

PAPER – 3 : BUSINESS AND CORPORATE LAWS

Question Nos. 1 and 7 are compulsory.

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

Question 1

Answer any six of the following:

- (a) Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for Rs.20 lakhs in the name of a nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Ahuja for Rs.26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain. (4 Marks)
- (b) Miss X, a film actress agreed to work exclusively for a period of two years, for a film production company. However, during the said period she enters into a contract to work for another film producer. Discuss the rights of the aggrieved film production company under the Indian Contract Act, 1872. (4 Marks)
- (c) Explain the meaning of "Accounting year" under the Payment of Bonus Act, 1965. (4 Marks)
- (d) State the acts which are considered beyond the implied authority of a partner under the provisions of the Indian Partnership Act, 1932. (4 Marks)
- (e) A, a major, and B, a minor, executed a Promissory Note in favour of C. Examine with reference to the provisions of the negotiable Instruments Act, 1881 the validity of the Promissory Note and state whether it is binding on A and B.
- (f) State the establishments to which the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, applies. (4 Marks)
- (g) Explain the conditions of registration of a society under the Cooperative Societies Act, 1912. (4 Marks)
- (h) What are the disqualifications for member of a multi-state cooperative society under the Multi-state Cooperative Societies Act, 2002?

Answer

- (a) The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide, that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:
 - (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.

- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover Rs.6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

- (b) Where a party commits a breach of negative term of a contract i.e., where he does something which he promised not to do, the aggrieved party can go to court which may issue an order restraining him from doing what he promised not to do. Such an order of the court is known as injunction. Since Miss X has agreed to work exclusively for the film production company for a period of two years, the aggrieved film production company can go to court and get injunction order restraining Miss X working for another film production company. A similar decision was taken in the case of *Warrior Bros vs. Nelson (1937) 1 K.B. 209*

- (c) Section 2(i) of the Payment of Bonus Act, 1965 defines 'accounting year'. It means,

- (i) in relation to a corporation, the year ending on the day on which the books of Accounts of the Corporation are to be closed and balanced.
- (ii) In relation to a company, this term means a period in respect of which any profit or loss account of the company laid before it in an annual general meeting is made up whether that period is a year or not.
- (iii) In any other case (a) the year commencing on the first day of April, or (b) if the accounts of an establishment maintained by the company thereof are closed and balanced on any day other than the 31st day of March then at the option of the employer, the year ending on the day on which its Accounts are so closed and balanced.

If, however, the said option is once exercised by the employer, it cannot be exercised once again, except with the permission in writing of the prescribed authority and upon such conditions as that authority may think fit. In other words, the exercise of the said option can only take place on obtaining the previous written permission of the prescribed authority, and the prescribed authority may impose such conditions as it may think fit.

- (d) According to Section 19 of the Indian Partnership Act, 1932, unless there is usage or custom of trade to the contrary, the following acts of a partner are considered beyond his implied authority.

- (1) Submit a dispute relating to the business of the firm to arbitration.
- (2) Open a bank account on behalf of the firm in his own name.
- (3) Compromise or relinquish any claim or portion of a claim by the firm against a third party (i.e. an outsider).
- (4) Withdraw a suit or proceedings filed on behalf of the firm.
- (5) Admit any liability in a suit or proceedings against the firm.

- (6) Acquire immovable property on behalf of the firm.
- (7) Transfer immovable property belonging to the firm.
- (8) Enter into partnership on behalf of the firm.

- (e) **Minor being a party to Negotiable Instrument:** Every person competent to enter into contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a Promissory Note, Bill of Exchange or clearance (Section 26, Para 1, Negotiable Instrument Act, 1881).

As a Minor's agreement is void, he cannot bind himself by becoming a party to a Negotiable Instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26, para 2).

In view of the provisions of Section 26 explained above, the promissory note executed by A and B is valid even though a minor is a party to it. B, being a minor is not liable; but his immunity from liability does not absolve the other joint promissory, viz., A from liability [*Sulochona v. Pondiyan Bank Ltd.*].

- (f) **Establishments under the EPF & MP Act, 1952:** According to Section 13(1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies to the following establishments:

- (a) every establishment which is a factory engaged in any industry specified in schedule 1 and in which 20 or more persons are employed; and
- (b) any other establishment which employs 20 or more persons or class of such establishments which the Central Government may, by notification in Official Gazette specify in the behalf.

