

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

QUESTIONS

A. BUSINESS LAWS

The Indian Contract Act, 1872

1. (a) State the legal positions in the following statements:
 - (i) X finds a golden chain in Y's shop which he handed over to Y to keep in its custody till owner is founded. Y puts all his efforts to trace the true owner but he failed. After sometime, X offered the lawful charges incurred by Y for finding the true owner and asked him to return the chain to him. Y denied.
 - (ii) A, a famous novelist contracted with B to write a novel in two parts for Rs.50,000 payable on completion of the whole work. After completion of Part I, B abandoned the publication.
 - (iii) Mr. P, a Hindu Brahmin contracts to marry R, a Muslim. If P is already married to S who lives with P.
 - (iv) XYZ & Co. a regular and reputed customer of PQR & Co., placed an order by imitating the Signature of XYZ & Co. The goods were however sold to A, an innocent buyer. A suit was filed by PQR & Co. against A for the recovery of goods.
- (b)
 - (i) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. What would be your answer if B afterwards makes default in collection?
 - (ii) X took a car on hire from Y and gave it to his friend Z for use describing it as his own. Y filed the case against Z for wrongful possession of his car. Decide under this circumstances the right /liability of Z .
 - (iii) A, who owes B Rs. 10,000, appoints B as his agent to sell his landed property at Delhi and after paying himself (B), out of the proceeds, what is due to him, to hand over the balance to A. Can A revoke his authority delegated to B?
- (c) State whether the following contract can be enforced.
 - (i) Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum.
 - (ii) Where there is a family settlement in writing and a family member who is not a party to the settlement wishes to enforce his claim.
 - (iii) A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

- (iv) X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company, though X had never heard of Z.

The Negotiable Instruments Act, 1881

2. (a) A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-

First endorsement, "B".

Second endorsement, "C".

Third endorsement, "D".

Fourth Endorsement, "E".

This bill A puts in suit against E and strikes out, without E's consent, the endorsements by C and D.

State the legal position in the following statement .

- (b) Mark the correct answer:

- (i) Which of the following Documents is not a negotiable instrument:

- (a) Share Certificates
- (b) Bill of Lading
- (c) Postal Orders
- (d) All of these

- (ii) A instrument made only to provide financial help to some person is called as:

- (a) Bill of Exchange
- (b) Accommodation Bill
- (c) Bill of Receipt
- (d) Bill of Lading

- (iii) An incomplete instrument is termed as:

- (a) Escrow
- (b) Ambiguous
- (c) Endorsement
- (d) Inchoate

- (c) X, by means of fraud, obtained from Y a cheque crossed 'not negotiable' and got it cashed at a bank other than the drawee bank. Y sued the bank for conversion. Is the bank liable for conversion?

3. (a) X draws 10 cheques of Rs. 100 each, but when the cheque ought to be presented, has only Rs. 600 at the bank and subsequently the bank fails before the cheques

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

are presented. Discuss the legal position in the given circumstances in the light of the Negotiable Instruments Act, 1881.

- (b) Differentiate the following under the Negotiable Instruments Act, 1881:
 - (i) 'Bearer instrument' and 'Other instrument'
 - (ii) 'Discharge of instrument' and 'Discharge of party'
 - (iii) 'Noting' and 'Protest'
 - (iv) Protection available to a banker in respect of a cheque being 'crossed' and 'uncrossed'
- (c) X, an owner of company borrowed a loan from Y on behalf of the company. X is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the complaint was lodged against him. Does X liable for an offence under section 138?

The Payment of Bonus Act, 1965

- 4. (a) Explain with reference to the provisions of the Payment of Bonus Act, 1965 the possibility of a non banking company relying on its Balance Sheet and Profit and Loss Account in the case of a dispute with its employees relating to bonus payable under the Act and the limitations, if any, in this regard.
 - (b) The management of Lakhani footwears Ltd. entered into an agreement with their employees to pay them bonus on productivity in lieu of Bonus based on profits, from the accounting year 2009. The employees further agreed to give up their right to receive minimum bonus and instead accept 21% of their salary/wage as bonus based on productivity. Discuss the validity of the above statement in the light of the Payment of Bonus Act, 1965.
 - (c) A company employed certain employees out of which 20 were full-time and 5 were part-time employees drawing salary of less than Rs.10,000 per month. After completing service of 25 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 and also to the remaining full-time and part-time employees. Decide, the legal position stating the provisions of the Payment of Bonus Act, 1965.
- 5. (I) Pick the correct answer.
 - (a) The limit of salary of a worker entitled to get bonus is
 - (i) 3,500/-
 - (ii) 2,500/-
 - (iii) 6,500/-
 - (iv) 10,000/-

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

- (b) An employee dismissed from service shall be disqualified from receiving bonus on the account of-
 - (i) Riotous or violent behavior on the premises of the establishment
 - (ii) Theft
 - (iii) Misappropriation
 - (iv) All of these
- (c) Who shall be authorized to recover the bonus due to an employee from an employer-
 - (i) Employee himself
 - (ii) Appropriate Government
 - (iii) Collector
 - (iv) Any other person authorized by an employee.
- (II) State whether the statement is correct or incorrect:
 - (i) A season workers who have worked for not less than 30 working days are entitled to bonus.
 - (ii) The minimum bonus which employer is bound to pay to every employee in respect of the accounting year is 8.33% of the salary.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

6. (I) Pick the correct answer:
- (a) The rate of Interest to be given to the employees on the provident fund amount is
 - (i) 8.5%
 - (ii) 10%
 - (iii) 12%
 - (iv) 9.5%
 - (b) The ceiling on the insurance amount paid to the dependant under the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010 is
 - (i) 10 lakhs
 - (ii) 1 lakh
 - (iii) 3.5 lakhs
 - (iv) 2.5 lakhs
- (II) State whether the statement is true and false:
- (a) The Act applies on an establishment where the strength of the employees at a particular time falls below twenty.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

- (b) Special Allowance paid to the employees will not be considered as the part of the Basic Allowance.
 - (c) “An employer generally has to deposit 50% of the money due from him so as to go on appeal “
7. (a) X, an employee in ABC Ltd (covered by the EPF & and MP Act, 1952) died in an accident. State to whom the amount standing in his account to be payable under the provisions of the Act.
- (b) Write short Notes:
- (i) Basic Wages under EPF Miscellaneous provisions Act, 1952
 - (ii) Employee Deposit Linked Insurance (Amendment) Scheme, 2010
 - (iii) Employees' Provident Fund Scheme
- (c) Analyse the appellate jurisdiction and the procedures relating thereto under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The Payment of Gratuity Act, 1972

8. (a) Give the Definitions of the following as per the Payment of Gratuity Act, 1972
- (i) Employee
 - (ii) Wages
- (b) State whether the following statements are true or false and give reasons therefor with reference to the Payment of Gratuity Act, 1972.
- (i) The Payment of Gratuity Act, 1972 is largely based on Kerala Industrial Employees Payment of Gratuity Act, 1972.
 - (ii) A retrenched employee is also eligible for gratuity.
 - (iii) Where an employee's resignation has not been accepted, then that employee is not eligible to claim gratuity.
 - (iv) Where the negligence of employee causes loss to the employer, then the gratuity shall be wholly forfeited.
 - (v) An appeal against the Controlling Authority's order must generally be made within 60 days.
9. (a) X, is an employee of Tata Consultancy Ltd. The whole of the undertaking of Tata Consultancy Ltd. was taken over by a new company - Asia Consultancy Ltd. The services of X remained continuous in new company. After serving for one year X met with an accident and became permanently disabled. X applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that X has served only for a year in the company.
- Examine the legal position of X in the light of the provisions of the Payment of Gratuity Act, 1972.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

- (b) Discuss the rules relating to penalties under the Payment of Gratuity Act, 1972?

