks)

Answer

When two or more persons meet together and talk/ discuss on any business or non business matter, it is known as negotiation. When same persons discuss specific proposals in order to come to a mutually accepted solutions; whether it is with an employer, family member or business partner. It can be said that negotiation is a common way of settling things in business.

Steps in the negotiation process

1. Preparing
2. arguing
3. signaling
4. packaging
5. bargaining
6. closing and arguing

Question 19

ABC Ltd. wants to hold its Annual General Meeting on 15th December, 2008 to discuss the matters relating to ordinary business. Draft a notice along with notes in brief for calling annual general meeting of its shareholders. (5 Marks)

Answer

Draft of notice for calling annual general meeting:

Notice

Notice is hereby given that the 3rd annual general meeting of the ABC Ltd. will be held on Friday, the 15th of December, 2008, at the registered office of the company at 123, tower

complex, Lucknow Distt. Lucknow (U.P.) at 11.00 a.m. to transact the following ordinary business:

1. To receive, consider and adopt the audited balance sheet of the company as on 31st march 2008 and the profit and loss account for the year ended on the date auditor's and director's reports there on.
2. To declare dividend for the year ending 31st March 2008.
3. To appoint a director in place of Mr. A.V. Kamath, Who retires by rotation and being eligible, offers himself for re-appointment.
4. To appoint a director in place of Mr. J.K. Smith, Who retires by rotation and being eligible, offers himself for reappointment.
5. To appoint statutory auditors of the company and fix their remuneration.

Regd. Office

For and on behalf of Board of Directors.

123, Tower complex

Distt. Lucknow (U.P.)

Sd.

Dated: Oct. 15, 2008

Chairman of the meeting

Notes:

- * A members entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and the proxy need not be a member of the company.
 - The register of members and the shares transfer banks of the company will remain closed from 7th day of December 2008 to 15th day of December 2008, both days inclusive.
 - Members are requested to notify immediately change of address, if any, to the company's registered office. While communicating to the company, please quote folio number.
 - Shareholders desirous of answering any information concerning the accounts the accounts and operations of the company are requested to address their questions to the company's head office, so as to reach at least 5 day before the date of the meeting so that information may be made available at the meeting to the best extent possible.

Question 20

State the various components which are required to draft a partnership deed. (5 Marks)

Answer

A written agreement of partnership is called partnership deed. A partnership deed can be seen as comprising of the following components:

- ◆ Date of execution
- ◆ Names of partners
- ◆ Date of commencement
- ◆ Business of partnership
- ◆ Name of the partnership
- ◆ Place of business
- ◆ Duration of partnership
- ◆ Capital
- ◆ Interest on capital
- ◆ Sharing of Profits/ Losses
- ◆ Accounts
- ◆ Borrowing powers
- ◆ Bank accounts
- ◆ Variation clause
- ◆ Arbitration