

PAPER – 3 : LAW, ETHICS & COMMUNICATION

QUESTIONS

A. LAW

The Indian Contract Act, 1872

1. (a) What are the legal requirements for the valid Consideration? State the legal positions in the following statements:
 - (i) Where a collector had passed an order that anyone using the market constructed by the Zamindar, for the purpose of selling his goods should pay commission to the Zamindar.
 - (ii) 'A' by gift deed transferred a property to her daughter with condition that her brother should be paid annuity by the daughter. She executed a document agreeing to pay annuity accordingly but declined to pay.
- (b) X, Y and Z jointly borrowed ₹ 50,000 from A. The whole amount was repaid to A by Y. Decide in the light of the Indian Contract Act, 1872 whether:
 - (i) Y can recover the contribution from X and Z,
 - (ii) legal representatives of X are liable in case of death of X,
 - (iii) Y can recover the contribution from the assets, in case Z becomes insolvent.
2. (a) Explaining the provisions of the Indian Contract Act, 1872, answer the following:
 - (i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?
 - (ii) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?
- (b) M lends a sum of ₹ 5,000 to B, on the security of two shares of a Limited Company on 1st April 2010. On 15th June, 2010, the company issued two bonus shares. B returns the loan amount of ₹ 5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.

The Negotiable Instruments Act, 1881

3. (a) X, a major, and M, a minor, executed a promissory note in favour of P. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on X and M.
- (b) Mark the correct answer:

- (i) A negotiable instrument, dated 30th August, 2010, is made payable three months after date. The instrument is at maturity on the -----
 - (a) 3rd December, 2010
 - (b) 4th December, 2010
 - (c) 2nd December, 2010
 - (d) 30th November, 2010
 - (ii) A negotiable instrument purporting to transfer only a part of the amount appearing to be due on the instrument is -----
 - (a) Valid instrument
 - (b) Unlawful instrument
 - (c) Not valid instrument
 - (d) Voidable instrument
 - (iii) The certification of dishonour of the instrument by Notary Public is called as----
 - (a) Noting
 - (b) Inchoate
 - (c) Endorsement
 - (d) Protest
4. (a) Explain 'Sans Recours' endorsement?
State the legal position in the following case:
A bill of exchange is drawn payable to X or order. X indorses it to Y, Y to Z, Z to A, A to B and B to X. Whether X can recover the amount of the bill from Y, Z, A and B, if he has originally indorsed the bill to Y by adding the words 'Sans Recours'.
- (b) On a Bill of Exchange for ₹ 2 lakhs, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State, the remedies available to 'A', can he be considered as a 'Holder in due course' and can receive the amount of the Bill from 'X'

The Payment of Bonus Act, 1965

5. (a) Who are eligible for bonus as per the Payment of Bonus Act, 1965?
State who among the following are entitled to bonus:
- (i) Season worker who worked for 29 days in a factory.
 - (ii) An employee committed fraud.

- (b) State whether the following statements are true or false and give reasons therefor with reference to the Payment of Bonus Act, 1965.
- (i) The maximum bonus payable to employees is limited to the available surplus.
 - (ii) "Salary or wage" does not include dearness allowance.
 - (iii) Accounting year in relation to a corporation means the year commencing on 1st of April.
 - (iv) A part-time employee engaged on regular basis is eligible for bonus.
 - (v) If any interim bonus has been paid it may be adjusted against the statutory bonus that is payable under the Payment of Bonus Act, 1965.
6. (a) Explain the following statement:
- Claim of annual bonus was rooted in custom but qualified by negotiations/settlements held to be customary in nature and statutory based only on settlement linked with productivity or profits.
- (b) The management of Shram Mills Ltd. entered into an agreement with their employees to pay them bonus based on production in lieu of Bonus based on profits, from the accounting year 2010. The employees further agreed to forego their right to receive minimum bonus and instead accept 25% of their salary/wage as bonus based on productivity. Is such an agreement valid? Examine in the light of the provisions of the Payment of Bonus Act, 1965

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

7. (a) State whether the following statement is true or false with reference to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (i) The Provident Fund is not payable to an employee in the event of an untimely death.
 - (ii) "Default in payment of contribution by employer is a cognizable offence".
- (b) An employee working in an establishment covered by the E.P.F. and M.P. Act, 1952 leaves his employment and takes up employment in another establishment. State in this connection:
- (i) How shall the amount accumulated to his P.F. Account be transferred?
 - (ii) What steps shall be taken if the establishment in which he has joined is not covered by the Act?
 - (iii) What would be your answer if the establishment in which he was previously working is not covered by the Act?
8. (a) Explain the provisions of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 regarding the following:

- (i) Rate of interest on amount due from the employer under the Act.
 - (ii) Maximum limit of interest rate
 - (iii) The period for which the employer is liable to pay the said interest
- (b) An Inspector appointed under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the "Shareholders' Register". How far under the Act is his action reasonable?

The Payment of Gratuity Act, 1972

9. (a) E was an employee of Indian global Ltd. The whole of the undertaking of company was taken over by a new company - Asian Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company.
- (b) An employee who is governed by the Payment of Gratuity Act, 1972 committed a theft in the course of his employment and consequently his services was terminated. State in this connection, whether the gratuity payable to him shall be wholly or partly forfeited.
10. (a) Sri is employed in woolen weaving factory, a seasonal establishment. The factory was in operation for 4 months only during the financial year 2010-11. Sri 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 Sri is entitled to gratuity payable under the Act. Would your answer be the same in case Sri works for 100 days?
- (b) Examining the provisions of the Payment of Gratuity Act, 1972, state whether gratuity is payable to an employee for the periods when he does not actually work in the organisation. Explain the manner in which gratuity is calculated for regular employees.

The Companies Act, 1956

11. (a) Some of the creditors of X Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 1956. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company.
- (b) A public limited company has only seven shareholders, all the shares being fully paid-up. All the shares of one such shareholder are sold by the court in an auction and purchased by another shareholder. The company continues to carry on

business thereafter. Discuss the liabilities of the shareholders of the company under the Companies Act, 1956.