However, the Central Government may, after giving not less than 2 months notice of its intention to do so, apply the provisions of this Act to any establishment with less than 20 persons in the employment.

Further, notwithstanding anything mentioned above or in sub-section (1) of Section 16, where it appears to the Central Provident Fund Commissioner, whether on an application made to him in this behalf or otherwise, that the employer and the majority of employees in relation to any establishment, have agreed that the provisions of this Act should be made applicable to the establishment, he may, by notification in the official, Gazette, apply the provision of this Act to the establishment on and from the date of such agreement or from any subsequent date specified in such agreement.

An establishment to which this Act applies must continue to be governed by this Act, even if the number of persons employed therein falls at any time below 20.

- (g) **Conditions of Registration of Society (Section 6):** The conditions for registration of a society under Section 6 of the Cooperative Society Act, 1912 are as follows:

- (1) A society, other than a society of which a member is a registered society, shall not be registered under this Act if it does not consist of at least ten persons above the

age of eighteen years and, where the object of the society is the creation of funds to be lent to its members, unless such persons:

- (a) reside in the same town or village or in the same group of villages; or
 - (b) save where the Registrar otherwise directs, are members of the same tribe, class, caste or occupation.
- (2) The word "limited" shall be the last word in the name of every society with limited liability registered under this Act.

If the society fails to retain 10 members, such a failure may lead to the cancellation of its registration (Section 40). But the breach of the conditions referred to in (i) and (ii) above does not lead to cancellation unless the byelaws so provide for.

(h) Disqualifications for member of a Multi-State Co-operative Society: Under Section 29 of the Multi-State Co-operative Societies Act, 1984 as amended by the Amendment Act, 2002, a person shall not be eligible for being a member of a Multi-State Co-operative Society if: -

- (1) his business is in conflict or competitive with the business of such Multi-state Co-operative Society; or
- (2) he used for two consecutive years the services below the minimum level specified in the bye-laws; or
- (3) he has not attended three consecutive general meetings of the Multi-State Co-operative Society and the members in the general meeting have not condoned such absence.
- (4) he has made any default in payment of any amount to be paid to the Multi-State Co-operative Society under the byelaws of such society.

Question 2

- (a) *"An agreement made without consideration is void. "With reference to provisions of the Indian Contract Act, 1872 examine the validity of the statement and explain the cases in which the statement does not apply. (6 Marks)*
- (b) *J, the owner of a Fiat car wants to sell his car. For this purpose he hand over the car to P, a mercantile agent for sale at a price not less than Rs.50,000. The agent sells the car for Rs.40,000 to A, who buys the car in good faith and without notice of any fraud. P misappropriated the money also. J sues A to recover the car. Decide giving reasons whether J would succeed. (6 Marks)*

Answer

- (a) **Validity of an Agreement without consideration:** The general rule is that an agreement made without consideration is void (Section 25). In every valid contract consideration is very important. A contract may only be enforceable when an adequate consideration is there. However, the Indian Contract Act, 1872 contains certain

exceptions to this rule. In the following cases, the agreement though made without consideration, will be valid and enforceable.

1. **Natural Love and Affection:** A written and registered agreement based on Natural Love and Affection between the parties standing in near relation (e.g., husband and wife) to each other is enforceable even without consideration. A contract in writing, registered on account of natural love and affection between parties standing near relation to each other are the essential requirements for valid contract though it is without consideration. (*Rajlukhee Devee vs. Bhootnath*).
 2. **Compensation for past voluntary services:** A promise to compensate, wholly or in part, a person who has already voluntarily done something for the promisor, is enforceable under (Section 25(2)). In order that a promise to pay for the past voluntary services is binding, the following essential factors must exist:
 - (i) the services should have been rendered voluntarily.
 - (ii) the services must have been rendered for the promisor.
 - (iii) the promisor must be in existence at the time when services were rendered.
 - (iv) the Promisor must have intended to compensate to the promisee.
 3. **Promise to pay time barred debt:** Where a promise in writing signed by the person making it or by his authorized agent, is made to pay a debt barred by limitation it is valid without consideration [Section 25(3)].
 4. **Agency:** According to Section 185 of the Indian Contract Act, 1872 no consideration is necessary to create an agency.
 5. **Completed gift:** In case of completed gifts, the rule no consideration no contract does not apply. Explanation (1) to Section 25 of the Act states "Nothing in this section shall affect the validity as between the donor and donee, of any gift actually made." Thus, gifts do not require any consideration.
- (b) The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:
- (1) the agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
 - (2) the agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
 - (3) the buyer should act in good faith.

