

**MOCK TEST PAPER – 2**  
**INTERMEDIATE (IPC): GROUP – I**  
**PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION**  
**SUGGESTED ANSWERS/HINTS**

1. (a) (i) The given instance deals with the coercion given in the section 15 of the Indian Contract Act, 1872. According to which when a consent is obtained by unlawful detaining of any property, the consent is said to be caused by coercion. Thus, in the given case the release from the current job by Mr. Anshul is obtained under the threat of unlawful detaining of property (i.e. on the basis of refusal to hand over the accounts books and other documents) which amounted to coercion and is voidable at the option of the principal.
- (ii) The given situation is related to section 132 of the Indian Contract Act, 1872 stating that the liability of two sureties is not affected by arrangement between them, that one shall be surety on other's default. The section says that where two persons contract with a third person to undertake a certain liability, and also contract with each other that one of them shall be liable only on the default of the other, the third person not being a party to such contract, there the liability of each of such two persons (sureties) to the third person under the first contract is not affected by the existence of the second contract, although such third person may have been aware of its existence. Thus X and Y both are liable to Z.
- (b) Under Section 53, a company may serve a document on its member either personally or by sending it by post to him to his registered address; or if he has no registered address in India to the address (if any) within India supplied by him to the company for giving notices to him. Recently, the Ministry of Corporate Affairs through Circular No. 17/2011 dated 21st April, 2011 has clarified that a company would have complied with Section 53 of the Companies Act, 1956, if the service of document has been made through electronic mode provided the company has obtained e-mail addresses of its members for sending the notice/documents through e-mail by giving an advance opportunity to every shareholders to register their e-mail address and changes therein from time to time with the company.

In cases where any member has not registered his e-mail address with the company, the service of document etc will be effected by other modes of service as provided under section 53 of the Companies Act, 1956.

In the light of the provisions of section 53 of the Companies Act, 1956, if the company has sent the notice on the email id registered with the company then it's a valid service of the notice.

(c) **Ethics programs helps to manage values, associated with quality management, strategic planning and diversity management:** Ethics programs helps in identifying preferred values and ensuring that organizational behaviors are aligned with those values. This includes recording the values, developing policies and procedures to align behaviours with preferred values, and then training all personnel about the policies and procedures. This overall effort is very useful for several other programs in the workplace that require behaviors to be aligned with values, including quality management, strategic planning and diversity management. For example, Total Quality Management initiatives include high priority on certain operating values, e.g., trust among stakeholders, performance, reliability, measurement, and feedback.

(d) **Innovation – The key to Success and Survival:** Companies that continuously innovate will create and re-invent new markets, products, services, and business models – which lead to more growth. Leaders of successful, high-growth companies understand that innovation is what drives growth, and innovation is achieved by remarkable people with a shared passion for problem solving and for turning ideas into realities through perseverance and a positive attitude. Innovation is dependent on organisation's ability to recognize market opportunities, internal capabilities to respond innovatively, and knowledge base. The successful business of the future will be one that provides unequaled customer service, delivers an exceptional product or service, and continuously makes innovative improvements. Success of an organisation depends on managers and leaders capturing the innovative hearts and minds of their workers. This will only happen if businesses breathe, dream and allow innovation at all levels of the business. Preoccupation with gimmicks, short term thinking, bureaucratic rules and procedures will generate more "Going Out of Business" signs than anything else. Innovation comes from a workforce empowered by both their ideas and their ability to contribute to the enterprise. Creating this innovative environment is the greatest business challenge of today's fast paced competitive and borderless business world.

Innovation begins with the leader or business manager. In today's rapidly changing working world, the manager must be more like a coach, or a team leader than a boss, a collaborator instead of a manipulator.

- 2 (a) (I) 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 ₹ 10,000 per month [Section 2(13) and Section 8]
- (i) In this case a reinstated employee without wages for the period of dismissal is not entitled for bonus because only a dismissed employee reinstated with back wages is entitled to bonus. [Gammon India Ltd. Vs. Niranjana Das [1984] 2LLJ 223]. Here the employee has been reinstated without wages.

(ii) A retrenched employee who worked for 45 days in a year on a salary of ₹ 10,500 per month is also not entitled for the bonus though he has worked for qualifying days i.e. 30 days but his salary is higher than prescribed limit (₹ 10,000 per month) given in the Act.

