

PAPER – 3 : BUSINESS AND CORPORATE LAWS

Question Nos. 1 & 7 are compulsory.

*Candidates are required to attempt four questions out of questions 2, 3, 4, 5 and 6
and two questions out of questions 8, 9 and 10.*

Question 1

Answer any four of the following:

- (a) *Ramaswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:*
 - (i) *The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.*
 - (ii) *The telegram of revocation and letter of acceptance both reached together.*
- (b) *Suraj sold his car to Sohan for Rs. 75,000. After inspection and satisfaction, Sohan paid Rs. 25,000 and took possession of the car and promised to pay the remaining amount within a month. Later on Sohan refuses to give the remaining amount on the ground that the car was not in a good condition. Advise Suraj as to what remedy is available to him against Sohan.*
- (c) *Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year –*
 - (i) *overtime allowance,*
 - (ii) *dearness allowance*
 - (iii) *commission on sales*
 - (iv) *employer's contribution towards pension fund*
 - (v) *value of food.*

Examine as to which of the above payments form part of “salary” of Prakash Chandra under the provisions of the payment of Bonus Act, 1965.

- (d) *Ram, Mohan and Gopal were partners in a firm. During the course of partnership, the firm ordered Sunrise Ltd. to supply a machine to the firm. Before the machine was delivered, Ram expired. The machine, however, was later delivered to the firm. Thereafter, the remaining partners became insolvent and the firm failed to pay the price of machine to Sunrise Ltd.*

Explain with reasons:

- (i) *Whether Ram's private estate is liable for the price of the machine purchased by the firm?*
- (ii) *Against whom can the creditor obtain a decree for the recovery of the price?*

34 PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006

- (e) *Point out the differences between “transfer by negotiation” and “transfer by assignment” under the provisions of the Negotiable Instruments Act, 1881.*
- (f) *Explain the Law relating to extent of contribution by an employee to his Provident Fund under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. Can the amount of contribution be increased by the employee? (4×5= 20 Marks)*

Answer

- (a) The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is a complete as against the acceptor when it comes to the knowledge of the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

- (i) Yes, the revocation of acceptance by Ramanathan (the acceptor) is valid.
- (ii) If Ramaswami opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

Alternate Answer

- (a) Section 5 had stand that revocation of acceptance must reach the offeror ‘before the communication of the acceptance is complete as against the acceptor, but not afterwards’.

The section does not clearly answer the question raised above about both the acceptance and the withdrawal reaching simultaneously. However, the illustration attached to Section 5 of the Act stated that the acceptor may revoke his acceptance at any time before or at the moment when the letter communicating the acceptance reaches the offeror but not afterwards. So, the two communications reaching simultaneously will neutralize each other and the agreement would not be formed.

There is a case also to support this view. In *Countess of Dunmore vs. Alexander*, the court stated that ‘the admission (by offeror) that the two letters were received together puts and end to the case’.

- (b) As per the section 55 of the Sale of Goods Act, 1930 an unpaid seller has a right to institute a suit for price against the buyer personally. The said Section lays down that
- (i) Where under a contract of sale the property in the goods has passed to buyer and the buyer wrongfully neglects or refuses to pay for the goods, the seller may sue him for the price of the goods [Section 55(1)].
- (ii) Where under a contract of sale the price is payable on a certain day irrespective of delivery and the buyer wrongfully neglects or refuses to pay such price, the seller may sue him for the price. It makes no difference even if the property in the goods

has not passed and the goods have not been appropriated to the contract [Section 55(2)].

This problem is based on above provisions. Hence, Suraj will succeed against Sohan for recovery of the remaining amount. Apart from this Suraj is also entitled to:-

- (1) Interest on the remaining amount
- (2) Interest during the pendency of the suit.
- (3) Costs of the proceedings.

(c) **Computation of Salary / Wages:** According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment. It includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

- (i) Any other allowance which the employee is for the time being entitled to;
- (ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service or of any concessional supply of food grains or other articles;
- (iii) Any traveling concession;
- (iv) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.
- (v) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and
- (vi) Any commission payable to the employee.

It may be noted that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Prakash Chandra while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds does not form part of his salary.

