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IDEAL ANSWERS

CA IPCC

Business & Corporate Laws

May, 2011 (Repeat) Exam

**100% questions from concepts
taught in NPA classroom**

Prepared by: **CA Tarun Mahajan**,
Address: 161, Tilak Nagar Ext., Indore
email: tarunmahajanca@gmail.com
Mobile: 9893040600

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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 these Ideal Answers. Every step has been taken to make these answers accurate, still if you find some clerical errors, please bring it to our notice through email.)

Question 1(b)(II)(ii)

Every employee of an establishment is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year on a salary not exceeding

- a) Rs. 3,500 per month.
- b) Rs. 5,000 per month.
- c) Rs. 10,000 per month.
- d) Rs. 15,000 per month.

(1 mark)

Answer 1(b)(II)(ii)

d) Rs.10,000 per month. As per section 2(13) of the payment of bonus act, 1965 "**employee**" means any person (other than an apprentice) employed on a salary or wage not exceeding **Rs.10,000 per month** in any industry to do any skilled, unskilled, manual, supervisory, managerial, administrative, technical or clerical work, whether the terms of employment are express or implied;

Question 1(c)

The annual General Meeting of PQR Limited was called on 2nd February, 2011 and the notice of the meeting had also been served. Later on, Government of India declared that date as a public holiday on account of 'Mahashivratri'. The AGM of the company was held on the fixed date. X, a shareholder of the company contended the decisions of the meeting stating that it was not properly held. Examining the provisions of the Companies Act, 1956 decide whether the contention of X is valid. (5 marks)

Answer 1(c)

According to section 2(38) of the companies Act, 1956 "public holiday" means a public holiday within the meaning of the Negotiable Instruments Act, 1881.

Provided that no day declared by the Central Government to be a public holiday shall be deemed to be such a holiday, in relation to any meeting, unless the declaration was notified before the issue of the notice convening such meeting;

In the present case AGM of PQR Ltd. has been called on 2nd February, 2011 and the notice of the meeting had also been served. Later on, Government of India declared that date as a public holiday on account of 'Mahashivratri'. But looking at the above provision we can say that for the purpose of this meeting 2nd February is not a public holiday, because govt. has declared that day to be a public holiday after dispatch of notice.

Therefore we can conclude that contention of X is not valid and the meeting will be assumed to be held properly.

Question 1(d)(I)(i)

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

Preference shareholders not being entitled to exercise voting rights are not entitled to attend the General Meeting also. (1 mark)

Answer 1(d)(I)(i)

Incorrect. According to section 172(2)(i) notice of every general meeting of the company shall be given to every member. Preference shareholders are also members of co. therefore, we can interpret that preference shareholders are eligible to receive notice & can attend general meeting of the company. Though they will have right to vote only as provided by section 87(2) of the companies act, 1956.

Question 1(d)(I)(ii)

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

A copy of the Statutory Report is required to be filed with the Registrar of Companies after its having been placed before the shareholders in the Statutory Meeting. (1 mark)

Answer 1(d)(I)(ii)

Incorrect. According to section 165(5) of the companies act, 1956 copy of statutory report must be delivered to the Registrar for **registration** forthwith, after copies thereof have been sent to the members of the company. And not after it is placed in the statutory meeting.

Question 1(d)(II)(i)

The particulars of a register able charge must be filed with the Registrar within

- a) 14 days.
- b) 21 days.
- c) 30 days.
- d) 45 days.

(1 mark)

Answer 1(d)(II)(i)

c) 30 days. According to section 125(1) particulars of charge along with a copy of instrument creating charge should be filed with ROC within 30 days from creation of charge.

Question 1(d)(II)(ii)

A company may close its register of members in a year not exceeding

- a) 30 days.
- b) 45 days.
- c) 60 days.
- d) 90 days.

(1 mark)

Answer 1(d)(II)(ii)

b) 45 days. According to section 154 of the companies act, 1956 a company can close its register of members or the register of debenture holders for any period not exceeding 45 days in each year, but not exceeding 30 days at any one time.

Question 1(d)(II)(iii)

Statutory Meeting should be held.

- a) Not less than one month from the date on which the company is entitled to commence business.
- b) Not less than one month from the date on which the company is incorporated.

