

PAPER – 3 : BUSINESS AND CORPORATE LAWS

Question Nos. 1 & 7 are compulsory. Candidates are required to attempt four questions out of questions 2, 3, 4, 5 and 6 and two questions out of questions 8, 9 and 10.

Question 1

Answer any four of the following:

- (a) X' agreed to become an assistant for 5 years to 'Y' who was a Doctor practising at Ludhiana. It was also agreed that during the term of agreement 'X' will not practise on his own account in Ludhiana. At the end of one year, X' left the assistantship of 'Y' and began to practise on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether X' could be restrained from doing so? (5 Marks)
- (b) Aman contracted to erect machinery on Sapan's premises on the condition that the price shall be paid on completion of work. During the progress of work the premises and machinery were destroyed by an accidental fire. Referring to the provisions of the Sale of Goods Act, 1930, decide whether the parties are bound to perform their promises and can Aman recover the price of the work actually done? (5 Marks)
- (c) Abhinav buys certain goods worth Rs. 50,000 from an unregistered firm Ram & sons. Ram & Sons has to pay Rs. 60,000 to Abhinav for the goods purchased by the firm in the past. Referring to the provisions of the Indian Partnership Act, 1932 decide whether Ram & Sons can compel Abhinav to accept Rs. 10,000 i.e. the difference between Rs. 60,000 and 50,000 as the final settlement? (5 Marks)
- (d) What are the essential elements of a "Promissory note" under the Negotiable Instruments Act, 1881? Whether the following notes may be considered as valid Promissory notes: (5 Marks)
 - (i) "I promise to pay Rs. 5,000 or 7,000 to Mr. Ram."
 - (ii) I promise to pay to Mohan Rs. 500, if he secures 60% marks in the examination.
 - (iii) I promise to pay Rs. 3,000 to Ravi after 15 days of the death of A.
- (e) Decide with reasons in the light of the Payment of Bonus Act, 1965 whether the following persons are entitled for bonus: (5 Marks)
 - (i) A University teacher,
 - (ii) An employee of the 'NABARD',
 - (iii) A reinstated employee without wages for the period of dismissal,,
 - (iv) A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month.
 - (v) An apprentice.

- (f) Is the payment of provident fund contribution a preferential payment in case of the employer being insolvent under the Employees Provident Funds and Miscellaneous Provisions Act, 1952? (5 Marks)

Answer

- (a) An agreement in restraint of trade/business/profession is void under Section 27 of the Indian Contract Act, 1872. But an agreement of service by which a person binds himself during the term of the agreement not to take service with anyone else directly or indirectly to promote any business in direct competition with that of his employer is not a restraint of trade. However in the given case X cannot be restrained by an injunction from doing so.
- (b) Section 8 of the Sale of Goods Act, 1930 states that where there is an agreement to sell specific goods and subsequently the goods without the fault of seller or buyer perish before the risk passes to the buyer. The agreement is thereby avoided. In the given case the premises and machinery destroyed because of accidental fire before the risk passes to the buyer and therefore both parties were excused from further performance. Aman having contracted for an entire work for a specific price to be paid on completion of work and therefore Aman could not recover any price of the work actually done.

NOTE: The question is on the specific point ie. risk passes on to the buyer with ownership and more specifically based on the Sale of Goods Act, 1930. Yet, the question might be answered in accordance with Section 56 of the Indian Contract, 1872 which states that an agreement to do an impossible in itself is void. A contract to do an act which, after the contract is made, becomes impossible, or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

- (c) Section 69 of the Indian Partnership Act, 1932 provides that an unregistered firm can not claim a set off exceeding Rs. 100 in value. In the given case the difference between Rs. 60,000 and 50,000 is of Rs. 10,000 for which the right of set off is not available. Therefore, Ram & Sons can not compel Abhinav to accept Rs. 10,000 as the final settlement.
- (d) A promissory note is an instrument (not being a bank note or currency note) in writing containing an unconditional undertaking, signed by the maker to pay a certain sum of money only to or the holder of, a certain person or to the bearer of the instrument, (Section 4 of the Negotiable Instruments Act, 1881).