(d) **Partnership Liability:** The problem in question is based on the provisions of the Indian Partnership Act, 1932 contained in Section 35. The Section provides that where under a contract between the partners the firm is not dissolved by the death of a partner, the estate of a deceased partner is not liable for any act of the firm done after his death. Therefore, considering the above provisions, the problem may be answered as follows:

36 PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006

- (i) Ram's estate in this case will not be liable for the price of the Machinery purchased. *[Bagel Vs. Willer]*
- (ii) The creditors in this case can have only a personal decree against the surviving partners and decree against the partnership assets in the hands of those partners. However, since the surviving partners are already insolvent, no suit for recovery of the debt would lie against them. A suit for goods sold and delivered would not lie against the representative of the deceased partner. This is because there was not debt due in respect of the goods in Ram's life time. *[Bagel vs. Willer]*.
- (e) Negotiation and Assignment: The essential distinction between transfer by negotiation and transfer by agreement are as under as provisions of the Negotiable Instrument Act, 1881.
 - (i) In the latter case the assignee does not acquire the right of a holder in due course but has only the right, title and interest of his assignor; on the other hand in the former case he acquires all the rights of a holder in due course i.e., right from equities (*Mohammad Khuerail vs. Ranga Rao, 24 M. 654*).
 - (ii) In the case of negotiable instrument, notice of transfer is not necessary while in the case of assignment of chose in action, notice or assignment must be served by the assignee on his debtor.
 - (iii) Again, in the case of transfer of negotiable instrument, consideration is presumed, but in the case of transfer by assignment, consideration must be proved as in the case of any other contract.
 - (iv) Negotiation requires either delivery only in the case of "bearer" instrument, or endorsement and delivery only in the case of "order instrument". But in the case of an assignment, Section 130 of the Transfer of Property Act requires a document to be reduced into writing and signed by the transferor.
 - (v) Endorsement does not require payment of stamp duty whereas negotiation requires payment of stamps duty.
- (f) Contribution to Provident Fund: Section 6 of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 states that the employee contribution to the fund shall be 10% of the basic wage, dearness allowance and retaining allowance (if any). An employee can at his will contribute beyond 10% if the scheme makes provision therefore subject to the conditions that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this Section. This rule will prevail irrespective whether the employer employs the person directly or through contractor.

According to the first proviso to the said section the Central government may, however, raise the aforesaid percentage of contribution from 10% to 12% in respect of any establishments. It may do so after making such enquiries as it deems fit.

According to the second proviso if the amount of any contribution involves fraction of a rupee, the scheme may provide for rounding off such fraction to the nearest rupee, half of a rupee or a quarter of rupee.

It may be noted that the dearness allowance mentioned above shall be deemed to include also the cash value of any food concession, allowed to the employees; also that “retaining allowance” means an allowance payable for the time being to an employee of any factory or other establishment during any period in which the, establishment is not working for retaining his service.

Question 2

- (a) *Explain the circumstances whereunder a party to a contract may be exempted from the performance of contract on the ground of ‘Supervening impossibility’ under the Indian Contract Act, 1872.* (5 Marks)
- (b) *State the grounds on the basis of which a member of a Society registered under the cooperative Societies Act, 1912 can be expelled?* (5 Marks)

Answer

- (a) **Supervening impossibility:** When performance of a promise becomes impossible or illegal by occurrence of an unexpected, event or a change of circumstances beyond the contemplation of parties, is called supervening impossibility. In case of supervening impossibility the contract becomes void.

Circumstances: A party to a contract may be excused from the performance of his promise on the ground of ‘supervening impossibility’ under the Indian Contract Act, 1872 in the following circumstances.

- (a) **Accidental destruction of the subject matter of the contract:** If the subject matter of the contract is destroyed by an accident both the parties are excused from the performance of the contract.
- (b) **Non-existence or non occurrence of a particular state of things:** Non-existence or non occurrence of a particular state of things of the contract exempts the parties from the performance of the contract.
- (c) **Incapacity to perform a contract of personal services:** In case of contract of personal service, disability or incapacity to perform, caused by the act of God e.g. illness, constitutes lawful excuse for non-performance of the contract.
- (d) **Change in law:** Performance of a contract may also become impossible due to a subsequent change in the law. The law passed after the contract may prohibit performance of some act, which may be very basis of the contract. As such the contract is discharged due to subsequent impossibility and the parties become free from their mutual obligations.
- (e) **Outbreak of war:** Contracts may be affected by war in a variety of ways, viz., (i) by emergency legislation controlling prices or otherwise relating to restriction of trade; (ii) by prohibiting or restraining transaction with alien enemy.