The Companies Act, 1956

10. (a) Explain the circumstances under which a subsidiary company can become a member of its holding company and also examine the position of the following with regard to membership in a company:
- (i) An Insolvent
 - (ii) Partnership Firm.
- (b) A Company was incorporated on 6th January, 2011. The certificate of incorporation of the company was issued by the Registrar on 15th January, 2011. The company on 10th January, 2011 entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act, 1956, whether the company can be exempted from the said contractual liability.
- (c) The object clause of the Memorandum of Association of ABC Pvt. Ltd, authorized it to do trading of dress material. The company, however, entered into a Partnership with Mr. X and traded in automobile parts and incurred liabilities to Mr. X. The Company, subsequently, refused to admit the liability to X on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to X.
11. (a) Under the Articles of Association of Sigma Ltd., directors had power to borrow up to Rs.25,000 without the consent of the general meeting. The Directors themselves lent Rs.35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, 1956, whether the company is liable? If so, what is the extent of liability of the company in this case?
- (b) What remedies are available to a subscriber against a company for allotment of shares on the faith of a misleading prospectus. What requirements must be fulfilled by such a subscriber before opting for the remedies?
- (c) After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 1956. Comment.
12. (a) Write a note on the powers of the Central Government in regard to conversion of debentures and loans into shares of the company under the following heads:
- (i) When terms of issue of such debenture or terms of loan do not include term providing for an option of conversion;

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

- (ii) Matters considered in determining the terms and conditions of such conversion.
 - (iii) Remedy available to the company if conversion or terms of conversion is not acceptable to it.
 - (b) 'R' obtains a certificate of transfer of shares by committing forgery from a company. Later R transfers the shares to 'S' for value acting in good faith. Company refuses to transfer the shares to 'S'. Whether the company can refuse? Decide the liability of 'R' and of the company towards 'S'.
 - (c) PQR Limited realised on 2nd May, 2010 that particulars of charge created on 12th March, 2010 in favour of a Bank were not filed with the Registrar of Companies for Registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2010 instead of 12th March, 2010? Explain with reference to the relevant provisions of the Companies Act, 1956.
13. (a) To remove the Managing Director, 40% members of Global Ltd. Submitted requisition for holding extra-ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.
- Examine the validity of the said meeting and resolution passed therein in the light of the Companies Act, 1956.
- (b) D, a director in a company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting, be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, under certificate of posting. D did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 1956:
 - (i) Whether the contention of D is valid?
 - (ii) Would you answer be still the same in case D remained outside India for two months (when such notices were given and meetings held).
 - (c) MDH Ltd. has only 50 preference shareholders. A meeting of the preference shareholders, called by the company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 1956, examine the validity of the meeting and the resolution passed thereat.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

14. State whether the statement is correct/incorrect:
- (i) A private Ltd. Company constituted of X and Y only. Both X and Y were killed in a car accident. Company is ceased to exist.
 - (ii) M purchased from N 100 shares of a company on the basis of prospectus containing wrong statement. M can claim against the company.
 - (iii) A company not having a share capital is not required to file an annual return.
 - (iv) A small depositor can invest a sum exceeding rupees twenty thousand in a company in a financial year.
 - (v) A instrument of proxy must be deposited with the company 48 hours before the meeting.
15. (a) Write short notes:
- (i) Corporate Veil Theory
 - (ii) Role of Prospectus
 - (iii) Classification of Meetings
- (b) What is the concept of proxy in relation to the meetings of a Company? Decide the appointment and rights of a proxy, under the Companies Act, 1956, in the following cases:
- (i) When a body corporate is a member in the company.
 - (ii) When a foreign company is a member in the company.
16. Whether the following persons can be counted for the purposes of quorum in a general meeting of a public company-
- (a) a person representing three member companies;
 - (b) both the joint owners of shares are present at the meeting;
 - (c) a single member present at the meeting.
17. At the annual general meeting of a company a resolution is proposed to be moved to the effect that the retiring auditors shall not be re-appointed. What would be the duty of the company and the right of the auditor in the circumstances?

B: ETHICS

18. (a) Answer stating whether the statement is correct or incorrect with brief reasons:
- (i) Ethics and morals are synonymous.
 - (ii) In the long run those business firms which do not respond to society's needs favourably will survive.
 - (iii) Company management has responsibility only towards its shareholders.
- (b) Examine the following hypothetical situation and give a brief analytical note on it.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

Mr. XYZ is a CEO of a pharmaceutical company. His R&D department, while experimenting with a chemical molecule, sees the possibility that the molecule may be developed into a drug for a rare, painful, life-threatening genetic disease that afflicts only one child in ten million. But to develop the drug, his company may have to invest huge sums of the shareholders' money, despite the drug not having wide salability. Is Mr. XYZ confronted by an ethical dilemma? How should he resolve the issue?

19. (a) Explain Corporate Social Responsibility and its requirement in Indian Business environment?
- (b) Write short notes on:
- (i) Code of Conduct on Insider Trading
 - (ii) (APEC) Business Code of Conduct
 - (iii) Corporate citizenship
20. (a) Explain the validity of the following statements:
- (i) "Promotion policies based on individual merit and not purely on the basis of seniority is discriminatory".
 - (ii) "There is no economic growth without ecological costs".
- (b) Elucidate 'Environmental ethics'? How does its implementation lead to 3 Ps Viz., Polluter Pays Principles?
21. (a) Say 'Yes' or 'No' with reasons:
- (i) Consumer purchases goods and health services for personal purposes only.
 - (ii) Whistle blowers helps in creating good ethical accounting environment in a business enterprise.
- (b) Examine the following hypothetical situation and give a brief analytical note on it.
- X Ltd. has been the leading scientific equipment manufacturing company in South India. But it suddenly finds that certain companies from North India that do not have anywhere near its own kind of clout in their own turfs, are trying to enter the south Indian market. But because of its superior clout, X Ltd coerces them to enter into agreement with itself such that they do not sell at prices above that of its own products. Comment on the legality of such agreements. Conversely, if X Ltd were to enter into agreements with distributors such that the distributors are prevented from marketing the products of the North Indian companies, would that be illegal?

C: COMMUNICATION

22. (a) What is Proxemics? Explain.
- (b) Explain social competence that are associated with Emotional Intelligence.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

- 23. (a) What is Negotiation? Describe some techniques for negotiation.
- (b) Explain ambiguity as an ethical dilemma in communication
- 24. (a) Draft a press note on the Company Law Settlement Scheme, 2010 introduced by the Ministry of Corporate Affairs, India.
- (b) Supply a notice of Annual general Meeting of XYZ Ltd to discuss the matters relating to ordinary business.
- 25. (a) Draft a format for sub-partnership deed.
- (b) Draft a 'Power of Attorney' by subscribers of Memorandum of Association of the Company authorizing a Chartered Accountant to appear before the Registrar of Companies.

SUGGESTED ANSWERS / HINTS

- 1. (a) (i) As per the provisions given under sections 71 & 168 of the Indian Contract Act, 1872, Y must return the golden chain to X because X was entitled to retain it against the whole world except the true owner.
- (ii) A is entitled to claim compensation for the work already done on quantum meruit basis.
- (iii) As per section 56 of the Indian Contract Act, 1872 the contract is void ab-initio because such contract is forbidden by law. P must compensate R for the loss caused to her by the non-performance of the promise.
- (iv) As per the section 72 of the Indian Contract Act, 1872, there was no contract between PQR & Co. and A never intended to contract with XYZ & Co. So A didn't get good title and hence he must return the goods or make payment for the same.
- (b) (i) The given problem is based on the provision given under section 143 of the Indian Contract Act, 1872. According to which any guarantee which the creditor has obtained by means of keeping silence as to a material circumstance, is invalid.

Accordingly, in the problem A, the creditor has obtained the guarantee from the surety C by means of keeping silence as to the earlier act of B, failing to account for some of his receipts. Here the guarantee has been obtained by concealment, so it is invalid and as such C is not liable as surety.
- (ii) The given problem is based on the provision given under section 164 of the Indian Contract Act, 1872, the bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods, or to give directions respecting them.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

Accordingly in the problem, Z had to give compensation to Y for the wrongful possession of the vehicle. However, X has a duty to indemnify Z for the loss caused due to his wrongful title, because Z did not know that X had no right to bail the vehicle.

- (iii) According to Section 202 of the Indian Contract Act, 1872 where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot, in the absence of an express contract, be terminated to the prejudice of such interest.