- (4) the buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, P, the agent, was in the possession of the car with J's consent for the purpose of sale. A, the buyer, therefore obtained a good title to the car. Hence, J in this case, cannot recover the car from A. A similar decision, in analogous circumstances, was taken in *Folkes v. King*.

Question 3

- (a) *Examine the validity of a contract when the acceptance from the offeree is obtained under 'Coercion' or under 'Undue influence'. Point out the distinction between 'Coercion' and 'Undue influence'.* (6 Marks)
- (b) *When does dissolution of a partnership firm take place under the provisions of the Indian Partnership Act, 1932? Explain.* (6 Marks)

Answer

- (a) According to Section 19 of the Indian Contract Act, 1872 when consent to an agreement is given due to coercion or undue influences, such a contract is voidable at the option of the party whose consent was so obtained. The difference between coercion and undue influence is as under:

Coercion	Undue Influence
(a) It involves the physical force or threat. The aggrieved party is complete to make the contract against its will.	It involves moral or mental pressure. The aggrieved party believes that he or she would make the contract.
(b) It involves committing or threatening to commit an act forbidden by Indian Penal Code for detaining or threatening to detain property of another person.	No such illegal act is committed or a threat is given.
(c) It is not necessary that there must be some relationship between the parties.	Some sort of relationship between the parties is absolutely necessary.
(d) Coercion need not proceed from the promisor nor need it be directed against the promisor.	Undue influence is always essential between the parties to the contract.
(e) The contract is voidable at the option of the party whose consent has been obtained by the coercion.	Where consent is induced by undue influence, the contract is either voidable or the court may set it sale or enforce it in a modified form.

- | | |
|--|---|
| (f) In case of coercion where the aggrieved party, as per Section 64, rescinds the contract any benefit received has to be restored back to the other party. | The court has the distinction to direct the aggrieved party to return the benefit in whole or in part or not to give any such directions. |
|--|---|

- (b) **Dissolution of Firm:** The Dissolution of Firm means the discontinuation of the jural relation existing between all the partners of the Firm. But when only one of the partners retires or becomes incapacitated from acting as a partner due to death, insolvency or insanity, the partnership, i.e., the relationship between such a partner and other is dissolved, but the rest may decide to continue. In such cases, there is in practice, no dissolution of the firm. The particular partner goes out, but the remaining partners carry on the business of the Firm. In the case of dissolution of the firm, on the other hand, the whole firm is dissolved. The partnership terminates as between each and every partner of the firm.

Dissolution of a Firm may take place (Section 39 - 44)

- (a) as a result of any agreement between all the partners (i.e., dissolution by agreement);
- (b) by the adjudication of all the partners, or of all the partners but one, as insolvent (i.e., compulsory dissolution);
- (c) by the business of the Firm becoming unlawful (i.e., compulsory dissolution);
- (d) subject to agreement between the parties, on the happening of certain contingencies, such as: (i) effluence of time; (ii) completion of the venture for which it was entered into; (iii) death of a partner; (iv) insolvency of a partner. In case of death, it is to be noted that the partners may make a contrary agreement only if their number exceeds two. If there are only two partners the only result of either's death will necessarily be the dissolution of the firm. This was made clear by the Supreme Court in *Commissioner of Income-tax vs. G.S. Mills*.
- (e) by a partner giving notice of his intention to dissolve the firm, in case of partnership at will and the firm being dissolved as from the date mentioned in the notice, or if no date is mentioned, as from the date of the communication of the notice; and
- (f) by intervention of court in case of: (i) a partner becoming the unsound mind; (ii) permanent incapacity of a partner to perform his duties as such; (iii) Misconduct of a partner affecting the business; (iv) willful or persistent breaches of agreement by a partner; (v) transfer or sale of the whole interest of a partner; (vi) improbability of the business being carried on save at a loss; (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.

Question 4

- (a) “*Nemo Dat Quod Non Habet*” – “None can give or transfer goods what he does not himself own.”

