

PAPER – 3 : LAW, ETHICS AND COMMUNICATION

QUESTIONS

LAW

The Indian Contract Act, 1872

1. Ram, Rahim and Robert are partners of software business and jointly promises to pay Rs.30, 000 to Raheja. Over a period of time Rahim became insolvent, but his assets are sufficient to pay one-fourth of his debts. Robert is compelled to pay the whole. Decide whether Robert is required to pay whole amount himself to Raheja in discharging joint promise.
2. Define an offer. Explain the rules of an offer. How an offer is different from an invitation to offer.
3. Briefly explain how the principal is liable for the acts of an Agent and state under what circumstances an agent is personally liable.

The Sale of Goods Act, 1930

4. An unpaid seller parted the possession of goods to a transporter for delivering goods to the buyer. In meanwhile, buyer becomes insolvent. State whether an unpaid seller is having right of stoppage of goods?
5. Briefly explain passing of risk from seller to buyer under the Act.
6. What is the meaning of warranty? Briefly explain the kinds of implied warranties under the Act.

The Indian Partnership Act, 1932

7. Briefly state the circumstances under which a partner cannot exercise his implied authority.
8. What is the meaning of 'dissolution of partnership firm'? Briefly explain the circumstances when the firm can be dissolved.
9. Who may become partner of a firm? Briefly explain the duties of partner.

The Negotiable Instruments Act, 1881

10. M a broker draws a cheque in favour of N, a minor. N indorses the cheque in favour of O, who in turn indorses it in favour of P. Subsequently, the bank dishonoured the cheque. State the rights of O and P and whether N, can be made liable?
11. 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 complaint was lodged against him. Is he liable for an offence under section 138?
12. Who is holder in due course? How he is different from a Holder?
13. What do you mean by an Indorsement. Briefly explain the types of an Indorsement.

The Payment of Bonus Act, 1965

14. Explain the special provisions with respect to newly set up establishments.
15. Explain the procedure of calculating direct tax payable by the employer under the Act.
16. What are the conditions upon which unit-wise profitability can be the basis for payment of bonus by an establishment?

The Employees Provident Fund and Miscellaneous Provisions Act, 1952

17. Explain in brief, the composition of the Executive Committee.

The Companies Act, 1956

18. How can a person acquire membership of a public company? Explain in brief, whether shareholders and members are similar?

19. Explain the provisions relating to furnishing of an "Abridged form of Prospectus" by a company under the Companies Act, 1956. State the circumstances where the said document is not required to be accompanied with the share application form?
20. Who is an "expert" under the Companies Act, 1956? What is the extent of liability of an expert for any mis-statement in the report given by him in relation to publication of prospectus? When he is not liable?
21. What is a floating charge? State the characteristics of a floating charge. When does it crystallise?
22. Explain the consequences of failure to get the shares listed in Stock Exchanges named in the prospectus by a public company, under the provisions of the Companies Act, 1956.
23. Briefly explain the effects of Irregular allotment under the Companies Act 1956.
24. What are the different types of meeting, under companies Act, 1956. Explain the statutory meeting.
25. Ashok Ltd issued a notice for holding of its AGM on 7th November, 2001. The notice was posted to the members on 16th October, 2001. Some of the members alleged that the company had not complied with the provisions of the Act with regard to the period of notice and as such the meeting was not validly called. Decide.
 - (i) Whether the meeting has been validly called?
 - (ii) If there is a shortfall in the number of days by which the notice falls short of the statutory requirement. State and explain by how many days the notice fall short of the statutory requirement?
 - (iii) Can the shortfall, if any, be condoned?

ETHICS

26. Explain the concept of Sustainable Development.
27. What do you understand by Ecological Ethics?
28. State any four reasons for ethical behaviour in marketing.
29. What is Competition Policy and Law?
30. How would you create an ethical environment in an organization?
31. What reasons would you attribute for an unethical behaviour in an organization?

COMMUNICATION

32. Why communication is important in a business organization?
33. What are the factors that lead to grapevine communication?
34. What principles you would keep in mind in oral communication?
35. What do you understand by Semantic problem in communication?
36. What is Emotional Intelligence?
37. What are the characteristics of group personality?
38. What are the advantages of ethical communication?
39. What are the elements of corporate culture?
40. Draft a power of attorney authorising by the subscribers to the memorandum to appear before the ROC, to receive the certificate of incorporation.

