6 – BUSINESS & CORPORATE LAWS – PE–II

Questions 1 and 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 8,9,10.

Question 1(a): Agreements in restraint of trade – Not enforceable – Exception 5 Marks

'X' agreed to become an assistant for 5 years to 'Y' who was a Doctor practicing at Ludhiana. It was also agreed that during the term of agreement 'X' will not practice on his own account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practice on his own account. Referring to the provisions of the Indian Contract Act, 1872, decide whether 'X' could be restrained from doing so?

Answer:

1. **Service Agreements:**
   (a) **Agreements:** Employers may enter into agreements with employees – (i) not to engage in other work during the tenure of his employment, or (ii) not to engage in similar work after his termination.
   (b) **During Employment:** The first restraint is always valid, e.g. doctors may be paid non practicing allowances to avoid practicing when they are employed in a hospital.
   (c) **After termination of service:** The second restraint is valid only if it is to protect the trade interests of the employer. It may be imposed to prevent the outgoing employee from using trade secrets he had learnt during his tenure, to the detriment of his previous employer.
   (d) **Valid Agreements:** Requiring employees to serve the organisation for a few years after training leaving, or execution of a bond requiring employees leaving the organisation to pay compensation to the employer are valid.
   (e) **Use of Personal Skills:** The employer cannot prevent the employee from using his personal skills and knowledge to his benefit, e.g. an employer cannot restrain an employee to act in theatre plays or in performing an art.

An agreement of service by which a person binds himself during the term of agreement not to take service with anyone else, directly or indirectly take part in or promote or aid any business in direct competition with that of his employer is **valid**.	**Charles v. Macdonald**

2. **Conclusion:** Therefore the given case constitutes a valid contract between the parties and it is enforceable by both the parties.

Question 1(b): Sale of goods Act – Transfer of Risk 5 Marks

Aman contracted to eract 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?

Answer:

1. Future Goods u/s 2(6) –
   - Future Goods means goods to be manufactured or produced or acquired by the seller, after making of the contract of sale. [Sec 2(6)].
   - The seller does not possess or own these goods at the time of of making the contract of sale.
   - The parties will not be discharged by the non–acquisition or non–production of the future goods.

Conclusion: Here Aman will not be discharged from the contract and will be bound to perform the contract. He cannot claim any amount from Sapan for the loss of goods due to the accidental fire.

Question 1(c): Partnership Act – Set off of debts due by an unregistered Firm 5 Marks

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?

Answer:

1. Registration of Firms is not compulsory, but an Unregistered Firm suffers from the following disabilities as mentioned u/s 69 –

Particulars	Description
Suit between Partners and Firm	A Partner of an unregistered Firm cannot sue the Firm or any other Partner of the Firm to enforce a right 1) arising from a contract, or 2) conferred by the Partnership Act.
Suit between Firm and Third Party	An Unregistered Firm cannot file a suit against a third party to enforce any right arising from a contract.
Claim of Set–off	An Unregistered Firm or a Partner thereof cannot claim a set–off or other proceeding to enforce a right arising from a contract.

2. Exceptions i.e. Non–registration not to affect the Right of third parties to sue the firm– **[Sec. 69]**
   - Right of Partners to sue for – a) Dissolution of the Firm, or b) Settlement of accounts of a dissolved Firm, or c) Realising the property of a dissolved Firm.
   - Power of an Official Assignee, Receiver or Court to realise the property of an Insolvent Partner and to bring an action on behalf of the Insolvent Partner.
   - Rights of the Firm or the Partners of the Firm which has (a) no place of business in the territories to which the Act applies, or (b) whose places of business are in such territories to which the Chapter does not apply.
   - Right of the Firm to institute a suit or claim of set–off not exceeding Rs.100.
   - Right of an Unregistered Firm to bring a suit against third parties to enforce a right arising otherwise than out of a contract, e.g., for enforcing a trademark.

3. **Conclusion:** Since the Firm is unregistered it cannot claim the set off of any debts due to it arising from any contractual obligation, Ram and Sons cannot compel Abhinav and Sons to accept the balance due of Rs.10,000. Abhinav and Sons can sue the unregistered Firm Ram and Sons for their due of Rs.60,000 whereas, Ram and Sons cannot claim the due of Rs.60,000 from Abhinav and Sons if they default in the payment, as the Firm is unregistered.

Question 1(d): Promissory Note – Essential Features 5 Marks

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 :

(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.

Answer:

1. **Sec.4:** A Promissory Note is –
   (a) an instrument in **writing** (not being a Bank Note or a Currency Note),
   (b) containing an **unconditional undertaking**,
   (c) **signed** by the Maker,
   (d) to pay a certain sum of **money** only**,**
   (e) to, or to the order of a certain **person** or to the **bearer** of the instrument.

