

PAPER-3 : BUSINESS AND CORPORATE LAWS

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, answers in Hindi, his answers in Hindi will not be valued.

Question Nos. 1 and 7 are compulsory

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

Question 1

Answer any four of the following:

- (a) W is the wife of H, who is Lunatic, purchases a diamond set of Rs.10 lacs from Beauty Jeweller on credit. Referring to the provisions of the Indian Contract Act,1872, decide whether the Beauty Jeweller is entitled to claim the above amount from the property of H.
(5 Marks)
- (b) A and B are partners in a firm. They borrowed a sum of Rs.10,000 from M. Later on, A becomes insolvent but his assets are sufficient to pay back the loan. M compels B for the payment of the entire loan. Referring to the provisions of the Indian Partnership Act,1932 examine the validity of M's claim and decide as to who may be held liable for the above loan.
(5 Marks)
- (c) PQR Limited, New Delhi refused to pay bonus to its employees on the ground that an authorized controller appointed by the Delhi Government controls its management and as such is exempt from the liability to pay bonus. Referring the provisions of the Payment of Bonus Act,1965, decide whether the plea of the company is tenable.
(5 Marks)
- (d) L delivered sarees valuing Rs.50,000 to R on 'Sale or Return Basis'. R further delivered these sarees to V and V to M on the same terms and conditions Subsequently, these sarees were burnt by fire while in the custody of M. L filed a suit against M for the recovery of the price, with reference to provisions of the Sale of Goods Act, 1930, examine whether L's suit for the price shall be maintainable.
(5 Marks)
- (e) Referring to the provisions of the Multi-state Co-operative Societies Act, 2002 examine the validity of the following nominations made by the Central Government on the Board of a Multi-state Cooperative Society.
(5 Marks)
 - (i) 2 members have been nominated to the Society's Board where the Central Government holds 21% of the issued share capital of the society.
 - (ii) 3 members have been nominated to the Society's Board where the Central Government holds 60% of the issued share capital of the society.
- (f) V makes a gift of Rs.10,000 to W through a cheque issued in favour of W. Later he (V) informs W not to present the cheque for payment and informs the bank also to stop

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payment. Examining the provisions of the Negotiable Instruments Act, 1881, decide whether V's above acts constitute an offence. (5 Marks)

Answer

- (a) Claim for necessities supplied to incapable person (THE INDIAN CONTRACT ACT, 1872)

The present problem is related with quasi-contract. Under the provisions of section 68 of the Indian Contract Act, 1872, 'if necessities are supplied to a person who is incompetent to contract, the supplier is entitled to claim the reimbursement from the property of such person;

However:

- (i) Minors, persons of unsound mind or lunatics and other disqualified persons are incompetent to contract.
- (ii) A supplier would also be to recover the price of necessities supplied to wives or minor child of there person because they are legally bound to support them.
- (iii) Necessaries means 'goods suitable to the condition in the life of such person and to his/her actual requirement at the time of sale and delivery' as defined by English sale of Goods Act, 1893.
- (iv) In such circumstances, the price only of necessities and not luxuries can be recovered.
- (v) Similarly, if money has been advanced in like circumstances for the purpose of necessities, its reimbursement can be claimed.
- (vi) In such cases, no personal liability attaches to minor or lunatics. It is only their estate is liable. If there is no property, nothing would be realizable.
- (vii) To establish his claim, the supplier must prove not only that the goods were supplied to the person who was minor or a lunatic but also that they were suitable to his requirements at the time of the sale and delivery.

Provided that a person of unsound mind is incapable of entering into a contract. However, such a person can enter into a valid contract during an interval of lucidity. For example, a patient in a lunatic asylum, who is at intervals of sound mind may contract during such intervals. Thus, the burden of proof that W is a lunatic and of unsound mind at the time of entering into the contract lies on the party who challenges the validity of the contract.

In this problem, Beauty Jeweller is not entitled to claim the price of diamond set from the property of H because diamond set of worth Rs.10 lacs is not a necessities for W. It is a luxury for her.

- (b) Liability to third parties (THE INDIAN PARTNERSHIP ACT, 1932)

The present problem is concerned with the contractual liability of the Partners. As stated in the section 25 of the Indian Partnership Act, 1932, in partnership, the liability of the partners is unlimited. The share of each partner in the partnership property along with his

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private property is liable for the discharge of partnership liabilities. The liability of the partners is not only unlimited but is also stated that a partner is both jointly and severally liable to third parties. However, every partner is liable jointly with other partner and also severally for the acts of the firm done while he is a partner.

On the basis of above provisions, M can compel to B for the payment of entire loan. B must pay the said loan and then he can recover the share of A's loan from his property.

- (c) Act not to apply to certain classes of employees (THE PAYMENT OF BONUS ACT, 1965)

Section 32 (iv) of the Payment of Bonus act, 1965 provides that the Act shall not apply to employees employed by an establishment engaged in any industry carried on or under the authority of any Department of the central Government or a State Government or a local authority.

However, in *RMS vs. The Model Mills* (1984) it was held by Supreme Court that the exemption as aforesaid will not extend to cases contemplated in the given problem, i.e., where the establishment was not under the direct authority of the Central/state Government or local authority. Appointment of the Controller in the company by the Delhi Government was temporary phenomenon. The PQR Ltd. was, therefore, held liable to pay bonus to its workmen. The claim of the PQR Ltd. shall therefore be not tenable.