12. (a) Pick the correct answer:
- (i) Where the members of a company by its memorandum of association limits his liability to such amount as he undertake to contribute to the assets of the company in the event of its being wound up. Such company is -----
 - (a) Company limited by shares
 - (b) Company limited by guarantee
 - (c) Unlimited company
 - (d) Non- Profit making companies
 - (ii) The restrictions on the private companies are:
 - (a) On inviting public to subscribe to any shares/debentures of the Company.
 - (b) On the right to transfer its shares.
 - (c) on an invitation/acceptance of deposits from persons other than its member/directors/their relatives.
 - (d) All of these
- (b) What are the documents that have to be filed at the time of registration of a company to the Registrar? What are the effects of registration of a company?
13. (a) State whether the following statement is true or false:
- (i) A company filing a shelf prospectus is not required to file an information memorandum.
 - (ii) In the case of Public issue of shares, the subscription list is to be kept open for a minimum period of 3 working days.
- (b) 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.
14. (a) The Board of Directors of a company decide to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of the proceeds of the share capital. Are the decisions taken by the Board of Directors valid under the Companies Act, 1956?

- (b) "Every shareholder of a company is also known as a member, while every member may not be known as a shareholder." Examine the validity of the statement and point out the distinction between a 'member' and a 'shareholder'.
15. (a) When can a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company? Can these shares be offered to the Preference Shareholders?
- (b) R, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Decide, under the provisions of the Companies Act, 1956, whether the Court at New Delhi is competent to take action in the said matter?
16. (a) A company refuses to register transfer of shares made by X to Y. The company does not even send a notice of refusal to X or Y within the prescribed period. Has the aggrieved party any right(s) against the company for such a refusal? Advise.
- (b) What is a Debenture Certificate? When and within what time it should be issued? Is there any penalty for the delay or default in the issue of such certificate?
17. (a) Explain the provisions of the Companies Act, 1956 relating to holding of Annual General Meeting of the Company with regard to the following:
- (i) Period within which the first and the subsequent Annual General Meetings must be held.
- (ii) Business which may be transacted at an Annual General Meeting.
- (b) D, a director in a company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, under certificate of posting. D did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 1956:
- (i) Whether the contention of D is valid?
- (ii) Would your answer be still the same in case D remained outside India for two months (when such notices were given and meetings held).

B. ETHICS

18. (a) State the guidelines to address ethical dilemmas to recognize ethical issues in understanding the business ethics?
- (b) How business ethics may be significant 'to promote a strong public image' and

'results in the formation of an improved society'.

19. (a) State the major 'characteristics' of good corporate governance .
(b) What are the common CSR policies that integrate responsible practices into daily business operations.
20. (a) 'Communication is another area in which ethical concerns may arise'. Explain.
(b) State the forums that had been established to promote and protect the rights of the consumers.
21. (a) Explain the following principles required to the professionals for behaving in an ethical manner.
 - (i) The principle of Integrity
 - (ii) The principle of confidentiality
(b) What is the importance of ethics for a finance and accounting professionals and what the ethical dilemma they face in the profession?

C. COMMUNICATION

22. (a) Write short notes on:
 - (i) Benefits of effective Communication
 - (ii) Semantic
- (b) Mark the correct answer:
 - (i) Founder of critical thinking:
 - (a) Einstein
 - (b) Karl Marx
 - (c) Socrates
 - (d) Aristotle
 - (ii) The Russian proverb "once a word goes out of your mouth, you can never swallow it again" point out.
 - (a) Interpersonal communication is irreversible.
 - (b) Interpersonal communication has long lasting effect.
 - (c) Interpersonal communication is a one way process.
 - (d) (a) and (b) only
 - (iii) The core of group dynamics is
 - (a) The Levels in the group

- (b) Group norms
 - (c) Group climate
 - (d) Interaction among members
23. (a) What do you understand by persuasion skills?
- (b) Explain the following of the ethical dilemmas that one faces while communicating:-
- (i) Euphemisms
 - (ii) Whistle-blowing
24. (a) MNP Limited was incorporated in September, 2010. Now, the company wants to hold its first meeting of the Board of Directors. Draft a notice of the said meeting along with agenda.
- (b) Third Annual General Meeting of ABC Limited was held on 28th June, 2011. Several businesses were transacted at the meeting including the adoption of annual accounts for the year ended 31st March, 2011. The meeting was attended by 30 members in person and 5 members in proxy. Draft the minutes of the Annual General meeting indicating how shall the adoption of accounts being one of the business transacted at the meeting, be recorded.
25. (a) Draft a specimen form of the Memorandum of Association of a private company.
- (b) Mr. A has not received a dividend warrant of ₹ 1,500 for 150 shares of XYZ Ltd. Draft an indemnity bond, to be given to the company for seeing release of Dividend.

SUGGESTED ANSWERS/HINTS

1. (a) Following are the legal requirement of consideration:
- Consideration must move at the desire of the promisor
 - Consideration can flow either from the promisee or any other person
 - Executed and Executory consideration
 - Past consideration
 - Adequacy of Consideration
 - Performance of what one is legally not bound to perform
 - Consideration must not be unlawful, immoral, or opposed to public policy.
- (i) As per the definition given under 2(d) of the Indian Contract Act, 1872 Consideration must move at the desire of the promisor and not of a third party. In this case it was not a proper order as the desire to receive consideration

had not emanated from the Zamindar but from a third party namely the collector [*Durga Prasad Vs Baldev*(1880)3, All 221].

Thus in this case, the consideration is not valid and so agreement is void.

- (ii) As per the definition given under 2(d) of the Indian Contract Act, 1872 Consideration can move either from the promisee or from any other person. Accordingly, in the given case consideration did flow from the 'A' to her daughter in lieu of the annuity to be paid by the daughter to the 'A's brother. Here the consideration from third party i.e. 'A', is sufficient to enforce the promise of the daughter to pay annuity to A's brother [*Chinya Vs Ramaya*(1881) a.mad.137]. This is a valid contract.
- (b) Section 42 of the Indian Contract Act, 1872 requires that when two or more persons have made a joint promise, then, unless a contrary intention appears from the contract, all such persons jointly must fulfill the promise. In the event of the death of any of them, his representative jointly with the survivors and in case of the death of all promisees, the representatives of all jointly must fulfill the promise.

Section 43 allows the promisee to seek performance from any of the joint promisors. The liability of the joint promisors has thus been made not only joint but "joint and several". Section 43 provides that in the absence of express agreement to the contrary, the promisee may compel any one or more of the joint promisors to perform the whole of the promise.

