

## PAPER – 3 : BUSINESS AND CORPORATE LAWS

### QUESTIONS

#### The Indian Contract Act, 1872

1. Ram invites Madhuri (a well-known film actress) to his daughter's engagement and dinner party. Madhuri accepts the invitation and promised to attend. Ram made special arrangements for Madhuri at the party but she did not turn up. Ram enraged with Madhuri's behaviour, wanted to sue for the loss incurred in making special arrangements. Ram is seeking your advice.
2. Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid?
3. What are contingent contracts? Explain the rules for enforcement. How does it differ from wagering agreement?

#### The Sale of Goods Act, 1930

4. When Non –owners may transfer the title of goods?
5. (i) What is the meaning of condition? Explain when condition may be treated as Warranty.  
(ii) X agrees with Y to deliver 150 bags of cement on March 1, 2008. X failed to deliver the cement on March 1, 2008 as agreed and is liable for breach of contract. But now X is prepared to deliver the cement on 15<sup>th</sup> March 2008. Advise Y

#### The Indian Partnership Act, 1932

6. Ram and Shyam both are partners in a firm dealing in spare parts of different brands of cars. Dinesh purchases a spare part for his esteem car after being told by Ram that the spare part is suitable for his car. Shyam is ignorant about this transaction. The spare part proves to be unsuitable for the car and it is damaged. Dinesh files a suit .What could be the decision of the court?
7. Describe the position of the minor on attaining majority in the Partnership Act?

#### The Negotiable Instruments Act, 1881

8. A promoter borrowed a loan on behalf of company and sent a cheque from the company's account to discharge its legal liability. Subsequently the cheque was dishonoured and a complaint was lodged against him. Here the promoter is neither a director nor a person-in-charge. Is he liable for an offence under section 138?
9. Who is holder in due course? How he is differing from a Holder?

#### The Payment of Bonus Act, 1965

10. Examine with reference to Payment of Bonus Act if an employee drawing a salary of Rs.5,000 and who joined duty on January 20<sup>th</sup>, 2008 and who availed maternity leave for premature delivery from February 8<sup>th</sup>, 2008 till April 4, 2008, is eligible for bonus for the year 2007-08.
11. Examine the entitlement of the following persons to receive bonus under the Payment of Bonus Act 1965 : (1) a probationer; (2) an apprentice, (3) an employee who had been laid –off for 20 days and had attended work for only 22 days in an entire accounting year; (4) an employee who is found guilty of misconduct causing financial loss to the employer.

#### The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

12. (a) An Inspector appointed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the "Shareholders' Register". How far under the Act is his action reasonable?  
(b) When an employee of an establishment is re-employed in another establishment, what are the rules applicable to the transfer of his PF account under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952?
13. (a) Examine the meaning of the term 'basic wages' under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952?  
(b) ABC Ltd. which is covered by the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, was adjudged insolvent and an order of winding up was made. State whether in this connection the provident fund is attachable and whether the payment of PF contribution under the provisions of the Act is to be considered a priority over other debts of the company.

#### The Co-operative Societies Act, 1912

14. State the conditions of the dissolution of a society under the Co-operative Societies Act. What are the effects of such dissolution?
15. What are the privileges and the duties of registered societies under Co-operative Societies Act, 1912?

#### The Multi-state Co-operative Societies Act, 2002

16. Briefly explain the co-operative principles enshrined under the Multi-state Co-operative Societies Act, 2002?
17. Under what circumstances winding up of multi-state co-operative societies takes place? How is the disposal of surplus assets made?

