IPCC LAW - Solved Answer –

NOVEMBER 2013 Exam .

Below solutions contains only solution of my subject – Business law & Company law.

Question 1 (a) –Page 23 –Exception – 5th point .

Answer : As per Section 27 of Indian contract act 1872, it deals with restraint of trade /business or profession is void . No person can restrain any one to practice his profession or from doing business .

Exception : if a person binds himself through an agreement , not to engage himself in any other business or profession , during the period of service , then same will not be treated as restain of trade or profession . Hence , In view of above provision , conclude that , X can be restained from doing so .

(b) – Refer Notes Page no. 77 of Company Law .

Answer : Minimum subscription is the minimum amount as stated in the prospectus, which in the opinion of directors must be raised by the issue of share capital to start with. The amount shall be utilised to meet the following expenditure:

1. Purchase price of the property bought or to be bought.
2. Any preliminary expenses.
3. Underwriting commission.
4. The repayment of money borrowed by the company for the above purposes.
5. Working capital and
6. Any other expenditure stating the nature and purpose with estimated amount in each case

Failure to Refund application money (Sec. 69) as per companies act 1956 : If the application money of those applicants to whom shares have not been allotted, is not repaid within 130 days of the date of issue of the prospectus, then the directors shall be jointly and severally liable to repay that money with interest @ 6% p.a. [According to SEBI guidelines- @ 15% p.a.]

Minimum Subscription as per SEBI Guidelines : According to the SEBI guidelines if minimum subscription including accepted development from underwriters etc, has not been received within **60 days of closure of issue,** all the money must be repaid, if money is not repaid **within 10 days,** the directors of company shall be jointly and severally liable to repay that money with interest (15% p.a.).

© & (d) – Ethics & Communication .

Question 2

(a) **i. – Refer notes page no. 59 & 61 – SAME AS NOTES .**

Answer : As per Section 8 of the payment of bonus act , 1965 , For bonus eligibility an employee has to work atleast 30 days in that year .

Section 13 deals with Computation of no. of working days - an employee shall be deemed to have worked in an establishment in any accounting year also on the days on which:-

a) He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Order) Act, 1946.
b) He has been on leave with salary or wage.
c) **He has been absent due to temporary disablement caused by accident arising out of and in the course of his employment.**
d) The employee has been on maternity leave with salary or wage, during the accounting year (section 14)

Hence , in view of above state provision , Employee is eligible for bonus for that year .

ii. Answer : - SEE Page 70 of notes .

As per section 4 of Gratuity Act , An employee is eligible for Gratuity , if he served for a Continues period of 5 years on his retirement or on his death or such disablement .

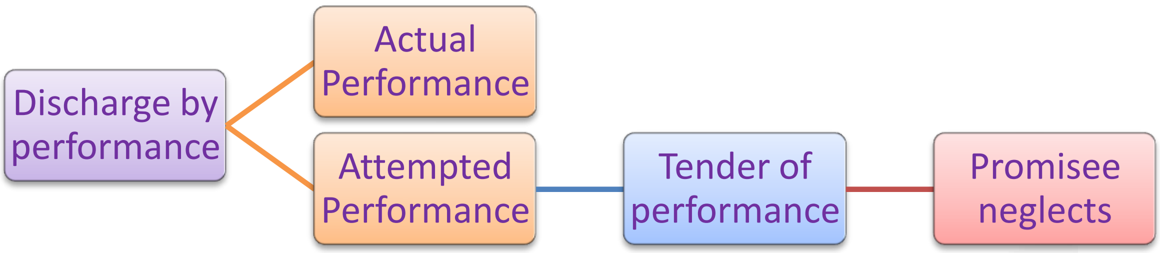
X can validity claim Gratuity amount , irrespective of 5 years . due to permanently disable . The contention of company is not valid .

(b) & (c) – Ethics & Communication .

Question 3 (a) :

Answer : Pge no. 29 of Business law notes .

DISCHARGE OF CONTRACT



Discharge by mutual agreement – Novation, Alteration, Rescission, Remission
Discharge by impossibility of performance.
Discharge of lapse of time e.g. Time barred debt under Indian Limitation Act, 1963
Discharge by operation of law such as by death of promisor, by insolvency, merger, material alteration etc.