Explain the rule and state the cases in which the rule does not apply under the provisions of the Sale of Goods Act, 1930. (6 Marks)

- (b) *Explain the manner in which the "Executive Committee" under the provisions of the employees' Provident Fund and Miscellaneous Provisions Act, 1952 is constituted. State its composition. (6 Marks)*

Answer

- (a) Exceptions to the Rule Nemo dat Quod Non Habet: The term means, "none can give or transfer goods what he does not himself own". Exceptions to the rule and the cases in which the Rule does not apply under the provisions of the Sale of Goods Act, 1930 are enumerated below:
- (1) **Effect of Estoppel (Section 27):** Where the owner is stopped by the conduct from denying the seller's authority to sell, the transferee will get a good title as against the true owner. But before a good title by estoppel can be made, it must be shown that the true owner had actively suffered or held out the other person in question as the true owner or as a person authorized to sell the goods.
 - (2) **Sale by a Mercantile Agent:** A sale made by a mercantile agent of the goods or document of title to goods would pass a good title to the buyer in the following circumstances, namely;
 - (a) if he was in possession of the goods or documents with the consent of the owner;
 - (b) if the sale was made by him when acting in the ordinary course of business as a mercantile agent; and
 - (c) if the buyer had acted in good faith and has at the time of the contract of sale, no notice of the fact that the seller had no authority to sell. (Proviso to Section 27).
 - (3) **Sale by one of the joint owners:** If one of the several joint owners of goods has the sole possession of them with the permission of the others the property in the goods may be transferred to any person who buys them from such a joint owner in good faith and does not at the time of the contract of sale have notice that the seller has no authority to sell. [Section 28].
 - (4) **Sale by a person in possession under voidable contract:** A buyer would acquire a good title to the goods sold to him by seller who had obtained possession of the goods under a contract voidable on the ground of coercion, fraud, misrepresentation or undue influence provided that the contract had not been rescinded until the time of the sale (Section 29).
 - (5) **Sale by one who has already sold the goods but continues in possession thereof:** If a person has sold goods but continues to be in possession of them or of the documents of title to them, he may sell them to a third person, and if such person obtains the delivery thereof in good faith without notice of the previous sale,

he would have good title to them, although the property in the goods had passed to the first buyer earlier. A pledge or other deposition of the goods or documents of title by the seller in possession are equally valid. [Section 30(1)].

- (6) **Sale by buyer obtaining possession before the property in the goods has vested in him:** Where a buyer with the consent of seller obtains possession of the goods before the property in them has passed to him, he may sell, pledge or otherwise dispose of the goods to a third person, and if such person obtains delivery of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods in good faith and without notice of the lien or other right of the original seller in respect of the goods, he would get a good title to them. [Section 30(2)].
- (7) **Sale by an unpaid seller:** Where an unpaid seller who had exercised his right of lien or stoppage in transit resells the goods, the buyer acquires a good title to the goods as against the original buyer [Section 54(3)].
- (8) **Sale under the provisions of other Acts:**
 - (i) Sale by an official Receiver or liquidator of the company will give the purchaser a valid title.
 - (ii) Purchase of goods from a finder of goods will get a valid title under circumstances.
 - (iii) Sale by a pawnee under default of pawnor will give valid title to the purchaser.
- (b) **Executive Committee under EPF & MP Act, 1952 – (Section 5A):** The Central Government may, by notification in the official Gazette, constitute, with effect from such date as may be specified therein, an Executive Committee to assist the Central Board in the performance of its functions.
 The Executive Committee shall consist of the following persons as members, namely:
 - (a) A chairman appointed by the Central Government from amongst the members of the Central Board;
 - (b) Two persons appointed by the Central Government from amongst the persons referred to in clause (b) of sub-section (1) of Section 5A.
 - (c) Three persons appointed by the Central Government from amongst the persons referred to in clause (c) of sub-section (1) of Section 5A.
 - (d) Three persons representing the employers elected by the Central Board from amongst the persons referred to in clause (d) of sub-section (i) of Section 5A.
 - (e) Three persons representing the employees elected by the Central Board from amongst the persons referred to in clause (e) of sub-section (i) of Section 5A.
 - (f) The Central Provident Fund Commissioner, ex-officio.
 The terms and conditions subject to which a member of the Central Board may be appointed or elected to the Executive Committee and the time, place and procedure of

the meetings of the Executive Committee shall be such as may be provided for in the scheme.