(II) Where, in respect of any accounting year referred to in Section 10 of the Payment of Bonus Act, 1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

Thus, Ashraf Ltd. can pay a bonus higher than the minimum bonus subject to a maximum 20% of salary or wage.

(b) Good corporate governance has the following major characteristics:

- (i) Participatory
- (ii) Consensus oriented
- (iii) Accountable
- (iv) Transparent
- (v) Responsive
- (vi) Effective and efficient
- (vii) Equitable and inclusive, and
- (viii) Follows the rule of law.

(c) Groups are the basic building blocks of organizations. It is now very common for groups of employers to make decisions to solve difficult problems that were once the domain of authoritarian incentives. Given below are the characteristics of Group personality:

1. spirit of conformity
2. respect for group values
3. resistance to change
4. group prejudice
5. collective power

Following are the salient characteristics of groups in an organization:

(a) Group Goal: Every group establishes its own group goals that provide motivation for their existence.

- (b) Group Structure: It is based on the roles to be performed.
- (c) Group Patterns of Communication: It is the pattern of message flow in a group.
- (d) Group Climate: It is the emotional environment of a group based on:
  - (i) Bonding and trust among members
  - (ii) Participative spirit
  - (iii) Openness and
  - (iv) High performance goals

3. (a) (I) (i) (3)  
 (ii) (3)  
 (iii) (4)

(II) According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, Mr. Prakash is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138 of the Negotiable Instruments Act, 1881.

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

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

**(c) Guidelines for Active Listening**

- ◆ Look at the person and suspend other things you are doing. Otherwise, your brain will be distracted from its main goal - understanding the other person's concerns, intentions.
- ◆ Be interested in what the person is saying. If you just can't make yourself interested, you will lose important information, so try taking notes.
- ◆ Listen to the tone of voice and inflections; look at gestures and body language - these may carry an unspoken message.
- ◆ Restate what the person said. Restating their meaning is a way for you to make sure you understand the person clearly.
- ◆ Ask questions once in a while to clarify meaning. Doing so will keep you alert and let the other person know you have been listening and are interested in getting all the facts and ramifications.
- ◆ Be aware of your own feelings and opinions. They may cloud your perception of what is being said. Being aware of your own preconceptions is a type of critical thinking that prevents biasing your judgment about the other person.

4. (a) The Ministry of Corporate Affairs vide General Circular No. 10/2012 dated 21<sup>st</sup> May 2012 & 34/2011 dated 2<sup>nd</sup> June 2011, framed certain criteria/standard for declaring any Financial Institution as Public Financial Institution (PFI) under Section 4A of the Companies Act, 1956. They are discussed as under:
- (i) A Company or Corporation should be established under a Special Act or the Companies Act being Central Act
  - (ii) Main business of the Company should be Industrial / Infrastructural Financing
  - (iii) The company must be in existence for at least 3 years and their financial statement should show that their income from Industrial / Infrastructural financing activities exceeds 50% of their total income
  - (iv) The net worth of the company should be atleast ₹ One thousand crore
  - (v) The company is registered as Infrastructure Finance Company (IFC) with RBI or as a Housing Finance Company (HFC) with National Housing Bank (NHB)
  - (vi) NOC from RBI/NHB must be obtained by IFC/HFC with regard to supervisory concern.
  - (vii) IFCs/HFCs, after being declared as PFI's must disclose in their Financial Statements the compliances laid down by the Ministry.
  - (viii) In the case of CPSUs/SPSUs, no restriction shall apply with respect to financing specific sector(s) and net worth stated in Para (iii) and (iv).

Any financial institution applying for declaration as PFI shall fulfill the aforesaid criteria.

- (b)** The focus on core values and sound ethics, the hallmark of ethical management, is being recognized as an important way to ensure the long-term effectiveness of governance structures and procedures and avoid the need for whistle-blowing. Employers, who understand the importance of work place ethics, provide their workforce with an effective framework and guiding principles to identify and address ethical issues as they arise. Measures to ensure ethics in the workplace:

1. Have a code of conduct and ethics
2. Establish open communication
3. Make ethics decisions in group and make decision public wherever appropriate
4. Integrate ethics management with other management practices.
5. Use of cross-functional teams when developing and implementing the ethics management programme
6. Appointing an ombudsman.
7. Creating an atmosphere of trust
8. Regularly updating of policies and procedures
9. Include a grievance policy for employees
10. Set an example from the top.

