A

PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

QUESTIONS

The Indian Contract Act, 1872

1. (a) Ram and Rahim are close friends. Rahim treats Ram during his illness. Rahim does not accept payment from Ram for the treatment and Ram promises Rahim's son, Abdul that he will pay him Rs.1000. Ram being in poor circumstances ,is unable to pay .Abdul sues Ram for the money .Can Abdul recover the money?

   (b) A agrees to sell his swift car to B a month after the date of the contract. But just after the 20 days of the contract he sells the swift car to C. Thereupon B sues A for the breach of the contract. A contends that he could still perform the contract by repurchasing the swift car from C .Decide the suit.

2. (a) How it can be determined whether a person is an agent of another? When an agent is personally liable to a third party ? Suppose B, an agent signs a negotiable instrument in his own name. Explain whether an agent incurs the personal liability to a third person.

   (b) Mark the correct answer justifying with reason in the following:

   (i) A contracts to indemnify B against the consequences of any proceedings which C may take against B in respect of a certain sum of money. This is a-

   (a) contract of indemnity.

   (b) contract of guarantee.

   (c) quasi contract.

   (d) illegal contract.

   (ii) A, in consideration that B will employ C in collecting the rents of B's house ,promises B to be responsible to an amount of RS.1,000 for due collection and payment by C of those rents.This is termed as-

   (a) Contract of indemnity.

   (b) Specific guarantee

   (c) Retrospective guarantee.

   (d) Continuing guarantee

   (iii) In bailment-

   (a) both custody and possession must change but not the ownership.

   (b) custody and possession must not change.

   (c) ownership must change.

   (d) both the custody and possession must not change but only the ownership.

(iv) 'A' owns a shop. 'B' manages the shop. 'A' as owner orders purchases. 'B' also as the agent orders purchases. Can he do so?

(a) yes

(b) no

(v) J employed a goldsmith for converting her old jewellery and making new one. Every evening she received the unfinished jewellery and put it in a box at the house of the goldsmith. She, however ,kept the key of the box with herself. One night the jewellery was stolen from the box. Is the goldsmith liable as the bailee?

(a) no

(b) yes

3. (a) State the conditions when a surety would be discharged?

(b) Plaintiff 'X' sued the Principal debtor 'Y' and the surety 'Z' for arrears of rent. On account of death of the principal debtor the debt is barred by limitation. State the liability of the Surety .

(c) Certain shares in a limited company were pledged by the debtor with a bank as a security for loan advanced by the bank to him. Subsequently, the company declared dividend on the shares and also issued bonus shares. The bank claimed that it was entitled to retain the amount of the dividend as also the bonus shares issued by the company. Discuss the claim of the bank.

The Negotiable Instruments Act,1881

4. (a) "Once a bearer instrument always a bearer instrument." Explain with reference to the relevant provisions of the Negotiable Instrument Act,1881.

(b) A drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as informs the bank to stop the payment. Does it constitute an offence under the Act ?

(c) What is the rule of compensation in case of dishonour of negotiable instruments?

5. (a) Whether the payee or the holder of a cheque can initiate prosecution for an offence under the N.I. Act, for its dishonour for the second time if he had not initiated prosecution on the first occasion?

(b) State the validity of the following statements with appropriate reason:

(i) A bill drawn in favour of a minor is valid.

(ii) A bill drawn in Calcutta on a merchant in Mumbai but endorsed in Paris is a foreign bill.

(iii) Special indorsement should be made by an indorser by signing his name and also by writing the name of the indorsee.

(iv) Acceptance is required in case of promissory note.

(v) Negotiable Instruments Act ordinarily is not applicable to Hundis..

The Payment of Bonus Act,1965

6. (a) Elucidate the term "Salary or Wage" under the Payment of Bonus Act, 1965.

   (b) Who among the following are entitled to bonus:

   (i) An employee employed through contractors on building operation.

   (ii) A retrenched employee.

   (iii) A temporary workman.

   (iv) An employee of a seasonal factory.

   (v) An employee who is dismissed from service on the ground of misconduct.

   (c) State the categories of employees who are precluded from the purview of the Payment of Bonus Act,1965.

7. (a) A ,in an establishment was a temporary employee drawing a salary of Rs.5,000.He was prevented by the employers from working in the establishment for two months during the financial year 2008-2009, pending certain inquiry against him. Since on the lack of concrete findings 'A' was back in the service. However, the employers refuse to pay bonus to 'A' as he has worked for ten months in the year. In the light of the provisions of the Payment of Bonus Act,1965 examine the validity of the employer's refusal to pay bonus to A.

   (b) Is there any time limit for bonus payment?

The Employees' Provident Funds And Miscellaneous Provisions Act,1952

8. Explain the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 relating to:

   (i) Transfer of accounts of an employee in case of his leaving the employment and taking up employment in another establishment.

   (ii) Liability of a transferee employer in case of transfer of establishment by an employer.

9. (a) Who may determine the moneys due from employers under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952?

   (b) Mark true or false with reason:

   (i) The liability for employer to contribute under the Employees' Provident Fund etc Act, 1952 is 10% of the employees' emoluments.

   (ii) Employer of any establishment to which any scheme applies may reduce directly or indirectly the wages of any employee or the benefits as old age pension, gratuity fund to which an employee is entitled.

   (iii) Basic wages means all the emoluments, dearness allowance, bonus, house rent allowance, and any other similar allowance payable to the employee.

   (iv) Generally the Employees Provident Funds and Miscellaneous Provisions Act, 1952 applies to entities employing more than 10 persons.

(v) The Central Government may apply the provisions of this Act even if it employs less than required number of persons.

The Payment of Gratuity Act,1972

10. (a) When, to whom and how gratuity shall be payable?

(b) Mark the statements correct/incorrect with appropriate reasons :

(i) Gratuity shall be paid to an employee after he has surrendered continuous service for not less than five years

(ii) For calculation of gratuity under the Payment of Gratuity Act, 1972 the actual number of days of employment is to be taken .

(iii) Gratuity can be attached in execution of decree or order of any court.

(iv) An employee resigning from service is not entitled to gratuity.

(v) Right to gratuity is a statutory right .

11. (a) An employee was terminated for disorderly conduct during the course of his employment .To what extent gratuity shall be forfeited?

(b) What is the procedure for the recovery of the gratuity?

The Companies Act,1956

12. State whether a minor can become a member of a company under the Companies Act, 1956?

13. What do you understand by 'corporate veil' theory ?Examine the circumstances under which the Courts may lift the corporate veil.

14. Promoters of Ahuja & sons Co. Ltd signed an agreement during incorporation process of the company , for the purchase of certain raw material for the company and the payment to be made to the supplier after the incorporation of the company. The company was incorporated and the material was also consumed. Soon, the company became i nsolvent and the debt became due. As a result supplier sued the promoters of the company for the recovery of money.

Examine the position of the promoters under the following situations:

(i) When the company has already adopted the contract after incorporation?'

(ii) When the company makes a fresh contract with the suppliers in terms of pre-incorporation contract?

15. What do you understand by doctrines of constructive notice and indoor management? State the conditions under which the doctrine of indoor management is inapplicable.

16. What are preliminary contracts? State the rules in respect of preliminary contracts.

17. (a) What are the liabilities and duties of a member in a company?

(b) X purchased 100 equity shares of ABC Ltd. from Y. Though the amount of transaction was paid to the seller, the transferee name is not appearing in the list of members. Subsequently, the company declared dividend. Referring to the provisions of the Companies Act, 1956 state to whom the company will be pa ying the dividend.

18. The Articles of Associations of X Ltd. require the personal presence of six members to constitute quorum of General Meeting. The following persons were present at the time of commencement of an Extraordinary General Meeting to consider the appointment of Managing Director:

(i) Mr. G. the representative of Governor of Gujarat

(ii) Mr. A and Mr. B, shareholders of Preference Shares.

(iii) Mr. L. representing M Ltd., N Ltd. and X Ltd.

(iv) Mr. P, Mr. Q, Mr. R and Mr. S who were proxies of Shareholders.

Can it be said that quorum was present? Discuss.

19. P transfers his share to Q and applies to a company to register transfer of share by P to Q. The company refuses to register such transfer of shares and even not sends notice of refusal to P or Q within the prescribed period. What are the rights available to the aggrieved party against the company for such refusal?

ETHICS

Principles of Business Ethics and Workplace Ethics

20. (a) List the benefits of ethical business practices.

(b) What are the various factors that influence ethical behaviour of an employee?

Corporate Governance and Corporate Social Responsibility

21. (a) What are the measures required for the corporate governance in a Business ?

(b) Define corporate social responsibility .Trace the key developments made in the CSR domain?

Ethics in Marketing and Consumer Protection, Environment & Ethics and Ethics in Accounting & Finance

22. (a) What is competition? What law has been enacted in order to prevent malpractices having adverse effect on competition in market?

(b) Co-relate Business and Environmental Ethics?

(c) Discuss briefly “Ethical Conflict Resolution”.

COMMUNICATION

Interdepartmental Communication and Principles of Interpersonal Communication

23. (a) Define the term Interdepartmental Communication.

(b) Describe the principles of Interpersonal Communication.

Characteristics of Group Personality, Ethical Communication and Press Release

24. (a) Elaborate characteristics of Group Personality.

(b) Write short notes on :

(i) Ethical communication

(ii) Press release

Organizational Change and Affidavit

25. (a) Explain the term 'Corporate Culture'.

(b) What is an Affidavit? Supply its format.

SUGGESTED ANSWER/HINTS

1. (a) Problem on Consideration:

No, Abdul cannot recover the money from Ram. The arrangement between Abdul and Ram is not a contract in the absence of the consideration. In this case Abdul's father, Rahim voluntarily treats Ram during the illness. Apparently it is not a valid consideration because it is voluntary act whereas consideration to be valid must be given at the desire of the promisor given under section 2(d). Even it is not covered under the exception where the contract is valid without the consideration given under Section 25(2) which provides that "if it is promise to compensate a person who has already voluntarily done something for the promisor..."Thus as per the exception the promise must be to compensate a person who has himself done something for the promisor and not to a person who has done nothing for the promisor. As Rahim's son, Abdul, to whom the promise was made, did nothing for Ram. So Ram's promise is not enforceable even under the exception.

(b) Anticipatory Breach of Contract:

As per the provision given under the Indian Contract Act,1872 that where the promisor refuses to perform his obligation even before the specified time for performance and signifies his unwillingness, then there is an anticipatory breach of contract.

Thus according to above provision, in the given problem there is anticipatory breach of contract by conduct from A's side and therefore his contention will not be upheld.

B is entitled to elect to treat the contract as rescinded and sue A for the breach of contract immediately.

2. (a) Determining Agency & Agent:

The test for determining whether a person is or is not an agent is whether that person has the capacity to bind the principal and make him answerable to a third person by bringing him (the principal) into legal relations with a third person and thus establish a privity of contract between the party and the principal. If yes, he is agent, otherwise not. This relationship of agency may be created either by express agreement or by implication:

Under the following circumstances an agent is personally liable.

1. When he represents that he has authority to act on behalf of his principal, but who does not actually posses such authority or who has exceeded that authority and the alleged employer does not ratify his acts. Any loss sustained by a third party by the acts of such a person (agent) and who relies upon the representation is to be made good by such an agent.
2. Where a contract is entered into by a person apparently in the character of agent, but in reality on his own account, he is not entitled to require performance of it.
3. Where the contract expressly provides for the personal liability of the agent.
4. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as an agent.
5. Where the agent acts for a principal who cannot be sued on account of his being a foreign Sovereign, Ambassador, etc.
6. Where the agent works for a foreign principal.
7. Where a Government Servant enters into a contract on behalf of the Union of India in disregard of Article 299 (1) of the Constitution of India. In such a case the suit against the agent can be instituted by the third party only and not by the principal *(Chatturbhuj v. Moheshwar).*
8. Where according to the usage of trade in certain kinds of business, agents are personally liable.

In case B signs a negotiable instrument without making it clear that he is signing it as an agent only, he may be held personally liable on the same. He would be personally liable as the maker of the note, even though he may be described in the body of the note as the agent. Here B is personally liable to third party.

(b) (i) This is a Contract of Indemnity as per the provision given under Section 124 of the Indian Contract Act,1872.Accordingly, here A contracts to indemnify B from the loss to be caused against that of a proceeding, initiated by C against him.

(ii) It is a continuing guarantee as it extend to a series of transactions as per Section 129 of the Indian Contract Act,1872.

(iii) As per provision given under Section 148 of the Indian Contract Act,1872 bailment is the delivery of goods by one person to another for some purpose on a contract ,upon the condition that the goods shall be returned or otherwise disposed when the purpose is fulfilled. Here the word ‘delivery’ means giving up the custody or the possession of the goods but not the ownership.

(iv) Yes,B can order purchases. As per the provision given under Section 188 of the Indian Contract Act,1872 an agent has an authority to carry on a business and has authority to do every lawful thing necessary for the purpose, usually done in the course of conducting such business.

(v) No, J keeps the keys with herself and therefore she did not hand over the possession and in bailment possession of goods must change.

3. (a) Discharge of surety:

Sections 133 to 139 of the Act lay down the provisions as to when a surety would be discharged. These are as follows:

(a) where there is any variance in the terms of the contract between the principal debtor and the creditor without surety’s consent .

(b) The surety is discharged if the principal debtor is discharged

(i) by a contract or

(ii) any act or

(iii) any omission the result of which is the discharge of the principal debtor.

However, there are certain exceptions to the above rules.

(b) Problem on the Indian Contract Act,1872:

In the given problem, if the debt is barred by the limitation on account of the death of the principal debtor, the surety is still liable for the payment of arrears of rent to the plaintiff ‘X’ [Krishto Kishore vs. Radha Romun i.l.r.12 Cal.330] The same view was confirmed by Privy Council in Mahant Singh vs U Bai A.I.R 1939 P.C 110 where it was held that omission of the creditor to sue within the period of limitation does not discharge the surety.

(c) Problem on the Indian Contract Act,1872:

The given problem is based on the provisions of the Sec.163 of the Indian Contract Act,1872.It provides that, in the absence of a contract to the contrary, the bailee is bound to deliver to the bailor, or to any other person in accordance with his direction, any increase or profit which may have accrued from the goods bailed. Since the pledge of goods that is shares as security is a form of bailment and the bank is not authorized to retain any increase or profit. Hence bank shall not be justified in its claim.

4. (a) Problem on The Negotiable Instrument Act,1881:

A bearer instrument is one, which can change hands by mere delivery of the instrument. The instrument may be a promissory note or a bill of exchange, or a cheque. It should be expressed to be so payable or on which the last endorsement is in blank. (Explanation 2 to Section 13 of the Negotiable Instrument Act, 1881).

Under Section 46 where an instrument is made payable to bearer, it is transferable merely by delivery, i.e. without any further endorsement thereon. But this character of the instrument can be subsequently altered. Section 49 provides that a holder of negotiable instrument endorsed in blank (i.e. bearer) may, without signing his own name, by writing above the endorser's signature, direct that the payment of the instrument be made to another person. Thus the character of the instrument is changed and the instrument cannot be negotiated by mere delivery.

But in the case of a Cheque, however, the law is a little different from the o ne stated above. According to the provisions of Section 85 (2) where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, despite any endorsement whether in blank or full appearing thereon not with standing that any such instrument purported to restrict or exclude further negotiation. In other words, the original character of the cheque is not altered so far as the paying bank is concerned, provided the payment is made in due course. Hence the proposition that once a bearer instrument always a bearer instrument.

(b) Problem on the Negotiable Instrument Act,1881:

The Supreme Court in *Modi Cements Ltd.* vs. *Kuchil Kumar Nandi* [1998] *2 CLJ* 8 held that once a cheque is issued by the drawer, a presumption under Section 139 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. The object of Sections 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques. Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for paymen t of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability, is informed by the bank unpaid either because of insufficiency of amount to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence

(c) Rules of Compensation:

Under Section 17 of the Act, the compensation payable in case of dishonour of a promissory note, bill of exchange, or cheque, by any party liable to the holder or any endorse, shall be determined by the following rules :

(a) The holder is entitled to the amount due upon the instrument, together with the expenses incurred in presenting, noting and protesting it.

(b) When the person charged resides at a place different from that at which the instrument was payable, the holder is entitled to receive such sum at the current rate of exchange between the two places.

(c) When the person charged and such endorser reside at different places, the endorser is entitled to receive such sum at the current rate of exchange between the two places.

(d) An endorser, who has paid the amount due under the instrument, is entitled to the amount so paid with interest at 6% per annum from the date of payment until tender or realisation together with all expenses caused by the dishonour and non-payment.

(e) The party entitled to compensation may draw a bill upon the party liable to compensate him, payable at sight or on demand, for the amount due to him, together with all expenses properly incurred by him.

5. (a) Problem on Dishonour of cheque:

The following facts are required to be proved to successfully prosecute the drawer for an offence under Section 138:-

(i) that cheque was drawn for payment of an amount of money for discharge of a debt/liability and the cheque was dishonored;

(ii) that the cheque was presented within the prescribed period;

(iii) that the payee made demand for the payment of the money by giving a notice in writing to the drawer within the stipulated period;

(iv) that the drawer failed to make the payment within 30 days(as per Negotiable Instruments Amendments and Miscellaneous Provisions Act,2002)of the receipt of the notice.

However,Clause (b) of Section 142 gives a restrictive meaning i n that it refers to only one fact which will give rise to the cause of action and that is failure to make the payment within 30 days from the the date of receipt of the offence.

Besides the language of sections 138-142 which clearly postulates only one cause of action,there are other formidable impediments which negates the concept of successive cause of action.The combined reading of the Sections 138 and 142 leave no room for the doubt that cause of action within the meaning of section 142(c) arises and can arise only once.

Thus the apparently conflicting provisions of the act, one enabling the payee to repeatedly present the cheque and the other giving him only one opportunity to file a complaint for its dishonour and that to within one month from the date of cause of action arises can be reconciled, the court held that the two provisions can be harmonized with the interpretation that on each presentation of the cheque and its dishonour, a fresh right and not cause of action accrues in his favour.

Therefore, the holder/payee of a cheque cannot initiate prosecution for an offence under Section138 for its dishonour for the second time, if he had not initiated such prosecution on the earlier cause of action.

(b) (i) Valid. Any bill drawn in favour of a minor is not void and can be sued upon by him, because he though incompetent to contract, may yet accept a benefit.

(ii) Invalid. As per section 11 of the Negotiable Instruments Act,1881 any negotiable instrument drawn or made in India and made payable in or drawn upon any person resident in India shall be deemed to be an inland instrument.

(iii) Valid. As per section 15 of the Negotiable Instrument Act,1881 the endorsement which includes in addition to the signature of the endorser the person to whom or to whose order the instrument is payable is specified is called as special endorsement.

(iv) Invalid as acceptance is required only in case of Bill of Exchange and not in the case of a promissory note and a cheque.

(v) Valid. The Negotiable Instrument,Act1881 ordinarily is not applicable to hundis but, the parties to the Hundis may agree to be governed by the Negotiable Instrument Act.

6. (a) Meaning of Salary or Wages:

According to Section 2(21) of the Payment of Bonus Act, 1965, the term 'salary or wage' means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would, if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment or of work done in such employment and includes dearness allowance; i.e. all cash payments by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

(i) any other allowance which the employee is for the time being entitled to;

(ii) the value of any house accommodation or of supply of light, water, medical attendance or other amenities or of any service or of any concessional supply of foodgrains or other articles;

(iii) any travelling concession;

(iv) any bonus including incentive, production and attendance bonus;

(v) any contribution paid or payable by the employer to any pension fund or provident fund or for the benefit of the employee under any law for the time being in force;

(vi) any retrenchment compensation or any gratuity or other retirement benefit payable to the-employee or any ex-gratia payment made to him;

(vii) any commission payable to the employee.

Where an employee is given in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage of such employee.

(b) (i) An employee employed through contractors on building operation is not entitled to bonus. (Section 32).

(ii) A retrenched employee is eligible to get bonus provided he has worked for minimum qualifying period. [*East Asiatic Co. (P.) Ltd.* vs. *Industrial Tribunal [1961] 1 LLJ 720].*

(iii) A temporary workman is entitled to bonus on the basis of total number of days worked by him.

(iv) An employee of a seasonal factory is entitled to proportionate bonus and not the minimum bonus as prescribed under Section 10 of the Act.

(v) An employee who is dismissed from service on the ground of misconduct a s mentioned in Section 9, is disqualified for any bonus and not merely for bonus of the accounting year in which he is dismissed (Pandian Roadways Corporation Ltd. vs. Presiding Officer [1996] 2 CLR 1175 (Mad.).

(c) Categories of employees not covered under the Payment of Bonus Act, 1965:

The Payment of Bonus Act, 1965 does not cover under its purview the following categories of employees (Section 32):

(i) Employees employed by the Life Insurance Corporation of India.

(ii) Seamen as defined under Section 3(42) of the Merchant Shipping Act, 1958.

(iii) Employees registered or listed under any scheme made under the Dock Workers (Regulation of Employment) Act, 1948 and employed by the registered or listed employers.

(iv) Employees employed by an establishment engaged in any industry carried on by or under the authority of any department of the Central Government or a State Government or a local authority.

(v) Employees employed by :

(a) the Indian Red Cross Society or any other institution of a like nature (including its branches),

(b) Universities and other educational institutions;

Institutions including hospitals, chambers of commerce and social welfare institutions established not for purposes of profit.

(vi) Employees employed through contractors on building-operations.

(i) Employees employed by Reserve Bank of India.

(ii) Employees employed by :

(a) The Industrial Finance Corporation of India;

(b) Any financial corporation established under section 3 or any joint financial corporation established under section 3A of the State Financial Corporation Act 1951;

(c) The Deposit insurance Corporation;

(d) The Agricultural Refinance Corporation;

(e) The Unit Trust of India;

(f) The Industrial Development Bank of India;

(g) Any other Financial Institution (othe r than a banking company) being an establishment in Public Sector, which the Central Government may be notification in the Official Gazette, specify; while so specifying the Central Government shall have regard to its capital structure, its objectives and the nature and extent of financial assistance or any concessions given to it by the Government and any other relevant factor.

(h) Employees employed by inland water transport establishment operating on routes passing through any other country.

Besides the above, if the appropriate government is of the opinion that it will be in the public interest, having regard to the financial position and other relevant circumstances of any establishment or class of establishment, it may, by notification in the Official Gazette, exempt for such periods as may be specified therein and subject to such conditions as it may think fit to impose, such establishments from all or any of the provisions of this Act.

7. (a) Entitlement for bonus under the Payment of Bonus Act, 1965:

Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than 30 working days in the year on a salary less than Rs. 3,500 per month. *[Section 2(13) read with Section 8]* (This ceiling of Rs. 3,500 has been now revised to Rs. 10,000, with effect from Nov 2007).

If an employee is prevented from working and subsequently reinstated in service, employee's statutory liability for bonus cannot be said to have been lost and the employee concerned shall be entitled to the bonus. (ONGC v. Sham Kumar Sahegal).

Thus based on the above ruling and the provisions of the Act as contained in Section 8, the refusal by the employers to pay bonus to X is not valid and he (X) is entitled to get bonus in the given case for the reasons given above in the provisions, i.e. he has worked for more than 30 days in a year, drawing salary of less than Rs. 10,000 and not disqualified for any other reason.

(b) Time Limit for payment of bonus (Section 19) :

The employer is bound to pay his employee bonus within one month from the date on which the award becomes enforceable or the settlement comes into operation, if a dispute regarding payment of bonus is pending before any authority under Section 22. In other cases, however, the payment of the bonus is to be made within a period of 8 months from closing of the accounting year. But this period of 8 months may be extended up to a maximum of 2 years by the appropriate Government or by any authority specified by the appropriate Government. This extension is to be granted on the application of the employer and only for sufficient reasons.

8. Transfer of accounts of an employee and liability of transferee employer under employees' Provident Funds and Misc. Provisions Act, 1952:

Transfer of Accounts: (Section 17-A)

Section I7A of the Act provides for the transfer of accounts of an employee in case if he is leaving the employment and taking up employment in another establishment 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 employee in the Fund or, as the case may be, in the provident fund of 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. This transfer has to be made with in such time as may be specified by the Central Government in this behalf.

Conversely, when an employee of an establishment to which this 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 that 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 re-employed.

Liability of a transferee employer in case of transfer of establishment by the employer (Section 17-B).

Where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall Jointly or severally be liable to pay the contribution and other sums due from the employer under any provisions of the Act of the Scheme or the Pension Scheme, as the case may be, in respect of the period up to the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained by him by such transfer.

Section 17-B deals with the liability of transferor and transferee in regard to the money due under-

(a) the Act: or

(b) the Scheme;

(c) Pension Scheme.

in the case of transfer of the establishment brought in by sale, gift, lease, or any other manner whatsoever, the liability of the transferor and the transferee is joint and several, but is limited with respect to the period upto the date of the transferor. Also the liability of the transferee is further limited to the assets obtained by him from the transfer of the establishment.

9. (a) Determination of moneys due from employer (Section 7A, E.P.F. & M.P Act, 1952):

Authorities empowered to determine the amount due from an employer under the provisions of the Act and the scheme include Central P.F. Commissioner, Deputy P.F. Commissioner, Assistant P.F. Commissioner & Regional P.F. Commissioner.

They involves decisions on:

(i) amount due as contribution

(ii) date from which same is due

(iii) administration charges

(iv) amount to be transferred under Section 15 or 17 of Act.

(v) any other charges payable by employer,

The authorities may conduct such inquiries as necessary and have powers such as are vested in Court.

Employer must be given a reasonable opportunity of representing his case.

Where any party fails to appear etc., the officer may decide on basis of evidence and documents put before him.

An *ex parte* order against employer may be set aside on application within 3 months of receiving order by him by showing sufficient cause. A fresh date shall be given for proceeding with inquiry.

As the above "proceedings are of quasi-judicial in nature and vitally affect the rights of parties, the principles of natural justice must be strictly followed in deciding the dispute.

(b) (i) True. As per Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act,1952,the contribution paid to the fund by the employer shall be 10% of the employees emoluments.

(ii) False. As per Section 12 ,no employer in relation to any establishment to which scheme applies shall by reason only of his liability for the payment of any contribution to the funds or any charge under this act or the scheme, reduce directly or indirectly the wages of any employee or the benefits in the nature of oldage pension, gratuity fund to which the employee is entitled.

(iii) False. As per provision given under Section 2(b) of the Employees' Provident Funds and Miscellaneous Provisions Act,1952,basic wages means all emoluments which are earned by an employer while on duty or on leave or on holidays with wages excluding the cash value, D.A, HRA, Bonus, overtime allowance ,any present etc.

(iv) False. As per Section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act,1952,This Act is generally applied to the entities employing 20 or more persons.

(v) True. As per section 16 of the Employees' Provident Funds and Miscellaneous Provisions Act,1952, the Central Government may, after giving not less than 2 months' notice of its intension to do so ,apply the provisions of this Act to any establishment with less than 20 persons in the employment.

10. (a) Payability of Gratuity [Section 4(1)]

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.

In the establishments other than seasonal establishments, the employer shall pay the gratuity to an employee at the rate of 15 days wages leased on the rate of wages last drawn by the employee concerned for every completed year of service or part therof in excess of 6 months.

In case of piece rated employee, daily wages, shall be computed on the average of the total wages received by him for a period of 3 months immediately preceding the termination of his employment.

In seasonal establishment employee may be categorized under two groups-

- Those who work throughout the year &
- Who work only in the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of six months. The later are, however, entitled to receive gratuity at the rate of seven days for each seasons.

(b) (i) The given statement is correct as per Section 4(1) of the Payment of Gratuity Act,1972. Therefore Gratuity shall be payable to an 'employee' after he has rendered continuous services for not less than five years on his superannuation, retirement or resignation, or on the death or disablement.

