

PAPER – 3 : BUSINESS AND CORPORATE LAWS

QUESTION

The Indian Contract Act, 1872

1. (a) Mr. X is a businessman fighting a long drawn Court case with Mr. Y another businessman. To support his case Mr. X signs up the services of Mr. Z a legal expert stating that an amount of Rs. 2 lakhs would be paid, if Mr. Z does not take up the brief of Mr. Y. Mr. Z agrees, but at the end of the litigation Mr. X refuses to pay. Decide whether Mr. Z can recover the amount promised by Mr. X under the provisions of the Indian Contract Act, 1872.
(b) P hires a taxi of Q and agrees to pay Rs.700 as hire charges. The taxi was unsafe for driving because of its loose footbrake, though Q was unaware of it. P was injured and claims compensation for injuries suffered by him. Q refuses to pay. Discuss the liability of Q.
2. X, a minor was pursuing the study of Chartered Accountancy. On 1st July, 2009 he took a loan of Rs. 15,000 from Y for payment of his course fees and to purchase books and agreed to repay by 31st December, 2009. X possesses assets worth Rs. 2 lakhs. On due date X fails to pay back the loan to Y. Y now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether Y would succeed.
3. Ram sent a consignment of goods worth Rs. 50,000 by roadways and got a receipt. He obtained an advance of Rs. 30,000 from the bank and endorsed and delivered the receipt in favour of the bank by way of security. The roadways failed to deliver the goods at the destination. The bank filed a suit against the roadways for Rs. 50,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit?
4. B, at the request of A, sells goods which is in the possession of A, on which A had no right to dispose of. B doesn't know this fact and hands over the sale proceeds to A. Afterwards C, the true owner to the goods sues B and recovers the value of the goods and costs. Advise the remedy available to B.

The Sale of Goods Act, 1930

5. With a view to boost the sales Shri Automobiles gave car to Mr. A on trial basis for a period of seven days with a condition that if Mr. A is not satisfied with the performance of the car, he can return the car. However, the car was destroyed in a fire accident at the place of Mr. A before the expiry of seven days. Decide whether Mr. A is liable for the loss suffered.
6. Shyam the owner of a zipsy wants to sell his zipsy. For this purpose he hand over the zipsy to Mohan , a mercantile agent for sale at a price not less than Rs. 80, 000. The agent sells the zipsy for Rs. 60, 000 to Ram, who buys the car in good faith and without

notice of any fraud. Mohan misappropriated the money also. Shyam sues Ram to recover the money. Decide with reason whether Shyam would succeed.

The Indian Partnership Act, 1932

7. State the modes by which a partner may transfer his interest in the firm in favour of another person, under the Indian Partnership Act, 1932. What are the rights of such a transferee?
8. (a) Five major persons form an association to which each member contributes Rs. 20,000. The purpose is to produce medicines for free distribution to poor patients. Is there a valid partnership?
(b) X, Y, and Z are partners in an unregistered firm. X steals the property of the firm. Y filed a suit against X. X resisted Y's claim on the plea that the firm was not registered. Will Y succeed in suit?

The Negotiable Instruments Act, 1881

9. Rajan by inducing Sohail obtains a Bill of Exchange from him fraudulently in his (Rajan) favour. Later, he enters into a commercial deal and endorses the bill to Mahesh towards consideration to him (Mahesh) for the deal. Mahesh takes the bill as a Holder-in-due-course. Mahesh subsequently endorses the bill to Rajan for value, as consideration to Rajan for some other deal. On maturity the bill is dishonoured. Rajan sues Sohail for the recovery of the money.

With reference to the provisions of the Negotiable Instruments Act, decide whether Rajan will succeed in the case ?

10. Give the meaning of 'Sans Recours' endorsement? A bill of exchange is drawn payable to P or order. P indorses it to Q, Q to R, R to S, S to T and T to P. State with reasons whether P can recover the amount of the bill from Q, R, S and T, if he has originally indorsed the bill to Q by adding the words 'Sans Recours'.
11. X, by means of fraud, obtained from Y a Cheque crossed 'not negotiable' and got it cashed at a bank other than the drawee bank. Y sued the bank for conversion. Is the bank liable for conversion?
12. Sameer, drawer of a cheque after having issued the cheque, informs Varun, the drawee not to present the cheque as well as informs the bank to stop the payment. Does it constitute an offence under the Act ?

