

PAPER – 3 : LAW, ETHICS AND COMMUNICATION

QUESTIONS

The Indian Contract Act, 1872

1. (a) Vijay gifted the whole of his property to his daughter on the condition that she should pay Rs.200 per month to her uncle (father's brother). Later, she refused to pay her uncle on the ground that she did not receive any consideration from her uncle. Is she justified?
(b) Mr. Vipin is a professional dancer. Mr. Pandey engages him to dance at a party he is giving for his business associates. But a day prior to the party Mr. Vipin's son passes away and he could not perform the dance recital. In case Mr. Pandey sues Mr. Vipin, does the latter have any protection under the law?
2. What is meant by "Undue Influence"? When is a contract said to be induced by undue influence?
3. Enumerate the differences and similarities between 'wagering agreements' and 'contingent contracts'.
4. (a) Ajit sees a book displayed in a shelf of a book shop with a price tag of Rs. 95. Ajit tenders Rs.95 at the counter and asks for the book. The bookseller refuses to sell saying that the book has already been sold to someone else and he does not have another copy of that book in the stock. Is the bookseller bound to sell the book to Ajit?
(b) X offered to sell his house to Y for Rs.50,000. Y accepted the offer by E-mail. On the next day Y sent a fax revoking the acceptance which reached X before the E-mail. Is the revocation of acceptance valid? Would it make any difference if both the E-mail of acceptance and the fax of revocation of acceptance reach X at the same time?
5. Mr. Mohan an industrialist has been fighting a long drawn litigation with Mr. Kamal, another industrialist. To support his legal campaign Mr. Mohan enlists the services of Mr. Anil a legal expert stating that an amount of Rs.5 lakhs would be paid, if Mr. Anil does not take up the brief of Mr. Kamal. Mr. Anil agrees, but at the end of the litigation Mr. Mohan refuses to pay. Decided whether Mr. Anil can recover the amount promised by Mr. Mohan under the provisions of the Indian Contract Act, 1872.
6. (a) Ramesh instructed Suresh, a transporter, to send a consignment of apples to Mumbai. After covering half the distance, Suresh found that the apples will perish before reaching Mumbai. He sold the same at half the market price. Ramesh sued Suresh. Will he succeed?

The Negotiable Instrument Act, 1881

- (b) Calculate the date of maturity in the following cases:

- (i) A bill of exchange dated 15th February, 2008 payable two months after date.
 - (ii) A promissory note dated 29th January, 2008 made payable one month after date.
 - (iii) A bill of exchange dated 2nd March, 2008 was made payable one month after date. It falls due on 5th April, 2008, which happens to be a public holiday. If in the instant case, it is a cheque what shall be the date of maturity?
7. (a) A cheque was dishonoured at the first instance and the payee did not initiate action. The cheque was presented for payment for the second time and again it was dishonoured. State in this connection whether the payee can subsequently initiate prosecution for dishonour of cheque.
- (b) A Bill is drawn payable at No. 19J, Pkt-2, Mayur Vihar, New Delhi, but does not contain the drawee's name. Mr. Mehta who resides at the above address accepts the bill. Is it a valid Bill?
8. (a) Write a brief note on different type of Hundis.
- (b) Point out any five distinctions between a promissory note and a bill of exchange.

The EPF & MP Act, 1952

9. (a) What is the meaning of 'factory' under the EPF & MP Act, 1952? Examine, with reference to case laws.
- (b) Write a note on the composition and functions of Central Board of Trustees under the EPF & MP Act, 1952.
10. (a) Examine the rules relating to review of order regarding determination of applicability of the EPF & MP Act, 1952 and the money due.

The Payment of Bonus Act, 1965

- (b) Can an employer pay production or productivity-linked bonus to his employees? Are there any conditions involved in payment of such bonus?
11. A Company in a particular accounting year suffered losses and hence was not able to pay even the minimum bonus to its workmen. State in this connection, whether the minimum bonus is payable irrespective of losses and whether under any circumstances, the Company may get exemption under the Payment of Bonus Act, 1965.
12. Examine the powers of Inspectors under the Payment of Bonus Act, 1965.

The Payment of Gratuity Act, 1972

13. What are the procedures for nominations under the Payment of Gratuity Act, 1972 in establishments for which the Central Government is the appropriate government?

The Indian Companies Act, 1956

14. What are the conditions for buy-back of shares by a company?
15. A Managing Director of a Company borrowed a sum of money by executing a document in which he forged the signature of two other directors who are required to sign as per requirements of the articles. Can the Company deny liability to creditors?
16. M/s Arya Engineering Ltd. was incorporated on 1.4.2007. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 1956 regarding the time limit for holding the first annual general meeting of the Company and the power of the registrar to grant extension of time for the first annual general meeting.
17. The management of Kamna Real Estate 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 object clause.
18. T, a share broker at Bombay Stock Exchange, is also the Secretary of XYZ Ltd. He applied for the allotment of 1000 equity shares being issued by the Company and paid the full amount. M, one of the clerks of T, owning no shares executed a transfer deed in favour of T without enclosing the share certificate. The Company without asking for the share certificate from M (the clerk) registered the transfer and issued a new share certificate. On declaration of dividend by the Company T was denied the right to get dividend on the grounds that the share certificate issued to T had no validity. T moves the Court praying the Court to declare the share certificate as valid and also claims for damages.