Section 43 deals with the contribution among joint promisors. The promisors, may compel every joint promisor to contribute equally to the performance of the promise (unless a contrary intention appears from the contract). If any one of the joint promisors makes default in such contribution the remaining joint promisors must bear the loss arising from such default in equal shares.

As per the provisions of above sections,

- (i) Y can recover the contribution from X and Z because X, Y and Z are joint promisors.
 - (ii) Legal representative of X are liable to pay the contribution to Y. However, a legal representative is liable only to the extent of property of the deceased received by him.
 - (iii) 'Y' also can recover the contribution from Z's assets.
2. (a) (i) According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.
- In the given case, B omits to supply the material. Hence C is discharged from his liability.

- (ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence A (Surety) is not discharged.

(b) Bailee's Duties and Liabilities

The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed."

Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also (*Motilal v Bai Mani*).

3. (a) **Minor being a party to negotiable instrument:** As per Section 26 of the Negotiable Instrument Act, 1881, every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque.

As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

In view of the provisions of Section 26 explained above, the promissory note executed by X and M is valid even though a minor is a party to it. M, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely X from liability [*Sulochana v. Pandiyan Bank Ltd., AIR (1975) Mad. 70*].

- (b) (i) Option (a) is the correct answer according to section 22 of the Negotiable Instrument Act, 1881.
- (ii) Option (c) is the correct answer as per section 56 of the Negotiable Instrument Act, 1881.
- (iii) Option (d) is the correct answer as per section 100 of the Negotiable Instrument Act, 1881.

4. (a) **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 X, 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 X. Till it is to prevent 'circuity of action'. But in this case X's original endorsement is

'without recourse' and therefore, he is not liable to Y, Z, A and B. But if the bill is negotiated back to X, all of them are liable to him and he can recover the amount from all or any of them (Section 52).

- (b) According to section 9 of the Negotiable Instruments Act, 1881, 'holder in due course' means any person who for consideration becomes 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 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.

As 'A' in this case prima facie became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

5. (a) Every employee of an establishment covered under the Payment of Bonus Act, 1965 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 less than ₹ 10,000 per month. [Section 2(13) read with Section 8]

The following are eligible for the bonus:

- (i) Season workers who have worked for not less than 30 working days are entitled to bonus [*J.K.Ginning & Pressing factory v. P.O., 2nd Labour Court, (1991) 62 FLR 207 (Bom)*]. Here in the given case season worker is not entitled for bonus as he has worked for less than 30 days.
 - (ii) An employee who have committed fraud as mentioned in section 9, is disqualified for the bonus of the accounting year in which he has committed fraud [*Himalaya Drug Co. v. P.O., 2nd Addl. Labour Court, (1986) 52 FLR 704*]
- (b) i. The statement is false as the maximum bonus payable to employees under Section 11 is 20% of salary, irrespective of the available surplus being more.
- ii. The statement is false as under Section 2(21), "salary or wage" includes dearness allowance.
- iii. The statement is false as under Section 2(1), the accounting year in relation to a corporation does not mean the year commencing on 1st of April.

- iv. The statement is true and a part-time employee engaged on regular basis is eligible for bonus as per decision in *Automobile Karmchari Sangh Vs. Industrial Tribunal (1970) 38 FJR 268*.
 - v. The statement is true as per Section 17.
6. (a) The above statement is based on the provision laid down in section 17 of the Payment of Bonus Act, 1965 relating to adjustment of customary or interim bonus against bonus payable under the Act. According to which, if in any accounting year, an employer has paid any puja bonus or other customary bonus to any employee, or an employer has paid a part of the bonus payable under this Act to an employee 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 to the employee under this Act in respect of that accounting year. The employee shall be entitled to receive only the balance.
- (b) **Payment of bonus linked with productivity**
- No, such an agreement is null and void. The problem is based on Section 31A of the Payment of Bonus Act, 1965 which allows an agreement between employers and employees for payment of bonus linked with productivity. But such payment is subject to two restrictions:
- (i) That such agreement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void.
 - (ii) If the bonus payable under such agreement exceeds 20% of the salary/wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of the salary/wages.
- Accordingly, in the given problem, the agreement to forego the right of receiving minimum bonus is null and void. The employees shall not be entitled to receive the excess over 20% of salary/wages in case of bonus payable linked with productivity.
7. (a) (i) The given statement is false. As per the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the Provident Fund is payable to an employee under the provisions of a statute and this statutory obligation cannot possibly, be deferred in the event of an untimely death of an employee [*Balbir Kaur Vs. Steel Authority of India, AIR 2000 SC1596*]
- (ii) This statement is true because according to Section 14AB of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, offences relating to default in payment of contribution by the employer is a cognizable offence. A cognizable offence is one where the police can arrest a person without warrant.
- (b) **Transfer of accumulated amount to the credit of Employees Provident Fund on change of employment:** Section 17A of the Employees' Provident Funds and

Miscellaneous Provisions Act, 1952 provides for the transfer of accounts of an employee in case of his leaving the employment and taking up new employment and to deal with the case of an establishment to which the Act applies and also to which it does not apply. The option to get the amount transferred is that of the employee. Where an employee of an establishment to which the Act applies leaves his employment and obtains re-employment in another establishment to which the Act does not apply, the amount of accumulations to the credit of such employees in the Fund or, as the case may be, in the provident Fund in the establishment left by him shall be transferred to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer. The transfer has to be made within such time as may be specified by the Central Government in this behalf [Sub-Section (1)].

Conversely, when an employee of an establishment to which the Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him, if the employee so desires and the rules in relation to such provident fund permit, may be transferred to the credit of his account in the fund or as the case may be, in the provident fund of the establishment in which he is employed [Sub-Section (2)].

8. (a) Rate, limit and period of payment of interest

As per Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952:-

- (i) The employer shall be liable to pay simple interest at the rate of 12 per cent per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act.
- (ii) Although limit of interest rate is not given in the Act, but it is clearly given that the higher rate of interest specified in the Scheme cannot exceed the lending rate of interest of any scheduled bank.

The period for which the employer is liable to pay the interest is from the date which the amount has become so due till the date of its actual payment.

- (b)** Under Section 13(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, an Inspector can inspect and make copies of, or take extract from any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any offence under this Act has been committed by an employer, seize with such assistance as he may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence.

In the present case the Inspector had sought to take copies of the "Shareholders' Register" which is irrelevant document for the purpose of EPF and MP Act, 1952. Moreover, he has visited the office after the working hours (10.00 pm) which is not reasonable.