Question 3 (b) & (c) - Ethics & Communication .

Question 4 (a) Answer :SEE page 89 & 90.

Financial assistance for purchase of own shares: Section 77 of the Companies Act, 1956 provides that no public company and no private company being a subsidiary of a public company, can give financial aid to any person, either directly or indirectly and whether by way of loan, guarantee or surety or otherwise, for or in connection with purchase or subscription made or to be made of any of its own shares or of its holding company.

There are, however, certain exceptions to this rule, namely -

(a) a banking company may lend money for the purpose in the ordinary course of its business but not on the security of its own shares, or

(b) The company in pursuance of a scheme for the purchase of or subscription for fully paid shares of the company(or those of its holding company) to be held by trustees for the benefit of the employees of the company, may advance loan for the purpose.

(c) The company may advance a loan to a person bonafide in its employment (other than directors or managers) to enable them to purchase or subscribe for fully paid shares for an amount not exceeding their salary or wages for a period of six months. (section 77)

However, the exception to this rule allows making of loans by a company, to its bonafide employees for purchasing or subscribing to the fully paid shares of the company. Section 77(3) provided that such financial assistance should not exceed six months' wages or salary of the employee.

Requirements to be complied with before buy-back: The company shall not purchase its own shares or other specified securities unless:

(a) the buy-back is authorised by its articles;

(b) a special resolution (also Declaration of Solvency to be filed with ROC & SEBI in case shares are listed on any recognised stock exchange), authorising the buy-back is passed in general meeting of the company;

(c) the buy-back is or less than 25% of the total paid-up capital and free reserves of the company;

Provided that the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

(d) the ratio of the debt owed by the company is not more than twice the capital and free reserves after such buy-back

Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies. The expression 'debt' includes all amounts of unsecured and secured debts,

The expression "free reserves" shall have the same meaning assigned to it in Clause (b), Explanation to Section 372A, which means those reserves which, as per latest audited balance-sheet of the company are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

(e) all the shares or other specified securities for buy-back are fully paid-up;

(f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by SEBI in this behalf;

(g) the buy-back in respect of shares or other specified securities other than those specified in Clause (f) is in accordance with guidelines as may be prescribed. [Sections 77A(2) and 77A(6)].

The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement slating;

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of security intended to be purchased under the buy- back;

(d) the amount to be involved under the buy-back; and

(e) the time limit for completion of buy-back. [Section 77A(3)]

Question 4 (b) – Ethics & Communication

4 (c) : Answer

Minutes of statutory meeting
Name of Company
Registered Office
Minutes of the statutory Meeting of ……………..Limited Held on …………AT ……… AM At the Registered Office Of the company.
Present:
1. …………………..
2. ………………………
Chairman
……………… was elected the chairman of the meeting and accordingly he equipped the chair.
Quorum

After satisfying that That quorum is present chairman will declare the meeting duly constituted and proceed to proceedings.

Welcome
The chairman will welcome the members for the statutory meeting and called the meeting to order.

ITEM NO.1-statutory report

Proposed by Mr. M
Seconded by Mr. N

The following resolution was put to vote as an ordinary resolution:
"Resolved that: the statutory report of the company laid before the meeting be and is hereby approved and adopted ."
The chairman will put the motion for discussion and thereafter declared on show of hands that the aforesaid resolution carried unanimously.

Question 5 (a) – Page 16 from Negotiable Act - Notes

A banker will be justified or bound to dishonour a cheque in the following cases, viz;