Examine the case and decide whether T's claim is valid. What would be your answer in case M is an officer of the Company, having no authority to issue share certificate, issues a forged certificate?
19. What are the effects of irregular allotment of shares?
20. What are SEBI guidelines on issue of bonus shares?

ETHICS

21. What are the United Nations' guidelines themes on consumer protection? Enumerate also the consumer rights enshrined therein.
22. Examine how discrimination can creep into employment issues.
23. Write a note on corporate governance and its historical development in the Indian context.

24. Examine briefly at least four international initiatives/mechanisms for strengthening CSR.

BUSINESS COMMUNICATION

Communication Media

25. Elaborate advantages and limitations of Oral and Written communication.

Interpersonal Communication Skills

26. Discuss the functions of Interpersonal communication.

Consensus Building

27. Explain Consensus Building.

Press Releases, Organisation Values and Corporate Culture

28. Write short notes on

- (a) The Press Communiqué
- (b) Organization Values
- (c) Corporate Culture

Affidavit

29. Explain Affidavit and its model format.

Indemnity Bond

30. What is an Indemnity Bond? Supply a format for Indemnity Bond.

SUGGESTED ANSWERS/HINTS

BUSINESS LAWS

The Indian Contract Act, 1872

1. (a) That consideration can legitimately move from a third party is an accepted principle of law in India though not in England. In *Chinaya vs. Ramaya* (1881) A.Mad. 13.7., a mother, 'A' had made over certain property to her daughter with condition that the former's brother should be paid annuity by the latter. The latter (i.e. the daughter) the same day executed the document agreeing to pay annuity accordingly but declined to pay after sometime. A's brother sued A's daughter. It was contended on behalf of A's daughter, that there was no consideration from A's brother and hence there was no valid contract. This plea was rejected on the ground that the consideration did flow from mother to daughter and such consideration from third

party is sufficient to enforce the promise of daughter of 'A' to pay annuity to A's brother.

In the given case if Vijay's daughter had made a promise to her uncle then she would be bound by the promise.

- (b) When performance of a promise becomes impossible on account of subsequent developments of events or change in circumstances, which are beyond the contemplation of parties, the contract becomes void. Such supervening impossibility can arise due to variety of circumstances as stated below :
 - (a) Accidental destruction of the subject matter of the contract.
 - (b) Non-existence or non occurrence of a particular state of things.
 - (c) Changes in law.
 - (d) Incapacity to perform a contract of personal services.

As can be seen above in point (d), in cases of contract of personal service, disability or incapacity to perform, caused by an act of God e.g. illness, constitutes lawful excuse for non-performance of the contract (Robinson vs. Davison L.R. 6 Ex. 269). Hence, Mr. Vipin has a valid excuse.

- 2. A contract is said to be induced by "undue influence" where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other [section 16 (1) of the Indian Contract Act, 1872]. Thus, merely being in a position to dominate is not sufficient, but the party should have used that position to dominate the other.

When a person is deemed to be in a position to dominate – Generally, a person is deemed to be in a position to dominate the will of another – (a) where he holds a real or apparent authority over the other, or where he stands in a fiduciary relation to the other; or (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reasons of age, illness, or mental or bodily distress, [section 16(2)]. These are only illustrations. There can be other situations also.

Illustrations of undue influence – (a) A, having advanced money to his son, B, during his minority, upon B's coming of age obtains, by misuse of parental influence, a bond from B for a greater amount than the sum due in respect of the advance. A employs undue influence. (b) A, a man enfeebled by disease or age, is induced, by B's influence over him as his medical attendant, to agree to pay B an unreasonable sum for his professional service. B employs undue influence. (c) A, being in debt to B, the money lender of his village, contracts a fresh loan on terms which appear to be unconscionable. It lies on B to prove that the contract was not induced by undue influence. (d) A applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan on these

terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence [section 16].

3. Distinction and similarities between wagering agreement and contingent contract are as follows – [Note that there cannot be any 'wagering contract', as wagering agreement is void and cannot become 'contract'].

Wagering Agreement	Contingent Contract
Differences	
A wagering agreement is a promise to give money or money's worth, depending on a future uncertain event.	A contingent contract is to do or not to do something if some event does or does not happen [section 32].
In a wager, the future event is the only event. It is the sole determining factor of contract in wager.	In contingent contract, the future uncertain event is collateral to the contract.
In a wagering agreement, parties have no pecuniary or financial interest in subject matter except the winning or losing amount or wager.	In contingent contract, the party has pecuniary financial interest in the event.
Wagering agreement is a game of chance. Wagering agreement consists of reciprocal promises. It is a set of mutual promises, each of them conditional on the happening or not happening of a future uncertain event.	A contingent event is uncertain but not a game of chance. A contingent contract may or may not contain reciprocal promises.
In a wager, the uncertain event is beyond the power of both parties.	In contingent contract, the event may be within the power of one of the parties.
Wagering agreement is void.	Contingent contract is valid.