In the instant case the doctrine of agency coupled with interest applies. Therefore, A cannot revoke the authority delegated to B, nor it can be terminated by his insanity or death.

- (c) (i) A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.
- (ii) As per the judgment in *Shuppu Vs Subramanian* 33 Mad. 238, a family settlement in writing, may be enforced by a member of the family who was not a party to the settlement.
- (iii) A student can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.
- (iv) The problem is based on the facts of the case *Smith vs Chadwick* (1884). In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.
2. (a) As per the provision laid down in the section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without 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 extent as if the instrument had been paid at maturity.

In the given instant, A impairs the bill by striking out the name of the C & D (Prior parties) without the consent of the Endorser E. As a result of this E is discharged from liability to the holder A as if the instrument has been paid at maturity and therefore, A is not entitled to recover anything from E.

- (b) (i) Answer (d)
- (ii) Answer (b)
- (iii) Answer (d)
- (c) Section 130 of the Negotiable Instruments Act, 1881 broadly says that, if the holder has a good title, he can still transfer it with a good title; but if the transferor has a defective title, and the transferee is affected by such defects, there he cannot claim the right of a holder in due course by proving that he purchased the instrument in

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

good faith and for value. As X in the case in question had obtained the cheque by fraud, he had no title to it and could not give to the bank cheque for conversion. A similar decision was taken in *Great Western Railway Co. vs. London and Country Banking Co. (1901) A.C. 414*.

3. (a) In the case of a cheque, if it is not presented for payment within a reasonable time of its issue and the drawer or person on whose account, it is drawn had the right at the time when presentment ought to have been made as between himself and the banker, to have the cheque paid and suffers actual damage through the delay he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is creditor of the banker to a larger amount that he would have been if such cheque had been paid (Section 84).

Thus in the given problem, X will be released from liability to the extent of Rs. 600 but will remain liable for the balance. If he had the full amount of Rs. 1,000 at the bank, he will be discharged in full.

However, in the above case liability of the drawer will be transferred to the banker. To determine reasonable time for presentation, the following would be considered: (i) nature of instrument: (ii) usage of the trade and bankers and (iii) facts of the case.

- (b) (i) Bearer and Order Instruments: An instrument may be made payable: (1) to bearer; (2) to a specified person or to his order.

An instrument is payable to bearer which is expressed to be so payable on which is expressed thus "Pay to R or bearer". It is also payable to bearer when the only or last endorsement on it is an endorsement in blank.

An instrument is payable to order, (1) when it is payable to the order of a specified person or (2) when it is payable to a specified person or his order or, (3) when it is payable to a specified person without the addition of the words "or his order" and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. When an instrument, either originally or by endorsement, is made payable to the order of a specified person and not to him or his order, it is payable to him or his order, at his option. When an instrument is not payable to bearer, the payee must be indicated with reasonable certainty. There is a proposition that "once a bearer instrument always a bearer instrument".

- (ii) An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. Therefore, discharge of a party to an instrument does not discharge the instrument itself. Consequently, the holder in due course may proceed against the other parties liable for the instrument. On the other hand, when a bill has been discharged by payment, all rights there under are extinguished even a holder in due course cannot claim any amount under the bill.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

- (iii) The law related to the noting and protest of negotiable instruments is enshrined in Section 99 to 104A of the Negotiable Instruments Act, 1881.

Noting: According to section 99, when a promissory note or bill of exchange has been dishonoured by non-acceptance, or non-payment the holder may cause such dishonour to be noted by a notary public upon the instrument, or on a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason for the dishonour or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonour and the notary's charges.

Protest: According to section 100, when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest. The contents of a protest are laid down in section 101 of the Act. According to section 102, when a promissory note or bill of exchange is required to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary making the protest. Under section 103, all bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentation to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Neither noting nor protesting is compulsory in the case of inland bills. But under section 104, every foreign bill must be protested for dishonour, when such protest is required by law of the country where the bill was drawn. The merit of protest and noting is that it would become good prima-facie evidence in a court of law that the instrument has been dishonoured. It is pertinent to note that as per section 119 the court is bound to recognise a protest, but it may or not recognise noting.

- (iv) If a cheque is uncrossed, the banker is exonerated for the failure to direct either the genuineness, or the validity of the endorsement on the cheque purporting to be that of the payee or is authorized agent.

In case a cheque is crossed, the banker who pays the cheque drawn by his customer, he can debit the drawer's account so paid even though the amount of cheque does not reach true owner. The protection that can be availed are if the payment has been made in due course in good faith and without negligence too any person in possession thereof in the circumstances which do not excite any suspicion that is not entitled to receive the payment of the cheque. In other words, the condition of good faith and without negligence would be the criteria applied for judging the conduct of a collecting banker. Even though the banker is protected for having made payment of the cheque

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

to a wrong person, the true owner of the cheque is entitled to recover the amount of the cheque from the person who had no title to the cheque.

- (c) The above Fact is based on the case law *H.N.D.Mulla Feroze Vs. C.Y.Somayajulu, J [2004] 55 SCL (AP)*.

The compliant lodge against X was challenged on the ground that, the petitioner(X) is neither a director nor a person-in-charge of the company and is not connected with the day to day affairs of the company and had neither opened nor is operating the bank account of the company and had not issued the cheque which was dishonoured and further contended that in any event notice of dishonour of the cheque was not served.

And also the court held that, although the petitioner has a legal liability to refund amount to the Y, but there petitioner is neither the drawer of the cheque, which was dishonoured, nor the cheque was drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner(X) couldn't be said to have committed the offence under section 138 of the Act.

4. (a) Presumptions about the accuracy of balance sheet and profit and loss account of a company: Dispute between an employer and his employees regarding bonus payable under the Payment of Bonus Act, 1965 shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of industrial disputes in force in a state and the provisions of that Act or as the case may be such law shall, save and otherwise expressly provided, apply accordingly (Section 22).

Proceeding may be lying before any arbitrator or tribunal under the Industrial Disputes Act or under any corresponding law relating to investigation and settlement of industrial disputes in force in the state (herein referred to as the 'said authority') to which any dispute of the nature specified in Section 22 has been referred. During the course of such proceeding the balance sheet and the profit and loss account of an employer, being a corporation or a company other than a banking company may be produced. If these statements of accounts are audited by the Comptroller and Auditor General of India or by auditors qualified under Section 226(1) of the Companies Act, then as specifically provided in Section 23 of the Payment of Bonus Act, the said authority may presume that those are accurate. In view of this presumption corporation or company need not prove the accuracy of such statements by affidavit or any other mode.

But there are certain limitations. If the said authority is satisfied that those statements are not accurate, it may take such steps as it thinks necessary to find out the accuracy thereof. Further, the trade union and if there is no trade union, employees being a party to the dispute may apply to the specified authority seeking clarification relating to any item in the balance sheet or profit and loss account. On receipt of such application the specified authority is to satisfy itself as to the necessity of such clarification. On being thus satisfied, the specified authority may

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

direct the corporation or the company to furnish to the trade union or the employees such clarifications within such time as may be specified in the direction.

Thereupon, the company or the corporation must comply with such direction [Section 23(2)].

- (b) The given problem is based on Section 31A of the Payment of Bonus Act, 1965 which allows an agreement between employers and employees for payment of bonus linked with productivity. But such payment is subject to two restrictions:
- (i) That such agreement whereby the employees relinquish their right to receive minimum bonus under Sec.10, shall be null and void.
 - (ii) If the bonus payable under such agreement exceeds 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of the salary/wages.

Accordingly, in the given problem, the agreement to forego the right of receiving minimum bonus is null and void. The employees shall not be entitled to receive the excess over 20% of salary/wages in case of bonus payable linked with productivity.

- (c) **Entitlement of bonus:-** 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 month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical 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 25 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.
- (c) **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

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

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)*].