9. (a) According to Section 4 (1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section. Disablement means such disablement as incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

The given problem fulfils all the above requirements as stated. Therefore, E is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

- (b) **Reduction and forfeiture of Gratuity:** Under Section 4 of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall stand forfeited. The gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of: (i) riotous or disorderly conduct or act of violence; or (ii) committing an offence involving moral turpitude in the course of his employment. Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6). [*Bharat Gold Mines Ltd. vs. Regional Labour Commissioner 1986 Lab. I.C. 1976 (Kar.)*]

10. (a) Section 2A of the Payment of Gratuity Act, 1972 provides that where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), 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 seventy-five percent of the number of days on which the establishment was in operation during such period.

In the given problem, as per above provision, Sri has worked only for sixty days that are less than 75% of the numbers of days therefore he shall not be eligible for getting any gratuity in first case.

In the second case, since the Sri has worked for 100 days that are more than 75% of the numbers of days therefore, he is entitled for gratuity.

(b) Periods for which Gratuity is Payable:

Yes, the periods for which gratuity is payable to an employee even if he does not actually work in the organization are the following:

1. Lay off under the Industrial Disputes Act, 1947.
2. Leave with full wages.
3. Maternity leave for female employees.
4. Absence due to temporary disablement caused during employment.

Quantum of gratuity payable is 15 days' wages on the last drawn wages for every completed year of service subject to a maximum of 15 months' wages.

11. (a) Corporate Veil

After incorporation, the company in the eyes of law is a different person altogether from the shareholders who have formed the company. The company has its own existence and as a result the shareholders cannot be held liable for the acts of the company even though the shareholders control the entire share capital of the company. This is popularly known as Corporate Veil and in certain circumstances the courts are empowered to lift or pierce the corporate veil by ignoring the company and directly examine the promoters and others who have managed the affairs of the company after its incorporation. Thus, when the corporate veil is lifted by the courts, (i.e., the courts have disregarded the company as an entity), the promoters can be made personally liable for the debts of the company. In the following circumstances, corporate veil can be lifted by the courts and promoters can be held personally liable for the debts of the company.

- (i) Trading with enemy country.
- (ii) Evasion of taxes.
- (iii) Forming a subsidiary company to act as its agent.
- (iv) The benefit of limited liability is destroyed by reducing the number of members below 7 in the case of public company and 2 in the case of private company for more than six months.
- (v) Under law relating to exchange control.
- (vi) Device of incorporation is adopted to defraud creditors or to avoid legal obligations.

(b) Consequences of membership falling below legal minimum

The problem in the question relates to reduction of membership below the statutory minimum. Section 12 of the Companies Act, 1956 requires a public company to have a minimum of seven members. If at any time the membership of a public company falls below seven and it continues its business for more than six months, then according to Section 45 of the Act, every such member who was aware of this fact would be personally and severally liable for all debts contracted by the company during the period and may be severally sued for all debts contracted after six months.

Accordingly, in the given problem, the remaining six members shall incur personal liability for the debts contracted by the company,

- (i) If they continued to carry on the business of the company with that reduced membership beyond the six month period.
- (ii) Only those members who knew of this fact of reduced membership shall be liable.
- (iii) The liability shall extend only to the debts contracted after six months from the date of auction of that member's shares.

12. (a) (i) The correct option is (a).
(ii) The correct option is (d).

(b) Documents to be filed: After getting the name approved, the following documents along with the application and prescribed fees, are to be filed with the Registrar:

- (1) Memorandum of Association [Section 33(1)(a)].
- (2) Articles of Association, if any [Section 33(1)(b)].
- (3) The agreement, if any, which the company proposed to enter into with any individual for appointment as its managing or whole time director or manager [Section 33(1)(c)].
- (4) A declaration that the requirements of the Act and the rules framed there under have been complied with. This declaration is required to be signed by an advocate of the Supreme Court or High Court or an attorney or a pleader having the right to appear before High Court or a secretary, or a Chartered Accountant in whole time practice in India who is engaged in the formation of a company, or by a person named in the articles as a director, manager or secretary of the company [Section 33(2)].
- (5) In case of a public company having share capital, where the articles name a person as director/directors, the list of the directors and their written consent in prescribed form to act as directors and take up qualification shares [Section 266].

Besides the aforementioned documents, the company must give a notice regarding the situation of its registered office under Section 146 within 30 days of registration.

Effects of a registration: Section 34(2) of the Companies Act, 1956 which provides for the effect of incorporation states that from the date of incorporation mentioned in the Certificate of Incorporation, such of the subscribers to the Memorandum and other persons, as may from time to time be members of the company, shall be a body corporate by the name contained in the memorandum, capable forthwith of exercising all the functions of an incorporated company and having perpetual succession and a common seal, but with such liability on the part of the members to contribute to the assets of the company in the event of its being wound up as is mentioned in the Companies Act.

Accordingly, when a company is registered and a Certificate of Incorporation is issued by the Registrar, three important consequences follow:

- (i) The company becomes a distinct legal entity. Its life commences from the date mentioned in the Certificate of Incorporation.
- (ii) It acquires a perpetual succession. The members may come and go, but it does on for ever, unless it is wound up.
- (iii) Its property is not the property of the shareholders. The shareholders have a right to share in the profits of the company when realised and divided. Likewise any liability of the company is not the liability of the individual shareholders.

13. (a) (i) **The given statement is false.** As per the provisions given under section 60A of the Companies Act, 1956, a company filing a shelf prospectus shall be required to file an information memorandum on all materials facts at the stage of the first offer of securities, such memorandum together with the shelf prospectus shall constitute the prospectus.
- (ii) **The given statement is true.** The subscription list for public issues should be kept open for at least 3 working days and a disclosure to this effect should be made in the prospectus.

(b) 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, 1956 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 on 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, 1956.

The Company has also violated the provisions of Section 69(4) of the Companies Act, 1956 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.

14. (a) Underwriting Commission

Considering the provisions of Section 76 of the Companies Act, 1956:

- (i) The payment of commission should be authorised by the articles.
- (ii) The shares have been issued or the amount or rate authorised by the articles whichever is less, and in the case of debentures, it should not exceed 2-1/2%.