SUGGESTED ANSWERS/HINTS

1. According Section 43 of Indian Contract Act, 1872 when two or more persons make a joint promise, the promisee may, in absence of express agreement to the contrary, compel any one or more of such joint promisers or perform the whole of the promise. Further, if any one of two or more joint promisers makes default in such contribution, the remaining joint promisors must bear the loss arising from such default in equal shares. Therefore, in this case, Robert is entitled to receive 2,500 from Rahims assets and 13,750 from Ram.
2. Definition: The word Proposal and offer are used interchangeably and it is defined under Section 2(a), Indian Contract Act, 1872 as when one person signifies to another his willingness to do or to abstain from doing anything with a view to obtaining the assent of that other to such act or abstinence, he is said to make a proposal.

Rules: The following are the important rules of an offer: -

- (i) Must be capable of creating legal relation.
- (ii) Must be certain, definite and not vague.
- (iii) May be expressed or implied.
- (iv) May be general or specific.
- (v) Must be communicated.

Offer and an Invitation to an offer

An offer is definite and capable of converting an intention into a contract. Where as, an invitation to an offer is only a circulation of an offer, it is an attempt to induce offers and precedes a definite offer. Acceptance of an invitation to an offer does not result contract and only an offer emerges in the process of negotiation.

3. Principal's liabilities for Agents acts
 1. When the agent exceeds his authority principal is liable for such acts.
 2. Principal is bound by notice given to agent in the course of business.
 3. A principal is liable where he has by words or conduct induced a belief in the contracting party that the act of the agent was within the scope of his authority.
4. The principal is liable for misrepresentation or fraud of his agent acting within the scope of his actual or apparent authority during the course of the agency business.

Agent is personally liable

1. When the contract expressly provides for the personal liability of the agent.
2. When the agent signs a negotiable instrument in his own name without making it clear that he is signing as agent.
3. Where the agent acts for a principal, who cannot be sued on account of his being a foreign sovereign, ambassador, etc.,
4. According to Section 50 of the Sale of Goods Act, 1930 the unpaid seller has the right of stopping of goods in transit after he has parted with their possession to a carrier, in case of insolvency of the buyer subject to following conditions.
 1. The seller must be unpaid.
 2. He must have parted with the possession of goods
 3. The goods must be in transit.
 4. The buyer must have become insolvent.
 5. The right is subject to provisions of the Act.

5. Unless otherwise agreed, the goods remain at seller's risk until property therein has passed to the buyer. After that, they are at the buyer's risk, whether delivery has been made or not. The rule is subject to two qualifications; (i) if delivery has been delayed by the fault of the seller or the buyer, the goods are at the risk of the party in default, as regards loss which might not have arisen but for the default; (ii) the duties and liabilities of the seller or the buyer as bailee of goods for the other party remain unaffected even when the risk has passed generally. "Risk"
6. Warranty has been defined as a stipulation essential to the main purpose of the contract, breach of which gives rise to a claim for damages but not to cancel the contract.

Implied Warranties

- (a) If the buyer, having got the possession of the goods, is later on disturbed in his possession, he is entitled to sue the seller for the breach of the warranty, unless the circumstances of the contract show a different intention.
 - (b) The goods shall be free from any charge or encumbrance in favour of any third party not declared or known to the buyer before or at the time of contract.
 - (c) There is another implied warranty on the part of the seller that in case the goods are inherently dangerous or they are likely to be dangerous to the buyer and the buyer is ignorant of the danger, the seller must warn the buyer of the probable danger. If there is a breach of this warranty, the seller will be liable in damages.
7. A partner is deemed to be an agent of the firm so far as the business of the firm is concerned (Section 18 of the Indian Partner Act). In view of this, acts of a partner which are done for the purpose of running the business in usual way, bind the firm and the authority of a partner to do such acts is known as implied authority [Higins v. Beucamp (1914) A.E.R. 937]. This implied authority is available to every partner of the firm and need not be reduced to writing in the deed of partnership.

The exercise of implied authority must be in accordance with the provisions of Section 19. Section 19 points out that implied authority can be exercised only in relation to those acts which have a direct relation with the business of the firm. Further, the manner in which the authority is exercised must be similar to that which is required for the business to be carried on by the firm.

Further, section 19(2) and 20 of the Indian Partnership Act, 1932 imposes certain limitations on the implied authority of a partner. In view of these provisions, a partner cannot exercise his implied authority in relation to the following acts:

1. Reference of firm's disputes to arbitration.
2. Opening bank account for the firm in his own name.
3. To compromise fully or partly in a suit for to abandon any claim.
4. The withdraw proceedings or part thereof, instituted in the court on the part of the firm.
5. To admit any liability in a proceeding against the firm.
6. To acquire immovable property for the firm.
7. To transfer immovable property of the firm.
8. To participate in any partnership for the firm.

A partner can do any of the above acts provided he is expressly authorized to do that or the usage or custom of the trade permits them.