The Payment of Bonus Act, 1965

13. What is the minimum bonus that is payable to (a) an employee (b) an employee under 15 years of age ?
14. How direct tax payable by the employer is calculated and how the tax payable by the employer is calculated where such employer is an individual?

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

15. Who shall administer the Fund created under the Employees' Pension Scheme?
16. Rainbow Group of Industries sold its manufacturing unit to Royal Group of Industries. Rainbow Group contributed 30% of total contribution in Pension Scheme, which was due before the sale under the provisions of Employees' Provident Fund and Miscellaneous Provisions Act, 1952. The Royal Group of Industries refused to bear the remaining 70% contribution in the Pension Scheme. State according to the provision of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent?

The Co-operative Societies Act, 1912 & The Multi-State Cooperative Societies Act, 2002

17. State the conditions of cessation of membership in a co-operative society registered under the Co-operative Societies Act, 1912.
18. State the provisions relating to the conduct of audit applicable to a society registered under the Co-operative Societies Act, 1912?

The Companies Act, 1956

19. Explain the term 'Pari Passu' clause in a debenture. Lay down the formalities required to be filed with the Registrar of Companies in case of such debentures secured by a charge on certain assets of the company.
20. In a private company it is discovered that there are, in fact, 54 members. On an enquiry, it is ascertained that 6 of such members have been employees of the company in the recent past and that they acquired their shares while they were still employees of the company. Is it necessary to convert the company into a public limited company?
21. XYZ Co. Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for payment under the following situations:

- (i) When the company has already adopted the contract after incorporation?
 - (ii) When the company makes a fresh contract with the suppliers in terms of preincorporation contract?
22. Explain the meaning of 'Sweat Equity Shares' and state the conditions a company has to fulfil for issuing such shares.

23. After receiving 80% of the minimum subscription as stated in the prospectus, a company allotted 100 equity shares in favour of 'X'. The company deposited the said amount in the bank but withdrew 50% of the amount, before finalisation of the allotment, for the purchase of certain assets. X refuses to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act, 1956. Comment.
24. The Articles of Association of Akme Company Ltd. provides that documents may be served upon the company only through Fax. Rajesh despatches a document to the company by post, under certificate of posting. The company does not accept it on the ground that it is in violation of the Articles of Association. As a result Rajesh suffers loss. Explain with reference to the provisions of the Companies Act, 1956:
 - (i) Whether refusal of document by the company is valid?
 - (ii) Whether Rajesh can claim damages on this basis.
25. The Board of Directors of M/s Balaji Associates Ltd. proposes to pay interim dividend of Rs.2 per equity share of Rs. 10 each. Advise the Board regarding:
 - (i) the time limit for payment of interim dividend to the shareholders, and
 - (ii) steps to be taken in case any dividend amount remains unpaid in the books of the company.

SUGGESTED ANSWER/HINTS

The Indian Contract Act, 1872

1. (a) The problem as asked in the question is based on one of the essentials of a valid contract. Accordingly, one of the essential elements of a valid contract is that the agreement must not be one which the law declares to be either illegal or void. A void agreement is one without any legal effect. Thus any agreement in restraint of trade, marriage, legal proceedings etc., are void agreements. Thus Mr. Z cannot recover the amount of Rs. 2 lakhs promised by Mr. X because it is an illegal agreement and cannot be enforced by law.
- (b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The Section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case Q is responsible to compensate P for the injuries sustained even if he was not aware of the defect in the carriage.
2. Yes, Y can proceed against the assets of X. According to section 68 of the Indian Contract Act 1872 "If a person, incapable of entering into a contract, or any one whom he

is legally bound to support, is supplied by another person with necessities suited to his condition in life, the person who has furnished such supplies is entitled to be reimbursed from the property of such incapable person.” Since the loan given to X is for the necessities of the minor, his assets can be sued for reimbursement to Y.

