SUGGESTED ANSWERS

BUSINESS LAW, ETHICS & COMMUNICATION

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1. **(a) Sunil borrowed a sum of Rs. 3 lakh from Rajendra. Sunil appointed Rajendra as his agent to sell and authorised him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by sunil is lawful?**

Ans:- According to Section 202 of the Indian Contract Act, 1872 where the agent has himself an interest in the property which forms the subject-matter of the agency, is called an Agency coupled with interest. This agency is irrevocable, therefore the agency cannot, in the absence of any express contract, be terminated to the prejudice of such interest.

In the Instant situation discussed in the question, Where Rajendra has himself an interest in the Selling the property of Sunil, as he had lent sum of money to the latter, therefore the doctrine of agency coupled with interest applies which is irrevocable.

Therefore Sunil cannot revoke the contract of agency with Rajendra as contract of agency is coupled with interest and it is irrevocable.

(b) Anson Limited held equity shares in Booban Limited. Later on Anson Limited became subsidiary company of Booban Limited. Decide under the Companies Act, whether it is necessary for Anson Limited to surrender the equity shares of Booban limited?

Ans:-According to the provisions contained in Section 42 of the Companies Act, 1956 a subsidiary company cannot become a member of its holding company but where a subsidiary company had become the member of the holding company before it became the subsidiary company, it can continue to be a member in the holding company. Although the subsidiary company shall not have any voting rights in respect of shares held in the holding company.

As per the Situation given in the question, where Anson limited held equity shares of Booban Limited before becoming subsidiary of the latter and later became the subsidiary, thus it does not violate the provisions of Section 42.

Therefore Anson Limited can continue as a member of Booban Limited even if the company is the latter’s subsidiary. But Anson limited will not have voting rights in respect of the shares held in Booban Limited.

(c) “Consumer Interest” and “Public Interest” are synonymous.

Ans:- Apparently it seems that “Consumer Interest” and “Public Interest” are synonymous but it is not so. They may be differentiated as under:

Consumer is a member of a society who purchase, use, maintains and disposes of products and services. They are being affected by pricing policies, quality of goods and services and various trade practices. They are clearly distinguished from manufacturers who produce goods for wholesalers, retailers who sells goods in public interest.

Public interest on the other hand is something in which society as a whole has some interest and is seen as an externality to competitive markets. There is also a justifiable apprehension that in the name of public interest, Governmental policies may be fashioned and introduced which may not be in ultimate interest of the consumers.

(d) The phrase "Iron Law of Responsibility" means that the institution of business exists only because it performs invaluable services towards its promoters.

Ans:-The statement is incorrect as the doctrine "Iron Law of Responsibility" means that the institution of business exists only because it performs invaluable services towards its society. Society gives business its license to exist and this can be amended or revoked at any time if it fails to live up to society expectations. In the long-run those who do not use power in a manner that society considers responsible, will tend to lose it.

(e) What important factors should be considered to make oral communication effective?

Ans:-To make oral communication effective the following points should be considered:-

- ✓ Consider the objective.
- ✓ Assess the interest level of the Receiver.
- ✓ Use the correct pitch.
- ✓ Use simple language, & familiar words.
- ✓ Be brief and precise.
- ✓ Avoid vagueness and generalities
- ✓ Give full facts.
- ✓ Use polite words and tone.

2. (a) Nimbaheda Textiles Limited has three separate units at three separate places in the Country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?

Ans:- According to the provisions contained in Section 3 of the Payment of Bonus Act, 1965 which lays that for purpose of computation of bonus, an establishment shall include all its departments, undertakings and branches. But there is exception to the above mentioned rule, it means a branch, department or undertaking shall not be treated as part of an establishment if the following 2 conditions are satisfied:-

- ✓ A separate B/S and P/L a/c has been prepared for such branch, department or undertaking
- ✓ Such branch, department or undertaking has never been treated as part of the establishment for the purpose of computation of bonus.

Also in the decided case of *Workmen v Somaiya organics India Limited 1981 (Allahabad High Court)*, where it was held that a company has two units of establishment and the employees of one unit are paid bonus on the basis of Separate Balance Sheet and profit and loss account, the employees of the other unit, cannot claim bonus, as the unit is separate.

As per Situation given in the Question, where Nimbaheda Textiles Ltd has three separate units, and every unit is preparing its separate Balance sheet and Profit and loss account, thus for the computation of bonus every unit will have its separate calculation.

