

Mock Test Paper – 1
IPCC/PCC: GROUP – I
PAPER – 2/3 : BUSINESS LAWS,/LAWS, ETHICS AND COMMUNICATION
SUGGESTED ANSWERS/HINTS

1. (a) According to the Indian Contract Act, 1872, sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

Where a launderer gives his customer a receipt for clothes received for drycleaning. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt [*Lily White vs. R. Muthuswami* [1966] A. Mad. 13].

Thus in the given problem, X cannot claim the full cost of the marriage coat and has right to get only 10% of the cost of the clothes.

- (b) As per the Companies Act, 1956 one of the important features of a company is an artificial juristic person. Being a juristic person, a company is capable of entering into contract in its own name. According to Section 4 of the Partnership Act, 1932, partnership is a contractual relationship between persons; therefore, there should not be any objection to a company in becoming a partner. Further, the limited liability element of a limited company is also does not restrict a company in becoming a partner in an unlimited liability of a partnership firm, because, it is limited liability of members of a limited company and not the company itself. However, the Ministry of corporate affairs is in the opinion that, a company may become a partner if the Memorandum of Association specifically allows it.

- (c) (1) **Incorrect:** A good system of law does incorporate many ethical standards, but Law can deviate from what is ethical. Law can become ethically corrupt, as some totalitarian regimes have made it. Law can be made to be a function of power alone and designed to serve the interests of narrow groups. Law may have a difficult time designing or enforcing standards in some important areas, and may be slow to address new problems.

Hence, Ethics is not following the law.

- (2) **Correct:** Social and natural science can provide important data to help us make better ethical choices. But science alone does not tell us what we ought to do. Science may provide an explanation for what humans are like. But ethics provides reasons for how humans ought to act. And just because something is scientifically or technologically possible, it may not be ethical to do it.

Hence, Ethics is not science.

(d) The factors responsible for the growing importance of communication:

- (i) Growth in the size and multiple locations of organisation
- (ii) Growth of trade unions
- (iii) Growing importance of human relations
- (iv) Public relations
- (v) Advances in Behavioural Sciences
- (vi) Technological advancement

- 2. (a)** (i) This is an Act intended to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. Unless it is provided otherwise in the Act, it shall apply to : (a) every factory, and (b) every other establishment in which 20 or more persons are employed on any day during an accounting year. But the appropriate Government may apply the provisions of the Act with effect from such accounting year as may be notified in the Gazette to any establishment or class of establishments [including an establishment as defined by Section 2(m) (ii) of the Factories Act, 1948] employing persons less than 20 but not less than 10 in number [Proviso to Section 1(3)].
- (ii) Disputes arising between an employer and his employees regarding bonus payable under this Act, 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 State and the provisions of that Act or as the case may be such law shall, save as otherwise expressly provided, apply accordingly.
- (b)** Corporate social responsibility (CSR) is the commitment of businesses to behave ethically and to contribute to sustainable economic development by working with all relevant stakeholders to improve their lives in ways that are good for business, the sustainable development agenda, and society at large.

Achievement of long term objectives may be in the following manner:

Businesses have been delegated economic power and have access to productive resources of a community. They are obliged to use those resources for the common good of society which delegated these to them to generate more wealth for its betterment . Technical and creative resources of a business if applied to social problems can help in resolving them. A business organisation, sensitive to community needs would, in its own self-interest, like to have a better community in which to conduct its business. To achieve that, it would implement special

programmes for social welfare. The resulting benefits would be:

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

A better society would produce a better environment in which the business may gain long-term *profit maximisation*.

(c) One may continue to communicate nonverbally through:

Kinesics or Body language: All our bodily movements, gestures, postures etc., are guided by our feelings and thought processes. The nodding of our head, blinking of our eyes, waving of our hands, shrugging of our shoulders etc., are expressions of our thought and feelings. All these movements are the signals that our body sends out to communicate.

Paralanguage: The term paralanguage is used to describe a wide range of vocal characteristics like tone, pitch, and speed etc. Vocal cues that accompany spoken language which help to express and reflect the speaker's attitude. Speaker uses a vast range of vocal cues like:

- (a) Pitch Variation
- (b) Speaking
- (c) Pause
- (d) Volume variation
- (e) Non – fluencies
- (f) Word Stress

Artificial Communication : It is well known that we react to people on the basis of their appearance. The use of personal adornment like clothing , accessories, makeup, hairstyle etc. provides important non verbal cues about one's age, social and economic status, educational level, personality etc.