Similarities

Performance of agreement depends on happening or not happening of a future uncertain event.	Performance of agreement depends on happening or not happening of a future uncertain event.
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4. (a) No. a display of goods with prices marked thereon is only an invitation for offer, and not an offer itself.
(b) Yes, the revocation of acceptance is valid because the acceptor may revoke his acceptance at any time before the letter of acceptance reaches the offeror. If the letter of acceptance (E-mail) and the Fax of revocation of acceptance reach X at the same time, the formation of contract will depend on the fact that which of the two is

opened first by Y. If X reads the Fax letter first, revocation is valid but if he reads the E-mail first, revocation is not possible.

5. Agreement in restraint of trade is one wherein a person is restrained from exercising his lawful profession, trade or business of any kind and is to that extent void. However one of the exceptions to agreement in restraint of trade is in respect of "SERVICE AGREEMENTS" i.e. an agreement by which a person agrees not to carry on any service within the term of his agreement. Such a restriction will not amount to an agreement in restraint of trade.

This case of Mr. Anil and Mohan falls in the category of an exception to an agreement in restraint of trade.

Conclusion: Mr. Anil can recover the amount from Mr. Mohan.

6. (a) An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances.

A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here the agent acts in an emergency and acts as a man of ordinary prudence. In the given case Suresh had acted in an emergency situation and Ramesh will not succeed against him.

The Negotiable Instrument Act, 1881

- (b) i. The maturity date is on third day after April 15th, 2008 i.e., 18 April, 2008.
ii. The date of maturity is 3rd March, 2008.
iii. The maturity date will be 4th April, 2008 i.e., the previous working day which is not a public holiday. However, if the instrument is a cheque there is no question of calculation of date of maturity as it is always payable on demand.
7. (a) The holder/payee of a cheque cannot initiate prosecution for an offence under section 138 of the Negotiable Instruments Act, 1881 for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action.
(b) Yes, it is a valid Bill and Mr. Mehta is liable thereon. The drawee may be named or otherwise indicated in the Bill with reasonable certainty. In the present case, the description of the place of residence indicates the name of the drawee and Mr. Mehta, by his acceptance, acknowledges that he is the person to whom the bill is directed (Gray vs Milner 1819, 2 Taunt 739).
8. (a) The common types of hundis are the following:
(i) Shah Jog Hundi : In this case, apart from a drawer and a drawee, there is

another party to the instrument known as Shah (a financier of repute). It is only payable to Shah. The function of the Shah is that he presents the hundi, when it eventually comes to him for payment to the drawee on behalf of the holder. In this case, this Shah acts like a banker to whom a cheque has been endorsed specially.

- (ii) **Jokhmi Hundi** : It is documentary bill which is drawn by a consignor or the consignee in respect of goods shipped by the consignor. The name of the vessel by which the goods have been shipped is also mentioned in the hundi. The consignee is not required to pay the hundi unless the goods reach their destination. In consequence, the consignor or the person with whom he has negotiated the hundi, has to suffer the loss in case the ship is sunk.
- (iii) **Nam jog Hundi** : It is hundi payable to the party named therein or to his order. The party, however, has a right to endorse it in favour of any other person as can be done in case of any other bill of exchange.
- (iv) **Jawabee Hundi** : It is an instrument for remitting money and takes the form of ordinary letter advising the party that he may collect money from a banker. The remitter hands over the hundi to his banker who in turn endorses it to a correspondent residing in the town in which the payee is resident. The correspondent on receiving the letter forwards it to the payee. The payee on presenting the letter collects the amount from the correspondent.

(b) Some five distinctions between a promissory note and a bill of exchange :

Promissory Note	Bill of Exchange
It contains a promise to pay	It contains an order to pay
The liability of the maker of a note is primary and absolute (Section 32).	The liability of the drawer of a bill is secondary and conditional. He would be liable if the drawee, after accepting the bill fails to pay the money due upon it provided notice of dishonour is given to the drawer within the prescribed time (Section 30)
It is presented for payment without any previous acceptance by maker.	If a bill is payable some time after sight, it is then required to be accepted either by the drawee himself or by some one else on his behalf, before it can be presented for payment.
The maker of a promissory note stands in immediate relationship with the payee (Explanation to Section 44) and is primarily liable to the payee or the holder.	The maker or drawer of an accepted bill stands in immediate relationship with the acceptor and the payee (Explanation to Section 44).

It cannot be made payable to the maker himself, that is the maker and the payee cannot be the same person.	In the case of bill, the drawer and payee or the drawee and the payee may be the same person.
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The EPF & MP Act, 1952

9. (a) Provident Fund Act applies to every factory employing 20 or more persons engaged in an industry specified in Schedule I [Section 1(3)]. Hence, the definition of 'factory' is important. 'Factory' means any premises, including the precincts thereof, in any part of which a manufacturing process is being carried on or is ordinarily so carried on, whether with the aid of power or without the aid of power [Section 2(g)]. As per Section 2(i-c), 'manufacture' or 'manufacturing process' means any process for making, altering, repairing, ornamenting, finishing, packing, oiling, washing, cleaning, breaking up, demolishing or otherwise treating or adapting any article or substance with a view to its use, sale, transport, delivery or disposal. Thus, this definition is very wide. It includes workshop for repairing and servicing of cars. – Lawly Sen v. RPFC (1959) 1 LabLJ 272 = AIR 1959 Pat 271.

