

MOCK TEST PAPER – 1
INTERMEDIATE (IPC): GROUP – I
PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION
SUGGESTED ANSWERS/HINTS

1. (a) The given problem is based on the law related to the 'Unilateral mistake as to the identity of the contracting party' given in the Indian Contract Act, 1872. The law says that mistake as to identity of the person will make the contract void only when the intention was to enter into a contract only with a particular person other than the person with whom the contract has been entered into.

In this case, there was no contract between the jeweler and the woman and the pawnbroker does not get good title and must return the ring to the jeweler. Though, the woman had got the physical possession of the jewelry, but there was no mental assent, as the jeweler intended to deal not with her but quite different person i.e., the wife of millionaire.

Thus, the jeweler is entitled to recover the ring.

- (b) The provision given in the Section 173 of the Companies Act, 1956 requires a company to annex an explanatory statement to every notice for a meeting of the company at which some special business is to be transacted. This explanatory statement is to bring to the notice of members all material facts relating to each item of special business. Section 173 further specifies that all business in case of any meeting other than (i) consideration and approval of the annual accounts of the company (ii) declaration of dividend (iii) appointment of directors in place of those retiring and (iv) appointment of auditors including the fixing of their remuneration is regarded as special business. Therefore, the complaint of Mr. A, the shareholder is valid, since the details on the item regarding issue of shares to be considered is lacking. The information about the issue of shares is a material fact. The notice given by public company of the General Meeting of the shareholders, is not a valid notice under Section 173 of the Companies Act, 1956.
- (c) The fundamental principles to be followed by the all accounting and finance professionals relating to ethics may be summarized as under:
1. **The Principle of Integrity:** It calls upon all accounting and finance professionals to adhere to honesty and straightforwardness while discharging their respective professional duties.
 2. **The Principle of Objectivity:** This principle requires accounting and finance professionals to stick to their professional and financial judgment.

3. **The Principle of Confidentiality:** This principle requires practitioners of accounting and financial management to refrain from disclosing confidential information related to their work.
 4. **The Principle of Professional Competence and due care:** Finance and accounting professionals need to update their professional skills from time to time in order to provide competent professional services to their clients.
 5. **The Principle of Professional Behaviour:** This principle requires accounting and finance professionals to comply with relevant laws and regulations and avoid such actions which may result in discrediting the profession.
- (d) A communication of the message is successful only when both the sender and the receiver perceive it in the same manner. Quite often, there is miscommunication due to one barrier or the other. Barriers or problems can arise at any stage of the communication process. It is very important to understand the causes of communication breakdown.

Following are the main barriers to communication:

- (1) **Noise:** Noise refers to the distracting element that breaks the concentration of the sender or receiver and prevents him/her from paying attention to the content of the message. Distraction (noise) can be either physical or psychological. Noise can lead to miscommunication and measures must be taken to overcome it.
- (2) **Semantic Barriers:** Semantic refers to the study of meanings of words and signs. Semantic barrier occurs due to:
 - (i) Sender and receiver interpret same words in different manner.
 - (ii) Words carry different nuances, shades and flavours to the sender and receiver.
 - (iii) Faulty translation.
 - (iv) Poor expression power or ability.
- (3) **Cultural Barrier:** We live in a globalised world and may encounter individuals of different races, religions and nationalities. The same category of words, phrases, symbols, actions, colours mean different things to people of different cultural background e.g. in the United States of America, people like to be called by their first name, while in Britain and to a large extent also in India, people like to be addressed by their surname.
- (4) **Emotions:** Emotions play a very vital role in our life. Both encoding and decoding of messages are influenced by our emotions. A message received when we are emotionally charged up will have a different meaning for us than when we are calm and composed.