8. Section 39 of the Indian Partnership Act, defines it as follows:

"The dissolution of partnership between all the partners of a firm is called the dissolution of the firm." Thus the business is stopped and the relations between all the partners come to an end.

Dissolution of a firm may take place in the following manner (Section 30-44):

1. As a result of any agreement between all the partners this is called dissolution by agreement.

2. By the adjudication of all the partners, or of all the partners but one, as insolvent this is known as compulsory dissolution.
3. By the business of the firm becoming unlawful, this is known as compulsory dissolution.
4. As per the agreement, upon happening of any of the following contingencies
 - (a) efflux of time;
 - (b) completion of the venture for which it was entered into;
 - (c) death of a partner;
 - (d) insolvency of a partner.

In case of death of a partner, the number of the partners if do not exceed two, the firm is to be dissolved. In case the number of partners is more than two, the firm may continue even after the death of one partner, provided other partners agree to do so.

5. By a partner giving notice of his intention to dissolve the firm in case of partnership at will and the firm being dissolved as from the date mentioned as from the date of the communication of the notice; and
6. By intervention of court in case of-
 - (i) a partner becoming of unsound mind;
 - (ii) permanent incapacity of a partner;
 - (iii) misconduct of a partner affecting the business;
 - (iv) willful persistence breach of agreement by a partner;
 - (v) transfer or sale of the whole interest of partner;
 - (vi) improbability of the business being carried on save at a loss;
 - (vii) the court being satisfied on other equitable grounds that the firm should be dissolved.
9. Section 4 of the Indian Partnership Act, defines Partnership. This definition lays stress on an agreement between persons. These persons should be those, who are competent to contract as per the provisions of S.No.11 of the Indian Contract Act i.e, these persons must have capacity to contract, meaning by they are capable of entering into a valid contract.

Section 11 defines capacity to contract as follows:

"Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is sound mind, and is not disqualified from contracting by any law to which he is subject". Those who do not have capacity to contract cannot be a partner. However, a minor under Section 30 of the Indian Partnership Act can be admitted to the benefits of the partnership firm with the consent of all the partners.

Thus to be a partner, a person must be (1) a major, (2) of sound mind, and (3) should not be disqualified from contracting by any law.

Duties of partners [Indian Partnership Act, 1932]:

1. To work for the greatest common advantage [Section 9].
2. To be just and faithful. [Section 9].
3. To render true accounts [Section 9].
4. To give full information. [Section 9].
5. To indemnify for frauds. [Section 9].
6. To indemnify for frauds. [Section 10].
7. To share losses. [Section 13(f)].
8. To attend diligently without remuneration. [Section 12(b)& 13(a)].

9. To hold and use property of the firm exclusively for the purpose of business. [Section 15].
 10. To account for private profits from transactions of firm etc., and from competing business. [Section 16].
 11. To act within authority.
 12. Not to assign his rights. [Section 29].
 13. To be liable jointly and severally. [Section 25].
- 10 According to section 26 of the Negotiable Instruments Act, 1881 a minor may draw, indorse, deliver and negotiate a negotiable instrument to bind all parties except himself. Therefore, O and P cannot claim from B, who being a minor does not incur any liability on the cheque. O can claim payment from M, the Drawer, only and P can claim against O, the indorser and M, the drawer.
11. 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.
12. **Holder in Due Course:** It means any person who, for consideration became its possessor before the amount mentioned in it became payable. In the case of an instrument payable to order, 'holder in due course' means any person who became the payee or endorsee of the instrument before the amount mentioned in it became payable. In both the cases, he must receive the instrument without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. In other words, holder in due course means a holder who takes the instrument bona fide for value before it is overdue, and without any notice of defects in the title of the person, who transferred it to him. Thus, a person who claims to be 'holder in due course' is required to prove that:
1. on paying a valuable consideration, he became either the possessor of the instrument if payable to order;
 2. he had come into the possession of the instrument before the amount due there under became actually payable; and
 3. he had come to possess the instrument without having sufficient cause to believe that any defect existed in the title of transferor's from whom derived his title.

Distinction between Holder and Holder in Due Course:

1. A holder may become the possessor or payee of an instrument even without consideration, whereas a holder in due course is one who acquires possession for consideration.
 2. A holder in due course as against a holder, must become the possessor payee of the instrument before the amount thereon become payable.
 3. A holder in due course as against a holder must have become the payee of the instrument in good faith i.e., without having sufficient cause to believe that any defect existed in the transferor's title.
13. The Indorsement consists of the signature of the holder made on the back of the negotiable instrument with the object of transferring the instrument. If there is no space on the instrument, the Indorsement may be made on a slip of paper attached to it. This attachment is known as "Allonge".

