

PAPER – 3 BUSINESS AND CORPORATE LAWS

Question Nos. 1, and 7 are compulsory

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

Question 1

Answer any six of the following:

- (a) Father promised to pay his son a sum of Rs. One lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.*
- (b) A hire a carriage of B and agrees to pay Rs.500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B.*
- (c) Define an “Establishment in public sector”. What are the circumstances when the Payment of Bonus Act, 1965 becomes applicable to such an establishment?*
- (d) Describe the procedure of registration of firm under the Indian Partnership Act. What is the rule of evidence with regard to entries in the Register of firms?*
- (e) A cheque payable to bearer is crossed generally and marked “not negotiable”. The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B.*
- (f) Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the Negotiable Instruments Act, 1881.*
- (g) State the emoluments paid to employees, which do not come within the purview of “basic wages” under the Employees’ Provident Funds and Miscellaneous Provisions Act, 1952.*
- (g) State the provisions relating to the conduct of audit applicable to a society registered under the Cooperative Societies Act, 1912?*
- (h) State the restrictions on borrowings on a multi-state cooperative society under the Multi-state Cooperative Societies Act.*

(6 x 4 = 24 marks)

Answer

- (a) Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 10. According to the provisions there should be an intention to create legal relationship between the parties. Agreements of a social nature*

or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of Balfour vs. Balfour (1912 2 KB. 571). Accordingly, applying the above provisions and the case decision, in this case son cannot recover the amount of Rs.1 lakh from father for the reasons explained above.

- (b) Problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.
- (c) Section 2(16) of the Payment of Bonus Act, 1965 defines 'establishment in public sector' to mean an establishment owned, controlled or managed by:
 - (a) a Government company as defined in Section 617 of the Companies Act, 1956;
 - (b) a Corporation in which not less than 40% of its capital is held (whether singly or taken together) by -
 - (i) the Government; or
 - (ii) the Reserve Bank of India; or
 - (iii) a Corporation owned by the Government or the Reserve Bank of India.

The provisions of the Payment of Bonus Act, 1965 do not ordinarily apply to an establishment in public sector. However, if the following two conditions are satisfied by such establishment in any accounting year, the provisions of the Act shall apply to such establishment as they apply to an establishment in the private sector:

- (i) If in any accounting year, an establishment in the public sector sells goods produced or manufactured by it or renders any services, in competition with an establishment in private sector; and
 - (ii) the income from such sale or services is not less than 20% of the gross income of the establishment in public sector in that year. (Section 20)
- (d) The Indian Partnership Act, 1932 provides that registration of firms may be effected at any time by filing an application in the form of a statement, giving the necessary information, with the Registrar of Firms of the area. Section 57 of the Act empowers the State Government to appoint Registrar of Firms for the purposes of the Partnership Act and defines the areas within which they shall exercise their powers and perform their duties.

Application for registration of a firm shall be accompanied by the prescribed fee. It shall state:

- (a) the name of the firm;
- (b) place or principal place of business of the firm;

- (c) names of other places where the firm carries on business;
- (d) date when each partner joined the firm;
- (e) names in full and permanent addresses of the partners;
- (f) duration of the firm.

The application shall be signed by all the partners or by their agents specially authorized in this behalf. It shall also be certified by them in the prescribed manner.

When the Registrar is satisfied that the above provisions have been complied, he shall record an entry in the Registrar of Firms and issue a certification of registration. Registration takes effect from the date on which the Registrar makes entries in the Register of Firms.

Any statement, notice or intimation recorded with the Registrar by any person shall be a conclusive proof against him of any fact therein stated. The third parties can, however, challenge the fact of statement and prove that it is false and is based on misrepresentation or fraud (Section 68).