Printing press of University is 'factory' within meaning of Section 2(g), although it is run by a larger organisation carrying on other activities falling outside the PF Act. – Andhra University v. RPFC(1985) 4 SCC 509 = AIR 1986 SC 463.

Industries as per Schedule I : The industries to which the Act applies are specified in Schedule I to the PF Act. As per Section 4, the Central Government can add any industry to the schedule by issuing a notification. Under these powers, various industries have been added from time to time. The schedule covers almost all types of industry, including cement, cigarettes, iron and steel, textiles, chemicals, food products, aerated water, paper and paper products, electrical, mechanical and general engineering products, beedi, automobile repairing and servicing, medical and pharmaceutical preparations, brick making etc. – Practically, all organised industries are covered under the Act. [However, tea factories in Assam have been exempted vide para 1(3)(a) of EPF Scheme].

- (b) The Board consists of the following – (a) Chairman and Vice Chairman are appointed by Central Government (aa) Central Provident Fund Commissioner as ex-officio member (b) Not more than 5 officials of Central Government (c) Not more than 15 persons representing State Governments (d) 10 persons representing employers appointed by Central government in consultation with association of employers (e) 10 persons representing employees appointed by Central Government in consultation with employees. Thus, the Central Board has about 43 members.

Functions of Central Board : The fund of EPS Scheme under Section 5, Employees Pension Scheme under Section 6A and Employees Deposit Linked

Insurance Scheme (EDLI) under Section 6C is vested in the Central Board of Trustees. The fund is administered by them as provided in the scheme. [Section 5A(3)]. The Central Board will perform other functions as may be required under any provisions of PF scheme, pension scheme and insurance scheme [Section 5A(4)].

Accounts, audit and report : Income and Expenditure accounts will be maintained by Central Board in such form and manner as specified by Central Government in consultation with Comptroller & Auditor General (C&AG) [Section 5A(5)].

10. (a) Any person aggrieved by order under Section 7A(1) can make application for review of the order in following cases – (a) if new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence (b) there is some mistake or error apparent on the records or (c) any other sufficient reason. – No application for review can be made if appeal was filed.

The officer can himself review the order on his own motion. [Section 7B(1)]. The officer can either reject the application for review if there are not sufficient grounds for review, or he can grant the review. [Section 7B(4)]. Appeal cannot be filed against order rejecting the application for review. However, if fresh order is passed after the review, appeal can be filed against such order [Section 7B(5)].

Application for review should be made within 45 days in form 9. [Para 79A of EPF Scheme].

In *Balu Fire Clay Niwas v. U.O.I.*, 2003 LLR 578 (Jhar HC), it was held that when statute provides for review, it cannot be contended that petitioner should have filed appeal against the order. It was also held that review petition should be disposed of by a speaking order.

The Payment of Bonus Act, 1965

- (b) There may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, as is payable under the Payment of Bonus Act. Section 31A of the Payment of Bonus Act, inserted by the Amendment Act, 1976, allows such an agreement/settlement made either before or after the commencement of this Amendment Act, 1976. Accordingly, when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restrictions imposed by Section 31A:
- (a) Any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.
- (b) If the bonus payable under such agreement exceeds 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

Effect of laws and agreements inconsistent with the Act (Section 34) : Subject to the provisions of Section 31A, the provision of the Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force or in the terms of any award, agreement or contract of service.

Saving (Section 35) : Nothing contained in this Act shall be deemed to affect the provisions of the Coal Mines Provident Fund, Family Pension and Bonus Scheme Act, 1948 (46 of 1948) or of any scheme made thereunder.

11. Power of Exemption (Section 36)

Though the Act creates liability on the part of employer to pay the minimum, bonus the obligation is subject to exemption under Section 36. If the appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishment is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Official Gazettee, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishment from all or any of the provisions of this Act.

The expression "financial position" includes loss suffered by the establishment during the accounting year. The expression "other relevant circumstances" will include every consideration as to whether the workmen had principally contributed to the financial loss of the Company during that accounting year.

If the bonus liability is negligible compared to loss suffered, Company should not be relieved of liability to pay minimum bonus.

If the losses sustained by the employer is not due to any misconduct on the part of employees, the employer is liable to pay statutory minimum bonus. [J.K. Chemicals Ltd. vs. Govt. of Maharashtra (1996) Bombay H.C.].

12. An inspector has to ascertain whether any of the provisions of this Act has been complied with. And for this purpose, he may: (i) require an employer to furnish such information as he may consider necessary; (ii) at any reasonable time and with assistance, if any, as he thinks fit, enter any establishment or any premises connected therewith and require anyone found in charge thereof to produce before him for examination any account books, registers and other documents relating to the employment of persons or the payment of salary or wage or bonus in the establishment; (iii) examine with respect to any matter relevant to any of the purpose aforesaid, the employer, his agent or servant or any other person whom the inspector has reasonable cause to believe to be or to have been an employee in the establishment; (iv) make copies of or make extracts from, any book, register or other document maintained in relation to the establishment; (v) exercise such other powers as may be prescribed.

