

Test Series: February, 2012

Mock Test Paper – 1

IPCC/PCC: GROUP – I

PAPER – 2/3: BUSINESS LAWS, ETHICS AND COMMUNICATION /
LAWS, ETHICS AND COMMUNICATION

Question No.1 is compulsory.

Attempt any five questions from the remaining six questions.

Time Allowed – 3 Hours

Maximum Marks – 100

1. (a) Mr. X gives his marriage coat to the laundry for the dryclean. Launderer gives X a receipt for the received clothe with the printed condition on the back side that only 10% of the amount will be paid in case of the damage of the clothes. X, without reading the term keeps the receipt in the pocket. After taking the delivery, X finds the coat to be damaged. Examine the position of X in the light of the Indian Contract Act, 1872? (5 Marks)
- (b) XYZ, a limited company proposes ABC, a partnership firm to become a partner in the business of manufacturing steel furnitures. Explain whether a limited company can become partner in a partnership firm. (5 Marks)
- (c) State with reasons as to nature of ethics, whether the following statements are correct or incorrect:
 - (1) Ethics is following the law.
 - (2) Ethics is not science. (2 ½ x 2 ½ = 5 Marks)
- (d) Lay down the factors that leads to the growing importance of communication: (5 Marks)
2. (a) (i) Explain the applicability of the Payment of Bonus Act,1965 towards certain class of establishments. (4 Marks)
- (ii) State the nature of disputes arising between an employer and his employees regarding the bonus payable under the Payment of Bonus Act,1965. (4 Marks)
- (b) What are the resulting benefits of the CSR (Corporate Social Responsibility) in the achievement of long term objectives in any businesses? (4 Marks)
- (c) What are the different manner of non-verbal communication? (4 Marks)
3. (a) (i) Pick the correct answer:
 - (i) A document which contains a promise to pay on demand a certain sum to a specified person is a –
 - (1) Bill of Exchange

- (2) Cheque
 - (3) Promissory Note
 - (4) All of the above
- (ii) A promissory note dated 30th August, 2011 is made payable three months after date. The instrument is at maturity on the-
- (1) 3rd December, 2011
 - (2) 30th November, 2011
 - (3) 4th December, 2011
 - (4) 2nd December, 2011
- (iii) The holder may allow the drawee of a bill of exchange to give his acceptance for the instrument within-
- (1) 24 hours
 - (2) 12 hours
 - (3) 48 hours
 - (4) 6 hours
- (iv) The period of validity of cheques is-
- (1) 2 months
 - (2) 6 months
 - (3) 3 months
 - (4) 1 year
- (1 x 4 = 4 Marks)
- (II) State the special rules of evidence regarding the 'presumptions as to negotiable instruments' under the Negotiable Instruments Act, 1882. (4 Marks)
- (b) Enumerate the main ethical issues that one faces in the workplace. (4 Marks)
- (c) What types of groups can be found in any organisation for regulating the business effectively? (4 Marks)
4. (a) Explain the formation and powers of National Company Law Tribunal? (8 Marks)
- (b) What is the concept behind emphasizing the ecological ethics. (4 Marks)
- (c) Enumerate some of the ethical dilemmas faced while communication in any organisation (4 Marks)
5. (a) Write a note on the composition and functions of Central Board of Trustees under the EPF & MP Act, 1952. (4 Marks)
- (b) The Articles of Association of a ABC Company provided that 'X' shall be the

Manager of the company and he shall be vacated on the ground of proved fraud. The company removed him even though his guilty of fraud not proved. Decide, whether company's action is valid? (4 Marks)

- (c) Draft a circular for employees insisting on maintaining the discipline in the office premises.
- 6. (a) "The Payment of Gratuity Act, 1972 is a benign law", Explain. (8 Marks)
- (b) What are consumer rights that can be used as the touchstones for assessing the consumer welfare. (4 Marks)
- (c) Draft a lease deed of a land for a limited period. (4 Marks)
- 7. Answer any FOUR of the following: (4 × 4 = 16 Marks)
- (a) Differentiate between the following: (2 × 2 = 4 Marks)
 - (i) Liquidated damages and penalty,
 - (ii) Contingent and wagering contracts
- (b) A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Decide. (4 Marks)
- (c) "Diminution of capital does not constitute reduction of capital within the provisions of the Companies Act, 1956," – Comment (4 Marks)
- (d) What are the reasons for unethical behavior in any organization? (4 Marks)
- (e) PQR Limited wants to hold its statutory meeting on 20 May, 2012 to discuss the matters relating to information of the company and incidental matters thereto. Draft a notice for calling statutory meeting of the company. (4 Marks)

Mock Test Paper – 1
IPCC/PCC: GROUP – I
PAPER – 2/3 : BUSINESS LAWS,/LAWS, ETHICS AND COMMUNICATION
SUGGESTED ANSWERS/HINTS

1. (a) According to the Indian Contract Act, 1872, sometimes there are situations where there are contracts with special conditions. These special conditions are conveyed tacitly and the acceptance of these conditions are also conveyed by the offeree again tacitly or without him even realizing it.

Where a launderer gives his customer a receipt for clothes received for drycleaning. The receipt carries special conditions and are to be treated as having been duly communicated to the customer and therein a tacit acceptance of these conditions is implied by the customer's acceptance of the receipt [*Lily White vs. R. Muthuswami* [1966] A. Mad. 13].

Thus in the given problem, X cannot claim the full cost of the marriage coat and has right to get only 10% of the cost of the clothes.

- (b) As per the Companies Act, 1956 one of the important features of a company is an artificial juristic person. Being a juristic person, a company is capable of entering into contract in its own name. According to Section 4 of the Partnership Act, 1932, partnership is a contractual relationship between persons; therefore, there should not be any objection to a company in becoming a partner. Further, the limited liability element of a limited company is also does not restrict a company in becoming a partner in an unlimited liability of a partnership firm, because, it is limited liability of members of a limited company and not the company itself. However, the Ministry of corporate affairs is in the opinion that, a company may become a partner if the Memorandum of Association specifically allows it.
- (c) (1) **Incorrect:** A good system of law does incorporate many ethical standards, but Law can deviate from what is ethical. Law can become ethically corrupt, as some totalitarian regimes have made it. Law can be made to be a function of power alone and designed to serve the interests of narrow groups. Law may have a difficult time designing or enforcing standards in some important areas, and may be slow to address new problems.
- Hence, Ethics is not following the law.
- (2) **Correct:** Social and natural science can provide important data to help us make better ethical choices. But science alone does not tell us what we ought to do. Science may provide an explanation for what humans are like. But ethics provides reasons for how humans ought to act. And just because something is scientifically or technologically possible, it may not be ethical to do it.