(ii) The given statement is incorrect. As per the provision under the Payment of Gratuity Act, 1972, for calculation of gratuity the number of days in a month is to be taken as 26 days.

(iii) The statement is incorrect as per the provision given under Section 13 of the Payment of Gratuity Act,1972. Gratuity cannot be attached in execution of any decree or order of any civil, revenue or criminal court.

(iv) The given statement is incorrect. As per the provision given under the Payment of Gratuity Act,1972 ,an employee resigning or leaving the establishment is entitled to gratuity which is paid by the employer to his employee for his past services.

(v) The statement is correct making gratuity a statutory right of the employees as per the provision given under the Payment of Gratuity Act,1972.

11. (a) Forfeiture of gratuity: Section 4(6)]

If the services of an employee have been terminated for any act, willful omission,or negligence causing any damage or loss to, or destruction of, property belonging to the employer the gratuity shall be forfeited to the extent of the damages or loss so caused.

If the services of such an employee have been terminated for his disorderly conduct or any other act of violence on his part, or if the services of such employees have been terminated for any act which constitutes offence involving moral turpitude, provided that such offence is committed by him in the course of his employment ,the gratuity payable to the employee may be wholly or partially forfeited.

(b) Recovery of gratuity:

If the gratuity payable under the Act is not paid by the employer within the prescribed time, to the person entitled thereto. The controlling authority shall issue a certificate for the amount to the collector to recover the same alongwith the compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears to enable the person entitled to get the amount after receiving the application from the aggrieved person. [Section. 8]

Before issuing the certificate for such recovery the controlling authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate.

The amount of interest payable under this Section shall not exceed the amount of gratuity payable under this Act in no case *[Section 8].*

12. Minor as a member of a company:

The Company Law Board has laid down in *Nandita Jain v. Bennet Coleman & Co. Ltd.* that a minor can become a member provided four conditions are fulfilled:

(a) Company must be a Company Limited by shares.

(b) Shares are fully paid up.

(c) Application for transfer is made on behalf of minor by lawful guardian.

(d) The transfer is manifestly for the benefit of the minor.

This was also confirmed in S.L. Bagree v. Britannia Industries.

In also *Diwan Singh v. Minerva Films Ltd. [(3958) 28 Comp. Cases 191 (Punj.), (1959) 29 Comp. Cases 263 (Punj.)],* the Punjab High Court held that there is no legal bar to minor becoming a member of a company by acquiring shares (by way of transfer) provided the shares are fully paid and no further obligation or liability is attached to them. Minor can become member by transfer or transmission, but a company may not allow a minor to be a member by allotment.

13. Theory of corporate veil

A company is a legal person distinct from its members *(Salomon v. Salomon & Co.).* It has its own corporate personality. This principle may be referred to as *'the veil of incorporation'.* The Courts in general consider themselves bound by this principle. The effect of this principle is that there is a fictional veil between the company and its members. That is, the company has a corporate personality which is distinct from its members.

The human ingenuity, however, started using this veil of corporate personality blatantly as a cloak for fraud or improper conduct.Thus, it became necessary for the Courts to break through or lift the corporate veil or crack th e shell of corporate personality or disregard the corporate personality of the company. Thus while by fiction of law a corporation is a distinct entity, yet, in reality it is an association of persons who are in fact the beneficial owners of all the corporate property *(Gallaghar v. Germania Brewing Co.).*

The circumstances or the cases in which the Courts have disregarded the corporate personality of the company are:

1. Protection of revenue: The Courts may ignore the corporate entity of a company where it is used for tax evasion. (Juggilal v. Commissioner of Income-tax).

2. Prevention of fraud or improper conduct: The legal personality of a company may also be disregarded in the interest of Justice where the machinery of incorporation has been used for some fraudulent purpose like defrauding creditors or defeating or

circumventing law. Thus where a company was incorporated as a device to conceal the identity of the perpetrator of the fraud, the Court disregarded the corporate personality. (Jones v. Lipman).

3. Determination of character of a company whether it is enemy company: A company may assume an enemy character when persons in de facto control of its affairs are residents in an enemy country. In such a case, the court may examine the character of persons in real control of the company and declare the company to be an enemy company. (Daimler Co. Ltd. V. Continental Tyre &. Rubber Co. Ltd).

4. Where the company is a sham: The Courts also lift the veil or disregard the corporate personality of a company where a company is a mere cloak or sham [hoax]. (Gilford Motor Co. Ltd. V. Horne).

5. Company avoiding legal obligations: Where the use of an incorporated company is being made to avoid legal obligations, the Court may disregard the legal personality of the company and proceed on the assumption as if no company existed.

6. Company acting as agent or trustee of the shareholders: Where the Company is acting as agent for its shareholders, the shareholders will be liable for the acts of the company. (F.G. Films Ltd. *In re*).

7. Avoidance of welfare legislation: Where the Courts find that there is avoidance of welfare legislation, it will be free to lift the corporate veil. [Workmen of Associated Rubber Industry Ltd. V. Associated Rubber Industry Ltd.].

8. Protecting Public Policy: The Courts invariably lift the corporate veil or disregard the corporate personality of a company to protect the public policy and prevent transactions contrary to public policy, (Connors v. Connors Ltd.).

14. Problem on the Promoters:

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name *(Scot v. Lord Ebury),* even though the contract expressly provided that only the company shall be answerable for performance.

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

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

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

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

(i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.

(ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

15. Doctrines of constructive notice and indoor management*:* In consequences of the registration of the memorandum and articles of association of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents. This is because these documents are construed as "public document" under Section 610 of the Companies Act, 1956. Accordingly if a person deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction, which is ultra vires, *these documents*, he must do so at his peril. However, the doctrine of constructive notice is not a positive one but a negative one like that of estoppel of which it forms parts. It operates only against the person who has been dealing with the company but not against the company itself; consequently he is prevented form alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority *ultra vires*. Thus, the doctrine is a "cloud" for the strangers.

One limitation to the doctrine of constructive notice of the memorandum and articles of a company is the doctrine of indoor management. According to the doctrine of indoor management, the outsider, dealing with the company are entitled to assume that as far as the internal proceedings of the company are concerned, everything has been regularly done. They are bound to lend the registered documents and to see that the proposed dealing is not inconsistent therewith, but they are not bound to do more, they need not inquire into the regularity of the internal proceedings as required by the memorandum and Articles. This limitation of the doctrine of constructive notice is known as the

'Doctrine of Indoor Management', popularly known as rule in *Royal British Bank v. Turquand.* Thus the doctrine of indoor management aims to protect outsiders against the company.

The following are the circumstances in which doctrines of indoor management is inapplicable:

1. *Knowledge of irregularity:* Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management. *(T.R. PRATT (Bombay) Ltd. v. E.D.* Sassoon & Co. Ltd.).
2. *Negligence:* Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he cannot claim the benefit of the rule of indoor management. The protection of the rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry *(Anand Bihari Lel v. Dinshaw & Co.*) *Also the case of Under Wood v. Bank of Liver Pool.*
3. *Act void ab initio and forgery:* Where the acts done in the name of a company are void ab initio, the doctrine of indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction. It does not apply to a forgery. A Company can never he held liable for forg eries committed by its officers *(Ruben v. Great Fingall Consolidated Co.).*
4. *Acts outside the scope of apparent authority :* If an officer of a company enters into a contract with a third party and if the act of the officer is beyond the scope of his authority, the company is not bound. *(Kreditbank Cassel v. Schenkers Ltd.).*
5. A person having no knowledge of Articles cannot seek protection under Indoor Management.

16. Preliminary or pre-incorporation contracts: Pre-incorporation contracts are those contracts, which are entered into, by agents or trustees on behalf of a prospective company before it has come into existence. Since a company comes in to existence from the date of its incorporation, it follows that any act purporting to be performed by it prior to that date is of no effect so far as the company is concerned. It will very likely be the intention of the promoters or persons concerned in the company that the company should, on its formation acquire some property or takeover the existing business, and for this purpose, a preliminary contract for the acquisition may be entered into before the company is formed. But as the company is non-existent before incorporation it cannot be bound, by any purported ratification [*Kelner vs. Baxter (1862) L.R. 2 C.P. 174*].

    The rules in respect of preliminary contracts may be summarised as follows:

    (*a*) The vendor cannot sue, or be sued by the company thereof, after its incorporation;

(*b*) Person who acts for the intended company remains personally liable to the vendor even if the company purports to ratify the agreement, unless the agreement provides that :

(*i*) his liability shall cease if the company adopts the agreement; and

(*ii*) either party may rescind the agreement, if the company does not adopt it within a specified time;

(*c*) After incorporation, the company may adopt the preliminary agreement. But this must be by novation which may be implied from the circumstances. But in some cases, the memorandum directs the directors to execute such contracts. The company can enforce a pre-incorporation contract if it is warranted by the terms of incorporation and for purposes of company.

A pre-incorporation contact can be enforced against the company if it is warranted by the terms of incorporation and it is adopted by the company. [Sections 15 and 16 of the Specific Relief Act, 1963]. In such a case, the directors have no discretion in the matter.

17. (a) Liabilities and duties of a member[Section 45]

(i) To take shares, when they are allotted in due time and in compliance with the provisions of the Act, unless the refusal to accept the shares has been sent on the ground of non-compliance with the provisions of the Act as regards the issue of the prospectus or as regards allotment.

(ii) To pay for the shares allotted to him when the allotment is made and when calls have been made validly and in conformity with the provisions of the articles.

(iii) To abide by the doing of the majority of members unless the majority acts vindictively, oppressively, *mala fide* or fraudulently.

(iv) to contribute to the assets of the company in the case of winding up when the shares held are partly paid-up.

(v) Members are severally liable for debts of the company contracted, where its business is carried on beyond the expiry of six months from the date at which its membership is redeemed below the legal minimum (*i.e.,* seven members in the case of public company and two members in the case of a private company). However, such members are not liable for debts contracted before the expiry of six months. No liability will accrue to those members who are not cognisant of the fact that the business of the company is being carried on with members fewer than the legal minimum .

(b) According to Section 206 of the Companies Act, 1956 dividend shall be paid only to the registered holder of shares or to his order or to his bankers or to the bearer of a share warrant. Where shares have been sold but not yet registered, the dividend shall be paid to the transferee only in case the transferor gives a mandate in writing to that effect. Otherwise, the dividend in respect of such shares shall be transferred to the 'unpaid dividend account'.

18. Problem on Quorum:

Quorum means the minimum number of members that must be personally present in order to constitute a meeting and transact business thereat. Thus, quorum represents the number of members on whose presence the meeting of a company can commence its deliberations. According to Section 174, of the Companies Act, 1956, unless the Articles provide for larger number, five members, personally present in the case of a public company and two in the case of any other company form the quorum for a general meeting. In this case, the Articles provide for six.

The word 'personally present' excludes proxies. However, the representative of a body corporate appointed under Section 187 or the representative of the President or a Governor of State under Section 187A is a member 'personally present' for purpose of counting a quorum. In case two or more corporate bodies who are members of a company are represented by a single individual, each of the bodies corporate will be treated as personally present by the individual representing it. If, for instance, he represents three corporate bodies, his presence will be counted as three members being present in person for purposes of quorum.

The quorum of members, personally present means the presence of the members who are called to vote in the meeting. Preference shareholders can vote only in relation to the matters affecting the rights of preference shares. In the extra ordinary general meeting in question, only the appointment of the managing director has to be considered. It is not a matter affecting the right of preference shares and the preference shareholders are not entitled to vote and hence, they cannot be considered as "members personally present" for the purpose of quorum.

Thus, the number of persons being personally present would be as follows:

Present personally	Number
Mr. G	1
Mr. A and Mr. B	Nil
Mr. L	3
Proxies	Nil
Total	4

It can therefore be said that quorum was not present.

19. Refusal to register transfer and appeal against refusal:

The problem as asked in the question is based upon Section 111 of the Companies Act 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 Rs.500 per day.

20. (a) Benefits of business ethics: There are many benefits of paying attention to business ethics :

1. 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 anti-trust laws, establishment of Government agencies and recognition of labour unions

2. Easier change management

Attention to business ethics is critical during times of fundamental change - times like those faced presently by businesses, whether non profit or for-profit. During times of change, there is often no clear moral compass to guide leaders through complex conflicts about what is right or wrong. Continuing attention to ethics in the workplace sensitizes leaders and staff for maintaining consistency in their actions.

3. Strong teamwork and greater productivity

Ongoing attention and dialogue regarding values in the workplace builds openness, integrity and community, all critical ingredients of strong teams in the workplace. Employees feel a strong alignment between their values and those of the organization resulting in strong motivation and better performance.

4. Enhanced employee growth.

   Attention to ethics in the workplace helps employees face the reality, both good and bad in the organization and gain the confidence of dealing with complex work situations.

5. Ethics programs help guarantee that personnel policies are legal.

   A major objective of personnel policies is to ensure ethical treatment of employees , For example, in matters of hiring, evaluating, disciplining, firing, etc., an employer can be sued for breach of contract for failure to comply with any promise it made, so the gap between stated corporate culture and actual practice has significant legal, as well as ethical implications. Attention to ethics ensures highly ethical policies and procedures in the workplace. Ethics management programs are also useful in managing diversity. Diversity programs require recognizing and applying diverse values and perspectives which are the basis of a sound ethics management program.Most organisations feel that it is far better to incur the cost of mechanisms to ensure ethical practices than to incur costs of litigation later.

6. Ethics programs help to avoid criminal acts “of omission” and can lower fines.

   Ethics programs help to detect ethical issues and violations early, so that they can be reported or addressed.

7. Ethics programs help to manage values associated with quality management, strategic planning and diversity management .

   Ethics programs help identifying preferred values and ensuring that organizational behaviors are aligned with those values. This includes recording the values, developing policies and procedures to align behaviours with preferred values, and then training all personnel about the policies and procedures. This overall effort is very useful for several other programs in the workplace that require behaviors to be aligned with values, including quality management, strategic planning and diversity management. For example, Total Quality Management initiatives include high priority on certain operating values, e.g., trust among stakeholders, performance, reliability, measurement, and feedback.

8. 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 honour.

   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.

(b) Factors influencing ethical behaviour at work

Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and co-workers, and the opportunity to engage in misconduct. While one may have great control over personal ethics outside the workplace, co-workers and management through authority for example, exerts significant control on ones choices at work. In fact, the activities and examples set by co-workers, along with rules and policies established by the firm, are critical in gaining consistent ethical compliance in an organization. If a company fails to provide good examples and direction for appropriate conduct; confusion and conflict will develop and result in the opportunity for unethical behaviour. For example if the boss or co-workers leave work early, one may be tempted to do so as well. If one sees co-workers making personal long-distance phone calls at work and charging them to the company, then one may be more likely to do so also. In addition, having sound personal values contributes to an ethical workplace.

Individual Standards and Values	+	Managers' and Co-workers' Influence	+	Opportunity: Codes and Compliance Requirements	=	Ethical/Unethical Choices in Workplace

21. (a) Corporate Governance measures

In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration, as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethics and /or social responsibility committees on their Boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and boards, some companies have adopted guidelines governing their own policies and practices around such issues like board diversity, independence, and compensation.

Indian Companies are required to comply with Clause 49 of the listing agreement primarily focusing on following areas:

- Board composition and procedure
- Audit Committee responsibilities
- Subsidiary companies
- Risk management
- CEO/CFO certification of financial statements and internal controls

- Legal compliance
- Other disclosures

(b) **Definition of Corporate Social Responsibility:**

"Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large".

"Corporate Social Responsibility is achieving commercial success in ways that honour ethical values and respect people, communities, and the natural environment."

Key developments

Several factors have converged over the last decade to shape the direction of the CSR domain:

Increased Stakeholder Activism: Corporate accounting scandals have focused attention more than ever on companies' commitment to ethical and socially responsible behaviour. The public and various stakeholders are increasingly seeking assistance of the private sector to help with myriad complex and pressing social and economic issues. There is a growing ability and sophistication of activist groups to target corporations they perceive as not being socially responsible, through actions such as public demonstrations, public exposes, boycotts, shareholders' resolutions, and even "denial of service" attacks on company websites. Companies are therefore focusing on meaningfully engaging with their various stakeholders. Companies and stakeholders have, in many cases, progressed beyond "dialogue for dialogue's sake," and are looking to rationalize the process.

Proliferation of Codes, Standards, Indicators and Guidelines: The recent accounting scandals, such as, Enron, Worldcome, Parmalat, AIR, LLP and Author Andersen have created another surge of reforms and new voluntary CSR standards and performance measurement tools continue to proliferate.

Accountability Throughout the Value Chain: Over the past several years, the CSR agenda has been characterized by the expansion of boundaries of corporate accountability. Stakeholders increasingly hold companies accountable for the practices of their business partners throughout the entire value chain with special focus on suppliers, environmental, labour, and human rights practices.

Transparency and Reporting: Companies are facing increased demands for transparency and growing expectations that they measure, report, and continuously improve their social, environmental and economic performance. Many companies are also instituting various types of audit and verification as further means of increasing the credibility of their transparency and reporting efforts. Increasingly, demands for greater transparency also encompass public policy - stakeholders want to know that the way companies use their ability to influence public policy is consistent with stated social and environmental goals. As part of this move toward greater disclosure, many companies are displaying detailed information about their social and environmental performance on their publicly accessible websites - even when it may be negative.

Convergence of CSR and Governance Agenda: In the past several years, there has been a growing convergence of corporate governance and CSR agenda. In the 1990s, the overlap was seen most clearly on issues such as board diversity, director independence, and executive compensation. The need for having on the board of directors, directors who are non-executive and who are independent i.e., directors who are not involved in the day-to-day administration of the company but who would bring a non-partisan and unbiased approach to a company's policies is emphasized by both CSR and Corporate Governance dictates. More recently, an increasing number of corporate governance advocates have begun to view companies' management of a broad range of CSR issues as a fiduciary responsibility alongside traditional risk management. In addition, more and more CSR activists have begun to stress the importance of board and management accountability, governance, and decision-making structures as imperative to the effective institutionalisation of CSR.

Growing Investor Pressure and Market-Based Incentives: CSR is now more and more part of the mainstream investment scene. The last few years have seen the launch of several high-profile socially and/or environmentally screened market instruments (e.g., indexes like the Dow Jones Sustainability Indexes), This activity is a testament to the fact that mainstream investors increasingly view CSR as a strategic business issue. Many socially responsible investors are using the shareholder resolution process to pressure companies to change policies and increase disclosure on a wide range of CSR issues, including environmental responsibility, workplace policies, community involvement, human rights practices, ethical decision-making and corporate governance. Activist groups are also buying shares in targeted companies to give them access to annual meetings and the shareholder resolution process.

Advances in Information Technology: The rapid growth of information technology has also served to sharpen the focus on the link between business and corporate social responsibility. Just as email, mobile phones and the Internet speed the pace of change and facilitate the growth of business, they also speed the flow of information about a company's CSR record.

Pressure to Quantify CSR "Return on Investment": Ten years after companies began to think about CSR in its current form, companies, their employees and customers, NGOs, and public institutions increasingly expect returns on CSR investments, both for business and society. This is leading to questions about how meaningful present CSR practice is, and the answers to those questions would determine both the breadth and depth of CSR practice for the next decade.

Companies want to determine what their CSR initiatives have accomplished so that they can focus on scarce resources more effectively.

22. (a) **Definition of Competition:** A broad definition of Competition is "a situation in a market in which firms or sellers independently strike for the buyers' patronage in order to achieve a particular business objective, for example profit, sales or market share" (World Bank, 1999). A pre -requisite for a good competition is trade, trade is the unrestricted liberty of every man to buy, sell and barter, when, where and how, of whom and to whom he pleases.

Competition Act, 2002

The Competition Act, 2002 is the relevant law laid down with an intend to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. The renewed efforts of the Government in implementing a Competition Act, 2002 is a laudable step in the right direction and a new beginning in the frontiers of India's Competition Policy towards harmonizing international trade and policy.

(b) **Business and Environmental Ethics**

Few decades ago, the corporate world, the industry or others engaged in the use of natural resources or environmental services were mainly concerned with good business in economic sense. Concern for environment and resource depletion was not on their agenda; if conservation of resources was required it was with a motive of mere economic gains or profits.

Not only in India but all over the world, there is now a growing concern for Social responsibility and ethical norms in all spheres of human activities; be it public behaviour, business or environment and there are ethical concerns to look after not only the interest of stakeholders but also that of community; as the regulatory / mandatory requirements have also become more stringent. This translates into providing safety for the workers at workplace, concern for their health, reducing pollution and incorporating environmental values in governance.

Environmental ethics is a larger issue that concerns ethical behaviour of all types of organisations ranging from International bodies, national governments, opinion makers, media, intelligentsia, public and private enterprises and NGOs. In India many companies have come to realize that ethical practices make good business sense especially the organisations engaged in exports as these organisations have to satisfy the importer in regard to the quality, ethics and environmental standards.

(c) **Ethical Conflict Resolution**

While evaluating compliance with the fundamental principles, a finance and accounting professional may be required to resolve a conflict in the application of fundamental principles. The following needs to be considered, either individually or together with others, during a conflict resolution process,

(a) Relevant facts;

(b) Ethical issues involved;

(c) Fundamental principles related to the matter in question;

(d) Established internal procedures; and

(e) Alternative courses of action.

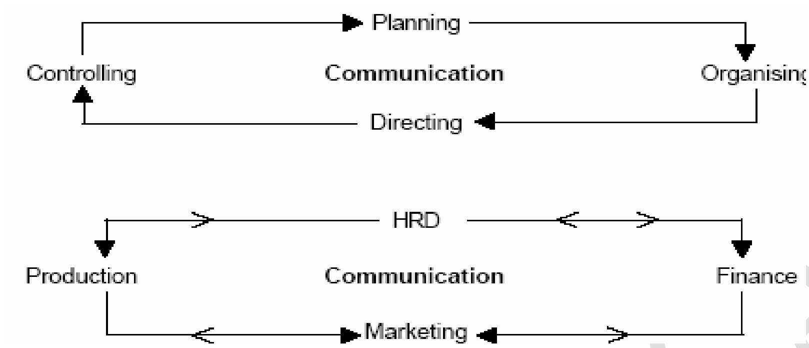
Having considered these issues, a finance and accounting professional should determine the appropriate course of action that is consistent with the fundamental principles identified. The professional should also weigh the consequences of each possible course of action. If the matter remains unresolved, the professional should consult with other appropriate persons within the firm or employing organization for help in obtaining resolution. During times where a matter involves a conflict with, or within, an organization, finance and accounting professional should also consider consulting with those charged with governance of the organisation, such as the board of directors.

If a significant conflict cannot be resolved, a professional may wish to obtain professional advice from the relevant professional body or legal advisors, and thereby obtain guidance on ethical issues without breaching confidentiality. For example, a professional accountant may have encountered a fraud, the reporting of which could breach the professional accountant's responsibility to respect confidentiality. The professional accountant should consider obtaining legal advice to determine whether there is a requirement to report.

If, after exhausting all relevant possibilities, the ethical conflict remains unresolved, a professional should, where possible, refuse to remain associated with the matter creating the conflict. The professional may determine that, in the circumstances, it is appropriate to withdraw from the engagement team or specific assignment, or to resign altogether from the engagement, the firm or the employing organization.

23. (a) Interdepartmental Communication:

The word department comes from the French word '*departir*' which means "to separate." Communication between departments is essential to collaborate and achieve the objectives of the organisation. Departments in an organization are like rooms in a house. Departments divide and create barriers; but without their cooperation, it would be virtually impossible for an organisation to function.



Importance of Interdepartmental Communication

Most organizations, to some degree, have difficulties with interdepartmental communication. Unfortunately, the problem is frequently overlooked and, even when recognized, often the symptoms are treated instead of the causes.

Avoiding unnecessary conflict, poor performance, time delays, and decisions that work at cross purposes are compelling reasons for taking active measures to improve interdepartmental communication. Major causes of interdepartmental communication problems are:

Departments Are Physically Separated: Office design may create barriers to effective interdepartmental relationships, because it subconsciously restricts natural communication impulses. To a great extent, office design determines who has access to whom by creating barriers to some departments and bridges to others. Because each office is unique, special factors have to be considered in each organization to make changes that will facilitate more effective communication between departments.

Departments Perform Separate Functions: Barriers are also caused by different priorities. What may be the first priority for department X may be the last priority for department Y. Ordinarily this may not be a problem, except when department X is dependent on department Y, a destructive sequence of impatience, tension, and distrust may prevail. Territory battles usually occur because departments fight over scarce resources, prestige, or such other factors. But who really wins? Who loses? Even though a particular department may "win," the customer usually loses. The competitor may even win. Customer service or a competitive threat should inspire and bridge the gaps between departments.

(b) Principles of Interpersonal Communication:

The following principles are basic to interpersonal communication:

Interpersonal communication is inescapable: We can't not communicate. The very attempt not to communicate communicates something. Through not only words, but through tone of voice and through gesture, posture, facial expression, etc., we constantly communicate to those around us and through these channels, we constantly receive communication from others. Remember, that people judge you by your behaviour, not by your intent.

Interpersonal communication is irreversible: A Russian proverb says, "Once a word goes out of your mouth, you can never swallow it again." You cannot really take back something once it has been said. The effect will inevitably remain.

Interpersonal communication is complicated: No form of communication is simple. Because of the number of variables involved, even simple requests are extremely complex. Actually we don't exchange ideas, but symbols that stand for ideas. This complicates communication. Words (symbols) do not have inherent meaning; we simply use them in certain ways, and no two people use the same word exactly alike.

Interpersonal communication is contextual: In other words, communication does not happen in isolation. There is a psychological context, - who the communicators are and what they bring to the interaction. Their needs, desires, values, personality, etc., all form the psychological context.

Relational context, which concerns reactions to each other.

Situational context deals with the "psycho-social-where" one is communicating. For example, an interaction that takes place in a classroom will be very different from one that takes place in a Board room.

Environmental context deals with the "physical -where" one is communicating. Furniture, location, noise level, temperature, season, time of day, all are examples of factors in the environmental context.

Cultural context includes all the learned behaviours and rules that affect the interaction. If you come from a culture (foreign or within your own country) where it is considered rude to make long, direct eye contact, you will out of politeness avoid eye contact. If the other person comes from a culture where long, direct eye contact signals trustworthiness, then we have in the cultural context a basis for misunderstanding.

24. (a) Characteristics of Group Personality:

Given below 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. If the members conform to the accepted standards of their group relationships, they feel happier and better adjusted.

(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. But the fact is that the individual's prejudices get further intensified while coming in contact with other members of the group holding similar prejudices.

(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. All of us are in need of people who adopt a friendly attitude towards us, not really those who are out to challenge us in a group.

(b) Short Notes On:

(i) Ethical communication:

Ethical communication is fundamental to responsible thinking, decision making, and the development of relationships and communities within and across contexts, cultures, channels, and media. Ethical communication enhances human worth and respect for self and others. In business communication, however, knowing right from wrong doesn't always mean that doing the right thing is either obvious or easy. Ethical communi cation is fundamental to responsible thinking, decision making, and the development of relationships and communities within and across contexts, cultures, channels, and media. Ethical communication enhances human worth and dignity by fostering truthfulness, fairness, responsibility, personal integrity, and respect for self and others. while unethical communication threatens the quality of all communication and consequently the well-being of individuals and the society in which we live.

An ethical communication:

- includes all relevant information,
- is true in every sense and is not deceptive in any way.
- accurate and sincere. Avoids language that manipulates,, discriminates or exaggerates.
- does not hide negative information behind an optimistic attitude .
- does not state opinions as facts,
- portrays graphic data fairly.

In a nutshell, ethical communicators have a "well developed sense of social responsibility. "One is honest with employers, co-workers, and clients, never seeking personal gain by making others look better or worse than they are; don't allow personal preferences to Influence your perception or the perception of others, and act in good faith.