3. **Rights of Bailee:** As per Sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledge, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. In *Morvi Mercantile Bank Ltd. vs. Union of India*, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledgor. Thus, the bank will succeed in this claim of Rs. 50,000 against Roadways.
4. As per the provision given under Section 223 of the Indian Contract Act, 1872, an agent has a right to be reimbursed by the principal for any compensation which he may be required to pay the third party for injuries caused by wrongful acts done within the scope of his authority, in good faith without having any wrong intentions.

Thus in the given problem B has a right to be reimbursed the sum which he has indemnified to C, against the consequences of acts done in good faith.

The Sale of Goods Act, 1930

5. The problem as asked in the question is based on the provisions of the Sale of Goods Act, 1930 as contained in Section 8. Accordingly, the contract becomes void if the goods are destroyed or do not answer to the description in the agreement before the risk passes on to the buyer. In the given case that the subject matter of the contract i.e. Motorcar was destroyed before the transfer of property from the seller to the buyer. Thus the risk passes only when the ownership is transferred to the buyer. Therefore, in the present case Mr. A is not liable for the loss suffered due to the fire accident over which A has no control. Thus M/s. Shri Automobiles will have to bear whatever loss that has taken place due to the fire accident.
6. The problem in this case is based on the provisions of the Sale of Goods Act, 1930 contained in the proviso to Section 27. The proviso provides that a mercantile agent is one who in the customary course of his business, has, as such agent, authority either to sell goods, or to consign goods, for the purpose of sale, or to buy goods, or to raise money on the security of goods [Section 2(9)]. The buyer of goods from a mercantile agent, who has no authority from the principal to sell, gets a good title to the goods if the following conditions are satisfied:

- (i) The agent should be in possession of the goods or documents of title to the goods with the consent of the owner.
- (ii) The agent should sell the goods while acting in the ordinary course of business of a mercantile agent.
- (iii) The buyer should act in good faith.
- (iv) The buyer should not have at the time of the contract of sale notice that the agent has no authority to sell.

In the instant case, Mohan, the agent, was in the possession of the zipsy with Shyam's consent for the purpose of sale. Ram, the buyer, therefore obtained a good title to the car. Hence, Shyam in this case, cannot recover the car from Ram. A similar decision, in analogous circumstances, was taken in *Folkes v. King*

The Indian Partnership Act,1932

7. According to Section 29 of the Indian Partnership Act, 1932 a partner may transfer his interest in the firm by sale, mortgage or charge. The transfer may be absolute or partial. The transfer does not entitle the transferee, during the continuance of the firm:
 - (a) (i) to interfere in the conduct of the business of the firm, or
 - (ii) to require accounts of the firm, or
 - (iii) to inspect the books of the firm

On transfer of interest by a partner, the transferee only becomes entitled to receive share of profit of the transferring partner. But in this case also the transferee has to accept the account of profits agreed to by the partners [Section 29(1)].

 - (b) if the firm is dissolved or if the transferring partner ceases to be a partner, the transferee is entitled to receive the transferring partner's share in the assets of the firm. For the purpose of ascertaining that share, he is entitled to an account as from the date of the dissolution [(Section 29(2)].
8. (a) As per Section 4 of the Indian Partnership Act,1932, there is no valid partnership between them because there is no intention to carry on the business and to share the profits thereof.
- (b) As per Section 69(1) of the Indian Partnership Act,1932 in the given problem Y can claim from X because Section 69(1) prohibits the institution of civil suit and not criminal proceedings.

The Negotiable Instruments Act,1881

9. The problem stated in the question is based on the provisions of the Negotiable Instruments Act as contained in Section 53. The Section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its

defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53).

Thus applying the above provisions it is quite clear that Rajan who originally induced Sohail in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as Rajan himself was a party to the fraud.

10. **Meaning of Sans Recours Endorsement:** It is a type of endorsement on a Negotiable Instrument by which the endorser absolves himself or declines to accept any liability on the instrument of any subsequent party. The endorser signs the endorsement putting his signature along with the words, SANS RECOURS.