- (d) Goods sent on approval or on sale or return (THE SALE OF GOODS ACT, 1930)

In case of sale of goods on 'sale or return' basis the property in goods passes from the seller to the buyer in any of the following circumstances as per provisions given under Section 24 of the Sales of Goods Act, 1930:-

- (i) When he (buyer) signifies his approval or acceptance to the seller;
- (ii) Where he does any act adopting the transaction, i.e., sells or pledges the goods to a third party, and
- (iii) Where he retains the goods, without giving notice of rejection, beyond the time fixed for the return of goods or beyond a reasonable time (where no time is fixed).

Thus, in the given problem, R is deemed to have accepted the sarees by a further transaction to V especially in the absence of any instruction from L. The ownership thus vests in R till M approves or does any act adopting the transaction. In the meantime sarees are burnt in fire from custody of M and assuming that M handled with due care. Here loss shall fall on the R the owner (risk being associated with ownership unless otherwise is agreed between the parties.)

- (e) Nominee of Central Government or State Government on the Board (THE MULTI-STATE CO-OPERATIVE SOCIETIES ACT, 2002)

As per the provisions given under Section 48 of the Multi-state Cooperative Societies Act, 2002, the Central Government or the State Government shall have right to nominate on the board of Multi-state Co-operative Society such number of persons as its members in the following manner:

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- (a) Where the total amount of issued equity share capital held by the Central Government or the State Government is
- (i) less than twenty six percent – one member.
 - (ii) twenty six percent or more but less than fifty-one percent- two members.
 - (iii) fifty one percent or more-three members, of the board.

The number of such nominated persons shall not exceed one third of the total number of members of the board.

The central Government or the State Government shall have the right to nominate person on the board of such a society in the manner as may be prescribed.

- (i) Thus the nominations of 2 members to the society's Board by the central Government holding 21% of the issued share capital of the society is not in order.
 - (ii) The nominations of 3 members to the society's Board by the Central Government holding 60% of the issued share capital of the society is in order.
- (f) Dishonoured cheque to be treated as an offence (THE NEGOTIABLE INSTRUMENTS ACT, 1881)

As per the provisions of the Negotiable Instruments (Amendment Miscellaneous and Provisions) Act, 2002, a person issuing a cheque will be committing an offence if the cheque is dishonoured for insufficiency of funds. The offence will be punishable with imprisonment for a term up to two years or with a fine twice the amount of the cheque or both. The cheque in question should be issued in discharge of a liability and therefore a cheque given as gift will not fall in this category.

The Supreme Court in *Modi Cements Ltd. Vs. Kuchil Kumar* [1998] held that once a cheque is issued by the drawer, a presumption under Section 139 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any other liability, is informed by the bank unpaid either because of insufficiency of amount to honour the cheque or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

But in the present problem V shall not be deemed to have committed an offence because V gifts the cheque to W. The Section 138 of the Act does not apply to the cheques given as gift.

Question 2

- (a) G applies to Colours Bank for a loan of Rs.80,000 needed for one year. The bank agrees to the loan at a high rate of interest because of the recession in the Indian Capital Market. G accepts the loan on these conditions. On due date G refuses to pay back the

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loan. He (G) pleads that the contract has been procured by exercising undue influence. The bank files a suit against G for recovery of the said loan.

Decide whether the bank would be given any relief by the court under the provisions of the Indian Contract Act, 1872. (5 Marks)

- (b) The Government of Maharashtra holds 49% of the paid-up share capital of a Multi-state Co-operative Society registered under the Multi-state Co-operative Societies Act, 2002. The Government (Government of Maharashtra) seeks your advise whether Central Government can be approached to direct the society for the Special Audit. Advise the Government of Maharashtra about the circumstances in which such an audit can be directed by the central Government. Would your answer be still the same in case the Government of Maharashtra holds 51% of the paid-up share capital of the Society?

(5 Marks)

Answer

- 2 (a) Undue influence (THE INDIAN CONTRACT ACT, 1872)

According to Section 16 of the Indian Contract Act, 1872, a contract is said to be induced by undue influence where the relations subsisting between the parties are such that one of the parties is in a position to dominate the will of the other and uses that position to obtain an unfair advantage over the other.

Section 16 further provides that a person is deemed to be in a position to dominate the will of another due to following reasons.

- (i) Where he holds a real or apparent authority over the other or where he stands in a fiduciary relation to the other, or
- (ii) Where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of age, illness or mental or bodily distress.

Thus, undue influence consists in the improper exercise of a power over the mind of one of the contracting parties by the other, and in certain cases it is presumed, e.g. where a person enters into a contract with his parents. Such agreement is voidable at the option of the aggrieved party.

In the given problem, the contract between G and colours Bank is not induced by undue influence. It is a transaction in the ordinary course of banking business. Hence the argument of G is not tenable and the bank would be given relief by the court for recovery of the said loan.

