

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

1. (a) (i) **Correct** , as the price in the given agreement is capable of being made certain, there is no uncertainty here to make the agreement void. Hence this is a valid contract.
- (ii) **Correct**, as per section 2(21) of the Payment of Bonus Act, 1965.
- (iii) **Correct**, as per section 147 of the N.I. Acts, 1881 every offence punishable under this Act shall be compoundable.
- (iv) **Incorrect**, as per the section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (v) **Incorrect**, as per section 4 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.
- (b) Under section 2(12) of the Companies Act, 1956 debenture includes debenture stock, bonds and other securities of the company whether constituting a charge on the assets of the company or not. Debentures are bonds issued in acknowledgement of any indebtedness, generally, however, they are issued under the company's seal and contain a provision for the repayment of principal sum at the appointed date and the payment of interest at fixed rate. Debentures are usually secured upon the company's property or undertaking.

Debentures may be of the following types:

1. Naked or unsecured debentures.
2. Secured debentures.
3. Redeemable debentures.
4. Perpetual debentures.
5. Bearer debentures.
6. Registered debentures

Distinction between debenture and share

- (i) Shares are a part of the capital of a company whereas debentures constitute a loan.
- (ii) The shareholders are the owners of the company whereas debenture holders are creditors.

- (iii) Shareholders generally enjoy voting right whereas debenture holders do not have any voting right.
 - (iv) Interest on debenture is payable even if there are no profits. But dividends can be paid to shareholders only out of the profits of the company.
 - (v) Debentures generally have a charge on the assets of the company but shares do not carry any such charge.
 - (vi) The rate of interest is fixed in the case of debentures whereas on equity shares the dividend may vary from year to year.
 - (vii) Fixed amount of interest on debentures gets priority over dividend on shares.
- (c) Following are the ancestry following different approaches of Ethical standards:

The Utilitarian Approach : The ethical corporate action is the one that produces the greatest good and does the least harm for all who are affected - customers, employees, shareholders, the community, and the environment. The utilitarian approach deals with consequences; it tries both to increase the good done and to reduce the harm done.

The Rights Approach (The Deontological Approach) : This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral rights -including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on. Also, it is often said that rights imply duties-in particular, the duty to respect others' rights.

The Fairness or Justice Approach: Aristotle and other Greek philosophers have contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally or if unequally, then fairly based on some standard that is defensible. We pay people more based on their harder work or the greater amount that they contribute to an organization, and say that is fair.

The Common Good Approach: This approach suggests that the interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others. This approach also calls attention to the common conditions that are important to the welfare of everyone. This may be a system of Laws, effective police and fire departments, health care, a public educational system, or even public recreational areas.

The Virtue Approach: A very ancient approach to ethics is that ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act

according to the highest potential of our character and on behalf of values like truth and beauty. Honesty, courage, compassion, generosity, tolerance, love, fidelity, integrity, fairness, self-control, and prudence are all examples of virtues.

(d) Letter of acknowledging the acceptance of the cheque book

The Manager,

-----bank,

-----New Delhi

Date-----

Dear sir,

This is to acknowledge the acceptance of the Cheque book containing 20 cheques from no. 123450 to 123470 which I found to be correct.

Yours faithfully,

XYZ

(Customer)

2. (i) The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ambani is entitled to recover Rs.6 lakhs from Mr. S being the amount of profit earned by Mr. S out of the transaction.

(ii) Rights of a surety against the Principal Debtor:

1. Right to be subrogated (Section 140)
2. Right to claim indemnity (Section 145)

Right of surety against co-sureties:

When a debt is guaranteed by two or more sureties, they are known as co-sureties. The rights are

- (i) Liability of co-sureties to contribute equally in the absence of any contract to the contrary (Section 146).

- (ii) Liability for equal limits (Section 147). where the co-surities have agreed to guarantee different sums, they have to contribute equally subject to maximum amount guaranteed by any one.
 - (iii) Right to share security obtained from the creditor.
- (b) Mr. Sam 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 may cause trouble 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 main points:
1. Defining the problem clearly.
 2. How did the situation arise?
 3. What is your intention in making this decision?
 4. How does this intention compare with the probable results?
 5. Whom could your decision or action injure?
- (c) Communication is a two-way process in which there is an exchange of ideas or thoughts linking the sender and receiver towards a mutually accepted direction or goal consisting of 7 elements which are as under:
1. **Sender:** The process of communication begins with a sender, the person who has an idea and desires to exchange it.
 2. **Encoding:** The sender puts his/her ideas or facts into words, symbols, pictures or gestures that the receiver can understand.
 3. **Message:** A message refers to what is being communicated. It may be verbal or non-verbal.
 4. **Channel:** Channel is the medium through which message is transmitted to the sender. Channel may be in oral or written forms.
 5. **Receiver:** It is any person who notices and attaches some meaning to a message.
 6. **Decoding:** The receiver translates the words and symbols used in the message into ideas and interpret it to attain its meaning.
 7. **Feedback:** Ultimately receiver reacts or responds to the communication sent by the sender. It could be based on clear interpretation of the symbols sent or misunderstanding or misinterpretation of the symbols sent.