Hence, Ethics is not science.

- (d) The factors responsible for the growing importance of communication:
 - (i) Growth in the size and multiple locations of organisation
 - (ii) Growth of trade unions
 - (iii) Growing importance of human relations
 - (iv) Public relations
 - (v) Advances in Behavioural Sciences
 - (vi) Technological advancement
- 2. (a) (i) This is an Act intended to provide for the payment of bonus to persons employed in certain establishments on the basis of profits or on the basis of production or productivity and for matters connected therewith. Unless it is provided otherwise in the Act, it shall apply to : (a) every factory, and (b) every other establishment in which 20 or more persons are employed on any day during an accounting year. But the appropriate Government may apply the provisions of the Act with effect from such accounting year as may be notified in the Gazette to any establishment or class of establishments [including an establishment as defined by Section 2(m) (ii) of the Factories Act, 1948] employing persons less than 20 but not less than 10 in number [Proviso to Section 1(3)].
- (ii) Disputes arising between an employer and his employees regarding bonus payable under this Act, shall be deemed to be an industrial dispute within the meaning of the Industrial Disputes Act, 1947 or any corresponding law relating to investigation and settlement of Industrial disputes in force in State and the provisions of that Act or as the case may be such law shall, save as otherwise expressly provided, apply accordingly.
- (b) Corporate social responsibility (CSR) is the commitment of businesses to behave ethically and to contribute to sustainable economic development by working with all relevant stakeholders to improve their lives in ways that are good for business, the sustainable development agenda, and society at large.

Achievement of long term objectives may be in the following manner:

Businesses have been delegated economic power and have access to productive resources of a community. They are obliged to use those resources for the common good of society which delegated these to them to generate more wealth for its betterment . Technical and creative resources of a business if applied to social problems can help in resolving them. A business organisation, sensitive to community needs would, in its own self-interest, like to have a better community in which to conduct its business. To achieve that, it would implement special

programmes for social welfare. The resulting benefits would be:

- .. Decrease in crime
- .. Easier labour recruitment.
- .. Reduced employee turnover and absenteeism.
- .. Easier access to international capital, better conditions for loans on international money markets.
- .. Dependable and preferred as supplier, exporter/importer, retailer of responsibly manufactured components and products.

A better society would produce a better environment in which the business may gain long-term *profit maximisation*.

(c) One may continue to communicate nonverbally through:

Kinesics or Body language: All our bodily movements, gestures, postures etc., are guided by our feelings and thought processes. The nodding of our head, blinking of our eyes, waving of our hands, shrugging of our shoulders etc., are expressions of our thought and feelings. All these movements are the signals that our body sends out to communicate.

Paralanguage: The term paralanguage is used to describe a wide range of vocal characteristics like tone, pitch, and speed etc. Vocal cues that accompany spoken language which help to express and reflect the speaker's attitude. Speaker uses a vast range of vocal cues like:

- (a) Pitch Variation
- (b) Speaking
- (c) Pause
- (d) Volume variation
- (e) Non – fluencies
- (f) Word Stress

Artificial Communication : It is well known that we react to people on the basis of their appearance. The use of personal adornment like clothing , accessories, makeup, hairstyle etc. provides important non verbal cues about one's age, social and economic status, educational level, personality etc.

Proxemics : refers to the space that exists between us when we talk or relate to each other as well the way we organize space around us. We can also call it 'space language'.

Chronemics or Time language: is the study of how we use time to communicate. Punctuality is an important factor in time communication. Misunderstandings or

disagreements involving time can create communication and relationship problems.

Haptics : is communication through touch .How we use touch sends important messages about us. It reveals our perceptions of status, our attitudes and even our needs.

Silence : The absence of paralinguistic and verbal cues also serves important communicative functions.

3. (a) (I) (i) (3) as per section 4 of the Negotiable Instruments Act,1881.
(ii) (1) as per section 23 of the Negotiable Instruments Act,1881.
(iii) (3) as per section 63 of the Negotiable Instruments Act,1881.
(iv) (2) [However, According to recent amendment made by RBI through notification dated 16th November,2011 the validity period of cheques will be reduced from 6 months to 3 months with effect from 1st April,2012]
- (II) Special rules of evidence regarding presumption as to negotiable instrument (Section 118) : For deciding cases in respect of rights of parties on the basis of a bill of exchange, the Court is entitled to make certain presumptions. These are briefly stated as follow:
 - (i) That the negotiable instrument was made or drawn for consideration and every party who made itself bound in respect thereof did so for consideration;
 - (ii) That the negotiable instrument was drawn on the date shown on the face of it;
 - (iii) That the bill of exchange was accepted before its maturity, *i.e.*, before it became overdue;
 - (iv) That the negotiable instrument was transferred before its maturity;
 - (v) That the endorsements appearing upon a negotiable instrument were made in the order in which they appear.
 - (vi) That an instrument which has been lost was properly stamped;
 - (vii) That the holder of a negotiable instrument is the holder in due course, except when the instrument has been obtained from its lawful owner or its lawful custodian. Likewise, if it has been obtained from a maker or acceptor by means of an offence or fraud, it is for the holder to prove that he is the holder in due course.
- (b) An individual's ethical concerns are about relationships and responsibilities at the workplace where correct decisions are not perfectly clear, and there are no hard and fast rules to follow. One set of relationships and responsibilities is directly related to employees, and include such areas as discipline, performance appraisal, safety, and the administration of reward systems. Another set is concerned with

customers and suppliers, and include the intricate aspects of such elements as timing, quality, and price. Ethical dilemmas also arise when there are conflicts in values with superiors or peers over such things as strategy, goals, policy, and administration. These issues can mainly be categorized in the following framework :

Business Relationships

The behaviour of businesspersons toward customers, suppliers, and others in their workplace may also generate ethical concerns. Ethical behaviour within a business involves keeping company secrets, meeting obligations and responsibilities, and avoiding undue pressure that may force others to act unethically.

Conflicts of Interest

A conflict of interest exists when a person must choose whether to advance his or her own personal interests or those of the organisation.

Fairness and honesty

Fairness and honesty are at the heart of business ethics and relate to the general values of decision makers.