According to Section 15 of the Negotiable Instruments Act, 1881 "when the maker or holder of a negotiable instrument signs the same, otherwise than as such maker, for the purpose of

negotiation, on the back or face therefore or on slip of paper annexed thereto, or so signs for the same purpose a stamped paper intended to be completed as negotiable instrument, he is said to indorse the same, and is called the indorser.”

Types of Indorsements.

1. Indorsement in Blank
 2. Indorsement in Full
 3. Restrictive Indorsement
 4. Indorsement sans recourse
 5. Conditional Indorsement
 6. Facultative Indorsement
 7. Partial Indorsement
 8. Sans frais Indorsement.
14. Special provision with respect to certain establishments: Section 16 of the Payment of Bonus Act, 1965 deals with the special provision regarding newly set up establishment. Accordingly, where an establishment is newly set up, the employees of such an establishment shall be entitled to be paid bonus in accordance with the provisions of sub-sections (1A), (1B) and (1C). Newly set up establishment does not mean that there is change in its location, management, name or ownership.

In the first five accounting years following the accounting year in which the employer sells the goods produced or manufactured by him or renders bonus shall be payable only in respect of the accounting year in which the employer derives profit from such establishment. Such bonus shall be calculated in accordance with the provisions of this Act relating to that year but without applying the provisions of Section 15 [Sub-section (1A)]. It may be noted that an employer shall not be deemed to have derived profit in accounting year unless:

- (a) he has made provision for that year's depreciation to which he is entitled under the Income-tax Act or as the case may be, under the Agricultural Income Tax law; and
- (b) the arrears of such depreciation and losses incurred by or in respect of the establishment for the previous accounting years have been fully set off against his profits. But in the sixth and seventh accounting year, the provisions of Section 15 shall apply subject to the following modifications, namely:
 - (i) for the sixth accounting year, set on or set off, as the case may be, shall be made in the manner illustrated in the Fourth Schedule, taking into account the excess or deficiency, if any, as the case may be, of the allocable surplus set on or set off in respect of the 5th and 6th accounting years;
 - (ii) for the 7th accounting year, the same principle is to be followed but the excess or deficiency of the allocable surplus set on or set off in respect of the 5th, 6th, and 7th accounting year has to be taken into account [sub-section (1B)].
 - (iii) From the 8th accounting year following the accounting year in which the employer sells the goods produced or manufactured by him or renders services, as the case may be, from such establishment, the provisions of Section 15, shall apply in relation to such establishment as they apply in relation to any other establishment [Sub-section (1C)].

For the purpose of Sub-section (1A), (1B) and (1C), sale of the goods produced or manufactured during the course of the trial running of any factory or of the prospecting stage of any mine or any oil field shall not be taken into consideration. Where any question arises with regard to such production or manufacture, the decision of the appropriate Government made after giving the parties a reasonable opportunity of representing the case, shall be final and shall not be called into question by any court or other authority.

15. Any direct tax payable by the employer for any accounting year shall, subject to the following provisions, be calculated at the rates applicable to the income of the employer for the year.

In calculating the above mentioned tax, no account shall be taken on the following matters, namely:

- (i) any loss incurred by the employer in respect of any previous accounting year and carried forward under any law for the time being in force relating to direct tax;
 - (ii) any arrears of depreciation which the employer is entitled to add to the amount of the allowance for depreciation for any following accounting year or years under Section 32(2) of the Income-tax Act;
 - (iii) any exemption conferred on the employer under Section 84 of the Income Tax Act or of any deduction to which he is entitled under Section 101(1) of the Income-tax Act, as in force immediately before the commencement of the Finance Act.
16. **Unit-wise Bonus:** Where an establishment consists of different departments or undertakings or has branches whether situated at the same place or in different places, all such departments or undertakings or branches are to be treated as parts of the same establishments for the purpose of bonus under Section 3 of the Payment of Bonus Act.

But it has been provided that if, for any accounting year, a separate balance sheet and profit and loss account are prepared and maintained in respect of any such departments etc., then such department, undertaking or branch shall be treated as separate establishments for the purpose of calculation of bonus for that year, unless such department, etc., were immediately prior to the commencement of that accounting year, treated as part of the establishment for the purpose of computation of bonus. If these two conditions are fulfilled it is possible to provide for the payment of bonus unit-wise instead of establishment wise.

17. **Executive Committee:** The Central Government may by notification in the official gazette constitute, with effect from such date as may be specified therein, an Executive Committee under the Employees Provident Fund and Miscellaneous Provisions Act, 1952 to assist the Central Board in the performance of its functions. (Section 5AA).