2. **Conclusion:**

Nature of the instrument	Is it a Promissory Note	Reason for the conclusion
I promise to pay Rs.5,000 or Rs.7,000 to Mr. Ram	**No**	Amount of the instrument is uncertain
I promise to pay Mohan Rs.500 if he secures 50% marks in the examination	**No**	The instrument is conditional
I promise to pay Rs.3,000 to Ravi after 15 days after the death of A.	**Yes**	A promissory note is valid if it is based on the happening of an event which is certain, but the time of its occurrence may be uncertain.

Question 1(e): Payment of Bonus Act – Applicability 5 Marks

Decide with reasons in the light of the Payment of Bonus Act, 1965 whether the following persons are entitled for bonus :

(i) A University teacher,(ii) An employee of the 'NABARD',(iii)A retrenched 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.

Answer:

Particulars	Eligibility to Bonus	Reason
(i) A University Teacher	No	Sec 32 specifically states that the Act shall not apply this category of persons.
(ii) An Employee of NABARD	No	Sec 32 specifically states that the Act shall not apply this category of persons.
(iii) A Retrenched employee who is reinstated without back wages.	Yes	A retrenched / dismissed employee is entitled to bonus provided he had worked for minimum qualifying period.
(iv) A retrenched employee who worked for 45 days at a pay of Rs.4,000 p.m.	No	Not covered under the Payment of Bonus Act as he derives "salary" of more than Rs.3,500 p.m. and hence falls outside the scope of the definition of "Employee" of the Act.
(v) An Apprentice	No	Excluded from the definition of an employee.

Question 1(f): Preferential Status of EPF outstanding on closure of business — EPF 5 Marks

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 ?

Answer:

1. **PROTECTION AGAINST ATTACHMENT [Sec. 10]:**
   (a) **No Assignment / Attachment:** The amount standing to the credit of any member in the Fund (or any exempted employee in a Provident Fund) –
   - Shall not in any way be capable of being assigned or charged,
   - Shall not be liable to attachment under any decree or order of any Court in respect of any debt or liability, and
   - Shall not be claimed by the Official Assignee or Receiver.

(b) **Free of liability:** Amount standing to the credit of any member in the Fund (or any exempted employee in a Provident Fund) at the time of his death and payable to his Nominee shall –
- Vest in the Nominee, subject to any deductions,
- Be free from any debt or liability incurred by the deceased or nominee, and
- Not be liable to attachment under any order or decree of the Court.

Question 2(a): Consideration – Indian Contract Act, 1872 — 5 Marks

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 form her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

Answer:

1. **Facts:** A house transferred his house to his daughter M by way of gift which specified that M shall pay a monthly annuity to N and consequently M executed an instrument in favor agreeing to pay the above sum. Later M refused to pay the amount to N on the ground that no consideration moved from N to M and therefore the contract is not valid for want of consideration.

2. **Analysis:** The condition **"No consideration no contract",** does not apply to agreements made out of natural love and affection. Also, where a valid contract has been created all the conditions in the contract shall be binding on all the parties to the contract. In the given case where a gift (which is a valid contract u/s 25) has been accepted subject to the condition that an annuity shall be paid to a certain person the same shall not be later refused to be paid, as it an essential facts of the contract.

3. **Conclusion: M is liable to pay the annuity to N.**

Question 2(b): Co–operative Societies Act, 1912 – Transfer of interest — 5 Marks

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?

Answer:

1. **Transfer of interest on death of a member [Sec.22]:**
   (a) On the death of a member, a Registered Society may – (a) transfer his share or interest, or (b) pay a sum representing value of his share or interest to – (i) his nominee, or (ii) legal heir, or (iii) legal representative.
   (b) Such transfer or payment made in accordance with the rules / bye–laws shall be valid and effectual against any demand made by such other person.

Society's liability is –	Payment / Transfer
Unlimited	**Payment** to Nominee / Heir / Legal Representative.
Limited	**Transfer** to Nominee / Heir / Legal Representative provided that – (a) they are eligible and qualified to become members, and (b) an application is made by them within 1 month of the death of member.

2. **Liability of past member and estate of deceased member [Sec.23 & 24]:**
   (a) A past member remains liable for the debts of the Society for **two years** from the date of his ceasing to be a member.
   (b) The estate of deceased member is liable for the Society's debts for **one year** from the time of his death. However, such liability is limited only to debts which existed at the time of his death.

Question 3(a): Joint Promises Rights and Obligations 5 Marks

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 :

(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 Z becomes insolvent.