5. (I) (a) The correct answer is 3,500/- per mensem as per the provision given under section 12 of the Payment of Bonus Act, 1965.
- (b) As per the provision given under section 9 of the Payment of Bonus Act, 1965, option (iv) is the correct answer.
- (c) As per section 21 of the Payment of Gratuity Act, 1965 Collector shall proceed to recover the bonus due of an employee on the basis of the certificate issued by the Appropriate Government on the application of the employee himself or any other person authorised by him.
- (II) (i) The given statement is **correct**. As per the provision given under the section 8 of the Payment of Bonus Act, 1965, every employee shall be entitled to be paid by his employer bonus in an accounting year, provided he has worked in the establishment for not less than thirty working days in that year. [*J.K. Ginning & Pressing Factory Vs. P.O., 2nd Labour Court, (1991) 62 FLR 207 (Bom)*].
- (ii) The given statement is **incorrect** as per the provisions laid down in the section 10 of the Payment of Bonus Act, 1965. Accordingly every employer shall be bound to pay to every employee a minimum bonus which shall be 8.33% of the salary/wage earned by the employee during the accounting year or one hundred rupees, whichever is higher. In case where employee has not completed fifteen years of age at the beginning of the accounting years, there the minimum bonus shall be sixty rupees.
6. (I) (a) The correct answer is 9.5 %. As per the recent amendment Central Govt. has increased the rate of interest on the PF amount from 8.5% to 9.5%.
- (b) The correct answer is 1 lakh as per the amendment made in the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010.
- (II) (a) **True**. As per section 1(5) of the EPF & Miscellaneous Provisions Act, 1952, wherein in any establishment the strength of the employees at a particular time is below 20, it cannot be contended by the employer that the establishment is no longer within the purview of the Act. [*Annamma Iype Vs. Regional Provident Fund Commissioner, 1993 LLR 287*]
- (b) **False**. As per section 2(b) of the EPF & MP Act, 1952, special allowance being paid to the employees appeared to be the dearness allowance which has been described by a different name, as such the special allowance would be the part of the 'Basic Wages'. [*Regional Provident Fund Commissioner Vs. Vivekananda Vidya Mandir, 2005 LLR 399 (Cal)*].
- (c) This statement is **false** as an employer under Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

7. (a) Protection of the amount standing to the credit of an employee in provident fund against attachment: As per Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules vest in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. (Section 10, EPF & MP Act, 1952).

- (b) (i) As per Section 2(b) of the EPF & Miscellaneous Provisions Act, 1952 "Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:
- the cash value of any food concessions ;
 - any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment ; or
 - any presents made by the employer.
- (ii) As per the Notification No. G.S.R.523(E), dated 18th June, 2010 amendment made in Employees' Deposit Linked Insurance Scheme, 1976 by the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010, by the Ministry of Labour and Employment. This modified Employees' Deposit Linked Insurance (Amendment) Scheme, 2010, stated that on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of rupees one lakh.

This above provision says that the EDLI amount is equal to the average balance of your PF in the last 12 months or the overall balance, whichever is less. But if the balance exceeds Rs. 50,000, your nominee will get Rs. 50,000 plus 40% of the excess balance up to a total of Rs. 1 lakh.

- (iii) The Central Government may, by notification in the Official Gazette, frame a scheme to be called Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or any class of employees of an establishments to which the Act applies. It may also specify the establishments or class of establishments to which the said scheme is to apply. As soon as may be after the framing of scheme, a Fund must be established in accordance with provisions of this Act and the Scheme.

The fund shall vest in and be administered by Central Board of trustees constituted under Section 5A by the Central Government . Subject to the provisions of the Act, the Scheme framed under Section 5(1) may provide for all or any of the matters specified in Schedule II [Section 5 (1B)].

- (c) An appeal against the order of officer made u/s 1(3), 1(4), 3, 7A, 7B, 7C or 14 B can be made to Employees' Provident Funds Appellate Tribunal. [Section 7-I].

The Tribunal is headed by a Presiding Officer who is or has been qualified to be judge of a High Court or a District Judge. [Section 7D]. The Tribunal has been set up at New Delhi w.e.f. 1-7-1997, to hear appeals. The Tribunal has all India jurisdiction. [Notification SO 491(E) dated 30-6-1997]. The presiding officer holds office for five years or until he attains the age of 62 years, whichever is earlier [Section 7E]. He can resign from his office by giving three months' notice. He can be removed after following prescribed procedure [Section 7F]. Staff of Tribunal will be supplied by Central Government [Section 7H]. The Tribunal, during proceedings, will give opportunity of hearing to parties. It will then pass order (a) confirming, modifying or annulling the order appealed against, or (b) remand the matter back to the authority for fresh directions, with such directions as the Tribunal may deem fit [Section 7L(1)]. The Tribunal has powers to rectify its order, if it is apparent from the records. Such rectification can be made within five years from date of the order. If such rectification has effect of increasing the liability of the employer, notice has to be given to the employer and opportunity of hearing will be given before passing order [Section 7L(2)]. An Order passed by the Tribunal is final and no appeal can be filed in any Court of law against the order [section 7L(4)]. Appeal can be entertained only after depositing 75% of amount demanded. However, the Tribunal can waive or reduce the deposit, for reasons to be recorded in writing [Section 7-O].

- 8. (a) (i) EMPLOYEE means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work ,manual or otherwise, in or in connection with the work of a

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity. [Definition is amended by the Payment of Gratuity (Amendment) Act, 2009, w.r.e.f 3-4-1997].

- (ii) WAGES means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes D.A. but does not include any bonus, commission, house rent allowance, overtime wages and any other allowances [Section 2 (s)].
 - (b) i. This statement is false because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees Payment of Gratuity Act, 1971.
 - ii. This statement is true because in the case of *State of Punjab Vs. Labour Court* (1986), it was held that a retrenched employee is also eligible for gratuity.
 - iii. This statement is false as it was held in *Mathur Spinning Mills Vs. Deputy Commissioner of Labour*, (1983) 11 LLJ 188, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.
 - iv. This statement is false because when loss is caused by the negligence of employee gratuity shall be forfeited to the extent of the damage or loss so caused.
 - v. This statement is true as an appeal against the Controlling Authority's order must generally be made within 60 days (Section 7 of the Payment of Gratuity Act, 1972).
9. (a) 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 superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The condition of the completion of five years 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, X 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.

(b) Rules relating to penalties under the Payment of Gratuity Act, 1972 are as follows:

Making false statement or false representation – Whosoever makes or causes to be made false statement or false representation for purpose of avoiding payment to be made under Payment of Gratuity Act or enables another person to avoid such payment, shall be punishable with imprisonment upto six months and fine upto Rs.10,000 or with both [Section 9(1) of Payment of Gratuity Act, 1972].

Contravening provisions of Gratuity Act or rules – An employer who contravenes provisions of Payment of Gratuity Act or Rules made thereunder shall be punishable for a term which will not be less than three months but can extend upto one year. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed [Section 9(2) of Payment of Gratuity Act, 1972].

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

Employer can charge another person as the actual offender – Though the 'employer' is liable under Payment of Gratuity Act, he can charge another person as actual offender. After commission of offence is proved, the employer has to prove that he used due diligence in execution of the Act and the other person committed the offence without the knowledge, consent or connivance of the employer. If actual offender cannot be brought before the Court within three months, the employer will be convicted of the offence [Section 10 of Payment of Gratuity Act, 1972].

Cognizance of offence – Cognizance of offence can be taken only on complaint made by authority appointed by 'Appropriate Government'. Complaint can also be filed by 'controlling authority' if employer did not pay gratuity within six months from prescribed time [Section 11(1) of Payment of Gratuity Act, 1972]. Metropolitan Magistrate or Judicial Magistrate of First Class can try the offences punishable under Payment of Gratuity Act [Section 11(2) of Payment of Gratuity Act, 1972].

