

PAPER – 2: BUSINESS LAW, ETHICS & COMMUNICATION

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR MAY, 2018 EXAMINATIONS

Applicability for May, 2018 examinations

The Study Material (July 2015 edition), Practice Manual (April 2016 edition) along with the “Supplementary Study Paper for November 2017 examinations and onwards” is relevant for May 2018 examinations. Supplementary Study Paper 2017 contains all relevant amendments/ circulars/ notifications etc. in the Business and the Company law part made from 1st May 2015 to 30th April, 2017. Further, all relevant amendments/ circulars/ notifications etc. in the Business Law and Company law part for the period 1st May 2017 to 31st October, 2017 are mentioned below:

Relevant Legislative amendments from 1st of May 2017 to 31st of October 2017				
The Companies Act, 2013/ Corporate Laws				
Sl. No.	Amendments related to	Relevant Amendments	Page no. of the Study material (SM)/ Supplementary study paper (SSP) with reference of relevant provisions	Earlier Law
1.	Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017	The Central Government amends the Notification G.S.R. 463(E), dated 5 th June 2015, whereby Exceptions, Modifications and Adaptations were provided in case of Government companies. Following is the amendments: In sub-section (2) of section 96, for the words "such other place as the Central Government may approve in this behalf", the words "such other place within the city, town	Pg 6.128 of SM and Pg 12 of SSP.	Such other place as the Central Government may approve in this behalf.

		or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf" shall be substituted.		
	Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5 th June 2015	The aforesaid exceptions, modifications and adaptations (i.e. as given in Notification G.S.R. 463(E), dated 5 th June 2015 and Notification G.S.R. 582(E) Dated 13 th June, 2017) shall be applicable to a Government company which has not committed a default in filing of its financial statements under section 137 of the Companies Act or annual return under section 92 of the said Act with the Registrar.		
2.	Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13 th June, 2017	The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015 whereby Exceptions, Modifications and Adaptations were provided in case of Private companies. Following are the amendments: (1) In Chapter V, clauses (a) to (e) of sub-section (2) of section 73, shall not apply to a private company- (A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or (B) which is a start-up, for five years from the date of its incorporation; or	Pg 15 of SSP and 6.63 of SM	(1) Clause (a) to (e) of Section 73 provides conditions for acceptance of deposits from members. Notification dated 5th June, 2015, provided that Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies which accepts from its members monies not exceeding one

		(C) which fulfils all of the following conditions, namely:- (a) which is not an associate or a subsidiary company of any other company; (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section: Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified. (2) In Chapter VII, clause (g) of sub-section (1) of section 92, shall apply to private companies which are small companies, namely:- “(g) aggregate amount of remuneration drawn by directors;”	Pg 6.124	hundred per cent, of aggregate of the paid up share capital and free reserves, and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified. (2) clause (g) of sub-section (1) of section 92 is read as “remuneration of directors and key managerial personnel”
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		(3) In Chapter VII, proviso to sub-section (1) of section 92, For the proviso, the following proviso shall be substituted, namely:- “Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.”	Pg 6.125	(3) Whereas with respect to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.
	Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5 th June 2015	The aforesaid exceptions, modifications and adaptations shall be applicable to a Private company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.		
3.	Vide notification S.O. 3086(E) dated 20th September 2017	The Central Government hereby appoints the 20th September, 2017 as the date on which proviso to clause (87) of section 2 of the said Act shall come into force.	Pg 6.8	Earlier not notified
The Employees' Provident Funds and Miscellaneous Provisions Act, 1952				
4.	Amendments vide the Finance Act, 2017 (wef 26.5.2017)	The following amendments have been carried out in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952: (1) in section 2, for clause (m), the following clause	-	(1) “Tribunal” means the Employees'

