

PAPER – 3 : LAW, ETHICS & COMMUNICATION

QUESTIONS

Indian Contracts Act, 1872

1. (a) Examine with reference to relevant case-law as to when acceptance need not be communicated.
(b) State whether the following contracts can be enforced.
 - (i) Where there is a family settlement in writing and a family member who is not a party to the settlement wishes to enforce his claim
 - (ii) Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum.
 - (iii) An agreement to create an agency, in which consideration is absent.
2. (a) Examine the difference between succession and assignment.
(b) (i) In what kind of contracts, time is of essence?
(ii) Briefly explain the positions of sub-agent and substituted agent under the law of agency.

Negotiable Instruments Act, 1881

3. (a) What is known as a 'bill drawn in a set'? What are the rules applicable thereto?
(b) B obtains A's acceptance to a bill by fraud. B endorses it to C who takes it as a holder in due course. C endorses the bill to D who knows of the fraud. Can D recover from A?
(c) What will be the effect of the following alterations on the validity of a bill?
 - (i) A bill payable with 'lawful interest' is altered into one payable with 12% interest.
 - (ii) A bill is accepted payable at the Indian Bank, Sarita Vihar, New Delhi. The holder without the consent of the acceptor scores out Sarita Vihar and inserts Chandni Chowk instead.
4. What are the essentials of a valid acceptance of a bill?

The Payment of Bonus Act, 1965

5. What are the rules relating to time limits for payment of bonus?
6. (a) Can an employer be exempt from paying minimum bonus? What does the law say of such exemption?
(b) State whether the following statements are true or false and give reasons therefor with reference to the Payment of Bonus Act, 1965.
 - i. The maximum bonus payable to employees is limited to the available surplus.
 - ii. "Salary or wage" does not include dearness allowance.

- iii. Accounting year in relation to a corporation means the year commencing on 1st of April.
- iv. A part-time employee engaged on regular basis is eligible for bonus.
- v. If any interim bonus has been paid it may be adjusted against the statutory bonus that is payable under the Payment of Bonus Act, 1965.

The Employees Provident Fund & Miscellaneous Provisions Act, 1952

- 7. Write a note on Employees Deposit-Linked Insurance Scheme.
- 8. (a) Examine the appellate jurisdiction and the procedures relating thereto under the Employees Provident Fund and Miscellaneous Provision Act, 1952.
- (b) State whether the following statements are true or false and give reasons therefor with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.
 - i. Basic wages include the cash value of food concessions.
 - ii. The chairman of the executive committee is appointed by the Central Board
 - iii. Default in payment of contribution by employer is a cognizable offence.
 - iv. Employee Provident Fund Appellate Tribunal shall consist of three judges
 - v. An employer generally has to deposit 50% of the money due from him so as to go on appeal

The Payment of Gratuity Act, 1972

- 9. Examine how disputes are resolved under the Payment of Gratuity Act, 1972.
- 10. (a) Discuss the rules relating to penalties under the Payment of Gratuity Act, 1972.
- (b) State whether the following statements are true or false and give reasons therefor with reference to the Payment of Gratuity Act, 1972.
 - i. The Payment of Gratuity Act, 1972 is largely based on Kerala Industrial Employees Payment of Gratuity Act, 1972.
 - ii. A retrenched employee is also eligible for gratuity.
 - iii. Where an employee's resignation has not been accepted, then that employee is not eligible to claim gratuity.
 - iv. Where the negligence of employee causes loss to the employer, then the gratuity shall be wholly forfeited.
 - v. An appeal against the Controlling Authority's order must generally be made within 60 days.

The Companies Act, 1956

11. (a) 'S', a shareholder, after duly appointing P as his proxy for a meeting, himself attended the meeting and voted on a resolution. P thereafter claimed to exercise his vote. Examine his claim.
(b) The Articles of Association of a public company require the instrument appointing a proxy to be received by the company 75 hours before the meeting. Is it a valid requirement? If not, what are its effect?
(c) S, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions?
12. Distinguish fully convertible from partly convertible debentures.
13. Is it possible to convert a public company into a private company? What are the rules applicable for such conversion?
14. State whether the following statements are true or false and give reasons therefor:
 - (a) The approval of the Central Government is required to change the name of a company.
 - (b) Companies registered under Section 25 are also known as 'licensed companies'.
 - (c) Television advertisements and visual clips giving all required details can be treated as a prospectus.
 - (d) Deferred shares also called founders' shares.
 - (e) To authorise the issue of shares at a discount, a special resolution is required.
15. (a) Mention any ten acts for which a special resolution is required.
(b) (i) An annual general meeting of a company was convened in November, 1996. It was adjourned and the adjourned meeting was held in March, 1997. The next general meeting was held in March, 1998. The company was held liable for an irregularity in holding the AGMs. Decide.
(ii) Reliance Industries Ltd. has its registered office at Mumbai. The company desires to hold an extraordinary general meeting in New Delhi. Examine the validity of the company's desire with reference to the relevant provisions of the Companies Act, 1956.

ETHICS

16. State whether the following statements are true or false and give reasons therefor:
 - (a) Plato discusses the concept of justice in his book 'Democracy'.
 - (b) According to Gandhiji, knowledge without sacrifice is a sin.
 - (c) The word ethics is derived from the Greek word 'ethikos', which means character.