(ii) Press Release:

The term press release in its narrower sense is used for releases covering news. The press release contains worthwhile material which has some news value. It is not only unnecessary expenditure but also damages the reputation of the concerned publicity / information department if the release is on a very trivial matter.

25. (a) Corporate Culture:

At its most basic, Corporate Culture is described as the personality of an organization, or simply as "how things are done around here." It guides how employees think, act, and feel. Corporate culture is a broad term used to define the unique personality or character of an organization, and includes such elements as core values and beliefs, corporate ethics, and rules of behaviour norms that are shared by people and groups in an organization and that control the way they interact with each other and with stakeholders outside the organization.

These cultural statements become effective when executives are able to communicate the values of their firm, which provide patterns for how employees should behave. Firms with strong cultures achieve higher results because employees maintain focus both on what to do and how to do it. Organizational values are beliefs and ideas about what kinds of goals members of an organization should pursue and ideas about the appropriate principles of behaviour organizational members should use to achieve these goals. From organizational values, develop organizational norms, guidelines or expectations that prescribe appropriate kinds of behaviour by employees in particular towards one another.

Senior management may try to determine a Corporate Culture. They may wish to impose corporate values and standards of behaviour that specifically reflect the objectives of the organization. In addition, there will also be an internal culture within the workforce. Work-groups within the organization have their own behavioural quirks and interactions which, to an extent, affect the whole system.

(b) Affidavit: An affidavit is a written statement used mainly to support certain applications and in some circumstances as evidence in court proceedings. A person who makes the affidavit is called the Deponent and must swear or affirm that the contents are true before a person who has the authority to administer oaths in respects of the particular kind of affidavit. The model form of affidavit is given below:

Format

I…...........................son of..............................aged ....years, residing at ...., hereby declare on oath as follows: "..."Sworn on this ....the day of ....

Date: Signature
Place:

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

QUESTIONS

The Indian Contract Act, 1872

1. (a) Examine what is the legal position, as to the following :

   (i) X offered to sell his land to N for Rs. 28,000/-. N replied purporting to accept the offer and enclosed a cheque for Rs. 8,000/-. He also promised to pay the balance of Rs. 20,000/- in monthly installments of Rs. 5,000/- each.

   (ii) A offered to sell his house to B for Rs. 10000/-. B replied that he can accept the house for only Rs. 8,000/-. A rejected B's counter offer to buy the house for Rs. 8,000/-. B later changed his mind and is now willing to buy the house for Rs. 10,000/-.

   (b) What are the circumstances under which an offer gets revoked or lapses?

2. (a) Do the following statements amount to involvement of fraud?

   (i) Where the vendor of a piece of land told a prospective purchaser that, in his opinion, the land can support 2000 heads of sheep whereas, in truth, the land could support only 1500 sheep.

   (ii) X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company. X had never heard of Z and the untrue statement of Z being a director was immaterial from his point of view. Can X claim damages on grounds of fraud?

   (b) Does the right of lien exist in the following cases?

   (i) A company agreed to garage the motor-car of H for three years, for an annual charge. H was entitled to take the car out of the company's garage as and when she liked. The annual payment being in arrear the company detained the car at the garage and claimed a lien.

   (ii) A, a watch-repairer, repaired B's watch for a total charge of Rs. 20. Before B took delivery of the watch, the shop caught fire through no fault of A, and B's watch was destroyed.

The Negotiable Instruments Act, 1881

3. (a) Examine the validity of the following instruments.

   (i) W drew a cheque crossed not negotiable in blank and handed it to his clerk to fill in the amount and the name of the payee. The clerk inserted a sum in excess of her authority and delivered the cheque to P in payment of a debt of her own.

   (ii) An instrument that reads: "I of my own free will and accord approached B and borrowed from him the sum of Rs. 100 bearing interest at the rate of 2 per cent per mensem. I have therefore executed these few presents by way of a promissory note so that it may serve as evidence and be of use when needed."

(iii) An instrument that reads: "I promise to pay Rs. 1,000 to B, 30 days after his marriage with C."

(b) Discuss the rules relating to the calculation of maturity of Negotiable Instruments.

4. (i) A bill of exchange purports to be drawn by A on B and is accepted by B. The bill is payable to C or order. C negotiates it to D who takes it as a holder in due course. In a suit by D on the bill, can B disclaim liability on the ground that A's signature is forged?

(ii) B obtains A's acceptance to a bill by fraud. B indorses it to C who takes it as a holder in due course. C indorses the bill to D who knows of the fraud. Can D recover from A?

(iii) A draws on B a bill payable three months after sight. It passes through several hands before X becomes its holder. On presentation by X, B refuses to pay. Discuss the rights of X on the bill.

The EPF & MP Act, 1952

5. (a) An establishment consists of different factories situated in two different states & the Union Territory of Pondicherry. Shall the different factories be treated as part of one establishment under the EPF & MP Act, 1952?

(b). A company XYZ Ltd. had mortgaged its property to a Bank. The company went into liquidation. Shall the dues to the Bank have priority over PF dues payable in respect of the employees?

6. Company ABC Ltd. and company JKF Ltd., had delayed payments of contributions under the EPF & MP Act, 1952 for periods of 3 months & 8 months respectively. Will penalty be imposed at the same rate in both the cases? Can such penalty be waived and if so, under what circumstances?

The Payment of Bonus Act, 1965

7. (a) Raj, an employee of Troy Ltd. has been suspended for insubordination. During his suspension he is paid a subsistence allowance. Would this subsistence allowance be treated as wages for payment of bonus? Explain with relevant case-laws.

(b). Will the following employees be entitled to bonus under the Payment of Bonus Act, 1965?

(i) An employee who has worked for only 20 days and had been laid off for 45 days under a standing order.

(ii) A dismissed employee reinstated with back wages.

(iii) A part time employee employed as a sweeper & engaged on a regular basis.

(iv) A retrenched employee who had worked only 45 days in an accounting year.

8. State whether the following statements are true or false and give reasons with reference to the Payment of Bonus Act, 1965.

   (a) The minimum bonus payable to an employee who has not completed 15 years of age is either 8.33% or Rs. 100, whichever is higher.

   (b) In a non-banking company, allocable surplus is equal to 66% of the available surplus.

   (c) Attendance bonus is not customary bonus and need not be adjusted against the bonus payable under the Payment of Bonus Act, 1965.

   (d) Since bonus is payable on the basis of gross profit, there is a general presumption under the Payment of Bonus Act, 1965 that the balance sheet & profit & loss A/c of a company are accurate.

The Payment of Gratuity Act, 1972

9. XYZ Ltd. was amalgamated with ABC Corporation in the year 2007. Mr. ST who had rendered continuous service from the year 1990, first in XYZ and later in the amalgamated company retired in 2008. ABC Corporation (the amalgamated Company) declined to pay gratuity claiming that Mr. ST has worked for only one year in their company. Examine their contention with reference to the Payment of Gratuity Act, 1972.

10. (a) Mr. Kumar, an employee of Costa Nostra Corporation had his services terminated for negligence leading to losses for the Company. Is he eligible for payment of any gratuity under the Payment of Gratuity Act, 1972?

   (b) State whether the following statements are true or false and give reasons therefore, with reference to the Payment of Gratuity Act, 1972.

      (i) Where an employee becomes disabled due to an accident or disease and is not in a position to do the same work and is reemployed on reduced wages on some other work, the gratuity will be calculated in two parts.

      (ii) The power to exempt any establishment from the operation of the Payment of Gratuity Act, 1972 rests with the Controlling Authority.

      (iii) Under the Payment of Gratuity Act, 1972, “retirement” means termination of the service of an employee otherwise than on superannuation.

      (iv) Where an employee dies without making a nomination, his legal heir shall apply on form “F”.

The Companies Act, 1956

11. Mr. Jain, a director in SysInfo Ltd has been empowered by the Board to make calls on shares of the company. Is this delegation of power to make calls, legal? Also advise him and the Board on the rules relating to making of calls.

12. Softmicro Ltd was allotted shares of LCH Ltd. But Softmicro Ltd claimed that it had not been issued a share certificate despite repeated requests for the same. But LCH Ltd

contended that a director of Softmicro Ltd had taken personal delivery of the certificate. How can this matter be resolved ? Discuss with reference to case laws, if any.

13. Mrs. & Mr. Premchand are joint-shareholders in XYZ Ltd. They wish to appoint their minor son Ajay as the nominee. Is such nomination, subsequent to purchase of shares, feasible? Can joint-holders appoint a single nominee? If so, can the proposed nominee be a minor? Explain with reference to the statutory provisions.

14. The secretary of X Ltd., convened a general meeting for the purpose of making a call. Only one shareholder attended the meeting. The business of the company was carried through including a call on the shareholders. D, a shareholder was sued for the call he had failed to pay. In his defence, D argued that the call had not been validly made at a general meeting. Is the meeting where only one member had attended, valid? Are all such meetings invalid? Substantiate your answer with relevant case law.

15. Beena Ltd company wants to buy back its shares. Advise the company as to the rules it has to comply with in this regard.

BUSINESS ETHICS

16. Examine the objectives and the parameters of Competition Law in India.

17. Examine the concept of stakeholders and enumerate a few examples.

18. How does a commitment to Corporate Social Responsibilities become an imperative for Corporations? Give any five reasons.

19. State whether the following statements are true or false and give reasons.

    (a) The concept of sustainable development was first elaborately dealt with by Brundtland Report.

    (b) The Indian Competition Act, 2002 is confined to control of abuse of dominant position.

    (c) One of Gandhiji's seven social sins is commerce without character.

    (d) The Cadbury Report was a seminal development in the field of corporate governance.

    (e) An employer is not responsible for any sexual harassment that may be perpetrated by one employee on another.

20. Discuss ways to create an ethical environment.

BUSINESS COMMUNICATION

Oral Communication

21. Elaborate merits and limitations of oral communication.

Emotional Intelligence

22. Discuss the competencies that are associated with emotional intelligence.

Types of Groups in Organization

23. Describe types of groups in organization.

Negotiation, Resistance to change and Legal Deeds

24. Write short notes on:
    (a) Negotiation
    (b) Resistance to change
    (c) Gift deed

Notice of Annual General Meeting

25. Draft a 'Power of Attorney' by subscribers of Memorandum of Association of the Company authorizing a Chartered Accountant to appear before the Registrar of Companies for the purpose of incorporation of the company.

SUGGESTED ANSWERS/HINTS

1. (a) To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems:

    (i) It is not a valid acceptance and no contract can come into being. In fact this problem is similar to the facts of Neale vs. Merret [1930] W.N 189, where M offered to sell his land to N for £ 280. N replied purporting to accept the offer but enclosed a cheque for £ 80 only. He promised to pay the balance of £ 200 by monthly installments of £ 50. It was held that N could not enforce his acceptance because it was not an unqualified one.

    (ii) This problem is similar to the facts of Union of India v. Bahulal (AIR 1968

Bombay 294) case, wherein A offered to sell his house to B for Rs. 1000/ -, to which B replied that, "I can pay Rs.800 for it". Consequently, the offer of 'A' is rejected by 'B' as the aceptance is not unqualified. But when B later changes his mind and is prepared to pay Rs. 1000/-, it becomes a counter offer and it is up to A whether to accept it or not.

(b) An offer may come to an end by revocation or lapse, or rejection.

Revocation or lapse of offer. Section 6 deals with various modes of revocation of offer. According to it, an offer is revoked-

(i) By communication of notice of revocation by the offeror at any time before its acceptance is complete as against him [Section 6(1)].

(ii) By lapse of time if it is not accepted within the prescribed time. If however, no time is prescribed, it lapses by the expiry of a reasonable time [Section 6(2)].

(iii) By non-fulfillment by the offeree of a condition precedent to acceptance [Section6 (3)1].

(iv) By death or insanity of the offeror provided the offeree comes to know of it before acceptance [Section 6(4)]. If he accepts an offer in ignorance of the death or insanity of the offeror, the acceptance is valid.

In addition to the above cases dealt with in Section 6, an offer is also revoked:

(v) If a counter-offer is made to it [U.P State Electricity Board v. Goel Electric Stores., A.I.R (1977) All. 494, 497]. Where an offer is accepted with some modification in the terms of the offer or with some other condition not forming part of the offer, such qualified acceptance amounts to a counter-offer. An offeree agreed to accept half the quantity of goods offered by the offeror on the same terms and conditions as would have applied to the full contract. Held, there was no contract as there was counter-offer to the offer [Tinn v. Hoffman, (1873) 29 L.T. 71].

(vi) If an offer is not accepted according to the prescribed or usual m ode, provided the offeror gives notice to the offeree within a reasonable time that the acceptance is not according to the prescribed or usual mode. If the offeror keeps quiet, he is deemed to have accepted the acceptance [Section7 (2)].

(vii) If the law is changed. An offer comes to an end if the law is changed so as to make the contract contemplated by the offer illegal or incapable of performance. An offer can however be revoked subject to the following rules:

(1) It can be revoked at any time before its acceptance is complete as against the offeror.

(2) Revocation takes effect only when it is communicated to the offeree.

(3) If the offeror has agreed to keep his offer open for a certain period, he can revoke it before the expiry of that period only-

(a) If the offer has in the meantime not been accepted, or

(b) If there is no consideration for keeping the offer open.

2. (a) (i) The problem is based on the facts of the case Bisset vs Wilkinson (1927). In the given problem the vendor says that in his opinion the land could support 2000 heads of sheep. This statement is only an opinion and not a representation and hence cannot amount to fraud.

(ii) The problem is based on the facts of the case Smith vs Chadwick (1884). In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.

(b) (i) In the given problem H was entitled to take the car away as and when she pleased. The possession by the garage was not continuous, and nor can we say that the possession at all vested in the company. Hence no right of lien exists [It was so held in a similar case of Hatton vs Car Maintenance Ltd (1915)].

(ii) In the given case, the issue relates not to existence of lien but a rule relating to particular lien. As a rule, if through no fault of the bailee, the goods are destroyed or stolen then the bailee is entitled to be paid for services performed on the goods before they were destroyed or stolen. In the given instance 'A' is entitled to get his repair charges for the work he performed prior to fire.

3. (a) (i) The given problem is based on the facts of Wilson & Meeson vs. Pickering case. In that case, it was held that the clerk had no title to the cheque and as such P had no better title and therefore W was not liable.

(ii) The given problem is based on Bal Mukand Vs Lal Ramji Lal case. The position of law is that the instant instrument is not a promissory note as it does not contain an express undertaking to pay the amount mentioned in it.

(iii) This is not a promissory note as it is probable that B may marry somebody other than C or may not marry at all.

(b) Calculation of maturity: Where a bill is payable at a fixed period after sight, the time is to be calculated from the date of acceptance if the bill is accepted and from the date of noting or protest if the bill is noted or protested for non-acceptance.

In the case of a note, the expression after sight means after exhibition thereof to the maker for the purpose of founding a claim for payment.

In the case of a bill payable after a stipulated number of months after sight which has been accepted for honour the date of its maturity is calculated from the date of acceptance for honour.

In calculating the date at which a note or bill made payable a certain number of days after date or after sight or after a certain event is at maturity on the day or the date or the day of presentment for acceptance or sight or the day of protest for non-acceptance or the day on which the event happens shall be excluded (Section 24). When a note or bill is made payable a stated number of months after date, the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance. When it is payable a stated number of months after a certain event the period terminates on the day of the month which corresponds with the day on which the event happens (Section 23).

If the month in which the period would terminate has no corresponding day the period terminates on the last day of such month (Section 23). Three days of grace are allowed to these instruments after the day on which they are expressed to be payable (Section 22).

When the last day of grace falls on a day which is public holiday the instrument is due and payable on the preceding business day (Section 25).

4. (i) Section 120 of the Negotiable Instruments Act,1882 states that no maker of a promissory note, and no drawer of a bill of exchange or cheque and no acceptor of a bill of exchange for the honour of the drawer, is in a suit thereon by a holder in due course permitted to deny the validity of the instrument as originally made or drawn. Therefore in the given problem B being an acceptor of the bill for the honour of the drawn cannot deny the validity of the bill and is therefore liable to D.

(ii) Yes D can recover the amount from A as he derived his title from C who is a holder in due course. Moreover D is not a party to the fraud. Once the title has been cleansed of the defect notwithstanding notice of the fraud D gets a good title. It was also so held in Guildford Trust Vs Gloss.

(iii) X is entitled to recover money on the bill from all the prior parties. A the drawer of the bill and B the acceptor of the bill are liable to X as principal debtors whereas the intervening indorsers are liable as sureties.

5. (a) Section 2(A) of the EPF &MP Act, 1952 provides that "where an establishment consists of different departments or has branches whether situate in the same place or in different places, all such departments or branches shall be treated as parts of the same establishment".

An establishment which consists of different departments or has branches in different places shall be treated as part of the same establishment even if the factories are situated in different states or Union Territory was the judgment in Eddy Current Controls (India) Ltd. V.RPFC (1993) 83 FJR 161=1993(2) KLT 573 and this is applicable in the given problem also. Therefore, the different departments spread over two States and a Union Territory comprise a single entity under the EPF & MP Act.

(b) If the employer is adjudged insolvent or in the case of company, an order of winding up is made, the amount due towards PF dues, insurance fund administration charges etc., will be deemed to be included among the debts which under Section 49 of Presidency Towns Insolvency Act or Section 61 of Provincial Insolvency Act or Section 530 of Companies Act are to be paid in priority to all other debts in the distribution of property of insolvent or assets of the company being wound up. [Section 11(1)]. The amount due from employer in respect of PF contribution deducted from salary of employees and also employer's contribution toward PF will be first charged over assets of the establishment and will be paid in priority to all debts. (Section 11(2).

In Union Bank of India v. Assistant PF Commissioner 2005 LLR 1018 (Kar HC), it was held that PF dues have priority over dues to Banks even if property has been mortgaged to Bank. Therefore in the given problem also, the PF dues shall priority over any dues to the Bank.

6. Under Para 32A of the EPF Scheme, rate of damages for delays in payment are – (a) Delay of less than two months: 17% p.a. (b) Two months and above but less than four months: 22% p.a. (c) Four months and above but less than six months: 27% p.a . (d) six months and above: 37% p.a.

Therefore ABC Ltd must pay damages at the rate of 22% p.a. for its delay of three months and JKF Ltd must pay at the rate of 37% p.a.for its delay of 8 months.

The damages can be also reduced by the Central Board in the following manner (a) Full waiver may be granted in case of merger/ amalgamation of sick company or change in management to Worker's Cooperative (b) Full waiver if BIFR recommends in a rehabilitation scheme (c) In other cases depending on merit reduction upto 5% may be allowed. (Para 32B of EPF Scheme).

The damages can be reduced or waived by Central Board in case of sick company for which a scheme for rehabilitation has been sanctioned by the BIFR.

7. (a) Subsistence allowance paid when employee is under suspension would not amount to "wages' within meaning of 2(21) of the Act, as it is not paid for work done. It was so held in Motor Industries Co v. Popat Murlidhar 1997 ILLN 749 = 1997 (2) LLJ 1206 (Bom HC). Contrary view was expressed in Project Manager Oil and Natural

Gas Commission V. Sham Kumar 1995 LLR 619 (Guj HC) where it was held that suspended employee will be entitled to bonus on suspension allowance. But since the former judgment is later in date, we may safely conclude that subsistence allowance does not amount to wages and therefore Mr. Raj would not be paid bonus

(b) (i) Under Section 2(13) read with Section 8 every employee who has worked for 30 days in an accounting year on a salary of less than Rs. 10,000/- per month is eligible for bonus and under Section 14 the days when an employee who has been laid off under a standing order shall be treated as working days. Therefore the employee in the given problem is entitled to get bonus.

(ii) As per the decision in Gannon India Ltd Vs Niranjan Das (1984) a dismissed employee reinstated with back wages is entitled to bonus.

(iii) A part time employee employed as a sweeper and engaged on a regular basis is entitled to bonus as per the decision in Automobile Karmchari Sangh vs. Industrial Tribunal (1970) 38 FJR 268.

(iv) A retrenched employee is eligible to get bonus provided he has worked for the minimum qualifying period as per the decision in East Asiatic Co. (P) Ltd. vs Industrial Tribunal (1961) 1 LLJ 720.

8. (a) False:- The minimum bonus payable to an employee who has not completed 15 years of age is either 8.33% or Rs. 60/-.

(b) True:- Allocable surplus is 67% of available surplus.

(c) True:- As per the decision in Baidyanath Ayurveda Bhavan Mazdoor Sangh Vs. Management (1984) attendance bonus is not a customary bonus.

(d) True:- There is such a presumption in law and evidence need not be adduced unless the documents are disputed.

9. The payability of gratuity to the employee is his right as well as the obligation of the employer. Even on the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees; it was so held in the case of Pattathurila K. Damodaran Vs M. Kassim Kanju (1993) ILLJ (1211 (Ker).

Hence, Mr. ST is eligible to receive gratuity from ABC Corporation.

10. (a) According to Section 4(6) of the Payment of Gratuity Act, 1972, “If the services of an employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of property belonging to the employer the gratuity shall be forfeited to the extent of the damage or loss so caused”.

Therefore, the amount of loss Mr. Kumar caused to his employer will be deducted from his gratuity.

(b) (i) **True**: The reason being Section 4(4)) of the Payment of Gratuity Act, 1972 which stipulates when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and is re-employed on reduced wages on some other job, the gratuity will be calculated in two parts-

For the period preceding the disablement : On the basis of wages last drawn by the employee at the time of his disablement.

For the period subsequent to the disablement – On the basis of the reduced wages as drawn by him at the time of the termination of services.

(ii) **False**: because the power to exempt rests with the the Appropriate Government.

(iii) **True**: because retirement means termination of the service of an employee otherwise than on Superannuation, according to Section 2 (q) of the Payment of Gratuity Act, 1972.

(iv) **False**: because, if an employee dies without making a nomination his legal heir, who is eligible for the payment of gratuity shall apply ordinarily within one year from the date of gratuity became payable to him on form 'K' to the employer.

11. The Board of Directors alone is empowered to make a call. The power cannot be delegated to a director or to a committee of directors or to any other officer of the company (Section 292). A call on the shares falling under the same class must be made on a uniform basis. Shares of the same nominal value, on which different amounts have been paid up, are not deemed to fall under the 'same class' (Section 91). The Board's resolution on making the call must specify the amount of call per share and the time allowed for its payment. The calls are made and are payable according to the conditions prescribed by the articles of the company. A call must not exceed 1/4th of the nominal value of the shares or be payable at less than one month from the date fixed for the payment of the last preceding call.

Rules relating to payment of calls in advance:

But before we conclude our discussion on calls we have also to know how payment in advance of calls is treated by a company. A company may, if so authorised by the articles, accept from any member the whole or a part of the amount remaining unpaid of any shares by him although no part of that amount has been called up [Section 92(1)]. The amount so received or accepted is described as payment in advance of calls. When a company receives payment in advance of calls, the consequences will be as follows:

(i) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable [Section 92(2)].

(ii) The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.

(iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.

(iv) The amount received in advance of calls is not refundable.

(v) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.

(vi) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company (Syke's case (1872) L.R. 13 Eq. 255).

12. In Cardiff Chemicals Ltd. Vs. Fortune Bio-Tech Ltd. and another [2004] 414 CLB., the petitioner company was allotted some shares against application and the respondent company had failed to deliver the share certificates in spite of repeated demands. Hence, the petitioner company filed petition under section 113 of the Companies Act, 1956 before the Company Law Board seeking directions against the respondent company for delivery of share certificates. The respondent company challenged the petition on the ground that the director of the petitioner took physical delivery of share certificates from the company. However, the respondent company failed to produce conclusive proof that it had delivered the share certificates to the petitioner. It was held that, the burden of proving delivery of the share certificates is on the respondent; and on failure of proving it, then the company is not discharged of its obligations imposed under section 113(1). Hence, the Company Law Board upheld the default of company in delivering the share certificates and further directed the company to deliver share certificates to the petitioner.

    Hence in the given problem, if LCH Ltd is unable to prove that a director of Softmicro Ltd had taken personal delivery of the share certificate, it must issue a fresh share certificate.

13. A new Section (109A) has been inserted by the Companies (Amendment) Act, 1999. Sub-section (1) of Section 109A provides that every holder of shares in, or holder of debentures of, a company may, at any time nominate, in the prescribed manner, a person to whom his shares in, or debentures of, the company shall vest in the event of his death.

    Where the shares in, or debentures of, a company are held by more than one person jointly, the joint-holders may together nominate, in the prescribed manner, a person to whom all the rights in the shares or debentures of the company shall vest in the event of death of all the joint holders (Sub-section 2).

Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such shares in, or debentures of, the company, where a nomination made in the prescribed manner purports to confer on any person the right to vest the shares in, or debentures of, the company, the nominee shall, on the death of the shareholder or holder of debentures of, the company or, as the case may be, on the death of the joint holders become entitled to all the rights in the shares or debentures of the company or, as the case may be, all the joint holders, in relation to such shares in, or debentures of the company to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner (Sub-section 3).

Where the nominee is a minor, it shall be lawful for the holder of the shares, or holder of debentures, to make the nomination to appoint in the prescribed manner any person to become entitled to shares in or debentures of, the company, in the event of his death, during the minority. (Sub-section 4).

Therefore, in the given problem, Mrs. & Mr. Premchand can nominate their minor son Ajay at any time and even if they are joint shareholders.

14. The problem is based on the facts of Sharp v. Dawes, (1876) 2 Q.B.D. 26. In that case a general meeting of a company was called for the purpose of making a call. Only one shareholder attended the meeting. The business of the company was carried through including a call on the shareholders. D was sued for the call he had failed to pay. In his defence, D argued that the call had not been validly made at a general meeting. The Court held that one person could not constitute a meeting, in the given circumstances.

Exceptions: In the following cases, one person may constitute a meeting:

1. Where there is a class meeting of shareholders and all the shares of that class (e.g., preference shares) are held by one person, he alone can constitute a meeting of the class and can pass a class resolution by signing it.

2. Where the Tribunal calls or directs the calling of an annual general meeting under Sec.167, it has the power to direct that one member present in person or by proxy shall be deemed to constitute a meeting.

3. Where the Tribunal orders a meeting of a company (other than the annual general meeting) under Sec.186 to be held, it may direct that even one member of the company present in person or by proxy shall be deemed to constitute a meeting.

4. Where the Board of directors delegates, subject to the provisions of the Act, any of the powers to a committee, the committee may consist of any one person (Article 77, Table A). In such a case, the only member of the committee shall constitute the quorum.

5. Where a quorum is not present at a general meeting within half an hour of the meeting, the meeting shall stand adjourned to the same day in the next week at the same time and place. If at the adjourned meeting also a quorum is not present within half an hour of the time of the meeting, the members present are the quorum. In such a case even one member may constitute the meeting (Sec.174).

15. Sections 77-A and 77-AA permit a company to purchase its own shares or other specified securities (referred to as buy-back subject to certain conditions).

Section 77- B prohibits buy-back in certain circumstances.

Power of company to purchase its own shares (Sec.77-A)

Buy-back

Notwithstanding anything contained in the Companies Act, 1956, a company may purchase its own shares or other specified securities (hereinafter referred to as buy-back). This is, however, subject to provisions as contained in Sec.77-A (2) and Sec.77-B.

Thus a company may purchase its own shares or other specified securities from –

(i) out of its a free reserves; or

(ii) out of the securities premium account ; or

(iii) out of the proceeds of an earlier issue other than fresh issue of shares made specifically for buy-back purposes (Sec.77-A(1)).

Conditions for buy-back

No company shall purchase its own shares or other specified securities as referred to above unless–

(a) the buy-back is authorised by its Articles;

(b) a special resolution has been passed in general meeting of the company authorising the buy-back;

However, the said special resolution shall not be required to be passed if the following conditions are satisfied:

(a) the bay-back is for less than 10 per cent of the total paid-up equity capital and the free reserves of the company, and

(b) such buy-back has been authorised by the Board of Directors by means of a resolution passed at its meeting;

Provided no company can come out with a fresh proposal to buy back its shares if within a period of 365 days from the date of preceding offer of buy back.