Question 5

- (a) *In what way does the Negotiable Instruments Act, 1881 regulate the determination of the 'Date of maturity' of a Bill of Exchange. Ascertain the 'Date of maturity' of a bill payable 120 days after the date. The Bill of exchange was drawn on 1st June, 2005. (6 Marks)*
- (b) *Explain the provisions of the payment of Bonus Act, 1965 relating to the following:*
- (i) *Adjustment of Customary Bonus against bonus payable under the Act.*
 - (ii) *What is the time limit within which payment of bonus due to an employee under the Act, be paid? (6 Marks)*

Answer

- (a) **Calculation of maturity of a Bill of Exchange:** The maturity of a bill, not payable on demand, at sight or on presentment, is at maturity on the third day after the day on which it is expressed to be payable (Section 22, para 2 of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of a bill payable on demand, at sight, or presentment.

When a bill is made payable as stated number of months after date, the period stated terminates on the day of the month, which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for Non-acceptance when it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens. (Section 23).

When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates which the day of the month which corresponds with the day on which it was so accepted.

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23).

In calculating the date a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which they are expressed to be payable. (Section 22).

When the last day of grace falls on a day, which is public holiday, the instrument is due and payable on the preceding business day (Section 25).

Answer to Problem: In this case the day of presentment for sight is to be excluded i.e. 1st June, 2005. The period of 120 days ends on 21st September, 2005 (June 29 days + July 31 days + August 31 Days + September 29 days = 120 days). Three days of grace are to be added. It falls due on 2nd October, 2005, which happens to be a public holiday. As such it will fall due on 1st October, 2005 i.e., the preceding Business Day.

- (b) (i) **Adjustment of customary or Interim Bonus against bonus payable under the Act (Section 17, Payment of Bonus Act, 1965):** If in any accounting year, an employer has paid any puja bonus or other customary bonus to any employee, then the former shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him to the employee under this Act in respect of that accounting year. The employee shall be entitled to receive only the balance. The employer can do the same thing even in a case where he has paid off the bonus payable under this Act to an employee before the date on which such customary bonus payable becomes payable.
- (ii) **Time limit for Payment of Bonus (Section 19):** The employer is bound to pay his employee bonus within one month from the date on which the award becomes enforceable or the settlement comes into operation, if a dispute regarding payment of bonus is pending before any authority under Section 22. In other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting year. But this period of 8 months may be extended upto a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

Question 6

- (a) *Examine when shall a holder of a negotiable instrument be considered as a holder in due course under the provisions of the Negotiable Instruments Act, 1881.* (6 Marks)
- (b) *Discuss the provisions relating to disposal of net profits of a society registered under the Multi-state Cooperative Societies Act, 2002.* (6 Marks)

Answer

- (a) According to Section 9 of the Negotiable Instruments Act, 1881, a holder of a negotiable instrument will be considered as holder in due course if he fulfills the following conditions.
- (i) that for consideration he became the possessor of the negotiable instrument of payable to bearer or the payee or endorsee thereof if payable to order.
 - (ii) that he became the holder of the instrument before maturity.
 - (iii) that he became the holder of the instrument in good faith i.e., without sufficient cause to believe that any infirmity or defect existed in the title of the person from whom he derived the title.
- (b) **Disposal of Net Profits (Section 63):** Section 63 of the Multi-State Co-operative Societies Act, 2002 provides that out of net profits, a Multi-State Co-operative Society.

- (a) transfer at least 25% of the net profits to the Reserve Fund.
- (b) one percent of the Net Profits should be credited to the National Co-operative Union of India Limited, New Delhi as contribution to the Education Fund maintained by the union;
- (c) transfer on amount not less than 10% to a reserve fund for meeting unforeseen losses.

After transferring the fund to above purposes, the balance of the net profits may be utilized for all or any of the following purposes, namely: -

- (a) payment of dividend to the members on their paid-up share capital at a rate not exceeding the prescribed limit;
- (b) constitution of, or contribution to, such special funds including education funds, as may be specified in the bye-laws;
- (c) purposes connected with the development of Co-operative Movement of charitable purpose as defined in Section 2 of the Charitable Endowments Act, 1890;
- (d) payment of ex-gratia amount to employees of the Multi-State Co-operative Society to the extent and in the manner specified in the byelaws.