#### The Companies Act, 1956

18. The Directors of a Company borrow Rs.50,000/- from A on a transaction which is ultra vires the Company. Discuss the rights of A against the Company and its Directors.
19. Under the Articles, the Directors of a Company had power to borrow upto Rs.1,00,000 without the consent of the General Meeting. The Directors themselves lent Rs.2,00,000 to the Company without such consent and took Debentures. Is the Company liable for Rs.2,00,000? If not, for what amount, if any, is the Company liable?
20. Six of the seven signatures on the Memorandum of Association of a Company were forged. The Memorandum was duly presented, registered and a certificate of incorporation was issued. The existence of the Company was subsequently questioned on the ground that the registration was void. Decide.
21. A company wants to provide financial assistance to its employees to enable them to subscribe for fully paid shares of the Company. Does it amount to purchase of its own shares. If in the instant case, the Company is itself purchasing to redeem its preference shares, does it amount to again acquisition of its own shares?
22. A scheme of amalgamation of XYZ Ltd. with ABC Ltd. was approved at statutory meeting of company XYZ Ltd. convened under Section 391 and the scheme was presented to the High Court for sanction. They exchange ratio of shares of company XYZ Ltd. for that of company ABC Ltd. was not to the satisfaction of XYZ Ltd.'s shareholders. Examine if the shareholders of XYZ Ltd. can requisition an EGM to ask their company to renegotiate with the other company. Can the High Court prevent the shareholders from discussing the terms of amalgamation?
23. What are the rules relating to issue of shares at a discount?
24. Briefly examine as to what is meant by the object clause.
25. "A forged transfer of shares is a nullity." Comment.

#### SUGGESTED ANSWERS/HINTS

#### The Indian Contract Act, 1872

1. No. 'Ram' cannot sue 'Madhuri' for his loss. Because the agreement was a kind of social nature and lacked the intention to create legal relationship.
2. Section 124 of the Indian Contract Act, 1872 says that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".

Section 126 of the Indian Contract Act says that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default." is called as "contract of guarantee".

The conditions under which the guarantee is invalid or void are stated in section 142,143 and 144 of the Indian Contract Act are:

- (i) Guarantee obtained by means of misrepresentation.
  - (ii) creditor obtained any guarantee by means of keeping silence as to material circumstances.
  - (iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.
3. Section 31 of the Indian Contract Act,1872 defines contingent contract as the contracts, which are conditional on some future event happening or not happening and are enforceable when the future event or loss occurs.

Rules for enforcement-

- ◆ Contingent contract dependent on the happening of some uncertain future event.
- ◆ Contingent contract dependent upon not happening of some uncertain future event.
- ◆ Contingent contract dependent upon the future act or conduct of a living person.
- ◆ Contingent contract dependent upon the happening of specified event within fixed time.
- ◆ Contingent contract dependent upon specified event not happening within fixed time.
- ◆ Contingent contracts depends upon impossible event.
- ◆ Contingent contract and wagering agreement

Contingent contract is a contract to do or not to do something if some event, collateral to such contract does or does not happen whereas on other hand a wagering agreement is a promise to give money or money's worth upon the determination or ascertainment of an uncertain event.

The Sale of Goods Act, 1930

4. The general rule of law is that 'no one can give that which he has not got. However, under the following cases the goods can be sold even by the persons who are not having title over it or the non-owners (Sale of Goods Act, 1930):
- ◆ Sale by a person not the owner or title by estoppel. (Section 27).
  - ◆ Sale by a mercantile agent (Proviso to Section 27).

- ◆ Sale by one of several joint owners (Section 28).
  - ◆ Sale by a person in possession under a voidable contract (Section 29).
  - ◆ Sale by seller in possession after sale [Section 30(1)].
  - ◆ By buyer in possession after sale [Section 30(2)].
  - ◆ By an unpaid seller [Section 54(3)].
5. (i) A condition has been defined as a stipulation essential to the main purpose of the contract, the breach of which gives rise to treat the contract as having been repudiated (section 12 of the Sales of Goods Act, 1930).
- In the following cases, a contract is not avoided even on account of a breach of a condition. It may be treated as a warranty-
1. where the buyer altogether waives the performance of the condition, there the party may waive a stipulation for his own benefit..
  2. where the buyer elects to treat breach of condition as a breach of warranty.
  3. where the contract is indivisible and the buyer has accepted the goods in full or in part.
  4. Where the fulfillment of any condition is excused by law by reason of impossibility or otherwise (section 13 of the sales of goods act, 1930).
- (ii) Y can accept this delivery by treating the breach of a condition as breach of warranty and can claim the damages, if any or Y may waive the condition.