Proxemics : 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'.

Chronemics or Time language: is the study of how we use time to communicate. Punctuality is an important factor in time communication. Misunderstandings or

disagreements involving time can create communication and relationship problems.

Haptics : is communication through touch .How we use touch sends important messages about us. It reveals our perceptions of status, our attitudes and even our needs.

Silence : The absence of paralinguistic and verbal cues also serves important communicative functions.

3. (a) (I) (i) (3) as per section 4 of the Negotiable Instruments Act,1881.
(ii) (1) as per section 23 of the Negotiable Instruments Act,1881.
(iii) (3) as per section 63 of the Negotiable Instruments Act,1881.
(iv) (2) **[However, According to recent amendment made by RBI through notification dated 16th November,2011 the validity period of cheques will be reduced from 6 months to 3 months with effect from 1st April,2012]**
- (II) Special rules of evidence regarding presumption as to negotiable instrument (Section 118) : For deciding cases in respect of rights of parties on the basis of a bill of exchange, the Court is entitled to make certain presumptions. These are briefly stated as follow:
- (i) That the negotiable instrument was made or drawn for consideration and every party who made itself bound in respect thereof did so for consideration;
 - (ii) That the negotiable instrument was drawn on the date shown on the face of it;
 - (iii) That the bill of exchange was accepted before its maturity, *i.e.*, before it became overdue;
 - (iv) That the negotiable instrument was transferred before its maturity;
 - (v) That the endorsements appearing upon a negotiable instrument were made in the order in which they appear.
 - (vi) That an instrument which has been lost was properly stamped;
 - (vii) That the holder of a negotiable instrument is the holder in due course, except when the instrument has been obtained from its lawful owner or its lawful custodian. Likewise, if it has been obtained from a maker or acceptor by means of an offence or fraud, it is for the holder to prove that he is the holder in due course.
- (b) An individual's ethical concerns are about relationships and responsibilities at the workplace where correct decisions are not perfectly clear, and there are no hard and fast rules to follow. One set of relationships and responsibilities is directly related to employees, and include such areas as discipline, performance appraisal, safety, and the administration of reward systems. Another set is concerned with

customers and suppliers, and include the intricate aspects of such elements as timing, quality, and price. Ethical dilemmas also arise when there are conflicts in values with superiors or peers over such things as strategy, goals, policy, and administration. These issues can mainly be categorized in the following framework :

Business Relationships

The behaviour of businesspersons toward customers, suppliers, and others in their workplace may also generate ethical concerns. Ethical behaviour within a business involves keeping company secrets, meeting obligations and responsibilities, and avoiding undue pressure that may force others to act unethically.

Conflicts of Interest

A conflict of interest exists when a person must choose whether to advance his or her own personal interests or those of the organisation.

Fairness and honesty

Fairness and honesty are at the heart of business ethics and relate to the general values of decision makers.

Communications

Communications is another area in which ethical concerns may arise. False and misleading advertising, as well as deceptive personal-selling tactics, anger consumers and can lead to the failure of a business.

- (c) 1. **Self directed teams** – autonomous and self regulated groups of employees empowered to make decisions.
2. **Quality Circles** – is a recent group dynamics technique representing a significant development in the fields of human relations and organizational behavior to improve productivity and work life in organizational settings. Quality Circle has been defined “as a group of workers from the same area who usually meet for an hour each week to discuss their quality problems, investigate causes, recommend solutions and take corrective actions when authority is in their purview. In other words, Quality Circle is a small group to perform voluntarily quality control activities within their work area.
3. **Committees** – are of various types (a) Standing Committee which are permanent in nature and highly empowered. (b) An advisory Committee comprises of experts in particular fields (c) An adhoc committee is setup for a particular purpose and after the goal is achieved, it is dissolved
4. **Task Force** – Task force is like Committee but it is usually temporary. Task force has wide power to take action and properly fix responsibility for investigation, results and proper implementation of decisions. Task force

groups are very important in Government organization to tackle specific administrative problems.