Answers to subdivision (i) and (ii):

1. **Devolution of Joint Liabilities [Sec. 42]:** When two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, **the promise shall be performed / fulfilled** by–
   (a) During their joint lives – All the Joint Promisors,
   (b) After the death of any of them – The Representative of such deceased Promisor together with the surviving Promisor(s),
   (c) After the death of the last survivor – The Representatives of all the Promisors jointly.
2. **Demanding performance from any of the Joint Promisors [Sec. 43]:**
   (a) In case of a Joint Promise, the Promisee may, in the absence of an express agreement to the contrary, compel **any one or more** of such Joint Promisors, to perform the **whole** of the promise.
   (b) The **liability** of Joint Promisors is **joint and several.**
   (c) **Example:** A, B and C jointly promise to pay D Rs.30,000. D may, compel either A or B or C or any two of them to pay him Rs.30,000.
3. **Rights and Duties of Joint Promisors [Sec. 43]:**
   (a) Unless a contrary intention appears from the contract, each Joint Promisor may compel every other Joint Promisor to **contribute equally with himself** to the performance of the promise.
   (b) If any one of Joint Promisors makes default in such contribution, remaining Joint Promisors must **equally share the loss arising from such default.**
   (c) **Example:** In the above case X, Y & Z are under a joint promise to pay A Rs.50,000. X pays the whole. X can recover Rs.33,333 each from B and C. If in this case, C is insolvent, but his assets are sufficient to pay half of his debts, A can recover Rs.8,333 from C's estate & Rs.21,333 from B (i.e. Rs.16,667 being B's share + Rs.4,666 towards B's Share of Loss due to C's insolvency]. If however, C's estate is unable to pay anything, A is entitled to receive Rs.25,000 from B.

Answer to subdivision (iii) Y can recover the amount from the assets of Z and in case of any shortfall, the loss is to be borne by the remaining promisors equally.

Question 3(b): Implied authority of a partner – restrictions and effect on third parties 5 Marks

"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?

Answer:

Restriction or extension of Implied Authority [Sec. 20]:

(a) The Partners, by mutual agreement, can restrict or extend the Implied Authority of any Partner.

(b) Notwithstanding any restriction, any act done by a Partner on behalf of the Firm which falls within his implied authority, binds the Firm, unless the person with whom he is dealing knows of the restriction or does not know or believe that Partner to be a Partner. So, a third party is not affected by limitation of implied authority unless he has actual notice of it.

Question 4(a): Right of Lien and Stoppage in Transit 5 Marks

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.

Answer:

1. **When to retain possession [Sec. 47]:** An Unpaid Seller in possession of the Goods is entitled to retain possession, till the tender or payment of price, in the following cases –
   (a) Where the Goods have been sold without any stipulation as to credit,
   (b) Where the Goods have been sold on credit, but the credit period has expired,
   (c) Where the Buyer becomes insolvent.
2. **Rules regarding right of lien:**
   (a) **Goods must be in the possession of the Seller:** Once possession is lost, right of lien is also lost.
   - Goods are deemed to be in the possession of the Seller, where the same have been delivered to a carrier but the document of title (i.e., Railway Receipt, Bill of lading, etc.) is obtained in the Seller's name or that of his agent, i.e. Seller has reserved the right of disposal.
   - Right of lien can be exercised even if the Goods are in Seller's possession in any other capacity, like that of a bailee or agent. [Sec. 47(2)]

   (b) **Buyer's default:** When the Goods have not been sold on credit and the Buyer fails to pay the full price, right of lien can be exercised.
   (c) **Buyer's insolvency:** When the Buyer becomes insolvent, the Seller can retain possession over the Goods.
   (d) **Expiry of credit period:** When the Goods have been sold on credit and the credit period has expired, lien can be exercised.
   (e) **Lien only for price:** The right of lien can be exercised only for the price and not for any other expenses, e.g. godown charges, interest, etc.
   (f) **Part Payment:** The Seller may refuse to deliver a part of the Goods on payment of a proportionate part of the price by the Buyer.
   (g) **Lien on partly delivered / retained Goods:** Where an Unpaid Seller has made part delivery of the Goods, he may exercise his right of lien on the remainder. When part delivery is intended as delivery of the whole, the right of lien is lost.
   (h) **Lien irrespective of decree:** The right of lien can be exercised even though the Seller has obtained a decree for the price of the goods. [Sec. 49(2)]
   (i) **Quasi–lien:** Where the property in Goods has not passed to the Buyer, the Unpaid Seller has in addition to his remedies, a right of withholding delivery of Goods. This right is similar to lien and is called 'quasi–lien'.
3. **Lien vs Stoppage in Transit**

Basis	Right of Lien	Right of Stoppage in Transit
1. **Objective**	To **retain** possession of Goods.	To **regain** possession of Goods handed over to a carrier for the purpose of transmission.
2. **Buyer's status**	Is exercised where the Buyer is able to pay, but has not paid for the Goods. It is not necessary that the Buyer should be insolvent.	Can be exercised only when the Buyer is insolvent.
3. **Possession of Goods**	The Goods should be in the actual and physical possession of the Seller.	The Seller should have parted with the possession of the Goods for transmission to Buyer. The carrier / bailee should have the Goods in his custody and should not have delivered it to the Buyer.

4. **End point**	The right of lien gives rise to the right of stoppage in transit.	To exercise this right the Seller must have lost his right of lien.
5. **Person acting**	The Seller has to exercise this right himself.	The Seller can exercise this right through the Carrier / Bailee with whom the Goods are lying.