38 PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006

- (b) Expulsion of a member: Section 43(2)(ii) of the Co-operative Societies Act, 1912 provides the grounds of expulsion of a member. As per provisions of the Act a member may be expelled if:
- (i) he fails to fulfill his obligations in the matter of dues (the number of months' arrears being specified);
 - (ii) he becomes a member of another similar society and refuses to withdraw (because each member has the right to inspect the books of the society and may pass information to a rival society of which he is a member);
 - (iii) he is to be proceeded against for debts;
 - (iv) he becomes insolvent;
 - (v) he engages in such activities as might be contrary to the principle of the society;
 - (vi) he becomes insane;
 - (vii) he is convicted by Criminal Court, especially of bribery, forgery, theft or fraud; and
 - (viii) he has committed an act which is considered dishonourable by the Managing Committee.

If a member of society with unlimited liability joins another society and so pledges his liability twice over, he should be expelled.

Question 3

- (a) *Ravi becomes guarantor for Ashok for the amount which may be given to him by Nalin within six months. The maximum limit of the said amount is Rs. 1 lakh. After two months Ravi withdraws his guarantee. Upto the time of reconviction of guarantee, Nalin had given to Ashok Rs. 20,000.*
- (i) *Whether Ravi is discharged from his liabilities to Nalin for any subsequent loan.*
 - (ii) *Whether Ravi is liable if Ashok fails to pay the amount of Rs. 20,000 to Nalin ?*
- (5 Marks)
- (b) *When is the registration of a Partnership firm deemed to be complete under the Indian Partnership Act, 1932? What are the consequences when a partnership firm is not registered?*
- (5 Marks)

Answer

- (a) Discharge of Surety by Revocation (Problem): As per section 130 of the India Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.
- As per the above provisions (i) Yes, Ravi is discharged from all the subsequent loan because it's a case of continuing guarantee. (ii) Ravi is liable for payment of Rs. 20,000 Nalin because the transaction has already completed.

- (b) Registration of firm: Registration of a partnership firm is affected by delivering to the Registrar of Firms, a statement in the prescribed form accompanied by the prescribed fee (Section 58 of the Indian Partnership Act). The act of the party by way of presentation of Statement under Section 58 makes registration effective; whereas the Act of the Registrar in recording an entry of the statement in the Registrar of the Firms is only a clerical act (*Jayalakshmi R&O M vs. Income Tax commissioner*).

The effects of non-registration of a firm as contained in section 69 are as follows:

1. Suits between Partners & Firm [Section 69 (1)] A partner of an unregistered firm cannot sue the firm or any partner of the firm to enforce a right arising from a contract or conferred by the Partnership Act. He can do so if (i) the firm is registered and (ii) the person suing is or has been shown in the Registrar of Firms as a partner in the firm.
2. Suits between Firm and third parties [Section 69(2)] An unregistered firm cannot sue a third party to enforce a right arising from a contract.
3. Claim of set-off [Section 69(3)]: An unregistered firm or any partner thereof cannot claim a set-off in a proceeding instituted against the firm by a third party to enforce a right arising from a contract until the registration of the firm is effected. This right of set-off, however, is not affected if the claim of set-off is less than Rs. 100 in value [Section 69(4)(b)].

Question 4

- (a) Point out the differences between the transactions of "Sale" and "hire-purchase" in the light of the provisions of the Sale of goods Act, 1930. (5 Marks)
- (b) Explain the salient features of the "Employees Pension Scheme" as provided under the Employees Provident Fund and Miscellaneous Provisions Act, 1952. (5 Marks)

Answer

- (a) Sale and Hire Purchase: Following are the differences between sale and hire purchase:

Sale	Hire Purchase Agreement
1. Ownership is transferred from the seller to the buyer as soon as the contract is entered into.	1. Ownership is transferred from the seller to the hire-purchaser only when a certain agreed number of installments are paid.
2. The position of the buyer is that of the owner	2. The position of the hire-purchaser is that of the bailee.
3. The buyer cannot terminate the contract and as such is bound to pay the price of the goods.	3. The hire-purchaser has an option to terminate the contract at any stage, and cannot be forced to pay the further installments.