Answer to problem:

Thus taking into account the above provisions it is concluded that the Board of Director's decision to pay 5% is not valid, since the payment cannot exceed 3% as provided in the Articles of the company. Secondly, decision of the Board to pay the commission out of capital is valid since underwriting commission can be paid both out of capital as well as out of profits (*Madan Lal Fakir Chand v. Shree Changdeo Sugar Mills Ltd. MR (1962)S.C. 1543*).

- (b) 'Member' or 'Shareholders' of a company are the persons who collectively constitute the company as a corporate entity. The terms 'Member' and 'Shareholder' and 'holder of a share' are used interchangeable. (*Balkrishan Gupta v. Swadeshi Polytex Ltd.*) They are synonymous in the case of a company limited by shares, a company limited by guarantee and having a share capital and an unlimited company whose capital is held in definite shares. But in the case of an unlimited company or a company limited by guarantee, a Member may not be a shareholder, for such a company may not have a share capital.

A shareholder may be distinguished from a Member as follows:

- (1) A registered shareholder is a member but a registered member may not be a shareholder because the company may not have a share capital.

- (2) A person who owns a bearer share warrant is a shareholder but he is not a member as his name is struck off from the register of members. [Section 115(1)]. This means that a person can be a holder of shares without being a member.
 - (3) A legal Representative of a deceased Member is not a member until he applies for registration. He is, however, a shareholder even though his name does not appear on the register of members.
 - (4) A person who subscribes to the Memorandum of Association immediately becomes the member, even though no shares are allotted to him. Till shares are allotted to the subscriber, he is a member but not a shareholder of the company.
 - (5) A person who has transferred his shares ceases to be a holder of those shares from the date of the transfer, but he continues to be a member till such time the transfer is registered in the name of the transfers in the books of the company.
15. (a) **Issue of Further Shares:** Section 81 of the Companies Act, 1956 provides that if, at any time after the expiry of 2 years from the formation of the company or after the expiry of one year from the first allotment of shares, whichever is earlier, it is proposed to increase the subscribed capital by allotment of further shares, it should be offered to the existing equity shareholders of the company in proportion to the capital paid up on those shares.
- The new shares of a company may be offered to outsiders or any persons (including the equity shareholders) if-
- (i) a special resolution to that effect is passed by the company.
 - (ii) an ordinary resolution is passed and the approval of the Central Government is obtained. The Central Government will accord its approval if it is satisfied that the proposal is most beneficial to the company.
 - (iii) if any shareholder to whom the shares are offered declines to accept the shares. In such a case the Board of Directors may dispose of the shares in such a manner as they think most beneficial to the company.
 - (iv) if the new shares are issued within 2 years from the formation of the company or 1 year of the allotment made for the first time.

Preference Shareholders - whether (Further Issue of Capital) be offered to:

From the wordings of Section 81, it is quite clear that these shares can be issued only to equity shareholders, unless procedure as stated above has been adopted for issue of these shares to outsiders, etc. Therefore, in general these shares cannot be offered to preference Shareholders.

(b) Jurisdiction of Court, now Tribunal

According to Section 113(1) of the Companies Act, 1956 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall within two months after the application for the registration of transfer of any such shares, deliver the certificates of all shares transferred. In the case of a listed company under the listing agreement this period has been reduced to 30 days.

The facts of the given case are similar to *H.V. Jaya Ram Vs. ICICI Ltd., 1998*. In this case the Special Court for Economic Offences in the State of Karnataka rejected the appellant's complaint against the respondent company on the ground that since the company had its registered office at Mumbai it is only the court which has territorial jurisdiction over the registered office of the company that can entertain the petition and not the court located in the State of Karnataka where the shareholder is residing. The High Court also upheld the order of the Special Court. On appeal Supreme Court held that cause of action for failure to deliver share certificate arises where the registered office of the company is situated and not in the jurisdiction of the Court located in the place where the complaint resides.

Accordingly in the present case also, the Court in New Delhi cannot entertain the complaint against a company having its registered office in Mumbai.

16. (a) The problem as asked in the question is based upon Section 111 of the Companies Act, 1956 dealing with the refusal to register transfer and appeal against refusal.

On refusal to register a transfer or transmission by operation of law, of the right to any shares in, or debentures thereof, the company has to send notice of refusal giving reasons to the transferee or the transferor or to the person giving intimation of such transmission, or on delivery of transfer deed to the company, as the case may be within a period of 2 months from the date of the intimation or delivery of the transfer deed to the company. In the given case the company has failed to give such notice of refusal to the aggrieved parties within the stipulated time of 2 months. Failure to give notice of refusal gives a right/remedies to the aggrieved parties.

Rights/remedies to aggrieved parties:

The aggrieved parties may apply to the Company Law Board (Tribunal) under sub-section (2) or (4) of Section 111 against refusal or for rectification of the register of members, if his name is entered in the register without sufficient cause, or for omission of his name from the register or default in making an entry of his name in the register. The time of filing such appeal is 4 months from the date of lodgement of transfer application. There is no limitation period provided for making an application for rectification of register of members, under subsection (4). The company is also punishable under sub-section (12) with a fine upto ₹ 500 per day.

(b) Meaning of Debenture Certificate:

Debenture Certificate is an acknowledgement by a company that the certificate holder is a creditor of the company to the extent of the number of debentures multiplied by the face value of each debenture. Thus, if the certificate states 100 debentures of ₹ 100/- each, then the person having the certificate is entitled to get ₹ 10,000/- from the company at the time of the redemption of such debentures by the company.

Thus this certificate entitled the holder to get repayment of principal sum at the appointed date and the payment of interest at a fixed rate. This certificate is issued by the company to the Debenture Holders of the company. The debentures are issued under the common seal of the company.

Debenture certificate is to be issued within three months of the allotment of debentures or debenture stock and within two months after the application for registration of the transfer of any such debentures or debenture stock, deliver the certificates of all debentures and debenture stock allotted or transferred in accordance with the procedure laid down in Section 53 of the Companies Act, 1956.

The C.L.B. (Now Central Government) is empowered to extend the period within which the debenture certificate may be delivered to a further period not exceeding nine months, if it is satisfied that it is not possible for the company to deliver the certificates within the said period,

Penalty: Where the default is made in the delivery of debenture certificate within the specified time, every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and the company and every officer of the company who is in default shall be punishable with the fine which may extend to ₹ 5000 per day of default.

