Nahata Professional Academy

Ideal Answers

CA PCC/IPCC

Business & Corporate Laws

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100% questions from concepts taught in NPA classroom

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(Disclaimer: Questions asked in the exam may have wrong/inadequate information and/or ambiguous language. In that case the answers provided by institute may differ from this Ideal Answers. Every step has been taken to make accurate these answers, still if you find some clerical errors, please bring it to our notice through email.)

Question 1 (c) (Negotiable)
Pick out the correct answer from the following and give reasons:
(III) A negotiable instrument drawn in favour of a minor is
(1) Void
(2) Void but not enforceable
(3) Valid
(4) None of the above

Answer 1
(3) Valid. According to section 26 of the Negotiable Instruments Act, 1881 A minor may draw, indorse, deliver and negotiate such instruments to as to bind all parties except himself. It means minor cannot be made liable but he can take the benefit.

Question 2 (a)
Noble Meters Limited was incorporated with the equity share capital of Rs. 50 lakh. The company received the certificate of Incorporation on 20th May, 2009. The company issued the prospectus inviting the public to subscribe for its equity shares. Meanwhile, the company intended to commence its business. Whether Noble Meters Ltd. is entitled to Commence it's Business without obtaining the certificate to commencement of Business?

Advice the company stating the conditions to be fulfilled for obtaining the certificate to commencement of Business from the Registrar of Companies under Companies Act, 1956.

Answer 2(a)
Noble meters Ltd. Is a public co. hence it cannot commence business without obtaining certificate of commencement of business. Following are the provisions of the Companies Act, 1956 in this respect:

1. According to sub section **(4)** of section 149, Any contract made by a public company before the date at which it is entitled to commence business shall be **provisional** only, and shall not be binding on the company until that date, and on that date it shall become binding.

2. According to sub section **(5)** a public company cannot borrow before its gets certificate of commencement of business but it can offer for subscription shares and debentures simultaneously.

According to sub section (1) if a company has issued prospectus, it has to fulfill all the following conditions to obtain certificate of commencement of business:
(a) shares have been allotted up to the amount of **minimum subscription**;
(b) **directors** have paid their application and allotment money;
(c) its' application for **listing** on stock exchange(s) have been accepted; and
(d) it has filed with the Registrar a duly verified **declaration** that the above provisions have been complied with.

Question 2 (b) (i)
State Whether the following statements are true or false and give reasons:
The articles of Association of a Company can be altered by passing an ordinary resolution in the meeting of the share holders.

Answer 2(b)(i)
False. According to section 31 a company can alter its articles of association in any way by passing a **Special Resolution** in the meeting of members.

Question 2 (b) (ii)
State Whether the following statements are true or false and give reasons:
A transferee becomes a member of the company when the instrument of transfer is submitted with the company.
Answer 2(b)(ii)
True. Provided other formalities mentioned in section 108 are fulfilled and company writes name of transferee in register of members.
Question

Question 2 (c) (i)
Pick out the correct answer from the following and give reasons:
Contracts which entered into, by agents or trustees on behalf of a prospective company before it has come into existence are called:

1. Provisional contracts
2. Pre-incorporation contracts
3. Both provisional and pre-incorporation contracts
4. None of the above.

Answer 2(c)(i)
(2) Pre-incorporation contracts. Contracts before the incorporation of any company are called pre incorporation contracts and contracts by a public co. after incorporation but before getting certificate of commencement of business are provisional contracts.

Question 2 (c) (ii)
Pick out the correct answer from the following and give reasons:
A prospectus issued by the financial institutions or bank for one or more issues of the securities or class of securities specified in the prospectus is called:

1. Deemed prospectus
2. Red-herring prospectus
3. Abridged prospectus
4. Shelf prospectus.

Answer 2(c)(ii)
(4) Shelf Prospectus. According to section 60A Any public financial institution, public sector bank or scheduled bank whose main object is financing shall file a shelf prospectus.

Question 2 (c) (iii)
Pick out the correct answer from the following and give reasons:
The gap between two Annual General Meetings must not be more than

1. 12 months
2. 15 months
3. 18 months
4. 15 months as may be extended by Registrar of Companies to 18 months.

Answer 2(c)(iii)

(4) 15 months as may be extended by registrar of Companies to 18 months. According to section 166(1) there should not be a time gap of more than 15 months between two AGMs. But for special reasons ROC can extend this time by a period not exceeding 3 months.