The Executive Committee shall consist of the following persons as members namely:

- (a) a chairman appointed by the Central Government from amongst the members of the Central Board.
 - (b) two persons appointed by the Central Government from amongst the official members of the Central Government.
 - (c) three persons appointed by the Central Government from amongst the representative members of the State Governments.
 - (d) three persons representing the employers elected by the Central Board.
 - (e) three persons representing the employees elected by the Central Board.
 - (f) the Central Provident Fund Commissioner, Ex-officio.
18. (a) **Modes of Acquiring Membership:** A person may become a member of the company in any one of the following ways:
- 1. **By subscribing to the memorandum of association:** The persons who subscribe (i.e. sign) to the memorandum of association are deemed to have agreed to become the members of the company. And on the registration of the company, their names are entered as members on the register of members [Section 41].
 - 2. **By application and allotment of shares:** A person, who agrees in writing to become a member of the company and whose name is entered in the register of member is also a member of the company [Section 41(2)]. The person intending to become a member has to make an application to the company for the purchase of its shares. On valid allotment, the name of the shareholder is entered in the register of member.

3. By agreeing to take qualification shares: A director of a public company is appointed when he takes or signs an undertaking to take and pay for his qualification shares. When a director signs and files with the Registrar an undertaking to take and pay for his qualification shares, he is in the same position as subscriber of the memorandum of association [Section 266(2)].
4. By transfer of shares: The Companies Act provides that the shares of a public company are freely transferable. Thus, one person may transfer his shares to any other person. On the registration of transfer of shares, the transferee becomes the member of the company.
5. By succession: The legal heirs of the deceased member/shareholder get a right to be a member of the company and be registered as a member of the company on the basis of the succession certificate. The company on the basis of the Succession Certificate enters their name in the Register of Members.

A member and a shareholder: In the parlance of Company Law, the two words “member” and “shareholder”, are similarly used by common people, thereby giving an impression that they are synonymous but in fact they can be differentiated on the following grounds:

- (1) A registered member may not be a shareholder, since a company may not be having Share Capital. For example, a company limited by guarantee and not having a share capital, does have members but not shareholders. But a registered shareholder is a member, since his name appears in the Register of Members maintained by the company.
 - (2) A person who owns a share warrant (bearer), is not a member since his name does not appear in the Register of Members maintained by the company. He is a shareholder only [Section 115(1)].
 - (3) A legal representative of a deceased member is a shareholder but not a member, till he applies for registration and his name is entered in the Register of members.
19. Abridged form of Prospectus: The abridged prospectus (in Form 2A) and the share application form should bear the same printed number. The investor may detach the share application form along with the perforated line after he has had an opportunity to study the contents of the abridged prospectus, before submitting the same to the company or its designated bankers. The same procedure also be followed while making available copies of the prospectus under Section 56 of the Companies Act, 1956.

There are, however, certain exceptions to the above provisions where an abridged prospectus containing all the prescribed details need not accompany the application forms sent out. These exceptions are:

1. In the case of bona fide underwriting agreement. (Section 56(3)(a)).
2. Where the shares or debentures are not offered to the public. (Section 56(3)(b)).
3. Where the offer is made only to existing members or debenture-holders of the company whether with or without the right of renunciation. (Section 56(3)(a)).
4. In the case of issue of shares or debentures which are in all respects similar with those previously issued and dealt in on a recognized stock exchange. (Section 56(5)(b)).

The Companies (Amendment) Act, 1988 permits a company to furnish along with the application forms for shares/debentures an abridged form of prospectus, instead of the full, prospectus, which however, is to be furnished on demand. The memorandum containing salient features of the prospectus accompanying the application form shall be as per rules prescribed by the Central Government in this behalf. It is, however, open to a company to attach full prospectus along with the application forms.

The Government has recently revised the format of this Memorandum (abridged prospectus) to provide for greater disclosure of information to prospective investors so as to enable them to take an informed decision regarding investment in shares and debentures.

20. **Meaning of Expert and his liability:** The term 'Expert' includes an engineer, valuer, accountant or any other person whose profession gives authority to the statement made by him. These experts have been included in the Provisions of Companies Act, 1956 under Section 59(2). The report of an expert cannot be included in a prospectus if he is in any way connected with the formation or promotion or management of the company (Section 57).

An expert is liable for any mis-statement in the prospectus unless

- (a) 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
- (b) 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 person who is knowingly a party to the issue of a prospectus in contravention of these provisions.

When an expert is not liable:

An expert who would be liable by reason of having given his consent to the issue of prospectus containing a statement made by him will not be liable if he proves:

- (i) that having given his consent to the issue of the prospectus, he withdraw it in writing before the delivery of a copy of the prospectus for registration; or
- (ii) that he was competent to make the statement and he had reasonable ground to believe, and did up to the time of allotment of the shares or debentures believe, that the statement was true [Section 62(3)].