- (e) The cheque in the given case was crossed generally and marked 'Not Negotiable'. Thereafter, the cheque was lost or stolen and came into the possession of B, who takes it in good faith and gives value for it. Section 130 of the Negotiable Instruments Act, 1881 provides that a person taking a cheque crossed generally or specially, bearing in either case the words 'not negotiable', shall not have, and shall not be capable of giving a better title to the cheque than that which the person from whom he took it had. In view of these provisions, B, even though he was a holder in due course, did not acquire any title to the cheque as against its true owner. The addition of the words 'not negotiable' entirely takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to a subsequent holder in due course. B did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque. Therefore, as regards the true owner, B was in no better position than the transferor. B is also liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque.

In the given case, both the collecting banker and the paying bankers would be exonerated. Since the collecting banker, in good faith and without negligence, had received payment for B, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (Section 131). Since the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner. (Section 128).

- (f) According to Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 'Basic wages' means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms of contract of

employment which are paid or payable in cash to him but does not include:

- (i) Cash value of any food concession.
 - (ii) Any dearness allowance i.e., Payments paid to an employee on account of rise in cost of living, house rent allowance, bonus, commission or over some allowance and
 - (iii) Any presents made by the employer.
- (g) According to Section 17 of the Co-operative Societies Act, 1912, it is obligatory for the Registrar to audit or cause to be audited by some persons authorized by him by a general or special order in writing the accounts of every registered society at least once in every year. The audit as contemplated by the said section includes an examination of over-due debts, if any, and a valuation of the assets and liabilities of the society. Audit also means such an examination of the books, accounts and vouchers of a business as shall enable the auditor to satisfy himself whether or not the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of affairs of the business according to the best of his information and the explanations given to him. The Registrar or any person authorized by a general or special order in writing in this behalf by the Registrar will have access to all the books, accounts, papers and securities of a society. Every officer of the society should furnish such information in regard to the transactions and working of the society as the person making such inspection may require.
- (h) Restriction on borrowing:
- (a) A Multi-state Co-operative Society under the Multi-State Co-operative Societies Act, 2002 may receive deposits, raise loans and receive grants from external sources to such extent as may be specified in the bye-laws. This is however, subject to the condition that the total amount of deposits and loans received during any financial year shall not exceed 10 times of the sum of subscribed share capital and accumulative reserves. While calculating the total sum subscribed capital and accumulated reserves, the accumulated losses shall be deducted.
 - (b) A multi-state Co-operative Society may accept funds or borrow funds for the fulfillment of its objects on such terms and conditions as are mutually contracted upon
 - (c) A multi-state Co-operative Society may issue non-convertible debentures or other instruments subject to the provisions of any laws in force to raise resources for the fulfillment of its objects to the extent of 25% of its paid up share capital.
 - (d) However, transactions of such a society with any non-member shall be subject to prohibitions and restrictions as may be specified in bye-laws of the society. (Section 68)

Question 2

- (a) *M Ltd., contracts with Shanti Traders to make and deliver certain machinery to them by 30.6.2004 for Rs. 11.50 lakhs. Due to labour strike, M Ltd. could not manufacture and*

deliver the machinery to Shanti Traders. Later, Shanti Traders procured the machinery from another manufacturer for Rs.12.75 lakhs. Shanti Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with M Ltd. and were compelled to pay compensation for breach of contract. Advise Shanti Traders the amount of compensation which it can claim from M Ltd., referring to the legal provisions of the Indian Contract Act. (6 marks)

- (b) *When can an unpaid seller of goods exercise his right of lien over the goods under the Sale of Goods Act. Can he exercise his right of lien even if the property in goods has passed to the buyer? When such a right is terminated? Can he exercise his right even after he has obtained a decree for the price of goods from the court?* (6 marks)

Answer

- (a) Section 73 of the Indian Contract Act, 1872 provides for consequences of breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, M Ltd is obliged to compensate for the loss of Rs.1.25 lakhs (i.e. Rs.12.75 minus Rs.11.50 = Rs. 1.25 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Shanti Traders were compelled to make to Zenith Traders, it depends upon the fact whether M Ltd knew about the contract of Shanti Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, M Ltd is also obliged to reimburse the compensation which Shanti Traders had to pay to Zenith Traders for breach of contract. Otherwise M Ltd is not liable.