- (d) Where more than one morally right alternative exists, then we can say an ethical dilemma exists.
 - (e) The Sarbanes–Oxley Act was a pioneer in the area of Corporate Social Responsibility.
 - (f) The term shareholder is of wider import than the term stakeholder.
 - (g) In India, the corporate governance mechanism is of voluntary nature.
 - (h) Clause 49 was amended in 2004 following the Kumar Mangalam Birla committee report.
 - (i) The Government is not a stakeholder.
 - (j) There is a growing convergence between CSR and Corporate Governance agendas.
17. Examine the compelling reasons for acting ethically in marketing.
18. Write short notes on the following:
- (a) Global warming
 - (b) The UN Guidelines on consumer protection
 - (c) Some international developments in CSR
19. Examine the following hypothetical situations and give a brief analytical note on each of them.
- (a) Mr. XYZ is a CEO of a pharmaceutical company. His R&D department, while experimenting with a chemical molecule, sees the possibility that the molecule may be developed into a drug for a rare, painful, life-threatening genetic disease that afflicts only one child in ten million. But to develop the drug, his company may have to invest huge sums of the shareholders' money, despite the drug not having wide salability. Is Mr. XYZ confronted by an ethical dilemma? How should he resolve the issue?
 - (b) ABC Ltd. has been the leading scientific equipment manufacturing company in South India. But it suddenly finds that certain companies from North India that do not have anywhere near its own kind of clout in their own turfs, are trying to enter the south Indian market. But because of its superior clout, ABC Ltd coerces them to enter into agreement with itself such that they do not sell at prices above that of its own products. Please comment on the legality of such agreements. Conversely, if ABC Ltd were to enter into agreements with distributors such that the distributors are prevented from marketing the products of the North Indian companies, would that be illegal?
 - (c) Identify the threats that an accounting professional would have to face in the following situations:
 - (i) Where the accounting professional has applied for a job opening in the client company.

- (ii) Where a former senior partner is the chief financial officer of the client company.
 - (iii) Where the accounting professional is being threatened with litigation.
 - (iv) Where the accounting professional has to report on the operation of a financial system after being involved in its designing.
20. Write a note on how an accounting professional may resolve an ethical conflict.

COMMUNICATION

Formal Communication

21. What is formal communication? Explain in brief its major advantages.

Active Listening and Critical Thinking

22. Discuss the qualities of a critical thinker.

Characteristics of Groups

23. Explain characteristics of groups.

The Advantage of Ethical Communication, Elements of Culture, Press Releases

24. Write short notes on :

- (a) Advantages of ethical communication.
- (b) Elements of culture
- (c) Guidelines for drafting a press release.

Power of Attorney

25. Prepare a draft of Power of Attorney to be submitted before the Income –Tax Authorities.

SUGGESTED ANSWERS

1. (a) In general, acceptance of the offer must be communicated to the offeror. Even when performance of an act constitutes acceptance of an offer, the performance of that act must be communicated, which will be equivalent to communication of acceptance.

But in cases, where the offer includes a term that a mere performance will constitute acceptance, the performance suffices as communication of acceptance. The position was clearly explained in the famous case of Carlill Vs Carbolic & Smokeball Co. In this case, the defendant, a sole proprietary concern manufacturing a medicine which was a carbolic ball whose smoke could be inhaled through the nose to cure influenza, cold and other connected ailments issued an advertisement for sale of this medicine. The advertisement also included a reward of £100 to any person who contracted influenza, after using the medicine (which was described as

'carbolic smoke ball'). Mrs. Carlill bought these smoke balls and used them as directed but contracted influenza. It was held that Mrs. Carlill was entitled to a reward of £100 as she had performed the condition for acceptance. Further as the advertisement did not require any communication of compliance of the condition, it was not necessary to communicate the same. The court thus in the process laid down the following three important principles:

- (i) an offer, to be capable of acceptance, must contain a definite promise by the offeror that he would be bound provided the terms specified by him are accepted;
 - (ii) an offer may be made either to a particular person or to the public at large and;
 - (iii) if an offer is made in the form of a promise in return for an act, the performance of that act, even without any communication thereof, is to be treated as an acceptance of the offer.
- (b) (i) As per the judgment in Shuppu Vs Subramanian 33 Mad. 238, a family settlement in writing, may be enforced by a member of the family who was not a party to the settlement.
- (ii) A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.
- (iii) According to Section 185, of the Indian Contract Act, 1872 an agreement creating an agency though devoid of consideration, is valid and can be enforced.
2. (a) When succession occurs by a process of law, both the burden and the benefit would some times devolve on the legal heir. For example, 'B' is the son of 'A' the father. Upon A's death 'B' will inherit all the assets and liabilities of 'A' [These assets and liabilities are also referred to as debts and estates].

Thus 'B' will be liable to all the debts of 'A', but if the liabilities inherited are more than the value of the estate [Assets] inherited it will be possible to pay only to the extent of assets inherited.

In the concept of "assignment", unlike succession, the assignor can assign only the assets to the assignee and not the liabilities. Because when a liability is assigned, a third party gets involved in it. The debtor cannot through assignment relieve himself of his liability to his creditor.

There cannot be any assignment of benefit of a contract coupled with a liability, unless the assignees consent has been sought or when a personal consideration has entered into making of the contract then the contract cannot be assigned. In Zaffer Mehar Ali Vs Budge Budge Jute Mills Company Ltd. 33 Cal. 'A' agreed to sell certain gunny bags to 'B' which were to be delivered in monthly installments for a period of 6 months and the contract contained certain options for the buyer as regards quality and packing. It was held that the clause relating to the buyer's option did not preclude the assignment of the contract.

- (b) (i) Ordinarily from a plain examination of a contract it would be difficult to ascertain from the terms of the contract whether time is of essence of the contract. A promisee may have failed to perform his contract within the specified time. Yet the time may not be treated as essence of the contract in that case. Whether time is of essence of a contract has to be decided from the terms of the contract.

In mercantile contracts, as business world is ruled by 'time', and 'money' any stipulation as to 'time' and 'money' are essential conditions.

The general principles that are followed can be enunciated as under.

- (i) In transactions relating to sale of gold, silver, blue chip shares, time of delivery is of essence. Here time will be treated as essence of contract.
- (ii) In transactions involving sale of land, redemption of mortgages, though certain time frame is fixed, any delay is not considered seriously provided justice can be done to parties. Of course even in sale of land, time can be made essence of contract by express words.