#### The Indian Partnership Act, 1932

6. The court decided that Both Ram and Shyam are responsible to Dinesh for his loss, as it is based on the general rule that the partners are agents of each other for the purpose of carrying on the business of the firm (section 23 of the Indian Partnership Act, 1932).
7. On attaining majority such a minor has to decide within 6 months whether he shall continue in the firm or leave it. These six months run from the date of his attaining majority or from the date when he first comes to know that he had been admitted to the benefits of partnership whichever date is later. Within this period he should give a public notice of his choice (a) to become, or (b) not to become, a partner in the firm.

If he fails to give a public notice, he is deemed to have become a partner in the firm on the expiry of the said six months.[Section 30(5)].

When such a minor elects to become a partner:

1. He becomes personally liable to third parties for all acts of the firm done since he was admitted to the benefits of partnership.
2. His share in the property and the profits of the firm is the share to which was admitted as a minor partner [Section 30(7)].

When such a minor elects not to become a partner:

1. His rights and liabilities continue to be those of a minor up to the date of the notice.
2. His share is not liable for any acts of the firm done after the date of the public notice.
3. He is entitled to sue the partners for his share or the property and profits in the firm [Section 30(8)].

The Negotiable Instruments Act, 1881

8. According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138.
9. Holder in Due Course (Section 9 of The Negotiable Instrument Act, 1881): It means any person who, for consideration became its possessor before the amount mentioned in it became payable. In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. In both the cases, he must receive the instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, holder in due course means a holder who takes the instrument bona fide for value before it is overdue, and without any notice of defects in the title of the person, who transferred it to him. Thus, a person who claims to be 'holder in due course' is required to prove that:
  1. on paying a valuable consideration, he became either the possessor of the instrument if payable to order;
  2. he had come into the possession of the instrument before the amount due there under became actually payable; and
  3. he had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor's from whom derived his title.

Distinction between Holder and Holder in Due Course:

1. A holder may become the possessor or payee of an instrument even without consideration, whereas a holder in due course is one who acquires possession for consideration.
2. A holder in due course as against a holder, must become the possessor payee of the instrument before the amount thereon become payable.
3. A holder in due course as against a holder must have become the payee of the instrument in good faith i.e., without having sufficient cause to believe that any defect existed in the transferor's title.

The Payment of Bonus Act,1965

10. According to Section 2(13) every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year on a salary of less than Rs.10, 000 per month. Under Section 14, the days when an employee has been on maternity leave with salary or wages during the accounting year will be included in calculating the total working days for the purpose of payment of bonus. In the instance case, the salary is falling within the limit. Also, her maternity leave period will be treated as working days. Therefore, she is eligible for bonus for the year 2007-08.
11. (1) A probationer is an employee and as such is entitled to bonus per Section 9 of the Payment of Bonus Act [Bank of Madura Ltd. vs. Employee's Union, 1970, (2) LLJ (21)].  
(2) An apprentice is not entitled to bonus per Section 9 of the Payment of Bonus Act. [Wheel & RIM Co. vs. Government of T.N. (1971) 2 LLJ 299 40 FJR 18]  
(3) According to Section 14, when an employee had been laid off under an agreement, those days on which he has been laid-off shall be deemed to be working days for the employee and it shall be counted while calculating the total days on which he has been on work for the purpose of payment of bonus. In the instance case, the employee had been laid off for 20 days and had attended work for 22 days in the entire accounting year equaling to 42 total working days. An employee is entitled to bonus when he has worked in the establishment for not less than thirty working days in the year (Section 13 ). So, in this case, the employee is entitled to get bonus.  
(4) Where in any accounting year, an employee is found guilty of misconduct, causing financial loss to the employer, the employer can deduct the amount of loss from the amount of bonus payable by him to the employee under this Act in respect of that accounting year only. Therefore, in this case employee shall be entitled to receive the balance, if any (Section 18). Thus, the employee is entitled to bonus, but amount of loss to employer can be deducted from such bonus.