- (b) A lien is a right to retain possession of goods until the payment of the price. It is available to the unpaid seller of the goods who is in possession of them where-
- (i) the goods have been sold without any stipulation as to credit;
 - (ii) the goods have been sold on credit, but the term of credit has expired;
 - (iii) the buyer becomes insolvent.

The unpaid seller can exercise 'his right of lien even if the property in goods has passed on to the buyer. He can exercise his right even if he is in possession of the goods as agent or bailee for the buyer.

Termination of lien: An unpaid seller loses his right of lien thereon-

- (i) When he delivers the goods to a carrier or other bailee for the purpose of

transmission to the buyer without reserving the right of disposal of the goods;

- (ii) When the buyer or his agent lawfully obtains possession of the goods;
- (iii) By waiver thereof.

Exercising the Right of Lien after obtaining a decree:

The unpaid seller of goods having a lien thereon, does not lose his lien by reasons only that he has obtained a decree for the price of the goods.

Question 3

- (a) *State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of his principal.* (6 marks)
- (b) *Ram & Co., a firm consists of three partners A, B and C having one third share each in the firm. According to A and B, the activities of C are not in the interest of the partnership and thus want to expel C from the firm. Advise A and B whether they can do so quoting the relevant provisions of the Indian Partnership Act.* (6 marks)

Answer

- (a) An agent is personally liable for the contracts entered into by him on behalf of his principal in the following cases/circumstances:
 - (i) When an contract expressly provides;
 - (ii) When an agent acts for a foreign principal.
 - (iii) When an agent acts for an undisclosed principal.
 - (iv) Where an agent acts for a principal who cannot be sued.
 - (v) Where the agent signs the contract in his own name without disclosing that he is acting only as an agent.
 - (vi) Where an agent acts for a principal not in existence.
 - (vii) Where an agent acts without any authority from the alleged principal or exceeds his authority.
 - (viii) Where a trade usage or custom makes him personally liable.
 - (ix) Where the agency is coupled with interest i.e., when an agent has an interest in the subject matter of the contract entered into by him.
 - (x) Where he receives or pays money by mistake or fraud.
- (b) Normally it is not possible for the majority of partners to expel a partner from the firm without satisfying the conditions as laid down in Section 33 of the Indian Partnership Act, 1932. The essential conditions before expulsion can be done are:
 - (i) power of expulsion should exist in the partnership deed (contract between the partners).
 - (ii) power has been exercised by the majority of the partners in good faith.

The test of good faith includes:

- (a) that the expulsion must be in the interest of the partnership;
- (b) that the partner to be expelled is served with a notice; and
- (c) that the partner has been given an opportunity of being heard.

Thus, in the given case A and B the majority partners can expel the partner only if the above conditions are satisfied and procedure as stated above has been followed.

Further the invalid expulsion of a partner does not put an end to the partnership and it will be deemed to continue as before.

Question 4

- (a) *".....there is no implied warranty or condition as to quality or fitness for any particular purpose of goods supplied under a contract of sale...."Discuss the significance and State exceptions, if any.* (6 marks)
- (b) *State the powers of the Central Government to authorize certain employers to maintain provident fund accounts under the Employees Provident Funds and Miscellaneous Provisions Act, 1952.* (6 marks)

Answer

- (a) The statement given in the question is the fundamental principle of law of sale of goods, sometime expressed by the maximum 'Caveat Emptor' meaning thereby 'Let the buyer be aware'. In other words, it is no part of the seller's duty in a contract of sale of goods to give the buyer an article suitable for a particular purpose, or of particular quality, unless the quality or fitness is made an express terms of the contract. The person who buys goods must keep his eyes open, his mind active and should be cautious while buying the goods. If he makes a bad choice, he must suffer the consequences of lack of skill and judgement in the absence of any misrepresentation or guarantee by the seller.