- 4 (a) **Formation of NCLT:** The Central Government is empowered, under Section 10FB of the Companies Act, 1956, to constitute a National Company Law Tribunal to exercise and discharge such powers and functions as may be conferred on it by or under the Companies Act or any other law for the time being in force.

According to Section 10FC, the Tribunal shall be headed by the President who has been, or is qualified to be a judge of a High Court and consists such number of Judicial and Technical Members not exceeding 62, as the Central Government deems fit, to be appointed by the Government by notification in the official gazette.

Eligibility for Members: As per Section 10FC, the Tribunal will consist of Judicial and Technical members. Persons who have been working as Judiciary, Advocate, Member of the Indian Company Law Service and Member of Indian Legal Service shall be considered for the appointment as Judicial Member, and the members of Indian Company Law Service (Accounts Branch), Chartered Accountant, Cost Accountant, Company Secretary shall be considered for the post of Technical Members. In addition to this, length of service in their particular nature of work will also taken into consideration.

Powers of Tribunal

- Tribunal shall have **power to review** its own order (Section 10 FO).
- The Tribunal, as per section 10 FM, after giving reasonable opportunity of being heard is empowered to pass such an order as it thinks fit. It can also, within a period of two years from the date of order, **rectify any mistake** and shall make amendment in the order passed by it and shall make such amendment if the mistake is brought to its notice by the parties.
- Tribunal may **delegate its powers** and duties subject to specified conditions and limitations to any member or officer or other employee of the Tribunal to manage any industrial company or industrial undertaking or any operating agency under this Act as it may deem necessary.

The Tribunal/any operating agency, on being directed by the Tribunal may **seek an assistance** of Chief Metropolitan Magistrate and District Magistrate within whose jurisdiction, any property, books of account or any other document of Sick Industrial Company be situate or be found, to take into custody or to take possession thereof.

- (b) Ecological ethics is based on the concept 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. It is the issues of exploitive human nature and attitudes that should be addressed in a rational way. Problems like Global warming, Ozone depletion and disposal of

hazardous wastes that concern the entire world. They require International cooperation and have to be tackled at the global level.

Unless businesses recognize the interrelationships and interdependencies of the ecological systems within which they operate and unless they ensure that their activities will not seriously injure these systems one cannot hope to deal with the problem of pollution.

(c) Some of the ethical dilemmas faced while communicating are:

- *Secrecy*: Organizations have a legitimate need to protect certain information. If competitors, for example, gain access to proprietary research and development, they can produce that product for a much lower net cost because they do not have to pay the research and development expenses.
- *Whistle-blowing*: Any employee who goes public with information about corporate abuses or negligence is known as a whistle-blower. Greed, jealousy, and revenge motivate some whistle-blowers. Courting whistle-blower too aggressively can be problematic.
- *Leaks*: A leak is like anonymous whistle-blowing. Leaks may cause organizational plans to be altered or forgone altogether. Leaks can be a form of political manoeuvring in the organization or a way to sabotage the career of a colleague competing for a job.
- *Rumour and gossip*: Rumours and gossip seem to be an inevitable part of everyday corporate life. The information has a way of creeping into performance evaluations and promotion decisions, even if unintended.
- *Lying*: A lie is a false statement intended to deceive. Lying breaks down the trust between individuals, shaking the foundation of ethical communication.
- *Euphemisms*: By definition, a euphemism is using a less offensive expression instead of one that might cause distress. For example using the expression "passed away" instead "died" is one of the more common examples. This usage is understandable. However, people frequently use these terms to obscure the truth.
- *Ambiguity*: 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.

- 5 (a) **Copmposition of the Board**: (a) Chairman and Vice Chairman are appointed by Central Government (aa) Central Provident Fund Commissioner as ex-officio member (b) Not more than 5 officials of Central Government (c) Not more than 15 persons representing State Governments (d) 10 persons representing employers appointed by Central government in consultation with association of employers (e)

10 persons representing employees appointed by Central Government in consultation with employees. Thus, the Central Board has about 43 members.