- (5) *Status Consciousness*: Subordinates are either too conscious of their low status or too afraid of being snubbed. At the same time, many executives keep distance from their juniors thinking that consulting subordinates is something below their dignity.
 - (6) *Poor Listening*: Poor listening may lead to serious communication problems. Too many people are interested in talking and mostly talking about themselves. Poor listening accounts for incomplete information and also for poor retention.
2. (a) (I) **Deduction allowed under Third Schedule under the Payment of Bonus Act, 1965**: According to Section 6 of the Payment of Bonus Act, 1965 the available surplus in respect of any accounting year shall be the gross profits for that year after deducting there from the sums referred to the section. The Third Schedule of the Act states that prior charges to be deducted from gross profits in respect of a company other than a banking company (a non-banking company) as follows:
1. The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividend are payable;
 2. 8.5% of its paid-up equity share capital as at the commencement of the accounting year.
 3. 6% of its reserves shown in the balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year.
- Where the employer is a foreign company under the Companies Act, 1956, the total amount to be deducted under this item shall be 8.5% of the aggregate of the value of the net fixed assets and the current assets of the company in India after deducting the amount of its current liabilities (other than any amount shown as payable by the company to its Head Office whether towards any advance made by the Head Office or otherwise or any interest paid by the company to its Head Office) in India.
- (II) (i) **Permissible deductions**- As per the sections 17 and 18 of the Payment of Bonus Act, 1965, any interim bonus, puja or customary bonus, paid by the employer and amount of any financial loss caused to the employer due to the misconduct of the employee shall be deductible from the amount of bonus payable to the employee in respect of the relevant accounting year.
- (ii) **Proportionate reduction in bonus**- According to section 13 of the Payment of Bonus Act, 1965 where an employee has not worked for all the working days in an accounting year, the minimum bonus of Rs. 100/

Rs. 60, if higher than 8.33% of his salary or wage for the days he has worked in that accounting year, shall be proportionately reduced.

- (b) **Socially Responsible Corporate Performance:** The benefits arising out of socially responsible corporate performance include the following:
1. Enhanced brand image and reputation.
 2. Reduced Government regulations and controls.
 3. Helps to minimize ecological damage.
 4. Improved financial performance.
 5. Reduced operating costs.
 6. Increased sales and customer loyalty.
 7. Increased productivity and quality of work life.
 8. Increased ability to attract and retain employees.
 9. Achievement of certain other objectives like easier access to capital including international capital.
- (c) **Tips for improving interpersonal skills:** Lines of communication must be open between people who rely on one another to get work done. Poor interpersonal communication skills, which include active listening, result in low productivity simply because one does not have the tools needed to influence, persuade and negotiate which are necessary for workplace success. To get this success the following tips are suggested:
- (i) *Congruency in communication elements:* If the words used are incongruent with the other interpersonal communication dynamics interpersonal communication is adversely affected. Since communication is shared meaning, words must send the same message as the other interpersonal communication dynamics – body language, facial expression, posture, movement, tone of voice to help emphasize the truth, sincerity and reliability of the communication. A consistent message ensures effective communication.
 - (ii) *Listening effectively:* Effective or active listening is very important skill to enhance interpersonal communication. Listening helps to build strong personal relationships. The process of communication completes when the message as intended by the sender is understood by the receiver. Most of the persons assume that listening is natural trait, but practically very few of us listen properly. One needs to give the communicator of the message sufficient attention and make an effort to understand his view point.
3. (a) The provisions(Sections 22-25) given in the Negotiable Instruments Act,1881 lays down the rule relating to the calculation of the maturity period of the Negotiable Instruments. The date on which a negotiable instrument falls due for payment is

called the date of maturity of the instrument.

Calculation of maturity of a Bill of Exchange: The maturity of a bill, is at maturity on the third day after the day on which it is expressed to be payable (Section 22, para 2 of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of bill payable on demand, at sight, or presentment.

- (i) When a bill is made payable at 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 the event happens. (Section 23).
- (ii) When a bill is made payable a stated number of months after sight and has been accepted for honour- the period terminates with the day of the month which corresponds with the day on which it was so accepted.
- (iii) 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).

In calculating the date a bill made payable after a certain number of days after date or after sight or after a certain event is at maturity, the day of 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).

- (iv) Three days of grace are allowed to these instruments after the day on which they are expressed to be payable (Section 22).
- (v) When the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day (Section 25).

Thus according to the above the provisions, in the first case, where a bill of exchange dated 20th November 2012, is payable on 4 months after date, there the instrument falls due for payment on 23 March, 2013.

Whereas in the second case, promissory note presented for sight on 15th April, 2013 made payable 60 days after sight, there the due date of the instrument will fall on third day after 14th June, 2013 i.e., 17th June, 2013.