- (b) Powers of Central Government to direct special audit (The Multi state Cooperative Societies Act, 2002)

The Multi state Cooperative Societies Act, 2002 (Section 77) clearly states that

- (i) If the Central Government or State Government or both hold 51 percent or more paid up share capital in a Multi state Cooperative Society, the Central government may at any time by order direct that a special audit of the Multi state Cooperative

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Society's accounts for such period/s as may be specified in the order, shall be conducted and may the same or a different order appoint either a Chartered Accountant or the Multi state Cooperative Society's Auditors himself to conduct a special audit, who shall be known as 'Special Auditor'.

- (ii) The Central Government will give direction for special audit, where the Central Government is of the opinion that-
 - (a) the affairs of any Multi state Cooperative Society are not being managed in accordance with self-help and mutual aid and co-operative principles or prudent commercial practices; or with sound business principles; or
 - (b) any Multi-state Cooperative Society is being managed in a manner likely to cause serious injury or damage to the interests of the trade, industry or business to which it pertains; or
 - (c) the financial position of any Multi-state Cooperative Society is such as to endanger its solvency.
- (iii) The expenses of, and incidental to, any special audit under this section (including the remuneration of the special auditor) shall be determined by the said Government.
- (iv) The expenses (including incidental) and remuneration of the special auditor are paid by the society and in default of such payment, shall be recoverable from the Multi-state Cooperative Society as an arrear of land revenue.

Thus is the given case since the holding of State Government is less than 51%, therefore, Central Government. cannot direct for special audit, However in later case it can do so because the holding is above 51%.

Question.3

- (a) R of New Delhi sends his agent M to purchase certain goods from Global Enterprise, Mumbai on credit for him. Later on R pays the amount for the goods purchased. On another occasion, he again sends M to purchase goods but this time pays sufficient cash to M for the purpose. M, However again purchases the goods from Global Enterprises but on credit and soon thereafter he dies. Global Enterprise files a suit against R for recovery of the said amount. Decide whether Global Enterprise would be given any relief by the Court under the provisions of the Indian Contract act, 1872. (5 Marks)
- (b) V, a member of a co-operative Society, registered with unlimited liability, desires to withdraw from the membership of the society. In the light of the provisions of the Co-operative Societies Act, 1912 advise whether V can do so. What consequences, if any, shall follow upon of such withdrawal of membership from the society? (5 Marks)

Answer

- (a) Liability of principal by estoppel (THE INDIAN PARTNERSHIP ACT,1932)

The problem relates to agency by estoppel. Section 237 of the Indian contract Act, 1872, which deals with agency by estoppels, provides that where an agent has, without

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authority, done or incurred obligations to third persons on behalf of the principal, the principal is bound by such acts or obligations, if he has by his words or conduct induced such third persons to believe that such acts and obligations were within the scope of the agent's authority.

In the given problem, R has, through an affirmative act, held out M as his agent to purchase goods for him on credit. Thus, based on the aforesaid provisions, Global Enterprises will succeed against R for recovery of the value of goods.

(b) Withdrawal of a member (THE CO-OPERATIVE SOCIETIES ACT,1912)

According to Section 23 of the Cooperative Societies Act,1912 in the case of a society with unlimited liability, a member thereof should be able to withdraw the membership of a society before any liability is incurred.

The consequences of such voluntary withdrawal from the society are as under as per provision of the Cooperative Societies Act,1912 before any liability is incurred.

- (i) He is only liable for the debts that exist at the time he ceases to be a member.
- (ii) If the society is dissolved within six months of the withdrawal, the withdrawal is null and void.
- (iii) The legal claim in share capital lapses in two years.
- (iv) Where the member ceases to reside within the area of society, both the member and the society may insist on withdrawal.
- (v) The share-value is paid to the member, but he has no claim on the reserve or other assets and may be made to pay off his share of any deficit.

Thus, V can withdraw from the membership of the society as per above aforesaid provisions.

Question 4

(a) State with reasons whether the following statements are 'Correct' or 'Incorrect':

- (i) A railway receipt is not a document of title.
- (ii) Payment made by a debtor is always appropriated in a chronological order.
- (iii) Right of lien and Right of Stoppage in transit may be exercised simultaneously by an unpaid seller.
- (iv) In an auction sale, goods to be auctioned can be put for sale in lots.

In a contract for the sale of unascertained goods, no property in the goods is transferred to the buyer unless and until the goods are ascertained. (5 Marks)

(b) M, S and N are partners in a firm. M retires from the firm without giving public notice of her retirement. Referring to the provisions of the Indian Partnership Act, 1932, decide whether M is liable for subsequent debts incurred by the firm. Would your answer still

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remain the same, if M is a sleeping partner but this fact is not known to the creditor of S and N? (5 Marks)

Answer

- (a) (i) Document of title to goods (THE SALE OF GOODS ACT, 1930)

The statement is incorrect. A railway receipt is a document of title to goods, within the definition of the term as per Section 2(4) of the Sale of Goods Act, 1930, and enables the person mentioned as consignee to give a valid discharge in respect of the goods to which it relates.

- (ii) Appropriation of payments (THE INDIAN CONTRACT ACT, 1872)

The statement is incorrect. Payments made by a debtor are not always appropriated in chronological order. Payment depends on the choice of a debtor.

- (iii) Rights of unpaid seller (THE SALE OF GOODS ACT, 1930)

The statement is incorrect. Right of lien can be exercised so long as the unpaid seller is in possession of goods. Right of stoppage in transit is exercisable after goods have left seller's possession but so long as they are passing through and have not reached the hands of the buyer.