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| <p>4. If the payment is made by the buyer in installments, the amount payable by the buyer to the seller is reduced, for the payment made by the buyer is towards the price of the goods.</p> <p>5. The Sale agreements are governed by the Sales of good Act, 1930.</p> | <p>4. The installments paid by the hire-purchaser are regarded as hire charges and not as payment towards the price of the goods till option to purchase the goods is exercised.</p> <p>5. The hire-purchase agreements are governed by the Hire-Purchase Act, 1972.</p> |
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(b) Employees' Pension Scheme: The scheme called the Employees' Pension Scheme in accordance with the provisions of Section 6A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 provides for:

- (a) Superannuation pension, retiring pension or permanent total disablement pension to the employees of any establishment or class of establishments to which the Act applies; and
- (b) Widow or widower's pension, children pension or orphan pension payable to the beneficiaries of such employees.

The Act further provides that notwithstanding anything contained in Section 6 of the Act, there shall be established, as soon as may be after framing of the Pension Scheme, a Pension Fund into which there shall be paid, from time to time, in respect of every employee who is a member of the pension scheme:

- (a) Such sums from the employers' contribution under Section 6 not exceeding 8 1/3% of the basic wages, dearness allowance and retaining allowance, if any, of the concerned employees, as may be specified in the pension scheme;
- (b) Such sums as are payable by the employers of exempted establishments under sub-section (6) of Section 17.
- (c) The net assets of the Employees' Family Pension Fund as on the date of the establishment of the Pension Fund;
- (d) Such sums as the Central Government may, after due appropriation by Parliament by law in this behalf, specify.

Further, the pension scheme may provide for all or any of the matters specified in Schedule III.

Question 5

- (a) *When is an alteration in a negotiable instrument is deemed to be a "material alternation" under the Negotiable Instruments Act, 1881? What are the consequences of material alternation in a negotiable instrument?* (5 Marks)

- (b) *The executive of a Cooperative Society is willing to convert the Society into a Multi-State Cooperative Society. Advise as to what steps are required to be taken for the said conversion under the Multi-State cooperative Societies Act, 2002. (5 Marks)*

Answer

- (a) Material alteration and its effect: As per the negotiable Instrument Act, 1881, an alteration is material which
- (a) alters the character or identity of the instrument or which shakes the very foundation of the instrument.
 - (b) changes the rights and, liabilities of the parties or any of the parties to the instrument or
 - (c) alters the operation of the instrument.

Any change in an instrument which causes it to speak a difference language in effect from that which it originally spoke, or which changes the legal identity or character of the instrument either in its terms or the relation of the parties to it is a material alteration. It makes no difference whether the alteration is beneficial or prejudicial.

Instances of material alteration. The following alterations are material i.e. the alteration of the date, the sum payable, the time of payment, the place of payment, additional of place of payment, and the rate of interest.

These alterations vitiate the instrument.

Effect of material alteration – As per Section 87 of the Negotiable Instrument Act, 1881, a material alteration of a negotiable instrument renders the same void against persons who were parties thereto before such alteration unless they have consented to the alteration.

But if an alteration is made in order to carry out the common intention of the original parties, it does not render the instrument void. Any material alteration if made by an indorsee, discharges his indorser from all liability to him in 'respect of the consideration thereof.

- (b) Conversion of Society: As per the Multi-State Co-operative Societies Act, 2002 (Section 22) steps for conversion of co-operative society into multi-state cooperative society are as follows:
- 1. A co-operative society by amending its bye-laws may extend its jurisdiction and convert itself into multi-state cooperative society.
 - 2. Such amended by-laws in order to be valid must be registered with the Central Registrar.
 - 3. The Central Registrar after consulting Registrars of Co-operative Societies of the State concerned may register the amendment within a period of six months from the date of receipt by him, if he is satisfied that the amendment fulfills the requirement

42 **PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006**

of members being from more than one state and is in accordance with section 11(4) of the Act.

4. A co-operative society shall be deemed to have been converted into a multi-state cooperative society unless it is registered as Multi-State Co-operative Society.
5. The Registrar shall thereafter forward a copy to the Co-operative Society, a copy of the registered amendment with the certificate which shall be a conclusive evidence that the amendment has been registered.
6. If the central Registrar refuses to register amendment of the bye-laws of the Co-operative Society, the reasons of refusal shall be communicated within seven days from the date of refusal.