		shall be substituted, namely: (m) "Tribunal" means the Industrial Tribunal referred to in section 7 D; (2) for section 7D, the following section shall be substituted, namely:- "7D. The Industrial Tribunal constituted by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act."	Pg 4.19	Provident Funds Appellate Tribunal constituted under section 7D (2) Employees' Provident Fund Appellate Tribunal (Section 7D): The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal to exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal. A Tribunal shall consist of one person only to be appointed by the
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				Central Government. A person shall not be qualified for appointment as the Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer), unless he is, or has been, or is qualified to be a Judge of a High Court; or a District Judge.
		(3) sections 7E, 7F, 7G and 7H shall be omitted	Pg 4.19	(3) The Study material contains only the citation of sections numbers 7E, 7F, 7G and 7H.
		(4) for section 18A, the following section shall be substituted, namely:— "18A. The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code."	Pg 4.33	(4) Presiding Officer and other officers to be public servants (Section 18A): The Presiding Officer of a Tribunal, its officers and other employees, the authorities referred to in Section 7-A and every inspector shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.

PART – II : QUESTIONS AND ANSWERS**QUESTIONS****PART – A: BUSINESS LAWS****The Indian Contract Act, 1872**

1. (a) Examine what is the legal position, as to the following:
 - (i) Ravi, Nalin and Ashok jointly borrowed ` 50,000 from Ajay. The whole amount was repaid to Ajay by Nalin. Decide in the light of the Indian Contract Act, 1872 whether:
 - (1) Nalin can recover the contribution from Ravi and Ashok,
 - (2) Legal representatives of Ravi are liable in case of death of Ravi,
 - (3) Nalin can recover the contribution from the assets, in case Ashok becomes insolvent.
 - (ii) Mr. MP entered into an agreement with Mr. ZX to deliver him (Mr. ZX) 5,000 bags to be manufactured in his factory. The bags could not be manufactured because of strike by the workers and Mr. MP failed to supply the said bags to Mr. ZX. Decide whether Mr. MP can be exempted from liability under the provisions of the Indian Contract Act, 1872.
 - (b) Shambhu becomes guarantor for Aman for the amount which may be given to him by Naveen within 6 months. The maximum limit of the said amount is ` 1 lakh. After two months Shambhu withdraws his guarantee. Up to the time of revocation of guarantee, Naveen had given to Aman ` 20,000.
 - (i) Whether Shambhu is discharged from his liabilities to Naveen for any subsequent loan.
 - (ii) Whether Shambhu is liable if Aman fails to pay the amount of ` 20,000 to Naveen?.
2. (a) Star gives to Sun a continuing guarantee to the extent of ` 15000 for the groceries to be supplied by Sun to Moon from time to time on credit. Afterwards, Moon became embarrassed, and without the knowledge of Star, Moon and Sun contract that Sun shall continue to supply Moon with groceries for ready money, and that the payments shall be applied to the then existing debts between Moon and Sun.

Examining the provision of the Indian Contract Act, 1872, decide whether Star is liable on his guarantee given to Sun.
 - (b) Shree hires a carriage of Jagdish and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though Jagdish is unaware of it. Shree is injured and claims

compensation for injuries suffered by her. Jagdish refuses to pay. Discuss the liability of Jagdish.

The Negotiable Instruments Act, 1881

3. A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-
 - (i) Whether D can sue the prior parties of the bill, and
 - (ii) Whether the prior parties other than D have any right of action inter se?Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.
4. (a) What is a 'Sans Recours' endorsement? A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words 'Sans Recours'.
(b) A banker made payment of a cheque in which the drawers signature was forged. Can the banker claim protection in respect of such payment? What would be the protection if it was a case of forgery of endorsee's signature?

The Payment of Bonus Act, 1965

5. Mr. A, an employee of Earth Limited, retired from the company on 31st March, 2017 and died after few months. Y, the heir of Mr. A, applied within the prescribed time to the company for payment of bonus of Mr. A which was due for the year ending 31st March, 2017. The company refused to pay the bonus. Examine the validity of the company's refusal and also state the procedure to recover the bonus under the provisions of the Payment of Bonus Act, 1965.
6. In 2009, the Tele Corporation, a Public Sector establishment under the Department of Science and Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to T.V. sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the Corporation. The employees of the Corporation went to strike for demand of Bonus. Decide, whether the demand of the employees is tenable under the provisions of the Payment of Bonus Act, 1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the Corporation?