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

Managers, in particular, because of the authority of their position, have the opportunity to influence employees' actions. For *example*, a manager can influence employees to use pirated computer software to save costs. The use of illegal software puts the employee and the company at legal risk, but employees may feel pressured to do so by their superior's authority. Customer's need should be considered most when it comes to ethical business practices. In the long run, a company will reap great profits from a customer base that feels it is being treated fairly and truthfully. Organizational pressures may encourage a person to engage in activities that he or she might otherwise view as unethical, such as invading others' privacy or stealing a competitor's secrets.

- (c) Several problems that typically arise in conflict situations. *First*, the parties will simply avoid the conflict. This can be damaging, because it can lead to greater problems in the future. It is usually best that the individuals discuss their differences. *Second*, individuals involved in conflict may blame the other individual. Often, individuals go beyond the specific behaviour in question and blame the character of the person. *Third*, a final problem that is often encountered in conflict management is adopting a win-lose mentality. Focusing on each individual's goals / outcomes will help avoid using a win-lose strategy.

The climate in which *conflict is managed* is important. It is essential to plan communications to foster a supportive climate, marked by emphasis on:

- Presenting ideas or opinions.
- Problem orientation- focusing attention on the task.
- Spontaneity-communicating openly and honestly.
- Empathy: understanding another person's thoughts.
- Equality- asking for opinions.
- A willingness to listen to the ideas of others.

If successfully managed conflict can be constructive and can strengthen relationships.

4. (a) The Memorandum of Association of company is in fact its charter; it defines its constitution and the scope of the powers with which it has been established under the Act. It is the very foundation on which the whole edifice of the company is built.

Object of registering memorandum: "Fundamentally, there are two objects in registering the memorandum. First, that the intending corporator who contemplates the investment of his capital may know within what fields it will be incurring risks. Secondly, that anyone dealing with the company may know without reasonable doubt whether the contractual relationship which he is proposing to enter into with the company is one relating to matters within its corporate objects". A company cannot depart from the provisions contained in the memorandum however

imperative may be the necessity for the departure. It cannot enter into a contract or engage in any trade or business, which is beyond the power confessed on it by the memorandum. If it does so, it would be *ultra vires* the company and void. Consequently, every person entering into a contract with the company is presumed to have the knowledge of the conditions contained therein. Thus, a memorandum is a public document.

Contents of memorandum [Section 13]: The particulars of clauses which the memorandum of a company must contain are as under:

- (1) The name of the company with 'Limited' as the last word and 'Private Limited' in the case of a private company.
- (2) The State in which the registered office will be situated.
- (3) The objects of the company, in the case of a company in existence immediately before the commencement of the Companies (Amendment) Act, 1965.

In the case of a company formed after the commencement of the Amendment Act, 1965, the memorandum must contain (a) the main objects of the company, together with other objects incidental or ancillary to the attainment of the main objects; (b) other objects of the company not included in (a) above.

- (4) In the case of a company (other than a trading corporation), with objects not confined to one State, the State to whose territories the objects extend.
- (5) A declaration that the liability of members is limited.
- (6) A statement as to the amount of share capital, and its division into shares of fixed amount.

The memorandum must conclude with a declaration of association signed by the sub-scribers, who shall add their description, address and occupation, each stating against his name the number of shares he agrees to take. The signatures of the subscribers must be attested, one witness is usually sufficient and he must add his address, description and occupation. It must be printed and divided into paragraphs, numbered consecutively, and should be in one of the forms in Tables B,C,D, and E of Schedule I to the Act as applicable to the type of the company or in a form as near thereto as circumstances admit [Sections 14 and 15].

- (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. It is the issues of exploitive human nature and attitudes that should be addressed in a rational way. Problems like Global warming, Ozone depletion and disposal of

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

The problem of pollution and other environmental issues can best be framed in terms of our duty to recognize and preserve the ecological systems within which we live which is an interrelated and interdependent set of organisms and environments.

- (c) Communication has always been of critical importance to the success of companies and corporate reputation is one of a company's most valuable and enduring assets. It plays a central role in the achievement of key business objectives such as creating shareholder value, attracting, retaining and motivating high-quality people, enhancing reputation with all audiences, marshaling stakeholder support on public policy issues, creating consumer preference for products and services, and minimizing the impact a crisis can have on a company's financial position and business prospects. 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 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.