The inspector appointed as aforesaid is deemed to be a public servant under Indian Penal Code.

Any person whom an inspector calls upon to produce any account book, register or other document or to give information, shall be legally bound to do so.

The provisions of Section 27 do not empower an Inspector to require a banking company to furnish or disclose any statement or to produce or give inspection of, any of its books of accounts or other documents, which a banking company cannot be compelled to furnish, disclose, produce or give inspection of, under Section 34-A of the Banking Regulation Act, 1949.

The Payment of Gratuity Act, 1972

13. In case of employees in establishment where Central Government is 'Appropriate Government', nomination shall be made in form 'F' in duplicate. Nomination shall be given to employer or sent by registered post. Employee should get proper receipt or acknowledgement from employer [rule 6(1) of Payment of Gratuity Rules]. Employer should fill details in the form and return one copy to the employee.

Nomination shall be normally submitted within 30 days after completion of service of one year. However, it can be submitted later also.

An employee who did not have family but acquired family later should submit nomination form in duplicate in form G within 90 days after acquiring family.

Notice of change in nomination shall be filed in form H.

The Indian Companies Act, 1956

14. The company shall not purchase its own shares or other specified securities unless:
 - (a) the buy-back is authorized by its articles;
 - (b) a special resolution (also Declaration of Solvency to be filed with ROC & SEBI, in case shares are listed on any recognized stock exchange), authorising the buy-back is passed in general meeting of the company;
 - (c) the buy-back is or less than 25% of the total paid-up capital and free reserves of the company;
provided that the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
 - (d) the ratio of the debt owed by the company is not more than twice the capital and free reserves after such buy-back;

provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies. The expression 'debt' includes all amounts of unsecured and secured debts.

The expression "free reserves" shall have the same meaning assigned to it in Clause (b), Explanation to Section 372A, which means those reserves which, as per latest audited balance-sheet of the company are free for distribution as dividend and shall include balance to the credit of the securities premium account but shall not include share application money.

- (a) All the shares or other specified securities for buy-back are full paid-up;
- (b) The buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by SEBI in this behalf;
- (c) The buy-back in respect of shares or other specified securities other than those specified in Clause (f) is in accordance with guidelines as may be prescribed. [Sections 77A(2) and 77A(6)].

15. In *Ruben v. Great Fingall Consolidated*, it was held that Doctrine of Indoor Management could not be extended to case of forgery. Transaction effected by forgery is void ab initio. However, in *Sri Kishan v. Mondal Bros. & Co.* it was held that a Company may be held liable for any fraudulent acts of its officers acting under ostensible authority. Therefore, in the instant case, Company will not be allowed to deny liability in order to defeat bona fide claims of the creditor.

16. A company shall hold its first Annual General Meeting (AGM) within 18 months from the date of its incorporation.

It shall not be necessary for a company to hold any AGM in the year of its incorporation or in the following year if it holds AGM within 18 months from the date of its incorporation.

In the given case the company M/s Arya Engineering Ltd. was incorporated on 1.4.2007. It should have conducted its first AGM within a period of 18 months i.e. 30th September 2008. However the company has not held the meeting till date, thus violating the provisions of Section 166 of the Companies Act. It is to be further noted that the Registrar does not have power to grant extension of time to hold the first AGM.

17. Since the present objects clause of the company does not contain any enabling provision to carry on the proposed business, the objects clause will have to be altered. According to Section 17, objects clause can be amended only for 7 special reasons. Loss cannot be considered as one of the reason to enable the company to amend the object clause.
18. If a Company authorises the issue of a share certificate stating that the person named therein is the registered holder of certain shares, it cannot afterwards allege that that

person is not entitled to those shares (*Praga Tools Corporation v. MRT Patny*). Thus a share certificate is a declaration by the Company to the whole world that the person in whose name the certificate is made out, and to whom it is given, is a shareholder in the Company.

Further in the case *Dixon v. Kennaway & Co.*, the Company was estopped from denying the validity of the certificate and was held liable to damages. The facts of the case were similar to that of what has been asked in the question. Furthermore, if an officer of the Company, who has no authority to issue certificates, issues a forged certificate, there is no estoppel.

Thus based on the above explanation and the case ruling, T's claim is valid and the Company would be estopped from denying the validity of the share certificate. The answer would be different in the second case since the officer concerned has no authority to issue the certificate and issues a forged certificate.

19. When the shares are not allotted in pursuance of Sections 69 and 70 such an allotment is known as irregular allotment. In spite of the stringent provision of Sections 69 and 70, one may find that allotment has been made in utter contravention thereof. The directors may choose to take a chance and proceed to allot shares although minimum subscription has not been reached or a prospectus or statement in lieu of prospectus has not been filed. Such an allotment is treated by the Act not as void ab initio but as irregular.