Communications

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.

- (c)
1. **Self directed teams** – autonomous and self regulated groups of employees empowered to make decisions.
 2. **Quality Circles** – is a recent group dynamics technique representing a significant development in the fields of human relations and organizational behavior to improve productivity and work life in organizational settings. Quality Circle has been defined “as a group of workers from the same area who usually meet for an hour each week to discuss their quality problems, investigate causes, recommend solutions and take corrective actions when authority is in their purview. In other words, Quality Circle is a small group to perform voluntarily quality control activities within their work area.
 3. **Committees** – are of various types (a) Standing Committee which are permanent in nature and highly empowered. (b) An advisory Committee comprises of experts in particular fields (c) An adhoc committee is setup for a particular purpose and after the goal is achieved, it is dissolved
 4. **Task Force** – Task force is like Committee but it is usually temporary. Task force has wide power to take action and properly fix responsibility for investigation, results and proper implementation of decisions. Task force

groups are very important in Government organization to tackle specific administrative problems.

- 4 (a) **Formation of NCLT:** The Central Government is empowered, under Section 10FB of the Companies Act, 1956, to constitute a National Company Law Tribunal to exercise and discharge such powers and functions as may be conferred on it by or under the Companies Act or any other law for the time being in force.

According to Section 10FC, the Tribunal shall be headed by the President who has been, or is qualified to be a judge of a High Court and consists such number of Judicial and Technical Members not exceeding 62, as the Central Government deems fit, to be appointed by the Government by notification in the official gazette.

Eligibility for Members: As per Section 10FC, the Tribunal will consist of Judicial and Technical members. Persons who have been working as Judiciary, Advocate, Member of the Indian Company Law Service and Member of Indian Legal Service shall be considered for the appointment as Judicial Member, and the members of Indian Company Law Service (Accounts Branch), Chartered Accountant, Cost Accountant, Company Secretary shall be considered for the post of Technical Members. In addition to this, length of service in their particular nature of work will also taken into consideration.

Powers of Tribunal

- Tribunal shall have *power to review* its own order (Section 10 FO).
- The Tribunal, as per section 10 FM, after giving reasonable opportunity of being heard is empowered to pass such an order as it thinks fit. It can also, within a period of two years from the date of order, *rectify any mistake* and shall make amendment in the order passed by it and shall make such amendment if the mistake is brought to its notice by the parties.
- Tribunal may *delegate its powers* and duties subject to specified conditions and limitations to any member or officer or other employee of the Tribunal to manage any industrial company or industrial undertaking or any operating agency under this Act as it may deem necessary.

The Tribunal/any operating agency, on being directed by the Tribunal may *seek an assistance* of Chief Metropolitan Magistrate and District Magistrate within whose jurisdiction, any property, books of account or any other document of Sick Industrial Company be situate or be found, to take into custody or to take possession thereof.

- (b) Ecological ethics is based on the concept that the environment should be protected not only for the sake of human beings but also for its own sake. The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal. It is the issues of exploitive human nature and attitudes that should be addressed in a rational way. Problems like Global warming, Ozone depletion and disposal of

hazardous wastes that concern the entire world. They require International cooperation and have to be tackled at the global level.

Unless businesses recognize the interrelationships and interdependencies of the ecological systems within which they operate and unless they ensure that their activities will not seriously injure these systems one cannot hope to deal with the problem of pollution.

- (c) Some of the ethical dilemmas faced while communicating are:
- *Secrecy*: Organizations have a legitimate need to protect certain information. If competitors, for example, gain access to proprietary research and development, they can produce that product for a much lower net cost because they do not have to pay the research and development expenses.
 - *Whistle-blowing*: Any employee who goes public with information about corporate abuses or negligence is known as a whistle-blower. Greed, jealousy, and revenge motivate some whistle-blowers. Courting whistle-blower too aggressively can be problematic.
 - *Leaks*: A leak is like anonymous whistle-blowing. Leaks may cause organizational plans to be altered or forgone altogether. Leaks can be a form of political manoeuvring in the organization or a way to sabotage the career of a colleague competing for a job.
 - *Rumour and gossip*: Rumours and gossip seem to be an inevitable part of everyday corporate life. The information has a way of creeping into performance evaluations and promotion decisions, even if unintended.
 - *Lying*: A lie is a false statement intended to deceive. Lying breaks down the trust between individuals, shaking the foundation of ethical communication.
 - *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.
 - *Ambiguity*: Ambiguity, like secrecy, can be used for ethical or unethical purposes. Language itself is made up of various words that carry values. So by using words in certain ways, one can influence others behaviour and expectations.
- 5 (a) Composition of the Board: (a) Chairman and Vice Chairman are appointed by Central Government (aa) Central Provident Fund Commissioner as ex-officio member (b) Not more than 5 officials of Central Government (c) Not more than 15 persons representing State Governments (d) 10 persons representing employers appointed by Central government in consultation with association of employers (e)

10 persons representing employees appointed by Central Government in consultation with employees. Thus, the Central Board has about 43 members.

Functions of Central Board : The fund of EPS Scheme under Section 5, Employees Pension Scheme under Section 6A and Employees Deposit Linked Insurance Scheme (EDLI) under Section 6C is vested in the Central Board of Trustees. The fund is administered by them as provided in the scheme. [Section 5A(3)]. The Central Board will perform other functions as may be required under any provisions of PF scheme, pension scheme and insurance scheme [Section 5A(4)].

Accounts, audit and report : Income and Expenditure accounts will be maintained by Central Board in such form and manner as specified by Central Government in consultation with Comptroller & Auditor General (C&AG) [Section 5A(5)].

(b) Removal of Manager

The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same [Section 36(1)]. However, company and members are not bound to outsiders in respect of anything contained in memorandum/articles. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract.

In this case, Articles conferred a right on 'X', the Manager that he shall not be removed except on the ground of proved fraud. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of 'X' even though he was not guilty of fraud) is valid. (*Eley V Positive Govt. Security Life Assurance Co., Major General Shanta Shamsher jung V Kamani Bros. P. Ltd.*)

**(c) Kumar & Sons Ltd.
Jaipur, Rajasthan.**

Circular No:-----

Date-----

To all employees,

Recent surprise checks have revealed that there is considerable indiscipline in the office premises, even the standard instructions for ensuring the maintenance of discipline are not followed. All employees are requested to strictly adhere to the maintaining of the discipline and decorum in the office premises.