Question 4(b): Appointment of Liquidator of an MSCS 5 Marks

Who appoints the liquidator for winding up of a Multi–state Cooperative Society? Referring the provisions of the Multi–state Cooperative Societies Act, 1984, point out six powers of the liquidator.

Answer: Appointment of Liquidator – Section 89

1. **Appointed by:** Central Registrar who shall fix his remuneration also.
2. **Powers of liquidator – Section 90**
   - **Vesting of property:** The whole of the assets of a Multi–State Co–operative Society in respect of which an order for winding up has been made, shall vest in the Liquidator from the date on which the order takes effect.
   - **Sale of property:** The liquidator shall have the power to realise such assets by sale or otherwise.
   - **Other powers:** Subject to the control of Central Registrar, the liquidator has the power to –
     (a) **Continue the business:** Carry on the business of the Multi–State Co–operative Society so far as may be necessary for the beneficial winding up of the same.
     (b) **Winding up instructions:** Give such directions in regard to collection and distribution of assets of the Society as may appear to him to be necessary for winding up the affairs of that Society.
     (c) **Status of Member:** Determine whether any person is a Member, Past Member or Nominee of a deceased Member.
     (d) **Contribution from members, etc.:** Determine from time–to–time the Contribution (including debts due and costs of liquidation) to the assets of the Multi–State Co–operative Society to be made or remaining to be made by – (a) Members or Past Members, or (b) Estates or Nominees, Heirs or Legal Representatives of Deceased Members, or (c) any Officers or Former Officers of the Society.
     (e) **Claims and its priorities:** Investigate all claims against the Multi–State Co–operative Society and subject to provisions of this Act, decide questions of priority arising between claimants.
     (f) **Payment of Claims:** Pay claims against the Multi–State Co–operative Society, including interest up to the date of winding up according to their respective priorities, in full or rateably, as the assets of the Society may permit, and Surplus, if any, remaining after payment of claims shall be applied in payment of interest from date of order of winding up at a rate fixed by him not exceeding the contract rate.

Question 5(a): Material alteration under the N.I. Act, 1881. 5 Marks

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:

(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.

Answer:

1. **Meaning:** "An alteration which alters the business effect of the instrument if used for any business purpose, any change made in the instrument that causes it to speak a different language from what is originally intended, or which changes the legal identity of the instrument in its terms or in relation or parties thereto is a material alteration." **(Aldons v. Cornwall)**

2. **What constitutes Material Alteration?** An alteration is said to be material if it –
   (a) Alters the character or identity of the N/I, or which shakes the very foundation of the instrument,
   (b) Changes the rights and liabilities of the parties or any of the parties thereto, or
   (c) Alters the operation of the instrument.

What is Material Alteration?	What is NOT Material Alteration?
Alteration regarding – (a) Date, (b) Time of payment, (c) Place of payment, (d) Sum payable, (e) Opening a crossed cheque, (f) Relationship between parties, (g) Converting an order cheque into a bearer cheque.	(a) Filling blanks of the instrument **(Sec.20)**, (b) Conversion of blank indorsement into indorsement in full **(Sec.49)**, (c) Crossing of Cheque **(Sec.125)**, (d) Making a General Crossing into Special Crossing, like addition of words "A/c payee" or "Not Negotiable", where a cheque is crossed specially by mentioning the Banker, crossing it again specially to another Banker, as his agent for collection, (e) Cancelling the word Bearer and making cheque payable to order, (f) Alteration made with the consent of the parties.

Facts	Whether the Act constitutes Material Alteration
The Holder of a bill alters the date of the instrument to accelerate or postpone the time of payment	**Yes**
The drawer of a Negotiable Instrument draws a bill but forgets to write the words "or order". Subsequently, the holder of the instrument inserts these words.	**No**
A Bill Payable to 'X' is converted into a bill payable to X and Y	**Yes**

Question 5(b): EPF Act – Employees Deposit Linked Scheme. 5 Marks

Explain the salient features of the 'Employee's Deposits Linked Insurance Scheme' as provided under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952.

Answer: The Central Government has framed an Insurance Scheme called Employees' Deposit Linked Insurance Scheme, 1976 which came into effect from 1st August, 1976 with the following salient features –

Particulars	Description
Eligibility to join the Scheme	• Applicable to all Factories / Establishments to which the EPF Act applies. • All employees who are members of Provident Funds in both exempted and un–exempted Establishments are covered under the Scheme.
Contributions to the Fund	• Only employers and **not employees** are required to contribute to the Insurance Fund. • Rate of contribution = **0.5%** of the total emoluments, i.e., Basic Wages, Dearness Allowance including cash value of any food concession, and Retaining Allowance, if any. • Contribution of Central Government = **0.25%** of the total emoluments as mentioned above.
Administrative	• Employers Contribution = 0.01% of total emoluments of the employee members