(c) the buy-back is off less than 25 per cent of the total paid-up capital and free reserves of the company purchasing its own shares or other specified securities;

(d) the ratio of the debt owed by the company is not more than twice the capital and its free reserves after such buy-back;

(e) all the shares or other specified securities are fully paid-up;

(f) the buy-back of shares or other specified securities listed on a stock exchange is in accordance with the regulations made by the Securities Exchange Board of India (SEBI) in this behalf;

(g) the buy-back in respect of unlisted shares or other specified securities is in accordance with the guidelines as may be prescribed (Sec.77-A(2)).

Notice of the meeting

The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating –

(a) a full and complete disclosure of all material facts;

(b) the necessity for the buy-back;

(c) the class of security intended to be purchased under the buy-back;

(d) the amount to be invested under the buy-back; and

(e) the time limit for completion of buy-back (Sec.77-A(3)).

Period for completion of buy-back

Every buy-back shall be completed within 12 months from the date of passing the special resolution (Sec.77-A (4)).

Modes of buy-back

The buy-back referred to above may be –

(a) from the existing security holders on a proportionate basis; or

(b) from the open market; or

(c) from odd lots, that is to say, where the lot of securi ties in a listed public company is smaller than such market lot as may be specified by the stock exchange; or

(d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity (Sec.77-A(5)).

Filing of declaration of solvency:

Where a company has passed a special resolution to buy-back its own shares or other securities, it shall, before making such purchases, file with the Registrar of Companies and Securities and Exchange Board of India a declaration of solvency in the form prescribed. The declaration shall be verified by an affidavit to the effect that the Board of directors has made a full inquiry into the affairs of the company as a result of which it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration adopted by the Board. The declaration shall be signed by at least two directors of the company, one of whom shall be the managing director, if any.

The declaration of solvency is not required to be filed by an unlisted company (Sec. 77-A(6)).

Extinguishment and physical destruction of securities

Where a company buys back its own securities, it shall extinguish and physically destroy the securities so bought within 7 days of the last date of completion of the buy-back (Sec.77-A(7)).

Restriction on further issue of securities within 6 months

Where a company completes a buy-back of its securities, it shall not make further issue of securities within a period of 6 months. It may however issue bonus shares. It may also discharge its subsisting obligations such as conversion of preference shares or debentures into equity shares (Sec.77-A(8)).

Maintenance of register and filing of return

Where a company buys back its securities, it shall maintain a register of the securities so bought, the consideration paid for the securities bought back, the date of cancellation of securities, the date of extinguishing and physical destruction of securities and such other particulars as may be prescribed (Sec.77-A(9)).

A company shall, after the completion of the buy-back, file with the Registrar of Companies and the Securities and Exchange Board of India, a return containing such particulars relating to the buy-back within 30 days of such completion, as may be prescribed (Sec.77-A(10).

Transfer of certain sum (Sec.77-A). Where a company purchases its own shares out of free reserves, a sum equal to the nominal value of share so purchased shall be transferred to capital redemption reserve account and details of such transfer shall be disclosed in the balance sheet.

Prohibition for buy-back in certain circumstances (Sec.77-B)

No company shall purchase its own shares or other specified securities –

(a) through any subsidiary company including its own subsidiary companies, or

(b) through any investment company or group of investment companies; or

(c) if a default, in repayment of deposit or interest thereon, redemption of debentures or preference shares or repayment of a term loan or interest there on to any financial institutions or bank, is subsisting.

16. The Competition Act, 2002 intends to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto. The renewed efforts of the Government in implementing a Competition Act, 2002 is a laudable step in the right direction and a new beginning in the frontiers of India's Competition Policy towards harmonizing international trade and policy.

Parameters of Competition Law

- *Prohibition of certain agreements, which are considered to be anti-competitive in nature.* Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or likely to cause an appreciable adverse effect on competition within India.
- *Abuse of dominant position* by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practic es resulting in denial of market excess or through in any other mode are prohibited.
- *Regulation of combinations* which cause or likely to cause an appreciable adverse affect on competition within the relevant market in India is also considered to be void.

17. Stakeholders: The traditional governance model positions management as accountable solely to investors (shareholders). But a growing number of corporations accept that constituents other than shareholders are affected by corporate activity, and that the corporation must therefore be answerable to them. Coined only in the late part of the 20th century, this word "stakeholders" describes such constituents of an organisation - the individuals, groups or other organizations which are affected by, or can affect the organisation in pursuit of its goals. A typical list of stakeholders of a company would be

- Employees
- Trade Unions
- Customers
- Shareholders and investors
- Suppliers
- Local communities
- Government
- Competitors.

18. 1. The Iron Law of Responsibility

The institution of business exists only because it performs invaluable services for society. Society gives business its charter to exist and that charter can be amended or revoked at any time if it fails to live up to society's expectations. Therefore, if a business intends to retain its existing social role and social power, it must respond to society's needs constructively. This is called the Iron Law of Responsibility. In the long-run those who do not use power in a manner that society considers responsible, will tend to lose it. And CSR policies help corporations to continue to fulfill the expectations the wider society places on them.

2. To Fulfill Long term Self-interest

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. As a result of this,

- ♦ crime would decrease and less money required to protect property.
- ♦ Labour recruitment would be easier.
- ♦ Turnover and absenteeism would also be substantially reduced.

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

3. To Establish a Better Public Image

Each business organisation must enhance its public image to secure more customers, better employees and higher profit.. According to this line of argument, social goals are now a top priority with members of the public. So, if the firm wants to capture a favourable public image, it will have to show that it also supports these social goals.

4. To Avoid Government Regulation or Control

Regulation and control are costly to business, both in terms of energy and money and restrict its flexibility of decision-making, as failure of businessmen to assume social responsibilities invites government to intervene and regulate or control their activities.. Businessmen have learnt that once a government control is established, it is seldom removed even though the warranting conditions change. If these are the facts, then the prudent course for business is to understand the limit of its power and to use that power responsibly, giving government no opportunity to intervene. By their own socially responsible behaviour, they can prevent government intervention

5. To Avoid Misuse of National Resources and Economic Power

Businessmen command considerable power over the productive resources of a community. They are obliged to use those resources for the common good of society. They should not forget that the power to command national resources has been delegated to them by the society to generate more wealth for its betterment. They must honour social obligations while exercising the delegated economic power. Otherwise, society will not indefinitely tolerate their misdeeds in wasting away these resources.

19. (a) True: The report of the Brundtland Commission of 1987 title 'Our Common Future' was one of the earliest documents to highlight and bring into international focus the concept of sustainable development.

(b) False: The Indian Competition Act, 2002 in addition to control of abuse of dominant position, deals with regulation of combinations, prohibition of monopolistic agreements and advocacy of fair competition.

(c) False: Two of Gandhiji's social sins are "commerce without morality' and 'knowledge without character'.

(d) True : The Adrian Cadbury Report of 1992 was a pioneering study of corporate governance issues and many other international studies were modeled on this.

(e) False: An employer is invariably held responsible for any sexual harassment that may go on in the workplace. The Supreme Court of India in the Vishaka vs. State of Rajasthan (1997) Case had placed entire onus on the employer to prevent sexual harassment in the workplace and part culpability on the employer in case of occurrences of sexual harassment offences.

20. Creating an Ethical Environment

The following three points need to be addressed for creating a sound ethical environment in any company. They are:

1. *Ensuring that employees are aware of their legal and ethical responsibilities.*

Ethical organisations would have policies to train and motivate employees toward ethical behaviour. This would require initiation from the top. A number of companies, both in the West and in India have been known for their quality and soundness of their Ethics programmes. Companies like Raytheon make ethics training compulsory for everyone. Similarly Texas Instruments has a well drafted Ethics programme from as long as 1961. In India Wipro was amongst the pioneers to establish an organised set of beliefs which would guide business conduct. This was done as early as 1970s. In the process the company has established an Integrity manual which helps employees take ethical decisions when faced with choices.

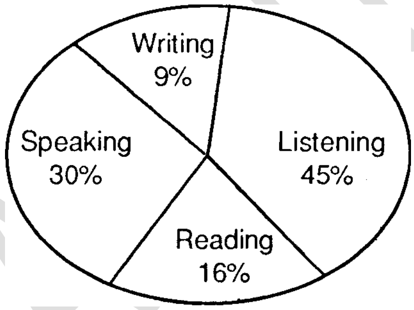
2. *Providing a communication system between the management and the employees so that any one in the company can report about fraud and mismanagement without the fear of being reprimanded.*

Ethical organisations need to provide facilities for employees through which they could communicate with responsible higher-ups for reporting frauds, mismanagement or any other form of non routine detrimental behaviour. In India Wipro has introduced a helpline comprising of senior members of the company who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.

3. *Ensuring fair treatment to those who act as whistle blowers.*

   This is perhaps the most important and sensitive issue. When Sherron Watkins had raised questions at Enron, she was demoted. Similar fate would have met all those who had followed Sherron. Fair treatment to whistle blowers is a basic necessity to check fraud. It is reassuring that two of the three "persons of the year", selected by the popular Time magazine in that year were accountants from Enron and World Com who had dared to blow the whistle. However, needless to say, that the appreciation is much more needed from within the company rather than outside.

21. **Oral Communication:** According to a research, an average manager in general spends only 9% of his/her time in writing, 16% in reading, 30% in speaking and 45% in listening, as shown in the following figure



Oral communication is characterized by seven Cs – Candidness, Clarity, Completeness, Conciseness, Concreteness, Correctness, and Courtesy. These act as principles for choosing the form (style) and content (matter) of oral communication. Oral communication should provide a platform for fair and candid exchange of ideas.

Oral communication, which is face-to-face communication with others, has its own benefits. When people communicate orally, they are able to interact; they can ask questions and even test their understanding of the message. In addition, people can also relate and comprehend the non-verbal, which serves far more than words. By observing facial expressions, eye contact, tone of voice, gestures, postures, etc., one can understand the message better.

The only shortcoming of oral communication is that more often than not it is spontaneous and if one communicates incorrectly, the message will not get understood. It is primarily due to this reason, one need to develop effective oral communication skills as a message; if not understood at appropriate time, can lead to disaster.

22. Competencies Associated with Emotional Intelligence:

I – Personal Competence – 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

II – Social Competence – How You Manage Relationships

Social Awareness

- Empathy: Sensing other's emotions, understanding their perspective and taking active interest in their concerns
- Organizational awareness: Reading the currents, decision networks, and politics at the organizational level
- Service: Recognizing and meeting follower, client, or customer needs

23. Types of Groups in Organization:

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 govt. organization to tackle specific administrative problems.

24. **Short Notes On:**

(a) **Negotiation:** Negotiation occurs when two or more parties-either individuals or groups discuss specific proposals in order to find a mutually acceptable agreement. Whether it is with an employer, family member or business associate, we all negotiate for things each day like higher salary, better service or solving a dispute with a co worker or family member. Negotiation is a common way of settling conflicts in business. When handled skillfully, negotiation can improve the position of one or even both but when poorly handled; it can leave a problem still unsolved and perhaps worse than before.

(b) **Resistance to change:** No matter whether a change is of major proportions or is objectively rather small, the change manager must anticipate that people in the organization are going to find reasons to resist changes. It is a basic tenet of human behaviour that any belief or value that has been previously successful in meeting needs will resist change.

(c) **Gift deed:** The law relating to gifts is provided for in the Transfer OF Property Act, 1882 and Indian Succession Act, 1925. Gift is defined as the transfer of certain movable or immovable property made voluntarily and without consideration by one person called the donor to another called the donee and accepted by or on behalf of the donee. A gift to be valid must be accepted by the donee during the life time of the donor. Registration of a gift often immovable property is must and that of movable property is optional.

25. **Power of Attorney Before Registrar of Companies**

We the subscribers to the Memorandum and Articles of Association of the proposed Company, hereby authorize to present the Memorandum of Articles of Association and other connected documents for the registration of the said company before the Registrar of Companies, Karnataka, Bangalore and to make such corrections / alternations / deletions / additions as may be required to be done by the Registrar in the documents and also to receive the certificate of incorporation.

General Power of Attorney

Know we all men by their presents that we————— do hereby appoint and constitute———— son of————— (hereinafter called “”Chartered Accountant” who has subscribed his signature hereunder in token of identification) presently residing at ——— ——————————————— to be my lawful Chartered Accountant in our name and on our behalf to do it any one or all of the following acts, deeds and things, namely:

1. to give all the particulars necessary for incorporation of company.
2. to give affidavit to the Registrar of Company for the purpose of incorporation.
3. to do needful acts necessary for the incorporation of the company.
4. to authorize include promissory notes, letter of declaration and indemnity for the purpose of incorporation.
5. to receive documents on behalf of one of the members of the company.
6. to sign forms, documents and papers required for the purpose of incorporation of the company.

Dated……….at this day……….of

(Address)

Specimen Signature of the Chartered Accountant above named

Notary Public.

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

QUESTIONS

A. BUSINESS LAWS

The Indian Contract Act, 1872

1. (a) State the legal positions in the following statements:

(i) X finds a golden chain in Y's shop which he handed over to Y to keep in its custody till owner is founded. Y puts all his efforts to trace the true owner but he failed. After sometime, X offered the lawful charges incurred by Y for finding the true owner and asked him to return the chain to him. Y denied.

(ii) A, a famous novelist contracted with B to write a novel in two parts for Rs.50,000 payable on completion of the whole work. After completion of Part I,B abandoned the publication.

(iii) Mr. P, a Hindu Brahmin contracts to marry R, a Muslim. If P is already a married to S who lives with P.

(iv) XYZ & Co. a regular and reputed customer of PQR & Co., placed an order by imitating the Signature of XYZ& Co. The goods were however sold to A, an innocent buyer. A suit was filed by PQR& Co. against A for the recovery of goods.

(b) (i) A engages B as clerk to collect money for him. B fails to account for some of his receipts, and A in consequence calls upon him to furnish security for his duly accounting. C gives his guarantee for B's duly accounting. A does not acquaint C with B's previous conduct. What would be your answer if B afterwards makes default in collection?

(ii) X took a car on hire from Y and gave it to his friend Z for use describing it as his own. Y filed the case against Z for wrongful possession of his car. Decide under this circumstances the right /liability of Z .

(iii) A, who owes B Rs. 10,000, appoints B as his agent to sell his landed property at Delhi and after paying himself (B),out of the proceeds, what is due to him, to hand over the balance to A. Can A revoke his authority delegated to B?

(c) State whether the following contract can be enforced.

(i) Where an orphanage wishes to enforce a promise made by a philanthropist to donate a specified sum.

(ii) Where there is a family settlement in writing and a family member who is not a party to the settlement wishes to enforce his claim.

(iii) A student was induced by his teacher to sell his brand new car to the later at less than the purchase price to secure more marks in the examination.

(iv) X bought shares in a company on the faith of a prospectus which contained an untrue statement that one Z was a director of the company, though X had never heard of Z.

The Negotiable Instruments Act, 1881

2. (a) A is the holder of a bill of exchange made payable to the order of B, which contains the following endorsements in blank-

First endorsement, “B”.

Second endorsement, “C”.

Third endorsement, “D.”.

Fourth Endorsement , “E”.

This bill A puts in suit against E and strikes out, without E’s consent, the endorsements by C and D.

State the legal position in the following statement .

(b) Mark the correct answer:

(i) Which of the following Documents is not a negotiable instrument:

(a) Share Certificates

(b) Bill of Lading

(c) Postal Orders

(d) All of these

(ii) A instrument made only to provide financial help to some person is called as:

(a) Bill of Exchange

(b) Accommodation Bill

(c) Bill of Receipt

(d) Bill of Lading

(iii) An incomplete instrument is termed as:

(a) Escrow

(b) Ambiguous

(c) Endorsement

(d) Inchoate

(c) X, by means of fraud, obtained from Y a cheque crossed ‘not negotiable’ and got it cashed at a bank other than the drawee bank. Y sued the bank for conversion. Is the bank liable for conversion?

3. (a) X draws 10 cheques of Rs. 100 each, but when the cheque ought to be presented, has only Rs. 600 at the bank and subsequently the bank fails before the cheques

are presented. Discuss the legal position in the given circumstances in the light of the Negotiable Instruments Act,1881.

(b) Differentiate the following under the Negotiable Instruments Act,1881:

(i) 'Bearer instrument' and 'Other instrument'

(ii) 'Discharge of instrument' and 'Discharge of party'

(iii) 'Noting' and 'Protest'

(iv) Protection available to a banker in respect of a cheque being 'crossed' and 'uncrossed'

(c) X, an owner of company borrowed a loan from Y on behalf of the company. X is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the compliant was lodged against him. Does X liable for an offence under section 138?

The Payment of Bonus Act,1965

4. (a) Explain with reference to the provisions of the Payment of Bonus Act,1965 the possibility of a non banking company relying on its Balance Sheet and Profit and Loss Account in the case of a dispute with its employees relating to bonus payable under the Act and the limitations, if any, in this regard.

(b) The management of Lakhani footwears Ltd. entered into an agreement with their employees to pay them bonus on productivity in lieu of Bonus based on profits, from the accounting year 2009. The employees further agreed to give up their right to receive minimum bonus and instead accept 21% of their salary/wage as bonus based on productivity. Discuss the validity of the above statement in the light of the Payment of Bonus Act, 1965.

(c) A company employed certain employees out of which 20 were full–time and 5 were part-time employees drawing salary of less than Rs.10,000 per month. After completing service of 25 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The Board of directors of this company decided not to give the bonus to the employees, who resigned and also to the remaining full-time and part-time employees. Decide, the legal position stating the provisions of the Payment of Bonus Act, 1965.

5. (I) Pick the correct answer.

(a) The limit of salary of a worker entitled to get bonus is

(i) 3,500/-

(ii) 2,500/-

(iii) 6,500/-

(iv) 10,000/-

(b) An employee dismissed from service shall be disqualified from receiving bonus on the account of-

(i) Riotous or violent behavior on the premises of the establishment

(ii) Theft

(iii) Misappropriation

(iv) All of these

(c) Who shall be authorized to recover the bonus due to an employee from an employer-

(i) Employee himself

(ii) Appropriate Government

(iii) Collector

(iv) Any other person authorized by an employee.

(II) State whether the statement is correct or incorrect:

(i) A season workers who have worked for not less than 30 working days are entitled to bonus.

(ii) The minimum bonus which employer is bound to pay to every employee in respect of the accounting year is 8.33%of the salary.

The Employees' Provident Funds and Miscellaneous Provisions Act,1952

6. (I) Pick the correct answer:

(a) The rate of Interest to be given to the employees on the provident fund amount is

(i) 8.5%

(ii) 10%

(iii) 12%

(iv) 9.5%

(b) The ceiling on the insurance amount paid to the dependant under the Employees' Deposit Linked Insurance (Amendment)Scheme, 2010 is

(i) 10 lakhs

(ii) 1 lakh

(iii) 3.5 lakhs

(iv) 2.5 lakhs

(II) State whether the statement is true and false:

(a) The Act applies on an establishment where the strength of the employees at a particular time falls below twenty.

(b) Special Allowance paid to the employees will not be considered as the part of the Basic Allowance.

(c) "An employer generally has to deposit 50% of the money due from him so as to go on appeal "

7. (a) X, an employee in ABC Ltd (covered by the EPF & and MP Act, 1952) died in an accident. State to whom the amount standing in his account to be payable under the provisions of the Act.

(b) Write short Notes:

(i) Basic Wages under EPF Miscellaneous provisions Act,1952

(ii) Employee Deposit Linked Insurance(Amendment)Scheme,2010

(iii) Employees' Provident Fund Scheme

(c) Analyse the appellate jurisdiction and the procedures relating thereto under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The Payment of Gratuity Act,1972

8. (a) Give the Definitions of the following as per the Payment of Gratuity Act,1972

(i) Employee

(ii) Wages

(b) State whether the following statements are true or false and give reasons therefor with reference to the Payment of Gratuity Act, 1972.

(i) The Payment of Gratuity Act, 1972 is largely based on Kerala Industrial Employees Payment of Gratuity Act, 1972.

(ii) A retrenched employee is also eligible for gratuity.

(iii) Where an employee's resignation has not been accepted, then that employee is not eligible to claim gratuity.

(iv) Where the negligence of employee causes loss to the employer, then the gratuity shall be wholly forfeited.

(v) An appeal against the Controlling Authority's order must generally be made within 60 days.

9. (a) X, is an employee of Tata Consultancy Ltd. The whole of the undertaking of Tata Consultancy Ltd. was taken over by a new company - Asia Consultancy Ltd. The services of X remained continuous in new company. After serving for one year X met with an accident and became permanently disabled. X applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that X has served only for a year in the company.

Examine the legal position of X in the light of the provisions of the Payment of Gratuity Act, 1972.

(b) Discuss the rules relating to penalties under the Payment of Gratuity Act, 1972?

The Companies Act, 1956

10. (a) Explain the circumstances under which a subsidiary company can become a member of its holding company and also examine the position of the following with regard to membership in a company:

    (i) An Insolvent

    (ii) Partnership Firm.

(b) A Company was incorporated on 6th January, 2011. The certificate of incorporation of the company was issued by the Registrar on 15th January, 2011. The company on 10th January, 2011 entered into a contract, which created its contractual liability. The company denies from the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide, under the provisions of the Companies Act, 1956, whether the company can be exempted from the said contractual liability.

(c) The object clause of the Memorandum of Association of ABC Pvt. Ltd, authorized it to do trading of dress material. The company, however, entered into a Partnership with Mr. X and traded in automobile parts and incurred liabilities to Mr. X. The Company, subsequently, refused to admit the liability to X on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to X.

11. (a) Under the Articles of Association of Sigma Ltd., directors had power to borrow up to Rs.25,000 without the consent of the general meeting. The Directors themselves lent Rs.35,000 to the company without such consent and took debentures of the Company. Decide under the provisions of the Companies Act, 1956, whether the company is liable? If so, what is the extent of liability of the company in this case?

(b) What remedies are available to a subscriber against a company for allotment of shares on the faith of a misleading prospectus. What requirements must be fulfiled by such a subscriber before opting for the remedies?

(c) 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.

12. (a) Write a note on the powers of the Central Government in regard to conversion of debentures and loans into shares of the company under the following heads:

    (i) When terms of issue of such debenture or terms of loan do not include term providing for an option of conversion;

(ii) Matters considered in determining the terms and conditions of such conversion.

(iii) Remedy available to the company if conversion or terms of conversion is not acceptable to it.

(b) 'R' obtains a certificate of transfer of shares by committing forgery from a company. Later R transfers the shares to 'S' for value acting in good faith. Company refuses to transfer the shares to 'S'. Whether the company can refuse? Decide the liability of 'R' and of the company towards 'S'.

(c) PQR Limited realised on 2nd May, 2010 that particulars of charge created on 12th March, 2010 in favour of a Bank were not filed with the Registrar of Companies for Registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12^{th} February, 2010 instead of 12th March, 2010? Explain with reference to the relevant provisions of the Companies Act, 1956.

13. (a) To remove the Managing Director, 40% members of Global Ltd. Submitted requisition for holding extra-ordinary general meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.

Examine the validity of the said meeting and resolution passed therein in the light of the Companies Act, 1956.

(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 you answer be still the same in case D remained outside India for two months (when such notices were given and meetings held).

(c) MDH Ltd. has only 50 preference shareholders. A meeting of the preference shareholders,called by the company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 1956, examine the validity of the meeting and the resolution passed thereat.

14. State whether the statement is correct/incorrect:

    (i) A private Ltd. Company constituted of X and Y only. Both X and Y were killed in a car accident. Company is ceased to exist.

    (ii) M purchased from N 100 shares of a company on the basis of prospectus containing wrong statement. M can claim against the company.

    (iii) A company not having a share capital is not required to file an annual return.

    (iv) A small depositor can invest a sum exceeding rupees twenty thousand in a company in a financial year.

    (v) A instrument of proxy must be deposited with the company 48 hours before the meeting.

15. (a) Write short notes:

    (i) Corporate Veil Theory

    (ii) Role of Prospectus

    (iii) Classification of Meetings

    (b) What is the concept of proxy in relation to the meetings of a Company? Decide the appointment and rights of a proxy, under the Companies Act, 1956, in the following cases:

    (i) When a body corporate is a member in the company.

    (ii) When a foreign company is a member in the company.

16. Whether the following persons can be counted for the purposes of quorum in a general meeting of a public company-

    (a) a person representing three member companies;

    (b) both the joint owners of shares are present at the meeting;

    (c) a single member present at the meeting.

17. At the annual general meeting of a company a resolution is proposed to be moved to the effect that the retiring auditors shall not be re-appointed. What would be the duty of the company and the right of the auditor in the circumstances?

B: ETHICS

18. (a) Answer stating whether the statement is correct or incorrect with brief reasons:

    (i) Ethics and morals are synonymous.

    (ii) In the long run those business firms which do not respond to society's needs favourably will survive.

    (iii) Company management has responsibility only towards its shareholders.

    (b) Examine the following hypothetical situation and give a brief analytical note on it.

Mr. XYZ is a CEO of a pharmaceutical company. His R&D department, while experimenting with a chemical molecule, sees the possibility that the molecule may be developed into a drug for a rare, painful, life-threatening genetic disease that afflicts only one child in ten million. But to develop the drug, his company may have to invest huge sums of the shareholders' money, despite the drug not having wide salability. Is Mr. XYZ confronted by an ethical dilemma? How should he resolve the issue?

19. (a) Explain Corporate Social Responsibility and its requirement in Indian Business environment?

    (b) Write short notes on:

    (i) Code of Conduct on Insider Trading

    (ii) (APEC) Business Code of Conduct

    (iii) Corporate citizenship

20. (a) Explain the validity of the following statements:

    (i) "Promotion policies based on individual merit and not purely on the basis of seniority is discriminatory".

    (ii) "There is no economic growth without ecological costs".

    (b) Elucidate 'Environmental ethics'? How does its implementation lead to 3 Ps Viz., Polluter Pays Principles?

21. (a) Say 'Yes' or 'No' with reasons:

    (i) Consumer purchases goods and health services for personal purposes only.

    (ii) Whistle blowers helps in creating good ethical accounting environment in a business enterprise.

    (b) Examine the following hypothetical situation and give a brief analytical note on it.

    X Ltd. has been the leading scientific equipment manufacturing company in South India. But it suddenly finds that certain companies from North India that do not have anywhere near its own kind of clout in their own turfs, are trying to enter the south Indian market. But because of its superior clout, X Ltd coerces them to enter into agreement with itself such that they do not sell at prices above that of its own products. Comment on the legality of such agreements. Conversely, if X Ltd were to enter into agreements with distributors such that the distributors are prevented from marketing the products of the North Indian companies, would that be illegal?

C: COMMUNICATION

22. (a) What is Proxemics? Explain.

    (b) Explain social competence that are associated with Emotional Intelligence.

23. (a) What is Negotiation? Describe some techniques for negotiation.

    (b) Explain ambiguity as an ethical dilemma in communication

24. (a) Draft a press note on the Company Law Settlement Scheme, 2010 introduced by the Ministry of Corporate Affairs, India.

    (b) Supply a notice of Annual general Meeting of XYZ Ltd to discuss the matters relating to ordinary business.

25. (a) Draft a format for sub-partnership deed.

    (b) Draft a 'Power of Attorney' by subscribers of Memorandum of Association of the Company authorizing a Chartered Accountant to appear before the Registrar of Companies.

SUGGESTED ANSWERS / HINTS

1. **(a)** (i) As per the provisions given under sections 71 &168 of the Indian Contract Act,1872,Y must return the golden chain to X because X was entitled to retain it against the whole world except the true owner.

(ii) A is entitled to claim compensation for the work already done on quantum meruit basis.