Question 7

Answer any **four** of the following:

- (a) Distinguish between 'share warrant' and 'share certificate'. State whether a private company can issue share warrants. (5 Marks)
- (b) When is a company required to issue a 'shelf prospectus' under the provisions of the Companies (Amendment) Act, 2000? Explain the provisions of the Act relating to the issue of 'shelf prospectus' and filing it with the Registrar of Companies. (5 Marks)
- (c) Dev Limited issued a notice for holding of its Annual General Meeting on 7th November, 2005. The notice was posted to the members on 16.10.2005. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 1956 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Act, decide:
 - (i) Whether the meeting has been validly called?
 - (ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?
 - (iii) Can the short fall, if any, be condoned? (5 Marks)
- (d) XYZ Limited realised on 3rd November, 2005 that particulars of charge created on 11th September, 2005 in favour of a bank were not filed with the Registrar of Companies for registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created

on 11th August, 2005 instead of 11th September, 2005? Explain with reference to the relevant provisions of the Companies Act, 1956. (5 Marks)

- (e) *“Every shareholder of a company is also known as a member, while every member may not be known as a shareholder.” Examine the validity of the statement and point out the distinction between a ‘member’ and a ‘shareholder’. (5 Marks)*

Answer

(a) Share certificate and Share Warrant:

- (1) A share certificate is a prima facie evidence of document of title, stating that the holder is entitled to specified number of shares. Share warrant is a bearer document stating that the holder is entitled to certain number of shares specified therein.
- (2) The holder of a share certificate is a member of the company, but whereas the bearer of a share warrant can be a member only if the articles provide.
- (3) A share warrant is a negotiable instrument, whereas a share certificate is not so.
- (4) A public company can only issue a share warrant, whereas, a share certificate can be issued by a public and private company.
- (5) In order to qualify as a director, the person should acquire a share certificate instead of a share warrant.
- (6) A share certificate can be issued for a fully paid and partly paid up shares. A share warrant can be issued in respect of only full paid up share.

Private Company issuing Share Warrant:

A Private Company cannot issue share warrant under the provisions of the Company Act, 1956.

- (b) **Meaning:** According to Section 60A as inserted by the Companies (Amendment) Act, 2000 ‘Shelf Prospectus’ means a prospectus issued by any Financial Institutions or bank for one or more issues of the Securities or class of securities specified in that prospectus.

Organization required to issue and file Shelf Prospectus: Any Public Financial Institution, a public sector bank or schedule bank whose main object is financing, shall file a shelf prospectus. ‘Financing Means Making loans to or subscribing in the capital of, a private industrial enterprise engaged in infrastructure financing, or such, other company as the Central Government may notify in this behalf.

A company filing a shelf prospectus with the registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus. It shall be required to file an information memorandum on all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities within the time prescribed by the Central Government prior to making of a second or subsequent offer of securities under the shelf prospectus.

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

Where an update of information memorandum is filed every time on offer of securities is made, such memorandum together with the shelf prospectus shall constitute the prospectus.

- (c) (i) 21 Days clear notice of an AGM must be given [Section 171, Companies Act, 1956]: In case of notice by post, section 53(2) provides that the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting. Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded. Accordingly, 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is, therefore, not validly convened.
- (ii) worked as per (i) above, notice falls short by 2 days.
- (iii) according to Section 171(2), on AGM called at a notice shorter than 21 clear days shall be valid if consent is accorded thereto by all the members entitled to vote thereat. Thus, if all the members of the company approve the shorter notice, shortfall may be condoned.
- (d) Section 125(1) of the Companies Act, 1956 provides that the prescribed particulars of the charge together with the instrument of any, by which the charge is created or evidenced, or a copy thereof, shall be filed with the Registrar within 30 days after the date of the creation of charge. In the given case particulars of charge have not been filed within the prescribed period of 30 days of its creation.

However, the Registrar of Companies is empowered under the proviso to Section 125(1) to extend the period of 30 days by another 30 days on payment of such additional fee not exceeding 10 times the amount of fee specified in Schedule X as the registrar may determine. Taking advantage of this provision, XYZ Limited should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause for not filing the particulars of charge within 30 days of creation of charge.

If the charge was created on 11th August, 2005, then the company has to apply to the Company Law Board u/s 141 (now Tribunal) and seek extension of time for filing the particulars for registration. The company must satisfy the Company Law Board (now Tribunal).