- 10. (a)** In accordance with the provisions of Section 42 of the Companies Act, 1956, a subsidiary company cannot become a member in its holding company and any allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:
- (a) the subsidiary company is a legal representative of a deceased member of the holding company, or
 - (b) the subsidiary company is a trustee and the holding company or a subsidiary thereof is not beneficially interested under the trust, or

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

- (c) entered into by the holding company in the ordinary course of business which includes the lending of money. Position of the following with regard to membership in a company:
- (i) Partnership Firm: A partnership may firm hold shares in a company in the individual names of partners as joint shareholders. As an un incorporated association, a firm is not a person and as such it cannot be entered as a member in the register of members. (*Ganesh Das Ram Gopal v. R.G. Cotton Mills Ltd.*) Section 25 of the Companies Act however, permits a firm to be a member of a company licensed under Section 25.
 - (ii) An Insolvent: An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the Official Assignee or Receiver. (*Morgan v. Gray*) allotment or transfer of shares is by way of security for the purpose of a transaction.
- (b) As per the provisions given under section 34 of the Companies Act, 1956, upon the registration of the documents as required under the Companies Act, 1956 for incorporation of a company, and on payment of the necessary fees, the Registrar of Companies issues a Certificate that the company is incorporated.

Section 35 provides that a certificate of incorporation issued by the Registrar is conclusive as to all administrative acts relating to the incorporation and as to the date of incorporation.

The facts as given in the problem are similar to those in case of *Jubilee Cotton Mills v. Lewis (1924) A.C. 1958* where it was held that an allotment of shares made on the date after incorporation could not be declared void on the ground that it was made before the company was incorporated when the certificate of incorporation was issued at a later date.

Applying the above principles the contention of the company in this case cannot be tenable. It is immaterial that the certificate of incorporation was issued at a later date. Since the company came into existence on the date of incorporation stated on the certificate, it is quite legal for the company to enter into contracts. To conclude the contracts entered into by the company before the issue of certificate of incorporation shall be binding upon the company. The date of issue of certificate is immaterial.

- (c) In terms of Companies Act, 1956, the powers of the company are limited to:
- (i) Powers expressly given by the Memorandum (which is popularly known as 'express' power or conferred by the Companies Act 1956, or other statute, and
 - (ii) powers reasonably incidental or necessary to the company's main purpose (termed as "Implied" powers). The Act further provides that the acts beyond the powers of a company are ultra vires and void and cannot be ratified even

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

though every member of the company may give his consent [*Ashbury Railway Carriage Company Vs Richee*].

The object clause enable shareholders, creditors or others to know what its powers are and what is the range of its activities and enterprises. The objects clause therefore is of fundamental importance to the share holder, creditors and others.

M/s ABC Pvt. Ltd is authorised to trade directly on dress material. It has no power to enter into a partnership for Automobile parts with Mr. X. Such act can never be treated as 'express' or 'implied' powers of the company. Mr X who entered into partnership is deemed to be aware of the lack of powers of M/s ABC (Pvt) Ltd. In the light of the above, Mr, X cannot enforce the agreement or liability against M/s ABC Pvt. Ltd. Mr. X should be advised accordingly. This conclusion is supported by the decision reported in the case of '*the Ganga Mata Refinery Company (Pvt) Ltd CIT*'.

11 (a) Directors' Power to Borrow under the Companies Act, 1956

An outsider is presumed to know the constitution of company, but not what may or may not have taken place within the doors that are closed to him. However, where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management. In this case, the directors of a company could borrow any amount up to Rs. 25,000/- without the resolution of the company in a general meeting. But for any amount beyond Rs. 25,000/- they had to obtain the consent of the shareholders in a general meeting. The directors themselves lent Rs. 35,000/- to the company without such consent and took debentures. The directors had the notice of the internal irregularity and hence the company was liable to them only for Rs. 25,000/-.

- (b) A person who has been induced to subscribe for shares/debentures on the faith of misleading prospectus has the following remedies against the company. If there is a misstatement of a material information in a prospectus, and if it has induced any shareholder to purchase shares, he can:

1. rescind the contract, and
2. claim damages from the company whether the statement is fraudulent or an innocent one.

Rescission of the Contract: Any person who takes shares on the faith of statements of fact contained in a prospectus, can apply to the Court for the rescission of the contract if those statements are false or fraudulent or if some material information has been withheld. He must, however, apply for the rescission within a reasonable time and before the company goes into liquidation. But he will have to surrender to the company the shares allotted to him, His name is then removed from the register of members and he gets back the money paid by him to the company along with interest. The contract can be rescinded if the following conditions are satisfied:

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

1. the statement must be a material misrepresentation of facts.
2. the statement must have induced the shareholder to take the shares,
3. the statement must be untrue.
4. the deceived shareholder is an allottee and he must have relied on the statement in the prospectus.
5. the omission of material fact must be misleading before rescission is granted.
6. the proceedings for rescission must be started as soon as the allottee comes to know of a misleading statement in the prospectus on the faith of which he had subscribed for shares and before the company goes into liquidation.

Rescission is available only if the aggrieved shareholder:

- (a) acts within reasonable time;
- (b) before the company goes into liquidation;
- (c) has not done any act indicating the upholding of the contract to take shares like:
 - (1) having attended a meeting of the company or
 - (2) accepted dividends declared by the company.

Damages:

Any person induced by a fraudulent statement in a prospectus to take shares is entitled to sue the company for damages. He must prove the same matters in claiming damages for deceit as in claiming rescission of the contract. He cannot both retain the shares and get damages against the company. He must show that he has repudiated the shares and has not acted as a shareholder after discovering the fraud or misrepresentation.

(c) Allotment of Shares

The company has received 80% of the minimum subscription as stated in the prospectus.

Hence the allotment is in contravention of section 69(1) of the Companies Act 1956 and the allotment is irregular attracting the provisions of Section 71 of the Companies Act, 1956.

The consequences of such irregular allotment are as follows:

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

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

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

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

In view of the above, refusal by 'X' to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act is valid provided he has exercised his option to avoid the allotment within the period mentioned in Section 71(1) of the Companies Act, 1956. The Company has also violated the provisions of Section 69(4) of the Companies Act 1956 in withdrawing 50% of the amount deposited with the bank before receiving the entire amount payable on application for shares in respect of the minimum subscription.

12. (a) (i) Under Section 81 of the Companies Act, 1956 where any debentures have been issued to or loans have been obtained from the Government by a company, whether such debentures have been issued or loans have obtained before or after the commencement of Companies Amendment Act, 1963 (w.e.f. 1.1.1964), the Central Government may, if in its opinion it is necessary in the public interest so to do, by order direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include term providing for an option for such conversion.
- (ii) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances:
- The financial position of the company;
 - The terms of issue of the debentures or the terms of the loans, as the case may be;
 - The rate of interest payable on the debentures or the loans;
 - The capital of the company, its loan liability, its reserves, its profits during the preceding five years; and
 - The current market price of the shares in the company.

A copy of every order proposed to be issued by the Central Government shall be laid in draft before each House of Parliament. The above powers of the Central Government are exercised notwithstanding anything contained in sub-sections (1), (2) and (3) of Section 81 of the Companies Act, 1956.

(iii) **Remedies open to the company**

If the terms and conditions of such conversion are not acceptable to the company, the company may, within 30 days from the date of communication of such order or within such further time as may be granted by the Court, prefer an appeal to the court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government shall be final and conclusive.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

- (b) A forged transfer is a nullity. It does not give the transferee concerned any title to the shares. Since the forgery is an illegality therefore it cannot be a source of a valid transfer of a title. Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate as the owner of the shares was really the owner of the shares represented by the certificate. Even then the illegality cannot be converted into legality. Therefore, in this case company has right to refuse to do the transfer of the shares in the name of the transferee S.

Here, as regards to the liability of R against 'S', R does not stand directly responsible according to provisions of company law as he has already committed forgery which is illegal but R is liable to compensate the company as he has lodged the forged transfer and the company has suffered the loss.

As regards to the liability of the company towards S, the company shall be liable to compensate to S in so far as the company had issued a certificate to transfer and was, therefore, stopped from denying the liability accruing from its own act. Further, as the company has refused to register him as a shareholder, company has to compensate S. However, in this case the interest of the original shareholder will be protected.