Therefore, the employees of one unit cannot claim bonus from the surplus of the other unit, as the other unit will not be treated as a part of that unit for the computation of bonus.

(b) Aswani who was an employee of Sun Televisions Limited, retired on 1st January 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December, 2013. Now, Aswani claims the amount of gratuity Act, 1972 whether Aswani will succeed in his claim?

Ans:- According to the provisions contained in Section 7 of the Payment of Gratuity Act, 1972 which lays that within 30 days of gratuity become payable, the employer shall pay the gratuity to the person to whom it is payable. If fails, he have to pay simple interest for delayed Period. Simple Interest need not to be paid, if:-

- ✓ Delay is due to fault of employee, and
- ✓ Employer has obtained written permission from controlling authority.

As per the situation given in the question, where the company had not pay the amount due as Gratuity to Aswani on the requsite time and there was no fault of the employee.

Thus, Aswani can recover the amount of Gratuity with Simple Interest as per the provisions of the Payment of Gratuity Act, 1972.

(c) What problems may arise at workplace when ethical behaviour is not adopted?

Ans:-The problems that may arise at workplace when ethical behaviour is not adopted are as follows:-

- ✓ increased risk of employees making unethical decisions.
- ✓ Increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum.
- ✓ inability to recruit and retain top people.
- ✓ Significant legal exposure and loss of competitive advantage in the marketplace.

(d) Briefly explain the "Grapevine Chains" propounded by the experts in relation to informal way of communication.

Ans:-Grave Chains in an organization can be categorized as:–

- ✓ Single Strand Chain - in this type of chain A tells something to B who tells to C and so on it goes down the line.
- ✓ Gossip Chain – in this one person seeks out and tells everyone the information he has obtained.
- ✓ Probability Chain – in this one persons communicates randomly with others and they further communicates randomly
- ✓ Cluster Chain – in this one person tells something to few selected individual and then some of these inform a few other selected individuals.

3. **(a) Explain the law relating to liability of joint promisors in a contract. 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay Rs. 1,50,000/- to 'A'. Later on 'F' became insolvent and his private assets are sufficient to pay only 1/5 of his share of debt. 'A' recovers the whole amount from 'D' through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'.**

Ans:- According to Section 43 of the Indian Contract Act, 1872 when two or more persons make a joint promise, the promise may, in absence of express agreement to the contrary, compel any one or more of such joint promisors to perform the whole of the promise. Further, if any of the two or more 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 situation given in the question where 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay Rs. 1,50,000/- to 'A'. Later on 'F' became insolvent and his private assets are sufficient to pay only 1/5 of his share of debt. Thus F will contribute Rs. 10000 (1,50,000*1/3*1/5) and the remaining RS 40000 (50000-10000) will be contributed by D and E in equal ratio.

Therefore D and E have to Contribute RS 70000 each (Rs 50000 for their respective share and 20000 for deficiency arises due to insolvency of F). Thus D have the right to recover Rs 70000 from E as E' share.

(b) What are the objects of the "Central Consumer Protection Council" in relation to protection of rights of the consumer?

Ans:- Objectives of Central Consumer Protection Council in India are to promote and protect the rights of the consumers such as:-

- ✓ Right to be protected against the marketing of goods & services which are harmful to life and property.
- ✓ Right to be informed about the quality, quantity, Purity, standard and price of goods/services so as to protect the consumer against Unfair Trade Practices.
- ✓ Right to be assured wherever possible access to variety of goods and services at competitive prices.
- ✓ Right to be heard and to be assured that consumers interest will receive due consideration at appropriate terms.
- ✓ Right to seek redressal against unfair trade Practices
- ✓ Right to consumer education.

(c) Explain those elements which can be used to influence an "Organisational Culture"

Ans:- The Elements which influences Organizational/Corporate Culture are as follows:-

- ✓ The Paradigm: What the organization is about, what it does, its mission, its values.
- ✓ Control Systems: The processes which have been put in place to monitor what is going on.
- ✓ Organizational Structures: Reporting lines, superior – subordinate relationships, managerial hierarchies, and the way that work flows through the business.
- ✓ Power Structures: Who makes the decisions and how power is distributed across the organisation.
- ✓ Symbols:-Corporate Logos and Designs, and Symbols of power.
- ✓ Rituals and Routines: Management Meetings, Board Reports, etc, which may be habitual or necessary.
- ✓ Stories and Myths: The build up about people and events, and convey a message about what is valued within the organization.