(ii) Sub-Agent

Sub agency occurs when an agent appoints another agent. The appointment of sub agent is not lawful, because the agent is a delegate and a delegate cannot further delegate. This is based on the Latin principle "delegata potestas non potest delegari".

The appointment of a sub-agent would be valid, if the terms of appointment originally contemplated it. Sometimes customs of trade may provide for appointment of sub agents. In both these cases the sub-agent would be treated as the agent of the principal.

Position of sub-agent vis a vis third parties where the sub-agent is properly appointed:

(a) Where the sub-agent is properly appointed

Where a sub agent is properly appointed, the principal is bound by his acts and is therefore responsible to third parties as if he were an agent originally appointed by the principal.

(b) In the case of appointment without authority

In case where the appointment of sub-agent takes place without authority, the principal is not bound by the acts of sub-agent and sub-agent is not bound to the principal. It is the agent who is the principal of sub agent. Where the sub-agent purportedly acts in the name of first principal, the first principal may ratify the act of sub-agent. However if the sub-agent acts in his own name or in the name of the agent who has without authority delegated to the sub-agent the business which is in fact that of the principal, the principal cannot ratify such acts of sub-agent.

Substituted Agent

Substituted agents are not sub-agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, then the second person is not to be treated as a sub-agent but only as an agent of the original principal.

For example, 'A' directs 'B' his solicitor to sell his property by auction and 'B' appoints 'C' an auctioneer. In this regard, 'C' is an agent of 'A' and not a sub-agent.

While selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence would and if he does so he will not be responsible for acts or negligence of the substituted agent.

For example, 'X' consigns goods to 'Y' a merchant for sale. 'Y' in due course employs an auctioneer in goods to sell goods of 'X' and also allows him to receive the proceeds of sale. The auctioneer becomes insolvent afterwards without handing over the proceeds. Here 'Y' will not be responsible to 'X' as he has discharged his duties as a man of ordinary prudence and diligence.

3. (a) A bill of exchange is sometimes drawn in parts, especially when it has to be sent from one country to another. This is known as drawing a bill 'in a set'. The object of drawing a bill in a set is (a) to avoid undue delay and unnecessary inconvenience which may arise due to the loss or miscarriage of the bill during the transit, and (b) to ensure the safe transmission of at least one part of the bill to the drawee and its acceptance by him as early as possible.

Each part of the bill is known as a 'via' and as soon as any of the parts is accepted or paid, the other parts become ineffective. There is no advantage in drawing inland bills in sets and this practice is confined only to foreign bills.

Rules regarding bills in sets (Sections 132 and 133).

1. A bill of exchange may be drawn in parts (two, three or four). All the parts together make a set and the whole set constitutes only one bill.
2. Each part of the bill in a set must be numbered and must contain a provision that it shall continue to be payable only so long as the other parts remain unpaid. Each part must contain a reference to the other parts. If any part of a set omits reference to the other parts, that part shall become a separate bill if it gets into the hands of a holder in due course.
3. The entire bill is extinguished when payment is made on one of the parts.
4. The drawer must sign each part of the bill and deliver all the parts. But the stamp is affixed on one part only and only one part of the whole set needs to be accepted.
5. When a person accepts or indorses different parts of the bill in favour of different persons, he and the subsequent indorsers of each part are liable on such parts as if these parts were separate bills.

6. Where two or more parts of a set are negotiated to different holders in due course, he who first acquires title to his part is deemed to be the true owner of the bill. He is entitled to (a) the possession of all other parts, and (b) claim the money represented by the bill.
- (b) Yes, D can recover the amount from A as he derived his title from C who is a holder in due course. Moreover, D is not a party to the fraud. Once the title has been cleansed of the defect, notwithstanding notice of the fraud, D gets a good title [Guildford Trust v. Gloss, (1926) 43 T.L.R. 167; Sec. 53].
 - (c) (i) The following alterations are material, i.e., the alteration of –
 - (1) the date,
 - (2) the sum payable,
 - (3) the time of payment,
 - (4) the place of payment,
 - (5) inclusion of place of payment,
 - (6) the rate of interest.

These alterations vitiate the instrument. So, in the given case alteration in the interest rate vitiates the validity of the bill, since lawful interest is 18% under the Banking, Public Financial Institutions & Negotiable Instruments (Amendment) Act, 1988.
 - (ii) In this case, the alteration is material. It renders the instrument void against persons who were parties thereto before such alteration, unless they have consented to the alteration (Sec. 87).]
4. The essentials of a valid acceptance are as follows:
 - (a) Acceptance must be written: The drawee may use any appropriate word to convey his assent. It may be sufficient acceptance even if just a bare signature is put without additional words. But it should be remembered that an oral acceptance is not valid in law. However, oral acceptance may be sufficient only in the case of hundies and that too only if a special custom is proved to exist.
 - (b) Acceptance must be signed: A mere signature would be sufficient for the purpose. Alternatively, the words 'accepted' may be written across the face of the bill with a signature underneath; if it is not so signed, it would not be an acceptance.
 - (c) Acceptance must be on the bill: That the acceptance should be on the face of the bill is not necessary; an acceptance written on the back of a bill has been held to be sufficient in law. What is essential is that it must be written on the bill; else it creates no liability as acceptor on the part of the person who signs it. When acceptance is signed upon a copy of the bill and the copy is not one of the part of it or if acceptance is made on a paper attached to the bill, then in either of the cases, acceptance would not be sufficient.

- (d) Acceptance must be completed by delivery: It would not be complete and the drawee would not be bound until the drawee has either actually delivered the accepted bill to the holder or tendered notice of such acceptance to the holder of the bill or some person on his behalf.
- 5. The employer is bound to pay his employee bonus within one month from the date on which the award becomes enforceable or the settlement comes into operation, if a dispute regarding payment of bonus is pending before any authority under Section 22. In other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting year. But this period of 8 months may be extended up to a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.
- 6. (a) Though the Act creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10, the obligation and right 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 establishments from all or any of the provisions of this Act.