- (a) that the omission was accidental or due to inadvertence or due to some other sufficient cause or was not of the nature of prejudice the position of creditors or shareholders of the company or.
- (b) that it is just and equitable to grant relief on other grounds. On such satisfaction, the Company Law Board (now Tribunal) may extend the time for registration of charge on such terms and conditions as it may think expedient. Once the time is

extended and it is made out that the particulars have been filed within the extended time, the Registrar is bound to register the charge.

- (e) 'Member' or 'Shareholders' of a company are the persons who collectively constitute the company as a corporate. Entry, the terms 'Member' and 'Shareholder' and 'holder of a share' are used interchangeable. (*Balkrishan Gupta v. Swadeshi Polytex Ltd.*) They are synonymous in the case of a company limited by shares, a company limited by guarantee and having a share capital and on unlimited company whose capital is held in definite shares. But in the case of an unlimited company or a company limited by guarantee, a Member may not be a shareholder, for such a company may not have a share capital.

A shareholder may be distinguished from a Member as follows:

- (1) A registered shareholder is a member but a registered member may not be a shareholder because the company may not have a share capital.
- (2) A person who owns a bearer share warrant is a shareholder but he is not a member as his name is struck off the register of members. [Section 115(i)]. This means that a person can be a holder of shares without being a member.
- (3) A legal Representative of a deceased Member is not a member until he applies for registration. He is, however, a shareholder even though his name does not appear on the register of members.
- (4) A person who subscribes to the Memorandum of Association immediately becomes the member, even though no shares are allotted to him. Till shares are allotted to the subscriber, he is a member but not a shareholder of the company.
- (5) A person who has transferred his shares ceases to be a holder of those shares from the date of the transfer, but he continues to be a member till such time the transfer is registered in the name of the transfers in the books of the company.

Question 8

- (a) *M/s India Computers Ltd. was registered as a Public Company on 1st July, 2005 in the State of Maharashtra. Another company by name M/s All India Computers Ltd. was registered in Delhi on 15th July, 2005. The promoters of India Computers Ltd. have failed to persuade the management of All India Computers Ltd. to change the company's name, as it closely resembles with the name of the first registered company.*

Advise the Management of India Computers Ltd. about the remedies available to them under the provisions of the Companies Act, 1956. (5 marks)

- (b) *State the procedure for inspection of Minutes Book of General Meetings of a company, by the members.* (5 Marks)

Answer

- (a) Since the name of M/s India Computer Ltd., was registered earlier, on 1st July, 2005, the promoters have a right to ask the management of M/s All India Computers Ltd to change its name suitably as the said name closely resembles with that of the first registered

company. Since the management of M/s All India Computers Ltd has not agreed, the promoters of India computers Ltd can approach the Central Government under Section 22 of the Companies Act, 1956 for rectification of the name of the company registered subsequently. The Central Government can direct the second registered company for correction. This direction can be given within 12 months from the date of registration of the latter company and the said company has to comply with the direction within 3 months by changing its name suitably failing which penal provisions will become applicable. The power of the Central Government under Section 22 has been delegated to the Regional Director.

(b) Inspection of Minutes Books of General Meetings: Following are the provisions relating to the procedure for inspection of minutes books of general meetings of a company by the members:

- (1) The books containing the Minutes of the proceedings of any general meeting of a company shall-
 - (a) be kept at the registered office of the company, and
 - (b) be open, during business hours, to the inspection of any member without charge, subject to such reasonable restrictions as the company may, by its articles or in general meeting impose, so however that not less than two hours in each day are allowed for inspection.
- (2) Any member shall be entitled to be furnished, within seven days after he has made a request in that behalf to the company, with a copy of any minutes referred to in sub-section (1), on payment of such sum as may be prescribed for every one hundred words or fractional part thereof required to be copied.
- (3) If any inspection required under sub-section (1) is refused, or if any copy required under sub-section (2) is not furnished within the time specified therein, the company, and every officer of the company who is in default, shall be punishable with fine which may extend to five thousand rupees in respect of each offence.
- (4) In the case of any such refusal or default, the Central Government may, by order, compel on immediate inspection of the Minute books or direct that the copy required shall forthwith be sent to the person requiring it.