Functions of Central Board : The fund of EPS Scheme under Section 5, Employees Pension Scheme under Section 6A and Employees Deposit Linked Insurance Scheme (EDLI) under Section 6C is vested in the Central Board of Trustees. The fund is administered by them as provided in the scheme. [Section 5A(3)]. The Central Board will perform other functions as may be required under any provisions of PF scheme, pension scheme and insurance scheme [Section 5A(4)].

Accounts, audit and report : Income and Expenditure accounts will be maintained by Central Board in such form and manner as specified by Central Government in consultation with Comptroller & Auditor General (C&AG) [Section 5A(5)].

(b) Removal of Manager

The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same [Section 36(1)]. However, company and members are not bound to outsiders in respect of anything contained in memorandum/articles. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract.

In this case, Articles conferred a right on 'X', the Manager that he shall not be removed except on the ground of proved fraud. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of 'X' even though he was not guilty of fraud) is valid. (*Eley V Positive Govt. Security Life Assurance Co., Major General Shanta Shamsher jung V Kamani Bros. P. Ltd.*)

**(c) Kumar & Sons Ltd.
Jaipur, Rajasthan.**

Circular No:-----

Date-----

To all employees,

Recent surprise checks have revealed that there is considerable indiscipline in the office premises, even the standard instructions for ensuring the maintenance of discipline are not followed. All employees are requested to strictly adhere to the maintaining of the discipline and decorum in the office premises.

Cooperation of all employees is solicited.

Sd/-

Manager – H.R

6. (a) Gratuity is a word derived from a Latin word 'Gratuitas' which simply means a 'Gift.' In the industrial sector, it can be treated as a gift from the employer to his employee for the services rendered to his establishment by him for the development and prosperity of the same. Gratuity is a benefit, which an employee gets at the time of retirement or when he leaves the establishment. Gratuity is a amount (as a lump sum payment) which is paid by an employer to his employee for his past services when the employment is terminated. When the employment comes to an end due to the retirement or superannuation of the workers, it becomes a good help to the workers, it becomes a good help to the effected employee to meet the new situation which often comes due to reduction in regular earnings or even total stoppage of earnings. In case of death of the worker, it provides financial assistance to the members of his family for their survival, if they have got no other means for their survival. Thus, this gratuity scheme serves as an instrument of social security as well as a reward to a person who sacrifices his whole life in the betterment, development and prosperity of an establishment, and in other way for the Nation.

In the case of *Delhi Cloth and General Mills Co. Ltd. Vs their workers (1968) 36 FJR 247*. Supreme Court held that the object of providing a gratuity scheme is to provide a retiring benefit to the workman who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.

Thus the Payments of Gratuity Act, 1972 was enacted to regulate the payment of Gratuity to the employees after the employment is terminated.

- (b) The UN Guidelines have implicitly recognized eight consumer rights, which were made explicit in the Charter of Consumers International as follows:

- .. Right to basic needs
- .. Right to safety
- .. Right to choice
- .. Right to redress
- .. Right to information
- .. Right to information
- .. Right to consumer education
- .. Right to representation
- .. Right to healthy environment

These eight consumer rights can be used as the touchstones for assessing the consumer welfare implications of competition policy and law.

(c) LEASE OF LAND FOR LIMITED PERIOD

THIS DEED OF LEASE of land made on.....day of.....between A s/o.....r/o.....(hereinafter called the 'lessor') and B s/o.....r/o..... (hereinafter called the 'lessee')

Whereas both the lessor and the lessee agree to the following terms and conditions :

1. That the lessor agrees to lease out the land numbering located inin the District of.....to the lessee with effect from.....for a period of two years on payment of monthly rent..... of Rs.....payable on the fifth day of each month in advance.
2. That the lessee agrees to take the aforesaid piece of land on lease. He shall pay the rent hereby reserved in the manner hereinbefore stated.
3. That the responsibility to pay all rates, taxes and charges which are payable or may so become at a future date in respect with the leased land, shall rest upon the lessor.
4. That the lessee shall deliver the peaceful vacant possession of the leased land to the lessor at the termination of the period of lease. Lessee intending to vacate the leased land at an early date, shall give notice of his intention to the lessor to vacate the leased at the expiry of the period stated in the notice. Default in payment of rent for four consecutive months shall entitle the lessor to enter upon the said land and determine the lease.