(iii) As per section 56 of the Indian Contract Act,1872 the contract is void ab-initio because such contract is forbidden by law. P must compensate R for the loss caused to her by the non-performance of the promise.

(iv) As per the section 72 of the Indian Contract Act,1872 ,there was no contract between PQR & Co. and A never intended to contract with XYZ & Co. So A didn't get good title and hence he must return the goods or make payment for the same.

(b) (i) The given problem is based on the provision given under section 143 of the Indian Contract Act,1872. According to which any guarantee which the creditor has obtained by means of keeping silence as to a material circumstances, is invalid.

Accordingly, in the problem A, the creditor has obtained the guarantee from the surety C by means of keeping silence as to the earlier act of B ,failing to account for some of his receipts. Here the guarantee has been obtained by concealment, so it is invalid and as such C is not liable as surety.

(ii) The given problem is based on the provision given under section164 of the Indian Contract Act,1872,the bailor is responsible to the bailee for any loss which the bailee may sustain by reason that the bailor was not entitled to make the bailment, or to receive back the goods ,or to give direction respecting them.

Accordingly in the problem, Z had to give compensation to Y for the wrongful possession of the vehicle .However, X has a duty to indemnify Z for the loss caused due to his wrongful title ,because Z did not know that X had no right to bail the vehicle.

(iii) According to Section 202 of the Indian Contract Act, 1872 where the agent has himself an interest in the property which forms the subject-matter of the agency, the agency cannot,in the absence of an express contract, be terminated to the prejudice of such interest.

In the instant case the doctrine of agency coupled with interest applies. Therefore, A cannot revoke the authority delegated to B ,nor it can be terminated by his insanity or death.

(c) (i) A gratuitous promise such as a promise to donate money lacks consideration and cannot be enforced.

(ii) As per the judgment in *Shuppu Vs Subramanian 33 Mad. 238*, a family settlement in writing, may be enforced by a member of the family who was not a party to the settlement.

(iii) A student can sue his teacher on the ground of undue influence under the provisions of Indian Contract Act, 1872. A contract brought as a result of coercion, undue influence, fraud or misrepresentation would be voidable at the option of the person whose consent was caused.

(iv) The problem is based on the facts of the case *Smith vs Chadwick (1884).* In the problem though the prospectus contains an untrue statement that untrue statement was not the one that induced X to purchase the shares. Hence X cannot claim damages.

2. **(a)** As per the provision laid down in the section 40 of the Negotiable Instruments Act,1881, where the holder of a negotiable instrument, without consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

In the given instant, A impairs the bill by striking out the name of the C &D(Prior parties) without the consent of the Endorser E. As a result of this E is discharged from liability to the holder A as if the instrument has been paid at maturity and therefore, A is not entitled to recover anything from E.

(b) (i) Answer (d)

(ii) Answer (b)

(iii) Answer (d)

(c) Section 130 of the Negotiable Instruments Act,1881 broadly says that, if the holder has a good title, he can still transfer it with a good title; but if the transferor has a defective title, and the transferee is affected by such defects, there he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As X in the case in question had obtained the cheque by fraud, he had no title to it and could not give to the bank cheque for conversion. A similar decision was taken in *Great Western Railway Co. vs. London and Country Banking Co. (1901) A.C. 414.*

3. **(a)** In the case of a cheque, if it is not presented for payment within a reasonable time of its issue and the drawer or person on whose account, it is drawn had the right at the time when presentment ought to have been made as between himself and the banker, to have the cheque paid and suffers actual damage through the delay he is discharged to the extent of such damage, that is to say, to the extent to which such drawer or person is creditor of the banker to a larger amount that he would have been if such cheque had been paid (Section 84).

Thus in the given problem, X will be released from liability to the extent of Rs. 600 but will remain liable for the balance. If he had the full amount of Rs. 1,000 at the bank, he will be discharged in full.

However, in the above case liability of the drawer will be transferred to the banker. To determine reasonable time for presentation, the following would be considered: (i) nature of instrument: (ii) usage of the trade and bankers and (iii) facts of the case.

(b) (i) Bearer and Order Instruments: An instrument may be made payable: (1) to bearer; (2) to a specified person or to his order.

An instrument is payable to bearer which is expressed to be so payable on which is expressed thus “Pay to R or bearer”. It is also payable to bearer when the only or last endorsement on it is an endorsement in blank.

An instrument is payable to order, (1) when it is payable to the order of a specified person or (2) when it is payable to a specified person or his order or, (3) when it is payable to a specified person without the addition of the words “or his order” and does not contain words prohibiting transfer or indicating an intention that it should not be transferable. When an instrument, either originally or by endorsement, is made payable to the order of a specified person and not to him or his order, it is payable to him or his order, at his option. When an instrument is not payable to bearer, the payee must be indicated with reasonable certainty. There is a proposition that “once a bearer instrument always a bearer instrument”.

(ii) An instrument is said to be discharged only when the party who is ultimately liable thereon is discharged from liability. Therefore, discharge of a party to an instrument does not discharge the instrument itself. Consequently, the holder in due course may proceed against the other parties liable for the instrument. On the other hand, when a bill has been discharged by payment, all rights there under are extinguished even a holder in due course cannot claim any amount under the bill.

(iii) The law related to the noting and protest of negotiable instruments is enshrined in Section 99 to 104A of the Negotiable Instruments Act, 1881.

Noting: According to section 99, when a promissory note or bill of exchange has been dishonoured by non-acceptance, or non-payment the holder may cause such dishonour to be noted by a notary public upon the instrument, or on a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason for the dishonour or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonour and the notary's charges.

Protest: According to section 100, when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest. The contents of a protest are laid down in section 101 of the Act. According to section 102, when a promissory note or bill of exchange is required to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary making the protest. Under section 103, all bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non-acceptance, may, without further presentation to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Neither noting nor protesting is compulsory in the case of inland bills. But under section 104, every foreign bill must be protested for dishonour, when such protest is required by law of the country where the bill was drawn. The merit of protest and noting is that it would become good prima-facie evidence in a court of law that the instrument has been dishonoured. It is pertinent to note that as per section 119 the court is bound to recognise a protest, but it may or not recognise noting.

(iv) If a cheque is uncrossed, the banker is exonerated for the failure to direct either the genuineness, or the validity of the endorsement on the cheque purporting to be that of the payee or is authorized agent.

In case a cheque is crossed, the banker who pays the cheque drawn by his customer, he can debit the drawer's account so paid even though the amount of cheque does not reach true owner. The protection that can be availed are if the payment has been made in due course in good faith and without negligence too any person in possession thereof in the circumstances which do not excite any suspicion that is not entitled to receive the payment of the cheque. In other words, the condition of good faith and without negligence would be the criteria applied for judging the conduct of a collecting banker. Even though the banker is protected for having made payment of the cheque to a wrong person, the true owner of the cheque is entitled to recover the amount of the cheque from the person who had no title to the cheque.

(c) The above Fact is based on the case law *H.N.D.Mulla Feroze Vs. C.Y.Somayajulu, J [2004] 55 SCL (AP).*

The compliant lodge against X was challenged on the ground that, the petitioner(X) is neither a director nor a person-in-charge of the company and is not connected with the day to day affairs of the company and had neither opened nor is operating the bank account of the company and had not issued the cheque which was dishonoured and further contended that in any event notice of dishonour of the cheque was not served.

And also the court held that, although the petitioner has a legal liability to refund amount to the Y, but there petitioner is neither the drawer of the cheque, which was dishonoured, nor the cheque was drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner(X) couldn't be said to have committed the offence under section 138 of the Act.

4. (a) Presumptions about the accuracy of balance sheet and profit and loss account of a company: Dispute between an employer and his employees regarding bonus payable under the Payment of Bonus Act, 1965 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 a state and the provisions of that Act or as the case may be such law shall, save and otherwise expressly provided, apply accordingly (Section 22).

Proceeding may be lying before any arbitrator or tribunal under the Industrial Disputes Act or under any corresponding law relating to investigation and settlement of industrial disputes in force in the state (herein referred to as the 'said authority') to which any dispute of the nature specified in Section 22 has been referred. During the course of such proceeding the balance sheet and the profit and loss account of an employer, being a corporation or a company other than a banking company may be produced. If these statements of accounts are audited by the Comptroller and Auditor General of India or by auditors qualified under Section 226(1) of the Companies Act, then as specifically provided in Section 23 of the Payment of Bonus Act, the said authority may presume that those are accurate. In view of this presumption corporation or company need not prove the accuracy of such statements by affidavit or any other mode.

But there are certain limitations. If the said authority is satisfied that those statements are not accurate, it may take such steps as it thinks necessary to find out the accuracy thereof. Further, the trade union and if there is no trade union, employees being a party to the dispute may apply to the specified authority seeking clarification relating to any item in the balance sheet or profit and loss account. On receipt of such application the specified authority is to satisfy itself as to the necessity of such clarification. On being thus satisfied, the specified authority may direct the corporation or the company to furnish to the trade union or the employees such clarifications within such time as may be specified in the direction.

Thereupon, the company or the corporation must comply with such direction [Section 23(2)].

(b) The given 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 Sec.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.

(c) **Entitlement of bonus:-** In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding Rs.10,000 (by notification dated 15th Nov. 2007) per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied is eligible for bonus. Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every employee of an establishment covered under the Act 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 Rs.10,000 per month.

The problem as asked is based on the above provisions of the Act and the answer may be given as follows:

(a) **As regards the employees who resigned :** The employees who have resigned are not entitled to bonus because they have given their services only for 25 days in an accounting year although they are drawing salary less than Rs.10,000 per mensem.

(b) **As regards full time remaining employees:** These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.

(c) **As regards part time employees:** Even a part time employee is also entitled to bonus on the basis of total number of days worked by him in an accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as they fulfil all the requirements stated above *[Automobile Karmchari Sangh vs. Industrial Tribunal (1971)].*

5. **(I)** (a) The correct answer is 3,500/- per mensem as per the provision given under section 12 of the Payment of Bonus Act,1965.

(b) As per the provision given under section 9 of the Payment of Bonus Act,1965, option (iv) is the correct answer.

(c) As per section 21 of the Payment of Gratuity Act,1965 Collector shall proceed to recover the bonus due of an employee on the basis of the certificate issued by the Appropriate Government on the application of the employee himself or any other person authorised by him.

(II) (i) The given statement is **correct**. As per the provision given under the section 8 of the Payment of Bonus Act,1965 , every employee shall be entitled to be paid by his employer bonus in an accounting year, provided he has worked in the establishment for not less than thirty working days in that year.*[J.K.Ginning & Pressing Factory Vs.P.O.,2nd Labour Court,(1991)62 FLR 207(Bom].*

(ii) The given statement is **incorrect** as per the provisions laid down in the section 10 of the Payment of Bonus Act, 1965. Accordingly every employer shall be bound to pay to every employee a minimum bonus which shall be 8.33% of the salary/wage earned by the employee during the accounting year or one hundred rupees, which ever is higher. In case where employee has not completed fifteen years of age at the beginning of the accounting years, there the minimum bonus shall be sixty rupees.

6. **(I)** (a) The correct answer is 9.5 %. As per the recent amendment Central Govt. has increased the rate of interest on the PF amount from 8.5% to 9.5%.

(b) The correct answer is 1 lakh as per the amendment made in the Employees' Deposit Linked Insurance (Amendment)Scheme, 2010.

(II) (a) **True**. As per section 1(5) of the EPF& Miscellaneous Provisions Act,1952, wherein in any establishment the strength of the employees at a particular time is below 20, it cannot be contended by the employer that the establishment is no longer within the purview of the Act.*[Annamma Iype Vs. Regional Provident Fund Commissioner,1993 LLR 287]*

(b) **False**. As per section 2(b) of the EPF& MP Act,1952,special allowance being paid to the employees appeared to be the dearness allowance which has been described by a different name, as such the special allowance would the part of the 'Basic Wages'.*[Regional Provident Fund Commissioner Vs. Vivekananda Vidya Mandir,2005 LLR 399(Cal)].*

(c) This statement is **false** as an employer under Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.

7. **(a)** Protection of the amount standing to the credit of an employee in provident fund against attachment: As per Section 10 of the Employees' Provident Funds and Miscellaneous Provisions Act,1952, the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act,1909, nor any receiver appointed under the Provincial Insolvency Act,1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules vest in nominees. And the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court. (Section 10, EPF & MP Act, 1952).

(b) (i) As per Section 2(b) of the EPF& Miscellaneous Provisions Act,1952 "Basic wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

- the cash value of any food concessions ;
- any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment ; or
- any presents made by the employer.

(ii) As per the Notification No. G.S.R.523(E),dated 18th June,2010 amendment made in Employees' Deposit Linked Insurance Scheme, 1976 by the Employees' Deposit Linked Insurance (Amendment) Scheme,2010 ,by the Ministry of Labour and Employment .This modified Employees' Deposit Linked Insurance (Amendment) Scheme,2010, stated that on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of rupees one lakh.

This above provision says that the EDLI amount is equal to the average balance of your PF in the last 12 months or the overall balance, whichever is less. But if the balance exceeds Rs. 50,000,your nominee will get Rs. 50,000 plus 40% of the excess balance up to a total of Rs. 1 lakh.

(iii) The Central Government may, by notification in the Official Gazette, frame a scheme to be called Employees' Provident Fund Scheme for the establishment of provident funds under this Act for employees or any class of employees of an establishments to which the Act applies. It may also specify the establishments or class of establishments to which the said scheme is to apply. As soon as may be after the framing of scheme, a Fund must be established in accordance with provisions of this Act and the Scheme.

The fund shall vest in and be administered by Central Board of trustees constituted under Section 5A by the Central Government . Subject to the provisions of the Act, the Scheme framed under Section 5(1) may provide for all or any of the matters specified in Schedule II [Section 5 (1B)].

(c) An appeal against the order of officer made u/s 1(3), 1(4), 3, 7A, 7B, 7C or 14 B can be made to Employees' Provident Funds Appellate Tribunal. [Section 7-I].

The Tribunal is headed by a Presiding Officer who is or has been qualified to be judge of a High Court or a District Judge. [Section 7D]. The Tribunal has been set up at New Delhi w.e.f. 1-7-1997, to hear appeals. The Tribunal has all India jurisdiction. *[Notification SO 491(E)dated 30-6-1997].* The presiding officer holds office for five years or until he attains the age of 62 years, whichever is earlier [Section 7E]. He can resign from his office by giving three months' notice. He can be removed after following prescribed procedure [Section 7F]. Staff of Tribunal will be supplied by Central Government [Section 7H]. The Tribunal, during proceedings, will give opportunity of hearing to parties. It will then pass order (a) confirming, modifying or annulling the order appealed against, or (b) remand the matter back to the authority for fresh directions, with such directions as the Tribunal may deem fit [Section 7L(1)]. The Tribunal has powers to rectify its order, if it is apparent from the records. Such rectification can be made within five years from date of the order. If such rectification has effect of increasing the liability of the employer, notice has to be given to the employer and opportunity of hearing will be given before passing order [Section 7L(2)]. An Order passed by the Tribunal is final and no appeal can be filed in any Court of law against the order [section 7L(4)]. Appeal can be entertained only after depositing 75% of amount demanded. However, the Tribunal can waive or reduce the deposit, for reasons to be recorded in writing [Section 7-O].

8. (a) (i) EMPLOYEE means any person (other than an apprentice) who is employed for wages, whether the terms of such employment are express or implied, in any kind of work ,manual or otherwise, in or in connection with the work of a factory, mine, oilfield, plantation, port, railway company, shop or other establishment to which this Act applies but does not include any such person who holds a post under the Central Government or a State Government and is governed by any other Act or by any rules providing for payment of gratuity. [Definition is amended by the Payment of Gratuity (Amendment) Act,2009, w.r.e.f 3-4-1997].

(ii) WAGES means all emoluments which are earned by an employee while on duty or on leave in accordance with the terms and conditions of his employments and which are paid or are payable to him in cash and includes D.A. but does not include any bonus, commission, house rent allowance, overtime wages and any other allowances [Section 2 (s)].

(b) i. This statement is false because the Payment of Gratuity Act, 1972 is largely based on West Bengal Employees Payment of Gratuity Act, 1971.

ii. This statement is true because in the case of *State of Punjab Vs. Labour Court (1986),* it was held that a retrenched employee is also eligible for gratuity.

iii. This statement is false as it was held in *Mathur Spinning Mills Vs. Deputy Commissioner of Labour, (1983) II LLJ 188)*, that non acceptance of the resignation is no hurdle in the way of an employee to claim gratuity.

iv. This statement is false because when loss is caused by the negligence of employee gratuity shall be forfeited to the extent of the damage or loss so caused.

v. This statement is true as an appeal against the Controlling Authority's order must generally be made within 60 days (Section 7 of the Payment of Gratuity Act, 1972).

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, X is entitled to recover gratuity after becoming permanently disabled, and continuous service of five years is not required in this case. Hence, the company can not refuse to pay gratuity on the ground that he has served only for a year.

(b) Rules relating to penalties under the Payment of Gratuity Act, 1972 are as follows:

Making false statement or false representation – Whosoever makes or causes to be made false statement or false representation for purpose of avoiding payment to be made under Payment of Gratuity Act or enables another person to avoid such payment, shall be punishable with imprisonment upto six months and fine upto Rs.10,000 or with both [Section 9(1) of Payment of Gratuity Act, 1972].

Contravening provisions of Gratuity Act or rules – An employer who contravenes provisions of Payment of Gratuity Act or Rules made thereunder shall be punishable for a term which will not be less than three months but can extend upto one year. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed [Section 9(2) of Payment of Gratuity Act, 1972].

Offence relating to non-payment of gratuity – If the contravention relates to non-payment of any gratuity payable under Payment of Gratuity Act, the term of imprisonment shall be minimum six months and maximum two years. The Court can impose a lesser term of imprisonment, if the Court is of the opinion that a lesser term of imprisonment would meet the ends of justice [proviso to Section 9(2) of Payment of Gratuity Act, 1972]. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed.

Employer can charge another person as the actual offender – Though the 'employer' is liable under Payment of Gratuity Act, he can charge another person as actual offender. After commission of offence is proved, the employer has to prove that he used due diligence in execution of the Act and the other person committed the offence without the knowledge, consent or connivance of the employer. If actual offender cannot be brought before the Court within three months, the employer will be convicted of the offence [Section 10 of Payment of Gratuity Act, 1972].

Cognizance of offence – Cognizance of offence can be taken only on complaint made by authority appointed by 'Appropriate Government'. Complaint can also be filed by 'controlling authority' if employer did not pay gratuity within six months from prescribed time [Section 11(1) of Payment of Gratuity Act, 1972]. Metropolitan Magistrate or Judicial Magistrate of First Class can try the offences punishable under Payment of Gratuity Act [Section 11(2) of Payment of Gratuity Act, 1972].

10. (a) In accordance with the provisions of Section 42 of the Companies Act, 1956, a subsidiary company cannot become a member in its holding company and any allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

(a) the subsidiary company is a legal representative of a deceased member of the holding company, or

(b) the subsidiary company is a trustee and the holding company or a subsidiary thereof is not beneficially interested under the trust, or

(c) entered into by the holding company in the ordinary course of business which includes the lending of money. Position of the following with regard to membership in a company:

(i) Partnership Firm: A partnership may firm hold shares in a company in the individual names of partners as joint shareholders. As an un incorporated association, a firm is not a person and as such it cannot be entered as a member in the register of members. (*Ganesh Das Ram Gopal v. R.G. Cotton Mills Ltd.)* Section 25 of the Companies Act however, permits a firm to be a member of a company licensed under Section 25.

(ii) An Insolvent: An insolvent may be a member of a company. So long as his name appears in the register of members, he is a member and is entitled to vote even though his shares vest in the Official Assignee or Receiver. *(Morgan v. Gray)* allotment or transfer of shares is by way of security for the purpose of a transaction.

(b) As per the provisions given under section 34 of the Companies Act,1956, upon the registration of the documents as required under the Companies Act, 1956 for incorporation of a company, and on payment of the necessary fees, the Registrar of Companies issues a Certificate that the company is incorporated.

Section 35 provides that a certificate of incorporation issued by the Registrar is conclusive as to all administrative acts relating to the incorporation and as to the date of incorporation.

The facts as given in the problem are similar to those in case of *Jubilee Cotton Mills v. Lewis (1924) A.C. 1958* where it was held that an allotment of shares made on the date after incorporation could not be declared void on the ground that it was made before the company was incorporated when the certificate of incorporation was issued at a later date.

Applying the above principles the contention of the company in this case cannot be tenable. It is immaterial that the certificate of incorporation was issued at a later date. Since the company came into existence on the date of incorporation stated on the certificate, it is quite legal for the company to enter into contracts. To conclude the contracts entered into by the company before the issue of certificate of incorporation shall be binding upon the company. The date of issue of certificate is immaterial.

(c) In terms of Companies Act, 1956, the powers of the company are limited to:

(i) Powers expressly given by the Memorandum (which is popularly known as 'express' power or conferred by the Companies Act 1956, or other statute, and

(ii) powers reasonably incidental or necessary to the company's main purpose (termed as "Implied' powers). The Act further provides that the acts beyond the powers of a company are ultra vires and void and cannot be ratified even though every member of the company may give his consent *[Ashbury Railway Carriage Company Vs Richee].*

The object clause enable shareholders, creditors or others to know what its powers are and what is the range of its activities and enterprises. The objects clause therefore is of fundamental importance to the share holder, creditors and others.

M/s ABC Pvt. Ltd is authorised to trade directly on dress material. It has no power to enter into a partnership for Automobile parts with Mr. X. Such act can never be treated as 'express' or 'implied' powers of the company. Mr X who entered into partnership is deemed to be aware of the lack of powers of M/s ABC (Pvt) Ltd. In the light of the above, Mr, X cannot enforce the agreement or liability against M/s ABC Pvt. Ltd. Mr. X should be advised accordingly. This conclusion is supported by the decision reported in the case of '*the Ganga Mata Refinery Company (Pvt) Ltd CIT'.*

11 (a) Directors' Power to Borrow under the Companies Act, 1956

An outsider is presumed to know the constitution of company, but not what may or may not have taken place within the doors that are closed to him. However, where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he cannot claim the benefit under the rule of indoor management. In this case, the directors of a company could borrow any amount up to Rs. 25,000/- without the resolution of the company in a general meeting. But for any amount beyond Rs. 25,000/- they had to obtain the consent of the shareholders in a general meeting. The directors themselves lent Rs. 35,000/- to the company without such consent and took debentures. The directors had the notice of the internal irregularity and hence the company was liable to them only for Rs. 25,000/-.

(b) A person who has been induced to subscribe for shares/debentures on the faith of misleading prospectus has the following remedies against the company. If there is a misstatement of a material information in a prospectus, and if it has induced any shareholder to purchase shares, he can:

1. rescind the contract, and
2. claim damages from the company whether the statement is fraudulent or an innocent one.

Rescission of the Contract: Any person who takes shares on the faith of statements of fact contained in a prospectus, can apply to the Court for the rescission of the contract if those statements are false or fraudulent or if some material information has been withheld. He must, however, apply for the rescission within a reasonable time and before the company goes into liquidation. But he will have to surrender to the company the shares allotted to him, His name is then removed from the register of members and he gets back the money paid by him to the company along with interest. The contract can be rescinded if the following conditions are satisfied:

1. the statement must be a material misrepresentation of facts.
2. the statement must have induced the shareholder to take the shares,
3. the statement must be untrue.
4. the deceived shareholder is an allottee and he must have relied on the statement in the prospectus.
5. the omission of material fact must be misleading before rescission is granted.
6. the proceedings for rescission must be started as soon as the allottee comes to know of a misleading statement in the prospectus on the faith of which he had subscribed for shares and before the company goes into liquidation.

Rescission is available only if the aggrieved shareholder:

(a) acts within reasonable time;

(b) before the company goes into liquidation;

(c) has not done any act indicating the upholding of the contract to take shares like:

  (1) having attended a meeting of the company or

  (2) accepted dividends declared by the company.

Damages:

Any person induced by a fraudulent statement in a prospectus to take shares is entitled to sue the company for damages. He must prove the same matters in claiming damages for deceit as in claiming rescission of the contract. He cannot both retain the shares and get damages against the company. He must show that he has repudiated the shares and has not acted as a shareholder after discovering the fraud or misrepresentation.

(c) 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) With in 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.

12. (a) (i) Under Section 81 of the Companies Act, 1956 where any debentures have been issued to or loans have been obtained from the Government by a company, whether such debentures have been issued or loans have obtained before or after the commencement of Companies Amendment Act, 1963 (w.e.f. 1.1.1964), the Central Government may, if in its opinion it is necessary in the public interest so to do, by order direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include term providing for an option for such conversion.

(ii) In determining the terms and conditions of such conversion, the Central Government shall have due regard to the following circumstances:

- The financial position of the company;
- The terms of issue of the debentures or the terms of the loans, as the case may be;
- The rate of interest payable on the debentures or the loans;
- The capital of the company, its loan liability, its reserves, its profits during the preceding five years; and
- The current market price of the shares in the company.

A copy of every order proposed to be issued by the Central Government shall be laid in draft before each House of Parliament. The above powers of the Central Government are exercised notwithstanding anything contained in sub-sections (1), (2) and (3) of Section 81 of the Companies Act, 1956.

(iii) **Remedies open to the company**

If the terms and conditions of such conversion are not acceptable to the company, the company may, within 30 days from the date of communication of such order or within such further time as may be granted by the Court, prefer an appeal to the court in regard to such terms and conditions and the decision of the Court on such appeal and, subject only to such decision, the order of the Central Government shall be final and conclusive.

(b) A forged transfer is a nullity. It does not give the transferee concerned any title to the shares. Since the forgery is an illegality therefore it cannot be a source of a valid transfer of a title. Although the innocent purchaser acting in good faith could validly and reasonably assume that the person named in the certificate as the owner of the shares was really the owner of the shares represented by the certificate. Even then the illegality cannot be converted into legality. Therefore, in this case company has right to refuse to do the transfer of the shares in the name of the transferee S.

Here, as regards to the liability of R against 'S', R does not stand directly responsible according to provisions of company law as he has already committed forgery which is illegal but R is liable to compensate the company as he has lodged the forged transfer and the company has suffered the loss.

As regards to the liability of the company towards S, the company shall be liable to compensate to S in so far as the company had issued a certificate to transfer and was, therefore, stopped from denying the liability accruing from its own act. Further, as the company has refused to register him as a shareholder, company has to compensate S. However, in this case the interest of the original shareholder will be protected.

(c) **Registration of charge** : The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge. [Section 125 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under proviso to section 125 (1) to extend the period of 30 days by another 30 days on payment of such additional fee not exceeding 10 times the amount of fee specified on Schedule X as the Registrar may determine. Taking advantage of this provision, PQR Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

If the charge was created on 12th February, 2010, then the company has to apply to the Company Law Board (Now tribunal) under Section 141 and seek extension of time for filing the particulars for registration. The company must satisfy the Company Law Board (Now tribunal) that the omission was accidental or due to inadvertence or due to some other sufficient cause or was not of the nature to prejudice the position of creditors or shareholders of the company, or that it is just and equitable to grant relief on the other grounds. On such satisfaction, the Company Law Board (Now tribunal) may extend the term for the registration of charge or; such terms and conditions as it may think expedient. Once the time is extended and it is made out that the particulars have been filed within the extended time, the registrar is bound to register the charge.

13. (a) **Extraordinary meeting:** Every shareholder of a company has a right to requisition for an extraordinary general meeting. He is not bound to disclose the reasons for the resolution to be proposed at the meeting *[Life Insurance Corporation of India vs. Escorts Ltd., (1986)59 Comp. Cas. 548].*

Section 169 of the companies Act,1956 contains provisions regarding holding of extraordinary general meetings. It provides that if directors fail to call a properly requisitioned meeting, the requisitionists or such of the requisitionists as represent not less than 1/10th of the total voting rights of all the members (or a majority of them) may call a meeting to be held on a date fixed within 3 months of the date of the requisition.