Question 6

- (a) *Explain the procedure relating to computation of "working days" for the purpose of payment of bonus under the Payment of Bonus Act, 1965. Can there be a deduction in the amount of bonus on the ground that the employee has not worked for all working days in an accounting year?* (5 Marks)
- (b) *What qualifications and disqualifications have been laid down for appointment of a person on the post of auditor of a Multi-State Cooperative Society under the Multi-State Cooperative Societies Act, 2002?* (5 Marks)

Answer

- (a) Computation of working days: Section 14 of the Payment of Bonus Act, 1956 provides for computation of number of working days for the purposes of Section 13. Section 13 in turn prescribes a scale whereby bonus can be proportionately reduced in certain cases. Under Section 14, following days shall be deemed to be the working days of an employee and shall be counted while calculating the total working days on which he has been on work for the purpose of bonus:
 - (i) day when he has been laid off under and agreement or by a standing order under Industrial Employment (Standing orders) Act, 1946 or Industrial Dispute Act, 1947 or any other law,
 - (ii) he has been on leave with salary or wage,
 - (iii) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment and
 - (iv) the employee has been on maternity leave with salary or wages during the accounting year.

As per Section 13, where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs. 100 or, as the case may be or Rs. 60, if such bonus is higher than 8.33% of his salary or wage for the days he has worked in that accounting year shall be proportionately reduced.

Both Section 13 and 14 do not cover a case where an employee was prevented from working by reason of an illegal order of termination. If an employee by himself and on his volition has not worked on all the working days in an accounting year, then the formula prescribed in Section 13 read with section 14 has to be applied. But where an employee was ready and willing to work, but for reasons beyond his control was unable to work gets the eligibility for bonus under Section 8 of the Act, it cannot be said that section 14 is bar for such a claim.

- (b) Qualification and disqualifications of auditors: As per section 72 of the Multi-State Co-operative Society Act, 2002 the qualification and disqualifications of an auditor are as under:

Qualification: A person shall not be qualified for appointment as an auditor of a Multi State Co-operative Society unless he is a Chartered Accountant within the meaning of the Chartered Accountants Act, 1949.

Disqualifications: None of the following persons shall be qualified for appointment as an auditor of a Multi-State Co-operative society:

- (a) A body corporate
- (b) An officer or employee of the multi state co-operative society.
- (c) A person who is a member, or who is in the employment of an officer or employee, of the Multi-State Co-operative Society.
- (d) A person who is indebted to Multi-State Co-operative Society or who has given any guarantee or provided any security in connection with the indebtedness of any third person to the Multi-State Co-operative Society for an amount exceeding one thousand rupees.

A person shall also not be qualified for appointment as an auditor of a Multi-State Co-operative Society if he is, by virtue of sub-section (2), disqualified for appointment as an auditor of any other body corporate or Multi-State Co-operative Society or Co-operative Society.

If an auditor becomes subject, after his appointment, to any of the disqualification specified above, he shall be deemed to have vacated his office as such.

Question 7

Answer any four of the following:

- (a) *Mars India Ltd. owed to Sunil Rs. 1,000. On becoming this debt payable, the company offered Sunil 10 shares of Rs. 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.*

Examine the validity of this allotment in the light of the provisions of the Companies Act, 1956.

- (b) *What is the meaning of "Certificate of Incorporation" under the provisions of the Companies Act, 1956?*

44 **PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006**

- (c) What are the provisions relating to “Information Memorandum” contained in Section 60B of the Companies Act, 1956 [inserted by the Companies (Amendment) Act, 2000]?
- (d) The Directors of “Sunrise Computers Ltd.” desire to change the Company’s name to “Royal Computers Ltd.” and seek your advice. Explain the procedure to be followed, for the said purpose, under the Companies Act, 1956.
- (e) Explain the meaning of “transmission of Shares” under the Companies Act, 1956. In what ways is “transmission of shares” different from “Transfer of Shares”?

(4×5=20 Marks)

Answer

- (a) Allotment of Shares: As per the Section 75 of the Companies Act, 1956 when shares are allowed to a person by a company, payment may be made – (i) in cash, or (ii) in kind (with the consent of the company).