Particulars	Description
Expenses	subject to a minimum of Rs.2 p.m. per member. • Central Government Contribution = One–half of Employers' Contribution, i.e. 0.005% subject to a minimum of Re.1 p.m. per member.
Nomination	• Nomination made under the PF Scheme is treated as nomination under this scheme.
Benefits	• In the event of death of a member while in service, nominee or heirs are paid, besides the PF accumulations, an additional amount equal to average balance in the PF Account of the deceased during the preceding 3 years or the period of membership, whichever is less provided the average balance was not below Rs.1,000 during, the said period. • The maximum amount of benefit is limited to Rs.10,000.
Exemption from the Scheme	• Factories or Establishments which have an Insurance Scheme conferring better benefits than those provided under Statutory Scheme, may be granted exemption, subject to certain conditions, if the majority of the employees favour such exemption.

Question 6(a): Payment of Bonus Act — 5 Marks

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 the answer, if the losses are related to the accounting year 2005–06?

Answer:

1. **Situation where deduction is permitted —**

Situation	Treatment
• Where in any accounting year, • An employee is found guilty of misconduct, and • Such misconduct has caused financial loss to the employer,	• Employer can lawfully deduct the amount of loss from amount of Bonus payable to the employee in respect of that accounting year only. • Employee shall be entitled to receive only the balance.

2. **Conditions —**
   (a) The misconduct and related financial loss must be duly **proved** before it can be deducted.
   (b) The employer must have proper **notice** of the misconduct and of financial loss caused.
   (c) There should **be a finding** of misconduct and resultant loss after proper enquiry.
   (d) This deduction shall be in addition to any punishment imposed on account of duly proved misconduct.

Question 6(b): Change in the registered office of a Cooperative Society — 5 Marks

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?

Answer:

1. Change in Name – Section 13
   (a) Any change in name is made by Amendment in the Bye–laws.
   (b) Such change shall not affect Rights and Obligations of either – (a) the Society, or (b) present and past members.

(c) Any legal proceedings by or against the Society that had commenced before change of name shall continue in the new name.

(d) Upon amendment, Central Registrar shall enter the new name in his Register and amend the Registration Certificate accordingly.

2. Change of Address – Section 14

(a) Every Multi–State Co–operative Society shall have a Principal Place of business.

(b) It shall be the Registered Office of the Society and specified in the Bye–laws.

(c) All Notices and Communications shall be sent to the address of Principal Place of Business.

(d) Change in Principal Place of business shall be made by Amendment of its Bye–laws.

(e) Any change in Registered Office shall be notified to Central Registrar within a period of 15 days of the change.

(f) Upon amendment, Central Registrar shall enter the new address in his Register.

Question 7(a): A.O.A – Not a contract between the members and outsiders 5 Marks

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?

Answer:

1. **Company and Members bound to Outsiders:**

(a) MOA and AOA do not confer any contractual rights upon outsiders against the Company or its members, even though the name of outsider is mentioned in articles.

(b) An outsider (i.e., a non–member) cannot rely on AOA for his action against the Company.

2. **Facts of Eley vs. Posititve Government Security Life Assurance Co. –**

Articles of a Company provided that 'E' should be a solicitor for life to the Company and should not be removed from office except for misconduct. Later on, he also became a member. After employing him as a solicitor for a number of years, Company discontinued his services. He, being a member, sued for damages for breach of contract contained in AOA. The case was dismissed on the ground that, as a solicitor, he was no party to Articles. He must prove a contract independent of Articles. There was no infringement of his right as a member. A breach of contract was there but in his capacity as a non–member.	**Eley v. Positive Government Security Life Assurance Co.**

3. **Conclusion:** Thus it is clear that the company can remove the solicitor even though he is not guilty of misconduct since the articles of the company do not constitute a valid agreement between the members and outsiders.

Question 7(b): Special Resolution – Company Meetings 5 Marks

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?

Answer:

1. **Special Resolution:** It is a resolution where the **votes cast in favour** of resolution (whether by show of hands or on poll) by Members present in person or by proxy is **not less than 3 times the number of votes cast against** the resolution. **Sec.189(2)**

2. **Votes Cast vs. Member's Present:** Only the votes cast shall be taken into account, and the number of Members present and number of Members who abstained from voting are irrelevant.
3. **Analysis and Conclusion:** In the instant case, ten votes have been cast in favour which is not less than 3 times the votes cast against the resolution, which is only 2. Hence, the Special Resolution has been passed. Chairman shall declare accordingly.

Question 7(c): Registration of modification of Charges – Exception 5 Marks

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.