There are, however, certain exceptions to the rule which are stated as under:

- (i) Where the buyer expressly or by implication, makes known to the seller the particular purpose for which he needs the goods and depends on the skill and judgement of the seller whose business is to supply goods of that description, there is an implied condition that the goods shall be reasonably fit for that purpose;
- (ii) If the buyer purchasing an article for a particular use is suffering from an abnormality and it is made known to the seller at the time of sale, implied condition of fitness will apply.
- (iii) If the buyer purchases an article under its patent or other trade name and relies on sellers skills and judgement which he makes known to him, the implied condition that are articles are fit for a particular purpose shall apply.
- (iv) If the goods can be used for a number of purposes the buyer must tell the seller the particular purpose for which he required the goods otherwise implied condition of fitness of goods for a particular purpose will not apply.

- (v) Where the goods are bought by description from a seller who deals in goods of that description whether he is the manufacturer or producer or not, there is an implied condition that the goods are of merchantable quality.
- (vi) An implied condition as to quality or fitness for a particular purpose may be annexed by the usage of trade or custom;

In a sale by sample there is an implied condition that

- (a) The bulk shall correspond with the sample in quality;
 - (b) The buyer shall have reasonable opportunity of comparing the bulk with the sample; and
 - (c) The goods shall be free from any defect, rendering them unmerchantable;
- (viii) In the case of eatables and provisions in addition to the implied condition of merchantability, there is an implied condition that the goods shall be wholesome.
- (b) Powers of the Central Government to authorize certain employers to maintain Provident Fund Accounts under the Employees' Provident Funds and Misc. Provisions Act, 1952 (Section 16A):

Under Section 16A of the Employees Provident Fund and Miscellaneous Provisions Act, 1952, the Central Government may, on an application made to it in this behalf by the employer and majority of employees in relation to an establishment employing 100 or more persons, authorize the employer, by an order in writing, to maintain a provident fund account in relation to the establishment subject to such terms and conditions as may be specified in the scheme.

The Central Government shall, however, not make such authorization if the employer of such establishment had committed any default in the payment of provident fund contribution or had committed any other offence under the Act during the three years immediately preceding the date of such authorization.

When an establishment is authorized to maintain a provident fund account, the employer in relation to such establishment shall maintain such account, submit such return, deposit the contribution in such manner, provide for such facilities for inspection, pay such administrative charges and abide by such other terms and conditions, as may be specified in the scheme.

Any authorization so made by the Central Government may be cancelled by an order in writing if the employer fails to comply with any of the terms and conditions of the authorization or where he commits an offence under any of the provisions of the Act. Before canceling the authorization, the Central Government shall give the employer a reasonable opportunity of being heard.

Question 5

- (a) 'A' draws a cheque for Rs.50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer.

What is the liability of the drawer.

(6 marks)

- (b) Explain the rules of set on and set off of allocable surplus under the Payment of Bonus Act.*

(6 marks)

Answer

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

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

- (b) Where for any accounting year, the allocable surplus exceed the amount of maximum bonus payable to the employees in the establishment under Section 11 of the Payment of Bonus Act, 1965, the excess shall, subject to the limit of 20% of the total salary or wage of the employees employed in the establishment in that accounting year, be carried forward for being set on in the succeeding accounting year and so on up to and inclusive of the 4th accounting year. This excess is to be utilized for the purpose of payment of bonus as illustrated in the 4th Schedule.

There may be a case where there is no allocable surplus or where the allocable surplus falls short of the amount of minimum bonus payable to the employee under section 10 and there is no amount or sufficient amount carried forward and set on under the aforesaid provisions which could be utilized for paying minimum bonus. In such a situation minimum amount or the deficiency as the case may be, shall be carried forward for being set off in the succeeding accounting year and so on up to and inclusive of the 4th accounting year in the manner illustrated in the 4th Schedule.