a) The cheque is undated.
b) The cheque is *stale* i.e. it has not been presented within the validity period of the cheque.
c) The instrument is inchoate (unclear or unformed or tentative) or not free from reasonable doubt.
d) The cheque is post-dated and presented for payment before its ostensible date.
e) The customer's funds in the banker's hands are not 'properly applicable' to the payment of cheque drawn by the former.
f) The customer has credit with one branch of a bank and he draws a cheque upon another branch of the same bank in which either he has account or his account is overdraw
g) A garnishee or other legal order from the Court attaching or otherwise dealing with the money in the hand of the banker, is served on the banker.
h) Authority of the banker to honour a cheque of his customer is determined by the notice of the drawer's death, lunacy and insolvency. However, any payment made prior to the receipt of the notice of death is valid.
i) Notice in respect of closure of the account is served by either party on the other.
j) The cheque contains material alterations, irregular signature of irregular endorsement.
k) The customer has countermanded payment.
l) Any ambiguity in the material part of the cheque including the defects resulting from the crossing of the cheque
m) Any difference between the amount of cheque in words and in figures

n) Any irregular endorsements.
o) The cheque is mutilated
p) Signature of the drawer has been forged

(b)-Page no. 59 - Shelf prospectus: (Sec 60A)

(1) Any public financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus.

(2) A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus.

(3) A company filing a shelf prospectus shall be required to file an information memorandum on 'all material facts relating to new charges created changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within such time as may be prescribed by the Central Government prior to making of a second or subsequent offer of securities under the shelf prospectus.

(4) An information memorandum shall be issued to the public along with shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus:

Provided that where an update of information memorandum is filed every time an offer of securities is made. Such memorandum together with the shelf prospectus shall constitute the prospectus.

"**Shelf prospectus"** means a prospectus issued by any financial institution or bank for one or more issues of the securities or class of securities specified in that prospectus.

5 (c) – Ethics & Communication .

Question 6 (a) – See page no 46 of Company law notes.

Registered office clause

Registered office means a office , which can be used by a company for doing its business with outsiders , same is mentioned in registered / situation clause of MOA. Must contain the name of state is which registered office is situated

Actual address of registered office is notified to ROC with in 30 days of in corporation.

Transfer of Registered Office of a Company: In order to shift the registered office from the State of West Bengal to the State of Maharashtra, M/s ABC Ltd has to take the following steps:

i. To pass a special resolution and thereafter file the same with the Registrar of Companies.
ii. To file a Petition before the Company Law Board under Section 17, of the Companies Act, 1956
iii. To give an advertisement in two newspapers one in English language and the other in local language indicating the change and any member/creditor having objection can write to the Company Law Board.
iv. To give notice to the State Government of West Bengal.
v. To submit all the required documents along with the fee to Company Law Board.

The Company Law Board (Central Government)* after hearing the petition passes an order confirming the alteration in the memorandum of association of the company regarding the shifting of the registered office. The Company Law Board's (Central Government)* order should be filed by ABC Ltd with both the Registrars of Companies West Bengal and Maharashtra. After registration of the said order the Registrar of Companies Maharashtra will issue a certificate which is the conclusive proof that all the formalities have been complied with.

6 (b) – Ethics & Communication .

(c)

i. False
ii. True
iii. True
iv. False .

Question 7 – page no.75

(a) Non-applicability of the Act to certain establishments

Section 16(1) of the Act provides that the Act shall **not apply** to certain establishments as stated thereunder. Such establishments include

- Establishments registered under the **Co-operative Societies Act, 1912**,and employing less than 50 persons and working without the aid of power; or
- To any other establishment belonging to or under the control of the Central Government or a State Government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or
- Set up under any Central or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under that Act governing such benefits.

(b) Page no. 42

Following are the differences between Pre-incorporation and Provisional Contracts:

a) Contracts, which are made before the company comes into existence, are called pre-incorporation contracts, while contracts which are entered into by a public company after obtaining the certificate of incorporation but before getting the certificate to commence business are known as provisional contracts.
b) The company is not bound by the pre-incorporation contract unless the company adopts the same after incorporation. But provisional contracts shall be binding on the company from the date on which the company is entitled to commence business.
c) Pre-incorporation contracts can be enforced against the company if it is warranted by the terms of incorporation of the company and for the purposes of the company, while the provisional contracts cannot be enforced and the company should go into liquidation without commencing business.

(c) Yes ., A a shareholder can do so .because as per section 176 , as a member attended the meeting , proxy will automatically revoked.

(d) & (e) – Ethics & Communication .