- 5 (a) (i) Section 17-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 deals with the liabilities of parties i.e., transferor and transferee in case of transfer of establishment 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 up to the date of the transfer. Also the liability of the transferee is further limited to the assets obtained by him from the transfer of the establishment.

- (ii) According to Section 77 of the Companies Act, 1956 no public company and no private company (being subsidiary of a public company) can give financial aid to any person (either directly or indirectly) and whether by way of loan, guarantee or surety or otherwise, for, or in connection with, purchase or subscription made or to be made of any shares of its own or of its holding company. But there are few exceptions of the Section 77 of the above Act, out of them one exception is as under.

The company may advance a loan to a person bonafide in its employment (other than directors, or managers) to enable them to purchase or subscribe for fully paid shares for an amount not exceeding their salary or wages for a period of six months.

On the basis of above provisions, the proposals of the Board of Directors of Arihant Limited is not valid because D is a director and he wants to purchase partly paid up shares of the company. And also the amount of loan to be provided, is higher than the six months salary of D.

- (b) Marketing executives should practice ethical behaviour because it is morally correct. To maintain ethical behaviour in marketing, the following positive reasons may be useful to the marketing executives:

To reverse declining public confidence in marketing: Sometime misleading package labels, false claim in advertisement, phony list prices, infringement of trademarks pervert the market trends and such behaviour damages the marketers' reputation. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well being of consumers, since they are the lifeblood of a business.

To protect the image of the organisation: Buyers often form an impression of an entire organisation based on their contact with one person. That person represents the marketing function. Sometimes a single sales clerk may pervert the market opinion in relation to that company which he represents.

Therefore, the ethical behaviour in marketing may be strengthened only through the behaviour of the marketing executives.

- (c) Affidavit

I, -----S/o-----Aged-----R/o----- hereby declare on oath as follows:

1. That the return of Income tax of my company----- (Name) was to be filed by the----- (Date).
2. That the notice under the Income Tax Act has been served requiring the company to file its return of income by the ----- (Date).
3. That the accounts of the company are closed on 31st March every year and they are under the audit.
4. That since the audit is in progress and has not been completed till now----- (Date), I had made an application for extension of time in your office and I was made to understand that the extension of time will be allowed till ----- (Date).

I, -----, the deponent do hereby verify that the contents of Para 1 to 4 are true to the best of my knowledge and belief.

Date:.....

Signature

Place:.....

(Deponent)

6. (a) (I) (i) The given statement is incorrect. As per the Payment of Gratuity (Amendment) Act, 2010, the gratuity amount payable to any employee has been restricted to ₹ ten lacs i.e., no employee is entitled to be paid gratuity amount more than ten lacs.
- (ii) The given statement is incorrect. According to the Payment of Gratuity Act, 1972, the employer shall arrange to pay the amount of gratuity within 30 days from the date it becomes payable to the person to whom the gratuity is payable.
- (iii) The given statement is incorrect. According to the provision given in the Payment of Gratuity Act, 1972 no gratuity payable under this act shall be liable to attachment in execution of any decree /order of any court.
- (iv) The given statement is correct. As per the Payment of Gratuity Act, 1972, where an employee is employed in a seasonal establishment, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than 75% of the no. of days on which the establishment was in operation during such period.
- (II) MCA 21 project is an innovative project and initiative of the Ministry of Corporate Affairs carried out under the national e-governance programme of the Government with a comprehensive online portal to enable e-filing. This project covers all the services provided by the Registrar of Companies (ROC) starting from the incorporation of a new company. The project would provide e-services including names and registration of new companies, filing of various return and statutory documents under the Companies Act, 1956. The system would also enable for e-filing and access for statutory documents like Memorandum of Association, Articles of Association, Certificate of Incorporation etc.

The project serves the interest of all the key stakeholders, corporate professionals and the public at large.

Now, Professionals need no longer to visit the officers of ROC and would be able to interact with the Ministry using MCA 21 portal from their offices or home. They are able to provide efficient services to their client companies. Financial Institutions may easily find charges registration and verification.