- (iv) Sale by auction (THE SALE OF GOODS ACT, 1930)

The statement given is correct. Section 64 of the Sale of Goods Act, 1930, provides that in the auction sale, where goods are put up for sale in lots, each lot is prima facie deemed to be subject matter of a separate contract of sale.

- (v) Unascertained goods (THE SALE OF GOODS ACT, 1930)

The statement given is correct. Where there is a contract for the sale of unascertained goods, ascertainment of the goods is the first condition and their appropriation to the contract, the second and thereupon the property passes to the buyer [Section 18 of the Sale of Goods act, 1930].

- (b) Retirement of a partner (THE INDIAN PARTNERSHIP ACT, 1932)

As per the provisions of the Indian Partnership Act, 1932, (Section 32) a partner may retire:

- (i) With the consent of all the other partners; (ii) by virtue of an express agreement between the partners; or (iii) in the case of partnership at will by giving notice in writing to all other partners of his intention to retire.

A retiring partner continues to be liable to third parties for acts of the firm after his/her retirement until public notice of his/her retirement has been given either by himself/herself or by any other partner. But the retired partner will not be liable to any third party if the latter deals with the firm without knowing that the former was Partner [Sections 32(3) and (4)].

As regards the liability for acts of the firm done before his retirement, the retiring partner remains liable for the same, unless there is an agreement made by her with the third

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party concerned and the partners of the reconstituted firm. Such an agreement may be implied by a course of dealings between the third party and the reconstituted firm after he had knowledge of the retirement.

In the given problem M is liable for subsequent debts, incurred by the firm. But M is not liable for any debt to any third party in second case as per the provisions of the Indian Partnership Act, 1932 as stated above.

Question.5

- (a) The amount of bonus payable to N, a probationer chemist in Global Chemical Limited, is Rs.12,000, during the accounting year 2007-2008. A sum of Rs.10,000 was paid to her and Rs.2,000 was deducted by the company under the pretext of proportionate deduction in bonus for two months maternity leave on full pay availed by her during the year. N files a suit against the company for recovery of the deducted amount. Examine the validity of N's claim under the provisions of the Payment of Bonus Act, 1965. (5 Marks)
- (b) You being a Chartered Accountant in practice have been assigned the job of framing a 'Pension Scheme' for the employees of a company. State the matters for which you would make provision in the Scheme. (5 Marks)

Answer

- (a) Procedure for calculation of working days for the payment of bonus (THE PAYMENT OF BONUS Act, 1965)

The given problem is based on calculation of working days for the payment of bonus. As per Section 8 of the Payment of Bonus Act, 1965, an employee shall be entitled to be paid bonus (including minimum bonus) only if he has worked in the establishment for not less than 30 working days in that year.

As per Section 14 of the Act, 1965 an employee shall be deemed to have worked in a establishment in any accounting year also on the day on which:-

- (a) He has been laid off under an agreement or as permitted by Standing Orders under the Industrial Employment (Standing Order) Act, 1946, or under the Industrial Disputes Act, 1947, or under any other law applicable to the establishment;
- (b) He has been on leave with salary or wage;
- (c) He has been absent due to temporary disablement caused by accident arising out of and in course of his employment; and
- (d) The employee has been on maternity leave with salary or wages during the accounting year.

Where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs.100 or, as the case may be, of Rs.60 (in case of an employee who has not completed 15 years of age), if such bonus is higher than 8.33% of his salary or wage of the days he has worked in that accounting year, shall be proportionately reduced (Section 13).

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In the given problem N would be succeed. She may recover the said deducted amount of bonus from the company because she was on maternity leave on full pay for two months which are the part of total working days for payment of bonus as per section 14 of the Act as stated above.

- (b) The Employees' Pension Scheme (THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952)

As per Section 6A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 the Scheme provides for:

- (a) Superannuation, pension, retiring pension or permanent or total disablement pension to employees of any establishment to which the act applies and
- (b) Widow or widower's pension, children pension or orphan pension payable to beneficiaries of such employees.

A fund for the above purpose is to be set up in which there shall be paid from time to time in respect of every employee who is a member of pension scheme, a sum not exceeding.

$8\frac{1}{3}$ % of basic wages, D.A & retaining allowance. The scheme may further provide for all or any of the matters specified in schedule III of the Act.

- (1) The employees or class of employees to whom the Pension Scheme shall apply.
- (2) The time within which the employees who are not members of the family Pension Scheme under Section 6A as it was before the commencement of the employees' Provident Funds and Miscellaneous Provisions (Amendment) Ordinance, 1995 shall opt for the pension Scheme.
- (3) The portion of the employers' contribution to the Provident Fund shall be credited to the pension fund.
- (4) The Minimum qualifying service for being eligible for the pension and the manner in which the employees may be benefited of their past services is given under Section 6A as it stood before the commencement of the Amendment Ordinance, 1995.
- (5) The regulation of the manner in which, the period of service for which no contribution is received.
- (6) The manner in which the employees' interest will be protected against default in payment of contribution by the employer.
- (7) The manner in which the accounts of the pensions fund shall be kept and invested to be made subject to such pattern of investment as determined by the central government.
- (8) The form in which an employee shall furnish particulars about himself and his family members whenever required.
- (9) The forms, registers and records to be maintained in respect of employees, required for the administration of the Pension Scheme.