Cooperation of all employees is solicited.

Sd/-

Manager – H.R

6. (a) Gratuity is a word derived from a Latin word 'Gratuitas' which simply means a 'Gift.' In the industrial sector, it can be treated as a gift from the employer to his employee for the services rendered to his establishment by him for the development and prosperity of the same. Gratuity is a benefit, which an employee gets at the time of retirement or when he leaves the establishment. Gratuity is a amount (as a lump sum payment) which is paid by an employer to his employee for his past services when the employment is terminated. When the employment comes to an end due to the retirement or superannuation of the workers, it becomes a good help to the workers, it becomes a good help to the effected employee to meet the new situation which often comes due to reduction in regular earnings or even total stoppage of earnings. In case of death of the worker, it provides financial assistance to the members of his family for their survival, if they have got no other means for their survival. Thus, this gratuity scheme serves as an instrument of social security as well as a reward to a person who sacrifices his whole life in the betterment, development and prosperity of an establishment, and in other way for the Nation.

In the case of *Delhi Cloth and General Mills Co. Ltd. Vs their workers* (1968) 36 FJR 247. Supreme Court held that the object of providing a gratuity scheme is to provide a retiring benefit to the workman who have rendered long and unblemished service to the employer and thereby contributed to the prosperity of the employer.

Thus the Payments of Gratuity Act, 1972 was enacted to regulate the payment of Gratuity to the employees after the employment is terminated.

- (b) The UN Guidelines have implicitly recognized eight consumer rights, which were made explicit in the Charter of Consumers International as follows:

- .. Right to basic needs
- .. Right to safety
- .. Right to choice
- .. Right to redress
- .. Right to information
- .. Right to information
- .. Right to consumer education
- .. Right to representation
- .. Right to healthy environment

These eight consumer rights can be used as the touchstones for assessing the consumer welfare implications of competition policy and law.

(c) LEASE OF LAND FOR LIMITED PERIOD

THIS DEED OF LEASE of land made on.....day of.....between A s/o.....r/o.....(hereinafter called the 'lessor') and B s/o.....r/o..... (hereinafter called the 'lessee')

Whereas both the lessor and the lessee agree to the following terms and conditions :

1. That the lessor agrees to lease out the land numbering located in in the District of.....to the lessee with effect from.....for a period of two years on payment of monthly rent..... of Rs.....payable on the fifth day of each month in advance.
2. That the lessee agrees to take the aforesaid piece of land on lease. He shall pay the rent hereby reserved in the manner hereinbefore stated.
3. That the responsibility to pay all rates, taxes and charges which are payable or may so become at a future date in respect with the leased land, shall rest upon the lessor.
4. That the lessee shall deliver the peaceful vacant possession of the leased land to the lessor at the termination of the period of lease. Lessee intending to vacate the leased land at an early date, shall give notice of his intention to the lessor to vacate the leased at the expiry of the period stated in the notice. Default in payment of rent for four consecutive months shall entitle the lessor to enter upon the said land and determine the lease.

IN WITNESS WHEREOF, the lessor and the lessee have signed this deed on the day and year first above stated.

Witness.....

Lessor.....

Witness.....

Lessee.....

7. (a) (i) Liquidated damages and penalty

Following are the important differences between liquidated damages and penalty.

- (I) Liquidated damages are imposed by way of compensation, but penalty is imposed by way of punishment.
- (II) Liquidated damages are assessed amounts of loss based on actual or probable calculation. Penalty is not based on actuals or probables. It is imposed to prevent parties from committing the breach.
- (III) Though the English Law recognizes the difference between the two, Section 74 of the act does not recognize any difference between the two.

(ii) **Difference between a contingent contract and a wagering contract**

1. A wagering agreement is a promise to give money or money's worth with reference to an uncertain event happening or not happening.
A contingent contract is a contract to do or not to do something with reference to a collateral event happening or not happening.
2. A wagering agreement consists of reciprocal promises whereas a contingent contract may not contain reciprocal promises.
3. In a wagering contract the uncertain event is the core factor whereas in a contingent contract the event is collateral.
4. A wagering agreement is essentially contingent in nature whereas a contingent contract may not be wagering in nature.
5. In a wagering agreement, the contracting parties have no interest in the subject matter whereas it is not so in a contingent contract.
6. A wagering contract is a game, losing and gaining alone matters whereas it is not so in a contingent contract.
7. A wagering agreement is void where as a contingent contract is valid.

(b) **Mis-leading Prospectus**

Any person who takes shares on the faith of statement of facts contained in a prospectus can rescind the contract if those statements are false or untrue. The words 'untrue statement' have to be construed as explained in Section 65(1)(a), which says that a statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included. Again, where the omission from a prospectus of any matter is calculated to mislead, the prospectus is deemed, in respect of such omission to be a prospectus in which an untrue statement is included [Section 65(1)(b)] of the Companies Act, 1956.

In this case, the fact that dividends were paid out of capital profit and not out of trading profits was not disclosed in the prospectus and to that extent the prospectus contained a material misrepresentation of a fact giving a false impression that the company was a profitable one. Hence the allottee can avoid the contract of allotment of shares. (*Rex V. Lord Kylsant*).

(c) **Diminution/Reduction of Capital**

Section 94(3) of the Companies Act, 1956 specifically states that diminution does not constitute a reduction of capital within the meaning of the Companies Act, 1956. Distinction can be made between the two on the following grounds:

- (i) Diminution of capital is the cancellation of the unsubscribed part of the issued capital while reduction of capital involves reduction of subscribed capital or paid-up capital.

- (ii) Both require authorisation by articles but whereas diminution can be effected by an ordinary resolution, while reduction can be effected by a special resolution.
 - (iii) Diminution needs no confirmation by the Court/Tribunal [Section 94(2)], but reduction needs such confirmation (Section 101).
 - (iv) A Company may be ordered to add the words 'and reduced' after its name in case of reduction but no such order can be passed in case of diminution.
- (d) A creation of a proper ethical environment requires a proper understanding of the reasons which lead to unethical behaviour. Four such reasons are discussed below-
1. *Emphasis on short term results.* This is one of the primary reasons which has led to the downfall of many companies like Enron and WorldCom. Manipulating accounting entries to depict good profitability can help companies raise further capital from the market
 2. *Ignoring small unethical issues:* It is a known fact that most of the compromises which we make in start are small however they lead us to large problems. Similarly, companies need to develop an environment where small ethical lapses are taken seriously so that they do not repeat in the future.
 3. *Economic cycles:* When Enron was doing well , no one had bothered to understand its actual financial position. There were no question marks on its financial statements. However, when the economy took a downward turn, finance and accounting managers took decisions which were compromises over the established code of conduct. This was done to reflect a financial position which would keep the investors in the market satisfied. All this resulted in a huge crisis and the ultimate fall of this US Giant. Hence, to prevent disclosure of ethical problems in times of depression, company need to be extremely careful and vigilant during good times.
 4. *Accounting rules:* In the era of globalisation and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.