Where a meeting is called by the requisitionists and the registered office is not made available to them, it was decided in *R. Chettiar v. M. Chettiar* that the meeting may be held any where else. Further, resolutions properly passed at such a meeting, are binding on the company.

Thus, in the given case, since all the above mentioned provisions are duly complied with. Hence the meeting with the resolution removing the managing director shall be valid.

(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.

(c) This question was decided in *Sharp Vs. Dawes* case which provides that "the word meeting prima facie means coming together of more than one person." In this given case, only one shareholder present. This was not a meeting within the meaning of the Companies Act, 1956. According to Section 174 another requirement of valid meeting is the presence of a required quorum. Moreover, the section also says that "the members actually present shall be the quorum." The presence of one member may not be enough.

This was not a valid meeting.

In *East Vs. Bennet Brothers Ltd. (1911)* it has been held that in case of a class meeting of all the shares of a particular class are held by one person, one person shall form the quorum. In the given case, since all the shares are not held by one person, no quorum is therefore present. The meeting and the resolution passed there shall not be valid.

14. (i) The statement is incorrect.

Reason: A company is an entity distinct from his members. Death, insolvency or retirement of its members, therefore, leave the company unaffected.

(ii) The statement is incorrect.

Reason: M shall have no remedy against the company,there being no privity of contract between M and the Company.

(iii) The statement is incorrect.

Reason: As per the provision given under the section 160 of the Companies Act,1956 a company not having a share capital is also required to file an annual return within 60 days of each annual general meeting.

(iv) The statement is incorrect.

Reason: As per the provisions given under sections 58 AA small depositor means depositor who has invested in a financial year a sum not exceeding rupees twenty thousand in a company.

(v) The statement is **correct** as per the section 176(3) of the Companies Act,1956.

15. (a) (i) A company in the eyes of law is regarded as an entity separate from its members. It has an independent corporate existence. Any of its members can enter into contracts with the company in the same manner as any other individual can and he cannot be held liable for the acts of the company even if he holds virtually the entire share capital. The company's money and property belong to the company, and not to the shareholders. (*Salomon v. Salomon & Co. Ltd.).*

Further, from the juristic point of view, a company is a legal person distinct from its members *(Salomon v. Salomon & Co.)*. It has its own corporate personality. This principle may be referred to as 'the veil of incorporation'. The Courts in general consider themselves bound by this principle. The effect of this principle is that there is a fictional veil between the company and its members. That is, the company has a corporate personality which is distinct from its members. This principle must be used for legitimate business purposes only. Where the legal entity of a corporate body is misused for fraudulent and dishonest purposes, the individuals concerned will not be allowed to take shelter behind the corporate personality.

The human ingenuity, however, started using this veil of corporate personality blatantly as a cloak for fraud or improper conduct. Thus it became necessary for the Courts to break through or lift the corporate veil or crack the shell of corporate personality or disregard the corporate personality of the company. Thus while by fiction of law a corporation is a distinct entity, yet, in reality it is an association of persons who are in fact the beneficial owners of all the corporate property *(Gallaghar v. Germania Brewing Co.).*

(ii) The prospectus is the basic document on the basis of which the intending investors decide whether or not they should subscribe to the shares or debentures. Therefore, the law requires unstinted disclosure of various matters through prospectus and forbids variations of any terms and conditions of a contract contained therein except with the approval and authority of the company in general meeting [Section 61].

Those who issue prospectus holding out to the public great advantage which will accrue to persons who take up shares on the representations contained therein, are bound to state everything with scrupulous accuracy and not only to abstain from stating as fact that which is not so but to omit no fact within their knowledge, the existence of which might in any degree affect the nature or extent or quality of the privilege and advantages which the prospectus holds out as an inducement to take shares [as per *Kindersely V.C. in Burnswick and Canada Railway Co. vs. Mullridge*].

It is therefore essential that the information statutorily needing disclosure is stated fully and precisely so that the investing public which is ignorant of the present and future prospects of the company may get all the information which is likely to affect the public mind. It is only to protect the members of the public against their being misguided by half truths or falsehoods that the law casts a liability on various persons connected with the issue of the prospectus to compensate every person (who subscribes on the faith of the prospectus) for any loss or damage he may have sustained because of the inclusion of any untrue statements in the prospectus [Section 62].

(iii) Types of Meetings under Companies Act, 1956:

1. Meetings of shareholders or members:
   - (a) Statutory meeting.
   - (b) Annual general meeting.
   - (c) Extraordinary general meeting.
   - (d) Class meetings.
2. Meeting of debenture holders.
3. Meetings of creditors and contributories in winding up.
4. Meeting of creditors otherwise than in winding up.

5. Meeting of directors:
   (a) Board meeting.
   (b) Committee meeting.

(b) (i) A proxy is a person, being a representative of a share holder at a meeting company who may be described as his agent to carry out which the shareholder has himself decided upon. *[Cousin vs. International Brick Co, 1931].* The appointment of a proxy must be made by a written instrument signed by the appointer or his duly authorised attorney. The instrument of proxy has to be in the prescribed form set out in Schedule IX.

Section 187 of the Companies Act, 1956 provides that where a company is a member of another company it may attend the meeting of any other company through a representative. The representative must be appointed by a resolution of the Board of directors or the other governing body, the person so appointed is entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of the company as the individual member of the company may exercise.

(ii) Foreign company can also make the use of this provision or it may by means of power of attorney. [*CEPT v. Jeevanlal Ltd., (1951)]*

16. (a) Unless the articles of a company provide for a larger number, five members personally present in the case of a public company shall be the quorum for a meeting of the company (section 174). Personally present excludes proxies. But a representative of a body corporate appointed under Section 187 is a member personally present for purposes of counting of quorum. If one individual represents three member companies, his presence will be counted as three members being present in person for purpose of quorum *[Mac-Leod (Neil) & Sons Ltd.].*

(b) For the purpose of quorum, joint shareholders will be collectively regarded as one shareholder. However in an Australian Case (*Re. Trans-Continental Hotel Ltd.),* it has been held that two joint holders are each members and are to be counted towards a quorum as two members personally present. The Companies Act, 1956 specifically provides for certain purposes e.g. under Section 3(i) (iii) and under section 399 where two or more persons hold shares jointly they shall be counted only as one member. If the articles do not provide anything to the contrary, it appears that two or more joint holders when personally present can be counted as so many members for the purpose of forming quorum.

(c) The word meeting literally means a coming of together of two or more persons and generally more than one person will be necessary to constitute a meeting [Mac-leod (Neil) & Sons Ltd.]. But there may be cases where the constitution of a company may be such as, for instance, where one person holds all the equity shares of a class or all the preference shares so that there can be no meeting of more than one voting shareholder or one member of a particular class of shares. In such cases, it must be presumed that the Act contemplates positions where a meeting of two or more persons will not be possible in the strict sense and the word meeting must be taken to have been used in the sense of a function which can be performed by one person also as effectively as by two or more *(East v. Bennet Bros. Ltd.).* Apart from these special circumstances, there is an express provisions in the Companies Act, 1956 where a single member will constitute a meeting. Section 167 empowers the CLB to call annual general meeting of a company. Section 186 empowers CLB to order a meeting of the company, other than an annual general meeting. In both these cases, the CLB may issue directions in relation to the calling, holding and conducting of the meeting. The directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

17. As per Section 225 of the Companies Act,1956 , the duty of the company may be summed up as follows:

(i) On the receipt of the 14 days. special notice, the company must forthwith send a copy thereof to the retiring auditor [Section 225(2)].

(ii) Where the retiring auditor makes a written representation, not exceeding a reasonable length, to the company and requests the company to notify such representation to the members, the company is bound to state in any notice of the resolution given to the members, the fact of the representation having been made and send a copy of the representation to every member to whom notice of the meeting is sent-whether before or after a receipt of the representation by the company. Moreover, the company is bound by this duty if the representation has not been received too late. If the representation has been received too late, the company will be relieved of this duty. But in such a case, the auditor may (without prejudice to his right to be heard orally) require that the representation shall be read out at the meeting.

The auditor's right to get the copies of the presentation sent out to members or read out at the meeting is hedged in by the provision that if the Court is satisfied, on the application of the company or any other aggrieved person, that the right is being abused to secure needless publicity for a defamatory matter, the Court may order that the representation may not be circularised or read out. The Court may further order that the company's costs on such an application should be paid by the auditor, in whole or any part even though he is not a party to the application [Section 225(3)].

The rights of the auditor in this context are as follows:

(1) It follows from paragraph (ii) above that the auditor has the right to make representation to the company and to request it to the members.

(2) The auditor has also right to be heard orally at the meeting of the shareholders.

(3) Where a copy of the representation has not been despatched as aforesaid because it was received too late or because of the company's default, the

auditor may without prejudice to his right to be heard orally, require that the representation be read out at the meeting.

18. (a) (i) **Incorrect:** Both 'ethics' and 'morals' deal with right and wrong conduct. But they are not same. Ethics deals with individual character which is a personal attribute. Ethics is the response of individual to a specific situation e.g. whether in this situation, it is ethical to state the truth. Morals deal with customs set by groups or some authority like religion. Morals are general principles e.g. you should speak truth.

(ii) **Incorrect:** Society gives business its license to exist and this can be amended or revoked at any time if it fails to live up to society's expectations. Therefore, if a business intends to retain its existing role and power it must respond to society's needs constructively.

(iii) **Incorrect:** Company management is responsible not only to the shareholders, but also to other stakeholders i.e. people who have an interest in the conduct of the business of the company. These include employees, customers, vendors, the local community and even society as a whole. These stakeholders have certain rights with regard to how the business operates.

(b) Mr. XYZ 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 afflicts 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 points:

1. Defining the problem clearly.
2. How to 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 organization?
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? Misunderstood?

12. Under what conditions would you allow exceptions to your stand?

19. (a) The concept of Corporate Social Responsibility (CSR) focuses on the idea that beyond making profit, a business has social obligations. It is the responsibility of the companies to produce an overall positive impact on the society. CSR is pursued by business to balance their economic, environmental and social objectives while at the same time addressing stakeholders' expectations and enhancing shareholders' values. Stakeholders, including shareholders, analysts, regulators, labour unions, employees, community organisations and mass media expect companies to be accountable not only for their own performance but for the performance of their entire supply chain. Issues such as peace, sustainable development, security, poverty alleviation, environmental quality and human rights have a profound effect on business and its environment.

Corporate Social Responsibility is the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Need for social responsibility:

1. The iron law of responsibility
2. To fulfil long term self-interest
3. To establish a better public image
4. To avoid government regulation and control
5. To avoid misuse of National Resources and Economic Power
6. To convert Resistances into Resources
7. To minimise Environmental damage.

(b) (i) In pursuance of the Securities and Exchange Board of India (Prohibition of Insider Trading) Regulations, 1992 (duly amended), the Board has approved the. 'Code of Conduct for Prevention of Insider Trading'. The objective of the Code is to prevent purchase and/or sale of shares of the Company by an Insider on the basis of unpublished price sensitive information.

(ii) APEC is known as the primary international organization for promoting open trade and economic cooperation among 21 member countries. The Code, issued as a draft in 1999, is a standard that draws significantly on a variety of other internationally recognized codes and standards. The drafting of the Code was initiated by business leaders from companies operating in APEC countries and is designed to supplement and support companies existing codes of conduct.

(iii) The term corporate citizenship denotes the extent to which businesses meet the legal, ethical, economic and voluntary responsibilities placed on them by their stakeholders. Companies can best benefit their stakeholders by fulfilling their economic, legal, ethical and discretionary responsibilities. The benefits of good corporate citizenship include:

- A stable socio-political-legal environment for business as well as enhanced competitive advantage through better corporate reputation and brand image.
- improved employee recruitment, retention and motivation, improved stakeholder relations and a more secure environment in which to operate.

20. (a) (i) The given statement is incorrect because discrimination is action based on prejudice resulting in unfair treatment of people. To discriminate socially is to make a distinction between people on the basis of class or category without regard to individual merit. Examples of such discrimination include racial, religious or gender-based discrimination. Distinctions between people which are based just on individual merit (such as personal achievements, skill or ability) are generally not considered socially discriminatory. So seniority alone cannot be the deciding factor for promotion, if the senior person is not fit for the job.

(ii) The given statement is correct. 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.

(b) Ecological ethics is based on the idea 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.

Business and Industry are closely linked with environment and resource utilization. Production process and strategy for eco-friendly technologies throughout the product life cycle and minimization of waste play major role in protection the environment and conservation of resources. Business, Industry and multinational corporations have to recognize environmental management as the priority area and a key determinant to sustainable development. Sound management of wastes is among the major environmental issues for maintaining the quality of Earth's environment and achieving sustainable development.

♦ If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pays Principle". Removing subsidies that encourage environmental damage is another measure.

21. (a) (i) **No.** The consumer does not purchase goods and health services for personal purposes only, because on certain occasions various items are purchased for public welfare and development of the society as a whole. Further, under the Competition Act, 2002, a consumer is also one who may purchase goods for commercial purposes also.

(ii) **Yes.** A whistle blower is an employee/person who reports fraud, mismanagement or unethical practices to the appropriate levels of management. Fair treatment and appreciation of whistle blowers is necessary to check fraud. This will help in creating good accounting environment in a business enterprise.

(b) The Competition Act, 2002 intends to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

The Act deals with the following:

- Prohibition of certain agreements, which are considered to be anti-competitive in nature. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or are likely to cause an appreciable adverse effect on competition within India.
- Abuse of dominant position by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices

resulting in denial of market access or through in any other mode are prohibited.

- Regulation of combinations which cause or likely to cause an appreciable adverse effect on competition within the relevant market in India.

In light of the above points, any agreement that X Ltd. may enter into with its competitors from North India to tie-up the price at a certain level is prohibited. Such agreements would also amount to abuse of dominant position.

Conversely, agreements with distributors preventing the latter from distributing the goods of its competitors would also be illegal since they would restrict market access and can be deemed anti-competitive.

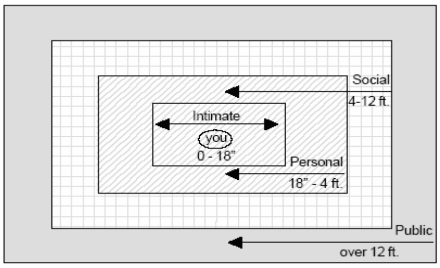
22. **(a)** Proxemics: It refers to the space that exists between us when we talk or relate to each other as well the way we organize space around us. We can also call it 'space language' as the following four space zones indicates the type of communication and the relationship of the source and receiver:

Intimate – Physical contact to 18 inches.

Personal – 18 inches to 4 feet.

Social – 4 to 12 feet.

Public-12 feet to as far as we can see or hear.



Zones of Space Language

(b) Social Competence – How You Manage Relationships

Social Awareness

- Empathy: Sensing other's emotions, understanding their perspective and taking active interest in their concerns.
- Organizational awareness: Reading the currents, decision networks, and politics at the organizational level.
- Service: Recognizing and meeting follower, client, or customer needs.

Relationship Management

- Inspirational leadership: Guiding and motivating with a compelling vision.
- Influence: Wielding a range of tactics for persuasion.

- Developing others: Bolstering others' abilities through coaching, feedback and guidance.
- Change catalyst: Initiating, managing, and leading in a new direction.
- Conflict management: Resolving disagreements.
- Building bonds: Cultivating and maintaining a web of relationships.
- Teamwork and collaboration: Cooperation and team building.

23. (a) Negotiation: Negotiation occurs when two or more parties-either individuals or groups discuss specific proposals in order to find a mutually acceptable agreement. Whether it is with an employer, family member or business associate, we all negotiate for things each day like higher salary, better service or solving a dispute with a co worker or family member. Negotiation is a common way of settling conflicts in business. When handled skillfully, negotiation can improve the position of one or even both but when poorly handled; it can leave a problem still unsolved and perhaps worse than before.

Techniques for Negotiation:

- Spiraling agreements: Begin by reaching a minimum agreement even though it is not related to the objectives, and build, bit by bit, on this first agreement.
- Changing of position: Formulate the proposals in a different way, without changing the final result.
- Gathering information: Ask for information from the other party to clarify their position.
- Making the cake bigger: Offer alternatives that may be agreeable to the other party, without changing the terms.
- Commitments: Formalize agreements orally and in writing before ending the negotiation.

(b) 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 because all language contains some degree of vagueness. Communicators are to some extent held responsible for possible misinterpretations. This means that one must be aware of the probabilistic nature of communication, and need to consider not only their intentions, but also how their messages might be misunderstood.

24. (a) Notice

Notice is hereby given that the 8th Annual General Meeting of the Members of XYZ Ltd. will be held on Thursday, the 25th day of February 2011, at the Registered Office of the Company at 28, Industrial Area, Phase-III, Sector-82 Noida (UP), at 10.00 a.m. to transact the following business –

Ordinary Business:

1. To receive, consider and adopt the Audited Balance Sheet of the company as on 31st March, 2011 and the Profit & Loss Account for the year ended on that date and Auditor's and Directors' Reports thereon.
2. To declare dividend for the year ending 31st March, 2011.
3. To appoint a director in place of Mr. …………………who retires by rotation and being eligible, offers himself for re-appointment.
4. To appoint a Director in place of Mr. …………………who retires by rotation and begin eligible, offers himself for re-appointment.
5. To appoint Statutory Auditors of the company; and fix their remuneration.

Regd. Office For and on behalf of Board of Directors.

28, Industrial Area, Phase-III,

Sector-82 Noida (UP) Sd.

Dated: January 27, 2011 Chairman of the meeting

(b) No. 2/7/2010-CL V

Government of India

Ministry of Corporate Affairs

Press Release: 5/2010

28th May, 2010

1. It has been observed that a large number of companies are not filing their due documents timely with the Registrar of Companies. Due to this, the records available in the electronic registry are not updated and thereby are not available to the stakeholders for inspection. Further, due to non-filing of the documents on time, companies are burdened with additional fee and facing the prosecutions also.
2. There are many companies, who have not increased their paid up capital up to the threshold limit provided in sub-section (3) and sub-section (4) of Section 3 of the Companies Act, 1956.
3. In order to give an opportunity to the defaulting companies to enable them to make their default good by filing belated documents and to become a regular compliant in future, the Ministry has introduced a Scheme namely, "Company Law Settlement Scheme, 2010," for condoning the delay in filing documents with the Registrar, granting immunity from prosecution and charging additional fee of 25 percent of actual additional fee payable for filing belated documents under the Companies Act, 1956 and the rules made there under.
4. After granting the immunity, the Registrar concerned shall withdraw the prosecution(s) pending if any before the concerned Court(s).

5. At the conclusion of the Scheme, the Registrar shall take necessary action under the Companies Act, 1956 against the companies who have not availed this Scheme and are in default in filing of documents in a timely manner.
6. The scheme will be in operation from 30th May, 2010 to 31st Aug, 2010.
7. For details refer General Circular No: 1/2010 dated 26.05.2010 available on the website of the Ministry i.e. www.mca.gov.in.
8. Availing the benefit of the Scheme will prevent companies from prosecution and other legal action.

25. (a) This deed a sub partnership executed on this............................. day of .... 1998 .... between (mention name and description of parties as in partnership deed) Witnesses as follows:

Whereas the aforesaid parties have come together to work in partnership a business of investing in the business of another partnership, which is carrying on a business in under the name and style of ....And Whereas the partners find it convenient to work in the said other partnership, the terms and conditions of sub partnership are hereby agreed to as follows (Clauses as in other partnership)

The.................................. Party shall represent the other partnership in the main partnership of ....constituted under an instrument of partnership; he shall account the share of profits / losses from that main partnership to this sub partnership with all other remuneration / compensation that may be paid to him. This will be treated as the profit / loss as the case may be as sub partnership.

WITNESS

1. .... Signature of the First Party
2. .... Signature of the Second Party

(b) Before Registrar of Companies, we the subscribers of the Memorandum and Article of Association of the Proposed Company hereby authorize to present the memorandum of Article of Association and other connected documents for the registration of the said company before the registrar of companies, Karnataka, Bangalore and to make such corrections/Alterations/deletions/Additions as may be required to be done by the Registrar in the documents and also to receive the certificate of incorporation.

General Power of Attorney: Know we all men by their present we do hereby appoint and constitute ……… son of ………………(hereinafter called "chartered Accountant" who has subscribed his signature hereunder in token of identification) presently residing …… to my lawful Chartered Accountant in our name and on our behalf do it any one or all the following acts, deeds, things namely

1. to give all particulars necessary for incorporation of company.

2. to give affidavit to the Registrar of Company for the purpose of incorporation.
3. to do needful acts necessary for incorporation of the company
4. He is authorized to include promissory notes letter of declaration and indemnity for the purpose of incorporation.
5. to receive documents on behalf of the members of the company.
6. to sign forms, documents and papers required for the purpose of incorporation of the company.

Dated ……….at this the ………….. day of ……………….

(address)

Specimen signature of the Chartered Accountant above named

Notary Public

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION : MAY, 2011

Applicability of the updates for May, 2011 Examination

S.No.	Subject Matter	Business Laws, Ethics and Communication
1.	The Employees' Provident Funds & Miscellaneous Provisions Act, 1952 • The Employees' Deposit Linked Insurance (Amendment)Scheme,2010 • Increase in the Interest Rate on the PF Amount.	**Applicable** **(for detail visit www.labour.nic.in)** **Applicable**
2.	The Payment of Gratuity (Amendment) Act, 2009 & The Payment of Gratuity (Amendment)Act,2010 • Amendment in the definition of an employee. • Enhancement of Ceiling Limit.	**Applicable** **(for detail visit www.labour.nic.in)** **Applicable**
3.	Companies Bill, 2009	**Not applicable**

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

QUESTIONS

A. BUSINESS LAWS

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 1^{st} April 2010. On 15^{th} 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 you 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 it 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 you 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 he 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.

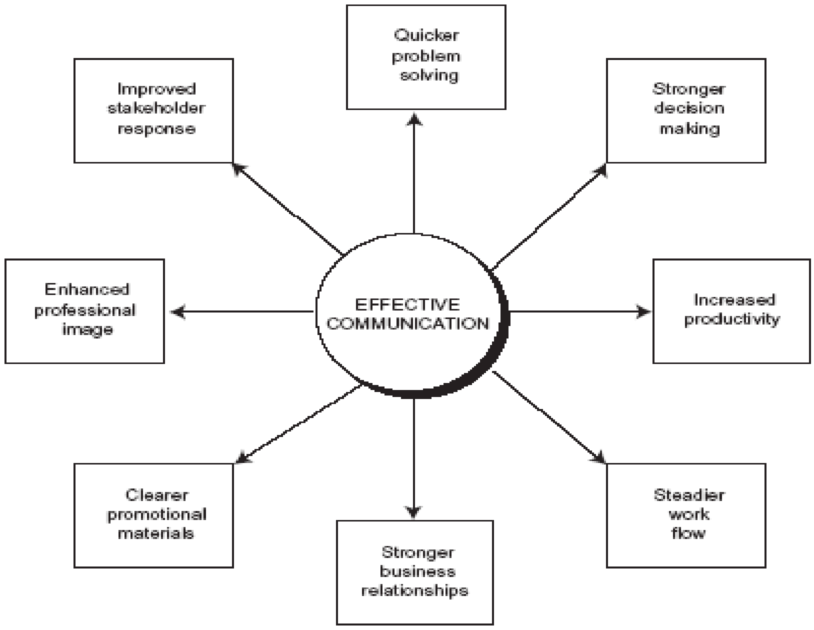
Until recently, various surveys conducted globally had ranked finance and accounting professionals very high in terms of professional ethics. However, various accounting scandals witnessed during the past few years have put a serious question mark on the role of the finance and accounting professional 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, Date

(Director)

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/-

Dated ………….2011 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 Nov, 2011 Examination

S.No.	Subject Matter	Business Laws, 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 21st April, 2011 by the Ministry of Corporate Affairs.	**Applicable**

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

QUESTIONS

A. BUSINESS LAWS

The Indian Contract Act, 1872

1. (a) State with reasons whether there is any contract made in the following cases as per the Indian Contract Act, 1872:

    (i) R sent his letter of acceptance to J under the address mentioned by J incorrectly in the letter of offer.

    (ii) A minor borrowed Rs. 5,000 from X to hire an advocate for his defence in charge of committing theft.

    (iii) An old man A under illness & feebleness endorsed a bill of exchange thinking it to be a mere guarantee.

    (iv) M promises to sell his car to N for Rs. 2 lacs if he feel like selling it after having a new car.

    (v) X contracted to sell his land to Y. Before sale could take place, the government took over the land under the law.

    (b) (i) X purchased an old car from Y. Y agreed to repair it for a charge. The car was delivered to X after a part payment. Later on, there was a problem in the car engine and X brought it again to Y. Having obtained the car, Y claimed lien on the car for the unpaid amount. Decide the right of Y in the light of the provisions of the Indian Contract Act,1872.

    (ii) 'X' consigns goods to 'Y' a merchant for sale. 'Y' in due course employees an auctioneer of goods to sell goods of 'X' and also allows him to receive the proceeds of sale. The auctioneer becomes insolvent afterwards without handling over the proceeds. Is 'Y' liable to 'X'? Decide .

2. (a) 'A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of Rs.50,000. One month later A revokes the guarantee, when C had lent to B Rs.5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan. What would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. Rs.5,000?

    (b) R is the wife of P. She purchased some sarees on Credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q would succeed?

    (c) Sunil delivered his car to Mahesh for repairs. Mahesh completed the work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of car. In the meantime a big fire occurred in the neighbourhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.

The Negotiable Instruments Act, 1881

3. (a) For cognizance of offence for the dishonour of cheque, should the cheque necessarily be presented to the drawee's (payee's) bank or can it be presented before any bank within the stipulated period?

   (b) Mark the correct answer:

   (i) Who cannot draw a negotiable instrument?

   (a) A company

   (b) An agent

   (c) An insolvent

   (d) All of these

   (ii) The presentment for payment is required in case of a:

   (a) Bill of Exchange

   (b) Promissory note

   (c) Cheque

   (d) All of these

   (iii) In case of dishonor of cheque,the holder's remedy is against the:

   (a) Drawee bank

   (b) Drawer of cheque

   (c) Indorsee of cheque

   (d) Both (a) and (c)

   (c) Ram draws a cheque of Rs. 20,000/- in favour of Balram. Ram has sufficient amount in his account with the Bank. The cheque was not presented in due time to the Bank for payment and the Bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether Balram can recover the money from Ram?

4. (a) Mr. A, a legal successor of B (a deceased person) signs a Bill of Exchange in his own name and admitted a liability of Rs.50,000 (i.e. the extent to which he inherits the assets from the deceased payable) to C after 3 months from 1st January, 2004. On maturity, when C presents the bill to A, he (A) refuses to pay for the bill on the ground that since the original liability was that of B, the deceased, therefore he is not liable to pay for the bill. Is A's contention valid?

   (b) Do the following alterations render the negotiable instrument void?

   i. The holder of a bill alters the date of the instrument to accelerate or postpone the time of payment.

ii. The drawer of a negotiable instrument draws a bill but forgets to write the words "or order". Subsequently, the holder of the instrument inserts these words.

iii. A bill payable three months after date is altered into a bill payable three months after sight.

iv. A bill was dated 2003 instead of 2004 and subsequently the agent of the drawer corrected the mistake.

v. A bill is accepted payable at the Union Bank, and the holder, without the consent of the acceptor, scores out the name of the Union Bank and inserts that of the Syndicate Bank.

(c) A promoter who has borrowed a loan on behalf of company, who is neither a director nor a person-in-charge, sent a cheque from the companies account to discharge its legal liability. Subsequently the cheque was dishonoured and the compliant was lodged against him. Does he liable for an offence under section 138 of the Negotiable Instruments Act,1881?