If a company on which a notice has been served requiring it to make good the default fails to do so within 10 days of the service of the notice, the CLB (Central Government) may on an application made by the aggrieved person, make an order directing the company and any officer of the company to deliver the securities within the period mentioned in the order. The order may provide that all costs incidental to the application shall be borne by the company or by the officer of the company responsible for the default.

17. (a) Annual General Meeting provisions under the Companies Act, 1956:

(i) *Period within which first and the subsequent Annual General Meeting must be held:*

- (a) In accordance with the provisions of the Companies Act, 1956 as contained in incorporation, and so long as the company hold its first annual general meeting within that period, the company need not hold any general meeting in the year of incorporation or in the following year

(First proviso to Section 166(1). Further, the date of the first Annual General Meeting must be within 9 months from the date of the financial year for which profit and loss account has been made,

- (b) Any subsequent Annual General Meeting must be held not later than 6 months from the close of the financial year of the company. The gap between the two consecutive Annual General Meetings must not be more than 15 months [Section 166(1)]. Further the second proviso to Section 166(1) states that the Registrar may, for any special reason, extend the time within which any Annual General Meeting (not being the first Annual General Meeting) shall be held by a period not exceeding 3 months.

(ii) *Business to be transacted at an Annual General Meeting:* The following two businesses may be transacted at an Annual General Meeting:

1. Ordinary Business; Viz.
 - (a) Consideration of Annual Accounts, Directors Report etc.
 - (b) Declaration of Dividend.
 - (c) Election of Directors.
 - (d) Appointment of auditors and fixation of their remuneration.
2. Special Business: Any business other than above 4 shall be special business, which may be transacted at any Annual General Meeting .

(b) **Problem on notice and validity of proceedings of the meeting:** The problem as asked in the question is based on the provisions of the Companies Act, 1956 as contained in Section 172 read with Section 53. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants to notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

Accordingly, the questions as asked may be answered as under:

- (i) The contention of D shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.
- (ii) In view of the provisions of the Companies Act, 1956, as contained in Section 172, the company is not bound to send notice to D at the address outside India. Therefore, answer in the second case shall differ from the first one.

Recently the Ministry of Corporate Affairs through *Circular No. 17/2011 dated 21st April, 2011* has clarified that a company would have complied with Section 53 of the Companies Act, 1956, if the service of document has been made through electronic mode provided the company has obtained e-mail addresses of its members for sending the notice/documents through e-mail by giving an advance opportunity to every shareholders to register their e-mail address and changes therein from time to time with the company.

18. (a) An ethical issue is an identifiable problem, situation, or opportunity that requires a person to choose from among several actions that may be evaluated as ethical or unethical. This will often involve an apparent conflict between moral imperatives, in which to obey one would result in transgressing another. Many business issues may seem straight forward and easy to resolve by choosing the one option which appears to be the clear choice, but in reality, one is faced with having to make a choice from various alternatives in which more than one option seems “right” resulting in an ethical dilemma.

Some guidelines to address ethical dilemmas are given below:

1. Define the problem clearly.
2. How would you define the problem if you stood on the other side of the fence?
3. How did the situation arise?
4. To whom are you loyal as a person and as a member of the organisation?
5. What is your intention in making this decision?
6. How does this intention compare with the probable results?
7. Whom could your decision or action injure?
8. Can you discuss the problem with the affected parties before you make your decision?
9. Are you confident that your position will be as valid over a long period?
10. Could you disclose without any doubt your decision or action to your boss, your CEO, the Board of Directors, your family, society as a whole?
11. What is the symbolic potential of your action if understood? If misunderstood?
12. Under what conditions would you allow exceptions to your stand?

(b) Ethics helps to promote a strong public image

An organization that pays attention to its ethics can portray a strong and positive image to the public. People see such organizations as valuing people more than profit and striving to operate with the integrity and honor. Thus managing ethical values in businesses besides optimizing profit generation in the long term, legitimizes managerial actions, strengthens the coherence and balance of the

organization's culture, improves trust in relationships between individuals and groups, supports greater consistency in standards and qualities of products, and cultivates greater sensitivity to the impact of the enterprise's values and messages. Finally and most essentially, proper attention to business ethics is the right thing to do.

Improved society

A few decades ago, children and workers were ruthlessly exploited. Trusts controlled some markets to the extent that prices were fixed and small businesses stifled. Influence was applied through intimidation and harassment. Then society reacted and demanded that businesses place high value on ethics, fairness and equal rights resulting in framing of antitrust laws, establishment of Government agencies and recognition of labour unions.

19. (a) **Corporate Governance:** Simply stated, 'Governance' means the process of decision making and the process by which decisions are implemented. The term 'corporate governance' is understood and defined in various ways. Corporate governance can be defined as the formal system of accountability and control for ethical and socially responsible organisational decisions and use of resources and accountability relates to how well the content of workplace decisions is aligned with the organisations strategic direction. Control involves the process of auditing and improving organisation decisions and actions. Good corporate governance has the following major characteristics:

- (i) Participatory
- (ii) Consensus oriented
- (iii) Accountable
- (iv) Transparent
- (v) Responsive
- (vi) Effective and efficient
- (vii) Equitable and inclusive and
- (viii) Follows the rule of law.

(b) **CSR Policies**

Corporate Social Responsibility (CSR) refers to operating a business in a manner that accounts for the social and environmental impact created by the business. CSR means a commitment to developing policies that integrate responsible practices into daily business operations, and to reporting on progress made toward implementing these practices.

Common CSR policies include:

- Adoption of internal controls reform in the wake of Enron and other accounting scandals;
- Commitment to diversity in hiring employees and barring discrimination;
- Management teams that view employees as assets rather than costs;
- High performance workplaces that integrate the views of line employees into decision making processes;
- Adoption of operating policies that exceed compliance with social and environmental laws;
- Advanced resource productivity, focused on the use of natural resources in a more productive, efficient and profitable fashion (such as recycled content and product recycling); and
- Taking responsibility for conditions under which goods are produced directly or by contract employees domestically or abroad.