4. (a) State the Provisions relating to "Information Memorandum" under Section 60 B of the Companies Act, 1956.

Ans:- Section 60B of the Companies Act, 1956 lays down the following provisions:-

➢ **Information memorandum**

✓ **Meaning:-** a process undertaken prior to the filing of a prospectus by which:

- Demand for the securities proposed to be issued by a company is elicited; and
- Price and terms of issue for such securities is assessed.

- ✓ **Circulation:-** The company may circulate information memorandum to the public prior to filing of a prospectus.

- ➢ **Red-Herring Prospectus**
  - ✓ **Meaning:-** A prospectus which does not have complete particulars on price and quantum of securities offered.
  - ✓ **Filing:-** The company shall file a Red-herring prospectus at least 3 days before the opening of the offer.

- ➢ **Variations between information memorandum and red-herring prospectus**
  - ✓ **Intimation of variations:-**Any variation between information memorandum and red-herring prospectus shall be
    - Highlighted as variations by the issuing company; and
    - Individually intimated to the proposed investors.

  - ✓ **Not to encash advance subscriptions**

  Any advance subscription for securities (by way of cash or post dated cheques or stock invest), if already received by the issuing company, shall not be encashed until:-
    - Such variation is individually intimated to the proposed investors; and
    - The company has offered an opportunity to the proposed investors to withdraw their applications and cancel the subscription moneys paid.

  - ✓ **Withdrawal of application:-** A proposed investor may withdraw his application within 7 days of receipt of intimation given by the company.

- ➢ **Allotment to be void**
  - ✓ **Reasons:-**An allotment shall be void if:-
    - The company fails to give enough information of any variation to any proposed investor; or
    - The company fails to give to the proposed investor an opportunity for cancelling an application.

  - ✓ **Refund of money and interest**

    If the allotment becomes void, the proposed investor shall be entitled to receive
    - Refund of his subscription money
    - Interest at 15% p.a.

- ➢ **Obligations of the Company**
  - ✓ **Obligations:-** Information memorandum and red-herring prospectus shall carry same obligations as are applicable to prospectus.
  - ✓ **Filing of final prospectus:-**

    Upon closing of the offer, a final prospectus shall be filed:-
    - In case of a listed company:- with SEBI and registrar
    - In any other case:- with the Registrar
  - ✓ **Contents of final prospectus:-** The final prospectus shall state:-
    - The total capital raised
    - The closing price of the securities

- Any other details as were not complete in the red-herring prospectus

(b) What do you understand by the term "Acid Rain"? How does it adversely affect the environment?

Ans:- It is a rain consisting of water droplets that are unusually acidic because of atmospheric pollution most notably the excessive amounts of sulphur and nitrogen released by cars and industrial processes. When sulphur dioxide and nitrogen oxide combine with the air, acid rain is created.

Acid rain causes acidification of lakes and streams and contributes to damage of trees and many sensitive forest soils. It accelerates the decay of building materials and paints, statues and sculptures. It also contributes to degradation and harms public health. (irritation of throat, nose and eyes, headache, asthma and dry cough)

(c) Draft a notice for calling the meeting of the Board of Directors of a company. In this meeting following transactions have to be proposed:

i. Mr. X to be co-opted as an Additional Director.

ii. Decision to be taken to buy-back company's equity shares.

Ans:-

Notice of Board Meeting

ABC Limited

Ph. No:-	Connaught Place
Fax:-	New Delhi
Ref. No.	May 29, 2014

Dear Sir/Madam

This is to inform you that Board Meeting of ABC Limited will be held on Wednesday the 25th day of June 2014, at the Registered office of the Company, 111 Connaught Place, New Delhi to transact the following business:-

1. To buyback 10% ESC of the Company
2. To appoint Mr. X as additional Director

Yours Faithfully

(Chairman)

5. (a)

(i) 'A' issued a cheque for Rs. 5000/- to 'B'. 'B' did not present the cheque for payment within reasonable period. The Bank fails, However, when the cheque was ought to be presented to the bank, there was sufficient fund to make payment of the cheque. Now, 'B' demands payment from 'A'. Decide the liability of 'A' under the Negotiable Instruments Act, 1881.