In the problem P, the endorser becomes the holder after it is negotiated to several parties. Normally, in such a case, none of the intermediate parties is liable to P. This is to prevent 'circuitry of action'. But in this case P's original endorsement is 'without recourse' and therefore, he is not liable to Q, R, S and T. But the bill is negotiated back to P, all of them are liable to him and he can recover the amount from all or any of them (Section 52 para 2).

11. As per Section 130 of the Negotiable Instrument Act, 1881, if the holder has a good title, he can still transfer it with a good title, but if the transferor has a defective title, the transferee is affected by such defects, and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As X in the case in question had obtained the cheque by fraud, he had no title to it and could not give to the bank any title to the cheque or the money and the bank would be liable for the amount of the cheque for conversion [Great Western Railway Co. vs. London and Country Banking Co. (1901) A.C. 414]
12. The Supreme Court in *Modi Cements Ltd. vs. Kuchil Kumar Nandi* [1998] 2 CLJ 8 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. The object of Sections 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques. 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 debt or other liability, is informed by the bank unpaid either because of insufficiency of amount to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Thus Sameer is liable under the Negotiable Instrument Act, 1881.

The Payment of Bonus Act, 1965

13. Payment of Minimum Bonus (Section 10)

- (a) Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of every accounting year, minimum bonus which shall be 8.33% of the salary or wage earned by the employee during the accounting year or Rs. 100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year.
- (b) But where the employee has not completed 15 years of age at the beginning of the accounting year he will be entitled to a minimum bonus which shall be 8.33% of the salary or wage during the accounting year Rs. 60, whichever is higher.

Even if the employer suffers losses during the accounting year he is bound to pay minimum bonus as prescribed by Section 10 [State vs. Sardar Dalip Singh Majilhia, 1979, Lab. I.C. (913) (All)].

14. Calculation of direct tax payable by the employer (Section 7): Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for the year.

In calculating the above mentioned tax, no account shall be taken on the following matters, namely :

- (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct tax;
- (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under Section 32(2) of the Income-tax Act;
- (iii) any exemption conferred on the employer under Section 84 of the Income Tax Act or of any deduction to which he is entitled under Section 101(1) of the Income-tax Act, as in force immediately before the commencement of the Finance Act

Where, the employer is an Individual, then the tax payable by such employer under the Income Tax Act shall be calculated on the basis that the income derived by him from the establishment is his only income.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

15. Employees Pension Fund

- (1) From and out of the contributions payable by the employer each month under Section 6 of the Act or under the rules of the Provident Fund of the establishment which is exempted either under clauses (a) and (b) of Sub-section (1) of Section 17 of the Act or whose employees are exempted under either paragraph 27 or paragraph 27A of the Employees' Pension Fund Scheme, 1952 a part of

contribution representing 8.33 per cent of the Employees' pay shall be remitted by the employer to the Employees' Pension Fund within fifteen days of the close of every month by a separate bank draft or cheque on account of the Employees' Pension Fund contribution in such manner as may be specified in this behalf by the Commissioner. The cost of the remittance, if any, shall be borne by the employer.

- (2) The Central Government shall also contribute at the rate of 1.16 per cent of the pay of the members of the Employees' Pension Scheme and credit the contribution to the Employees' Pension Fund :

Provided that where the pay of the member exceeds rupees five thousand per month, the contribution payable by the employer and the Central Government be limited to the amount payable on his pay of rupees five thousand only.

- (3) Each contribution payable under sub-paragraphs (1) and (2) shall be calculated to the nearest rupee, fifty paise or more to be counted as the next higher rupee and fraction of a rupee less than fifty paise to be ignored.
- (4) The net assets of the Family Pension Scheme, 1971 shall vest in and stand transferred to the Employees' Pension Fund.

16. The problem as asked in the question is based on the provisions of Section 17(B) of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly or severally liable to pay the contribution and other sums due from the employer under the provisions of this Act of the scheme or pension scheme, as the case may be, in respect of the period upto the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

It would be thus evident from the aforesaid provisions that Section 17-B deals with the liability of transferor and transferee in regard to the money due under (a) the Act or (b) the scheme (c) and pension scheme. In the case of the transfer of the establishment brought in by sale, gift, lease etc. The liability of the transferor and transferee is joint and several, but it is limited to the period upto the date of transfer.