The Payment of Bonus Act,1965

5 (a) Define the terminologies as per the Payment of Bonus Act,1965:

(i) Accounting year

(ii) Allocable surplus

(b) Mr. Shriman joined as controller a company on monthly salary of Rs. 9000 on 1. 02. 2010 and resigned from his job on 28. 02. 2010. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. Shriman knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965.

6. (a) On 1st January, 2010, Aryan Textiles Ltd., agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under Section 10 of the Payment of Bonus Act, 1965. As per the agreement the employees of Aryan Textiles Ltd., claimed annual bonus linked with production or productivity in the relevant accounting year. On refusal of the company the employees of the company moved to the court for relief.

Decide in reference to the provisions of the Payment of Bonus Act, 1965 whether the employees will get the relief? Inspite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.

(b) Prakash Chandra is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year –

(i) overtime allowance,

(ii) dearness allowance

(iii) commission on sales

(iv) employer's contribution towards pension fund

(v) value of food.

Examine as to which of the above payments form part of "salary" of Prakash Chandra under the provisions of the Payment of Bonus Act, 1965.

(c) Decide with reasons in the light of the Payment of Bonus Act, 1965 whether the following persons are entitled for bonus:

(i) A university teacher,

(ii) An employee of the 'NABARD',

(iii) A reinstated employee without wages for the period of dismissal.

(iv) A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month.

(v) An apprentice.

The Employees' Provident Funds and Miscellaneous Provisions Act,1952

7. (a) 'X', an employee of Steria limited filed a claim for provident fund settlement with the provident fund commissioner. However, he did not get any settlement from the authority even after six month's. Referring to the EPF & MP Act, 1952 guide X, the course of action he can take in this respect.

(b) Hindustan Group of Industries sold its Manufacturing unit to the other Group of Industries. Hindustan Group contributed 35% of total contribution in Pension Scheme, which was due before sale under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The transferee company refused to pay the remaining 65% contribution in the Pension Scheme. Decide, the liabilities as to payment of the remaining contribution in case of transfer of establishment and upto what extent?

8. (a) An employee leaves the establishments in which he was employed and gets employment in another establishment wherein he has been employed. Explain the procedure laid down in the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 in this relation.

(b) Vimal is an employee in a Company. The following payments were made to him during the previous year:

(i) Piece rate wages

(ii) Productivity bonus

(iii) Additional dearness allowance

(iv) Value of Puja gift.

Examine as to which of the above payments form part of "Basic Wage"' of Vimal under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

(c) Who determines the money due from an employer under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952? State the factors considered by the authorities at the time of determining the amount.

The Payment of Gratuity Act,1972

9. (a) An employee who is governed by the Payment of Gratuity Act, 1972 committed a negligence ,as a result caused loss to his employer, during the course of his employment. And consequently his services was terminated. State, whether the gratuity payable to him shall be forfeited?

(b) Discuss the rules relating to penalties for the non-payment of gratuity under the Payment of Gratuity Act, 1972.

10. (a) How will you calculate gratuity?

(b) How will you calculate the 'continuous service'?

The Companies Act,1956

11. (a) The Memorandum of Association of a company was signed by two adult members and by a guardian of the other five minor members, the guardian signing separately for each minor member. The Registrar registered the company and issued under his hand a certificate of incorporation. The plaintiff contended that (i) conditions of registration were not duly complied with, and (ii) that there were no seven subscribers to the Memorandum. Will the Court uphold his contention?

(b) A limited company issued certain number of shares as fully paid up to a subscriber to the memorandum on the basis of promissory note executed by him as consideration towards the shares. Since no money was paid towards the allotment, the company after five years from the date of allotment wants to forfeit those shares and reissue. Can the company do so?

(c) The number of members in the public company were reduced to six and the company continued to carry on its business. State in this connection, whether the remaining persons will be liable and under what circumstances?

(d) A company wants to shift some of its objects from 'other objects' to the main objects. State whether it is a permissible alteration?

(e) In what way does the Companies Act, 1956 regulate and restrict the following in respect of a company going/or public issue of shares :

(i) Minimum Subscription, and

(ii) Application Money payable on shares being issued ? Explain.

12. (a) A solicitor prepared a necessary document for the incorporation of a company and made payment of the required registration fee and other expenses. He claimed for expenses. Decide the case in the light of the Companies Act,1956.

(b) ABC Limited realised on 2nd May, 2010 that particulars of charge created on 12th March, 2010 in favour of a Bank were not filed with the Registrar of Companies for Registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2010 instead of 12th March, 2010? Explain with reference to the relevant provisions of the Companies Act, 1956.

(c) XYZ Co. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

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

(i) When the company has already adopted the contract after incorporation?'

(ii) When the company makes a fresh contract with the suppliers in terms of pre-incorporation contract?

(d) 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.

(e) The Directors of a company registered and incorporated in the name "Mars Textile India Ltd.", desire to change the name of the company entitled "National Textiles and Industries Ltd." Advise as to what procedure is required to be followed under the Companies Act, 1956?

13. (a) What is the extent of liability of an expert, in relation to publication of prospectus, for any mis-statement in the report given by him?

(b) M/s Low Esteem Infotech Ltd., was incorporated on 1.4.2010. No general meeting of the company has been held so far. Explain the provisions of the Companies Act, 1956 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the first annual general meeting.

(c) Dev Limited issued a notice for holding of its annual general meeting on 7th July, 2010. The notice was posted to the members on 16.06.2010. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 1956 with regard to the period of notice and as such the meeting was not validly called. Referring to the provisions of the Companies Act,1956 decide:

(i) Whether the meeting has been validly called?

(ii) If there is a short fall in the number of days by which the notice falls short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?

(iii) Can the short fall, if any, be condoned?

(d) State whether the following statements are correct or incorrect. Give reasons:

(i) Right shares means shares which are issued by a newly formed company.

(ii) A company should file its annual return within six month of the close of the financial year.

(iii) A bearer of a share warrant of a company is not member of the company.

(iv) The shareholder of the company in general meeting can increase the rate of dividend recommended by the Board of Directors.

(v) Debenture with voting rights can be issued only if permitted by the Articles of Association.

(e) State the legal position in the following circumstances with reference to the provisions in the Companies Act, 1956.

'At an adjourned extraordinary general meeting of a Public Ltd. Company adjourned for want of quorum, only 3 members are personally present'.

14. Venus Pvt. Ltd., owed to Mr. X, Rs. 2,000. On becoming this debt payable, the company offered Mr. X, 10 shares of Rs. 200 each in full settlement of the debt. The said shares were fully paid and were allotted to Mr. X.

Examine the validity of these allotments in the light of the provisions of the Companies Act, 1956.

15. "If an applicant had offered to take shares on the condition that he was to be employed as a cashier in the company". Comment on the following statement in the light of the Companies Act,1956

16. State the validity of the following statements with reasons:

(a) Amway Ltd. has its registered office at Rajasthan. The company desires to hold an extra ordinary general meeting in New Delhi.

(b) Once the dividend is declared, it cannot be revoked.

17. The articles of Okara group Ltd., provide that, in the event of the quorum being not present within half-an- hour- from the time scheduled for the annual general meeting, the meeting shall stand dissolved and then quorum is not formed within half-an-hour from the time fixed therefor.

State, what will be the position of retiring directors-will they cease to be directors from the date on which the general meeting could not be held for want of quorum and consequently stood dissolved as per the articles as aforesaid or will they remain directors till the date of the fresh annual general meeting which was convened subsequent to the first one?

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2010

B ETHICS

18. (a) 'Business ethics help to promote a strong public image'. Explain.

    (b) In what ways 'Ethics' differs from' Morals'.

19. (a) How 'increase in stakeholder activism' is accountable for the development of the CSR(Corporate Social Responsibility)?

    (b) Bring out some examples of ethical issues faced by an individual in a work place.

20. Write short notes:

    (a) Sustainable Development

    (b) Ethics and Marketing

    (c) Competition

    (d) Corporate Governance

21. (a) Discuss the factors required for creating a sound ethical environment in any company.

    (b) What factors influence Ethical behavior at work?

C COMMUNICATION

22. Elaborate and discuss types of grapevine chains.

23. Comment on the following:

    (a) Groupthink

    (b) Ethical dilemmas in communication

24. (a) Draft a press release on the Easy Exit Scheme, 2010 introduced by the Ministry of Corporate Affairs.

    (b) Draft a specimen notice for the 2nd AGM of ABC Ltd., whose main agenda includes only 'ordinary business'.

25. Draft an affidavit certifying that the company XYZ Ltd does not have any tax dues to the Government.

SUGGESTED ANSWERS / HINTS

1. **(a)** (i) As per the Section 4 of the Indian Contract Act, 1872, offeror is bound by acceptance as soon as the letter is posted, but the acceptor himself is bound only when it comes to the knowledge of offeror. So, in spite of delay or loss of acceptance, the acceptance will be effective and the contract shall emerge. But ,it is necessary the letter is correctly addressed, sufficiently stamped and duly posted. In the given instant, according to R, the address given by J on the letter of offer was presumed to be correct. So mentioning of the given address by R on the letter of acceptance , which J had supplied give rise to valid acceptance and thus the contract.

(ii) As per Section 68 of the Indian Contract Act, 1872, any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person's property. This is termed as quasi contract. Thus according to the above provision giving of Rs. 5000 to the minor for hiring an advocate for his defence, entitles X to get reimbursed from the property of minor, and so giving rise to a contract.

(iii) As per Section 22 of the Indian Contract Act, 1872 ,where a person has been led to make a mistake as to an essential matter of fact by the other person, there the law save such person who is giving the consent. There such an unilateral mistake about a fundamental matter shall make the contract voidable. Thus in the given case, it's a voidable contract because there is a unilateral mistake on the part of A who endorsed a bill of exchange thinking it to be a mere guarantee.

(iv) As per Section 29 of the Indian Contract Act,1872, agreements, the meaning of which is not certain, or capable of being made certain, are void. Thus in the problem, there is no contract because the agreement made is vague and uncertain in meaning and even not capable of being made certain ,so it is a void agreement.

(v) It is a void contract due to supervening impossibility of the performance of the contract as per Section 56 of the Indian Contract Act,1872. A contract to do an act which, after the contract is made, become impossible, or, unlawful, becomes void when the act becomes impossible or unlawful. Here in the given instant performance of a contract became impossible due to change in law subsequently.

(b) (i) As per the provisions relating to the rights of bailee for the possession of goods i.e., right of lien ,given under the Section 170 of the Indian Contract Act,1872, where the lawful charges of the bailee in respect of the goods bailed are not paid, he has the right to exercise lien on the goods bailed. Lien is a possessory right. If a possession is lost even once, the lien is lost altogether.

Thus in the given problem ,Y cannot claim lien on the ground that earlier delivery of the car to X marked an end of the lien, and repossession was for a fresh repair only for which no amount was agreed to be paid(*Eduljee vs café John Bros ILR[1944]Nag 37*).

(ii) As per the provision given in the Section 194 of the Indian Contract Act, 1872, substituted agents are not sub agents. They are agents of the principal. Where the principal appoints an agent and if that agent identifies another person to carry out the acts ordered by principal, than the second person is not to be treated as a sub agent but only as an agent of the original principal. While selecting a 'substituted agent' the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent(Section 195)

Thus in the given problem, 'Y' will not be responsible to 'X' as he has discharged his duties as a man of ordinary prudence and diligence.

2. (a) The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice : A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

The liability of the surety for previous transactions however remains.

Thus applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan.

Answer in the second case would differ i.e. A is liable to C for Rs. 5,000 on default of B since the loan was taken before the notice of revocation was given to C.

(b) Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries. But the legal presumption can be rebutted in the following cases:

(i) Where the goods purchased on credit are not necessaries.

(ii) Where the wife is given sufficient money for purchasing necessaries.

(iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.

(iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv).

Applying the above conditions in the given case 'Q' will succeed. He can recover the said amount from 'P' if sarees purchased by 'R' are necessaries for her.

(c) The problem asked in the question is based on the provisions of Section 160 and 161 of the Indian Contract Act, 1872. Accordingly, it is the duty of the bailee to return or deliver the goods bailed according to the bailor's directions, without demand, as soon as the time for which they were bailed has expired, or the purpose for which they were bailed for any loss, destruction of the goods from that time (Section 161), notwithstanding the exercise of reasonable care on his part.

Therefore, applying the above provisions in the given case, Mahesh is liable for the loss, although he was not negligent, but because of his failure to deliver the car within a reasonable time *(Shaw & Co. v. Symmons* & Sons).

3. **(a)** "The bank" referred to in clause (a) to the proviso to Section 138 of the Negotiable Instruments Act, 1881, mean the drawee-bank on which the cheque is drawn and not all banks where the cheque is presented for collection including the bank of the payee, in whose favour the cheque is issued. It, however, does not mean that the cheque is always to be presented to the drawer's bank on which the cheque is issued. The payee of the cheque has the option to present, the cheque in any bank including the collecting bank where he has his account, but to attract the criminal liability of the drawer of the cheque, such collecting bank is obliged to present the cheque in the drawee or payee bank on which the cheque drawn within the period of six months from the date on which it is shown to have been issued. The non presentation of the cheque to the drawee-bank within the period specified in the Section would absolve the person issuing the cheque, of his criminal liability under Section 138 of the Act, who shall otherwise may be liable to pay the cheque amount to the payee in a civil action initiated under the law. A combined reading of Sections 2, 72 and 138 of the Act would leave no doubt that the law mandates the cheque to be presented at the bank on which it is drawn, if the drawer is to be held criminally liable. Such presentation is necessarily to be made within six months at the bank on which the cheque is drawn whether presented personally, or through another bank, namely, the collecting bank of the payee[*Shri Ishar Alloy Steels Ltd. (v) Jayaswals Neco. Ltd. (2001) LCLJ 18 (SC)]*

(b) (i) (c) is the correct answer as per the Section 26 of the Negotiable Instruments Act, 1881, According to which every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque.

So, Minors, Company and an agent can draw a negotiable instruments according to the law to which they are subject. However, insolvent is not allowed to draw, make, accept or indorse a negotiable instrument because it will bind his estate which is now vested in the Official Receiver.

(ii) (d) is the correct answer as per Section 64 of the Negotiable Instruments Act,1881.According to which Promissory notes, bill of exchange and cheques must be presented for payment to the maker, acceptor or drawee thereof respectively, by or on behalf or the holder as hereinafter provided. In default of such presentment, the other parties thereto are not liable thereon to such holder.

(iii) (b) is the correct answer as per the section 92 of the Negotiable Instruments Act,1881. According to which when a Negotiable Instrument becomes dishonored either by non acceptance or by non- payment, its holder becomes entitled to sue the parties liable to pay thereon. Thus in the given instant according to the above provision drawer of cheque is liable to the holder for dishonor of cheque.

(c) The problem as asked in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 84. The Section provides that where a cheque is not presented by the holder for payment within a reasonable time of its issue and the drawer suffers actual damage through the delay because of the failure of the bank, he is discharged from liability to the extent of such damage. In determining what is reasonable time, regard shall be had to the nature of the instrument, the usage of trade and bankers, and the facts of the particular case. Accordingly, in the given case, the drawer(Ram) is discharged from the liability to pay the amount of cheque to Balram. However, Balram can sue against the bank for the amount of the cheque applying the above provisions.

4. (a) The problem is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 29. A legal representative of a deceased person who signs his own name on a negotiable instrument is personally liable for the entire amount thereon, unless he expressly limits his liability to the extent of the assets received by him as such. Applying the above provisions to the given problem C is entitled to recover Rs.50,000/- from A. A cannot refuse to pay the amount since he has inherited the assets of the deceased. He will be liable to the extent of the full amount of the bill, even if he inherits the property valued less than the amount of the bill. Thus in the first case he will be liable to full amount of Rs.50,000/-. In the second case since he has made a limit in the instrument itself before signing on it, his liability will be only to the extent of Rs.50,000/- and not to the extent of the full amount as given on the instrument though he might have inherited the property value greater in amount than that of the instrument.

(b) (i) Yes.

(ii) No.

(iii) Yes.

(iv) No.

(v) Yes.

According to Section 87 of the Negotiable Instrument Act,1881, any material alteration of a negotiable instrument renders the same void as against any one who is party thereto at the time of making such alteration and does not consent thereto, unless it was made in order to carry out the common intention of the original parties and any such alteration, if made by an endorse discharges endorser from all liability to him in respect of the consideration thereof. The alteration must be so material that it alters the character of the instrument, to a great extent. Alterations of the date, amount payable, time, place of payment are regarded as material alterations.

(c) According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for discharging any debt or liability, and if it is dishonoured by banker on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. However, in this case, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, he has not committed an offence under section 138.

5. (a) (i) *Accounting year [Section 2(1)] :* It means, (a) in relation to a corporation, the year ending on the day on which the books of accounts of the corporation are to be closed and balanced.

(b) in relation to a company, this term means a period in respect of which any profit or loss account of the company laid before it in an annual general meeting is made up whether that period is a year or not.

(c) in any other case (a) the year commencing on the first day of April, or (b) if the accounts of an establishment maintained by the company thereof are closed and balanced on any day other than the 31st day of March then at the option of the employer, the year ending on the day on which its accounts are so closed and balanced.

If, however, the said option is once exercised by the employer, it cannot be exercised once again, except with the permission in writing of the prescribed authority and upon such conditions as that authority may think fit. In other words, the exercise of the said option can only take place on obtaining the previous written permission of the prescribed authority, and the prescribed authority may impose such conditions as it may think fit.

(ii) *Allocable surplus [Section 2(4)] :* This expression means 67% of the available surplus in an accounting year, in relation to an employer, being a company, other than a banking company, which has not made the arrangements prescribed under the Income-tax Act, for the declaration and payment within India of the dividends payable out of its profits in accordance with the provisions of Section 194 of that Act. In any other case, the allocable surplus means 60% of such available surplus.

(b) As per proviso of Section 2(13) of the Payment of Bonus Act, 1965 an employee means only person on a salary or wage not exceeding ten thousand rupees per month.

Further, Section 8 provides that an employee to be entitled for bonus in the accounting year should have worked in the establishment for not less than thirty working days in that year.

Thus, in view of the above Mr. Shriman is not entitled for Bonus, as he has not worked for 30 days in the accounting year.

6. (a) Problem relating to bonus linked with production or productivity (Section 31A)

As per Section 31A of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, as is payable under the Act. Accordingly, when such an agreement has been entered into the employees are entitled to receive bonus as per terms of the agreement/settlement, subject to the following restriction imposed by Section 31A:

(i) any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under Section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.

(ii) If the bonus payable under such agreement exceed 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 salary/wages.

In the given case Aryan Textile Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of based on profits subject to the limit of 30% of their salary/ wages during the relevant accounting year. According to Section 31A the maximum bonus under this provision can be given which should not exceed 20% of the salary/wages earned by the employee during the relevant accounting year. Hence, the maximum bonus may be paid upto 20% of the salary/wages. If the company agrees to pay more than 20% then it will be against the provisions of the Payment of Bonus Act, 1965.

The employees of Aryan Textiles also agreed not to claim minimum bonus stated in Section 10 of the Payment of Bonus Act, 1965 such an agreement shall be null and void as it purports to deprive the employees of their right of receiving minimum bonus. Hence, the relief may be given by the court, as regards to the payment of bonus to the employees, based on the production or productivity, if it is agreed, subject to a maximum of 20%. The employees will also be entitled legally to claim bonus which is minimum prescribed under Section 10 of the Act, even though they have relinquished such right as per the agreement.

(b) Computation of Salary / Wages: According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment. It includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

(i) Any other allowance which the employee is for the time being entitled to;

(ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service or of any concessional supply of food grains or other articles;

(iii) Any traveling concession;

(iv) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.

(v) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and

(vi) Any commission payable to the employee.

It may be noted that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Prakash Chandra while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds does not form part of his salary.

(c) 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 that Rs. 3,500 per month. [Section 2(13) and Section 8] (**Note: This amount has been revised to Rs. 10,000 now)**

In the given problem a University teacher and an employee of the NABARD are not entitled for bonus because the employees of Universities and other educational institutions and employees of the Agricultural Refinance Corporation are excluded from the operation of the Act as per Section 32 of the Payment of Bonus Act, 1965.

A reinstated employee without wages for the period of dismissal is also not entitled for bonus because only a dismissed employee reinstated with back wages is entitled to bonus. *[Gannon India Ltd. Vs. Niranjan Das [1984] 2LLJ 223].* In this case the employee has been reinstated without wages.

A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,000 per month is also not entitled for because he has worked for qualifying days i.e. 30 days but his salary is higher than prescribed limit (Rs. 3500 per month) in the Act. (**Under the revised wage ceiling mentioned in the note above, this employee will be eligible for bonus).**

An apprentice is not entitled to bonus [*Wheel & RIM Co. vs. Government of Tamil Nadu (1971)*].

7. (a) As per the Notification given on August 26,1997 in relation to Employees' Deposit-Linked Insurance Scheme given under the section 6(c) of the Employees' Provident

Funds and Miscellaneous Provisions Act,1952, the Provident Fund claims complete in all respects submitted along with the requisite documents shall be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt by the commissioner. If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application. In case the commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner. Here X can claim interest on the benefit amount from the commissioner at the rate of 12% per annum.

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

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

Therefore applying the above provisions in the given case the transferor Hindustan Group of industries, the transferor has paid only 35% of the total liability as contribution in pension scheme before sale of the establishment. With regards to remaining 65% liability both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable, The liability is limited upto the date of transfer and upto remaining amount. Further, the liability of the transferee i.e. the other Group of Industries, is limited to the extent of assets obtained by it from the transfer of the establishment.'

8. (a) Transfer of accumulated amount to the credit of Employees' Provident Fund on change of employment: Section 17-A 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 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 with in such time as may be specified by the Central Govt. in this behalf [Sub-Section (l)].

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)].

(b) Basic Wages

As per Section 2 of the Employees Provident Funds and Miscellaneous Provisions Act, 1952, the "Basic Wages" means all emoluments which are earned by an employee while on duty or on leave or on holidays with wages in either case in accordance with the terms of the contract of employment and which are paid or payable in cash to him, but does not include:

(i) the cash value of any food concessions;

(ii) any dearness allowance (that is to say all cash payments, by whatever name called, paid to an employee on account of rise in the cost of living), house rent allowance, overtime allowance, bonus, commission or pay and other similar allowance payable to the employee in respect of his employment or of work done in such employment; or

(iii) any presents made by the employer.

Applying the above provisions of the Act to the given problem, the Basic wages of X will include only piece rate wages but it excludes the Productivity bonus, additional dearness allowance and value of puja gift.

(c) Determination of moneys due from employer (Section 7A, E.P.F. & M.P Act, 1952):

Authorities empowered to determine the amount due from an employer under the provisions of the Act and the scheme include Central P.F. Commissioner, Deputy P.F. Commissioner, Assistant P.F. Commissioner & Regional P.F. Commissioner.

This involves decisions on:

(i) amount due as contribution

(ii) date from which same is due

(iii) administration charges

(iv) amount to be transferred under Section 15 or 17 of Act.

(v) any other charges payable by employer,

The authorities may conduct such inquiries as necessary and have powers such as are vested in Court.

Employer must be given a reasonable opportunity of representing his case.

Where any party fails to appear etc., the officer may decide on basis of evidence and documents put before him.

An *ex parte* order against employer may be set aside on application within 3 months of receiving order by him by showing sufficient cause. A fresh date shall be given for proceeding with inquiry.

As the above "proceedings are of quasi-judicial in nature and vitally affect and vitally affect the rights of parties, the principles of natural justice must be strictly followed in deciding the dispute.

9. (a) 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.

In the given case ,the employer has a right to forfeit the amount of earned gratuity of an employee whose services were terminated for any act, willful omission, or negligence causing any damage to the employer is limited to the extend of the damage, and the proof of such damage in view of Section 4(6)(a) [*Parmali Wallance Limited Vs State of M.P., (1996) II LLJ 515 (MP),]*.

(b) Offence relating to non-payment of gratuity – If the contravention relates to non-payment of any gratuity payable under the Payment of Gratuity Act,1972 the term of imprisonment shall be minimum six months and maximum two years. The Court can impose a lesser term of imprisonment, if the Court is of the opinion that a lesser term of imprisonment would meet the ends of justice [proviso to Section 9(2) of the Payment of Gratuity Act,1972]. In addition, a minimum fine of Rs.10,000 (maximum Rs.20,000) will be imposed.

10. (a) Calculation of gratuity amount payable[Section 4(2)]

In the establishments other than seasonal establishments, the employer shall pay the gratuity to an employee at the rate of 15 days wages leased on the rate of wages last drawn by the employee concerned for every completed year of service or part thereof in excess of 6 months. In case of piece rated employee, daily wages, shall be computed on the average of the total wages received by him for a period of three months immediately preceding the termination of his employment, and, for this purpose, the wages paid for any overtime work shall not be taken into account. In case of an employee who is employed in a seasonal establishment can be classified into two groups-

- those who work throughout the year &
- who work only during the season.

The former are entitled to get the gratuity at the rate of 15 days wages for every completed year of service or part thereof in excess of six months. The later are, however, entitled to received gratuity at the rate of seven days for each season.

In case of a monthly rated employee; the fifteen days. wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty six and multiplying the quotient by fifteen. In order to arrive at the figure of daily wage for the purpose of Section 4(2) of the Act, monthly wages is to be divided by 26 [*Hindustan Lever Ltd. Vs Kasargoe Devidas Rao, (1990) 61FLR 6231 (BOM)]*

(b) 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.

11. (a) No, the court will not uphold this contention because it is presumed that the certificate of incorporation is conclusive for all purposes. According to Section 35 of the Companies Act, 1956 a certificate of incorporation given by the Registrar in respect of any association shall be conclusive evidence that all requirements of this Act have been complied with in respect of registration and matters precedent and incidental thereof, and that the association is a company authorised to be registered and duly registered under this Act.

(b) Normally in the case of allotment of shares, a company may call for the entire face value of the shares on allotment or it may call for a portion of the face value. In case where a company has allotted shares for part of the face value, it issues call notice for the balance money in one or more installments.

Therefore, in the normal course, no share is allotted unless otherwise allotment money is received and the question of forfeiture would arise only when on the basis of call made for the balance amount, the same is not paid by the shareholder. In the instant unique case, the consideration for the shares has been received by the company in a form other than cash (i.e., Promissory Note).

If the concerned shareholder has not paid any money as per the promissory note, the course of action for the company would be to initiate legal proceedings for realising the money. It cannot forfeit those shares after 5 years from the date of allotment[*K. Md. Farooq Ahmed v. F.C. Electronics (P.) Ltd. & Others [1997] 2 CLJ 234 CLB].*

(c) The problem in question relates to reduction of membership below the statutory minimum. Section 12 of the Companies Act 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 Companies Act, 1956 every such member who was aware of this fact, would be individually (personally) liable for all debts contracted after six months.

Thus, in the above 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 (i.e., 6) beyond six month period;

(ii) Only those members who knew of this fact of reduced membership shall be liable, for instance, if one of the members who was abroad and thus not aware of those developments, shall not be liable.

(iii) The liability shall extend only to the debts contracted after six months.

(d) The Company Law Board which was faced with the aforesaid issue in the case of *Mafatlal Consultancy Services (India) Ltd. In re [1995] 17 C.L.A. 385* answered it in the negative.

Rejecting the petition the CLB held that —

Section 17 of the Companies Act provides that a company may alter its memorandum of association with respect to its 'objects clause' to enable it to — (a) to carry on its business more economically or more efficiently; (b) to attain its main purpose by new or improved means; (c) to enlarge or change the local area of its operations; (d) to carry on some business which under existing circumstances may conveniently or advantageously be combined with the business of the company; (e) to restrict or abandon any of the objects specified in the memorandum; (f) to sell or dispose of the whole or any part of the undertaking or of any of the undertakings of the company; or (g) to amalgamate with any other company or body of persons.