- c) Not less than one month but within six months from the date on which the company is entitled to commence business.
- d) Not less than one month but within six months from the date on which the company is incorporated. (1 mark)

Answer 1(d)(II)(iii)

c) Not less than one month but within six months from the date on which the company is entitled to commence business. This provision is given in section 165(1) of the companies act, 1956.

Question 2(a)

M is an employee of ABC Limited. The amount of bonus payable to him during the year 2010-11 is Rs.10,000 only. The company deducted a sum of Rs. 2,000 against the attendance bonus already paid to him during the said year and paid remaining amount. M filed a suit against the company for recovery of the deducted amount. Decide under the payment of Bonus Act, 1956 whether M would be given any relief by the court. What will be your answer if the said amount is paid to M as interim bonus? (8 marks)

Answer 2(a)

According to section 17 of the payment of bonus act, 1965, where in any accounting year an employer has paid any-

- (a) **puja bonus** or other **customary bonus**; or
 - (b) part of the bonus payable **under this Act** before the date on which such bonus becomes payable,
- then, the employer shall be entitled to deduct the amount of bonus so paid from the amount of bonus payable by him for the year and the employee shall be entitled to receive only the balance.

In the present case ABC Ltd. has paid attendance bonus of Rs.2000 which is not a puja bonus, customary bonus or the interim bonus. As per section 17 employer can deduct only puja/customary/interim bonus and not any other amount.

Therefore we can conclude that ABC Ltd. can not deduct the amount of Rs.2000 from the final bonus of Rs.10,000 hence M would be given relief by the court.

If the amount of Rs.2000 is interim bonus then employer can deduct the same from the amount of bonus payable to him, i.e., Rs.10,000.

Note: There is a **technical mistake in this question**. Sec. 11 says that maximum bonus is 20%. Section 12 says that if salary is more than Rs.3,500 per month it will be deemed to be Rs.3500 for calculation of bonus. Therefore maximum annual salary is $3500 \times 12 = \text{Rs.}42000$ hence maximum bonus is $\text{Rs.}42000 \times 20\% = \text{Rs.}8400$. while the question says it is Rs.10,000.

Question 3(a)

X was a monthly rated employee of RSP Limited. He served the company for 14 years. His last drawn wages were Rs.1, 50,000 per month on superannuation. Calculate the amount of

gratuity payable to him under the provisions of the payment of Gratuity Act, 1972. What will be the amount of gratuity if he (X) was terminated by the company due to his negligence which caused a loss of company's property worth Rs.2.00 Lakhs. (8 marks)

Answer 3(a)

According to section 4(1) of the payment of gratuity act, 1972 an employee is eligible for gratuity on termination of his employment, if he has rendered continuous service for at least 5 years.

According to section 4(2) For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of **fifteen days' wages based on the rate of wages last drawn** by the employee concerned.

Explanation : In the case of a monthly rated employee, the fifteen days' wages shall be calculated by **dividing** the monthly rate of wages last drawn by him by **twenty-six** and multiplying the quotient by fifteen.

Also according to section 4(3) the amount of gratuity payable to an employee shall not exceed **three lakhs and fifty thousand rupees**.

In the present case last drawn monthly salary of X was Rs.1,50,000 per month therefore 15 days salary is $\text{Rs.1,50,000} \times \frac{15}{26} = \text{Rs.86538}$

Now he has served the company for 14 years hence the amount of gratuity is $\text{Rs.86538} \times 14 = 12,11,538$.

But as per gratuity act amount of gratuity cannot be more than Rs.3,50,000. Therefore employer is liable to pay the amount of Rs.3,50,000 as gratuity to X.

According to section 4(6) the gratuity of an employee, whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of, property belonging to the employer, shall be **forfeited to the extent of the damage** or loss so caused.

In the present case X caused property loss of Rs.2,00,000 hence employer can deduct this amount from the amount of gratuity of Rs.3,50,000 and employee will be eligible to receive only the balance amount of Rs. 1,50,000.