3. (a) According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer.

The word "fictitious payee" means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

Applying the above, answers to the questions asked can be as under:

- (i) In first case B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
 - (ii) In the second case, C is not a fictitious payee because the drawer intended him to receive payment.
- (b) 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.

(c) Personal Competencies associated with Emotional Intelligence:

Personal Competencies – How You Manage Yourself

Self-Awareness

- *Emotional self-awareness*: Reading your own emotions and recognizing their impact; using 'gut sense' to guide decisions
- *Accurate self-assessment*: Knowing your strengths and weaknesses
- *Self-confidence*: A sound sense of your self-worth and capabilities
- *Self-Management*

- *Emotional self-control*: Keeping disruptive emotions and impulses under control
- *Transparency*: Displaying honesty and integrity; trustworthiness
- *Adaptability*: Flexibility in adapting to changing situations or overcoming obstacles
- *Achievement*: The drive to improve performance to meet inner standards of excellence
- *Initiative*: Readiness to act and seize opportunities
- *Optimism*: Seeing the upside in events

4 (a) (i) According to Section 2(13) every employee of an establishment covered under the Payment of Bonus Act, 1965 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 of less than Rs.10, 000 per month. Under Section 14, the days when an employee has been absent or on leave due to temporary disablement caused by the accident arising out of and in the course of the employment during the accounting year will be included in calculating the total working days for the purpose of payment of bonus. In the instance case, the salary is falling within the limit. Also, his leave period will be treated as working days. Therefore, he is eligible for bonus for the year 2010-11.

(ii) Where an establishment consists of different departments or undertakings or has branches whether situated at the same place or in different places, all such departments or undertakings or branches are to be treated as parts of the same establishments for the purpose of bonus under Section 3 of the Payment of Bonus Act, 1965.

But it has been provided that if, for any accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such departments etc., then such department, undertaking or branch shall be treated as separate establishments for the purpose of calculation of bonus for that year, unless such department, etc., were immediately prior to the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus. If these two conditions are fulfilled it is possible to provide for the payment of bonus unit-wise instead of establishment wise.

(b) (i) **Incorrect**, the ethics are necessary in marketing not only to build image, but ethics are necessary for sustainable development of business, and ultimately for transparency and good corporate governance in the country.

- (ii) **Correct:** Business apathy, resistance or token responses to unethical behaviour simply increase the probability of more Governmental regulation. Indeed, most of the Governmental limitations on marketing are the results of management's failure to live up to its ethical responsibilities at one time or other. However, once some form of government control has been introduced, it is rarely removed. So, business enterprises in their own interest must behave ethically in marketing.

(c) Following are the characteristics of group personality.

- (a) **Spirit of Conformity:** Individual members soon come to realize that in order to gain recognition, admiration and respect from others they have to achieve a spirit of conformity. Our beliefs, opinions, and actions are influenced more by group opinion than by an individual's opinion, even if it is an expert's opinion.
- (b) **Respect for group values:** Any working group is likely to maintain certain values and ideals which make it different from others. In order to deal effectively with a group we must understand its values which will guide us in foreseeing its programmes and actions.
- (c) **Resistance to change:** It has been observed that a group generally does not take kindly to social changes. On the other hand the group may bring about its own changes, whether by dictation of its leader or by consensus. The degree to which a group resists change serves as an important index of its personality. It helps us in dealing with it efficiently.
- (d) **Group prejudice:** Just as hardly any individual is free from prejudice, groups have their own clearly evident prejudices. It is a different matter that the individual members may not admit their prejudiced attitude to other's race, religion, nationality etc.
- (e) **Collective power:** It need not be said that groups are always more powerful than individuals, how so ever influential the individual may be. That is why individuals may find it difficult to speak out their minds in groups. There is always the risk of the one-against-many situation cropping up.
5. (a) Any person aggrieved by order under Section 7A(1) can make application for review of the order in following cases – (a) if new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence (b) there is some mistake or error apparent on the records or (c) any other sufficient reason. – No application for review can be made if appeal was filed.

