

MASTER MINDS

BUSINESS& CORPORATE LAWS

QUESTION 1(b)

State with reasons whether the following statements are correct or incorrect:

1. Employee can relinquish their right to receive minimum bonus by an agreement with employer.

ANSWER 1(b)

Incorrect. According to section 34A of the Payment of Bonus Act, 1965 employer and employees can mutually agree for calculation of bonus based on production or productivity but they must follow the provisions of minimum and maximum bonus.

Question 1(c) (iii)

Pick out the correct answer from the following and give reasons:

P. obtains a cheque drawn by M by way of gift. Here P is a

1. Holder in due course
2. Holder for value
3. Holder
4. None of the above

Answer 1(c) (iii)

2. **Holder:** If the transferee does not pay consideration he is simply a holder. If the transferee pays consideration then he is a holder for value and if the holder for value acquires the instrument in good faith and before maturity then he is the holder in due course.

Question 2(a)

UMC limited has only 7 shareholders having fully paid-up shares. On 30th April, 2009, all the shares of X (a shareholder of the company) are sold to Y (another shareholder of the company) in an auction by the order of the court. Z, (a shareholder of the company) was in USA for a business trip from January and thus he was not aware of the developments. The company continues to carry on its business thereafter. In December, 2009, the company borrowed a sum of Rs. 5lac from the Unique Bank. Later, the company was wound up and the assets of the company were not sufficient for the payment of its Liabilities. The Bank filed a suit against Y and Z for recovery of the said loan from them. Decide the Liabilities of Y and Z under the provisions of companies Act, 1956. Would your answer be the same, if the said loan was taken in the month of March, 2009?

Answer 2(a)

According to section 45 of the Companies Act, 1956, if at any time the number of members of a public company falls below seven, or in the case of a private company, below two, and the company carries on business for more than six months while the number is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued there for.

In the given case no. of members of the public company reduced to 6 on 30th April. From this date six months period ends on 31st October while UMC borrowed money in December, which is beyond the period of six months. Hence Y is liable personally this debt.

Z is not cognizant of this fact that no. of members have reduced below 7, hence Z is not liable personally for the debt. His liability will be limited up to the amount of his unpaid share capital only.

If UMC limited would have borrowed money in the months or March, 2009 then no shareholder of the company would be liable personally because the money was borrowed before the cut off date of 31st October, 2009. In this case liability of shareholders will be limited up to the amount of their unpaid share capital only.

Question 2(b)

State with reasons whether the following statements are correct or incorrect:

- i. Issue of debentures with voting rights is not permissible.
- ii. A private company is required to hold the statutory meeting.

Answer 2(b)

- (i) **Correct.** According to section 117 of the Companies Act, 1956 a company can not issue debentures with voting rights.
- (ii) **Incorrect.** According to section 165(10) of the Companies Act, 1956 a private Co. is not required to hold Statutory meeting. Only a public co. limited by shares or limited by guarantee and having a share capital is required to hold statutory meeting.

Question 2(c)

Pick out the correct answer from the following and give reasons:

1. Contracts entered into by a company after its incorporation and before it is entitled to Commerce businesses are called:
- iii. Provisional contracts
 - iv. Pre-incorporation contracts
 - v. Both I and 2
 - vi. None of the above
2. The underwriting commission on shares must not exceed:
- i. 2.0 percent of the issued price of shares
 - ii. 2.5 percent of the issued price of shares
 - iii. 5.0 percent of the issued price of shares
 - iv. 5.5 percent of the issued price of shares
3. Which one of the following required ordinary resolution?
- i. To change the name of the company
 - ii. To alter the articles of association
 - iii. To reduce the share capital
 - iv. To declare dividends

Answer 2(c)

- (i). **Provisional Contracts.** As per section 149(4) contracts by a public co. after incorporation and before commencement of business are provisional only and are enforceable only on or after the date of certificate of commencement of business. Contracts entered before the incorporation are called Pre-incorporation contacts.
- (ii). **5.0 percent of the issued price of shares.** As per section 76 a company can pay maximum underwriting commission equal to 5% of the issue price in case of shares and 2.5% of the issue price in case of debentures or the rate or amount mentioned in the articles whichever is lower.
- (iii). To declare dividend. Because the first three items requires special resolution as per section 21, 31 and 100 respectively.

Question 3

I accepted a bill of exchange and gave it to K for purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it returned the bill to J. J tore the bill in two pieces with the intension of canceling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such manner that the bill seemed to have been folded for safe custody, rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881?

Answer 3

According to section 9 of the Negotiable Instruments Act, 1881 'Holder in due course' means any Person:

- Who for **consideration**
- became the **possessor** of a promissory note, bill of exchange or cheque if payable to bearer, or
- the **payee** or **endorsee** thereof, if payable to order,
- **before** the amount mentioned in it became payable, and
- Without having sufficient cause to believe that any **defect** existed in the title of the person from whom he derived his title.

In the present case L acquired this instrument in good faith and for value and the bill has been pasted in such a way that it does not appear to be pasted hence L is a holder in due course.

Also negotiable act says that all the prior parties are liable to a holder in due course. Therefore we can conclude that J is liable to pay the bill amount.

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Question 4

In 2009, the Electronics Corporation, a Public Sector establishment under the Department of Science and Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to TV. Sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the corporation. The employees of the corporation went to strike for demand of Bonus. Decide, whether the demand of the employees is tenable under the provisions of the Payment of Bonus Act, 1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the corporation.