(e) Notice of Statutory Meeting

PQR Limited

Registered Office:.....

Notice is hereby given that the statutory meeting of the company will be held at the registered office of the company at-----on-----10th May, 2012-----at A.M./P.M. for considering the statutory report and for considering any other business which ought to be considered at that meeting.

Please find enclosed a copy of the statutory report.

Date:

By order of the Board

Place:

For PQR Ltd.

Sd/-

Company Secretary

Test Series: March, 2012

Mock Test Paper – 2

IPCC/PCC: GROUP – I

PAPER – 2/3: BUSINESS LAWS, ETHICS AND COMMUNICATION /
LAWS, ETHICS AND COMMUNICATION

Question No.1 is compulsory.

Attempt any five questions from the remaining six questions.

Time Allowed – 3 Hours

Maximum Marks – 100

1. (a) State which of the statement is correct or incorrect among the following: (5 Marks)
 - (i) A agrees to sell B “one thousand maunds of rice at a price to be fixed by C” is a valid contract.
 - (ii) Dearness allowance is included in the definition of salary .
 - (iii) Offences committed under the Negotiable Instruments Acts,1881 are considered to be compoundable.
 - (iv) A charitable or religious trust of old temples are covered by the provident Funds Act.
 - (v) Gratuity shall be payable to an employee for rendering continuous service for not less than 2 years.
- (b) What do you understand by debenture? Differentiate it with shares. (5 Marks)
- (c) State the ancestry of the ethical standards (5 Marks)
- (d) Draft a letter from the customer XYZ to the bank, admitting the acceptance of the cheque book. (5 Marks)
2. (a) (i) Mr. Ambani appoints Mr. S as his agent to purchase a plot in Indrapuram, Gaziabad. Mr. S purchased a plot for ₹ 20 lakhs in the name of a nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same plot to Mr. Ambani for ₹ 26 lakhs. Mr. Ambani later comes to know of the cheating committed by Mr. S and tries to recover the excess amount paid to Mr. S. Explain the legal position in the above case. (4 Marks)
- (ii) What are the rights of a surety against the principal debtor and as against co-sureties (4 Marks)
- (b) Examine and analyse the following hypothetical situation .
Mr. Sam is a proprietor of a Apollo pharmaceutical company. While testing with a chemical molecule, his company sees the possibility that the molecule may be developed into a drug for a rare, painful, life-threatening genetic disease that may

cause problem only one child in ten million. But to develop the drug, his company may have to spend heavy amount of the shareholders' money, despite the drug not having wide salability. Do Mr. Sam face difficulty by an ethical dilemma? How should he determine the issue? (4 Marks)

- (c) Explain clearly the procedure of Communication. (4 Marks)
- 3. (a) A persuades B by deception to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881 the following legal positions-
 - (i) Whether B the drawer, can recover the amount of the cheque from C's Bankers?
 - (ii) Whether C is the Fictitious Payee? (8 Marks)
- (b) "There is no economic growth without ecological costs" explain. (4 Marks)
- (c) Discuss Personal competencies that are associated with Emotional Intelligence. (4 Marks)
- 4. (a) (i) Examine with reference to Payment of Bonus Act, 1965, an employee joined the glass factory drawing a salary of ₹ 10,000 on 20th January, 2011. During the employment he met with an accident causing fracture in his right hand and he went on the leave from February 8th, 2011 till April 4, 2011. Is the employee eligible for bonus for the year 2010-11? (4 Marks)
- (ii) What are the conditions upon which unit-wise profitability is the basis for payment of bonus by an establishment? (4 Marks)
- (b) Answer whether the statement is correct or incorrect with brief reasons: (2 x 2 = 4 Marks)
 - (i) Ethics are necessary in marketing to build Brand image only.
 - (ii) Ethical behaviour in marketing is necessary to avoid Government intervention/ regulation.
- (c) What are the characteristics of group personality? (4 Marks)
- 5. (a) Examine the rules relating to review of order regarding determination of applicability of the EPF & MP Act, 1952 and the money due. (8 Marks)
- (b) Explain in brief the mode of incorporation of a company. (4 Marks)
- (c) What do you understand by legal drafting? (4 Marks)
- 6. (a) Explain the provisions and main contents of "Return of Allotment" under the Companies Act, 1956. (8 Marks)

- (b) Elucidate "Consumer for personal use and consumer for commercial use are synonymous". (4 Marks)
 - (c) State whether the following statements are correct or incorrect: (2 x 2 = 4 Marks)
 - (i) Employees' Provident Funds and Miscellaneous Provisions Act, 1952 applies to "Municipal Councils and Municipal Corporations.
 - (ii) The Funds under the Employees' Provident Funds Scheme, 1952 is vested and administered by Central Government.
7. Answer any FOUR of the following: (4 × 4 = 16 Marks)
- (a) When a gratuity is payable to an employee in any establishment? (4 Marks)
 - (b) What is the provision relating to modification of charge under the Companies Act, 1956? (4 Marks)
 - (c) Lay down the procedure for convening and conduct of general meetings of the company. (4 Marks)
 - (d) State the various threats which can be faced by a finance and accounting professional while working as an auditor, consultant or an employee in an organization. (4 Marks)
 - (e) State the elements that can be used to describe the organizational culture. (4 Marks)

Mock Test Paper – 2
IPCC/PCC: GROUP – I
PAPER – 2/3 : BUSINESS LAWS,/LAWS, ETHICS AND COMMUNICATION
SUGGESTED ANSWERS/HINTS

1. (a) (i) **Correct** , as the price in the given agreement is capable of being made certain, there is no uncertainty here to make the agreement void. Hence this is a valid contract.
- (ii) **Correct**, as per section 2(21) of the Payment of Bonus Act, 1965.
- (iii) **Correct**, as per section 147 of the N.I. Acts, 1881 every offence punishable under this Act shall be compoundable.
- (iv) **Incorrect**, as per the section 1 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.
- (v) **Incorrect**, as per section 4 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.
- (b) Under section 2(12) of the Companies Act, 1956 debenture includes debenture stock, bonds and other securities of the company whether constituting a charge on the assets of the company or not. Debentures are bonds issued in acknowledgement of any indebtedness, generally, however, they are issued under the company's seal and contain a provision for the repayment of principal sum at the appointed date and the payment of interest at fixed rate. Debentures are usually secured upon the company's property or undertaking.