Answer:

1. **Meaning:** It is the registration of the modification i.e. variation in the terms of agreement, either by mutual agreement or by operation of law. Assigning rights of the charge holder to a Third Party also constitutes modification of Charge. Modification in charge should be registered with the ROC.
2. **Instances of Modification:**
   (a) Varying **any terms and conditions** of the existing charge by agreement,
   (b) Modification pursuance to an agreement for **enhancing or decreasing the limits**,
   (c) Cessation of *Pari Passu* charge,
   (d) Change in rate of interest (other than bank rate)
   (e) Change in repayment schedule of loan (not applicable for Loans repayable on demand e.g. Working Capital Loans like Cash Credit, Overdraft etc.) and
   (f) Partial release of the charge on a particular asset or property.
3. **Conclusion:** In the above case the rate of interest has been specified at a fixed percentage above the bank rate. Since any changes in bank rate does not constitute modification of a charge and the same need not be registered with the ROC. Hence the stand of the bank is not right.

Question 7(d): Reduction in the share capital of a Company – Circumstances 5 Marks

Under what circumstances a Company can reduce its share capital?

Answer: Reduction of Share Capital [Sec.100]

1. **Applicability:**
   (a) Company limited by a Shares or
   (b) Company limited by Guarantee and having a Share Capital.
2. **Meaning:** Reduction refers to reduction of Issued, Subscribed Capital and Paid up Capital of the Company.
3. **Authority:**

AOA	Reduction of Share Capital should be **authorized by the Company's AOA**.
Special Resolution	The Company should have passed a **Special Resolution** at its General Meeting for reduction of Share Capital.
Con Firmation by Tribunal	Reduction of Share Capital shall take effect only when it is **con Firmed by the Tribunal** on an application made by the Company.

4. **Manner of Reduction:**

Manner	Illustrative Example
(a) **Extinguishment or Reduction of the liability** on any of its Shares in respect of Capital Not paid up.	A Share of Rs.10 on which Rs.5 has been paid may be treated as a Share of Rs.5 fully paid up. Shareholder is **relieved from liability on uncalled capital.**
(b) **Cancellation of any of the Paid up Share Capital**, which is lost, or is not represented by available assets. (either with or without extinguishing or reducing the liability on any of its Shares)	A Share of Rs.10 fully paid up is represented by Rs.7.50 worth of assets. To present the true picture in Balance Sheet Rs.2.50 per share may be written off. **Fictitious items under the Assets** side like goodwill, preliminary expenses, discount on issue of shares and debentures, etc. are either **cancelled or values reduced** by the extent useless.
(c) **Paying any Paid up Share Capital which is in excess of the wants** of the Company. (with or without reducing or extinguishing the liability on any of its Shares)	Share of Rs.10 fully paid up may be reduced as Share of Rs.5 fully paid up and balance Rs.5 **paid back to the shareholder**. Payment may also be conditional that **it may be called back** in which case the liability is not extinguished.

Company was allowed to reduce its capital which was found to be in excess of its needs by permitting it to pay the same partly in cash and partly in the form of non–convertible debentures.	**Tamil Nadu Newsprint & and Papers Ltd. v. ROC**

5. **Alteration of MOA:** If necessary, the Company should alter its MOA by reducing the amount of its Share Capital and its Share accordingly.

Question 7(e): Proxy – Appointment and Rights 5 Marks

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,

(i) When a body corporate is a member in the Company.

(ii) When a foreign Company is a member in the Company.

Answer:

1. **Appointer:** Any Member entitled to **attend and vote** at a Meeting can appoint another person, whether Member or not, as his Proxy to attend and vote instead of himself.
2. **Membership:** A Proxy **need not be a Member** of the Company.
3. **Separate Meetings:** For each meeting a separate Proxy is required, though the person appointed as Proxy is the same.
4. **Voting Right:** A Proxy is **not entitled** to vote, **except on a poll,** unless the AOA provides otherwise.
5. **Speaking:** A Proxy shall **not** have any right to speak at the Meeting.
6. **Notice:** In every Notice calling a meeting of a Company which has a Share Capital, or the AOA of which provide for voting by Proxy at the meeting, there shall appear with reasonable prominence, a statement that – (a) a Member entitled to attend and vote is entitled to appoint Proxy(ies), to attend and vote instead of himself, and (b) a Proxy need not be a member. Non–compliance attracts a fine of Rs.5,000.

7. **Signature of Appointer:** Proxy is appointed by a written instrument signed by the Appointer or his duly authorised attorney. In case the Appointer is a Body Corporate, the Proxy Form should be under its seal or signed by its Officer / Authorised Attorney.
8. **Form of Proxy:**
   (a) Instrument of Proxy should be in **the prescribed Form** set out in Schedule IX. Generally, Notices calling the Meeting contain the Proxy Forms.
   (b) An instrument appointing a Proxy, if in any of the forms set out in Schedule IX, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the AOA of the Company.
9. **Deposit of Proxy Form:** Instrument of Proxy shall be deposited with the Company **48 hours before** the meeting. If a period longer than 48 hours is specified in the AOA, it shall have effect as if a period of 48 hours had been specified.
10. **Special provisions:** Unless Articles of the Company otherwise provide –
    (a) The provisions as to appointment of Proxy **does not apply** to a Company having no Share Capital.
    (b) Member of a Private Company **cannot** appoint more than one Proxy to attend on the same occasion.
11. **Revocation of Proxy:** Subject to the AOA, Proxy **may be revoked** unless made irrevocable for valuable consideration.
12. **Two Proxies:**
    (a) Where two Proxy instruments by the same Shareholder are lodged in respect of the same votes before the expiry of time for lodging Proxies, the **second in time will be counted.** Thus, a Proxy bearing the latest date will **supersede** the earlier one.
    (b) However, where one Proxy is lodged **before** and the other Proxy Form lodged **after** the expiry of the date fixed for lodging Proxies, the **former will be counted** (since it is the only valid Proxy).
    (c) The latest Proxy will **not automatically revoke** the earlier Proxy **unless revocation of earlier Proxy is expressly stated.**