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- (10) The scale of pension and pensionary benefits and the conditions relating to such benefits of the employees.
- (11) The manner in which the exempted establishments have to pay contribution towards the Pension Scheme and the submission of return relating thereto.
- (12) The mode of disbursement of pension and arrangements to be entered into with disbursing agencies as may be specified for the purpose
- (13) The manner in which the expenses for administering the Pension Scheme will be met from the income of the Pension Fund.
- (14) Any other matter provided for the Pension Scheme or which may be necessary or proper for the purpose of implementation of the Pension Scheme.

Question 6

- (a) Referring to the provisions of the Negotiable Instruments Act, 1881, examine whether acceptance of a bill of exchange in the following situation shall be treated as 'qualified' acceptance where the acceptor:
 - (i) undertakes to pay only Rs.2,000 for a bill drawn for Rs.5,000;
 - (ii) declares the payment to be independent of any other event;
 - (iii) Writes : "Accepted, payable at ABC Bank". (5 Marks)
- (b) Examine with reasons, the validity of the following nominations made under the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952
 - (i) J nominated N (his son) as a nominee.
 - (ii) M nominated S (his wife) and K (a friend) as nominees.
 - (iii) R who does not have a family, nominated A (a close relative) as a nominee.
 - (iv) G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

G nominated N (a friend) as nominee because he does not have family at the time of nomination. Later, after one year of nomination he gets married to N. (5 Marks)

Answer

- (a) Acceptance of the Bill of Exchange (THE NEGOTIABLE INSTRUMENTS ACT, 1881)

Acceptance of a Bill of Exchange can be either "general" or "qualified". It is qualified when the drawee does not accept the bill according to the apparent terms of the bill but attaches some conditions or qualification which have the effect of either reducing his (acceptor's) liability or acceptance of the liability subject to certain conditions. The holder of the bill is entitled to require an absolute and unconditional acceptance as well as to treat it as dishonoured, if it is not so accepted. However, he may agree to 'qualified acceptance'. But such an act will discharge all parties prior to himself, unless he has obtained the consent of prior parties

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Thus, applying the above in the given case answers to the sub-parts are as under:

- (i) The acceptance shall be treated as 'qualified'.
 - (ii) Acceptance shall not be treated as 'qualified'.
 - (iii) It is not qualified acceptance.
- (b) Nomination (THE EMPLOYEES' PROVIDENT FUNDS AND MISCELLANEOUS PROVISIONS ACT, 1952)

According to the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, every member of the provident fund is required to nominate a person to receive the amount credited to his provident fund in the event of his death. More than one nominee may be appointed and the amount distributed amongst them in any proportion. Nomination must be made in favour of a family member only. Nomination in favour of a person other than a family member shall be invalid. But, where a member does have a family, nomination may be made in favour of any person but the same shall become invalid on his acquiring a family.

As per above provision, the validations of the following nominations are as under-

- (i) The nomination of N (son of J) is valid being he is the family member of the J.
- (ii) The nomination of S (wife of M) is valid being family member but the nomination of K is not valid being a friend.
- (iii) The nomination of A by R is also valid because he does not have a family.
- (iv) Initially, the nomination of N by G is valid due to lack of family, but it becomes invalid after the marriage of G with Z because he has acquired family now.
- (v) The nomination of N by G is valid in both the cases because initially N is the friend of G and later on she becomes wife. In the absence of family, the nomination of friend is valid and later on wife's nomination is valid.

Question.7

Answer any four of the following

- (a) XYZ limited obtained certificate of Incorporation and Certificate of Commencement of Business from the registrar of companies on 10th January, 2009 and 10th February, 2009 respectively. On 15th January, 2009, the company purchased office furniture worth Rs.10,000 from the SAB Private Limited on credit. Later on the Company refuses to make payment of the said amount on the ground that company is not bound by contract entered into prior to issuing of Certificate of commencement of Business. In the light of the provisions of the Companies Act, 1956, advise whether XYZ Limited can be exempted from the above liability. (5 Marks)
- (b) The registered office of India Software Limited is situated in Mumbai. The company desires to shift the registered office to Pune. As the advisor of the company what steps would you advise for shifting of the company's registered office from Mumbai to Pune under the provisions of the Companies Act, 1956, as amended in 2009? (5 Marks)

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- (c) X, a minor purchased 500 equity shares of Rs.10 each of a company, on which only Rs.5 per share were paid, from the Mumbai Stock Exchange, and submitted an application to the company for transfer of these shares in his name. Examining the provisions of the Companies Act, 1956 decide whether these shares can be transferred to X. (5 Marks)
- (d) The paid up share capital of ABC Private Limited is Rs. one crore consisting of 8,00,000 equity shares of Rs.10 each and 2,00,000 cumulative preference shares of Rs.10 each, both fully paid up. PQR Private Limited and MNO Private Limited are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in ABC Private Limited. PQR Private Limited and MNO Private Limited are the subsidiaries of UMC Private Limited. Examine with reference to the provisions of the Companies Act,1956, whether ABC Private Limited is a subsidiary of UMC Private Limited. Would your answer be different, if UMC Private Limited controls the composition of Board of Directors of ABC Private Limited? (5 Marks)
- (e) The Board of Directors of ABC Limited called an Extra-ordinary General Meeting of the company to transact certain urgent matters. The meeting could not be held for want of requisite quorum. As a result, the meeting was adjourned to next week. Again, at the adjourned meeting also the requisite quorum was not present. Members at this meeting held the meeting and passed certain resolutions.