Ans:- Section 84 of the Negotiable Instruments Act, 1881 provides that where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time when presentation ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged from the liability, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than would have been if such cheque had been paid. In determining what a reasonable time is, regard shall be had to the nature of the instrument, the usage of trade and of banker, and the facts of the particular case.

Applying the above provisions to the given problem since the B (payee) has not presented the cheque to the drawer's bank within a reasonable time when A (drawer) had funds to pay the cheque and the drawer has suffered actual damage, A (drawer) is discharged from the liability.

(ii) Ram has Rs 2000/- in his bank account and he has no authority to overdraw. He issued a cheque for Rs 5000/- to Gopal which was dishonoured by the bank. Point out whether Gopal must necessarily give notice of dishonour to Ram under the Negotiable Instrument Act, 1881?

Ans:- According to the decided case of *Subrao v Sitaram (Bombay High Court)*, Neither presentment nor notice of dishonour is necessary if it is shown there were no funds belonging to the drawer in the hands of drawee. And also as per the provisions contained in Section 98 of the Negotiable Instruments Act, when the party charged could not suffer damage for want of notice, then notice of dishonour is not necessary.

In the given question, where Ram has Rs 2000/- in his bank account and he has no authority to overdraw, he issued a cheque for Rs 5000/- to Gopal which was dishonoured by the bank.

Thus as per the above mentioned case and provision of the Negotiable Instruments Act, there is no compulsion on Gopal to give the notice.

(b) Which matters are considered to be "Ordinary" matters at the Annual General Meeting of a company? What kind of resolution is required to be passed for 'ordinary business' and for 'special business' in an Annual General Meeting under the companies Act, 1956?

Ans:- According to the Provisions contained in Section 173 (1) (a) of the Companies Act, 1956, Following business shall be ordinary business

- ✓ Consideration of Accounts.
- ✓ Declaration of Dividend.
- ✓ Retirement of directors and appointment of directors in place of those retiring.
- ✓ Retirement of Auditors and appointment of Auditors in place of those retiring.

Nature of resolution:- In case of Ordinary Business, generally Ordinary resolution, However if sec 224A is attracted, Special Resolution is required to be passed, although the business transacted u/s 224A is ordinary business.

(c) What do you understand by "Discrimination"? Which basic elements are involved in discrimination in employment?

Ans:- To discriminate means to distinguish one person from another on any unreasonable grounds. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit. In other words if age, gender, religion, cast, race, are used to differentiate between two or more person which is not relevant to the job that is to be performed than it is said to be Employment discrimination.

Discrimination in employment involves three basic elements:-

- ✓ First, it is a decision against one or more employee that is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications.
- ✓ Second, the decision derives solely or in part from racial or sexual prejudice, false stereotypes, or some other kind of morally unjustified attitude against members of the class to which the employee/s belongs.
- ✓ Third, the decision (or set of decisions) has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions, or better pay.

6. (a) What restrictions are applicable under the Companies Act, 1956 when Articles of Association of a company are altered?

Ans:-The following are the restrictions when Articles of Association of a company are altered:-

- ✓ An alteration must not be inconsistent with the memorandum
- ✓ An alteration must not be inconsistent with the Companies Act, 1956.
- ✓ An alteration must not be unlawful or against the public policy
- ✓ An alteration must not increase the liability of members of the company.
- ✓ An alteration converting a public company into a private company is not effectual until approval of CG is obtained.
- ✓ An alteration must not amount to a fraud on the minority
- ✓ An alteration must not be Oppressive on any manner.

(b) Draft 'Gift Deed' assuming your own facts regarding parties and subject matter relating to gift.

Ans:-

Gift Deed

This deed of gift is made on 7th day March 2013 at New Delhi between
Mr. A aged about __________ S/o _______________ R/at _____________ herein called DONOR
Mrs. B aged about ___________ W/o _____________ R/at ____________ herein called DONEE

They Donor has gifted a car to donee.

Now the parties witnessed as follows

- ✓ Gift is Made on 1/05/2014
- ✓ Donor has gifted an BMW X5 to Donee on her marriage the market value of gift is Rs. 30 lakh.
- ✓ Donor has gifted to Donee out of his natural love & affection towards done on the occasion of her marriage.
- ✓ Donee has accepted the gift.
- ✓ Donee is the absolute owner of the car gifted.

In witness whereof parties have signed this deed

Witness	Signature
1………………….	Donor………………
2………………….	Donee…………….