- (c) **Registration of charge** : The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge. [Section 125 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

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

If the charge was created on 12th February, 2010, then the company has to apply to the Company Law Board (Now tribunal) under Section 141 and seek extension of time for filing the particulars for registration. The company must satisfy the Company Law Board (Now tribunal) that the omission was accidental or due to inadvertence or due to some other sufficient cause or was not of the nature to prejudice the position of creditors or shareholders of the company, or that it is just and equitable to grant relief on the other grounds. On such satisfaction, the Company Law Board (Now tribunal) may extend the term for the registration of charge or; such terms and conditions as it may think expedient. Once the time is extended and it is made out that the particulars have been filed within the extended time, the registrar is bound to register the charge.

13. (a) **Extraordinary meeting**: Every shareholder of a company has a right to requisition for an extraordinary general meeting. He is not bound to disclose the reasons for the resolution to be proposed at the meeting [*Life Insurance Corporation of India vs. Escorts Ltd.*, (1986) 59 Comp. Cas. 548].

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

Section 169 of the companies Act, 1956 contains provisions regarding holding of extraordinary general meetings. It provides that if directors fail to call a properly requisitioned meeting, the requisitionists or such of the requisitionists as represent not less than 1/10th of the total voting rights of all the members (or a majority of them) may call a meeting to be held on a date fixed within 3 months of the date of the requisition.

Where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in *R. Chettiar v. M. Chettiar* that the meeting may be held anywhere else. Further, resolutions properly passed at such a meeting, are binding on the company.

Thus, in the given case, since all the above mentioned provisions are duly complied with. Hence the meeting with the resolution removing the managing director shall be valid.

- (b) **Problem on notice and validity of proceedings of the meeting:** The problem as asked in the question is based on the provisions of the Companies Act, 1956 as contained in Section 172 read with Section 53. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants to notice to be served on him under a certificate or by registered post with or without acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of D shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.
- (ii) In view of the provisions of the Companies Act, 1956, as contained in Section 172, the company is not bound to send notice to D at the address outside India.

Therefore, answer in the second case shall differ from the first one.

- (c) This question was decided in *Sharp Vs. Dawes* case which provides that "the word meeting prima facie means coming together of more than one person." In this given case, only one shareholder present. This was not a meeting within the meaning of the Companies Act, 1956. According to Section 174 another requirement of valid meeting is the presence of a required quorum. Moreover, the section also says that "the members actually present shall be the quorum." The presence of one member may not be enough.

This was not a valid meeting.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

In *East Vs. Bennet Brothers Ltd. (1911)* it has been held that in case of a class meeting of all the shares of a particular class are held by one person, one person shall form the quorum. In the given case, since all the shares are not held by one person, no quorum is therefore present. The meeting and the resolution passed there shall not be valid.

14. (i) **The statement is incorrect.**

Reason: A company is an entity distinct from its members. Death, insolvency or retirement of its members, therefore, leave the company unaffected.

(ii) **The statement is incorrect.**

Reason: M shall have no remedy against the company, there being no privity of contract between M and the Company.

(iii) **The statement is incorrect.**

Reason: As per the provision given under the section 160 of the Companies Act, 1956 a company not having a share capital is also required to file an annual return within 60 days of each annual general meeting.

(iv) **The statement is incorrect.**

Reason: As per the provisions given under sections 58 AA small depositor means depositor who has invested in a financial year a sum not exceeding rupees twenty thousand in a company.

(v) The statement is **correct** as per the section 176(3) of the Companies Act, 1956.

15. (a) (i) A company in the eyes of law is regarded as an entity separate from its members. It has an independent corporate existence. Any of its members can enter into contracts with the company in the same manner as any other individual can and he cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The company's money and property belong to the company, and not to the shareholders. (*Salomon v. Salomon & Co. Ltd.*).

Further, from the juristic point of view, a company is a legal person distinct from its members (*Salomon v. Salomon & Co.*). It has its own corporate personality. This principle may be referred to as 'the veil of incorporation'. The Courts in general consider themselves bound by this principle. The effect of this principle is that there is a fictional veil between the company and its members. That is, the company has a corporate personality which is distinct from its members. This principle must be used for legitimate business purposes only. Where the legal entity of a corporate body is misused for fraudulent and dishonest purposes, the individuals concerned will not be allowed to take shelter behind the corporate personality.

The human ingenuity, however, started using this veil of corporate personality blatantly as a cloak for fraud or improper conduct. Thus it became necessary

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

for the Courts to break through or lift the corporate veil or crack the shell of corporate personality or disregard the corporate personality of the company. Thus while by fiction of law a corporation is a distinct entity, yet, in reality it is an association of persons who are in fact the beneficial owners of all the corporate property (*Gallagher v. Germania Brewing Co.*).

- (ii) The prospectus is the basic document on the basis of which the intending investors decide whether or not they should subscribe to the shares or debentures. Therefore, the law requires unstinted disclosure of various matters through prospectus and forbids variations of any terms and conditions of a contract contained therein except with the approval and authority of the company in general meeting [Section 61].

Those who issue prospectus holding out to the public great advantage which will accrue to persons who take up shares on the representations contained therein, are bound to state everything with scrupulous accuracy and not only to abstain from stating as fact that which is not so but to omit no fact within their knowledge, the existence of which might in any degree affect the nature or extent or quality of the privilege and advantages which the prospectus holds out as an inducement to take shares [as per *Kindersely V.C. in Burnswick and Canada Railway Co. vs. Mullridge*].

It is therefore essential that the information statutorily needing disclosure is stated fully and precisely so that the investing public which is ignorant of the present and future prospects of the company may get all the information which is likely to affect the public mind. It is only to protect the members of the public against their being misguided by half truths or falsehoods that the law casts a liability on various persons connected with the issue of the prospectus to compensate every person (who subscribes on the faith of the prospectus) for any loss or damage he may have sustained because of the inclusion of any untrue statements in the prospectus [Section 62].

- (iii) Types of Meetings under Companies Act, 1956:

1. Meetings of shareholders or members:
 - (a) Statutory meeting.
 - (b) Annual general meeting.
 - (c) Extraordinary general meeting.
 - (d) Class meetings.
2. Meeting of debenture holders.
3. Meetings of creditors and contributories in winding up.
4. Meeting of creditors otherwise than in winding up.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

5. Meeting of directors:

- (a) Board meeting.
- (b) Committee meeting.

- (b) (i) A proxy is a person, being a representative of a share holder at a meeting company who may be described as his agent to carry out which the shareholder has himself decided upon. [*Cousin vs. International Brick Co, 1931*]. The appointment of a proxy must be made by a written instrument signed by the appointer or his duly authorised attorney. The instrument of proxy has to be in the prescribed form set out in Schedule IX.

Section 187 of the Companies Act, 1956 provides that where a company is a member of another company it may attend the meeting of any other company through a representative. The representative must be appointed by a resolution of the Board of directors or the other governing body, the person so appointed is entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the company as the individual member of the company may exercise.

- (ii) Foreign company can also make the use of this provision or it may by means of power of attorney. [*CEPT v. Jeevanlal Ltd., (1951)*]

16. (a) Unless the articles of a company provide for a larger number, five members personally present in the case of a public company shall be the quorum for a meeting of the company (section 174). Personally present excludes proxies. But a representative of a body corporate appointed under Section 187 is a member personally present for purposes of counting of quorum. If one individual represents three member companies, his presence will be counted as three members being present in person for purpose of quorum [*Mac-Leod (Neil) & Sons Ltd.*].
- (b) For the purpose of quorum, joint shareholders will be collectively regarded as one shareholder. However in an Australian Case (*Re. Trans-Continental Hotel Ltd.*), it has been held that two joint holders are each members and are to be counted towards a quorum as two members personally present. The Companies Act, 1956 specifically provides for certain purposes e.g. under Section 3(i) (iii) and under section 399 where two or more persons hold shares jointly they shall be counted only as one member. If the articles do not provide anything to the contrary, it appears that two or more joint holders when personally present can be counted as so many members for the purpose of forming quorum.
- (c) The word meeting literally means a coming of together of two or more persons and generally more than one person will be necessary to constitute a meeting [Mac-leod (Neil) & Sons Ltd.]. But there may be cases where the constitution of a company may be such as, for instance, where one person holds all the equity shares of a class or all the preference shares so that there can be no meeting of more than one voting shareholder or one member of a particular class of shares. In such cases, it must be presumed that the Act contemplates positions where a meeting of two or