The applicant for the shares may avoid the allotment. If he does so within the time specified by Section 71, namely,

- (a) where the allotment was made before the statutory meeting, within 2 months after the holding of statutory meeting of the company and not later; or
- (b) where no statutory meeting is required to be held by the company, within 2 months after the date of allotment and not later; or
- (c) where the allotment was made after the statutory meeting within 2 months of allotment [and not later] the allotment shall be voidable despite the fact that the company is in the course of being wound up.

Within the above-mentioned period, the allottee must intimate to the company that he wants to avoid the allotment. If legal proceedings are required to be taken, these need not be within the period of two months provided the notice of avoidance was served on the company within the aforesaid time, but they should be reasonably prompt thereafter if they are required to be brought [*Re. National Motor Mail Coach Co. (1908) 2 Ch.228*].

Furthermore, Sub-section (3) of Section 71 makes every director of a company, who knowingly contravenes or authorises the contravention of any of the provision of Section 69 or Section 70 with respect of allotment, liable to compensate the company and the

allottee for any loss, damages or costs which they may have sustained or incurred thereby. But the proceedings for such compensation can only be taken within two years from the date of allotment. As the allotment is only voidable at the option of the shareholder, the shareholder may keep the shares and yet sue the directors who have knowingly contravened either of the two Sections (69 and 70) to compel them to make good the loss to him as a result of the irregular allotment.

20. Guidelines for Bonus Issues

A listed company proposing to issue bonus shares shall comply with following:

- (a) No company shall, pending conversion of FCDs/PCDs, issue any shares by way of bonus unless similar benefit is extended to the holders to such FCDs/PCDs, through reservation of shares in proportion to such convertible part of FCDs or PCDs.
- (b) The shares so reserved may be issued at the time of conversion(s) of such debentures on the same terms on which the bonus issues were made.

The bonus issue shall be made out of free reserves built out of the genuine profits or share premium collected in cash only.

Reserves created by revaluation of fixed assets are not capitalised.

The declaration of bonus issue, in lieu of dividend, is not made.

The bonus issue is not made unless the partly-paid shares, if any existing, are made fully paid-up.

The Company –

- (a) has not defaulted in payment of interest or principal in respect of fixed deposits and interest on existing debentures or principal on redemption thereof and
- (b) has sufficient reason to believe that it has not defaulted in respect of the payment of statutory dues of the employees such as contribution to provident fund, gratuity, bonus etc.

A company which announces its bonus issue after the approval of the Board of Directors must implement the proposal within a period of six months from the date of such approval and shall not have the option of changing the decision.

- (i) The Articles of Association of the company shall contain a provision for capitalisation of reserves, etc.
- (ii) If there is no such provision in the Articles the company shall pass a Resolution at its general body meeting making provisions in the Articles of Association for capitalisation.

ETHICS

21. The UN Guidelines call upon governments to develop, strengthen and maintain a strong consumer policy, and provide for enhanced protection of consumers by enunciating various steps and measures around eight themes (UNCTAD, 2001). These eight themes are :

1. Physical safety
2. Economic interests
3. Standards
4. Essential goods and services
5. Redress
6. Education and information
7. Specific areas concerning health
8. Sustainable consumption

The Guidelines have implicitly recognised eight consumer rights, which were made explicit in the Charter of Consumer International as follows:

- ◆ Right to basic needs
- ◆ Right to safety
- ◆ Right to choice
- ◆ Right to redress
- ◆ Right to information
- ◆ Right to consumer education
- ◆ Right to representation
- ◆ Right to healthy environment

These eight consumer rights can be used as the touchstones for assessing the consumer welfare implications of competition policy and law, and to see how they help or hinder the promotion of these rights.

22. Discrimination in employment involves three basic elements:

- ◆ First, it is a decision against one or more employees (or prospective employees) that is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications.
- ◆ Second, the decision derives solely or in part from racial or sexual prejudice, false stereotypes, or some other kind of morally unjustified attitude against members of the class to which the employee/s belong(s).

- ◆ Third, the decision (or set of decisions) has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions, or better pay.

Arbitrarily giving some individuals less of an opportunity, to compete for jobs than others is unjust. Discrimination in employment is wrong because it violates the basic principles of justice by differentiating between people on the basis of characteristics (race or sex) that are not relevant to the tasks they must perform.

It is consequently understandable that the law has gradually been changed to conform to these moral requirements, and that there has been a growing recognition of the various ways in which discrimination in employment occurs. Among the practices now widely recognized as discriminatory are the following:

Recruitment Practices Firms that rely solely on the word-of-mouth referrals of present employees to recruit new workers tend to recruit only from those racial and sexual groups that are already represented in their labour force. Also, when desirable job positions are advertised only in media that are not used by minorities or women or are classified as for men only, recruitment would also tend to be discriminatory.

Screening Practices Job qualifications are discriminatory when they are not relevant to the job to be performed (e.g., requiring a high school diploma or a credential for an essentially manual task). Job interviews are discriminatory if the interviewer routinely disqualifies certain class of people – for example, on the basis of assumptions about occupations “suitable for women” or the propriety of putting women in “male” environments.

Promotion Practices: Promotion, job progression, and transfer practices are discriminatory when employers place males on job tracks separate from those open to women and minorities. When promotions rely on the subjective recommendations of immediate supervisors.