In view of the above provision of the said Act, following are the essential elements of a promissory note-

1. It must be in writing.
2. The promise to pay must be unconditional.
3. The amount promised must be a certain and a definite sum of money.
4. The instrument must be signed by the maker.

5. The person to whom the promise is made must be a definite person.

Thus:

- (i) In case (i) it is not a valid promissory note because the amount is not certain.
- (ii) In case (ii) it is not a valid promissory note because it is conditional.
- (iii) In case (iii) it is a valid promissory note because death of A is a certainty even if time of death is not certain.

- (e) 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 less than Rs. 3,500 per month. [Section 2(13) and Section 8]

In the given problem a University teacher and an employee of the NABARD are not entitled for bonus because the employees of Universities and other educational institutions and employees of the Agricultural Refinance Corporation are excluded from the operation of the Act as per Section 32 of the Payment of Bonus Act, 1965.

A reinstated employee without wages for the period of dismissal is also not entitled for bonus because a dismissed employee reinstated with back wages is entitled to bonus. [Gannon India Ltd. Vs. Niranjana Das [1984] 2LLJ 223]. In this case the employee has been reinstated without wages.

A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month is also not entitled for bonus because he has worked for qualifying days i.e. 30 days but his salary is higher than prescribed limit (Rs. 3500 per month) in the Act.

An apprentice is not entitled to bonus [Wheel 8 RIM Co. vs. Government of Tamil Nadu [1971]].

- (f) Section 11 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that if the employer is adjudged an insolvent or if the employer is a company and an order for winding thereof has been made, the amount due from the employer whether in respect of the employee's contribution or the employer's contribution must be included among the debts which are to be paid in priority to all other debts under Section 49 of the Presidency -Towns insolvency Act, Section 61 of the Provincial Insolvency Act, section 530 of the Companies Act, 1956, in the distribution of the property of the insolvent or the assets of the company. In other words, this payment will be preferential payment provided the liability therefore has accrued before this order of adjudication or winding up is made.

Question 2

- (a) X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of Rs. 5, 000 per month to N (the sister of the executant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N

because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N. (5 Marks)

- (b) Decide, under the Cooperative Societies Act, 1912, whether a society can transfer the share or interest of a member on his death. If yes, to what extent? Whether the estate of a deceased member can be appropriated to pay-off the debts of the society? (5 Marks)

Answer

- (a) As per Section 2 (d) of the Indian Contract Act, 1872, in India, it is not necessary that consideration must be supplied by the party, it may be supplied by any other person including a stranger to the transaction.

The problem is based on a case "Chinnaya Vs. Ramayya" in which Honorable Court clearly observed that the consideration need not necessarily move from the party itself, it may move from any person. In the given problem, the same reason applies. Hence, M is liable to pay the said sum to N. and cannot deny from liability on the ground that consideration did not move from N.

- (b) As per the Cooperative Societies Act, 1912, the share or interest of a member may transfer to the nominee or heir or legal representative on his death. Section 22 started that all transfer and payments made by a registered society to the nominee or heir or legal representative of the deceased member in respect of such member's share or interest or dues in accordance with the rules or bye-laws made in this behalf shall be valid and effectual against any demand made upon the society by any other person.

In case of a society with unlimited liability, such nominee, heir or legal representative, as the case may be, may required payment by the society of the values of the share or interest of the deceased member and in the case of a limited liability society the share or interest of such member can only be transferred to the nominee, heir or legal representative if he is qualified for membership, or on his application within one month of the death of the member to any person specified in the application- who is so qualified (Section 22).

A past member remains liable for the debts of the society for two years from the date of his ceasing to be a member, and the estate of a deceased member for one year from the time of his death (Sections 23 and 24)

Question 3

- (a) X, Y and Z jointly borrowed Rs.50,000 from A. the whole amount was paid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether: (5 Marks)

- (i) Y can recover the contribution from X and Z,
- (ii) legal representatives of X are liable in case of death of X,
- (iii) Y can recover the contribution from the assets, in case X becomes insolvent.