An expert can also claim indemnity against the persons who included his name in the prospectus in case where he has not given his consent, or he has withdrawn his consent before the issue of the prospectus.

21. **Floating charge:** A floating charge is an equitable charge which is created on some assets which is constantly changing e.g., a change on stock in trade, book debts, etc. The company can deal in such asset in its normal course of business until the charge becomes fixed on the happening of an event. Debentures usually create a floating charge on the assets of the company.

Characteristics of a floating charge:

- (1) It is charge on a class of assets of the company, both present and future.
- (2) That class is one which in the ordinary course of the business of the company, would be changing from time to time.
- (3) It is contemplated that until some steps are taken by or on behalf of those interested in the charge, the company may carry on its business in the usual way.

Crystallisation is the conversion of a floating charge into a fixed charge on the assets in the class charged at the moment of crystallisation. A floating charge crystallises or gets fixed when:

- (i) the company goes into liquidation.
- (ii) the company ceases to carry on business, or
- (iii) a receiver is appointed, or
- (iv) a default is made in paying the principal or interest and the holder of the charge brings an action to enforce his security specified in the deed.

22. **Listing of Shares:** Every public company is required before issuing shares for public subscription by issue of prospectus, to make an application for listing the security in one or more recognised stock exchanges [section 73(1)]. The prospectus shall state the names of the stock exchanges to which application has been made. If the permission has not been granted by the stock exchange or each stock exchange before the expiry of 10 weeks from the date of the closing the

subscription the allotment made shall become void. [Section 73(1A)]. An appeal may be preferred against the decision of any recognised stock exchange refusing the aforesaid permission for enlistment under section 22 of the Securities Contracts (Regulation) Act, 1956 and then such allotment shall not be void, until the dismissal of the appeal. It shall be deemed that permission has not been granted if the application for permission has not been disposed of within the period specified in section 73(1A) i.e. before the expiry of 10 weeks from the closing of the subscription lists [section 73(5)]. Where the permission has not been applied for or having been applied for, has not been granted, the application money received must be refunded to the applicants forthwith without any interest. If the money is not refunded with 8 days after the company becomes liable to repay it, the company and every director of the company who is in default shall, on and from the expiry of the eighth day be jointly and severally liable to repay the money with interest at such rate which shall not be less than 4% and not more than 15% as may be prescribed, having regard to the length of the period of delay in making the repayment of such money [section 73(2)]. All moneys received as application and allotment money shall be kept in a separate bank account maintained with a scheduled bank until the permission is granted, failure to do so is a punishable offence [section 73(3)].

23. Effect of Irregular allotment: When the shares are not allotted in pursuance of Section 69 and 70 (i.e. without receiving the minimum subscription and without filing a prospectus or statement in lieu of prospectus to the registrar before the allotment) such an allotment is an irregular allotment. In spite of the stringent provision of Section 69 and 70 one may find that allotment has been made in utter contravention thereof. The directors may choose to take a chance and proceed to allot shares although minimum subscription has not reached or a prospectus or statement in lieu of prospectus has not been filed. Such an allotment is not void *initio* but as irregular.

The applicant for the shares may avoid the allotment, if he does so within the time specified by Section 71, namely:

- (a) where the allotment was made before the statutory meeting within 2 months after the holding of statutory meeting of the company and not later; or
- (b) where no statutory meeting is required to be held by the company, within 2 months after the date of allotment and not later; or
- (c) where the allotment was made after the statutory meeting, within 2 months of allotment (and not later) the allotment shall be voidable despite the fact that the company is in the course of being wound up.

Within the aforesaid period, the allottee must intimate to the company that he wants to avoid the allotment. If legal proceedings are required to be taken, these need not be within the period of two months provided the notice of avoidance was served on the company within the aforesaid time but they should be reasonably prompt thereafter if they are required to be brought.

Furthermore, Section 71(3) makes every director of a company, who knowingly contravenes or authorizes the contravention of any of the provisions of Section 69 or Section 70 with respect to allotment, liable to compensate the company and the allottee for any loss, damages or costs which they have sustained or incurred thereby. But the proceedings for such compensation can only be taken within 2 years from the date of allotment. As the allotment is voidable at the option of the shareholder, the shareholder may keep the shares and yet sue the directors who have knowingly contravened either of the two sections i.e. 69 and 70 to compel them to make good the loss to him as a result of the irregular allotment.

24. 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.

Statutory Meeting (Section 165) : Every public company limited by shares or limited by guarantee and having a share capital must hold a general meeting of the members of the company which may be called the statutory meeting. It is to be convened after not less than one month but within six months from the date which the company is entitled to commence business (sub-section 1).