There are two stages in Section 36:

- (1) The Government shall consider the financial position and other relevant circumstances of an establishment or class of establishment.
- (2) It should be of the opinion that it would not be in the public interest to apply all or any of the provisions of the 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 the loss suffered, company will not be relieved of the liability of paying the 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.].

- (b) i. The statement is false as the maximum bonus payable to employees under Section 11 is 20% of salary, irrespective of the available surplus being more.
- ii. The statement is false as under Section 2(21), "salary or wage" includes dearness allowance.
- iii. The statement is false as under Section 2(1), the accounting year in relation to

a corporation does not mean the year commencing on 1st of April.

- iv. The statement is true and a part-time employee engaged on regular basis is eligible for bonus as per decision in Automobile Karmchari Sangh Vs. Industrial Tribunal (1970) 38 FJR 268.
 - v. The statement is true as per Section 17.
7. The purpose of the Employees Deposit Linked Insurance Scheme is to provide life insurance benefits to employees who are already covered under PF. Section 6C(1) empowers Central Government to frame a scheme for the purpose of providing life insurance benefits to employees of any establishment or class of establishments to which PF Act is applicable.

Under the scheme a Deposit Linked Insurance Fund is set up. Employer is required to pay contribution which cannot be more than 1% of 'pay' of employee (presently it is 0.5%). [Section 6C(2)]. Employer is also required to pay administration charges for the Insurance Scheme [Section 6C(4)(a)]. The Insurance Fund will vest in Central Board of Trustees and will be administered by Central Board as per insurance scheme [Section 6C(5)]. The insurance scheme can provide for all matters specified in Schedule IV. The scheme can have provisions which can take effect prospectively or retrospectively [Section 6C(7)].

Schedule IV of the Act provides that Insurance Scheme can provide for (a) Employees to whom it will apply (b) Manner in which accounts will be kept and investment of moneys made as per pattern determined by Central Government (c) Procedures like forms, registers, records and returns (d) Nomination to receive insurance amount (e) Scale of insurance benefits and conditions for grant of benefit (i) Mode of payment of amount due to members of family of employees (j) Any other matter necessary for proper administration and implementation of scheme.

Accordingly, Employees Deposit Linked Insurance Scheme has been prepared, which has been made effective w.e.f. 1st August, 1976.

The employer has pay contribution equal to 0.50% of the total wages of employees. In addition, administrative charges of 0.1% of total wages is paid. [Notification No. AO 503 (E) dated 28-7-1976 issued under Section 6C(2) of PF Act].

The employee does not contribute any amount to the scheme. The salary limit for coverage of employees is same as that of Provident Fund.

8. (a) An appeal against the order of officer made u/s 1(3), 1(4), 3, 7A, 7B, 7C or 14 B can be made to Employees' Provident Funds Appellate Tribunal. [Section 7-I].

The Tribunal is headed by a Presiding Officer who is or has been qualified to be judge of a High Court or a District Judge. [Section 7D]. The Tribunal has been set up at New Delhi w.e.f. 1-7-1997, to hear appeals. The Tribunal has all India jurisdiction. [Notification SO 491(E) dated 30-6-1997]. The presiding officer holds office for five years or until he attains the age of 62 years, whichever is earlier [Section 7E]. He can resign from his office by giving three months' notice. He can

be removed after following prescribed procedure [Section 7F]. Staff of Tribunal will be supplied by Central Government [Section 7H].

The Tribunal, during proceedings, will give opportunity of hearing to parties. It will then pass order (a) confirming, modifying or annulling the order appealed against, or (b) remand the matter back to the authority for fresh directions, with such directions as the Tribunal may deem fit [Section 7L(1)]. The Tribunal has powers to rectify its order, if it is apparent from the records. Such rectification can be made within five years from date of the order. If such rectification has effect of increasing the liability of the employer, notice has to be given to the employer and opportunity of hearing will be given before passing order [Section 7L(2)]. An Order passed by the Tribunal is final and no appeal can be filed in any Court of law against the order [section 7L(4)].

Appeal can be entertained only after depositing 75% of amount demanded. However, the Tribunal can waive or reduce the deposit, for reasons to be recorded in writing [Section 7-O].

- (b) i. This statement is false because the expression basic wages does not include the cash value of food concessions. Basic wages means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him.
 - ii. This statement is false because the Chairman of the executive committee is appointed by the Central Government and not the Central Board.
 - iii. This statement is true because according to Section 14AB of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, offences relating to default in payment of contribution by the employer is a cognisable offence. A cognizable offence is one where the police can arrest a person without warrant.
 - iv. This statement is false as the Employee Provident Fund Appellate Tribunal shall consist of one judge.
 - v. This statement is false as an employer under Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.
9. If there is any dispute regarding the amount of gratuity payable to an employee or admissibility of any claim of or in relation to, an employee for payment of gratuity or the person entitled to receive the gratuity, the employer shall deposit, such amount as he admits to be payable by him as gratuity, to the controlling authority and for these (one or all) other person raising dispute may make an application to the controlling authority for deciding the dispute.

The controlling authority shall, after due inquiry and after giving the reasonable opportunity of being heard to the parties to the dispute, determine the matter or matters

in dispute. After such inquiry if any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or the difference of amount so determined and the amount already deposited by the employer to the controlling authority. The controlling authority shall pay the amount deposited by the employer including the excess amount, if any, to the person entitled thereto.