Question 3 (Bonus)

Standard Airways Limited was incorporated at Chennai in the year 2005 employing 125 workmen. Due to strike of workers, mismanagement in the company and accidental loss of the assets the company suffered heavy losses continuously since its incorporation, resulting which the large part of the capital and assets were wiped out. Consequently, the company moved an application to the Government of Tamilnadu requesting to exempt the company fully from the application of the provisions of the Payment of Bonus Act, 1965.

Decide, whether the Government of Tamilnadu may grant exemption to the Company. State the provisions of law in this regard as stated under the Payment of Bonus Act, 1965.

Answer 3

According to section 36 of the Payment of bonus act, 1965: looking at the financial position or other circumstances, the appropriate government may exempt any establishment from all or any of the provisions of the Payment of Bonus Act, 1965. The govt. may also specify the conditions and period of exemption.

Also according to section 2(5) "**appropriate government**" means,-

(i) in relation to an establishment for which the Central Government is appropriate government <u>under the Industrial Disputes Act</u>, the Central Government;

(ii) in relation to any other establishment, the Government of the State in which it is situate;

Looking at the circumstances given in the question we can assume that for Standard Airways Ltd. Tamilnadu government is the appropriate govt. Now section 36 gives power to Tamilnadu govt. to give exemption from bonus act on the basis of financial position. In the current case company has sustained heavy losses hence **govt. can give exemption** on that basis.

Here one thing is clear that even if govt. does not provide exemption, currently the company need not to pay bonus to its employees. Because according to section 16 of the payment of bonus act In the **1st five** accounting years following the accounting year in which the employer sells the goods manufactured by him or renders services, bonus shall be payable only in respect of the accounting year in which the employer derives profit.

Question 4 (Negotiable)

'N' is the holder of a bill of exchange made payable to the order of 'P'. The bill of exchange contains the following endorsements in blank:

First Endorsement	'P'
Second endorsement	'Q'
Third endorsement	'R'
Fourth endorsement	'S'

'N' Strikes out, without S's consent, the endorsement by 'Q' and 'R'. Decide with reasons whether 'N' is entitled to recover anything from 'S' under the provisions of negotiable Instruments Act, 1881.

Answer 4

According to section 82 of the Negotiable Instruments Act, 1881 the endorser of a negotiable instrument is discharged from liability thereon:

1) to a holder thereof who cancels such endorser's name with intent to discharge him, and to all parties claiming under such holder;
2) to a holder thereof who otherwise discharges such endorser, and to all parties deriving title under such holder after notice of such discharge;

Also as per section 87: Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent thereto.

In the present case N strikes out endorsement of Q and R, it means as per section 82 liability of Q & R towards all the parties is discharged. Now for this alteration consent of S was not taken by N. Therefore **liability of S is also discharged.**

Question 5 (Gratuity)

Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial conditions the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity.

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer 5

A company cannot refuse to pay the gratuity on the basis of stringent financial conditions. Following are the provisions of recovery of gratuity under section 8 of the payment of gratuity act:

If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, **issue a certificate for that amount to the Collector**, who shall recover the same, together with compound interest thereon from the date of expiry of the prescribed time, **as arrears of land revenue** and pay the same to the person entitled thereto.

PROVIDED that the controlling authority shall, before issuing a certificate under this section, give the employer **a reasonable opportunity** of showing cause against the issue of such certificate:

PROVIDED FURTHER that the amount of interest payable under this section shall, in no case, exceed the amount of gratuity payable under this Act.

In the present case Mutual Developers Ltd. Has denied to make payment of gratuity to Mr. X. therefore as per section 8 Mr. X can apply to appropriate authority for payment of gratuity.

Question 7

The united Traders Associations was constituted by two joint Hindu Families consisting of 21 major and 5 minor members. The Association was carrying the business of trading as retailers with the object for acquisitions of gain. The Association was not registered as a company under the Companies Act, 1956 or other law.

State whether United Traders Associations is having any legal status? Will there be any change in the status of this Association if the members of the United Traders Association subsequently reduced to 15.

Answer 7

Following are the relevant provisions given in **section 11** of the companies act, 1956:

1. An association or partnership carrying on banking business cannot have more than ten member, and carrying on any other business cannot have more than 20 members, unless it is registered under the companies act or other law.

2. This section shall not apply to a joint family. But where a business is carried on by two or more "joint families, all of their major member will be counted as partner.

3. Any association carrying on business in contravention of this section shall be illegal and their members are **personally liable** for all liabilities incurred in such business. Member are also punishable with fine which may extend to ten thousand rupees.

In the present case United Traders Association was constituted by two joint Hindu families consisting of 21 major member and carrying on business or trading. According to above provision it should not have more than 20 member, while it is having 21 members. It means that it is in violation of section 11 and **will be treated as illegal association having no existence.**

If its number of members reduces to 15 in that case it will be a legal association for transactions entered into after such reduction.