20. (a) Communications is another area in which ethical concerns may arise. False and misleading advertising, as well as deceptive personal-selling tactics, anger consumers and can lead to the failure of a business. Truthfulness about product safety and quality are also important to consumers. The Food and Drug Regulatory authorities need to ensure that customers are told the truth about product safety, quality, and effectiveness claims. Some manufacturers fail to provide enough information to consumers about differences or similarities between products. For example, a lawsuit filed by consumers against Johnson claimed that the company's Acuvue and 1-Day Acuvue contact lenses were actually the same product. Consumers were directed by the company to dispose of the 1-Day Acuvue lenses after one day's use. The suit claims that because the two products were identical, the lenses could have been worn up to two weeks. It is estimated that six million people who used contact lenses spent \$1.1 billion on unnecessary replacements because of the company's misleading advertising. Johnson & Johnson agreed to pay up to \$860 million to settle the complaints. Another important aspect of communications that may raise ethical concerns relates to product labelling. It is mandatory for cigarette manufacturers to indicate clearly on cigarette packing that smoking cigarettes is harmful to the smoker's health.

(b) The forum established to promote and protect the rights of the consumers are called as Consumer Protection Councils. In India these forums are setup at three different levels:

The Central Consumer Protection Council: The objects of the Central Council shall be to promote and protect the rights of the consumers such as,-

- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods (or services, as the case may be) so as to protect the consumer against unfair trade practices;
- (c) the right to be assured, wherever possible, access to a variety of goods, and services at competitive prices;
- (d) the right to be heard and to be assured that consumer's interest will receive due consideration at appropriate terms;
- (e) the right to seek redressal against unfair trade practices {or restrictive trade practices} or unscrupulous exploitation of consumers; and
- (f) the right to consumer education.

The State Consumer Protection Council: The objects of every State shall be to promote within the State the rights of the consumers laid down in point (a) to (f) mentioned above.

The District Consumer Protection Council: The objects of every District Council shall be to promote within the State the rights of the consumers laid down in point (a) to (f) mentioned above.

21. (a) (i) The principle of Integrity

The dictionary meaning of integrity is veracity. Accordingly, the principle calls upon all accounting and finance professionals to adhere to honesty and straight forwardness while discharging their respective professional duties. In addition the following acts of responsibility would help comply with the Integrity principle.

Avoid being involved in activities which would impair the goodwill of the organization.

Communicate adverse as well as favourable information with those concerned.

Refuse any gift or favour which could influence actions taken or to be taken.

Refuse to get involved in any activity which would adversely affect the achievement of an organisations objective.

Avoid conflicts and advise related parties on apparent conflicts which could arise in the future.

(ii) The principle of confidentiality

This principle requires practitioners of accounting and financial management to refrain from disclosing confidential information related to their work. Such information may be however be disclosed to their subordinates and care

should be taken that the latter maintains confidentiality. The only exception to this principle is when there are requirements to disclose information under a legal obligation or because of some statutory ruling.

- (b) Finance and Accounts is perhaps the only business function which accepts responsibility to act in public interest. Hence, a finance and accounting professional's responsibility is not restricted to satisfy the needs of any particular individual or organization. While acting in public interest, it becomes imperative that the finance and accounting professional adheres to certain basic ethics in order to achieve his objective.

Until recently, various surveys conducted globally had ranked finance and accounting professionals very high in terms of professional ethics. However, various accounting scandals witnessed during the past few years have put a serious question mark on the role of the finance and accounting professional in providing the right information for decision making, both within and outside their respective organisations.

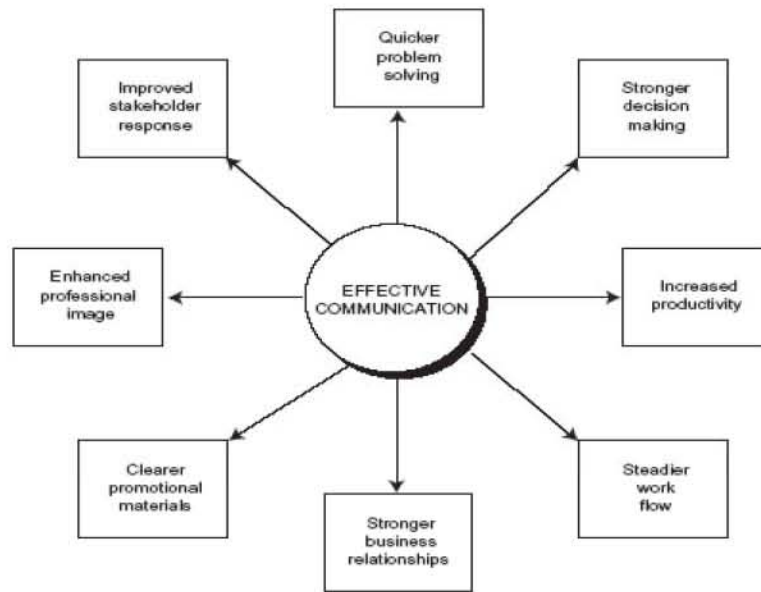
Ethics' which may be defined as 'those moral principles which guide the conduct of individuals' irrespective of the differences of opinions amongst individuals, Ethical behavior implies such course of actions which are taken after giving due thought to their impact on the society and other stake holders.

Ethical Dilemmas exist when finance and accounting professionals need to choose from amongst alternatives and there are (1) significant value conflicts among differing interests, (2) actual alternatives which can all be justified and (3) significant consequences to all stakeholders. For an example of a finance and accounting professional who has been asked to provide a profit forecast which needs to be given to a banker for a much wanted loan to be utilised in launching a new product. The company has not been doing well for the past few years and without this loan there is a likelihood of its closing down. However, the loan can only be availed if the banker is convinced that the projected profitability shall be at least ₹ 50,00,000 per annum. A optimistic projection of the profits shows that if everything goes extremely well the company may be able to make profits of ₹ 50,00,000, however, a realistic assumption provides a much lower figure. In such a situation the concerned professional will need to resolve the dilemma of the type of profit forecast to be provided to the banker. In case he gives a realistic projection the company may not get the loan and perhaps may need to close down. On the other hand if he makes a optimistic projection, he may be misleading the banker. There is no right answer to such a situation. Both actions proposed have got there own risks.

22. (a) (i) Benefits of Effective Communication

Only through effective communication both inside and outside, an organisation, becomes an open system interacting with its environment. Effective internal communication works towards establishing and disseminating of the goals of

an enterprise, evolving plans for their achievement, organizing human and other resources in an efficient way, selecting, developing and appraising members of the organisation, leading, motivating and encouraging people to put in their best and controlling performance.