Proactive and effective compliance of relevant laws and corporate governance by the employees.

- (b) (i) **Incorrect.** 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) **Correct:** The Competition Act, 2002 intends to protect the interests of consumers by establishing a commission to prevent practices having adverse effect on competition and to promote and sustain competition in markets. The commission is empowered to prohibit certain agreements which are considered as anti-competitive in nature, abuse of dominant position and regulation of combinations likely to cause appreciable adverse effect on competition.
- (c) **Business Letter notifying 'change in meeting place and date'**

----- Company

New-Delhi.

Date:

Dear sir,

On the request of several clients, the place and date of meeting scheduled on -----
----- for the -----, has been changed as follows:

New place of meeting: Hotel Taj, near India Gate, Delhi

Time and Date: At 9 A.M on 20th July 2013

Please ensure to attend the meeting positively with full particulars.

Looking forward to meet you on the new place and date.

Yours faithfully,

Secretary

7. (a) **Personal liability of an agent:** The general rule is that only the principal can enforce, and can be held liable on, a contract entered into by the agent except when there is a contract to the contrary. However, in the following cases an agent is

personally held liable:

- (i) When the contract expressly provides for his personal liability.
- (ii) When the agent acts for a principal.
- (iii) When he acts for an undisclosed principal.
- (iv) When he acts for a principal who cannot be sued, e.g., minor.
- (v) Where he signs a contract in his own name.
- (vi) Where he acts for a principal not in existence e.g., promoter of a company under formation.
- (vii) Where he is liable for breach of warranty.
- (viii) Where he receives or pays money by mistake or fraud.
- (ix) Where the agency is coupled with interest.

(b) Effect of forfeiture:

1. Cessation of membership: A person whose shares have been forfeited ceases to be a member in respect of the shares so forfeited. He, however, remains liable to pay to the company all moneys which, at the date of forfeiture were payable by him to the company in respect of the shares.
2. Cessation of liability: The liability of the person whose shares have been forfeited ceases if and when the company receives payment in full of all such money in respect of the shares,
3. If a company is wound up more than 1 year after the forfeiture, the member whose shares have been forfeited cannot be held liable as a contributory.
4. Forfeited shares become the property of the company and may be reissued or otherwise disposed of on such terms and in such manner as the Board thinks fit. The purchaser would be liable to pay all the calls due on the shares including the call for which shares were forfeited. But where the articles provide that a shareholder whose shares have been forfeited is to remain liable for the call occasioning the forfeiture, the purchaser is liable only for the difference between the amount of the call and the sum realized on reissue, should this be less than the call.

- (c) Buy-back of Shares by Company (Section 77A of the Companies Act, 1956):**
The Company cannot buy back its entire equity shares from the existing shareholders. According to Section 77A of the Companies Act, 1956, buy back is restricted to 10% of its paid-up equity capital and free reserves authorised by the Board by means of a resolution passed at its meeting and upto 25% by way of a special resolution in a financial year. The sources out of which buy-back of shares can be finalised are:

- (i) Free reserves; or
 - (ii) Security Premium account; or
 - (iii) Proceeds of any shares or other specified securities.
- (d) **Creating an ethical environment in company:** A sound ethical environment in a company may be created and corporate scandals may be avoided by adopting the following methods:
1. **Ensuring that employees are aware of their legal and ethical responsibilities.**
 Some ethical organisations are having policies to train and motivate employees towards ethical behaviour. Thus organisation by embracing of such training and policies may establish ethical environment among the employees enabling them to take ethical decisions.
 2. **Providing a communication system between the management and employees so that any one in the company can report fraud and mismanagement with out the fear of being reprimanded.**
 Helpline comprising of senior members of the company must be established 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. Fair treatment to whistle blowers is a basic necessity to check fraud. Some acts must be appreciated and that appreciation should be extended from within the company rather than outside.
- (e) **A sustainable innovation organisation should possess following qualities:**
- (i) Vision and strategy for innovation
 - (ii) Culture supporting innovation
 - (iii) Processes, practices and systems supporting innovation
 - (iv) Top management team leading to innovation.
 - (v) Effective cross-financial teams.
 - (vi) Empowered employees driving innovation.
 - (vii) Finding the right balance between bureaucracy and chaos.