Answer to subdivision (i) —

Representation of a Company in another Company's Meeting **[Sec.187]**	• A Company Member, can authorize (through Board Meeting) a person to act as its representative any meeting of a Company whose shares it holds. • Authorized Person will be considered on par with an Individual Member to **exercise the rights and powers,** including the right to vote by Proxy, on behalf of the Company he represents.	Appointment of Z as a Proxy for attending the General Meeting of ABC Limited is **valid**.

For Subdivison (ii) The provisions relating to the appointment of the proxies by a Foreign Company are similar to the appointment of proxies by any other companies.

Question 8(a): Objects clause of Memorandum of Association – Scope 5 Marks

X, a chemical manufacturing Company distributed 20 lac (Rs. Twenty Lac) to scientific institutions for furtherance of scientific education and research. Referringto the provisions of the Companies Act, 1956 decide whether the said distribution of money was "Ultra vires" the Company?

Answer:

Situation 1: If there is a specific provision in the objects clause of the Memorandum of Association providing for the said activity the same cannot be considered to be "Ultra Vires" the Company.

Situation 2: If there is no specific provision in the objects clause of the Memorandum of Association then the activity will be considered "Ultra Vires" the Company, since the same activity of donating to scientific institution for promotion of scientific research and education would be "Ultra Vires" the Company.

Question 8(b): Nomination facility on shares – Transimission of shares 5 Marks

How nomination facility shall operate in case of transmission of shares under the Provisions of the Companies Act?

Answer:

1. **Meaning:** It is the process of assigning or identifying the next person to whom the shares / debentures held by a person will vest in the event of his death.
2. **Persons eligible to appointment Nominee:**

Following persons can appoint nominee –	Following cannot appoint nominee –
Individuals, holding shares on their own behalf, either singly or jointly.	Non–individuals including Society, Trust, Body Corporate, Partnership Firm, Karta of a HUF, Holder of Power of Attorney cannot make nominations.

3. **Appointment of Nominee:**

Eligible to be Nominee	Not Eligible to be Nominee
(a) Any person **including a Minor** (the name and address of the Guardian should also be given). (b) **Non–Resident Indian** can be a Nominee on repatriable basis.	Non–individuals including Society, Trust, body Corporate, Partnership Firm, Karta of a HUF, Holder of Power of Attorney.

4. **Nomination:**
   (a) **Time of Nomination:** Every Shareholder or Debenture holder shall, in the prescribed manner, **at any time**, nominate a person to whom his shares / debentures shall vest **in the event of his death**.
   (b) **Joint Holdings:** In the case of joint holdings, joint holders shall together nominate the person in whom all the rights shall vest in the event of **death of all the Joint Holders**.
5. **Legal Status:** Nomination holds good against any Legal Successor, whether by will or status, unless varied or cancelled in the prescribed manner.
6. **Nomination Form:** Intimation regarding Nomination or Nomination Form should be **filed in duplicate** with the Company or Registrar and Share Transfer Agents of the Company **who will return one copy thereof** to the Share / Debenture / Deposit holder.
7. **Process upon Death of the Shareholder / Debenture Holder [Sec.109B]:**

Activity	Description
Option by Nominee	On production of evidence as required by the Board, the Nominee should either – (a) **Register himself** as Holder of the share / debenture, or (b) Transfer such Share / Debenture, as the deceased Share / Debenture holder have done.
Notice	If the Nominee opts to register as a Shareholder / Debenture holder, he should send a Notice in writing to the Company of his intention to the Company.
Death Certificate	Notice as above (by the Nominee) should be accompanied by Death Certificate of the deceased shareholder / debenture holder.
Option by Company	(a) **Notice by Board:** At any time, the Board can give Notice to the Nominee requiring him to exercise his option i.e. to register himself or transfer the security. (b) **Non–Compliance to Notice:** If the Nominee does not exercise his option **within 90 days,** Board can **withhold** payment of all dividends, bonuses or other moneys payable in respect of Share or Debenture, till such compliance.