A meeting held prior to statutory period of one month is not a statutory meeting. The notice for such a meeting must say that it is intended to be statutory meeting [Gardner Vs. Iredel (1912) 1 Ch.700].

25. (i) 21 days' clear notice of an AGM must be given [Section 171]. In case notice is sent by post, then 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. 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 and the meeting is, therefore, not validly convened.
 - (ii) Worked as per (i) above, notice falls short by 2 days (i.e. Notice should have been posted on 14.10.01). In other words, notice of the general meeting must have been sent at least 25 days before the date of the meeting i.e. 7th November, 2001 (where the notice is sent by post)
 - (iii) According to section 171(2), an 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 to the shorter notice, shortfall may be condoned.
26. 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.

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. An ecological system is an interrelated and interdependent set of organisms and environments, such as a lake, in which the fish depend on small aquatic organisms, which in turn live off decaying plant and fish waste products. Since the various parts of an ecological system are interrelated, the activities of one of its parts will affect all the other parts. Business firms (and all other social institutions) are parts of a larger ecological system. Business firms depend on the natural environment for their energy, material resources, and waste disposal, and that environment in turn is affected by the commercial activities of business firms. For example, the activities of 18th century European manufacturers of beaver hats led to the wholesale destruction of beavers (a semi aquatic large furry rodent) in the United States, which in turn led to the drying up of the innumerable swamp

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

27. 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.
28. (i) To reverse declining public confidence in marketing: Periodically we hear about misleading package labels, false claims in ads, phony list prices, and infringements of well established trademarks. Though such practices are limited to only a small proportion of all marketing, the reputations of all marketers are damaged. 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.
- (ii) To avoid increases in government regulation. Our economic freedoms sometimes have a high price, just as our political freedoms do. Business apathy, resistance, or token responses to unethical behavior simply increase the probability of more government regulation. Indeed, most of the governmental limitations on marketing are the result of management's failure to live up to its ethical responsibilities at one time or other. Moreover, once some form of government control has been introduced, it is rarely removed.
- (iii) To regain the power granted by society. Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
- (iv) To protect the image of the organization. Buyers often form an impression of an entire organization based on their contact with one person. More often than not, that person represents the marketing function. You may base your opinion of a retail store on the behavior of a single sales clerk. As Procter & Gamble put it in an annual report: "When a Procter & Gamble sales person walks into a customer's place of business that sales person not only represents Procter & Gamble, but in a very real sense, that person is Procter & Gamble."
29. The Competition Policy is regarded as genus, of which, the Competition Law is specie. Competition Law provides necessary powers to the commission to enforce and implement the Competition Policy. The central economic goal of the Competition Policy is the preservation and promotion of the competitive process. It is a symbolic process, which encourages efficiency in the production and allocation of goods and services over a period of time through its effects on innovation and adjustment to technological change. In conditions of effective competition, competitors will be having equal opportunities to compete for their own economic interest and therefore the quality of their outputs and resource deployment will be given top priority in order to sustain and succeed in the market by meeting consumers' demand at the lowest possible cost.
30. 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 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.

3. 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 reassuring 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.

31. A creation of a proper ethical environment requires a proper understanding of the reasons which lead to an ethical behaviour. Four such reasons are

1. **Emphasis on short term results:** This is one of the primary reasons which has led to the downfall of many companies like Enron and WorldCom. Manipulating accounting entries to depict good profitability can help companies raise further capital from the market
2. **Ignoring small unethical issues:** It is a known fact that most of the compromises we make start small however they lead us to large problems. Similarly, companies need to develop an environment where small ethical lapses are taken seriously so that they do not repeat in the future. Otherwise, toleration of such small lapses could lead to larger problems.
3. **Economic cycles:** When Enron was doing well, no one had bothered to understand its actual financial position. There were no question marks on its financial statements. However, when the economy took a downward turn, finance and accounting managers took decisions which were compromises over the established code of conduct. This was done to reflect a financial position which would keep the investors in the market satisfied. All this resulted in a huge crisis and the ultimate fall of this US Giant. Hence, to prevent disclosure of ethical problems in times of depression, company need to be extremely careful and vigilant during good times.
4. **Accounting rules:** In the era of globalisation and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote an ethical behaviour.

32. Given below are some of the factors responsible for the growing importance of communication :

- (a) **Growth in the size and multiple locations of organisations :** Most of the organisations are growing larger and larger in size. The people working in these organisations may be spread over different states of a country or over different countries. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.