- (b) "Implied authority of a partner can be extended or restricted. Discuss the above statement in the light of the provisions of the Indian Partnership Act, 1932. How far, are third parties affected by restrictions placed on such implied authority? (5 Marks)

Answer

- (a) Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears by the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promises, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors, the promisors, may compel every joint promisors to contribute equally to the performance of the promise (unless a contrary intention appears from the contracts). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because XYZ are joint promisors.
 - (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
 - (iii) 'Y' also can recover the contribution from Z's assets.
- (b) The Indian Partnership Act, 1932, (Section 19 (2) provides that the act of a partner which is done to carry on the usual way, business of the kind carried on by the firm bind the firm, provided the act is done in the firm's name or in any manner expressing or implying an intention to bind the firm. The implied authority of a partner extends only to such acts which are common in the type of business carried on by the firm and are done by him in usual way of carrying on the firm's business. Thus, if it is usual to give credit to customers, in a particular business, the giving of credit by a partner to a customer will bind the firm. However, if a usual act is done in an unusual manner, this must raise a suspicion as to the authority of a partner and the protection on the ground of implied authority may not be available.

Section 19 (2) lays down certain limitations as regards implied authority of a partner. Such acts regarded as acts outside the implied authority of a partner. Thus, in the absence of any usage or custom of trade to the contrary, the implied authority of a

partner does not extend to the following matters:

- (i) The submitting of a dispute relating to the business of the firm to arbitration.
- (ii) Operation of a bank account on behalf of the firm in his own name.
- (iii) Compromising or relinquishing any claim or portion of a claim by the firm.
- (iv) Withdrawal of suit or proceeding filed on behalf of the firm.
- (v) Admitting any liability in a suit or proceeding against the firm.
- (vi) Acquisitions of immovable property on behalf of the firm.
- (vii) Transfer of any immovable property belonging to the firm.
- (viii) Entering into partnership on behalf of the firm.

Implied authority of a partner can be extended or restricted. Section 20 of the Indian Partnership Act, 1932 authorises the partners of a firm to extend or restrict the implied authority but only by a contract amongst themselves. In spite of such restriction, if a partner does, on firm's behalf, any act which falls within his implied authority, the firm will be bound unless the person, with whom he is dealing, is aware of the restriction or does not know or believe the partner to be a partner. Thus, a third party is not affected by such a limitation of a partner's implied authority unless he has actual notice of it.

Question 4

- (a) Under which circumstances can an unpaid seller exercise his right of lien? Distinguish between right of lien and right of stoppage of goods in transit, under the Sale of Goods Act, 1930. (5 Marks)
- (b) Who appoints the liquidator for winding up of a Multi-state Cooperative Society? Referring the provisions of the Multi-state Cooperative Societies Act, 2002, Point out any six powers of the liquidator (5 Marks)

Answer

- (a) Section 47 of the Sale of Goods Act, 1930 lays down cases in which an unpaid seller is entitled to lien. They are as follows:

- (i) Where goods have been sold without any stipulation as to credit.
- (ii) Where goods have been sold on credit but the term of credit expired, or
- (iii) Where the buyer becomes insolvent.

Distinction between right of lien and right of stoppage of goods in transit.:

- (1) The essence of a right of lien is to retain possession whereas the right of stoppage in transit is right to regain possession.

- (2) Seller should be in possession of goods under lien while in stoppage in transit (i) Seller should have parted with the possession (ii) possession should be with a carrier and (iii) buyer has not acquired the possession.
- (3) Right of lien can be exercised even when the buyer is not insolvent but it is not the case with right of stoppage in transit.
- (4) Right of stoppage in transit begins when the right of lien ends. Thus the end of the right of lien is the starting point of the right of stoppage in transit.
- (b) The Central Registrar may appoint a liquidator for the purpose of winding up of a Multi--State Co-Operative Society and may fix his remunerations. As per Section 90 of this Act, 2002, the powers of liquidator are as follows:

The liquidator shall have the power to realize the assets by sale or otherwise to clear the claims of Multi-state Co-operative society. He shall also has power, subject to the control of the central Registrar:

- (i) to institute and defend suits and other legal proceedings on behalf of the society by the name of his office:
- (ii) to determine from time to time the contribution (including debts due and costs of liquidation) to be made or remaining to be made by the members, or past members or by the estates of nominees, heirs or legal representatives of deceased members or by any officer or former 'Officers, to the assets of the Society;
- (iii) to investigate all claims against the Society and subject to the provisions to the Act, to decide questions of priority arising between claimants;
- (iv) to pay claims against the society, including interest upto the date of winding up according to their respective priorities, if any, in full or ratably, as the assets of the society may permit, the surplus. If any, remaining after payment of the claims being applied in payment of interest from the date of such order of winding up at a rate fixed by him but not exceeding the contract rate in any case;
- (v) to determine by what persons and in what proportions the costs of liquidation are to be borne
- (vi) to determine whether any person is a member, past members or nominee of a deceased member;
- (vii) to give such directions in regard to the collection and distribution of the assets of the society as may appear to him to be necessary for winding up the affairs of the society,
- (viii) to carry on the business of the society so far as may be necessary for winding up the affairs of that society;
- (ix) to make any compromise or arrangement with any person between whom and the society there exists any dispute and to refer any such dispute for decision;

- (x) after consulting the members of the Society to dispose of the surplus, if any, remaining after paying the claims against the society, in such manner as may be prescribed;
- (xi) to compromise all calls or liabilities to calls and debts and liabilities capable of resulting in debts, and all claims; present or future, certain or contingent, subsisting or alleged to be subsisting between the society and a contributory or other debtor or person apprehending liability to the Multi-State Co-operative Society and all questions in any way relating to or affecting the assets or the winding up of the society on such terms as may be agreed and take any security for the discharge of any such call, liability, debts or claim and give a complete discharge in respect thereof.

After the winding up proceedings are complete, the liquidator is to make a report to the Central Registrar and deposit the records of the society in such place as the Central Registrar may direct [Section 90 (3)].

Question 5

- (a) What do you understand by "Material alteration under the Negotiable Instruments Act, 1881? State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881? (5 Marks)
 - (i) The holder of the bill inserts the word "or order" in the bill,
 - (ii) The holder of the bearer cheque converts it into account payee cheque,
 - (iii) A bill payable to X' is converted into a bill payable to X and Y.
- (b) Explain the salient features of the 'Employee's Deposits Linked Insurance Scheme' as provided under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952. (5 Marks)

Answer

- (a) As per the Negotiable Instrument Act, 1881, an alteration can be called a material alteration if it alters or attempts to alters the character of the instrument and affects or is likely to affect the contract which the instrument contains or is evidence of. Thus, it totally alters the business effect of the instrument. It makes the instrument speak a language other than that intended.

The following materials alterations have been authorised by the Act and do not require any authentication:

- (a) filling blanks of inchoate instruments [Section 20]
- (b) Conversion of a blank endorsement into an endorsement in full [Section 49]
- (c) Crossing of cheque [Section 125]

The important material and non-material alteration are:

Material alteration	Non-material alteration
1. Alteration of date of instrument (e.g. if a bill dated 1st may, 1998) is changed to a bill dated 1st June, 1998.	1. Conversion of instrument payable to bearer.
2. Alteration of time of payment (e.g. if a bill payable three months After date is changed to bill payable four months payable after date).	2. Conversion of instrument payable to bearer into order.
3. Alteration of place of payment (e.g., if a bill payable at Delhi is changed to bill payable at Mumbai).	3. Elimination of the words 'or order' from an endorsement.
4. Alteration of amount payable (e.g., if bill for Rs. 1,000 is changed to a bill for Rs. 2000	4. Addition of the words 'or demand' to a note in which no time or payment is expressed.
5. Conversion of blank endorsement into special endorsement.	
6. Addition of a new party to an instrument.	
7. Alteration of one of the clauses of the instrument containing a penal action	

As per the above sections the changes of serial numbers (i) is non-material and changes of serial numbers (ii) (iii) are material changes in the given problem.