With reference to provisions of the Companies Act, 1956, examine the validity of the meeting and stage whether resolutions passed at such meeting shall be binding upon the company and its members. (5 Marks)

Answer

- (a) Provisional contracts (THE COMPANIES ACT,1956)

The Companies Act, 1956 states that the private company or a company having no share capital may commence business and exercise its various powers immediately after it is incorporated, On the other hand a public company having share capital, must obtain Certificate of Commencement of Business from the Registrar of Companies before it can commence its business or exercise its borrowing powers.

As per section 149(4) of the Companies Act,1956 contracts which are entered into by a public company after obtaining the Certificate of Incorporation but before getting the Certificate of Commencement of Business are known as provisional contracts. Such contracts are not binding on the company until the company is entitled to commence business and on that date they shall become binding, without any need for ratification. Thus, if the company is unable to obtain the Certificate of Commencement of Business, a provisional contract will never become binding on the company and no one can sue it.

In the given problem the XYZ public Ltd. company cannot be exempted from payment of SAB Private Ltd. because it is a provisional contract. It becomes effective from the date the company has obtained the certificate of commencement of business from the registrar of companies as per above provisions of the Act.

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(b) Alteration of registered office(THE COMPANIES ACT,1956)

In the given problem, the India Software Ltd is interested to change its registered office from Mumbai to Pune. The following procedure is to be followed by the company as per Section 17A of the companies (Amendment) Act,2000.

- (i) A special resolution is required to be passed at a general meeting of the shareholders.
- (ii) The company shall make an application in the prescribed form to the Regional Director (Western Region Mumbai).
- (iii) Confirmation of the Regional Director is to be obtained where the change is from jurisdiction of one Registrar of Companies to the jurisdiction of another Registrar of Companies which is applicable in this case. The Regional Director shall convey his confirmation within four weeks from the date receipt of application for such change.
- (iv) A copy of the special resolution, as aforesaid, is to be filed with the Registrar within 30 days in Form No.23. Copy of the confirmation by Regional Director shall be filed with the confirmation together with a printed copy of the altered memorandum of association. The Registrar is required to register the same and certify the registration within one month from the date of filing of the said document. The certificate shall be conclusive evidence that all the requirements of the Act with respect to the alternation and confirmation have been complied with and henceforth the memorandum as altered shall be the memorandum of the company.
- (v) Within 30 days of the removal of the registered office, the notice of the new location of the new location has to be given to the Registrar who shall record the same. Once again, it may be noted, the aforesaid change does not involve alteration of the memorandum of association, the State remaining the same.

(c) Minor as a member of a company(THE COMPANIES ACT,1956)

The position of a minor as a member of a company as per the companies Act,1956 may be noted as under:

- (i) As a minor is wholly incompetent to enter into a contract (Mohri Bibi V. Dharmadas Ghose 1930). An agreement by a minor in India to take shares is void and hence, he cannot be a member of a company.
- (ii) If shares are allotted to a minor in response to his application, and his name entered on the register of members, in ignorance of the fact of minority, the company can repudiate the allotment and remove his name from the register on coming to know of the minority of the member. The company must repay all money received from him in respect of the allotment of shares.
- (iii) The minor also can repudiate the allotment during his minority and he shall be returned the amount he paid towards the allotment of shares.
- (iv) If the name of the minor continues on the register of members and neither party repudiated the allotment, the minor does not incur any liability on the shares during minority (Fazalbhoy Jaffar v. The Credit Bank of India [1914].

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- (v) If an application for shares in the name of the child describing him as a minor, neither the minor nor the guardian can be placed on the list of contributories at the time of winding up (*Palaniappa v. Official Liquidator, Pasupati Bank Ltd. Madras*).
- (vi) In case of transfer of partly-paid shares to a minor, the company may refuse to registrar him as a member. In case the company, in ignorance of the minority, has permitted the transfer, then the company may remove the name of the minor and replace it by that of transferor, even though the latter may have been ignorant of the minority.
- (vii) In case of fully paid shares, minor's name may be admitted in the register of members, if the minor happens to acquire the same by way of transfer or transmission. In *Devan Singh v. Minerva Films*; 1956, the Punjab High Court held that there is no legal bar to a minor becoming a member of a company by acquiring shares (by way of transfer) provided the shares are fully paid up and no further obligation or liability is attached to them. Similarly, in *S.L. Bagree v. Britannia Industries Ltd*; 1980, company law board upheld transfer in favour of a minor.

We may thus conclude that there is no objection to a minor being admitted as a member in respect of fully paid shares provided he happens to acquire the same by way of transfer or transmission. After application of the above provisions in given problem fully paid up shares can be transferred to X without any contractual liability.

(d) Holding and Subsidiary Companies (THE COMPANIES ACT, 1956)

According to Section 4(b) of the Companies Act, 1956 if a company, by itself or along with its subsidiaries held more than half the nominal value of the equity shares capital of another company, it will be considered as the holding company of the other company.