IN WITNESS WHEREOF, the lessor and the lessee have signed this deed on the day and year first above stated.

Witness.....

Lessor.....

Witness.....

Lessee.....

7. (a) (i) Liquidated damages and penalty

Following are the important differences between liquidated damages and penalty.

- (I) Liquidated damages are imposed by way of compensation, but penalty is imposed by way of punishment.
- (II) Liquidated damages are assessed amounts of loss based on actual or probable calculation. Penalty is not based on actuals or probables. It is imposed to prevent parties from committing the breach.
- (III) Though the English Law recognizes the difference between the two, Section 74 of the act does not recognize any difference between the two.

(ii) Difference between a contingent contract and a wagering contract

1. A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening.
A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.
2. A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.
3. In a wagering contract the uncertain event is the core factor whereas in a contingent contract the event is collateral.
4. A wagering agreement is essentially contingent in nature whereas a contingent contract may not be wagering in nature.
5. In a wagering agreement, the contracting parties have no interest in the subject matter whereas it is not so in a contingent contract.
6. A wagering contract is a game, losing and gaining alone matters whereas it is not so in a contingent contract.
7. A wagering agreement is void where as a contingent contract is valid.

(b) Mis-leading Prospectus

Any person who takes shares on the faith of statement of facts contained in a prospectus can rescind the contract if those statements are false or untrue. The words 'untrue statement' have to be construed as explained in Section 65(1)(a), which says that a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included. Again, where the omission from a prospectus of any matter is calculated to mislead, the prospectus is deemed, in respect of such omission to be a prospectus in which an untrue statement is included [Section 65(1)(b)] of the Companies Act, 1956.

In this case, the fact that dividends were paid out of capital profit and not out of trading profits was not disclosed in the prospectus and to that extent the prospectus contained a material misrepresentation of a fact giving a false impression that the company was a profitable one. Hence the allottee can avoid the contract of allotment of shares. (*Rex V. Lord Kylsant*).

(c) Diminution/Reduction of Capital

Section 94(3) of the Companies Act, 1956 specifically states that diminution does not constitute a reduction of capital within the meaning of the Companies Act, 1956. Distinction can be made between the two on the following grounds:

- (i) Diminution of capital is the cancellation of the unsubscribed part of the issued capital while reduction of capital involves reduction of subscribed capital or paid-up capital.

- (ii) Both require authorisation by articles but whereas diminution can be effected by an ordinary resolution, while reduction can be effected by a special resolution.
 - (iii) Diminution needs no confirmation by the Court/Tribunal [Section 94(2)], but reduction needs such confirmation (Section 101).
 - (iv) A Company may be ordered to add the words 'and reduced' after its name in case of reduction but no such order can be passed in case of diminution.
- (d) A creation of a proper ethical environment requires a proper understanding of the reasons which lead to unethical behaviour. Four such reasons are discussed below-
1. *Emphasis on short term results.* This is one of the primary reasons which has led to the downfall of many companies like Enron and WorldCom. Manipulating accounting entries to depict good profitability can help companies raise further capital from the market
 2. *Ignoring small unethical issues:* It is a known fact that most of the compromises which we make in start are small however they lead us to large problems. Similarly, companies need to develop an environment where small ethical lapses are taken seriously so that they do not repeat in the future.
 3. *Economic cycles:* When Enron was doing well , no one had bothered to understand its actual financial position. There were no question marks on its financial statements. However, when the economy took a downward turn, finance and accounting managers took decisions which were compromises over the established code of conduct. This was done to reflect a financial position which would keep the investors in the market satisfied. All this resulted in a huge crisis and the ultimate fall of this US Giant. Hence, to prevent disclosure of ethical problems in times of depression, company need to be extremely careful and vigilant during good times.
 4. *Accounting rules:* In the era of globalisation and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.

(e) Notice of Statutory Meeting

PQR Limited

Registered Office:.....

Notice is hereby given that the statutory meeting of the company will be held at the registered office of the company at-----on-----10th May, 2012-----at A.M./P.M. for considering the statutory report and for considering any other business which ought to be considered at that meeting.

Please find enclosed a copy of the statutory report.

Date:

By order of the Board

Place:

For PQR Ltd.

Sd/-

Company Secretary