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

more persons will not be possible in the strict sense and the word meeting must be taken to have been used in the sense of a function which can be performed by one person also as effectively as by two or more (*East v. Bennet Bros. Ltd.*). Apart from these special circumstances, there is an express provisions in the Companies Act, 1956 where a single member will constitute a meeting. Section 167 empowers the CLB to call annual general meeting of a company. Section 186 empowers CLB to order a meeting of the company, other than an annual general meeting. In both these cases, the CLB may issue directions in relation to the calling, holding and conducting of the meeting. The directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

17. As per Section 225 of the Companies Act, 1956, the duty of the company may be summed up as follows:

- (i) On the receipt of the 14 days. special notice, the company must forthwith send a copy thereof to the retiring auditor [Section 225(2)].
- (ii) Where the retiring auditor makes a written representation, not exceeding a reasonable length, to the company and requests the company to notify such representation to the members, the company is bound to state in any notice of the resolution given to the members, the fact of the representation having been made and send a copy of the representation to every member to whom notice of the meeting is sent-whether before or after a receipt of the representation by the company. Moreover, the company is bound by this duty if the representation has not been received too late. If the representation has been received too late, the company will be relieved of this duty. But in such a case, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.

The auditor's right to get the copies of the presentation sent out to members or read out at the meeting is hedged in by the provision that if the Court is satisfied, on the application of the company or any other aggrieved person, that the right is being abused to secure needless publicity for a defamatory matter, the Court may order that the representation may not be circularised or read out. The Court may further order that the company's costs on such an application should be paid by the auditor, in whole or any part even though he is not a party to the application [Section 225(3)].

The rights of the auditor in this context are as follows:

- (1) It follows from paragraph (ii) above that the auditor has the right to make representation to the company and to request it to the members.
- (2) The auditor has also right to be heard orally at the meeting of the shareholders.
- (3) Where a copy of the representation has not been despatched as aforesaid because it was received too late or because of the company's default, the

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

auditor may without prejudice to his right to be heard orally, require that the representation be read out at the meeting.

18. (a) (i) **Incorrect:** Both 'ethics' and 'morals' deal with right and wrong conduct. But they are not same. Ethics deals with individual character which is a personal attribute. Ethics is the response of individual to a specific situation e.g. whether in this situation, it is ethical to state the truth. Morals deal with customs set by groups or some authority like religion. Morals are general principles e.g. you should speak truth.
- (ii) **Incorrect:** 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 role and power it must respond to society's needs constructively.
- (iii) **Incorrect:** Company management is responsible not only to the shareholders, but also to other stakeholders i.e. people who have an interest in the conduct of the business of the company. These include employees, customers, vendors, the local community and even society as a whole. These stakeholders have certain rights with regard to how the business operates.
- (b) Mr. XYZ is in a situation where he has to choose between carrying on the development of a drug for a painful and life threatening disease which afflicts one in ten million and the action of spending huge sum of shareholders' money for such development. As we can see, both are positive and ethically right choices. As a socially responsible person he has to think in terms of eliminating a serious illness but at the same time he must be careful in dealing with shareholders' money. This is a classic case of an ethical dilemma. Such an ethical dilemma must be resolved by addressing the following points:
1. Defining the problem clearly.
 2. How to define the problem if you stood on the other side of the fence?
 3. How did the situation arise?
 4. To whom are you loyal as a person and as a member of the organization?
 5. What is your intention in making this decision?
 6. How does this intention compare with the probable results?
 7. Whom could your decision or action injure?
 8. Can you discuss the problem with the affected parties before you make your decision?
 9. Are you confident that your position will be as valid over a long period?
 10. Could you disclose without any doubt your decision or action to your boss, your CEO, the Board of Directors, your family, society as a whole?
 11. What is the symbolic potential of your action if understood? Misunderstood?

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

12. Under what conditions would you allow exceptions to your stand?

19. (a) The concept of Corporate Social Responsibility (CSR) focuses on the idea that beyond making profit, a business has social obligations. It is the responsibility of the companies to produce an overall positive impact on the society. CSR is pursued by business to balance their economic, environmental and social objectives while at the same time addressing stakeholders' expectations and enhancing shareholders' values. Stakeholders, including shareholders, analysts, regulators, labour unions, employees, community organisations and mass media expect companies to be accountable not only for their own performance but for the performance of their entire supply chain. Issues such as peace, sustainable development, security, poverty alleviation, environmental quality and human rights have a profound effect on business and its environment.

Corporate Social Responsibility is the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Need for social responsibility:

1. The iron law of responsibility
 2. To fulfil long term self-interest
 3. To establish a better public image
 4. To avoid government regulation and control
 5. To avoid misuse of National Resources and Economic Power
 6. To convert Resistances into Resources
 7. To minimise Environmental damage.
- (b) (i) In pursuance of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (duly amended), the Board has approved the. 'Code of Conduct for Prevention of Insider Trading'. The objective of the Code is to prevent purchase and/or sale of shares of the Company by an Insider on the basis of unpublished price sensitive information.
- (ii) APEC is known as the primary international organization for promoting open trade and economic cooperation among 21 member countries. The Code, issued as a draft in 1999, is a standard that draws significantly on a variety of other internationally recognized codes and standards. The drafting of the Code was initiated by business leaders from companies operating in APEC countries and is designed to supplement and support companies existing codes of conduct.
- (iii) The term corporate citizenship denotes the extent to which businesses meet the legal, ethical, economic and voluntary responsibilities placed on them by their stakeholders. Companies can best benefit their stakeholders by fulfilling

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

their economic, legal, ethical and discretionary responsibilities. The benefits of good corporate citizenship include:

- ◆ A stable socio-political-legal environment for business as well as enhanced competitive advantage through better corporate reputation and brand image.
- ◆ improved employee recruitment, retention and motivation, improved stakeholder relations and a more secure environment in which to operate.

20. (a) (i) The given statement is incorrect because discrimination is action based on prejudice resulting in unfair treatment of people. To discriminate socially is to make a distinction between people on the basis of class or category without regard to individual merit. Examples of such discrimination include racial, religious or gender-based discrimination. Distinctions between people which are based just on individual merit (such as personal achievements, skill or ability) are generally not considered socially discriminatory. So seniority alone cannot be the deciding factor for promotion, if the senior person is not fit for the job.

(ii) The given statement is correct. Economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. Industrialization and rapid development have affected the environment. Everybody should realize that such development is related to environmental damage and resource depletion.

Therefore, an element of resource regeneration and positive approach to environment has to be incorporated in development programs. Sustainable development refers to maintaining development over time. Sustainable development is development that meets the needs of the present without comprising the ability of future generations to meet their own needs. A nation or society should satisfy its social, economic and other requirement without jeopardizing the interest of future generations.

High economic growth means high rate of extraction, transformation and utilization of non-renewable resources. Therefore it is suggested that economic growth has to be environmentally sustainable because it is sure that there is no economic growth without ecological cost.

(b) Ecological ethics is based on the idea that the environment should be protected not only for the sake of human beings but also for its own sake. The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal.

Business and Industry are closely linked with environment and resource utilization. Production process and strategy for eco-friendly technologies throughout the

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

product life cycle and minimization of waste play major role in protection the environment and conservation of resources. Business, Industry and multinational corporations have to recognize environmental management as the priority area and a key determinant to sustainable development. Sound management of wastes is among the major environmental issues for maintaining the quality of Earth's environment and achieving sustainable development.

- ◆ If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pays Principle". Removing subsidies that encourage environmental damage is another measure.

21. (a) (i) **No.** The consumer does not purchase goods and health services for personal purposes only, because on certain occasions various items are purchased for public welfare and development of the society as a whole. Further, under the Competition Act, 2002, a consumer is also one who may purchase goods for commercial purposes also.
- (ii) **Yes.** A whistle blower is an employee/person who reports fraud, mismanagement or unethical practices to the appropriate levels of management. Fair treatment and appreciation of whistle blowers is necessary to check fraud. This will help in creating good accounting environment in a business enterprise.
- (b) The Competition Act, 2002 intends to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

The Act deals with the following:

- 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 anti-competitive if they cause or are 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

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

resulting in denial of market access or through in any other mode are prohibited.