- (b) The Central Government under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 framed the Employees' Deposit-linked Insurance Scheme, 1976. The Insurance Scheme came into force on the 1st day of August, 1976.

Soon after the-framing of the above scheme, there was established a Deposit-link Insurance Fund (called Insurance Fund). The employer shall pay into the fund from time to time in respect of his employees an amount not exceeding 1 % of the aggregate of the basic wages, dearness allowance and retaining allowance (if any) as the Centre Government may, by notification in the Official Gazette, specify. He shall also pay into the fund such further sum of money not exceeding 1/4th of the contribution which he is required to make as the Central Government may, from time to time determine. This payment is required to be made to meet all the expenses in connection with the administration of the Employees' Deposit-linked Insurance Scheme other than the expenses towards the cost of any benefit provided by or under that scheme [Section 6C (4) (a)].

The Insurance Fund shall vest in the Central Board and be administered by-it in such manner as may be specified in the Insurance Scheme [Section 6C (5)]. The Insurance

Scheme may provide for all or any of the matters specified in Schedule IV [Section 6C (7)].

The Insurance Scheme may provide that any of its provisions and amendment shall take effect either prospectively or retrospectively on such date as may be specified in this behalf in that Scheme, [(Section 6C and 7)]

The Provident Fund claims complete in all respects submitted along with the requisite documents shall be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the Commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the commissioner.

Question 6

- (a) A is an employee of a company. The amount of the bonus payable to A during the year 2006-07 is Rs. 10,000, but the company paid him Rs. 7,000 only and a sum of Rs. 3,000 was deducted from bonus against the loss suffered by the company due to misconduct of A during the same accounting year. A files a suit against the company for recovery of the deducted amount. Decide whether A would be given any relief by the court under the provisions of the Payment of Bonus Act, 1956? What will be your answer, if the losses are related to the accounting year 2005-06? (5 Marks)
- (b) An existing Multi-state Cooperative Society desires to change its registered office from Mumbai to Bhopal. Advice as to what steps are required to be taken for the said change under the Multi-state Cooperative Societies Act, 2002? (5 Marks)

Answer

- (a) As per the Payment of Bonus Act, 1965, in an any accounting year, if an employee is found guilty of misconduct causing financial loss to the employer, then the employer can lawfully deduct the amount of loss from the amount of bonus payable by his to the employee in respect of that accounting year only. 'n this case, the employee shall get only the balance, if there be any (Section 18).

After application of the above provision it is clear that 'A' will not get any relief by the court because employer has all right to deduct the said losses from the bonus of employee.

In the second case, A will get relief by the Court because the losses are related to the accounting year 2005-06. As per the provision, the employers are entitled to deduct the losses incurred due to misconduct of the employee in the same accounting year. In this problem bonus payable year and accounting year are different.

- (b) Every change in principal place of business (i.e. registered office) of multi-state cooperative society shall be made by an amendment of its bye-laws after following the procedure laid down in Section 11 of the Multi-State Cooperation Societies Act, 2002.
- (1) No amendment of any bye-law of a Multi-State Cooperative Society shall be valid, unless such amendment has been registered under this Act.
 - (2) The amendment to the bye-laws of a Multi-State Cooperative Society shall be made by a resolution passed by a two-thirds majority of the members present and voting at general meeting of the society.
 - (3) The resolution, as aforesaid, shall not be valid unless fifteen clear days' notice of the proposed amendment has been given to the members.
 - (4) In every case in which a multi-state cooperative society proposes to amend its bye-laws, an application to register such amendments shall be made to the Central Registrar together with:
 - (a) a copy of the resolution referred to in sub-section (2)
 - (b) a statement containing the required particulars.