The Employees' Provident Fund and Miscellaneous Provisions Act, 1952

12. (a) Under Section 13(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, an Inspector can inspect and make copies of, or take extract from any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence.

In the present case the Inspector had sought to take copies of the "Shareholders' Register" which is irrelevant document for the purpose of EPF and MP Act, 1952. Moreover, he has visited the office after the working hours (10.00 pm) which is not reasonable.

- (b) Section 17-A provides for the transfer of accounts of an employee in case of his leaving the employment and taking up employment in another establishment and to deal with the case of an establishment to which this Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee.

Where an employee of an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the Fund or, as the case may be, in the provident fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to the provident fund permit such transfer. This transfer has to be made within such time as may be specified by the Central Government in this behalf [Sub-section (1)].

Conversely, when an employee of an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is re-employed [Sub-section (2)].

13. (a) As per the EPF and MP Act, 1952, 'basic wages' means all emoluments which are earned by an employee in accordance with the terms of the contract of employment and which are paid or payable in cash to him – (a) while on duty, or (b) while on leave or on holidays with wages in either case. However, 'basic wage' does not include – (i) the cash value of any food concession (ii) any dearness allowance (i.e. all cash payments by whatever name called paid to an employee on account of a rise in the cost of living), house-rent allowance, overtime allowance, bonus, commission or any other similar allowance payable to the employee in respect of his



employment or of work done in such employment (iii) any presents made by the employer [section 2(b)]. [Cash value of food concession and Dearness Allowance are excluded from definition of 'basic wage' since they may be added separately, as definition of 'pay' includes basic wage, DA and cash value of food concession].

- (b) If the employer is adjudged insolvent or in the case of company an order of winding up is made, the amount due towards PF dues, insurance fund, administration charges etc. will be deemed to be included among the debts which u/s 49 of Presidency Towns Insolvency Act or section 61 of Provincial Insolvency Act or section 530 of Companies Act, which are to be paid in priority to all other debts in the distribution of property of insolvent or assets of the company being wound up [section 11(1)]. The amount due from employer in respect of PF contribution deducted from salary of employees and also employer's contribution toward PF will be first charged over assets of the establishment and will be paid in priority to all other debts [section 11 (2)].

In the case of ABC Ltd. Falling under EPF & MP Act, 1952, PF is attachable and PF contribution under the provision of the Act is to be considered a priority over other debts of the company. (In Union Bank of India v. Assistant PF Commissioner 2005 LLR 1018 (Kar HC), it was held that PF dues have priority over dues of Banks, even if property was mortgaged to Bank).

14. The corporate existence of a society continues till the dissolution of society or its registration is cancelled by the Registrar.

Under the following conditions the Registrar of Co-operative Societies is empowered to cancel the registration of a society under the Cooperative Societies Act, 1912:

- (i) If he holds an enquiry under Section 35 of the Act, into the constitution, working and financial condition of a registered society, or after an inspection of the books of a society has been made under Section 36, or on receipt of an application made by 3/4<sup>th</sup> of the members of a society is of the opinion that the society ought to be dissolved. The cancellation takes effect after the expiry of two months from the date of the order of cancellation, if no appeal is referred against the order of cancellation, by any member within that period. If, however, an appeal is presented within that period, the cancellation takes effect only when it is confirmed by the Appellate Authority, i.e. the State Government (Section 39).
- (ii) Where it is a condition of the registration of a society that it should consist of at least ten members, and it is proved to the satisfaction of the Registrar that the number of members has been reduced to less than 10. In this case, the cancellation takes effect from the date of the order (Section 40 & 41).

Effect of cancellation: The society ceases to exist as a corporate body from the date the cancellation takes effect (Section 41). The Registrar may appoint a competent person to be liquidator of the society (Section 42).

15. The privileges of a registered society are covered under the sections 18 to 28 of the Co-operative Societies Act, 1912 .