As soon as the employer made the said deposit, the controlling authority shall pay the amount to the applicant where he is the employee or where the applicant is not the employee, to the nominee or as the case may be, the guardian of such nominee or legal heir of the employee, if he is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity. For the purpose of conducting inquiry, the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908. The proceedings made by him will be the 'judicial proceedings' within the meaning of Sections 193 & 228 & for the purposes of Section 196, Indian Penal Code the controlling authority will avail all the powers like enforcing the attendance, production of documents, receiving evidences on affidavits and issuing commission for the examination of witnesses. [Section 7(4)]

10. (a) Rules relating to penalties under the Payment of Gratuity Act are as follows:

Making false statement or false representation – Whosoever makes or causes to be made false statement or false representation for purpose of avoiding payment to be made under Payment of Gratuity Act or enables another person to avoid such payment, shall be punishable with imprisonment upto six months and fine upto Rs.10,000 or with both [Section 9(1) of Payment of Gratuity Act].

Contravening provisions of Gratuity Act or rules – An employer who contravenes provisions of Payment of Gratuity Act or Rules made thereunder shall be punishable for a term which will not be less than three months but can extend upto one year. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed [Section 9(2) of Payment of Gratuity Act].

Offence relating to non-payment of gratuity – If the contravention relates to non-payment of any gratuity payable under Payment of Gratuity Act, the term of imprisonment shall be minimum six months and maximum two years. The Court can impose a lesser term of imprisonment, if the Court is of the opinion that a lesser term of imprisonment would meet the ends of justice [proviso to Section 9(2) of Payment of Gratuity Act]. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed.

Employer can charge another person as the actual offender – Though the 'employer' is liable under Payment of Gratuity Act, he can charge another person as actual offender. After commission of offence is proved, the employer has to prove that he used due diligence in execution of the Act and the other person committed the offence without the knowledge, consent or connivance of the employer. If actual

offender cannot be brought before the Court within three months, the employer will be convicted of the offence [Section 10 of Payment of Gratuity Act].

Cognizance of offence – Cognizance of offence can be taken only on complaint made by authority appointed by 'Appropriate Government'. Complaint can also be filed by 'controlling authority' if employer did not pay gratuity within six months from prescribed time [Section 11(1) of Payment of Gratuity Act]. Metropolitan Magistrate or Judicial Magistrate of First Class can try the offences punishable under Payment of Gratuity Act [Section 11(2) of Payment of Gratuity Act].

- (b) State whether the following statements are true or false and give reasons therefor with reference to the Payment of Gratuity Act, 1972.
- i. This statement is false because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees Payment of Gratuity Act, 1971.
 - ii. This statement is true because in the case of State of Punjab Vs. Labour Court (1986), it was held that a retrenched employee is also eligible for gratuity.
 - iii. This statement is false as it was held in Mathur Spinning Mills Vs. Deputy Commissioner of Labour, (1983) II LLJ 188, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.
 - iv. This statement is false because when loss is caused by the negligence of employee gratuity shall be forfeited to the extent of the damage or loss so caused.
 - v. This statement is true as an appeal against the Controlling Authority's order must generally be made within 60 days (Section 7 of Payment of Gratuity Act, 1972).
11. (a) As per law, a shareholder has a right to revoke the proxy's authority by voting himself before the proxy has voted - but once the proxy has voted he cannot retract his authority. Therefore P's claim in the given case is invalid. This point was reiterated in Cousins v. International Brick Co. Ltd also.
- (b) According to Section 176 of the Companies Act, 1956, any provision in the Articles of a public company or of a private company which is a subsidiary of a public company which requires a longer period than 48 hours before a meeting of the company for depositing a proxy, shall have effect as if a period of 48 hours had been specified for such deposit. Therefore in the given case, the answer is a 'no'.
- (c) S has given proper notice under Section 176(7) of the Companies Act 1956 which stipulates that not less than three days in writing of the intention to inspect has to be given to the company. But, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So S can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

12. The major points of distinction between fully and partly convertible debentures are highlighted below:

	Features of debentures	Fully convertible debentures	Partly convertible debentures
(i)	Classification for debt equity ratio computation	Classified as equity for debt equity computation.	Convertible portion classified as 'equity' and non-convertible portion as 'debt'.
(ii)	Flexibility in financing	Highly favourable debt equity ratio.	Favourable debt equity ratio.
(iii)	Capital base	Highly equity capital on conversion of debentures.	Relatively lower equity capital on conversion of debentures.
(iv)	Suitability	Better suited for companies without established track record.	Better suited for companies with established track record.
(v)	Servicing of equity	Higher burden of servicing of equity.	Relatively lesser burden of equity servicing.
(vi)	Debenture redemption reserve	Not required.	Required to be created for 50% of the face value of the non-convertible portion.
(vii)	Buyback arrangements	Not required.	Arrangement may be made buyback of the non-convertible portion of the debentures.
(viii)	Popularity	Highly popular with investors.	Not so popular with investors.

13. A public company can be converted into a private company by passing a special resolution altering its articles so as to include therein the restrictions contained in Section 3(1) (iii) of the Act. A special resolution passed to convert a public company into a private company is binding on dissenting shareholders provided its bona fide, is in the interest of the company as a whole, and is consistent with the objects in the memorandum of association [Bal Ramba vs. Master Silk Mills AIR 1955 N.U.R. Saurashtra 927]. Under Section 31(1), any alteration made in the articles to convert a public company into a private company shall not have effect unless such an alteration has been approved by the Registrar of Companies.

Rule 4B of the Companies (Central Government's) General Rules and Forms, 1956 lays down that where the alteration of articles of association of any company has the effect of converting a public company into a private company, the company must have the approval of the Central Government. This approval must be had through an application, within three months from the date when the special resolution for the alteration of the articles of the company was passed. The application must be in writing and in Form No. 1A or in a form as near thereto as the circumstances of the case of the case admit.

(Further, under Section 192, a copy of the special resolution together with a copy of the statement of material facts annexed under Section 173 to the notice of the meeting at which such a resolution has been passed must be filed with the Registrar of Companies within 30 days from the date it was passed by the company. The copies of the above-mentioned documents must be either printed or type written and duly certified under the signature of an officer of the company).