Conditions of Employment: Many times wages and salaries are discriminatory to the extent that equal wages and salaries are not given to people who are doing essentially the same work. Another issue is related to fair wages and treatment of workers. Companies subcontracting manufacturing operations abroad are now aware of the ethical issues associated with supporting facilities like child labour that abuse and/or underpay their work forces. Such facilities have been termed “sweatshops”. Maximizing profits is often the motivation behind a company’s decision to utilize sweatshops.

Dismissal: Firing an employee on the basis of his or her race or sex is a clear form of discrimination. Less blatant but still discriminatory are layoff policies that rely on a seniority system, in which women and minority have the lowest seniority because of past discrimination.

23. “Corporate governance is about promoting corporate fairness, transparency and accountability”. It is concerned with structures and processes for decision making, accountability, control and behaviour at the top level of organisations. It influences how

the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized.

The term Corporate Governance is not easy to define. The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and ensures proper accountability for management in the interest of all stakeholders. It is a system through which an organization is guided and directed. On the basis of this definition, the core objectives of Corporate Governance are focus, predictability, transparency, participation, accountability, efficiency & effectiveness and stakeholder satisfaction.

- Accountability relates to how well the content of workplace decisions is aligned with the organisation's stated strategic direction.
- Control involves the process of auditing and improving organisational decisions and actions.

Corporate governance arrangements are key determinants of an organisation's relationship with the world and encompass:

1. The power given to management;
2. Control over management's use of power (e.g. through institutions such as Boards of Directors);
3. Management's accountability to stakeholders;
4. The formal and informal processes by which stakeholders influence management decisions.

In India, Corporate Governance is ensured by subjecting companies to clause 49 of the listing agreements that listed companies have to signed with stock exchanges. The focus of clause 49 has been on: (i) appointment of independent Directors, (ii) financial disclosures and (iii) stream lining of auditing procedures.

The Confederation of Indian Industry (CII) took the lead in framing a desirable code of corporate governance in April, 1998. This was followed by the recommendations of the Kumar Manglam Birla Committee on Corporate Governance. This Committee was appointed by the Securities and Exchange Board of India (SEBI). The recommendations were accepted by SEBI in December 1999, and enshrined in Clause 49 of the Listing Agreement of all Stock Exchanges in India.

In August 2002, the Department of Company Affairs, Government of India, constituted a nine-member committee under the chairmanship of Mr. Naresh Chandra.

SEBI having analysed disclosures made by many companies under Clause 49 constituted a review committee under the chairmanship of Mr. N.R. Narayana Murthy. The Narayana Murthy Committee report, 2003, suggested further improvements and in alignment with these recommendations, the revised Clause 49 has been made effective.

24. The following are some of the international initiatives in the area of CSR :

The Global Reporting Initiative: is a reporting standard established in 1997 with the mission of designing global applicable guidelines for preparing enterprise-level sustainability reports including both social and environmental indicators. GRI accomplishes this vision by developing, continually improving, and building capacity around the use of its Sustainability Reporting Framework. An international network of thousands from business, civil society, labour, and professional institutions create the content of the Reporting Framework in a consensus-seeking process.

AA1000: Launched in 1999, AA1000, based on John Elkington's triple bottom line (3BL) reporting is an accountability standard designed to complement the Global Reporting Initiative's (GRI) Reporting Guidelines with the objective to improve accountability and performance by learning through stakeholder engagement.

United Nations Global Compact: The Global Compact is a voluntary international corporate citizenship network initiated to support the participation of both the private sector and other social actors to advance responsible corporate citizenship and universal social and environmental principles to meet the challenges of globalisation.

Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational enterprises: The guidelines were first published in 1976 and updated most recently in June 2004. The guidelines are recommendations addressed by government to multinational enterprises and are voluntary principles and standards, not legally enforceable.

BUSINESS COMMUNICATION

25. Advantages and Limitations of Oral and Written Communication

Oral Communication	Written Communication
Advantages	Advantages
More personal and informal	Better for complex and difficult subjects, facts and opinions
Makes immediate impact	Better for keeping records of messages exchanged
Provides opportunity for interaction and feedback	Provides opportunity to refer back
Helps us to correct ourselves (our messages according to the feedback and non-verbal cues received from the listener)	Can be read at receiver's convenience or pleasure
Better for conveying feelings and emotions	Can be revised before transmitting
	Can be circulated

Limitations	Limitations
Demands ability to think coherently as you speak	Never know if the message is ever read
A word once uttered cannot be taken back	Impersonal and remote
Hard to control voice pitch and tone, especially under stress, excitement or anger	Immediate feedback is not available for correction on the spot
Very difficult to be conscious of our body language	Reader is not helped by non-verbal cues that contribute to the total message

26. Functions of Interpersonal Communication

Interpersonal communication is important because of the following functions it achieves:

Gaining Information: One reason, we engage in interpersonal communication, is to gain knowledge about another individual. We attempt to gain information about others so that we can interact with them more effectively. We can predict better how will they think, feel, and act if we know who they are. We gain this information passively by observing them; actively, by having others engage them; or interactively, by engaging them ourselves.