Question 8

Mr. 'Y', the transferee, acquired 250 equity shares of BRS Limited from Mr. 'X', the transferor. But the signature of Mr. 'X', the transferor, on the transfer deed was forged. Mr. 'Y' after getting the shares registered by the company is his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRS Limited. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

Answer 8

When the signature of a transferor is forged on an instrument of transfers, it is called a forged transfer. Following are the consequences of a forged transfer:

1) A forged transfer is void. It does not give any legal title to the transferee.

2) The original owner of shares (i.e., transferor) continues to be shareholder of the company. And if the company has registered the forged transfer, original owner can compel the company to restore his name in the register of members.

3) If the company has issued a share certificate to the transferee on the basis of forged transfer and he has sold shares to an innocent purchaser, then the purchaser will not have the right to be registered as a shareholder. However he can claim damages from the company on the ground that he acted on the faith of the share certificate issued by the company.

4) If the company has suffered any loss by reason of the forged transfer, it may claim damages from the person who lodged the forged instrument for registration even though he acted in good faith.

In the present case X is the original owner, Y is the transferee and Z is the subsequent purchaser. Looking at the above provisions we can conclude that:

1) X has the right to compel the company to restore his name in the register of members for entire 250 shares.
2) Z has the right to claim damages from company for 150 shares he bought on the basis of share certificate issued by the company.
3) Y will not have any title on 100 shares he is holding. In fact company can ask him to compensate for 150 shares he sold to Z.

Question 9

Modern Furniture Limited was willing to purchase teakwood estate in Chhattisgarh State. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh State. The report was found inaccurate. Mr. 'X' purchased the shares of Modern Furniture Limited on the basis of the above statement in the prospectus. Will Mr. 'X' have any remedy against the company? When an expert will not be liable? State the Provisions of the Companies Act, 1956 in this respect.

Answer 9

Here in this case prospectus issued by the company contains misstatement, hence it is a misleading prospectus. In case of a misleading prospectus, Mr. X (the mislead investor) has the following remedies:

1) Right of rescission of contract: Allotment of shares is contract between the company and its members. As per contract act if the invitation or offer contains any misstatement then the acceptor has the right to treat the contract voidable. Therefore in the present case Mr. X can treat the allotment voidable and demand his money back from the company.

2) Right to claim compensation from expert: According to section 62 of the companies act, 1956 If a prospectus contains any misstatement in the report of expert then he shall be liable to pay compensation to every person who subscribes for any shares or debentures on the faith of the prospectus for any loss or damage he may have sustained. Therefore Mr. X can claim compensation from the expert.

According to sub section **(3)** An expert, shall not be liable, if he proves-

1) that, he **withdrew** his consent in writing **before** delivery of a copy of the prospectus for registration;

2) that, **after** delivery of a copy of the prospectus for registration and before allotment there under, he, on becoming aware of the untrue statement, **withdrew** his consent in writing and gave reasonable public notice of the withdrawal and of the reason therefore; or

3) that he was **competent** to make the statement and that he has **reasonable ground to believe**, and did up to the time of the allotment of the shares or debentures, believe, that the statement was true.

Question 10

M.H. Company Limited served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A', a shareholder of the M.H. Company Limited Complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M.H. Company Limited regarding issued of sweat equity shares valid according to the provisions of the Companies Act, 1956? Explain fully.

Answer 10

According to section 173(2) of the companies act, 1956
If any special business is to be transacted at the meeting then a statement setting out **all material facts** concerning each such item of business should be annexed with the notice of the meeting, including in particular the nature of the interest of every director and the manager.

According to sub section (1), For the purposes of this section-

a) **in the case of an annual general meeting**, all business to be transacted at the meeting shall be deemed special, with the exemption of business relating to:
(i) the consideration of the accounts
(ii) the declaration of a dividend,
(iii) the appointment of directors in the place of those retiring, and
(iv) the appointment of, and the fixing of the remuneration of the auditors; and

b) **in the case of any other meeting**, all business shall be deemed special.

In the present case M.H. limited is going to consider issue of sweat equity shares. And this is a special business hence an explanatory statement containing all material facts must also be given along with notice.

Also as per section 79A following details should be given along with notice of special resolution:

- the number of shares,
- current market price,
- consideration, if any, and
- the class or classes of directors or employees to whom such equity shares are to be issued;

Also as per section 189 the intention to propose any resolution as a special resolution should be duly specified in the notice calling the meeting. And it appear that the company has also not specified that intention.
Looking at the above violations we can say that notice issue by M.H. limited is not a valid notice.