**(c) Guidelines to handle communication ethics dilemmas:**

1. Maintain candour: Candour refers to truthfulness, honesty, frankness and one should stick to these elements while communicating with others.
2. Keep message accurate: At the time of relaying information from one source to another, communicate the original message as accurately as possible.
3. Secrecy: One has to maintain secrecy and confidence in communication. So, one should not divulge such information to others.
4. Ensure timeliness of communication: The timing of messages can be critical. Delay in sending messages can be assumed unethical.
5. Avoid deception: Ethical communicators are always vigilant in their quest to avoid deception, fabrication, intentional distortion or withholding of information in their communication.
6. Confront unethical behaviour: One must confront an unethical behaviour in order to ensure a consistent ethical view point.

**5. (a) (i) Employees' Deposit Linked Insurance (Amendment) Scheme, 2011**

As per the *Notification No. G.S.R. 9(E), dated 8th January, 2011* by the Ministry of Labour and Employment, the Central Government revised the benefits provided to the employees under the Employees' Deposit Linked Insurance (Amendment) Scheme, 2010. Under the revised scheme, the benefit provided in case of death of an employee who was member of the scheme at the time of the death, their family will get 20 times of the average wages of the last 12 months of the member. According to the revised scheme, maximum benefits under the scheme will now be ₹ 1,30,000/-, as the wage ceiling upto which contribution can be paid under the scheme is ₹ 6500/-.

This is an additional method of computation of benefit that has to be paid to the nominee of the deceased along with the existing method of computation as per the EDLI (Amendment) Scheme, 2010, whichever is higher.

- (ii) **Directors' Power to Borrow under the Companies Act, 1956:** An outsider is presumed to know the constitution of company, but not what may or may not have taken place within the doors that are closed to him. However, where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management.

In this case, the directors of a company could borrow any amount up to ₹ 10,000/- without the resolution of the company in a general meeting. But for any amount beyond ₹ 10,000/- they had to obtain the consent of the shareholders in a general meeting. The directors themselves lent ₹ 35,000/- to the company without such consent and took debentures. The directors had the notice of the internal irregularity and hence the company was liable to them only for ₹ 10,000/-.

- (b) **Ethical behaviour in Marketing:** Market is flooded with duplicate goods having fake labels for selling drugs, food stuffs, consumables like agarbathis, suparis etc. followed by misleading advertisements. This results in disrepute for the products of good companies even though such fake goods are small in quantities. Setting high ethical standard and enforcing them reverses the position. If government notices such depletion of ethical standard, rigid regulations are brought in and are never withdrawn. Marketing executives enjoy great amount of social power in influencing the society. They also are the emblems for the organization. Once the virtues are lost it is difficult to regain the social power, influence and image.
- (c) Poor listening may lead to serious communication problems. Too many people are interested in talking, and mostly talking about themselves. They are so much involved with themselves that they do not have patience to listen. The result is that they are not interested in the speaker whose words go waste. Everybody knows about the importance of listening, but very few actually practice patient, active and

empathic listening. That is why, so many communication problems crop up. Poor listening accounts for incomplete information and also poor retention. One may simply not get the desired result if this keeps on happening.

6. (a) (i) Section 2 A of the Payment of Gratuity Act, 1972 provides that where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five percent of the number of days on which the establishment was in operation during such period.

In the given problem, as per above provision, Mr. Shorthas worked for 136 days that are more than 75% of numbers of days of an operation of an establishment therefore, Mr. Shortshall be eligible for gratuity.

- (ii) The term E-filing indicates the process of getting services electronically with a comprehensive on-line portal. The advantages are:

1. Instant registration of companies;
2. Simplified and more facile method of filing documents;
3. Total transparency;
4. Easier and better compliance of regulations;
5. Utmost customer care
6. Authentic and reliable filling of forms / returns through professionals;
7. Centralised database management;
8. Better service availability;
9. Filing of and inspection of documents anywhere and anytime.
10. Quick redressal of investor grievances
11. Supervisor and monitoring of compliance made easier.