Question 7

Answer any four of the following:

- (a) A limited company is formed with its Articles stating that one Mr. X shall be the solicitor for the company, and that he shall not be removed except on the ground of misconduct. Can the company remove Mr. X from the position of solicitor even though he is not guilty of misconduct? (5 Marks)
- (b) For a special resolution in a Company's general meeting, 10 voted in favour, 2 against and 4 abstained. The chairman declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act, 1956. (5 Marks)
- (c) While sanctioning working capital limit of a company, the rate of interest has been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India. There was a change in the interest rate due to RBI notification issued later. The bank insisted on filing a return of modification of charges. Is the stand of the bank correct? Discuss this in the light of the provisions of the Companies Act, 1956. (5 Marks)
- (d) Under what circumstances a company can reduce its share capital? (5 Marks)
- (e) 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: (5 Marks)
 - (i) When a body corporate is a member in the company.
 - (ii) When a foreign company is a member in the company.

Answer

- (a) The Articles of Association of a company are its by-laws that govern the management of its internal affairs. As between outsiders and the company, Articles do not give any right to outsiders against the company even though their names might have been mentioned in the Articles. An outsider cannot take advantage of the Articles to found claim thereon against the company. Thus, in the given case, the company shall succeed in removing Mr. X as solicitor of the company (Eley V Positive Government Security Life Assurance Co.)
- (b) Yes, it is a valid resolution. Section 189 (2) (c) of the Companies Act, 1956 provides that the votes cast in favor of resolution (whether on a show of hands, or on a poll as the case may be) by members who, being entitled so to do, vote in person or where proxies are allowed, by proxy, are not less than three times the number of votes, if any, cast against resolution by members so entitled and voting.
- (c) 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 the 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. In the light of this provision the changes in the rate of interest constitutes modification, therefore, the stand of bank is correct.
- (d) Section 100 of the Companies Act, provides that a company, limited by shares or guarantee and having share capital, if so authorised by the articles, may by special resolution and with the confirmation of the Court, reduce its share capital in any way and in particular by:
 - (a) extinguishing or reducing the liability of members in respect of the capital not paid up:
 - (b) writing off or cancelling any paid-up capital which is in excess of the needs of the company.
 - (c) paying off any paid-up share capital which is in excess of the needs of the company.

Reduction in (b) and (c) may be made either in addition or without extinguishing or reducing the liability of the members for uncalled capital. Reduction of share capital may in reality take three forms, namely, (i) reducing the value of shares in order to absorb the accumulated losses suffered by the company without any payment to the shareholders; (ii) extinction of liability of capital not paid; (iii) paying off any paid-up share capital. Only in the circumstances referred to in (ii) and (iii) is the interest of creditors really involved.

- (e) 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.

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

Question 8

- (a) X, a chemical manufacturing company distributed 20 lac (Rs. Twenty Lac) to scientific institutions for furtherance of scientific education and research. Referring to the provisions of the Companies Act, 1956 decide whether the said distribution of money was "Ultra vires" the company? (5 Marks)
- (b) How nomination facility shall operate in case of transmission of shares under the provisions of the Companies Act, 1956? (5 Marks)

Answer

- (a) Distribution of Rupees Twenty Lac by a company engaged in Chemical manufacturing is not 'Ultra Vires' the company since it was conducive to the continued growth of the company as chemical manufacturers (Evans v. Brunnner, Mood & Co. Ltd. 1921).
- (b) Section 109 of the Act provides that any person who becomes a nominee by virtue of the provisions of Section 109 A, upon the production of such evidence as may be required by the Board and subject as hereinafter provided, elect, either
 - (a) to a registered himself as holder of the share or debenture, as the case may be; or
 - (b) to make such transfer of the share or debenture, as the case may be as the deceased shareholder or debenture holder, as the case may be, could have made.

If the person being a nominee, so becoming entitled, elects to be registered as holder of the share or debenture, himself as the case may be, he shall deliver or send to the company a notice in writing signed by him stating that he so elects and such notice shall be accompanied with the death certificate of the deceased shareholder or debenture holder, as the case may be. (Sub-section 2).