Answer 4

According to section 20 of the Payment of Bonus Act, 1965 Provisions of this act shall **not apply to** the employees of establishment in **public sector**. But it will apply to that establishment also, if both of the following conditions are fulfilled:

- establishment in public sector sells any goods manufactured by it or renders any services, in competition with an establishment in private sector, and
- Income from such sale or services or both is equal to or more than 20% of the gross income of the establishment in public sector for that year.

In the present Case Electronics Corporation is a PSU and is selling mobile in a competition with private sector and income from competition business is more than 20% of its gross income therefore we can conclude that the Payment of Bonus Act, 1965 is applicable to the Electronics Corporation and demand of employees is tenable.

If the income from competition business is 10% only then the payment of gratuity act will not be applicable.

Question 6

S is employed in Golden Ice-cream factory, a seasonal establishment. The factory was in operation for four months only during the financial year 2009-10. S was not in continuous service during this period. However, he has worked only for sixty days. Referring to the provisions of the payment of Gratuity Act, 1972 decide whether S is entitled to gratuity payable under the Act. Would you answer be the same in case S works for 100 days ?

Answer 6

According to section 2A(3) of the Payment of Gratuity Act, 1972 where an employee, employed in a **seasonal establishment**, is not in continuous service, for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75% of the number of days on which the establishment was in operation during such period.

In the present case S is employed in a seasonal establishment which was in operation for 120 days (4 months). 75% works out to be 90 days. There was an interruption in service of S. Also he has worked for 60 days only which is less than 75% of the working days therefore S will not be deemed to be in continuous service.

If S would have worked for 100 days he should have been deemed to be in continuous service.

Question 7

J held 100 partly paid up shares of LKM Limited. The company asked him to pay the final Call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. J contested the decision of the Chairman. Referring to the provisions of the Companies Act, 1956 decide whether the contention of J is valid.

Answer 7

According to section 181 of the Companies Act, 1956: The articles of a company may provide that a member shall not exercise any voting right if any calls are due on his shares or in regard to which the company has exercised any right of lien.

Also section 182 says A public company shall not prohibit any member from exercising his voting right on the ground that he has not held his share for any specified period preceding the date on which the vote is taken, or on any other ground except u/s 181.

In the present case J has failed to make payment of calls and also articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore Chairman of the meeting is right and Js contention is invalid.

Question 8

The object clause of the Memorandum of Association of RST Limited authorizes it to publish and sell text-books for students. The company, however, entered into an agreement with Q to supply 100 laptops of worth Rs. 5 lac for resale purposes. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for payment to Q under the provisions of the Companies Act, 1956.

Answer 8

The Doctrine of Ultra vires: The term 'ultra' means beyond and the term 'vires' means power. Thus the term 'ultra-vires' means doing an act beyond the power. According to the doctrine of ultra-vires any contract entered by the company beyond the authority of its memorandum of association is void ab-initio. It means it can not be enforced by or on the company. Even all the member of the company can not ratify this act.

In the present case memorandum of association authorizes to publish and sell text books for student and not the trading of laptops. Therefore contract to buy laptops for the purpose of reselling is ultra vires and neither the company nor Q can enforce the contract.

But suppose Q has delivered laptops to the company and those laptops are still with the company in that case if the company refuses to make payment then Q can take back the laptops.

Question 9

K, a member of MNO Limited, appoints L as his proxy to attend the general meeting of the company. Later he (K) also attends the meeting. Both K (the member) and L (the proxy) voted on a particular resolution in the meeting. K's vote was declared invalid by the chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to the decision of the Chairman. Decide, under the provisions of the Companies Act, 1956 whether K's objection shall be valid.

Answer 9

According to section 176(1) of the Companies Act, 1956 Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person (whether a member or not) as his proxy to attend and vote instead of himself; but a proxy so appointed shall not have any right to **speak** at the meeting.

But even after appointing the proxy if the member himself is present at the meeting and casts vote on a resolution then the vote casted by proxy will be invalid.

In the present case declaration by chairman that K's vote is invalid is wrong hence objection taken by K is valid.

Question 10

Explain the 'MCA 21 Program' introduced by the Government of India to develop computerized environment for company law. How does it serve the interest of all the stakeholders of a company, corporate professionals and the public at large?

Answer 10

Under the Companies Act, 1956 there are various documents which are required to be filed with the Registrar of Companies at various point of time. For example, Form No. 1A for checking availability of Name, Form no.1 for declaration for registration of a company, Form No.18 for notice situation/change of registered office of the company, Filing of Memorandum, Annual return etc. Earlier all this documents were filed physically with the Registrar of companies. According to section 52 of the Companies Act these documents are either submitted personally or by post. But after introduction of MCA 21 project almost all the documents can be filed electronically with ROC. Web address for the same is www.mca.gov.in/MCA21/index.html.

This project is initiated by Ministry of company affairs and carried out under the national e-governance programme of the Government.

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This programme serves the interest of all the stakeholders as follows:

- 1. Company:** Can file almost all the documents electronically. Even payment of registration fees and stamp duty can be made online. This will save lot of paperwork, time and money of more than 6 lakhs companies registered in our country.
- 2. Corporate Professional:** will be able to offer efficient services to their company clients.
- 3. Public at Large:** As per companies act, General public have access to many document filed with ROC. Earlier to inspect these documents or to get a certified copy, one need to go to ROC office. But now one can easily access all these documents online. Also redressal of grievances has become faster.
- 4. Financial Institutions:** can easily find charges created on properties before granting finance to the company.

THE END