‘Cash’ here does not necessarily mean the current coin of the country. It means “such transaction as would in an action at law for calls, support a plea of payment.”

On the basis of the above provision and decision of the related case *Coregam Gold Mining Co. of India V. Roper*, (1892), A.C. 125, the allotment of fully paid up shares in full satisfaction of Sunil’s debt is valid.

- (b) Certificate of incorporation: Upon the registration of the documents required for registration of a proposed company and filed by such company along with the necessary fee, the Registrar of Companies issues a certificate that the company is incorporated and in the case of a limited company, that it is limited (Section 34 of the Companies Act, 1956).

Section 35 provides that the certificate of incorporation given by the Registrar in respect of all the requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorized to be registered and duly registered under this Act. A certificate of incorporation is conclusive as to all administrative acts relating to incorporation and as to the date of incorporation (*Jubilee Cotton Mills vs. Leuris*)

Commencement of Business: A private company can commence its business as soon as it gets certificate of incorporation. But a company having a share capital which has issued a prospectus inviting the public to subscribe for its shares cannot commence any business or exercise borrowing power unless:

- (a) The minimum number of shares which have to be paid for in cash has been subscribed and allotted.
- (b) Every director has paid, in respect of share for which he is bound to pay an amount equal to what is payable on shares offered to the public on application and allotment.
- (c) No money is or may become liable to be paid to application of any shares or debentures offered for public subscription by reason of any failure to apply for or to

obtain permission for the shares or debentures to be dealt in any recognised stock exchange; and

- (d) A statutory declaration by the secretary or one of the directors that the aforesaid requirements have been complied with is filed with the Registrar.

If, however, a company having a share capital has not issued a prospectus inviting the public to subscribe for its shares, it cannot commence any business or exercise borrowing powers unless it has issued a statement in lieu of prospectus and the conditions contained in paragraph (b) and (d) aforesaid have been complied with.

The Registrar of Companies shall examine them and if satisfied, shall issue to the company a certificate to commence business.

- (c) Information Memorandum: Section 60B of the Companies Act, 1956 (inserted by the Companies Amendment Act, 2000) provides the following regarding information memorandum:

1. A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.
2. A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.
3. The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus.
4. Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.

Explanation – For the purposes of Sub-sections (2), (3) and (4), “red-herring prospectus” means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.

5. Every variation as made and highlighted in accordance with sub-section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.
6. In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques or stock-invest, the company or such underwriters or bankers to the issue shall not encash such subscription moneys or post-dated cheques or stock-invest before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post-dated cheques or stock-invest or return of subscription paid.
7. The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such

intimation and shall indicate such withdrawal in writing to the company and the underwriters.

8. Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations, or the particulars of withdrawing of offer or opportunity for cancelling the post-dated cheques or stock invest or stop payments for such payments shall be void and the applicants shall be entitled to receive a refund, or return of its post-dated cheques or stock-invest or subscription monies or cancellation of its application, as if the said application had never been made and the applicants are entitled to receive back their original application and interest at the rate of fifteen per cent from the date of encashment till payment of realisation.
 9. Upon the closing of the offer of securities, a final prospectus stating therein the total capital raised whether by way, of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board and Registrar, and in any other case with the Registrar only.
- (d) Change of name of the company: 'Sunrise Computers Ltd.' may change its name to 'Royal Computers Ltd.' as per section 21 of the Companies Act, 1956.

A company may by special resolution, and with the approval of the Central Government, signified in writing, change its name [Section 21]. Power under Section 21 has been delegated to the Registrar of Companies vide notification GSR 507(E) dated 24-6-85]. The application for change of name is required to pay a fee of Rs. 500/- to ascertain whether the proposed name is available and thereafter pass the required special resolution and thereafter submit the necessary documents to the Registrar. If the Registrar is satisfied that the relevant procedures have been complied with by the Company, in this regard, the Registrar shall issue fresh certificate with the change embodied therein. The change in name shall not affect any of the company's rights or obligations of the company or render any legal proceedings by / or against it. Any legal proceedings which might have been continued or commenced by or against the company by its former name may be continued by its new name [Section 23].