Question 9

- (a) *"Moonstar Ltd" is authorised by its articles to accept the whole or any part of the amount of remaining unpaid calls from any member although no part of that amount has been called up. 'A', a shareholder of the Moonstar Ltd., deposits in advance the remaining amount due on his shares without any calls made by "Moonstar Ltd."*

Referring to the provisions of the Companies Act, 1956, state the rights and liabilities of Mr. A, which will arise on the payment of calls made in advance. (5 Marks)

- (b) *C, a member of LS & Co. Ltd., holding some shares in his own name on which Final call money has not been paid, is denied by the company voting right at a general meeting on*

the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him.

With reference to the provisions of the Companies Act, 1956, examine the validity of company's denial to C of his voting right. (5 Marks)

Answer

- (a) Mr.. A, a shareholder of the 'Moon Star Ltd'. , deposited in Advance the remaining amount due on his shares without any calls made by 'Moon Star Ltd'. 'Moon Star Ltd' was authorized to accept the unpaid calls by its articles. According to section 92(1) of the Companies Act, 1956, a company may, if so authorized by the articles, accept from any member the whole or a part of the amount remaining unpaid or any shares by him although no part of that amount has been called up. The amount so received or accepted is described as payment in advance of calls. When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:
- (i) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same would, but for such payment become presently payable. [Section 92(2)].
 - (ii) The shareholder's liability to the company in respect of the call for which the amount is paid is distinguished.
 - (iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
 - (iv) The amount received in advance of calls is not refundable.
 - (v) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
 - (vi) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.
- (b) Section 181 of the Companies Act, 1956 lays down the grounds on which right of a shareholder to vote at the general meeting may be excluded. These are:
- (a) Non-payment of calls by a member;
 - (b) Non-payment of other sums due against a member;
 - (c) Where company has exercised the right of lien on his shares.

Since the stipulation in the Articles relates to one of the grounds permitted under Section 181, the same is valid C's protest is not valid.

Question 10

- (a) *In what way does the Companies Act, 1956 regulate the payment of 'underwriting commission'? Explain the provisions of the Act, state the conditions to be complied with before payment of such commission can be made to underwriters of the company.*

(5 Marks)

- (b) *At a General meeting of a company, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from voting. The Chairman of the meeting declared the resolution as passed.*

With reference to the provisions of the Companies Act, 1956, examine the validity of the Chairman's declaration.

(5 Marks)

Answer

- (a) Payment of underwriting commission is regulated by the provisions of Companies Act, 1956 stating certain conditions as contained in Section 76. The conditions to be fulfilled are:
- (i) The payment of commission should be authorized by the articles.
 - (ii) The names and addresses of the underwriters and the number of shares or debentures underwriter by each of them should be disclosed in the prospectus.
 - (iii) The amount of commission should not exceed, in the case of shares, 5% of the price at which the shares have been issued or the amount or rate authorized by the articles, whichever is less and in the case of debentures it should not exceed 2½%.
 - (iv) The rate should be disclosed in the prospectus, or in the statement in lieu of prospectus (or in a statement in prescribed form signed in the like manner as the statement in the lieu of prospectus) and should be filed with the Registrar along with a copy of the underwriting contract before the payment of the commission.
 - (v) The number of shares or debentures, which persons have agreed to subscribe absolutely or conditionally for commission, should be disclosed in the manner aforesaid.
 - (vi) A copy of the contract for the payment of the commission should be delivered to the Registrar along with the prospectus or the statement in lieu of prospectus for registration.

Section 76(4A) clarifies that commission to the underwriter is payable only in respect of those shares or debentures which are offered to the public for subscription. However, where, (i) a person, who for a commission has subscribed (or agreed to subscribe) for shares or debentures of a company and before the issue of the prospectus (or statement in lieu of prospectus) for such shares or debentures, some other person (or persons) has subscribed for any or all of them, and (ii) such a fact together with the aggregate amount of commission payable to the underwriter is disclosed in such prospectus (or statement in

lieu of prospectus), then the company may pay commission to the underwriter in respect of his subscription irrespective of the fact that the shares or debentures have already been subscribed.

- (b) Under Section 189(2) of the Companies Act, 1956, for a valid special resolution, the following conditions need to be satisfied:
- (i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
 - (ii) The notice required under the Companies Act must have been duly given of the general meeting;
 - (iii) The votes cast in favour of the resolution (whether by show of hands or on poll) by members present in person or by proxy are not less than 3 times the number of votes, if any, cast against the resolution.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or in valued, if any, are not to be taken into account. Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), if other conditions of Section 189(2) are satisfied, the decision of the Chairman is in order.