Therefore applying the above provisions in the given case the transferor Rainbow Group of industries, has paid only 30% of the total liability as contribution in pension scheme before sale of the establishment. With regards to remaining 70% liability both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable,

The liability is limited upto the date of transfer and upto remaining amount. Further, the liability of the transferee i.e. Royal Group of Industries, is limited to the extent of assets obtained by it from the transfer of the establishment.

The Co-operative Societies Act, 1912 & The Multi-State Cooperative Societies Act, 2002

17. Cessation of membership in a co-operative society under the Cooperative Societies Act, 1912: Rule 19 of the Act provides that a person shall cease to be a member on the ground of:

1. his resignation.
2. transfer of his share.
3. his death.
4. his removal.
5. his expulsion, and
6. his incurring any of the disqualifications specified in the Act.

A person once admitted to the membership of a society can not be removed by the general body or the Managing Committee. (Postal Cooperative House Construction Ltd. v. Registrar).

18. According to Section 17 of the Co-operative Societies Act, 1912, it is obligatory for the Registrar to audit or cause to be audited by some persons authorized by him by a general or special order in writing the accounts of every registered society at least once in every year. The audit as contemplated by the said section includes an examination of over-due debts, if any, and a valuation of the assets and liabilities of the society. Audit also means such an examination of the books, accounts and vouchers of a business as shall enable the auditor to satisfy himself whether or not the balance sheet is properly drawn up so as to exhibit a true and correct view of the state of affairs of the business according to the best of his information and the explanations given to him. The Registrar or any person authorized by a general or special order in writing in this behalf by the Registrar will have access to all the books, accounts, papers and securities of a society. Every officer of the society should furnish such information in regard to the transactions and working of the society as the person making such inspection may require.

The Companies Act, 1956

19. 'Pari Passu': Pari passu clause in a debenture means that all the debentures of the series are to be paid rateably, if, therefore, security is insufficient to satisfy the whole debts secured by the series of debentures, the amounts of debentures will abate proportionately. If the clause is not made use of then the debentures rank in accordance with the date of issue, and if they are all issued on the same date they will be payable according to their numerical order. A company, however, cannot issue a new series of

debentures so as to rank 'pari passu' with prior series unless the power to do so is expressly reserved and contained in the debenture deed of the previous series.

Registration: In the event of the 'pari passu' clause being included in the debentures secured by a charge, it is enough if the following formalities are complied in the filing with the Registrar of Companies within 30 days after the execution of the deed containing the charges or where there is no deed after the, execution of debentures of the series:

- (i) the total amount secured by the whole series;
- (ii) the dates of the resolutions authorising the issue of the series;
- (iii) the date of deed, if any, by which security is created;
- (iv) a general description of the property charged; and
- (v) the name of the trustees for debenture holders, if any, together with the deed containing the charge or a certified copy of the deed or, if there is no deed, one of the debentures of the series (Section 128).

Where more than one issue is made of debentures in the series, particulars of the date and the amount of each issue must be filed with the Registrar. But an omission to do so will not affect the validity of the debentures issued.

- 20.** As per Section 3(1)(iii), a company to be registered as a private company must restrict its membership to 50 only. However, in counting this number of 50 members, employee members and Ex-employee members(i.e., those who become members while in the employment of the company but now having ceased to be in the employment still continue to retain membership) are to be excluded. Thus ,in the given case, the company shall continue to be a private company. There is no need for conversion.
- 21.** The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name (Scot v. Lord Ebury), even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other

parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers to the questions as asked in the paper can be answered as under:

- (i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be liable in this case for the reasons given above.
- (ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

22. Meaning of Sweat Equity Shares: Sweat equity shares mean equity shares issued by the company to employees or directors at a discount or for consideration other than cash for providing know-how or making available right in the nature of intellectual property rights or value additions, by whatever name called. [Explanation II to Section 79A, Companies (Amendment) Act, 2000].