The main privilege of a registered society is that on registration, such a society becomes a body corporate by the name under which it is registered, having a perpetual succession and a common seal , with a right to hold property, to enter into contracts, to institute and defend suits and other legal proceedings and to do all things necessary for the purposes of its constitution (section 18).

Other privileges which a registered society enjoys are:

- (a) Subject to any prior claim of the Government in respect of land – revenue, it is entitled in priority to other creditors to enforce any outstanding demand in respect of certain dues from a member or past member (section 19).
- (b) In respect of any debt due from a member or past member it will have a charge upon the share or interest in the capital, and on deposits of, or other sums payable to, a member or past member, and it may set off any sums payable to a member or past member in or towards payment of any such debt (section 20).
- (c) The share or interest of a member in the capital of a registered society is not liable to attachment (section 21); nor is it claimable by the Official Assignee or a Receiver under the insolvency laws (section 21).
- (d) All transfers and payments made by a registered society to the nominee or heir or legal representative of the deceased member in respect of such member's share or interest or dues in accordance with the rules or bye – laws made in this behalf shall be valid and effectual against any demand made upon the society by any other person (section 22).
- (e) A past member remains liable for the debts of the society for two years from date of his ceasing to be a member, and the estate of a deceased member for one year from the time of his death (section 23 & 24).
- (f) Any register or list of members or shares kept by the registered society shall be evidence of the date at which the name of any person was entered ,and the date at which such person ceased to be a member(section 25)
- (g) A certified copy of any entry in a book of registered society shall be received as evidence in any suit or legal proceedings of the existence of such entry (section 26).
- (h) The provisions of section 17(1)(b)&(c) of the Indian Registration Act, 1908 do not apply in relation to shares and debentures of a registered society(section 27)

- (i) A registered society may be exempted by the Government from payment of income tax, stamp duty and registration fee (section 28).

The following are the duties of registered society given under section 15-17 of the Co-operative Societies Act -

1. To register address of society with the Registrar,
  2. Copy of Act, Rules and Byelaws to be open to inspection.
  3. Audit of Accounts
  4. Access to books, papers, etc.,
16. The following are the co-operative principles under the Multi-State Co-operative Societies Act, 2002:
1. Voluntary and Open Membership.
  2. Democratic Members Control.
  3. Member's Economic Participation.
  4. Autonomy and Independence.
  5. Education, Training and Information.
  6. Co-operation among co-operatives.
  7. Concern for Community.
17. The central Registrar is empowered under section 86 to issue an order for winding up of a Multi-State Co-operative Society, under the following circumstances-
1. Either of its own motion:
    - (i) when he made an inquiry u/s 78:
    - (ii) when he made an inspection u/s 79:
  2. On an application made by not less than 3/4<sup>th</sup> of the members of the society
  3. Where it's a condition of the registration that the society shall consist of atleast 50 members.
  4. Where the society has not commenced working with in a period of six months of the date of its registration or within the extended as the central registrar has allowed, or
  5. Society has ceased to function in accordance with Co-operative principles.

Disposal of surplus assets:

The surplus assets of a Multiple-State Cooperative Society has to be utilized as per the specification of the bye-laws, if the bye-laws doesn't specify the purpose ,a central registrar with the prior permission from the central government, may distribute amongst

the members of such Multi State Cooperative Society in such manner as may be prescribed (section 91).

#### The Companies Act, 1956

18. A contract which is ultra vires is void ab initio. Such contract has no legal effect. Thus, company is not liable for such ultra vires contracts. Therefore, A does not have any right against the company but he can insist that the director should repay his debt of Rs.50,000/-.
19. The company is not to be held wholly liable but it is liable only to the extent of Rs.1,00,000 which is permitted under the Articles of the company. (Howard Vs. Patent Ivory Co.,)
20. Section 35 of the Companies Act 1956 declares that certificate of incorporation given by the Registrar in respect of any company shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto.