Building Understanding: Interpersonal communication helps us to understand better what someone says in a given context. Words can mean very different things depending on how they are said or in what context. Content Messages refer to the surface level meaning of a message. Relationship Messages refer to how a message is said. The two are sent simultaneously, but each affects the meaning assigned to the communication and helps us understand each other better.

Establishing Identity: We also engage in interpersonal communication to establish an identity based on our relationships and the image we present to others.

Interpersonal Needs: We also engage in interpersonal communication to express interpersonal needs. William Schutz has identified three such needs: inclusion, control, and affection.

- Inclusion is the need to establish identity with others.
- Control is the need to exercise leadership and prove one's abilities. Groups provide outlets for this need. Some individuals do not want to be a leader. For them, groups provide the necessary control over aspects of their lives.
- Affection is the need to develop relationships with people. Groups are an excellent way to make friends and establish relationships.

27. Consensus Building

Consensus means overwhelming agreement. Most consensus building efforts set out to achieve unanimity. The key indicator of whether or not a consensus has been reached is that everyone agrees with the final proposal and it is important that consensus be the product of a good-faith effort to meet the interests of all stakeholders. Thus, consensus

requires that someone frame a proposal after listening carefully to everyone's interests. Before the parties in a consensus building process come together, mediators (or facilitators) can play an important part in helping to identify the right participants, assist them in setting an agenda and clarifying the ground rules by which they will operate, and persuading noncompliant parties to participate. Once the process has begun, mediators (and facilitators) try to assist the parties in their efforts to generate a creative resolution of differences.

- **Problem-Solving Orientation-** It is important to be constructive and maintain a problem-solving orientation, even in the face of strong differences and personal antagonism. It is in every participant's best interest to behave in a fashion they would like others to follow. Concerns or disagreement should be expressed in an unconditionally constructive manner.
- **Engage in Active Listening-**Participants in every consensus building process should be encouraged (indeed, instructed, if necessary) to engage in what is known as active listening -- a procedure for checking to be sure that communications are being heard as intended.
- **Disagree Without Being Disagreeable-**Participants in every consensus building process should be instructed to "disagree without being disagreeable." This dictum should probably be included in the group's written ground rules.
- **Strive for the Greatest Degree of Transparency Possible-**To the greatest extent possible, consensus building processes should be transparent. That is, the group's mandate, its agenda and ground rules, the list of participants and the groups or interests they are representing, the proposals they are considering, the decision rules they have adopted, their finances, and their final report should, at an appropriate time, be open to scrutiny by anyone affected by the group's recommendations.
- **Strive to Invent Options for Mutual Gain-**The goal of a consensus building process ought to be to create as much value as possible and to ensure that whatever value is created be divided in ways that take account of all relevant considerations. The key to creating value is to invent options for mutual gain. This is best done by engaging in cooperative behaviours that "make the pie larger" before giving in to competitive pressures "to get the most for one's self."

28. (a) The Press Communiqué

The press releases covering news in the case of the government are mainly of four types – press communiqués, press notes, handouts, and unofficial stories or unofficial hand-outs.

The press communiqués are issued when some important government decisions or announcements are made such as cabinet appointments, conclusion of the foreign dignitaries' visits, international agreement, etc. The press communiqué is formal in

character. It carries the name of the ministry or department and the place the date at the bottom left-hand corner of the release. Generally, the press is expected to reproduce the press communiqué without any substantial change. No heading or subheading is given on press communiqués.

(b) Organization Values

A key element in any communication activity is the value of the organization. Values are the principles and ideas that people or organizations strongly believe in and consider important. When people are in doubt about decisions, they frequently rely on deep-seated values to help them make the right choice. In organizations, reliance on shared values makes setting goals easier in the face of the competing ideas, desires, and objectives of individual employees.

One can get a good idea about the values of an organization by examining its vision and mission statement. These statements are short descriptions of the purpose of organizations and the directions they try to take to achieve success. Many organizations post their vision and mission statements in several places so that employees know what the organization values are.

(c) Corporate Culture

Corporate Culture is described as the personality of an organization, or simply as “how things are done around here.” It guides how employees think, act, and feel. Corporate culture is a broad term used to define the unique personality or character of an organization, and includes such elements as core values and beliefs, corporate ethics, and rules of behavioral norms that are shared by people and groups in an organization and that control the way they interact with each other and with stakeholders outside the organization.

These cultural statements become effective when executives are able to communicate the values of their firm, which provide patterns for how employees should behave. Firms with strong cultures achieve higher results because employees maintain focus both on what to do and how to do it. Organizational values are beliefs and ideas about what kinds of goals members of an organization should pursue and ideas about the appropriate principles of behaviour, organizational members should use to achieve these goals. From organizational values develop organizational norms, guidelines or expectations that prescribe appropriate kinds of behaviour by employees in particular towards one another.

29. Affidavit

An affidavit is a written statement used mainly to support certain applications and in some circumstances as evidence in court proceedings. A person who makes the affidavit is called the Deponent and must swear or affirm that the contents are true before a person who has the authority to administer oaths in respects of the particular kind of affidavit. The model form of affidavit is given below:

Date: _____ Signature: _____ Place: _____