Where in any accounting year any amount has been carried forward and set on and set off under Section 15, in calculating bonus for the succeeding accounting year, the amount of set on and set off carried from the earliest accounting year shall first be taken into account. [Section 15(4)].

Question 6

- (a) State the cases in which a banker is justified or bound to dishonour cheques.*

(6 marks)

- (b) PQR Cooperative Society Ltd., a Multi-state Cooperative Society desires to change its bye-laws in respect of the following matters:*

- (i) To increase the number of members of the board from existing 18 to 24.
- (ii) To increase the tenure of the directors from the present limit of 4 years to 6 years.
- (iii) To reduce the frequency of the board meetings from existing figure of 6 to 4 meetings in a year.

After completion of the required formalities, the society has made an application to the central registrar for registration of the amendments.

Examine the powers of the registrar to register the amendments in the light of the provisions of the Multi-state Cooperative Societies Act. (6 marks)

Answer

- (a) In the following cases in which a banker is bound or justified to dishonour cheques:
- (i) A banker is justified to dishonour a cheque in reference to payment of a post-dated cheque presented for payment before its ostensible date;
 - (ii) The banker is bound to pay a cheque only when it has 'sufficient funds of the drawer in his hands' otherwise not.
 - (iii) The banker is bound to honour his customer's cheque only when the funds of the customers in his hands are 'properly applicable to the payment of such cheques' otherwise not.
 - (iv) A banker is justified in refusing to honour a cheque which is irregular, or ambiguous, or drawn in a form of doubtful legality;
 - (v) A banker is justified in refusing payment of a cheque drawn by a customer having credit with one branch of the bank, where the cheque is drawn upon another branch in which he has no account or in which his account is overdrawn.
 - (vi) When the customer becomes insolvent, or an order of adjudication has been made against him, all his assets vest in the official assignee, and the banker should thereafter refuse to pay his customer's cheques.
 - (vii) The duty and authority of a banker to pay a cheque drawn on him by his customer is determined by the customer countermending payment;
 - (viii) Notice of death of the customer determines the authority of the banker to dishonour a cheque, but if the banker pays a cheque before he receives notice of his customer's death, payment is valid.
 - (ix) If garnishee or other legal order from a court attaching or otherwise dealing with money in the hands of the banker, is served on the banker.
 - (x) If it contains material alterations, irregular signature or irregular endorsement.
 - (xi) If it is stale, that is if it has not been presented within reasonable period.
- (b) According to Section 10 of the Multi-State Co-operative Societies Act, 2002 every society can make its own bye-laws which are consistent with the provisions of the Act and not contrary to the provisions of the Act. Accordingly,

- (i) The increase in the number of members of the board from the existing strength of 18 to 24 is not permissible because the maximum limit prescribed under the Act is 21.
- (ii) The tenure of the directors from the present limit of 4 to 6 years is not permissible because there is a ceiling of 5 years tenure for the directors and other office bearers including the chairperson of the society.
- (iii) There are no restriction on the frequency of the board meetings yet the society can reduce the board meetings from 6 to 4.

Thus, the Central Registrar will not approve in the bye-laws in respect of (i) and (ii) items referred to above. Where the Central Registrar registers the amendment, he shall forward a copy of the registered amendments together with a certificate, within a period of one month from the date of registration thereof which shall be conclusive evidence of such amendment(s).

Question 7

Answer any *four* of the following:

- (a) *The management of Ambitious Properties Ltd., has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the object clauses of the Memorandum of Association to enable the company to carry on such business. State with reasons whether its object clause can be amended. State briefly the procedure to be adopted for change in the object clause.*
- (b) *Several small depositors of Overtrading Company Ltd., have made complaints about non-refund of the deposits after due date. Explain briefly (1) the meaning of small depositor and (2) the duty of the company after the default has taken place in the matter of repayment of the deposits.*
- (c) *Explain briefly the meaning of sweat equity shares and the steps that a company has to take for issue of such shares.*
- (d) *A company is required to pay dividend to its shareholders within 30 days of its declaration. State the circumstances when a company will not be deemed to have committed any offence even if it does not pay within 30 days.*
- (e) *The Articles of Association of a private limited company contain provisions restricting the right to transfer shares and limiting the number of members to fifty. What restrictions are generally incorporated in the articles in restricting the right to transfer shares?*