- Regulation of combinations which cause or likely to cause an appreciable adverse effect on competition within the relevant market in India.

In light of the above points, any agreement that X Ltd. may enter into with its competitors from North India to tie-up the price at a certain level is prohibited. Such agreements would also amount to abuse of dominant position.

Conversely, agreements with distributors preventing the latter from distributing the goods of its competitors would also be illegal since they would restrict market access and can be deemed anti-competitive.

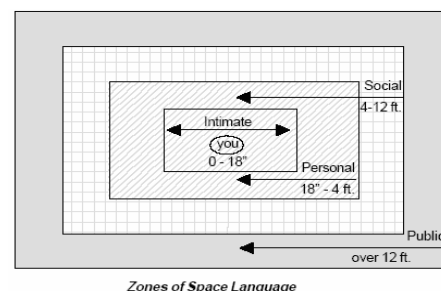
22. (a) Proxemics: It refers to the space that exists between us when we talk or relate to each other as well the way we organize space around us. We can also call it 'space language' as the following four space zones indicates the type of communication and the relationship of the source and receiver:

Intimate – Physical contact to 18 inches.

Personal – 18 inches to 4 feet.

Social – 4 to 12 feet.

Public-12 feet to as far as we can see or hear.



- (b) Social Competence – How You Manage Relationships

Social Awareness

- Empathy: Sensing other's emotions, understanding their perspective and taking active interest in their concerns.
- Organizational awareness: Reading the currents, decision networks, and politics at the organizational level.
- Service: Recognizing and meeting follower, client, or customer needs.

Relationship Management

- Inspirational leadership: Guiding and motivating with a compelling vision.
- Influence: Wielding a range of tactics for persuasion.

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

- Developing others: Bolstering others' abilities through coaching, feedback and guidance.
- Change catalyst: Initiating, managing, and leading in a new direction.
- Conflict management: Resolving disagreements.
- Building bonds: Cultivating and maintaining a web of relationships.
- Teamwork and collaboration: Cooperation and team building.

- 23. (a)** Negotiation: Negotiation occurs when two or more parties-either individuals or groups discuss specific proposals in order to find a mutually acceptable agreement. Whether it is with an employer, family member or business associate, we all negotiate for things each day like higher salary, better service or solving a dispute with a co worker or family member. Negotiation is a common way of settling conflicts in business. When handled skillfully, negotiation can improve the position of one or even both but when poorly handled; it can leave a problem still unsolved and perhaps worse than before.

Techniques for Negotiation:

- Spiraling agreements: Begin by reaching a minimum agreement even though it is not related to the objectives, and build, bit by bit, on this first agreement.
 - Changing of position: Formulate the proposals in a different way, without changing the final result.
 - Gathering information: Ask for information from the other party to clarify their position.
 - Making the cake bigger: Offer alternatives that may be agreeable to the other party, without changing the terms.
 - Commitments: Formalize agreements orally and in writing before ending the negotiation.
- (b)** Ambiguity, like secrecy, can be used for ethical or unethical purposes. Language itself is made up of various words that carry values. So by using words in certain ways, one can influence others behaviour and expectations because all language contains some degree of vagueness. Communicators are to some extent held responsible for possible misinterpretations. This means that one must be aware of the probabilistic nature of communication, and need to consider not only their intentions, but also how their messages might be misunderstood.

24. (a) Notice

Notice is hereby given that the 8th Annual General Meeting of the Members of XYZ Ltd. will be held on Thursday, the 25th day of February 2011, at the Registered Office of the Company at 28, Industrial Area, Phase-III, Sector-82 Noida (UP), at 10.00 a.m. to transact the following business –

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

Ordinary Business:

1. To receive, consider and adopt the Audited Balance Sheet of the company as on 31st March, 2011 and the Profit & Loss Account for the year ended on that date and Auditor's and Directors' Reports thereon.
2. To declare dividend for the year ending 31st March, 2011.
3. To appoint a director in place of Mr.who retires by rotation and being eligible, offers himself for re-appointment.
4. To appoint a Director in place of Mr.who retires by rotation and begin eligible, offers himself for re-appointment.
5. To appoint Statutory Auditors of the company; and fix their remuneration.

Regd. Office

For and on behalf of Board of Directors.

28, Industrial Area, Phase-III,

Sector-82 Noida (UP)

Sd.

Dated: January 27, 2011

Chairman of the meeting

(b) No. 2/7/2010-CL V

Government of India

Ministry of Corporate Affairs

Press Release: 5/2010

28th May, 2010

1. It has been observed that a large number of companies are not filing their due documents timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not available to the stakeholders for inspection. Further, due to non-filing of the documents on time, companies are burdened with additional fee and facing the prosecutions also.
2. There are many companies, who have not increased their paid up capital up to the threshold limit provided in sub-section (3) and sub-section (4) of Section 3 of the Companies Act, 1956.
3. In order to give an opportunity to the defaulting companies to enable them to make their default good by filing belated documents and to become a regular compliant in future, the Ministry has introduced a Scheme namely, "Company Law Settlement Scheme, 2010," for condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under.
4. After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s).

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

5. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.
6. The scheme will be in operation from 30th May, 2010 to 31st Aug, 2010.
7. For details refer General Circular No: 1/2010 dated 26.05.2010 available on the website of the Ministry i.e. www.mca.gov.in.
8. Availing the benefit of the Scheme will prevent companies from prosecution and other legal action.

25. (a) This deed a sub partnership executed on this..... day of 1998 between (mention name and description of parties as in partnership deed) Witnesses as follows:

Whereas the aforesaid parties have come together to work in partnership a business of investing in the business of another partnership, which is carrying on a business in under the name and style ofAnd Whereas the partners find it convenient to work in the said other partnership, the terms and conditions of sub partnership are hereby agreed to as follows (Clauses as in other partnership)

The..... Party shall represent the other partnership in the main partnership ofconstituted under an instrument of partnership; he shall account the share of profits / losses from that main partnership to this sub partnership with all other remuneration / compensation that may be paid to him. This will be treated as the profit / loss as the case may be as sub partnership.

WITNESS

1. Signature of the First Party
2. Signature of the Second Party

- (b) Before Registrar of Companies, we the subscribers of the Memorandum and Article of Association of the Proposed Company hereby authorize to present the memorandum of Article of Association and other connected documents for the registration of the said company before the registrar of companies, Karnataka, Bangalore and to make such corrections/Alterations/deletions/Additions as may be required to be done by the Registrar in the documents and also to receive the certificate of incorporation.

General Power of Attorney: Know we all men by their present we do hereby appoint and constitute son of(hereinafter called "Chartered Accountant" who has subscribed his signature hereunder in token of identification) presently residing to my lawful Chartered Accountant in our name and on our behalf do it any one or all the following acts, deeds, things namely

1. to give all particulars necessary for incorporation of company.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

2. to give affidavit to the Registrar of Company for the purpose of incorporation.
3. to do needful acts necessary for incorporation of the company
4. He is authorized to include promissory notes letter of declaration and indemnity for the purpose of incorporation.
5. to receive documents on behalf of the members of the company.
6. to sign forms, documents and papers required for the purpose of incorporation of the company.

Datedat this the day of

(address)

Specimen signature of the Chartered Accountant above named

Notary Public

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

Applicability of the updates for May, 2011 Examination

S.No.	Subject Matter	Business Laws, Ethics and Communication
1.	The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 • The Employees' Deposit Linked Insurance (Amendment) Scheme, 2010 • Increase in the Interest Rate on the PF Amount.	Applicable (for detail visit www.labour.nic.in) Applicable
2.	The Payment of Gratuity (Amendment) Act, 2009 & The Payment of Gratuity (Amendment) Act, 2010 • Amendment in the definition of an employee. • Enhancement of Ceiling Limit.	Applicable (for detail visit www.labour.nic.in) Applicable
3.	Companies Bill, 2009	Not applicable