- (e) Transmission and transfer of shares: Under Section 109B of the Companies Act, 1956, transmission of shares takes place when shares are transferred under the operation of law, either on the death of the registered shareholder or on his being adjudged as insolvent. It also takes place where the holder is a company if it goes into liquidation. Upon the death, the shares of the deceased vest in his executors or administrators and the estate becomes liable for calls if the shares are not fully paid up. In the like manner the official assignee or the receiver, as the case may be, is also entitled to be registered as a member in the place of shareholder who has been adjudged as insolvent [*R. W. Key and Sons (1902) IC, 467*]. However, the executors or administrators may decline to be registered as members for various reasons. In that event the legal representatives, by virtue of Section 109, shall be entitled to transfer the shares of the deceased irrespective of whether they are partly paid or fully paid.

Similarly, the official assignee has the statutory power to transfer the shares under Section 58(1) of the Presidency Towns Insolvency Act.

Distinction between transfer and transmission of shares

Transfer of shares	Transmission of shares
1. It is affected by a voluntary/deliberate act of the parties.	1. It takes place by operation of law e.g. due to death, insolvency or lunacy of a member.
2. It takes place for consideration.	2. No consideration is involved.
3. The transferor has to execute a valid instrument of transfer.	3. There is no prescribed instrument of transfer.
4. As soon as the transfer is complete, the liability of the transferor ceases.	4. Shares continue to be subject to the original liabilities.

Question 8

- (a) *The Registrar of Companies on examining the statutory report filed with him by M/s Jyothi Company Ltd., finds that the report has been certified as correct, by all the directors of the Company, except the Managing Director. The Registrar refuses to register the said document on the ground that it was not signed by the Managing Director of the Company.*

Answer the following in the light of the Companies Act, 1956:

- (i) *Whether the Registrar of Companies can hold the officers of the Company liable?*
 - (ii) *What provisions of the Companies Act have not been complied with by the company and its officers?*
 - (iii) *To what penalties are the Company and its officers liable?* (5 Marks)
- (b) *To remove the Managing Director, 40% members of Global Ltd. submitted requisition for holding extra-ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.*

Examine the validity of the said meeting and resolution passed therein in the light of the companies Act, 1956. (5 Marks)

Answer

- (a) FILING REPORT WITHOUT SIGNATURE:

- (i) Yes, the Registrar can hold the officers of the company liable.
- (ii) Section 165(4) of the Companies Act, 1956 requires the statutory report to be certified as correct by at least two directors of the company one of whom must be a

48 PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006

managing director, where there is one. Thus, the aforesaid provision of Section 165(4) has not been complied with.

- (iii) Sub –Section (9) of Section 165 provides for penalties for non-compliance of Sub-section (4). It makes every director or other officer of the Company who is in default punishable with fine upto Rs. 5,000/-.
- (b) Extraordinary meeting: Every shareholder of a company has a right to requisition for an extraordinary general meeting. He is not bound to disclose the reasons for the resolution to be proposed at the meeting [*Life Insurance Corporation of India vs. Escorts Ltd.*, (1986) 59 Comp. Cas. 548].

Section 169 of the companies Act contains provisions regarding holding of extraordinary general meetings. It provides that if directors fail to call a properly requisitioned meeting, the requisitionists or such of the requisitionists as represent not less than 1/10th of the total voting rights of all the members (or a majority of them) may call a meeting to be held on a date fixed within 3 months of the date of the requisition.

Where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in *R. Chettiar v. M. Chettiar* that the meeting may be held any where else.

Further, resolutions properly passed at such a meeting, are binding on the company.

Thus, in the given case, since all the above mentioned provisions are duly complied with. Hence the meeting with the resolution removing the managing director shall be valid.

Question 9

- (a) What do you understand by “Charge” under the Companies Act, 1956? Distinguish between “fixed Charge” and “Floating charge”. (5 Marks)
- (b) The Articles of Association of X Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The following persons were present in the extraordinary meeting to consider the appointment of Managing Director:
- (i) A, the representative of Governor of Madhya Pradesh.
 - (ii) B and C, shareholders of preference shares,
 - (iii) D, representing Y Ltd. and Z Ltd.
 - (iv) E, F, G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting? (5 Marks)

Answer

- (a) Charge: The term ‘charge’ has not been adequately defined in the Companies Act, 1956 except that section 124 provides that the expression charge shall include a mortgage. However, it can be understood that where in transaction for value, both parties evidence the intention that property existing or future shall be made available as security for the

payment of a debt and that the creditor/mortgage shall have a pleasant right to have it made available, there is a charge.