Debentures may be of the following types:

1. Naked or unsecured debentures.
2. Secured debentures.
3. Redeemable debentures.
4. Perpetual debentures.
5. Bearer debentures.
6. Registered debentures

Distinction between debenture and share

- (i) Shares are a part of the capital of a company whereas debentures constitute a loan.
- (ii) The shareholders are the owners of the company whereas debenture holders are creditors.

- (iii) Shareholders generally enjoy voting right whereas debenture holders do not have any voting right.
 - (iv) Interest on debenture is payable even if there are no profits. But dividends can be paid to shareholders only out of the profits of the company.
 - (v) Debentures generally have a charge on the assets of the company but shares do not carry any such charge.
 - (vi) The rate of interest is fixed in the case of debentures whereas on equity shares the dividend may vary from year to year.
 - (vii) Fixed amount of interest on debentures gets priority over dividend on shares.
- (c) Following are the ancestry following different approaches of Ethical standards:

The Utilitarian Approach : The ethical corporate action is the one that produces the greatest good and does the least harm for all who are affected - customers, employees, shareholders, the community, and the environment. The utilitarian approach deals with consequences; it tries both to increase the good done and to reduce the harm done.

The Rights Approach (The Deontological Approach) : This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral rights -including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on. Also, it is often said that rights imply duties-in particular, the duty to respect others' rights.

The Fairness or Justice Approach: Aristotle and other Greek philosophers have contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally or if unequally, then fairly based on some standard that is defensible. We pay people more based on their harder work or the greater amount that they contribute to an organization, and say that is fair.

The Common Good Approach: This approach suggests that the interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others. This approach also calls attention to the common conditions that are important to the welfare of everyone. This may be a system of Laws, effective police and fire departments, health care, a public educational system, or even public recreational areas.

The Virtue Approach: A very ancient approach to ethics is that ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act

according to the highest potential of our character and on behalf of values like truth and beauty. Honesty, courage, compassion, generosity, tolerance, love, fidelity, integrity, fairness, self-control, and prudence are all examples of virtues.

(d) Letter of acknowledging the acceptance of the cheque book

The Manager,

-----bank,

-----New Delhi

Date-----

Dear sir,

This is to acknowledge the acceptance of the Cheque book containing 20 cheques from no. 123450 to 123470 which I found to be correct.

Yours faithfully,

XYZ

(Customer)

2. (i) The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ambani is entitled to recover Rs.6 lakhs from Mr. S being the amount of profit earned by Mr. S out of the transaction.

(ii) Rights of a surety against the Principal Debtor:

1. Right to be subrogated (Section 140)
2. Right to claim indemnity (Section 145)

Right of surety against co-sureties:

When a debt is guaranteed by two or more sureties, they are known as co-sureties. The rights are

- (i) Liability of co-sureties to contribute equally in the absence of any contract to the contrary (Section 146).

- (ii) Liability for equal limits (Section 147). where the co-surities have agreed to guarantee different sums, they have to contribute equally subject to maximum amount guaranteed by any one.
 - (iii) Right to share security obtained from the creditor.
- (b) Mr. Sam is in a situation where he has to choose between carrying on the development of a drug for a painful and life threatening disease which may cause trouble one in ten million and the action of spending huge sum of shareholders' money for such development. As we can see, both are positive and ethically right choices. As a socially responsible person he has to think in terms of eliminating a serious illness but at the same time he must be careful in dealing with shareholders' money. This is a classic case of an ethical dilemma. Such an ethical dilemma must be resolved by addressing the following main points:
1. Defining the problem clearly.
 2. How did the situation arise?
 3. What is your intention in making this decision?
 4. How does this intention compare with the probable results?
 5. Whom could your decision or action injure?
- (c) Communication is a two-way process in which there is an exchange of ideas or thoughts linking the sender and receiver towards a mutually accepted direction or goal consisting of 7 elements which are as under:
1. **Sender:** The process of communication begins with a sender, the person who has an idea and desires to exchange it.
 2. **Encoding:** The sender puts his/her ideas or facts into words, symbols, pictures or gestures that the receiver can understand.
 3. **Message:** A message refers to what is being communicated. It may be verbal or non-verbal.
 4. **Channel:** Channel is the medium through which message is transmitted to the sender. Channel may be in oral or written forms.
 5. **Receiver:** It is any person who notices and attaches some meaning to a message.
 6. **Decoding:** The receiver translates the words and symbols used in the message into ideas and interpret it to attain its meaning.
 7. **Feedback:** Ultimately receiver reacts or responds to the communication sent by the sender. It could be based on clear interpretation of the symbols sent or misunderstanding or misinterpretation of the symbols sent.

3. (a) According to Section 42 of the Negotiable Instruments Act, 1881 an acceptor of a bill of exchange drawn in a fictitious name and payable to the drawer's order is not, by reason that such name is fictitious, relieved from liability to any holder in due course claiming under an instrument by the same hand as the drawer's signature, and purporting to be made by the drawer.

The word "fictitious payee" means a person who is not in existence or being in existence, was never intended by the drawer to have the payment. Where drawer intends the payee to have the payment, then he is not a fictitious payee and the forgery of his signature will affect the validity of the cheque.

Applying the above, answers to the questions asked can be as under:

- (i) In first case B, the drawer can recover the amount of the cheque from C's bankers because C's title was derived through forged endorsement.
 - (ii) In the second case, C is not a fictitious payee because the drawer intended him to receive payment.
- (b) Economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. Industrialization and rapid development have affected the environment. Everybody should realize that such development is related to environmental damage and resource depletion.

Therefore, an element of resource regeneration and positive approach to environment has to be incorporated in development programs. Sustainable development refers to maintaining development over time. Sustainable development is development that meets the needs of the present without comprising the ability of future generations to meet their own needs. A nation or society should satisfy its social, economic and other requirement without jeopardizing the interest of future generations.