The officer can himself review the order on his own motion. [Section 7B(1)]. The officer can either reject the application for review if there are not sufficient grounds for review, or he can grant the review. [Section 7B(4)]. Appeal cannot be filed against order rejecting the application for review. However, if fresh order is

passed after the review, appeal can be filed against such order [Section 7B(5)]. Application for review should be made within 45 days in form 9. [Para 79A of EPF Scheme].

In *Balu Fire Clay Niwas v. U.O.I.*, 2003 LLR 578 (Jhar HC), it was held that when statute provides for review, it cannot be contended that petitioner should have filed appeal against the order. It was also held that review petition should be disposed of by a speaking order.

- (b) **Mode of registration/incorporation of company:** In the case of a public company with or without limited liability any 7 or more persons can form a company by subscribing their names to memorandum and otherwise complying with the requirements of the Companies Act, 1956. In exactly the same way, 2 or more persons can form a private company [Section 12]. Persons who form the company, who conceive the idea of forming the company are known as promoters. They take all necessary step for its registration.
 - (a) **Lawful purpose:** The essence of validly incorporated company is that it must consist of a particular number of persons and be an association for a lawful purpose.
 - (b) **Applying for the name:** The promoters of the company should decide upon at least three suitable names in order of preference to afford flexibility to the Registrar to decide the availability of the name.
 - (c) **Documents to be filed:** After getting the name approved, the certain documents along with the application and prescribed fees, are to be filed with the Registrar.
 - (d) **Subscribing their names:** Section 15 stipulates that the Memorandum should be signed by each subscriber who should add his address, description and occupation in the presence of one witness.
 - (e) **Commencement of business**
 - (f) **Statement in Lieu of Prospectus:** If a public company does not issue a prospectus inviting the public to purchase its share because, the directors think they can sell the shares even without the issue of the prospectus, it can do so.
 - (g) **Certificate of incorporation:** Upon the registration of the documents mentioned earlier under the head "Documents to be filed for registration of the company" and the payment of the necessary fees, the Registrar of Companies issues a certificate that the company is incorporated.
- (c) Legal drafting is of great importance to a person for entering into various types of agreements with different parties and in executing various types of documents in favour of the other.

This Legal drafting is a technical writing used by lawyers, judges, legislators

and others in law to express legal analysis and legal rights, privileges, functions, status and duties.

Drafting is of importance for the three reasons:

- (i) For obtaining legal consultations
- (ii) For carrying out documentation
- (iii) For interpretation of the documents

Legal Drafting have been catagorised into three forms-

- 1. Document
- 2. Instrument
- 3. Deed

6. (a) Return of Allotment (Section 75, Companies Act, 1956): Within thirty days of allotment of shares, a company is required to send the Registrar a report, known as the "return as to allotment". It must contain the following particulars:

- 1. The number of nominal amount of shares allotted; the names, addresses, the occupation of the allottees; the amount, if any, paid or payable on each share. No share should be shown as allotted for cash unless cash has actually been received in respect of the allotment.
- 2. Contracts in writing under which shares have been allotted for any consideration other than cash, must be produced for examination of the Registrar.
- 3. Where bonus shares have been issued, the returns must show the nominal amount of the shares allotted; names and addresses and occupations of the allottees and a copy of the resolution authorizing the issue of such shares.
- 4. Where the shares have been issued at a discount, the return must include a copy of the resolution authorizing such an issue, a copy of the Tribunal's order sanctioning the issue, and where the rate of discount is more than ten percent, a copy of the order of the Central government permitting the issue.

(b) The definitions of "consumer" given under Competition Act, 2002 and under Consumer Protection Act, 1986 are substantially the same. But there is difference between the two and that difference is that under clause (1) of Section 2(f) in Competition Act, the words used are "whether such purchase of goods is for the resale of for any commercial purpose or for personal use" in place of the words "but does not include a person who obtains such goods for resale of for any commercial purpose" as in the Consumer Protection Act. Likewise in clause (ii) the words used in the Competition Act are "Whether such hiring or availing of services is for any commercial purpose or for personal use" in place of the words "but does not include

a person who avails of such services for any commercial purpose” as in the Consumer Protection Act. Thus in case of Competition Act the word consumer includes both consumer for personal use and for commercial use but it is not so in the case of Consumer Protection Act.