Therefore the Registration cannot be challenged in the given case, even though six of the seven signatures of the Memorandum of Association of a company were forged as the Memorandum was duly presented, registered and a certificate of incorporation was issued.

21. As per Section 77 of the Companies Act, a company can not purchase directly its own shares and also financing any person directly or indirectly whether by way of loan / guarantee or surety or otherwise for or in connection with purchase or subscription made or to be made of any shares of its own or of its holding Company is prohibited. But this rule has two exceptions under Section 80 of the Act. The first of those exceptions extends to a case where a company makes a purchase to redeem its preference shares and the second exception comes into operation where a company may legitimately provide financial assistance in the form of a loan to bona fide employees of the company, other than its Directors or manager, to enable them to purchase fully paid-up shares to be "held by themselves by way of beneficial ownership, where such loans shall not exceed in amount six months' salary or wages of such employees.
22. It can be noted that the Court cannot prevent shareholders from requisitioning a meeting, discussing and passing a resolution, proposing a modification to an amalgamation scheme, even when the scheme is pending for sanction before Court. Thus in Pravin Kantilal Vakil Vs. Mrs. Rohini Ramesh Save (1985) Comp. Cas. 31 (Bom.), a scheme of amalgamation of company C with company B was approved at a statutory meeting convened under Section 391, after which the scheme was presented to the High Court for sanction. The scheme, inter alia, provided for exchange ratio of share of B for 5 shares of C. While the scheme was pending in the High Court, an extraordinary general meeting was requisitioned for the purpose of asking the company C to re-negotiate with

B, as according to the requisitionists the ratio was not fair and equitable. The question was whether the Court could prevent the shareholders from discussing the modification on the ground that the scheme of amalgamation was already pending before the Court.

Held that Section 392 gives wide powers to the Court to give such direction in regards to any modification in the compromise or arrangement as it may consider necessary for the proper working of the compromise or arrangement arrived at. Under the said Section 392 the Court even at the instance of any shareholder could consider any such modification in the scheme. In that event, a mere discussion by the shareholder at a properly requisitioned meeting about the proposed modification to the scheme pending before the Court for sanction and if approved passing a resolution to that effect would not by itself affect either the scheme or the Court's powers to consider the modification and sanction of the scheme with or without modification. Thus, the shareholders could requisition the meeting for proposing a modification to the scheme pending for sanction before the Court.

Therefore, the High Court cannot prevent the shareholders from discussing the terms of amalgamation.

23. The rules relating to issues of shares at a discount is given as under :

A company cannot issue shares in disregard of Section 79. It may issue at a discount, share of a class already issued, only if all the following conditions are fulfilled :

- (a) The issue must have been authorised by a resolution passed by the company in general meeting, and sanctioned by the Company Law Board (CLB).
- (b) The said resolution must specify the maximum rate of discount, at which the shares are to be issued. By virtue of the proviso added to Section 79 by the Amendment Act, 1974 no such resolution shall be sanctioned by the Company Law Board if the maximum rate of discount specified in the resolution exceeds 10 per cent unless the CLB is of the opinion that a higher percentage of discount may be allowed in the special circumstances of the case.
- (c) At the date of issue, not less than one year ought to have elapsed since the date on which the company was entitled to commence business.
- (d) Lastly, the shares to be issued at a discount have been issued within 2 months after the date of the CLB's sanction or within the time extended by it.

On passing the resolution authorising the said issue, the company may apply to the CLB for its sanction thereon. Thereupon, if the CLB thinks it proper to sanction, it may do so on such terms and conditions as it thinks fit.

Every prospectus relating to issue of the shares must contain particulars of the discount allowed on the issue of the shares or so much of that discount as has been written off at the date of the issue of the prospectus. A default in compliance with this requirement will

render the company, and every officer thereof who is at fault punishable with fine extending to Rs.500.

24. Object clause: The powers of the company are limited to: (a) power expressly given by the memorandum (termed “express” powers) or conferred by statute, (b) powers reasonably incidental or necessary to the company’s main purpose (termed “implied” powers).