High economic growth means high rate of extraction, transformation and utilization of non-renewable resources. Therefore it is suggested that economic growth has to be environmentally sustainable because it is sure that there is no economic growth without ecological cost.

- (c) Personal Competencies associated with Emotional Intelligence:

Personal Competencies – How You Manage Yourself

Self-Awareness

- *Emotional self-awareness*: Reading your own emotions and recognizing their impact; using 'gut sense' to guide decisions
- *Accurate self-assessment*: Knowing your strengths and weaknesses
- *Self-confidence*: A sound sense of your self-worth and capabilities
- *Self-Management*

- *Emotional self-control*: Keeping disruptive emotions and impulses under control
 - *Transparency*: Displaying honesty and integrity; trustworthiness
 - *Adaptability*: Flexibility in adapting to changing situations or overcoming obstacles
 - *Achievement*: The drive to improve performance to meet inner standards of excellence
 - *Initiative*: Readiness to act and seize opportunities
 - *Optimism*: Seeing the upside in events
- 4 (a) (i) According to Section 2(13) 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 of less than Rs.10, 000 per month. Under Section 14, the days when an employee has been absent or on leave due to temporary disablement caused by the accident arising out of and in the course of the employment during the accounting year will be included in calculating the total working days for the purpose of payment of bonus. In the instance case, the salary is falling within the limit. Also, his leave period will be treated as working days. Therefore, he is eligible for bonus for the year 2010-11.
- (ii) Where an establishment consists of different departments or undertakings or has branches whether situated at the same place or in different places, all such departments or undertakings or branches are to be treated as parts of the same establishments for the purpose of bonus under Section 3 of the Payment of Bonus Act, 1965.
- But it has been provided that if, for any accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such departments etc., then such department, undertaking or branch shall be treated as separate establishments for the purpose of calculation of bonus for that year, unless such department, etc., were immediately prior to the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus. If these two conditions are fulfilled it is possible to provide for the payment of bonus unit-wise instead of establishment wise.
- (b) (i) Incorrect, the ethics are necessary in marketing not only to build image, but ethics are necessary for sustainable development of business, and ultimately for transparency and good corporate governance in the country.

- (ii) **Correct:** Business apathy, resistance or token responses to unethical behaviour simply increase the probability of more Governmental regulation. Indeed, most of the Governmental limitations on marketing are the results of management's failure to live up to its ethical responsibilities at one time or other. However, once some form of government control has been introduced, it is rarely removed. So, business enterprises in their own interest must behave ethically in marketing.
- (c) **Following are the characteristics of group personality.**
 - (a) **Spirit of Conformity:** Individual members soon come to realize that in order to gain recognition, admiration and respect from others they have to achieve a spirit of conformity. Our beliefs, opinions, and actions are influenced more by group opinion than by an individual's opinion, even if it is an expert's opinion.
 - (b) **Respect for group values:** Any working group is likely to maintain certain values and ideals which make it different from others. In order to deal effectively with a group we must understand its values which will guide us in foreseeing its programmes and actions.
 - (c) **Resistance to change:** It has been observed that a group generally does not take kindly to social changes. On the other hand the group may bring about its own changes, whether by dictation of its leader or by consensus. The degree to which a group resists change serves as an important index of its personality. It helps us in dealing with it efficiently.
 - (d) **Group prejudice:** Just as hardly any individual is free from prejudice, groups have their own clearly evident prejudices. It is a different matter that the individual members may not admit their prejudiced attitude to other's race, religion, nationality etc.
 - (e) **Collective power:** It need not be said that groups are always more powerful than individuals, how so ever influential the individual may be. That is why individuals may find it difficult to speak out their minds in groups. There is always the risk of the one-against-many situation cropping up.
- 5. (a) Any person aggrieved by order under Section 7A(1) can make application for review of the order in following cases – (a) if new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence (b) there is some mistake or error apparent on the records or (c) any other sufficient reason. – No application for review can be made if appeal was filed.

The officer can himself review the order on his own motion. [Section 7B(1)]. The officer can either reject the application for review if there are not sufficient grounds for review, or he can grant the review. [Section 7B(4)]. Appeal cannot be filed against order rejecting the application for review. However, if fresh order is

passed after the review, appeal can be filed against such order [Section 7B(5)]. Application for review should be made within 45 days in form 9. [Para 79A of EPF Scheme].

In *Balu Fire Clay Niwas v. U.O.I.*, 2003 LLR 578 (Jhar HC), it was held that when statute provides for review, it cannot be contended that petitioner should have filed appeal against the order. It was also held that review petition should be disposed of by a speaking order.

- (b) **Mode of registration/incorporation of company:** In the case of a public company with or without limited liability any 7 or more persons can form a company by subscribing their names to memorandum and otherwise complying with the requirements of the Companies Act, 1956. In exactly the same way, 2 or more persons can form a private company [Section 12]. Persons who form the company, who conceive the idea of forming the company are known as promoters. They take all necessary step for its registration.
 - (a) **Lawful purpose:** The essence of validly incorporated company is that it must consist of a particular number of persons and be an association for a lawful purpose.
 - (b) **Applying for the name:** The promoters of the company should decide upon at least three suitable names in order of preference to afford flexibility to the Registrar to decide the availability of the name.
 - (c) **Documents to be filed:** After getting the name approved, the certain documents along with the application and prescribed fees, are to be filed with the Registrar.
 - (d) **Subscribing their names:** Section 15 stipulates that the Memorandum should be signed by each subscriber who should add his address, description and occupation in the presence of one witness.
 - (e) **Commencement of business**
 - (f) **Statement in Lieu of Prospectus:** If a public company does not issue a prospectus inviting the public to purchase its share because, the directors think they can sell the shares even without the issue of the prospectus, it can do so.
 - (g) **Certificate of incorporation:** Upon the registration of the documents mentioned earlier under the head "Documents to be filed for registration of the company" and the payment of the necessary fees, the Registrar of Companies issues a certificate that the company is incorporated.
- (c) **Legal drafting** is of great importance to a person for entering into various types of agreements with different parties and in executing various types of documents in favour of the other.

This Legal drafting is a technical writing used by lawyers, judges, legislators

and others in law to express legal analysis and legal rights, privileges, functions, status and duties.