- (b) Growth of trade unions : Over the last so many decades trade unions have been growing strong. No management can be successful without taking the trade unions into confidence. Only through effective communication can a meaningful relationship be built between the management and the workers.
 - (c) Growing importance of human relations: Workers in an organisation are not like machines. They have their own hopes and aspirations. Management has to recognise them above all as sensitive human beings and work towards a spirit of integration with them which effective communication helps to achieve.
 - (d) Public relations : Every organisation has a social responsibility, towards customers, government, suppliers and the public at large. Communication with them is the only way an organisation can project a positive image of itself.
 - (e) Advances in Behavioural Sciences : Modern management is deeply influenced by exciting discoveries made in behavioural sciences like psychology, sociology, transactional analysis etc. All of them throw light on subtle aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationships. And this is possible only through communication.
 - (f) Technological advancement : The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only methods of work but also the composition of groups. In such a situation proper communication between superiors and subordinates becomes very necessary.
33. The grapevine becomes active when the following factors are present :
- (a) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.
 - (b) Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.
 - (c) Formation of a coterie or favoured group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like minded companions, at whatever level they may be. Mostly they find them at their own level, but other levels are not barred. This type of communication is being seriously studied by psychologists and management experts.
34. The communicator should follow the following –
- (a) Consider the objective.
 - (b) Think about the interest level of the receiver.
 - (c) Be sincere.
 - (d) Use simple language, familiar words.
 - (e) Be brief and precise.
 - (f) Avoid vagueness and generalities.
 - (g) Give full facts.
 - (h) Assume nothing.
 - (i) Use polite words and tone.
 - (j) Cut out insulting message.
 - (k) Say something interesting and pleasing to the recipient.
 - (l) Allow time to respond.
35. 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.

36. "Emotional Intelligence" refers to the capacity to recognize your own feelings and those of others, for motivating yourself, and for managing emotions well in yourself and in your relationships. It describes abilities distinct from, but complementary to, academic intelligence, the purely cognitive capabilities measured by IQ. Many people who are book smart but lack emotional intelligence end up working for people who have lower IQs than they but who excel in emotional intelligence skills. The basic flair for living called emotional intelligence is being able, for example, to rein in emotional impulse; to read another's innermost feelings; to handle relationships smoothly as Aristotle put it, the rare skill "to be angry with the right person, in the right way." "Intelligent" puts emotions at the centre of our abilities. These abilities can preserve our most prized relationships, or their lack corrode them; the market forces that are reshaping our work life are putting an unprecedented premium on emotional intelligence for on-the-job success; and toxic emotions put our physical health at as much risk as does chain-smoking, even as emotional balance can help protect our health and well-being.
37. Following are the characteristics of group personality.
 - (a) Spirit of Conformity : Individual members soon come to realize that in order to gain recognition, admiration and respect from others they have to achieve a spirit of conformity. Our beliefs, opinions, and actions are influenced more by group opinion than by an individual's opinion, even if it is an expert's opinion. 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.
38. Ethical communication promotes long-term business success and profit. However, improving profits isn't reason enough to be ethical; as soon as the cost of being ethical outweighed the benefits, ethical choices would no longer be possible. One advantage of ethics long-term integrity. Surveys report that all employees want to work for organizations with high ethical standards.

Competent people are likely to search for organizations that maintain high ethical standards. When competent people migrate toward ethical firms, everyone benefits because both competence and ethics are perpetuated. Indeed, it is quite easy to make the argument that

competence and ethics go hand in hand. They know that ethical practices are the only sure the level of ethical awareness has risen over the last few years. Many companies are reassessing their communication budgets, moving away from traditional, functional approaches to public relations and public affairs and pursuing internal and external corporate communication strategies. The theory and practice arising from corporate communications lies at the heart of effective strategic management, planning and control. Recognizing the impact that new digital media technologies are having on news management and the monitoring and evaluation of corporate identity, corporate advertising, organizational reputation and overall performance.

39. A number of elements that can be used to describe or influence Organizational Culture:
 - (a) The Paradigm: What the organization is about; what it does; its mission; its values.
 - (b) Control Systems: The processes in place to monitor what is going on.
 - (c) Organizational Structures: Reporting lines, hierarchies, and the way that work flows through the business.
 - (d) Power Structures: Who makes the decisions and how is power distributed across the organisation .
 - (e) Symbols: These include the logos and designs, but would extend to symbols of power, such as car parking spaces and executive washrooms!
 - (g) Rituals and Routines: Management meetings, board reports and so on may become more habitual than necessary.
 - (h) Stories and Myths: build up about people and events, and convey a message about what is valued within the organization.
40. We the subscribers to the Memorandum and Articles of Association of the proposed Company, hereby authorize to present the Memorandum and 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/ alterations / deletions / additions as may be required to be done by the Registrar in the documents and also to receive the Certificate of incorporation.