In the instant case the proposal of the company did not fall under any of these clauses. Therefore the request of the company could not be acceded to.

All the clauses of the 'object clause', whether stated under Part A or Part C are the objects of the company and a company is empowered to take up activities covered under any one of them and in fact it was already carrying on the business as per clause 70A. The company now sought to shift clause 70A in Part C to Part A. Such a transposition could not be deemed to be alteration as permissible under section 17.

(e) The Companies Act, 1956 by virtue of provisions as contained in Section 69 (1) and Section 69 (3) to (6) regulate and restrict the minimum subscription and the application money payable on shares being issued by a company going for public issue of shares. These sections provide as under:

Minimum subscription [Section 69 (1)]

No Allotment shall be made of any share capital of a company offered to the public for subscription; unless; -

(i) the amount stated in the prospectus as the minimum amount has been subscribed, provided that such amount shall not be less than 5% of the nominal amount of the shares being issued; and

(ii) the sum payable on application for such amount has been paid to and received by the company-

If the application are not received by the company for such quantum of shares for making the minimum subscription, within 120 days after the issue of prospectus, all money received from the applicants for share shall be repaid without interest. If any such money is not repaid within 130 days after the issue of prospectus, moneys will be repaid with interest at the rate of 6% from the expiry of 130 days.

Application money:

Section 69 (3) provides that the amount payable on application on each share shall not be less than 5% of the nominal amount of the share. All moneys received from application for shares shall be deposited and kept deposited in a Schedule Bank:

(i) until the certificate to commence business is obtained under Section 149, or

(ii) where such certificate has already been obtained, until the entire amount payable on application for shares in respect of the minimum subscription has been received by the company, and where such amount has not been received by the company within the time on the expiry of which the moneys received from the applicant for shares are required to be repaid without interest under Sub-section (5), all moneys received from applications for shares shall be returned in accordance with the provisions of that sub-section, as stated above.

12. (a) As per the provision given in the Section 149(4) of the companies act, 1956 any contract made by a company before the date at which it is entitled to commence business shall be provisional only, and shall not be binding on the company until that date on which trading certificate is issued , and on that date it shall become binding. As such any preliminary expenses incurred on behalf of the company to be incorporated cannot be recovered (*Re National Motor Co. 908 2 Ch. 228).*

Thus, in the given problem solicitor will not be allowed since the company was not in existence at the time when the expenses were incurred and no ratification was possible.

(b) **Registration of charge :** The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge. [Section 125 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under proviso to section 125 (1) to extend the period of 30 days by another 30 days on payment of such additional fee not exceeding 10 times the amount of fee specified on Schedule X as the Registrar may determine. Taking advantage of this provision, ABC Ltd., should immediately file the particulars of charge with the Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

If the charge was created on 12th Feb., 2010, then the company has to apply to the Company Law Board (Now tribunal) under Section 341 and seek extension of time for filing the particulars for registration. The company must satisfy the Company Law Board (Now tribunal) (a) that the omission was accidental or due to inadvertence or due to some other sufficient cause or was not of the nature to prejudice the position of creditors or shareholders of the company, or that it is just and equitable to grant relief on the other grounds. On such satisfaction, the Company *Law* Board (Now tribunal) may extend the term for the registration of charge or; such terms and conditions as it may think expedient. Once the time is extended and it is made out that the particulars have been filed within the extended time, the registrar is bound to register the charge.

(c) The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name *(Scot v. Lord Ebury),* even though the contract expressly provided that only the company shall be answerable for performance.

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

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

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

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

(i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held liable in this case for the reasons given above.

(ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.

(d) Allotment of Shares

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

The consequences of such irregular allotment are as follows:

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

(i) With in 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.

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

(e) Change in the Name of Company:

In the first instance, Mars Textile India Ltd., should ascertain from the Registrar of Companies whether the proposed name viz. National Textiles and Industries Ltd. is available or not. For this purpose, the company should file the prescribed Form

No.1A with the Registrar along with the necessary fees. The Registrar after examination will inform whether the new name is available or not for registration.

In case the name is available, the company has to pass a special resolution approving the change of name to National Textiles and Industries Ltd.

Thereafter the approval of the Central Government should be obtained as provided in Section 21 of the Companies Act, 1956. The power of Central Government in this regard has been delegated to the Registrar of Companies. Thus, the company has to file an application along with the prescribed filing fee for change of name. The change of name shall be complete and effective only on the issue of a fresh certificate of incorporation by the Registrar. The Registrar shall enter the new name in the Register in place of the former name. The change of name shall not affect any rights or obligations of the company and it shall not render defective any legal proceedings by or against it.

13. (a) A prospectus may contain a statement purporting to be made by an expert. The term expert includes an engineer, a valuer, an accountant, and any other person whose profession gives authority to a statement made by him [section 59 (2) of Companies Act, 1956].

An expert is considered liable for any mis-statement given by him in his report in relation to publication of the prospectus, unless

(i) he has given his written consent to the issue of the prospectus and has not withdrawn such consent before the delivery of the copy of the prospectus to the Registrar for Registration and

(ii) Unless a statement as to his consent and non-withdrawal of it appears in the prospectus (Section 58).

Section 59(1) provides a penalty of fine extending to Rs.50,000/- for the company and any other persons who is knowingly a party to the issue of a prospectus in contravention of these provisions.

(b) According to Section 166 of the Companies Act, 1956, every company shall hold its first annual general meeting within a period of 18 months from the date of incorporation. Since M/s Low Esteem Infotech Ltd was incorporated on 1.4.2010, the first annual general meeting of the company should be held on or before 30th September, 2010. Even though the Registrar of Companies is empowered to grant extension of time for a period not exceeding 3 months for holding the annual general meeting, such a power is not available to the Registrar in the case of the first annual general meeting. Thus, the company and its directors will be liable for the default if the annual general meeting was held after 30th September, 2010.

(c) (i) 21 Days clear notice of an AGM must be given [Section 171, Companies Act, 1956]: In case of notice by post, section 53(2) provides that the notice shall be deemed to have been received on expiry of 48 hours from the time of its posting. Besides, for working out clear 21 days, the day of the notice and the day of the meeting shall be excluded. Accordingly, 21 clear days notice has not been served (only 19 clear days notice is served) and the meeting is, therefore, not validly convened.

(ii) worked as per (i) above, notice falls short by 2 days.

(iii) according to Section 171(2), on AGM called at a notice shorter than 21 clear days shall be valid if consent is accorded thereto by all the members entitled to vote thereat. Thus, if all the members of the company approve the shorter notice, shortfall may be condoned.

(d) (i) Right shares

According to section 81 of the Companies Act, 1956 where the shares are offered to the existing shareholders who have pre-emptive right to purchase the additional shares of the company to expand its activities or it may stand in need of more financial resources, it is called right issue.

Hence the given statement is incorrect.

(ii) Filing of annual return

Section 159 of the Companies Act, 1956 states that a company should file its annual return within sixty days from the date the Annual General Meeting is held.

Hence the given statement is incorrect.

(iii) Share warrant

According to the provision relevant to share warrant, it has been mentioned that the bearer of a share warrant of a company can be a member only if the articles so provide. This says that the bearer is not a member of the company unless and until the articles of a company may provide that the bearer of a share warrant shall be deemed to be a member of the company for the purposes defined by the articles.

So the given statement is correct.

(iv) Dividend

The shareholders can decrease the rate of the dividend but cannot increase in the general meeting. Hence the given statement is incorrect.

(v) Debentures with voting rights

As given under section 117 of the Companies Act,1956 no company can issue any debentures carrying voting rights at any meeting of the company, whether generally or in respect of any particular classes of business.

Hence the given statement is incorrect.

(e) Quorum

Quorum means the minimum number of members who must be present in order to constitute a meeting and transact business thereat. Thus the meeting cannot proceed with business in the absence of quorum unless the articles of the company provide otherwise.

As per Section 174(5) of the Companies Act,1956, if a meeting is adjourned for want of quorum and at the adjourned meeting also quorum is not present, within half an hour from the time appointed for holding the meeting, the members present shall be quorum. Assuming here, that the adjournment of meeting is called because of absence of quorum, the above- stated provision will prevail. Accordingly, three members who are personally present can validly conduct the meeting. But if the adjournment has taken place for any reason other than absence of quorum, the quorum as per articles or at least five members as per Section 174(1), must be present.

14. **Allotment of Shares:** As per the Section 75 of the Companies Act, 1956 when shares are allowed to a person by a company, payment may be made – (i) in cash, or (ii) in kind (with the consent of the company).

'Cash' here does not necessarily mean the current coin of the country. It means "such transaction as would in an action at law for calls, support a plea of payment."

On the basis of the above provision and decision of the related case *Coregam Gold Mining Co. of India V. Roper, (1892), A.C. 125*, the allotment of fully paid up shares in full satisfaction of Mr. X's debt is valid.

15. As per the provision given under the Section 72 relating to allotment of shares under the Companies Act, 1956, the allotment of shares can be done only when there has been a written application to take shares. The application for shares would contain various terms of allotment. The company must make allotment of shares while accepting all those terms and should also not add new terms from its side.

Thus on the basis of above provision in the given statement, the company must appoint an applicant as cashier, otherwise, an applicant have a right to reject the allotment (*Ramanbhai vs Ghasiram[1918]ILR 42 Bom 595)*

16. **(a)** The holding of the extra-ordinary general meeting by the company at any place is valid. Section 166(2) of the Companies Act,1956 mentions the place for an AGM only. It says that Every annual general meeting shall be called for a time during business hours, on a day that is not a public holiday, and shall be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. Section 172(1) too contains no reference to any particular place for meeting. This section says that every notice of a meeting of a company shall specify the place and the day and hour of the meeting, and shall contain a statement of the business to be transacted thereat.

(b) This is a valid statement .Ordinarily, once the dividend is declared with the approval of the general meeting, it cannot be revoked. However, as per section 205(1A) of the Companies Act,1956 a resolution at the general meeting may be passed to revoke the declaration before the amount is credited to the shareholders(*Kishinchand Chellaram vs CIT*).Similarly, the interim dividend declared by the Board may be revoked by the general meeting.

17. As per the Provision given under Section 174 of the Companies Act,1956, if the newly convened annual general meeting is held well within the statutory period, then the rotational directors may remain in office till the date of the second meeting so held. If, however, the meeting is called on the last day of the statutory prescribed period and the meeting could not be held for want of quorum and a fresh annual general meeting is convened as a result, then the rotational directors might be allowed to retain their office till the date of the second meeting with the prior permission of the registrar of Companies.

18. **(a)** 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.

(b) The word 'Ethics' is derived from the Ancient Greek ēthikos - meaning character is the essence of values and habits of a person or group. It covers the analysis and employment of concepts such as right and wrong, good and evil, and acting with responsibility. It has many definitions . According to one ,ethics are the principles of conduct governing an individual or a group. Another describes ,ethics as relating to what is good or bad, and having to do with moral duty and obligation.

Let us draw a distinction between Ethics and Morals . The word 'Moral' is defined as relating to principles of right and wrong. Although both words are broadly defined in contemporary English as having to do with right and wrong conduct, the root word for ethics is the Greek "ethos," meaning "character", while the root word for Moral is Latin "mos," meaning "custom."Character and custom, however, provide two very different standards for defining what is right and what is wrong. Character is a personal attribute, while custom is defined by a group over time. People have character. Societies have custom. To violate either can be said to be wrong, within its appropriate frame of reference. Another way to look at the distinction is to say that morals are accepted from an authority (cultural, religious, etc.), while ethics are accepted because they follow from personally accepted principles. For example, if one accepts the authority of a religion, and that religion forbids stealing, then stealing would be immoral. An ethical view might be based on an idea of personal property that should not be taken without social consent (like a court order).

Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'. and are typically first absorbed as a child from family, friends, school, religious teachings and other associations. Morals work on a smaller scale than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.

19. (a) Increased Stakeholder Activism: Corporate accounting scandals have focused attention more than ever on companies, commitment to ethical and socially responsible behaviour. The public and various stakeholders are increasingly seeking assistance of the private sector to help with myriad complex and pressing social and economic issues. There is a growing ability and sophistication of activist groups to target corporations they perceive as not being socially responsible, through actions such as public demonstrations, public exposes, boycotts, shareholders, resolutions, and even 'denial of service' attacks on company websites. Companies are therefore focusing on meaningfully engaging with their various stakeholders. Companies and stakeholders have, in many cases, progressed beyond 'dialogue for dialogue's sake, and are looking to rationalize the process.

(b) Some examples of ethical issues faced by an individual in the workplace are:

(1) Relationships with suppliers and business partners:

(a) Bribery and immoral entertainment

(b) Discrimination between suppliers

(c) Dishonesty in making and keeping contracts

(2) Relationship with customers

(a) Unfair pricing

(b) Cheating customers

(c) Dishonest advertising

(d) Research confidentiality

(3) Relationship with employees

(a) Discrimination in hiring and treatment of employees

(4) Management of resources

(a) Misuse of organisational funds

(b) Tax evasion

20. (a) The Concept of sustainable development was brought into focus by Brundtland Report, which stated that economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. One must realize that increased development and higher GNP are related to environmental damage and resource depletion. Therefore, an element of resource regeneration and positive approach to environment have to be incorporated in developmental programmes. Literally sustainable development refers to maintaining development over time. Most widely cited definition of sustainable development is development that meets the needs of the present without compromising the ability of future generations to meet their own needs. A nation or society should satisfy its requirements- social, economic and others without jeopardizing the interest of future generations. High economic growth means high rate of extraction, transformation and utilization of non-renewable resources. There is no doubt that twenty first century markets shall be driven by the requirements of sustainable environments.

(b) The task of marketers is to influence the behaviour of customers. To accomplish this goal, marketers have a variety of tools at their disposal. Broadly speaking, these tools include the design of a product, the price at which it is offered, the message used to describe it, and the place in which it is made available. Ethics are standards of moral conduct. To act in an ethical fashion is to conform to an accepted standard of moral behavior. Undoubtedly, virtually all people prefer to act ethically. It is easy to be ethical when no hardship is involved, when a person is winning and life is going well. The test comes when things are not going well, when pressures build. These pressures arise in all walks of life, and marketing is no exception. Marketing executives face the challenge of balancing their own best interests in the form of recognition, pay, and promotion, with the best interests of consumers, their organizations, and society into a workable guide for their daily activities. In any situation they must be able to distinguish what is ethical from what is unethical and act accordingly, regardless of the possible consequences.

(c) A broad definition of Competition is .a situation in a market in which firms or sellers independently strike for the buyers. patronage in order to achieve a particular business objective, for example profit, sales or market share. (World Bank, 1999). A pre-requisite for a good competition is trade, trade is the unrestricted liberty of every man to buy, sell and barter, when, where and how, of whom and to whom he pleases. For a free market to be in existence the handicap is that for a given distribution of income of those who can pay the highest price will most be able to purchase the goods regardless their relative needs. However, the real culprit is income distribution system and not the competitive system. In an unregulated free market, in certain circumstances it could be of greater benefit to the owner to withhold goods from market in order to extract a higher price. Despite the efforts to regulate prices which have been unsuccessful, the caution in a free market as compared to the problems in an unregulated market can be overcome by posturing competition by which the ultimate raison de. etre of competition, namely the, interest of the consumer can be protected.

(d) Corporate Governance

"Corporate governance is about promoting corporate fairness, transparency and accountability". It is concerned with structures and processes for decision making, accountability, control and behaviour at the top level of organisations. It influences how the objectives of an organisation are set and achieved, how risk is monitored and assessed and how performance is optimized.

The term Corporate Governance is not easy to define. The term governance relates to a process of decision making and implementing the decisions in the interest of all stakeholders. It basically relates to enhancement of corporate performance and ensures proper accountability for management in the interest of all stakeholders. It is a system through which an organisation is guided and directed. On the basis of the definition given in the Cadbury Report, 1992, the core objectives of Corporate Governance are focus, predictability, transparency, participation, accountability, efficiency & effectiveness and stakeholder satisfaction.

Corporate Governance can also be defined as the formal system of accountability and control for ethical and socially responsible organisational decisions and use of resources.

- Accountability relates to how well the content of workplace decisions is aligned with the organisation's stated strategic direction.
- Control involves the process of auditing and improving organisational decisions and actions.

Corporate governance arrangements are key determinants of an organization.s relationship with the world and encompass:

1. The power given to management;
2. Control over management's use of power (e.g. through institutions such as Boards of Directors);
3. Management's accountability to stakeholders; and
4. The formal and informal processes by which stakeholders influence management decisions.

21. (a) In light of the various corporate scandals giving rise to potential conflicts, the following three points need to be addressed for creating a sound ethical environment in any company. They are,

i. Ensuring that employees are aware of their legal and ethical responsibilities.

Ethical organisations would have policies to train and motivate employees toward ethical behaviour. This would require initiation from the top. A number of companies, both in the West and in India have been known for their quality and soundness of their Ethics programmes. Companies like Raytheon make ethics training compulsory for everyone. Similarly Texas Instruments has a well drafted Ethics programme from as long as 1961. In India Wipro was amongst the pioneers to establish an organised set of beliefs which would guide business conduct. This was done as early as 1970s. In the process the company has established an Integrity manual which helps employees take ethical decisions when faced with choices.

ii. Providing a communication system between the management and the employees so that any one in the company can report about fraud and mismanagement without the fear of being reprimanded.

Ethical organisations need to provide facilities for employees through which they could communicate with responsible positions for reporting frauds, mismanagement or any other form of non routine detrimental behaviour. In

India Wipro has introduced a helpline comprising of senior members of the company who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.

iii. Ensuring fair treatment to those who act as whistle blowers.

This is perhaps the most important and sensitive issue. When Sherron had raised questions at Enron, she was demoted. Similar fate would have met all those who had followed Sherron. Fair treatment to whistle blowers is a basic necessity to check fraud. It is re assuring that two of the three persons of the year, selected by the popular Time magazine were accountants from Enron and World Com who had dared to blow the whistle, however, needless to say that the appreciation is much more needed from within the company rather than outside.

(b) Ethical decisions in an organization are influenced by three key factors: individual moral standards, the influence of managers and co-workers, and the opportunity to engage in misconduct. While one may have great control over personal ethics outside the workplace, co-workers and management through authority for example, exerts significant control on ones choices at work. In fact, the activities and examples set by co-workers, along with rules and policies established by the firm, are critical in gaining consistent ethical compliance in an organization. If a company fails to provide good examples and direction for appropriate conduct; confusion and conflict will develop and result in the opportunity for unethical behaviour. For example if the boss or co-workers leave work early, one may be tempted to do so as well. If one sees co-workers making personal long-distance phone calls at work and charging them to the company, then one may be more likely to do so also. In addition, having sound personal values contributes to an ethical workplace.

22. Types of grapevine chains: Specialists in this field have identified four types of grapevine chains:

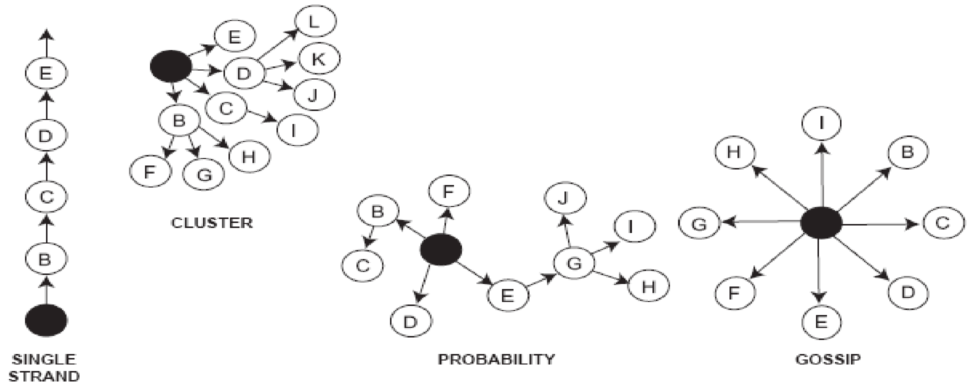
(a) Single Strand Chain: In this type of chain, ‘A’ tells something to ‘B’ who tells it to ‘C’ and so on. This type of chain is the least accurate in passing on the information or message.

(b) Gossip Chain: In it, a person seeks out and tells everyone the information he has obtained. This chain is often used when information or a message regarding a ‘not-on-job’ nature is being conveyed.

(c) Probability Chain : In it, individuals are indifferent to the persons to whom they are passing some information. This chain is found when the information is somewhat interesting but not really significant.

(d) Cluster Chain: In this type of chain, ‘A’ tells something to a few selected individuals and then some of these individuals inform a few other selected individuals.

It has been found out that the cluster chain is the dominant grapevine pattern in an organization. Most informal communication flows through this chain.



Transmission Of Information Along Grapevine

23. (a) Groupthink: Groupthink is the tendency of group members to seek agreement solely for agreement's sake. A group gripped by groupthink fails to be creative, explore alternative solutions, problems, or concerns in an effort to present a united or cohesive front to outsiders. Group members must question themselves and their actions to ensure high-quality decision making. There are several ways to reduce the tendency toward groupthink. One technique that encourages open discussion is to have the group leader ask each member to assume the role of critical evaluator. It should be stressed that the role is that of constructive rather than destructive questioner. Another technique is to have the group from time to time divide into subgroups with similar tasks leading to fresh perspectives. A third technique conducive to warding off groupthink is to have each group member discuss the group's communications and actions with trusted outsiders to obtain an objective viewpoint. A fourth way to avoid groupthink is to have the group hold a special meeting where all misgivings, second-guessing, and objections are aired. At such a meeting, each member is encouraged to express any doubts she or he may have, about any phase of the group's deliberation. A special method of minimizing groupthink is to have a measure of cultural diversity within a group leading to emergence of diverse ideas, opinions, and arguments which can counteract the effects of groupthink.

(b) Ethical dilemmas in communication: Some of the ethical dilemmas faced while communicating are:

(i) Secrecy**:** Secrets are kept for both honourable and dishonourable reasons; may be used to guard intimacy or to invade it. Here then lies the challenge for the manager, to determine when secrets are justifiable and when they are not.

(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.

(iii) Leaks: A leak is like anonymous whistle- blowing; one distinction being the propriety of the leak; namely, that the person who leaks information cannot be cross-examined. Leaks may cause organizational plans to be altered or forgone altogether.

(iv) Rumour and gossip: Rumours and gossip seem to be an inevitable part of everyday corporate life. Even though managers usually treat the information as "yet to be confirmed," it may cloud judgments about that employee.

(v) Lying: A lie is a false statement intended to deceive .Lying breaks down the trust between individuals, shaking the foundation of ethical communication.

(vi) Ambiguity: Ambiguity, like secrecy, can be used for ethical or unethical purposes. So by using words in certain ways, one can influence others behaviour and expectations.

24. (a) A press note on the Easy Exit Scheme, 2010 introduced by the Ministry of Corporate Affairs:

F. No. 2/7/2010-CL V

Government of India

Ministry of Corporate Affairs

<u>Press No- 06/2010</u> 28th May, 2010

Subject: Easy Exit Scheme, 2010.

1. In order to give an opportunity to the defunct companies, for getting their names struck off from the Register of Companies, the Ministry has decided to introduce a Scheme namely, “Easy Exit Scheme, 2010” under Section 560 of the Companies Act, 1956.
2. The Scheme does not inter-alia cover the listed companies, section 25 companies, vanishing companies, companies under inspection/investigation, companies against which prosecution for a non-compoundable offence is pending in court, companies having outstanding public deposits or secured loan or dues towards banks and financial institutions or any other Government Departments etc. or having management dispute or company in respect of which filing of documents have been stayed by court or CLB or Central Government or any other competent authority.
3. Any defunct company desirous of getting its name struck off the Register under Section 560 of the Companies Act, 1956 shall make an application without fee in the Form EES, 2010 electronically on the Ministry of Corporate Affairs portal namely www.mca.gov.in along with affidavit, Indemnity Bond and a Statement of Account duly certified by the statutory auditor or a Chartered Accountant in whole time practice.
4. The scheme will be in operation from 30th May, 2010 to 31st Aug, 2010.
5. For details refer General Circular No: 2/2010 dated 26.05.2010 available on the website of the Ministry i.e. www.mca.gov.in.
6. Availing the benefit of the Scheme will prevent companies from prosecution and other legal action.

(b) Notice is hereby given that the 10th Annual General Meeting of the Members of XYZ Ltd. Will be held on Thursday, the 15th day of September, 2006, at the Registered Office of the Company at Plot Nos. 16-18, New Electronics Complex, Chambaghat, Distt. Solan (HP), at 10.00 a.m. to transact the following business .

Ordinary Business:

1. To receive, consider and adopt the Audited Balance Sheet of the company as on 31st March, 2006 and the Profit & Loss Account for the year ended on that date and Auditor's and Directors. Reports thereon.
2. To declare dividend for the year ending 31st March, 2006.
3. To appoint a director in place of Mr. .... who retires by rotation and being eligible, offers himself for re-appointment.
4. To appoint a Director in place of Mr. .... who retires by rotation and begin eligible, offers himself for re-appointment.
5. To appoint Statutory Auditors of the company; and fix their remuneration.

Regd. Office: For and on behalf of Board of Directors

16-18, New Electronics Complex

Chambaghat

Distt: Solan (HP) Chairman of the Meeting

25. An affidavit certifying that the company XYZ Ltd., does not have any tax dues to the government:

I, Mr. A son of Mr. B aged 50 years residing at 15, Vasant Kunj, New Delhi-110070 hereby affirm that the Company XYZ Ltd. does not have any dues towards Income Tax /Sales Tax/Central Excise/Banks and Financial Institutions; any other Central or State Government Departments/ Authorities or any Local Authorities**.**

I solemnly state that the contents of this affidavit are true to the best of my knowledge and belief and that it conceals nothing and that no part of it is false.

Signature:-----------------------

(Deponent)

Verification

I verify that the contents of this affidavit are true to the best of my knowledge and belief.

Place:--------------------- Signature:-------------------------

Date:---------------------- (Deponent)

PAPER – 2 : BUSINESS LAWS, ETHICS & COMMUNICATION

UPDATES IN BUSINESS LAWS

S.No.	Name of the Act	Gist of the Updates	Reference to the Updates	Applicability for the November 2010 Exam
Business Laws				
1	The Employees' Provident Funds and Miscellaneous Provisions Act,1952	The Central Government amended the Employees' Deposit Linked Insurance Scheme, 1976 by Employees' Deposit Linked Insurance(Amendment) Scheme,2010. According to which on the death of an employee, who is member of the Fund or of a provident fund exempted under section 17 of the Act, the person entitled to receive the provident fund accumulations of the deceased shall, in addition to such accumulations be paid an amount, equal to the average balance in the account of the deceased in the fund or a provident fund exempted under section 17 of the Act, as the case may be, during preceding twelve months or during the period of his membership, whichever is less, except where the average balance exceeds rupees fifty thousand, the amount payable shall be rupees fifty thousand plus 40% of the amount in excess of fifty thousand subject to a ceiling of Rupees one lakh.	Notification No. G.S.R. 523(E) of Ministry of Labour and Employment www.labour.nic.in	Not Applicable
2	The Payment of Gratuity Act,1972	The Payment of Gratuity (Amendment) Act, 2010 has amended the limit of amount of gratuity payable to an employee from rupees 3.5 lakhs to rupees 10 lakhs.	Notification No. S.O.1217(E) of Ministry of Labour and Employment www.labour.nic.in	Not Applicable

INTEGRATED PROFESSIONAL COMPETENCE EXAMINATION: NOVEMBER, 2010

Company Law				
3	The Companies Act, 1956			
	Companies Bill, 2009	The Companies Bill, 2009 which was introduced in the Lok Sabha has made extensive changes in the existing Companies Act, 1956. At present, it is in the form of a Bill only and pending before parliamentary Standing Committee on Finance.	www.mca.gov.in	Not Applicable