It may be noted that acts beyond the company’s powers are ultra vires and void, and cannot be ratified even though every member of the company may give his consent [Ashbury Railway Carriage Co. vs. Riche [1875] L.R. 7 H.L. 653]. The test to be applied whether a power is implied or not, is not the benefit the transaction is expected to confer on the company, but whether it can reasonably be regarded as arising from the main object of the company.

It is customary to exclude the general rule of construction for the interpretation of the intention contained in different clauses of the memorandum of association, by including a statement that the objects specified in each paragraph of the memorandum shall be in no way limited or restricted by reference to or inference from the terms of any other paragraph or the name of the company.

The subscribers to the memorandum may choose any “object” or “objects” for the purposes of their company. There are two restrictions, however, on the selection of “object” for a company : (i) the objects should not include anything which is illegal or contrary to law or public policy, e.g., floating a company for dealing in lotteries [Ex. parte More [1931] 2 K.B. 197]; or trading with alien enemies [Daimler & Co. vs. Continental Tyre Co. [1916] 2 A.C. 307]. Objects, which are in restraint of trade [Mac. Ellis vs. Ballymacalligot etc. Company [1919] A.C. 459] or are blasphemous (but not denying Christianity) have also been held to be bad [Bowen vs. Secular Society [1917] A.C. 406]; (ii) the objects should not also contemplate doing anything which is prohibited by the Companies Act. Apart from those two restrictions, the object of a company may be anything that the proposed company desires to achieve [Lal Gopal Dutt vs. Khorotriah Mego Zlite Zamindary Co. 16 C.W.N. 297].

The object clause enables shareholders, creditors and all those who deal with the company to know what its powers are and what is the range of its activities and enterprise, it is therefore true that the object clause of the memorandum of association of a company is of fundamental importance to its members as well as to its non-members. In the first place, it gives protection to subscribers (members) who learn from it the purpose to which their money can be applied. In the second place, it protects persons dealing with the company, who can infer from it the extent of the company’s powers. The narrower the objects appended in the memorandum, the lesser are the subscriber’s risk; the wider these objects, the greater is the security of those who transact business with the company.

25. A forged transfer is a nullity. It does not give the transferee concerned any title to the shares. If the company acts on a forged transfer and removes the name of the real owner from the register of Members then the company is bound to restore the name of the real owner on the register as the holder of the shares and to pay him any dividends which he ought to have received [Barton vs. North Staffordshire Railway Co. 38 Ch. D. 456. People Insurance Co. Ltd. vs. Wood & Co. Ltd. (1961) 31 Comp. Case. 63].

Thus, if by forgery, a person obtains a certificate of transfer of shares from a company and transfers the shares to a purchaser for value acting in good faith i.e. without the knowledge of the forgery, such purchaser does not get a good title to the shares so transferred, because a forged transfer is a nullity and cannot be a source of a valid transfer of title. But the company shall be liable to compensate the purchaser in so far as the company had issued a certificate to transfer and was therefore estopped from denying the liability accruing from its own act. The innocent purchaser for value acting upon the faith of the certificate issued by the company could validly and reasonably assume that the person named in the certificate as the owner of shares was really the owner of the shares represented by the certificate [Balkis Consolidated Co. vs. Tamkinson (1982) A.C. 1961]. If as a result of the forged transfer, the name of the true owner of shares is taken off the Register of Members he can compel the company to restore his name to the register. He can also claim any dividend which may not have been paid to him during the intervening period [Barton vs. North Staffordshire Supra]. Likewise the transferee must take care that he is not getting a certificate from the company on a forged transfer, because in that case the transferee shall be liable to indemnify the company against the consequences of the damages which may have to be paid by the company to the true owner of the shares [Sheffield Corporation vs. Barclay (1905) B.C. 393]. The person who even without any negligence brings about a transfer is liable to indemnify the company against its liability to the owner of shares whose name was taken off from the register as a result of the forged transfer [Sheffield Corporation vs. Barclay (supra); Starkey vs. Bank of England (1903) A.C. 104].