- (b) **Moral vs. Ethics:** Following are the points of difference between Ethics and Moral:

- (i) The word 'Ethics' is derived from Ancient Greek 'éthikos' meaning 'character'. The word 'moral' is derived from Latin 'mos' meaning 'custom'.
- (ii) Character is the essence of values and habits of a person or group. It severs the analysis and employment of concepts such as right and wrong, good and evil and acting with responsibility. Moral is defined as relating to principles of right and wrong.
- (iii) Character is a personal attitude, while custom is defined by a group over a period of time. For example People have character, Societies have custom.

- (iv) Morals are accepted from an authority (such as cultural, religious etc.) while ethics are accepted because they flow from personally accepted principles. An ethical view might be based on an idea of personal property that should not be taken without social consent. Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'.
- (v) Morals work on smaller scale than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.

**(c) LEASE OF LAND FOR THE PERIOD OF 5 YEARS FOR THE COMMERCIAL PURPOSE**

THIS DEED OF LEASE of land made on.....day of.....between Mr. Raghu s/o.....r/o.....(hereinafter called the 'lessor') and Mr. Raghav 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 in ..... to the lessee with effect from.....for a period of five years on payment of monthly rent of ₹..... which will be payable on the fifth day of each month in advance.
2. That the lessee agrees to take the aforesaid piece of land on lease for commercial use. He shall pay the rent hereby reserved in the manner herein before 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.
5. That where the lessee intending to vacate the leased land at an early date, shall give notice of his intention to the lessor to vacate the leased land at the expiry of the period stated in the notice.
6. That the 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) **Finding is not keeping.** The finder must make reasonable efforts to locate the real owner and may also spend reasonable money in taking care of the goods found. However, he enjoys certain rights as against the goods found as well as the owner of those goods. His rights are:
- (1) He has a right of lien over the goods for his expenses. But he has no right to sue the owner for any such compensation (Section 168).
  - (2) He can sue for any specific reward, which the owner has offered for the return of goods (Section 168).
  - (3) He can even sell the goods under the following circumstances:
    - (i) If the owner cannot with reasonable diligence be found;
    - (ii) If found, he refuses to pay the lawful charges of the finder;
    - (iii) If the goods are in the danger of perishing or of losing the greater part of their value
    - (iv) If the lawful charges of the finder, in respect of the goods found, amount to more than two thirds of their value (Section 169).
- (b) List of businesses in which the resolutions may be passed through postal ballot:
- (a) Alteration in the object clause of memorandum;
  - (b) Alteration of articles of associations in relation to deletion or insertion of provisions defining private company;
  - (c) Buy-back of own shares by the company under sub-section (1) of Section 77A;
  - (d) Issue of shares with differential voting rights as to voting or dividend or otherwise under sub-clause (ii) of clause (a) of Section 86;
  - (e) Change in place of registered office outside local limits of any city, town or village as specified in sub-section (2) of Section 146;
  - (f) Sale of whole or substantially the whole of undertaking of a company as specified under sub-clause (a) of sub-section (1) of Section 293;
  - (g) Giving loans or extending guarantee or providing security in excess of the limit prescribed under sub-section (1) of Section 372A;
  - (h) Election of a director under sub-section (1) of Section 252;
  - (i) Power to compromise or make arrangements with creditors and members as specified under sub-section (2) of Section 391;
  - (j) Variation in the rights attached to a class of shares or debentures or other securities as specified under Section 106.
- (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 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) The definitions of "consumer" under the Competition Act, 2002 and under the 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 or 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 or 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.
- (e) **Emotional Intelligence:** Emotional intelligence refers to the capacity to recognize your own feelings and those of others, for motivating yourself, and for managing emotions well in yourself and in your relationships.

**Emotional quotient:** This inventory is designed to measure a nature of constructs related to emotional intelligence. Emotional Quotient (EQ) is the ability to make deeper connections at three levels: with ourselves (personal mastery), with another person (one-to-one) and within groups/teams. Our EQ or emotional intelligence is the capacity for effectively recognizing and managing our own emotions and those of others.

Social competencies associated with emotional intelligence are as follows:

Social Awareness:

1. Empathy: Sensing others emotions, understanding their perspective and taking active interest in their concerns.

2. Organizational awareness: Leading the currents decision, networks and politics at the organizational level.
3. Service: Recognizing and meeting follower, client or customer needs.  
Relationship Management:
4. Inspirational leadership: Guiding and motivating with a compelling vision.
5. Influence: wielding a range of tactics for persuasions
6. Developing others: Bolstering others' abilities through coaching, feedback and guidance.