After obtaining the approval of the Central Government in the manner just discussed, it must file with the Registrar a printed copy of the articles as altered within one month of the date of receipt of the order of approval [Section 31 (2A)].

When altering the articles for the aforesaid purposes, the company should take care to see that the articles as a whole conform to the requirements of the Act regarding private companies, e.g., if the articles provide for power to issue share warrants to bearer, the same must be deleted, for a private company cannot issue the same.

14. (a) True. As per Section 21 of Companies Act, 1956, the Central Government's approval is required for name change.
- (b) True. The permission of the Central Government for registering a company under Section 25 is in the form of a license and hence they are also called licensed companies.
- (c) False. A prospectus must be in writing.
- (d) True. Since deferred shares are often held by the promoters of the company, they are called so.
- (e) False. Under Section 79, subject to the articles, an ordinary resolution is sufficient to authorize an issue of shares at discount.
15. (a) Acts for which special resolutions are required: Some matters may be so important and outside the ordinary course of the company's business, such as any important constitutional changes, that safeguards should be imposed to ensure that a larger majority than a simple majority of the members approve of them before they are given effect to. The Act requires that the following matters, inter alia, have to be resolved by the company, by a special resolution:
 - (1) To alter any provision contained in the memorandum, which could lawfully have been contained in the articles instead of the memorandum (Section 16);
 - (2) To alter the objects or the place of registered office of a company (Section 17);

- (3) To change the name of the company (Section 21);
 - (4) To alter the articles of association (Section 31);
 - (5) To create a reserve liability, that is, to determine that a portion of the uncalled capital shall not be capable of being called up, except in the event of a winding up (Section 99);
 - (6) To reduce the share capital (Section 100);
 - (7) To move the company's registered office within the same State but outside the local limits of the city, town or village where such office is situated [Section 146(2)];
 - (8) To commence any new business which is not germane to the business the company is carrying on currently, though covered by the objects clause of the memorandum [Section 149(2A)];
 - (9) To pay interest on shares out of capital (Section 208);
 - (10) To appoint auditors, if not less than 25 per cent of the company's subscribed capital is held, whether singly or in any combination, by the Central or any State Government, Government companies, financial institutions, nationalized banks, etc. (Section 224A).
- (b) (i) The company is guilty of violation of Section 166. There must be a meeting in each calendar year which did not happen in this case.
- (ii) The company may hold the EGM at any place. Sec.166 mentions the place for an AGM but Section 172 (1), dealing with EGMs, contains no reference to any particular place for meeting.
16. State whether the following statements are true or false and give reasons therefor:
- (a) This statement is false as Plato discusses the concept of justice in his book, 'The Republic'.
 - (b) This statement is false as according to Gandhiji, knowledge without character is a sin.
 - (c) This statement is true as the word ethics is derived from the Greek word 'ethikos', which means character.
 - (d) This statement is true as an ethical dilemma is said to exist where more than one morally right alternative exists.
 - (e) This statement is false as the Sarbanes–Oxley Act was a pioneer in the area of Corporate Governance.
 - (f) This statement is false as the term shareholder is of narrower import than the term stakeholder.
 - (g) This statement is false since in India, the corporate governance mechanism is not of voluntary nature.

- (h) This statement is false as Clause 49 was amended in 2004 following the Narayan Murthy Committee report.
 - (i) This statement is false as the Government is also a stakeholder.
 - (j) This statement is true since there is a growing convergence between CSR and Corporate Governance agendas.
17. To reverse declining public confidence in marketing. Periodically we hear about misleading package labels, false claims in ads, phony list prices, and infringements of well established trademarks. Though such practices are limited to only a small proportion of all marketing, the reputations of all marketers are damaged. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well-being of consumers, since they are the lifeblood of a business.
- To avoid increases in government regulation. Our economic freedoms sometimes have a high price, just as our political freedoms, do. Business apathy, resistance, or token responses to unethical behavior simply increase the probability of more government regulation. Indeed, most of the governmental limitations on marketing are the result of management's failure to live up to its ethical responsibility at one time or other. Moreover, once some form of government control has been introduced, it is rarely removed.
- To regain the power granted by society. Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
- To protect the image of the organization. Buyers often form an impression of an entire organization based on their contact with one person. More often than not, that person represents the marketing function. One may base one's opinion of a retail store entirely on the behavior of a single sales clerk. As Procter & Gamble put it in an annual report : "When a Procter & Gamble sales person walks into a customer's place of business that sales person not only represents Procter & Gamble, but in a very real sense, that person is Procter & Gamble."
18. (a) Global Warming : Greenhouse gases – carbon dioxide, nitrous oxide, methane, and chlorofluorocarbons, occur naturally in the atmosphere to absorb and hold heat from the sun, preventing it from escaping back into space, to keep the earth's temperature about 33°C warmer than it would otherwise be, so that life can evolve and flourish. However, industrial, and other human activities during the last 50 years have released substantially more greenhouse gases into the atmosphere, particularly by the burning of fossil fuels such as oil and coal raising the levels of greenhouse gases and resulting in increasing amounts of heat, raising temperatures around the globe. Average global temperatures are now at least 1°C higher than in 1900 and are expected to rise by upto 4.5°C during this century. This rising heat will

expand the world's deserts; melt the polar ice caps, causing sea levels to rise; make several species of plants and animals extinct; disrupt farming; and increase the distribution and severity of diseases. Bodies of water such as lakes and oceans will warm, and this will dramatically shift the geographical distribution of fish and other marine species and increase the frequency and magnitude of droughts. The increase in levels of greenhouse gases would require reducing current emissions of greenhouse gases by 60 to 70 percent – an amount that would seriously damage the economies of both developed and developing nations.