The Benefits of Effective Communication

- (ii) Semantics is the systematic study of meaning. That is why the problems arising from expression or transmission of meaning in communication are called semantic problems. Oral or written communication is based on words. And words, limited in number, may be used in unlimited ways. The meaning is in the mind of the sender and also in that of the receiver. But it is not always necessary for the meaning in the mind of the sender to be the same as in the mind of receiver. Much, therefore, depends on how the sender encodes his message.

The sender has to take care that the receiver does not misconstrue his message, and gets the intended meaning. Quite often it does not happen in this way. That leads to semantic problems. It can be ensured only if we aim at clarity, simplicity and brevity so that the receiver gets the intended meaning.

- (b) (i) Option (c)
 (ii) Option (d)
 (iii) Option (d)
23. (a) Persuasion is one dimension of influence. It is a direct communication when benefits are stated in a reasoned arguments and competent views dealt with in a respectful manner. The two principles of persuasion are:
- Honour and Respect: These are communicated in various ways-You can respect people's time by being sensitive about the timing of your communication. Imagine barging in and demanding someone's attention simply because what you have to say is more important to you than to them.
 - Understanding the other person's Frame of Reference: Each of us have a unique personality but one can get to know a great deal about the other person by approaching things from their point of reference, asking questions and listening.
- (b) (i) **Euphemisms:**
 By definition, a euphemism is using a less offensive expression instead of one that might cause distress. For example using the expression "passed away" instead "died" is one of the more common examples. This usage is understandable. However, people frequently use these terms to obscure the truth. For example a purchasing agent has a far easier time accepting a "consideration fee" than a "bribe." Petty office theft gets passed off as merely "permanently borrowing" the item instead of "stealing."
- (ii) **Whistle-blowing:**
 Any employee who goes public with information about corporate abuses or negligence is known as a whistle-blower. Corporations and managers legitimately expect employee loyalty. Greed, jealousy, and revenge motivate some whistle-blowers. Some are simply misinformed. Some confuse public interest with private interest. Certainly the community has a right to know about corporate practices that are potentially hazardous, yet courting the whistle-blower too aggressively can be problematic.

24. **Notice of the First Meeting of the Board of Directors**

MNP Limited

To,
 (Director)

Date

Dear Sir/Madam,

This is to inform you that the first meeting of the Board of Directors will be held at the Registered Office of the company on 15th September, 2010 at 3 p.m. to transact the business as per the enclosed agenda.

You are requested to please attend the meeting.

Yours faithfully,

Secretary

For and on behalf of the Board of Directors

Place :

Date :

Agenda:

- (i) Election of the Chairman of the Meeting.
 - (ii) To produce the Certificate of Incorporation, the Memorandum and the Articles of Association.
 - (iii) Election of the Chairman of the Company.
 - (iv) Appointment of Managing Director.
 - (v) Appointment of Secretary.
 - (vi) Appointment of Auditors.
 - (vii) Appointment of Bankers and approval of the opening of a Bank Account and its operation.
 - (viii) Adoption of the company's seal.
 - (ix) Approval of the statement of preliminary expenses by the promoters and adoption of the preliminary contracts and underwriting contracts.
 - (x) Any other business with the permission of the chairman.
- (b) Minutes of 3rd Annual General Meeting of the shareholders of ABC Ltd held at p.m. on 28th June, 2011.**

Present

- 1. 30 members in person.
- 2. 5 Members in Proxy
- 3. Director

4.Chartered Accountant

5.Secretary.

Mr., Chairman took the chair, in accordance with articles of the company. The quorum being present, chairman called the meeting to order. The notice convening the meeting was read by the Secretary. The auditors report was read by the Secretary.

Adoption of Accounts

The Chairman then invited queries from the members present on Directors report, accounts and auditor and auditors, report, but there was no query. Thereafter, the Chairmen proposed the following resolution which was seconded by

“Resolved that the Directors' Report, audited Balance Sheet as on 31st March, 2011 and Profit and Loss Account for the year ended 31st March, 2011 and Auditors Report thereon be the same are hereby received, considered and adopted.

Carried unanimously_____

The meeting conducted with a vote of thanks to the Chair.

Sd/-

Dated2011

Chairman

25. (a) Format of Memorandum of Association

MEMORANDUM OF ASSOCIATION OF_____

PRIVATE LIMITED (Incorporated under the Companies Act, 1956)

1. Name of the Company:

The name of the company shall be.....

2 Registered Office:

Registered office of the company shall remain in the
.....(Mention the state) and at present it is at the following
address:

.....
.....

3. Aims and Objects:

The aims and objects for which the company is established is as under:

(a)

(b)

(c) and so on.....

4. Governing Body:

The names, addresses, occupation and designation of the present members of the governing body to whom the management of the company is entrusted as required under the Companies Act, 1956, are as follows:

.....

S.No. Name Addresses Occupation Designation in the Company

(full in capital).....

(1)

(2)

(3) and so on

5. Desirous person

We the undersigned are desirous of forming a company namely "....." under the Companies Act, 1956 in pursuance of this Memorandum of Association of the Company.

.....

S.No. Names and Addresses Age Occupations Signatures of the Subscribers
 No. of Shares

.....

(1)

(2)

(3) and so on

Note:

- 1) The memorandum should close here.
- 2) Following paragraph should be added as last paragraph:

" All the incomes ,earnings, movable or immovable properties of the company shall be solely utilised and applied towards the promotion of its aims and objects only as set forth in the Memorandum of Association and no portion thereof shall be paid or transferred directly by way of dividends, bonus, profits or in any manner whatsoever, to the present or past members of the company or to any person claiming through any one or more of the present or the past members .No member of the company shall have any personal claim on any movable or immovable properties of the company or make any profit,

whatsoever, by virtue of his membership attested by each subscriber signature of the subscriber names, address description and occupations of witness

Dated-----this Day of ----- at-----

(b) Indemnity Bond

Mr. A S/o resident of..... do hereby agree to indemnify the XYZ Ltd. for any loss that may occur for seeking release of dividend for 150 shares of ₹ 1500. I further declare that personally I have not received the dividend warrant in question.

Signature

Date:

Place:

Applicability of the updates for November, 2011 Examination

S.No.	Subject Matter	Law, Ethics and Communication
1.	The Companies Act, 1956 Adoption of electronic-mode for the services of document under Section 53 of the Companies Act, 1956, vide Circular No. 17/2011 dated 21 st April, 2011 by the Ministry of Corporate Affairs.	Applicable