Question 4(a)

M draws a cheque in favour of N for Rs. 50 without writing word 'only'. N, without the consent of M, alters the cheque. He adds three zeroes after the figure '50' and he also adds the words 'thousand only' after 'fifty' as there is sufficient space of making these additions. The instrument looks like cheque drawn for Rs. 50,000. The bankers pay Rs. 50,000 to N in due course. Referring to the provisions of the Negotiable Instrument Act, 1881 decide whether the bank is liable to M for excess payment. (8 marks)

Answer 4(a)

According to section 89 of the negotiable instruments act, 1881 where a promissory note, bill of exchange or cheque has been materially altered but does not appear to have been so altered, payment thereof by a person or banker liable to pay according to the apparent tenor thereof, shall discharge such person or banker liable to pay, from all liability thereon, and such payment shall not be questioned by reasons of the instrument having been altered.

In the present case N has made material alternation in the cheque without permission on drawer M but the alteration has been made so neatly that it looks like an original cheque. Bank has made payment in due course without negligence.

Therefore looking at the above provisions we can say that that bank is not liable to M for excess payment.

Question 6(a)

Examine the validity with reasons the following nominations made by share and debentures holders of XYZ Limited under the provisions of the Companies Act, 1956.

- (i) A and B , joint holders of share, nominate X.
- (ii) P nominates his minor son Q.
- (iii) M nominates 'P & Sons' a partnership firm.
- (iv) J nominates K, a non-resident Indian.

(8 marks)

Answer 6(a)

According to section 109A of the companies act, 1956:

- (1) Every shareholder or debentureholder of a company may make **nomination at any time**. And the nominee shall be entitled to his shares or debentures in the event of his death.
- (2) Where the shares or debentures of a company are held by more than one person jointly, the **joint holders** may together nominate, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders.
- (3) Where a nomination made the nominee shall be entitled to the shares or debentures in the event of death of the shareholder or debenture holder , even if there is anything contrary in any law or will of the deceased.
- (4) If the nominee is a minor then a guardian should also be appointed.

Here we can also note that Non-individuals including society, trust, body corporate, partnership firm, *karta* of HUF, holder of power of attorney, cannot nominate. Likewise any of these persons cannot be a nominee.

Looking at the above provisions we can say that:

- (i) A and B Joint holders of shares, nominate X. This is valid because as per sub section 2 above joint holder can together make a nomination.
- (ii) P nominates his minor son Q. This is valid but as per sub section 4 above P should also appoint guardian for taking care of shares during minority of Q.

- (iii) M nominates 'P & sons' a partnership firm. This is not valid because nomination cannot be made in the name of non-individual persons.
- (iv) J nominates K, a non resident Indian. This is valid because there is nothing in the companies act 1956 which denies nomination in the name of NRI.

Question 7(b)

MNP Limited issued a prospectus stating that application has been made to Bombay Stock Exchange for permission to deal in the shares. Explain the eligibility criteria for listing of securities of the company on the BSE. Also state the effect on the issue in case permission has not been granted by the said stock exchange within prescribed time limit under the provisions of the Companies Act, 1956. (4 marks)

Answer 7(b)

As per the study material of ICAI following are the eligibility criterion for listing of securities on the BSE:

- (a) in respect of companies, the invest hold limit for listing will be issued capital of Rs. 5 crores.
- (b) in respect of existing, and now seeking listing as the Bombay Stock Exchange, all the following criteria will have to be fulfilled
 - (i) minimum issued equity capital of Rs. 3 crores,
 - (ii) minimum Book value of Rs. 5 crores (Capital + Free reserves) and
 - (iii) minimum Market capitalisation of Rs. 10 crores.

SEBI has prescribed norms for minimum quantity of capital of 25 per cent being offered to the public beyond all reservations to different categories of persons and institutions.

According to section 73 of the companies act, 1956:

If the permission has not been granted by the stock exchange, before the expiry of ten weeks from the date of the closing of the subscription lists company cannot make allotment and if allotment is made it will be void.

Company can also make an appeal against the order of stock exchange. In that case allotment shall not be void until the dismissal of the appeal.

Also the company shall forthwith repay without interest all moneys received from applicants and, if any such money is not repaid within eight days after the company becomes liable to repay it, the company and every director of the company who is an officer in default shall be jointly and severally liable to repay that money with interest at such rate as may be prescribed.