In this case, the equity share capital of ABC Private Ltd. is Rs.80,00,000 consisting of 8,00,000 equity shares of Rs.10 each fully paid up. PQR Private Limited and MNO Private Limited are holding 4,50,000 (3,00,000+1,50,000) equity shares in ABC Private Limited. As PQR Private Limited and MNO Private Limited are the subsidiaries of UMC Private Limited; UMC Private Limited will be treated as holding more than half in nominal value of equity share capital of ABC Private Limited. Hence, ABC Private Limited is a subsidiary of UMC Private Limited. While calculating the controlling interest, the holding of equity shares alone should be taken into consideration for the purpose of Section 4(b) of the Act.

If UMC Private Limited controls the composition of board of directors of ABC Private Limited, it will also be treated as holding company by virtue of Section 4(1)(a). Hence, the answer will remain the same.

(e) Quorum (THE COMPANIES ACT, 1956)

As per the provisions of Section 174 of the Companies Act, 1956 the extraordinary general meeting cannot proceed with business in the absence of quorum. Unless the articles of the company provide otherwise, if within half-an-hour from the time appointed for holding the meeting of the company, quorum is not present then the meeting if called upon the requisition of members shall stand dissolved. In any other case, the meeting

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shall stand adjourned, to the same day in the next week, at the same time and place, or to such other day and such other time and place as the Board may determine. If at such an adjourned meeting a quorum is not present within half-an-hour from the time appointed for the meeting the members present shall constitute the quorum but a single member present shall not constitute quorum at an adjourned meeting.

Some times quorum is immaterial for a company meeting. If all the members are present, it is immaterial that the quorum required is more than the total number of members [Re. Express Engineering Works Ltd. (1920) V. Re Oxted Motor Co. Ltd. (1921)]. If, for example, the articles of a private company provide that four members personally present shall be a quorum, and the number of members is reduced to three then the question of quorum will not arise when all the members attend a meeting. Resolution passed at this meeting shall be binding upon the company and its members.

Question.8

- (a) Gold Limited invited applications for the issue of 5,00,000 Equity shares of Rs.10 each through a public issue. As per prospectus, applicants were required to pay only Rs.2 on application. 'A' applies for 500 shares and deposits Rs.5,000 to the company – because he did not properly go through the terms of the offer. Later, he applies to the company seeking refund of the excess amount paid by him. Referring to the provisions of Companies Act,1956, decide whether the company is bound to refund the excess money to 'A'. (5 Marks)
- (b) As a Corporate Professional advise your client company whether the following matters can be transacted by getting a resolution passed through Postal Ballots:
- Issue of shares with differential voting-rights;
 - Sale of whole of the undertaking of a company;
 - Buy-back of own shares by the company. (5 Marks)

Answer

- (a) Payment of calls in advance (THE COMPANIES ACT,1956)

According to section 92(1) of the companies Act,1956, a company may, if so authorized by the articles, accept from any member the whole or a part of the amount remaining unpaid of any shares by him although no part of the amount has been called up. The amount so received or accepted is described as payment in advance or accepted is described as payment of calls in advance.

When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:

- (i) The amount received in advance of calls is not refundable. Except in the cases of winding up of the company. The amount will be treated as and can be used for specific purpose.
- (ii) At the time of winding up of the company the shareholder rank after the creditors but must be paid his amount, before the other shareholders are paid off.

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- (iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder become the creditor of the company in respect of this amount.
- (iv) The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.
- (v) The shareholder is not entitled to voting rights in respect of moneys so paid by him until the same would, but for such payment, become presently payable.
- (vi) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

This problem is related with call in advance. As per the above provisions of the Companies Act, 1956 the Gold Ltd is not bound to refund the excess amount paid by A. It was also provided in the case of *Lock v. Queensland Investment and Lank Mortgage Co*; 1896, that the member can not compel the company to repay the amount.

Alternate Answer:-

M/s Gold Ltd. cannot keep the excess amount paid by A due to mistake. Instead of making a payment of Rs.1000/-, A paid the full amount of Rs.5,000/- to Gold Ltd. Due to ignorance. Thus, Gold Ltd. Cannot retain the said excess amount of Rs.4,000/- i.e. Rs.5,000/- minus the required figure of Rs.1,000/- as calls in advance in the absence of any call made by the board of the company for this purpose. Further, there is a prescribed procedure for making calls by way of resolution by the board of Directors and the same has not been followed in this case. Thus, A can obtain by way of refund the excess money paid by him by mistake.

(b) Passing of resolution by postal ballot (THE COMPANIES ACT, 1956)

Section 192 A of the Companies (Amendment) Act, 2000 Provides for the procedure to be followed by the company for ascertaining the views of the members by postal ballot. A company shall read notice and draft resolution but registered post to all shareholders explaining the reasons and requesting them to communicate their assent/dissent within 30 days from the date of posting of letter.

Postal ballot includes voting by shareholders by postal or electronic mode instead of voting personally by presenting for transacting business in a general meeting of the company.

List of businesses for which the resolutions may be passed through postal ballot:

- (a) Alteration in the object clause of memorandum;
- (b) Alteration of articles of associations in relation to deletion or insertion of provisions defining private company;
- (c) Buy-back of own shares by the company
- (d) Issue of shares with differential voting rights as to voting or dividend or otherwise.