Conditions to be fulfilled before issue of Sweat Equity Shares:

Notwithstanding anything contained in Section 79 (Providing for issue of shares at a discount), a company may issue sweat equity shares if the following conditions are fulfilled:

1. Shares of a class which have already been issued only can be issued as 'sweat equity shares'.
2. Issue of 'sweat equity-shares' should be authorised by a special resolution passed by the company in general meeting.
3. The resolution should specify number of shares, current market price, consideration, if any and class or classes of directors or employees to whom the 'sweat equity shares' may be issued.
4. The 'sweat equity shares' may be issued only one year after the company was entitled to commence business.
5. If the company is listed on stock exchange 'sweat equity shares' can be issued as per regulations made by SEBI. If the company is not listed on the stock exchange 'sweat equity shares' will be issued in accordance with guidelines of Central Government. [Section 79A(1)].
6. The 'sweat equity shares' have same limitations, restrictions and rights as are applicable to other equity shares. [Section 79A(2)].

23. Allotment of Shares

The company has received 80% of the minimum subscription as stated in the prospectus. Hence the allotment is in contravention of section 69(1) of the Companies Act and the allotment is irregular attracting the provisions of Section 71 of the Companies Act 1956.

The consequences of such irregular allotment are as follows:

The allotment is rendered voidable at the option of the applicant. The option must however be exercised -

- (i) Within 2 months after the holding of the statutory meeting of the Company; or
- (ii) Where the Company is not required to hold a statutory meeting or where the allotment is made after the holding of the statutory meeting, within 2 months after the date of allotment [Section 71(1)].

The irregular allotment is voidable even if the company goes into liquidation in the meantime [section 71(2)].

In view of the above, refusal by 'X' to accept the allotment of shares on the ground that the allotment is violative of the provisions of the Companies Act is valid provided he has exercised his option to avoid the allotment within the period mentioned in Section 71(1) of the Companies Act.

The Company has also violated the provisions of Section 69(4) of the Companies Act in withdrawing 50% of the amount deposited with the bank before receiving the entire amount payable on application for shares in respect of the minimum subscription.

24. Problem on service of document upon a company: The problem as asked in the question is based on the provisions of the Companies Act, 1956 as contained in Section 51. Accordingly a document may be served on a company or on its officer at the registered office of the company. It must be sent either by post or by leaving it at its registered office. If it is sent by post, it must be either by post under a certificate of posting or by registered post. When a notice has been addressed to the company and served on the directors, it constitutes a good service (Benabo v. Jay (William) and Partners Ltd.) The articles of a company which contain the provisions contrary to Section 51 cannot be enforced nor can they limit the mode of service to only one of the modes provided by the Statute (Sadasiv Shankar Dandige V. Gandhi Seva Samaj Ltd.).

- (i) Accordingly in the first case the refusal by the Akme Company Ltd. of the service of the document is not valid.
- (ii) In the second case, Rajesh can claim damages on this account from the Company.

25. The Board of Directors of M/s Balaji Associates Ltd. should take the following steps for declaration and payment of interim dividend;
- (i) The Board should carefully assess the adequacy of profits since in the event of absence or inadequacy of profits, the distribution would amount to reduction of capital.
 - (ii) The interim dividend amount should be deposited in a special bank account.
 - (iii) Depreciation on assets should be provided for the full year.
 - (iv) If there is a carry forward loss from past years, the same should be adjusted against the estimated profits.
 - (v) The company should transfer to reserves the prescribed percentage of the estimated profits of the period arrived at after providing for current year's depreciation and arrears of depreciation/loss.

Time Limit:

Interim dividend should be paid within 30 days. If any amount of interim dividend remains unpaid or unclaimed, for more than 30 days, the same should be transferred to a special account in a Scheduled Bank called 'Unpaid Interim Dividend Account of M/s Balaji Associates Ltd. Any amount remaining in the said bank account for a period of seven years should be transferred to the Investor Education and Protection Fund established under Section 205C of the Companies Act, 1956.