- (b) The UN Guidelines on consumer protection : 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 recognized eight consumer rights, which were made explicit in the Charter of Consumers 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.

- (c) Some International Developments in CSR : Various performance and reporting standards have been introduced globally to improve CSR performance of business houses. A few of those standards are explained below:

- The Global Reporting Initiative : It is a reporting standard established in 1997 with the mission of designing globally applicable guidelines for preparing enterprise-level sustainability reports including both social and environmental indicators.
 - AA1000 : Launched in 1999, AA1000, based on John Elkington's triple bottomline (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 to globalization.
 - 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 governments to multinational enterprises and are voluntary principles and standards, not legally enforceable. Governments adhering to the Guidelines encourage the companies operating within the countries to observe the guidelines wherever they operate.
19. (a) Mr. XYZ is in a situation where he has to choose between carrying on the development of a drug for a painful and life threatening disease which afflicts one in ten million and the action of spending huge sum of shareholders money for such development. As we can see, both are positive and ethically choices. As a socially responsible person he has to think in terms of eliminating a serious illness but at the same time he must be careful in dealing with shareholders money. This is a classic case of an ethical dilemma. Such an ethical dilemma must be resolved by addressing the following questions:
1. Defining the problem clearly.
 2. How to define the problem if you stood on the other side of the fence?
 3. How did the situation arise?
 4. To whom are you loyal as a person and as a member of the organization?
 5. What is your intention in making this decision?
 6. How does this intention compare with the probable results?
 7. Whom could your decision or action injure?
 8. Can you discuss the problem with the affected parties before you make your decision?
 9. Are you confident that your position will be as valid over a long period?

10. Could you disclose without any doubt your decision or action to your boss, your CEO, the Board of Directors, your family, society as a whole?
 11. What is the symbolic potential of your action if understood? Misunderstood?
 12. Under what conditions would you allow exceptions to your stand?
- (b) The Competition Act, 2002 intends to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

The Act deals with the following:

- Prohibition of certain agreements, which are considered to be anti-competitive in nature. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or are likely to cause an appreciable adverse effect on competition within India.
- Abuse of dominant position by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market access or through in any other mode are prohibited.
- Regulation of combinations which cause or likely to cause an appreciable adverse effect on competition within the relevant market in India.

In light of the above points, any agreement that ABC Ltd. may enter into with its competitors from North India to tie-up the price at a certain level is prohibited. Such agreements would also amount to abuse of dominant position.

Conversely, agreements with distributors preventing the latter from distributing the goods of its competitors would also be illegal since they would restrict market access and can be deemed anti-competitive.

- (c) (i) Where the accounting professional has applied for a job opening in the client company, there could arise a self interest threat.
- (ii) Where a former senior partner is the chief financial officer of the client company, there could arise a familiarity threat.
- (iii) Where the accounting professional is being threatened with litigation, there could arise an intimidation threat.
- (iv) Where the accounting professional has to report on the operation of a financial system after being involved in its designing, there could arise a self-review threat.
20. While evaluating compliance with the fundamental principles, a finance and accounting professional may be required to resolve a conflict in the application of fundamental

principles. The following needs to be considered, either individually or together with others, during a conflict resolution process

- (a) Relevant facts;
- (b) Ethical issues involved;
- (c) Fundamental principles related to the matter in question;
- (d) Established internal procedures; and
- (e) Alternative courses of action.

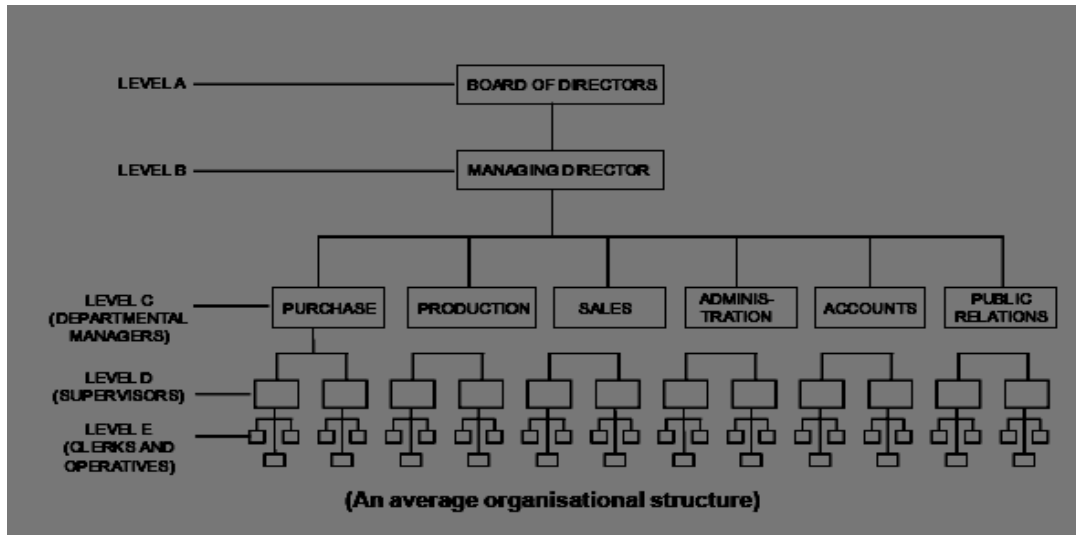
Having considered these issues, a finance and accounting professional should determine the appropriate course of action that is consistent with the fundamental principles identified. The professional should also weigh the consequences of each possible course of action. If the matter remains unresolved, the professional should consult with other appropriate persons within the firm or employing organization for help in obtaining resolution. During times where a matter involves a conflict with, or within, an organization, finance and accounting professional should also consider consulting with those charged with governance of the organization, such as the board of directors.

It may be in the best interests of the professional to document the substance of the issue and details of any discussions held or decisions taken, concerning that issue.