(5 x 4 = 20 marks)

Answer

- (a) Section 17(1) of the Companies Act, 1956 permits a company to alter its objects for the under mentioned purposes:
 - (1) to carry on business more economically;
 - (2) to attain the main purpose of the company by new and improved means;

- (3) to carry on some business which the existing circumstances may conveniently or advantageously be combined with the existing business;
- (4) to change and enlarge the local area of operations;
- (5) to restrict or abandon any of the existing objects;
- (6) to sell or dispose of the whole or any part of the undertaking;
- (7) to amalgamate with any other company or body of persons.

The case of the company is covered under point No. 3 above and therefore the company can amend its object clause to take up the business of Food Processing activity.

PROCEDURE

The company should amend the object clause by passing a special resolution in a general meeting.

File with the Registrar of companies, a copy of the special resolution within one month from the date of passing of such resolution together with a printed copy of the memorandum as altered and the Registrar shall register the same and certify the registration under his hand written one month from the date of filing of such documents. The certificate is a conclusive evidence that all the requirements with respect to the alteration have been complied with and the memorandum so altered shall be the Memorandum of Association of the company.

- (b) **Meaning of Small Depositor:** According to Section 58AA of the Companies Act, 1956, a small depositor means a depositor who has deposited in a financial year a sum not exceeding Rs. 20,000/- in a company and includes his successors, nominees and legal representatives.

Duty of company in case of default in repayment of deposits: Every company accepting deposits from small depositors should intimate the Company Law Board/Tribunal within 60 days of the date of default the name and address of each small depositor to whom it had defaulted in repayment of deposit or interest thereon. Thereafter, the company should also give intimation to the Company Law Board/ Tribunal on a monthly basis.

- (c) **Meaning of Sweat Equity Shares:** According to Section 79A of the Companies Act, 1956, Sweat Equity Shares means equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available right in the nature of intellectual property rights or value additions by whatever name called.

Steps for issue of Sweat Equity Shares: The company has to take the following steps for issue of sweat equity shares:

- (i) A special resolution is to be passed authorising the issue of sweat equity shares.
- (ii) The special resolution should specify the number of shares, current market price, consideration, if any, and the class or classes of directors or employees.

- (iii) At least one year should have elapsed since the date on which the company was entitled to commence business.
 - (iv) In the case of a listed company, the sweat equity shares can be issued in accordance with the regulations made by SEBI in this behalf. In the case of unlisted company, the shares are to be issued in accordance with the guidelines as may be prescribed. (Unlisted companies issue of sweat equity share Rules, 2003).
- (d) Section 207 of the Companies Act, 1956 provides for the following cases when failure to pay dividend within 30 days of its declaration is not deemed to be an offence:
- (i) Where dividend could not be paid due to operation of any law;
 - (ii) Where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with;
 - (iii) Where there is a dispute regarding the right to receive dividend;
 - (iv) Where the dividend has been lawfully adjusted by the company against any sum due to it (company) from the shareholder; or
 - (v) Where for any reason, the failure to pay the dividend or to post the dividend warrant within the period of 30 days from the date of declaration was not due to any default on the part of the company.
- (e) The right of transfer of shares and limiting the number of members to 50 is generally restricted in the following manner:
- (i) By authorising the directors to refuse transfer of shares to persons whom they do not approve or by compelling the shareholder to offer his shareholding to the existing shareholders first. It may be noted that it can only restrict the right of sale to a member. On this consideration, the articles usually provide that before selling or transferring his share by the shareholder, the directors must be communicated in writing of such intention of the shareholder.
 - (ii) By specifying the method for calculating the price at which the shares may be sold by one member to another. Generally, it is left to be determined either by the auditor of the company or by the company at a general meeting.
 - (iii) By providing that the shareholders who are employees of the company shall offer the shares to specified persons or class of persons when they leave the company's service or from other sources in case of under-subscribed issues, within 60 days from the date of closure of the issue, the company shall refund forthwith the subscription amount in full without interest and with interest @15% p.a. if not paid within 10 days after expiry of the said 60 days.