Question 9

- (a) Sunrise Limited submitted the documents for incorporation on 5th October, 2006. It was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2006. The company on 14th October, 2006 entered into a contract

which created its contractual liabilities. The company denies 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. (5 Marks)

- (b) P the secretary of a XYZ Limited issues a Share certificate in favour of A Purporting to be signed by the directors and the secretary and the seal of the company affixed to it. In fact the secretary forged the signature of the directors and has affixed the seal without authority. Can A hold the company liable for the shares covered by the Share certificate, under the provisions of the Companies Act, 1956? (5 Marks)

Answer

- (a) Sometimes contracts are made on behalf of a company even before it is incorporated. But no contracts can bind a company before it becomes capable of contracting by incorporation. Two consenting parties are necessary to a contract, whereas the company before incorporation is a non-entity [Kelner v. Baxter 1866].

Pre-incorporation contracts in general are void ab initio and hence not binding on the company. However, under section 19 (e) of the Specific Relief Act, 1963 the party to the contract can enforce the contracts against the company if the company had adopted the same after incorporation and the contract is warranted by the terms of incorporations. Thus unless the company adopts the contract, the other party cannot enforce the same against the company. However, promoters can be-held personally liable. The problem is based on above case i.e. Kelner v. Baxter. After application of above provisions it is clear that the company can be exempted from the said contractual liability .

- (b) Share certificate is a document under the common seal of the company specifying that member is the holder of specified number of shares of the company. The company is stopped from denying the title of the shareholder on number of shares in the share certificate. Hence share certificate is a prima facie evidence of the title of member to such shares.

Facts given in the problem are based on the facts of Rubben v. Great Fingall Consoldated Co. [1906]. In this case it was held that the company is liable if an officer of the company, who was no authority to issue a forged certificate. Hence A can hold the company liable for the shares covered by the forged share certificate issued by P, the secretary of XYZ Limited.

Question 10

- (a) Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956: (5 Marks)
- (i) The Board of Directors of a company refuse to convene the extraordinary general meeting of the members on the ground that the requisitionists have not given reasons for the resolution proposed to be passed at the meeting.

- (ii) The Board of Directors refuse to convene the extraordinary general meeting on the ground that the requisitions have not been signed by the joint holder of the shares.
 - (iii) Adjournment of extraordinary general meeting called upon the requisition of members on the ground that the quorum was not present at the meeting.
- (b) What are the differences between "Share certificate and Share warrant"? (5 Marks)

Answer

- (a) As per Section 169 of the Companies Act 1956, the Board of directors must convene a general meeting upon request or requisition if the certain conditions are satisfied.
- (i) The requisitions must state the objects of the meeting, i.e., it must set out the matters for the consideration of which the meeting is to be called [Section 169 (2)]. However, the requisitionists are under no obligation to attach the explanatory statement to the requisition. It is for the Board of directors, on receipt of the requisition, to include in the notice convening the meeting the necessary explanatory statement (Life Insurance Corporation of India v. Escorts Ltd. 1986.).
In given problem (i) the Board of Directors may refuse to convene the meeting because reasons for the resolution is not given.
 - (ii) Where two or more persons hold any shares or interest in a company jointly, a requisition, or notice calling a meeting, signed by one or some of them shall, for the purposed of this section, have the same force and effect as if it had been signed by all of them [Section 169 (8)].
On the basis of above section the Board of Directors has no right to refuse to convene the meeting in the given problem (ii).
 - (iii) As per Section 147 of the Companies Act, 1956, if in a requisitioned meeting, there is no quorum present within half an hour, the meeting stands dissolved.
The stand taken by the Board of Directors is proper in the given problem (iii).
- (b) The difference between "share certificate" and share warrant" may be as follows
1. A share certificate is a prima facie evidence of file whereas a share warrant is a bearer document, stating that the holder is entitled to certain number of shares specified therein.
 2. The holder of share certificate is a member of the company whereas the holder of share warrant may be a member. (Provided by Articles).
 3. A share warrant is a negotiable instrument whereas a share certificate is not so.
 4. In order to qualify as director a person should acquire a share certificate instead of share warrant.
 5. A share certificate can be issued for a fully or partly paid up shares. On the other hand a share warrant can be issued in respect of fully paid up share only.