8. **Applicability of Other Provisions:** Transfer by nomination or notice (as referred above) will be treated on par with transfer of shares had such transfer been effect if the death of the member had not occurred.
9. **Rights of Nominee:**
   (a) **Right as to Dividends:** Nominee is entitled to dividends and other similar advantages as if he were the Registered Holder of share or debenture.
   (b) **No Voting Rights:** He does not posses the right to vote in Meetings, unless he is Registered as a member.

Question 9(a): Incorporation of the Company – Certificate of Incorporation 5 Marks

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 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.

Answer:

1. State the facts of ***Jubilee Cotton Mills vs Lewis*** as below —

Documents for registration were filed with the ROC on 6th January. Certain Shares were allotted on 6th January itself even before the Certificate of Incorporation was issued. ROC issued Certificate of Incorporation on 8th January but dated as 6th January. Held that allotment was valid and Certificate of Incorporation is conclusive evidence of all that it contains.

2. The Company came into existence on the date of incorporation stated on the certificate. The contract entered into by the Company before the issue of certificate of incorporation, but after the date of incorporation shall be binding up on the Company. The date of issue of certificate is immaterial. The Company **cannot be exempted** from the contractual liability in this case.

Question 9(b): Exception to the Doctrine of Indoor Management. 5 Marks

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 the seal with out authority. Can A hold the Company liable for the shares covered by the Share certificate, under the provisions of the Companies Act, 1956?

Answer:

1. **Forgery:** Indoor Management does not extend to transactions which are –
   (a) Forged, or
   (b) Otherwise Void, or
   (c) Illegal ab initio.

The Secretary of a Company forged signatures of two of Directors whose signatures were required under the AOA on a Share Certificate and issued Certificate without authority. Applicants were refused registration as members of the Company. The Certificate was held to be a **nullity** and holder of certificate was not allowed to take advantage of the Doctrine of Indoor Management.	**Ruben v. Great Fingal Consolidated**

2. **Facts:** The question given covers the facts of the case ***Ruben v Great Fingal Consildated*** as referred to above.
3. **Conclusion**: Hence it is clear that the Company cannot be held liable for the share certificates issued.

Question 10(a): Refusal to conduct EGM by the Board on request 5 Marks

Examine the validity of the following with reference to the relevant provisions of the Companies Act, 1956:

(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 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.

Answer:

Issue	Analysis	Conclusion
Refusal to convene EGM for non furnishing of reasons for the same.	(a) Requsitionists are **not bound to give reasons** for the resolutions proposed to be passed at the meeting. (b) It is for the Board, to include the necessary Explanatory Statement, in the Notice convening the meeting. **[LIC vs Escorts Ltd]**	Action of the Board of Directors is **not valid**.
Refusal to Convene EGM as requisition is not signed by Joint Holders of Shares.	(a) In case of Shares held jointly by two or more persons, a requisition or a notice calling the meeting may be signed by one of them. **[Sec.169(8)]** (b) Such signature will have the same force and the effect, as if it had been signed by all of them.	Action of the Board of Directors is **not valid.**
Adjournment of EGM called by Requisitionists as Quorum was not present.	(a) In a EGM convened upon requisition by Members, if Quorum is not present within 30 minutes from the appointed time, the meeting will stand **dissolved.** (b) However, if the AOA provides otherwise, then the Meeting can be adjourned.	Meeting stands **dissolved.**

Question 10(b): Share Certificate vs. Share Warrant 5 Marks

What are the differences between "Share certificate" and "Share warrant"?

Answer:

Basis	Share Warrant	Share Certificate
Issued by	Only Public Limited Companies	Both Private and Public Limited Companies
Statutory Nature and Approval	• Not a statutory obligation. • AOA should permit issue of Warrants. • Prior approval of Central Government is also required.	Since issuing Share Certificate is statutory obligation, there is no requirement as to specific provision in AOA or approval of Central Government.
When can it be issued?	Only with respect to **fully paid–up shares**	Issued upon allotment, even if shares are not fully paid. Certificate mentions amount due on calls.
Holder vs. Member	Holder entitled to be a Member **only upon proper surrender of warrant** to the Company and entry in Register of Members.	Person in whose name Share Certificate is issued is a Member if **his name is entered in Register of Members**.
Registration and Delivery	Transferred **by delivery**. **Registration** of transfer with Company is **not required**.	Transfer **complete only when registered** by Company on an application made in this behalf.

Stamp duty	No stamp duty is payable.	Stamp duty is payable.
Negotiable Instrument?	By mercantile usage it is a Negotiable Instrument, transferable by mere delivery.	It is not considered as Negotiable Instrument.
Share Qualification	Warrants do not account for Share Qualification of a Director.	Holder being member, it is valid for acquisition of Share Qualification.
Notice for Winding up	Holder of a Share Warrant **cannot present a petition** for winding up of the Company.	Holder of Share Certificate **can present a petition** for the winding up of the Company
Payment of Dividend	Dividend payment is advertised. Holder **presents the coupon** attached with the warrant and collects dividend.	Paid to holder **by issue of Dividend Warrant** in favour of the holder.

STUDENT'S NOTES