Drafting is of importance for the three reasons:

- (i) For obtaining legal consultations
- (ii) For carrying out documentation
- (iii) For interpretation of the documents

Legal Drafting have been catagorised into three forms-

- 1. Document
- 2. Instrument
- 3. Deed

6. (a) **Return of Allotment (Section 75, Companies Act, 1956):** Within thirty days of allotment of shares, a company is required to send the Registrar a report, known as the "return as to allotment". It must contain the following particulars:
- 1. The number of nominal amount of shares allotted; the names, addresses, the occupation of the allottees; the amount, if any, paid or payable on each share. No share should be shown as allotted for cash unless cash has actually been received in respect of the allotment.
 - 2. Contracts in writing under which shares have been allotted for any consideration other than cash, must be produced for examination of the Registrar.
 - 3. Where bonus shares have been issued, the returns must show the nominal amount of the shares allotted; names and addresses and occupations of the allottees and a copy of the resolution authorizing the issue of such shares.
 - 4. Where the shares have been issued at a discount, the return must include a copy of the resolution authorizing such an issue, a copy of the Tribunal's order sanctioning the issue, and where the rate of discount is more than ten percent, a copy of the order of the Central government permitting the issue.
- (b) The definitions of "consumer" given under Competition Act, 2002 and under Consumer Protection Act, 1986 are substantially the same. But there is difference between the two and that difference is that under clause (1) of Section 2(f) in Competition Act, the words used are "whether such purchase of goods is for the resale of for any commercial purpose or for personal use" in place of the words "but does not include a person who obtains such goods for resale of for any commercial purpose" as in the Consumer Protection Act. Likewise in clause (ii) the words used in the Competition Act are "Whether such hiring or availing of services is for any commercial purpose or for personal use" in place of the words "but does not include

a person who avails of such services for any commercial purpose” as in the Consumer Protection Act. Thus in case of Competition Act the word consumer includes both consumer for personal use and for commercial use but it is not so in the case of Consumer Protection Act.

- (c) (i) **Correct.** The Ministry of Labour & Employment through *Notification No. S.O. 30 (E)*, dated 8th January, 2011 specifies that the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 shall also apply to “Municipal Councils and Municipal Corporations constituted under sub-clauses (b) & (c) of clause (1) of Article 243Q of the Constitution of India”.
 - (ii) **Incorrect.** The funds under the Employees' Provident Funds Scheme, 1952 shall vest in and be administered by Central Board of trustees constituted under Section 5A by the Central Government.
7. (a) 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 continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. Generally, it is payable to the employee himself. However, in case of death of the employee it shall be paid to his nominee or if no nomination has been made, to his heirs.

The payability of Gratuity to the employee is his right as well as the obligation of the employer. By the change of ownership, the relationship of employer and employees subsist and the new employer cannot escape from the liability of payment of gratuity to the employees; it was held in the case of *Pattathurila K. Damodaran Vs M.Kassim Kanju (1993) 111 LLJ (1211 (Ker))*.

An employee resigning from service is also entitled to gratuity; (*Texmaco Ltd. Vs Sri Ram Dham, 1992 LLR 369(Del)*) and non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity; (*Mathur Spinning Mills Vs Deputy Commissioner of Labour, (1983) 111 LLJ 188*).

- (b) Section 135 of the Companies Act, 1956 provides that “whenever the terms or conditions or the extent or operation of any charge registered under this part are or is modified, it shall be the duty of company to send to the Registrar the particulars of such modifications and the provisions of this part as to registration of a charge shall apply to modification of the charge.”

The term 'modification' includes variation of any of the terms of the agreement including variation of rate of interest which may be by mutual agreement or by

operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as a modification.

What constitutes modification?

1. where the charge is modified by varying any terms and conditions of the existing charge by agreement;
 2. where the modification is in pursuance of an agreement for enhancing or decreasing the limits;
 3. where the modification is by ceding a *pari passu* charge;
 4. change in rate of interest (other than bank rate);
 5. change in repayment schedule of loan; (this is not applicable in working capital loans which are repayable on demand) and
 6. partial release of the charge on a particular asset or property.
- (c) The business at a meeting is said to have been “validly transacted” if the members of the organisation or body concerned, whether or not they were present, are bound by the decision made thereat. They cannot be so bound unless the meeting is validly held. The essentials of a valid meeting are that the meeting should be:
- (a) *Properly convened*; i.e. a proper notice must be sent by the proper authority to every person entitled to attend.
 - (b) *Properly constituted*, i.e. the proper person must be in the chair, the rules as to quorum must be observed, and the regulations governing the meeting must be complied with.
 - (c) *Properly conducted*, i.e. the chairman must conduct the proceeding in accordance with the law relating to general meetings as per the Companies Act (Sections 171 to 185), the Company’s own Articles of Association or, where applicable, Table A (Regulations 47 to 63) or in the absence thereof in respect of any specific matter, by the common law relating to meetings.
- (d) The dynamic environment in which businesses operate today may usher a broad range of circumstances because of which compliance the fundamental principles may potentially be threatened. Such threats may be classified as follows:
- (i) Self-interest threats, which may occur as a result of the financial or other interests of a finance and accounting professional or of an immediate or close family member;
 - (ii) Self-review threats, which may occur when a previous judgment needs to be re-evaluated by the finance and accounting professional responsible for that judgment;

- (iii) Advocacy threats occur when a professional promotes a position or opinion to the point that subsequent objectivity may be compromised;
 - (iv) Familiarity threats occur when a finance and accounting professional has close relationships in the work environment and such relationships impair his selfless attitude towards work.
 - (v) Intimidation threats occur when a professional may be prohibited from acting objectively by threats, actual or perceived.
- (e) A number of elements that can be used to describe or influence Organizational Culture:
- **The Paradigm:** What the organization is about; what it does; its mission; its values.
 - **Control Systems:** The processes in place to monitor what is going on.
 - **Organizational Structures:** Reporting lines, hierarchies, and the way that work flows through the business.
 - **Power Structures:** Who makes the decisions and how power is distributed across the organization.
 - **Symbols:** These include the logos and designs, but would extend to symbols of power, such as car parking spaces and executive washrooms.
 - **Rituals and Routines:** Management meetings, board reports and so on may become more habitual than necessary.
 - **Stories and Myths:** build up about people and events, and convey a message about what is valued within the organization.

Communicating the corporate culture effectively is paramount. For *example*, at General Electric (GE), corporate values are so important to the company, that Jack Welch, the former legendary CEO of the company, had them inscribed and distributed to all GE employees at every level of the company.