Question 8

- (a) *State briefly the provisions relating to minimum subscription and consequence of non-receipt of minimum subscription as per the Companies Act, 1956 and the provisions as per SEBI guidelines.* (5 marks)

- (b) Write a note on the powers of the Central Government in regard to conversion of debentures and loans into shares of the company under the following heads:
- (i) When terms of issue of such debenture or terms of loan do not include term providing for an option of conversion;
 - (ii) Matters considered in determining the terms and conditions of such conversion.
 - (iii) Remedy available to the company if conversion or terms of conversion is not acceptable to it. (5 marks)

Answer

- (a) In terms of Section 69(1) of the Companies Act, 1956 every prospectus for shares must contain an indication as to the minimum amount which in the opinion of the Board of directors must be raised. The amount so stated in the prospectus which shall be reckoned exclusively of any amount otherwise than in money is referred to as the 'minimum subscription'. The amount payable on application of each share shall not be less than 5% of the nominal amount of the shares.

If the applications are not received by the company for such quantum of shares for making minimum subscription within 120 days of the issue of prospectus, all moneys received from the applicants for shares shall be repaid without interest. If such money is not repaid within 130 days after the issue of prospectus, money will be repaid with interest @6% p.a. after the expiry of 130 days.

POSITION AS PER SEBI GUIDELINES: As per SEBI guidelines, the minimum subscription in respect of public and rights issue shall be 90% of the issue amount. The requirement of 90% minimum subscription shall not be mandatory in case of offer for sale of securities. In case of non-receipt by the company of 90% of the issued amount from public subscription plus accepted development from underwriters or from other sources in case of under-subscribed issues, within 60 days from the date of closure of the issue, the company shall refund forthwith the subscription amount in full without interest and with interest @15% p.a. if not paid within 10 days after expiry of the said 60 days.

- (b) (i) Under Section 81 of the Companies Act, 1956 where any debentures have been issued to or loans have been obtained from the Government by a company, whether such debentures have been issued or loans have obtained before or after the commencement of Companies Amendment Act, 1963 (w.e.f. 1.1.1964), the Central Government may, if in its opinion it is necessary in the public interest so to do, by order direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include term providing for an option for such conversion.
- (ii) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances:
- (i) The financial position of the company;

- (ii) The terms of issue of the debentures or the terms of the loans, as the case may be;
- (iii) The rate of interest payable on the debentures or the loans;
- (iv) The capital of the company, its loan liability, its reserves, its profits during the preceding five years; and
- (v) The current market price of the shares in the company.

A copy of every order proposed to be issued by the Central Government shall be laid in draft before each House of Parliament.

The above powers of the Central Government are exercised notwithstanding anything contained in sub-sections (1), (2) and (3) of Section 81 of the Companies Act, 1956.

(iii) Remedies open to the company

If the terms and conditions of such conversion are not acceptable to the company, the company may, within 30 days from the date of communication of such order or within such further time as may be granted by the Court, prefer an appeal to the court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government shall be final and conclusive.