(c) (i) **Correct.** The Ministry of Labour & Employment through *Notification No. S.O. 30 (E)*, dated 8th January, 2011 specifies that the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952 shall also apply to “Municipal Councils and Municipal Corporations constituted under sub-clauses (b) & (c) of clause (1) of Article 243Q of the Constitution of India”.

(ii) **Incorrect.** The funds under the Employees’ Provident Funds Scheme, 1952 shall vest in and be administered by Central Board of trustees constituted under Section 5A by the Central Government.

7. (a) 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 continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. Generally, it is payable to the employee himself. However, in case of death of the employee it shall be paid to his nominee or if no nomination has been made, to his heirs.

The payability of Gratuity to the employee is his right as well as the obligation of the employer. By the change of ownership, the relationship of employer and employees subsist and the new employer cannot escape from the liability of payment of gratuity to the employees; it was held in the case of *Pattathurila K. Damodaran Vs M.Kassim Kanju (1993) 111 LLJ (1211 (Ker))*.

An employee resigning from service is also entitled to gratuity; (*Texmaco Ltd. Vs Sri Ram Dham, 1992 LLR 369(Del)*) and non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity; (*Mathur Spinning Mills Vs Deputy Commissioner of Labour, (1983) 111 LLJ 188*).

(b) Section 135 of the Companies Act, 1956 provides that “whenever the terms or conditions or the extent or operation of any charge registered under this part are or is modified, it shall be the duty of company to send to the Registrar the particulars of such modifications and the provisions of this part as to registration of a charge shall apply to modification of the charge.”

The term ‘modification’ includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by

operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.

What constitutes modification?

1. where the charge is modified by varying any terms and conditions of the existing charge by agreement;
 2. where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
 3. where the modification is by ceding a *pari passu* charge;
 4. change in rate of interest (other than bank rate);
 5. change in repayment schedule of loan; (this is not applicable in working capital loans which are repayable on demand) and
 6. partial release of the charge on a particular asset or property.
- (c) The business at a meeting is said to have been “validly transacted” if the members of the organisation or body concerned, whether or not they were present, are bound by the decision made thereat. They cannot be so bound unless the meeting is validly held. The essentials of a valid meeting are that the meeting should be:
- (a) *Properly convened*, i.e. a proper notice must be sent by the proper authority to every person entitled to attend.
 - (b) *Properly constituted*, i.e. the proper person must be in the chair, the rules as to quorum must be observed, and the regulations governing the meeting must be complied with.
 - (c) *Properly conducted*, i.e. the chairman must conduct the proceeding in accordance with the law relating to general meetings as per the Companies Act (Sections 171 to 185), the Company’s own Articles of Association or, where applicable, Table A (Regulations 47 to 63) or in the absence thereof in respect of any specific matter, by the common law relating to meetings.
- (d) The dynamic environment in which businesses operate today may usher a broad range of circumstances because of which compliance the fundamental principles may potentially be threatened. Such threats may be classified as follows:
- (i) Self-interest threats, which may occur as a result of the financial or other interests of a finance and accounting professional or of an immediate or close family member;
 - (ii) Self-review threats, which may occur when a previous judgment needs to be re-evaluated by the finance and accounting professional responsible for that judgment;

- (iii) Advocacy threats occur when a professional promotes a position or opinion to the point that subsequent objectivity may be compromised;
 - (iv) Familiarity threats occur when a finance and accounting professional has close relationships in the work environment and such relationships impair his selfless attitude towards work.
 - (v) Intimidation threats occur when a professional may be prohibited from acting objectively by threats, actual or perceived.
- (e) A number of elements that can be used to describe or influence Organizational Culture:
- **The Paradigm:** What the organization is about; what it does; its mission; its values.
 - **Control Systems:** The processes in place to monitor what is going on.
 - **Organizational Structures:** Reporting lines, hierarchies, and the way that work flows through the business.
 - **Power Structures:** Who makes the decisions and how power is distributed across the organization.
 - **Symbols:** These include the logos and designs, but would extend to symbols of power, such as car parking spaces and executive washrooms.
 - **Rituals and Routines:** Management meetings, board reports and so on may become more habitual than necessary.
 - **Stories and Myths:** build up about people and events, and convey a message about what is valued within the organization.

Communicating the corporate culture effectively is paramount. For *example*, at General Electric (GE), corporate values are so important to the company, that Jack Welch, the former legendary CEO of the company, had them inscribed and distributed to all GE employees at every level of the company.