(c) State whether the following statements are correct or incorrect

(i) The concept of legal personality of a company is of absolute nature

Ans:-Incorrect, because legal personality is disregarded at the time of lifting of Corporate Veil.

(ii) Contracts entered into by a company after its incorporation and before it is entitled to commence business are not binding until the company becomes entitled to commence business

Ans:-Correct, Provisional contracts are binding when Company receives the Certificate of Business.

(iii) A minor on his attaining majority can validate any agreement which was entered into when he was a minor and which was void.

Ans:-Incorrect, minor cannot ratify the void agreement on attaining the age of Majority.

(iv) Maintenance and champerty are void in England but not in India, till they are not opposed to public policy.

Ans:-Correct, Maintenance and Champerty are not void until they are not opposed to public policy.

7. **(a) Solar Industries Limited sold its unit to Mars Industries Limited and contributed 30% contribution in the pension scheme. The transferee company refused to bear the balance 70% contribution in the pension scheme. Decide, under the Employee Provident and Miscellaneous Provisions act, 1952 the liability of remaining contribution.**

Ans:-According to the Provisions contained in Section 17(B) of the Employee Provident and Miscellaneous Provisions act, 1952, where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, deed or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly and severally liable to pay the contribution and other sums due from the employer under the provisions of this actof the scheme or the pension scheme, as the case may be, in respect of the period upto the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

Therefore applying the above provisions in the given case the transferor Solar industries Limited, the transferor paid only 30% of the total liability of the contribution in pension scheme before sale of the establishment. With regard to remaining 70% liability both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable.

The liability is limited up to the date of transfer and upto remaining amount. Further, the liability of the transferee i.e. Giant Group of Industries, is limited to the extent of assets obtained by it from the transfer of the establishment.

(b) What is “Return of Allotment”? List the documents which have to be enclosed when shares are allotted on discount.

Ans:-The company is to submit a report in prescribed form No. 2 called ‘Return of Allotment’, to the Registrar within 30 days of allotment of shares.

Contents, in case of shares issued at a discount

- ✓ Number and nominal amount of the shares comprise in the allotment,
- ✓ Names, addresses and occupations of the allottees,

- ✓ Amount, if any, paid or due and payable on each share.
- ✓ A copy of the resolution passed by the company authorizing issue of shares at discount.
- ✓ A copy of the order of CLB

(c) Decide, under the Companies Act, 1956 whether Mr. Prabhu can incorporate a new company using the phrase "Electoral Trust" with the name of company.

Ans:-According to section 20 of the Companies Act, 1956, the name of the company should not give an impression that the company enjoys the patronage of the Government.

As per the situation given in the question, where Mr. Prabu wants to incorporate a new company using the phrase "Electoral Trust" with the name of company.

Therefore, as per the provisions of section Mr Prabhu cannot incorporate a company using the phrase "Electoral trust" with the name of company as this will misled the company.

(d) What are the guidelines for 'active listening'?

Ans:-The following are the guidelines for Active Listening

- ✓ **Look at the Speaker** and suspend other activities. Otherwise it would not be possible to understand the speaker's intentions.
- ✓ **Be interested in what the Speaker is saying.** Taking notes will keep body and mind active.
- ✓ **Listen to the pitch and tone of voice and modulation.** Look at gestures and body language. These may carry an unspoken message.
- ✓ **Restate what the Speaker said.** It helps the Listener to make sure that he understands the Speaker clearly.
- ✓ **Ask questions once in a while to clarify the meaning** in order to know that the listener has been listening effectively

(e) What threats are existing in environment which adversely affect the fundamental principles of ethics?

Ans:- Following threats are existing in environment which adversely affect the fundamental principles of ethics:-

- ✓ **Self Interest Threat:-**This threat occurs when a professional is shown any personal benefit which can be financial or non-financial.
- ✓ **Self-Review Threat:-**This threat occurs when a professional who have formed a judgement himself has to review his judgement.
- ✓ **Advocacy Threat:-**This threat occurs when a professional promotes a position or opinion that his own objectivity may be compromised.
- ✓ **Familiarity threat:-**This threat occurs when a professional has a close relation with a person who have appointed him or with the work environment.
- ✓ **Intimidation Threat:-**This threat occurs when a professional is being threatened. In other words when a threat is being given actual or being threaten to be removed or litigation.