If a significant conflict cannot be resolved, a professional may wish to obtain professional advice from the relevant professional body or legal advisors, and thereby obtain guidance on ethical issues without breaching confidentiality. For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant should consider obtaining legal advice to determine whether there is a requirement to report.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict. The professional may determine that, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

21. **Formal Communication:** A formal communication flows along prescribed channels which all organizational members desirous of communicating with one another are obliged to follow. Every organisation has a built-in hierarchical system that can be compared to a pyramid. It can, therefore, be understood that communication normally flows from top- downwards. But it is not always so. Communication in an organisation is multidimensional or multidirectional.



Given below are the directions in which communications are sent :

- (a) Downward
- (b) Upward
- (c) Horizontal or Lateral
- (d) Diagonal or Crosswise

Formally, a clerk working in any section cannot directly communicate with a Managing Director but has to follow the reporting hierarchy. It has been called “the main line of the organisation’s operational communication”. In this are included the reports, records and other forms that supply working information to the various parts of the organisation, orders, instructions and messages that flow up and down in the hierarchical system and the letters, sales presentations, advertising and publicity material that go out to the public. These forms of communication just do not happen by themselves. They are carefully thought out and well designed. Great care is taken in their design and movement.

Advantages of Formal Communication:

- (a) The formal channels account for most of the effectiveness of communication. As has been said earlier, great care has to be taken in sending across any letter or report through the ‘proper’ formal channel.
- (b) Formal channels cover an ever – widening distance as organizations grow. Through them, it is easier to reach out to the branches of an organisation spread far and wide.
- (c) The formal channels, because of their tendency to filter information, keep the higher level managers from getting bogged down.

- (d) Formal channels of communication consolidate the organisation and satisfy the people in managerial position.
22. Qualities of a Critical Thinker:
By combining the skills of critical thinking with the appropriate mindset, one can make better decisions and adopt more effective courses of action. To develop as a critical thinker, one must be motivated to develop the following attributes :-
1. Open-minded – willing to accept and explore alternative approaches and ideas.
 2. Well-informed – knows the facts and what is happening on all fronts.
 3. Experimental – thinks through “what if” scenarios to create probable options and then test the theories to determine what will work and what won’t.
 4. Contextual – keeps in mind the appropriate context. Apply factors of analysis that are relevant or appropriate.
 5. Reserved in Making Conclusions – knows when a conclusion is “fact” and when it is not. Only true conclusions support decisions.
23. Characteristics of Groups:
- Group goals – every group establishes its own group goals, which provide motivation for their existence.
- Group structure – is based on the roles to be performed and member positions.
- Group patterns of communication – is the pattern of message flow in a group.
- Group norms – are the informed rules of interaction in a group.
- Group climate – is the emotional atmosphere of a group based on: -
- (1) Bonding and trust among members.
 - (2) Participative spirit.
 - (3) Openness.
 - (4) High performance goals.
24. Short Notes On:
- (a) Advantages of Ethical Communication:
- Ethical communication promotes long-term business success and profit. However, improving profits isn't reason enough to be ethical; as soon as the cost of being ethical outweighed the benefits, ethical choices would no longer be possible. Surveys report that all employees want to work for organizations with high ethical standards. Competent people are likely to search for organizations that maintain high ethical standards. When competent people migrate toward ethical firms, everyone benefits because both competence and ethics are perpetuated. Indeed, it is quite easy to make the argument that competence and ethics go hand in hand. Many companies are reassessing their communication budgets, moving away from traditional, functional approaches to public relations and public affairs and pursuing

internal and external corporate communication strategies. The theory and practice arising from corporate communications lies at the heart of effective strategic management, planning and control. New digital media technologies are having greater impact on news management and the monitoring and evaluation of corporate identity, corporate advertising, organizational reputation and overall performance.

(b) Elements of Culture

A number of elements that can be used to describe or influence Organizational Culture:

- The Paradigm: What the organization is about; what it does; its mission and values.
- Control Systems: The processes in place to monitor what is going on.
- Organizational Structures: Reporting lines, hierarchies, and the way that work flows through the business.
- Power Structures: Who makes the decisions and how power is distributed across the organization.
- Symbols: These include the logos and designs, but would extend to symbols of power, such as car parking spaces and executive washrooms.
- Rituals and Routines: Management meetings, board reports and so on may become more habitual than necessary.
- Stories and Myths: build up about people and events, and convey a message about what is valued within the organization.

(c) Guidelines for drafting a Press Release:

The term press release in its narrower sense is used for releases covering news. The press release contains worthwhile material which has some news value. It is not only unnecessary expenditure but also damages the reputation of the concerned publicity / information department if the release is on a very trivial matter.

The press release should be written in a journalistic style. It should provide facts or information of interest to the readers and should attempt to cover all aspects of a specific subject. There should not be any loose ends. It should be on a subject which is recent or in news. The release should not be generally lengthy. It should be concise and to the point. It has not much place for subsidiary or background material. The release is a piece of clear writing without any ambiguity, without any effort towards colour or ornamentation.

The introduction or lead should be in a summary format as it is a news story. The relative value of the various ingredients of the subjects in the press release is weighted and evaluated and the most pertinent of them are included in the lead.

The releases should have a consistent format. Generally, the name of the organization from where the release emanates is given on the top. The date and place are indicated on the top right side. The release should have a title and a subtitle also, if necessary. It should have a suitable introductory paragraph. In the case of releases from non-official organization, it is desirable also to mention the designation of the person issuing the release and his telephone number.

25. Format of Power of Attorney to be submitted before the Income –Tax Authorities.

I/we, _____, residing at _____ hereby authorise, _____ to represent me/my firm/my family in connection with _____ for the year _____. His statement and explanation will be binding on me/us.

Place:

Date:

I, _____ hereby declare that I am duly qualified to represent the above-mentioned person.

Place:

Date:

(Address of Power of Attorney holder)