Distinction between fixed charge and floating charge:

Fixed charge	Floating charge
1. It is a legal charge.	1. It is an equitable charge.
2. It is a charge on specific, ascertained and existing asset.	2. It is a charge on present and future assets. No specific assets.
3. Company cannot deal with the assets except with the consent of the charge holder.	3. Company is free to use or deal with the assets the way it likes until the charge becomes fixed.
4. Registration of fixed charge on movable assets is not compulsory.	4. Registration of all floating charge on all kinds of assets is compulsory by law.
5. Fixed charge has always priority over floating charge.	5. Ambulatory and shifting in character.

- (b) Quorum: In this case the quorum for a general meeting is 7 members to be personally present. For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of a latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum (Section 187)

Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Again Section 187A of the Companies Act, 1956 provides that the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as its representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. B & C have to be excluded for the purpose of quorum because they represent the preference shares and since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

50 **PROFESSIONAL EDUCATION (EXAMINATION – II) : MAY, 2006**

Thus it can be said that the requirements of quorum being 7, 3 members personally present shall not constitute a valid quorum for the meeting.

Question 10

- (a) *A Company served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complains that the amount of the proposed increase was not specified in the notice. Is the notice valid?* (5 Marks)
- (b) *Answer the following in relation to the provisions of the Companies Act, 1956:*
- (i) *Can the declaration of Board of Directors of interim dividend be revoked?*
- (ii) *Who is empowered to declare final dividend ?* (5 Marks)

Answer

- (a) **Notice of Meeting:** Section 173 of the Companies Act, 1956 requires a company to annex an explanatory statement to every notice for a meeting of company, at which some 'special business' is to be transacted. This explanatory statement is to bring to the notice of members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting other than the annual general meeting is regarded as special business. Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 173 of the Companies Act, 1956.
- (b) **Dividend**
- (i) The Articles of a company may empower the directors to declare interim dividends, i.e., dividends in between its two annual general meetings. The Board may from time to time pay to the members such interim dividends as appear to it to be justified by the profits of the Company. (Article 86 of Table A)
- An interim dividend is not a debt. It is a settled law that in case of an interim dividend which the directors have resolved to pay, they have an option at any time before payment to review their decision and resolve not to pay.
- Hence, interim dividend declared by Board of Directors may be revoked.
- (ii) The dividend is declared by a company by a resolution passed at the annual general meeting. The Board of directors determines the rate of dividend to be declared and recommends it to the meeting of shareholders. The rate determined by the Board is to be sanctioned by the members of the company in general meeting. The members may reduce the rate recommended by the Board but they cannot increase it. Technically, therefore, a final dividend can only be declared by the members of a company [*Kantilal Manital v. Commr. Of Income Tax (1956) 26 Comp. Cas 357 (Bom.)*].

Alternative Answer

- (b) (i) Till the passing of the Companies (Amendment) Act, 2000, there was no provision in the Companies Act (except reg. 86 of Table A) relating to interim dividend. The Companies (Amendment) Act, 2000 has introduced sub-section (14A) in section 2 whereby 'interim dividend' is now part of 'dividend' and accordingly all provisions of the Companies Act relating to 'dividends' have become applicable to 'interim dividend' also.

To put things beyond doubt, section 205 has also been amended to provide for the following:

- ◆ The Board of Directors may declare interim dividend and the amount of dividend including interim dividend shall be deposited in a separate bank account within five days from the date of declaration of such dividend.
- ◆ The amount of dividend including interim dividend so deposited above shall be used for payment of interim dividend.
- ◆ The provisions contained in sections 205, 205A, 205C, 206, 206A and 207, as far as may be, also apply to any interim dividend.

Another view is there that the decision on interim dividend can be revoked only before transfer of the amount to the separate bank account pursuant to section 205(1A) of the Act. Further, according to Secretarial Standard 3 of the ICSI, interim dividend once declared cannot be revoked. A judicial decision in this regard can only remove the confusion.

Accordingly, it seems that the interim dividend, like final dividend, should be considered as a debt due and thus cannot be revoked.