Question 9

- (a) State the procedure for passing a resolution by Postal Ballot. (5 marks)
- (b) State what is meant by "Quorum" and when does quorum be considered immaterial under the provisions of the Companies Act, 1956. (5 marks)

Answer

- (a) A listed public company and in case of resolutions relating to such business as the Central Government may, by notification, declare to be conducted only by postal ballot, shall get any resolution passed by means of a postal ballot, instead of transacting the business in general meeting of the company. The procedure laid down in Section 192A is as under:
 - (i) Where a company decides to pass any resolution by resorting to postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent within a period of 30 days from the date of posting of the letter;
 - (ii) The notice shall be sent by registered post acknowledgement due or by any other method as may be prescribed by the Central Government in this behalf, and shall be annexed with the notice a postage pre-paid envelope for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period;
 - (iii) The board of directors shall appoint one scrutinizer, who is not in employment of the

company, may be a retired judge or any person of repute, who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner;

- (iv) The scrutinizer will be in position for 35 days (excluding holidays) from the date of issue of notice for annual general meeting. He is required to submit his final report on or before the said period.
- (v) If a resolution is assented to by a requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.

For this purpose the scrutinizer willing to be appointed is available at the registered office of the company for ascertaining the requisite majority.

- (vi) If a shareholder sends his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defences or destroys the ballot paper or declaration of the identity of shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or both;
 - (vii) The scrutinizer shall maintain a register to record the consent received, including electronic media, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form. The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/registers safely till the resolution is given effect to.
 - (viii) As per the Explanation, 'Postal Ballot' includes voting by electronic mode.
- (b) Quorum means the minimum number of members that must be present in order to constitute a meeting and transact business thereat. Thus quorum represents the number of members on whose presence the meeting of a company can commence its deliberations. Under the articles provide for a larger number, 5 members personally present in the case of a public company (other than a public company which became public by virtue of Section 43A, now deleted) and 2 members in case of a private company constitute the quorum for a general meeting as given in Section 174 of the Companies Act, 1956. The words 'personally present' excludes proxies. However, the representative of a body corporate appointed under Section 187 or the representative of the President or Governor of a State appointed under Section 187A is a member personally present for the purpose of counting quorum.

If all the members are present, it is immaterial that the quorum required is more than the total number of members. If for example, the articles of a private company provide that 4 members personally present shall be a quorum and the number of members is reduced to 3, the question of quorum will not arise when all the 3 members attend the meeting.

Question 10

- (a) *State the provisions of the Companies Act regarding calling and holding an extraordinary general meeting with respect to:*
- (i) *Number of members entitled to requisition a meeting.*
 - (ii) *Power of the tribunal to order meeting to be called under Section 186. (5 marks)*
- (b) *The minutes of the meeting must contain fair and correct summary of the proceedings thereat. Can the Chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a Director of the company. The Chairman declines to do so. State how the matter can be resolved. (5 marks)*

Answer

- (a) (i) **Number of members entitled to requisition an extraordinary general meeting:**
- (a) in the case of a company having a share capital, such number of members who hold at the date of requisition, not less than 1/10th of such of the paid up capital of the company as at that date carries the right of voting in regard to that matter;
 - (b) in the case of a company not having a share capital, such number of members who have at the date of deposit of requisition not less than 1/10th of the total voting power of all the members having at the said date a right to vote in regard to that matter.
- (ii) **Power of Tribunal to order meeting to be called under Section 186:**
- If for any reason it is impractical to call a meeting, other than an annual general meeting, in any manner in which meetings of the company may be called, or hold or conduct the meeting of the company in the manner prescribed by the Act or the articles, the Tribunal may, either on its own motion or on the requisition of:
- (a) any director of the company or (b) of any member of the company who would be entitled to vote at the meeting:
 - (a) Order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and
 - (b) Give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying, or supplementing in relation to the calling holding and conducting of the meeting, the operations of the provisions of the Companies Act, 1956 and of the company's articles. The Tribunal may give direction that one member present in person or by proxy shall be deemed to constitute a meeting with such order shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.
 - (b) Under Section 193(5) of the Companies Act, 1956 any matter which in the

opinion of the Chairman of the meeting:

- (i) is or could reasonably be regarded as defamatory of any person;
- (ii) is irrelevant or immaterial to the proceedings, or
- (iii) is detrimental to the interests of the company,

the Chairman shall exercise an absolute discretion in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified above.

Since the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes, the insistence of the shareholders will be of no avail.