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- (e) Change in place of registered office out side local limits of any city, town or village.
- (f) Sale of whole or substantially the whole of undertaking of a company.
- (g) Giving loans or extending guarantee or providing security in excess of the limit prescribed.
- (h) Election of a director under section 252.
- (i) Power to compromise or make arrangements with creditors and members.
- (j) Variation in the rights attached to a class of shares or debentures or other securities.

Thus in the given case the company can be advised to get all the three items as asked in the question to get transacted through postal ballots.

Question.9

- (a) Board of Directors of ABC Limited wants to transact the following matters at the forthcoming Annual General Meeting of the Company:

Approval of Financial Statement – Balance Sheet and Profit and Loss Account.

Declaration of Dividend.

Election of Directors

Appointment of Auditors

Fixation of Auditors' Remuneration

Sale of an undertaking of the company to XYZ limited for a consideration of Rs.100 crores.

Setting up a subsidiary company in U.K. in collaboration with a company incorporated there at.

You being the senior officer of the company are directed by the Board of Directors to classify the above matters into 'ordinary' and 'special' business to be transacted at the above meeting and state the types of resolutions required to be passed for transacting the above matters. (5 Marks)

- (b) Golden Private Limited in its Article of Association provides a format of 'proxy form' different from the one prescribed by the companies Act, 1956 in Schedule IX, S, a shareholder submits an instrument appointing proxy to the company in the form as prescribed in Schedule IX. The company rejects the proxy on the ground that it is not in the form as prescribed in Articles of Association of the company. Is the rejection valid under the provisions of the Companies Act,1956? Decide giving reasons. (5 Marks)

Answer

- (a) Special and ordinary business (THE COMPANIES ACT, 1956)

Classification of Business for Annual General Meeting:

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Business which may be transacted at an Annual General Meeting can be classified into two : Viz

(i) Ordinary Business:-

This may be transacted at the Annual General Meeting by passing ordinary Resolution.

(ii) Special Business:-

Any business other than ordinary business is called special business which may be transacted at the Annual General Meeting & Extraordinary General Meeting by passing either an ordinary resolution or special resolution, depending upon nature of the business and the requirements of Companies Act,1956. Further where any special business has been listed on agenda an explanatory statement for each such item must be given as required under the following items shall be listed in the category of

1. Ordinary Business:-

Serial No.1, 2, 3, 4, & 5 (To be transacted by passing ordinary Resolution).

2. Special Business:-

Serial No.6 and 7 (To be transacted by passing special Resolution. Item is to be listed with explanatory statement.

Auditor can also be appointed by passing Special Resolution as required u/s.224A of companies Act,1956 where in a company 25% or more of the subscribed capital is held whether simply or jointly by a public financial institution. or a Government Company. or central or state Act in which a state Government holds not less than 51% of the subscribed capital or a nationalized bank or an Insurance Company carrying on General Insurance.

(b) Proxies(THE COMPANIES ACT,1956)

The provisions of Section 176(6) of the Companies Act, 1956 provides that the instrument appointing a proxy, if in any of the forms set out in schedule IX of the Act, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles. In terms of Section 170(1) provisions of Section 176(6) shall not be applicable to the private company in question as it is not a subsidiary of a public company and that it has specifically provided for provisions to be issued in the form prescribed under the Articles.

Therefore, the rejection of Golden Private Ltd. is valid. The company may reject the proxy form of S. He has to submit the proxy form as prescribed in its articles of association.

Alternate Answer

Where the company in accordance with its articles has adopted a proxy form of its own and wants its members to use only that form, it has been held that even then, members can use the form prescribed by schedule IX. General Commerce vs. Apparel Export Promotion Council(1990) 69 com. Cases 158(Del).

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Question.10

- (a) Star Limited forfeited 80 equity shares and re-issued the same at a premium of Rs.2,000 resulting in a surplus earning of Rs.2,000. The company did not file the return of allotment with the Registrar of the companies in respect of re-issued shares. Explain with reasons whether the company has contravened the provisions of the companies Act,1956. (5 Marks)
- (b) XYZ company Private Limited desirous of raising funds through acceptance of deposits from the public seeks your advise on the matter. You being the financial advisor of the company, advise the company whether acceptance of deposits from the public in the given case be valid under the provisions of the Companies Act, 1956. (5 Marks)

Answer

- (a) Return of allotment(THE COMPANIES ACT,1956)

No, the public company has not contravened any provisions of the Companies Act, 1956. According to the provisions of Section 75(5) of the Act, forfeited shares can be re-issued at a premium without any legal formalities. The issue of forfeited shares is treated as a sale and not the allotment of shares. Thus no return of allotment of such re-issue need be filed with Registrar of Companies.

The above provision is also applicable in case of Star Ltd.

Alternate Answer:

The provisions of Section 75(5) relates only to forfeiture of shares for non payment of calls. If, however, the company re-issues the forfeited shares, it has to furnish the details of the new member of the shares to the Registrar of Companies.

- (b) Private Company(THE COMPANIES ACT,1956)

In accordance with the definition of private company under section 3(1) (iii) of the Companies Act, 1956, a private company is a company which, inter alia, prohibits any invitation or acceptance of deposits from persons other than its members, directors or their relatives.

Hence ,this section allows acceptance of deposits but only from its members, directors or their relatives. It cannot accept deposits from the public without changing its status.