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

7. Mr. Avinash, an employee working in an establishment covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, leaves his employment and takes up employment in another establishment. State in this connection:
 - (i) How shall the amount accumulated to his Provident Fund 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. Satinder retired from the services of PQR Limited, on 31st March, 2016. He had a sum of ₹ 5 lac in his Provident Fund Account. It has become due for payment to Satinder on 30th April, 2016 but the company made the payment of the said amount after one year. Satinder claimed for the payment of interest on due amount at the rate of 15 percent per-annum for one year. Decide, whether the claim of Satinder is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The Payment of Gratuity Act, 1972

9. Mr. Naresh was an employee of LMO Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. Naresh applied to the Appropriate Authority for the recovery of the amount of gratuity.
- Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.
10. Mr. Kartik is employed in Akshara Limited, a seasonal establishment. The factory was in operation from 1st March to 30th June during the financial year 2015-16. Though, Mr. Kartik was not in continuous service during this period, he had worked for 95 days. Referring to the provisions of the Payment of Gratuity Act, 1972, decide whether Mr. Kartik is entitled to gratuity.

The Companies Act, 2013

11. Exceptional Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 2013.
12. (a) In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013?
- (b) Misha India Ltd. owed to Sunil ₹1,000. On becoming this debt payable, the company offered Sunil 10 shares of ₹100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.

Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013.

13. The paid-up share capital of Saras Private Limited is ` 1 crore, consisting of 8 lacs Equity Shares of ` 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of `10 each, fully paid-up. Jeevan Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush (PQR) Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited?
14. Zenab Limited held its Annual General Meeting on September 15, 2016. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2016, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.
15. Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

PART – B: ETHICS

16. State, how far a sound ethical environment in a company may be created and corporate scandals may be avoided.
17. What do you understand by the term "Acid Rain"? How does it adversely affect the environment?
18. What reasons force a marketing executive to adopt ethical practices in marketing? Explain.
19. Explain the role played by different committees in regulating the 'Corporate Governance'.
20. State the elements which create discrimination in employment in the business organizations.

PART – C: COMMUNICATION

21. What is an Indemnity Bond? Supply a format for Indemnity Bond.
22. Write Short notes on:
 - (a) Guidelines for drafting a Press Release
 - (b) The Press Communiqué.
23. Explain the key elements involved in the innovation frame work of an organisation.
24. What do you understand by "ethical communication"? What are its elements.

25. Discuss personal competencies that are associated with Emotional Intelligence.

SUGGESTED ANSWERS/HINTS

1. (a) (i) 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 promisors, 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,

- (1) Nalin can recover the contribution from Ravi and Ashok because Ravi, Nalin and Ashok are joint promisors.
 - (2) Legal representative of Ravi are liable to pay the contribution to Nalin. However, a legal representative is liable only to the extent of property of the deceased received by him.
 - (3) Nalin also can recover the contribution from Ashok's assets.
- (ii) According to Section 56 of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged

unless otherwise agreed by the parties to the contract (*Budget V Bennington; Jacobs V Credit Lyonnais*).

In this case Mr. MP could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 and hence Mr. MP is liable to Mr. ZX for non-performance of contract.

- (b) As per section 130 of the India Contract Act, 1872, a continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. Thus, a specific guarantee cannot be revoked by the surety if the liability has already accrued.
 - (i) In the given situation, Shambhu is discharged from all the subsequent loans because it's a case of continuing guarantee.
 - (ii) Shambhu is liable for payment of ` 20,000 to Naveen because the transaction has already completed.
- 2. (a) The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

In the given problem all the above requirements are fulfilled. Therefore, Star is not liable on his guarantee for the vegetable supplied after this new arrangements. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there and he is not liable on the altered contract because it is different from the contract made by him.

- (b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed.

Accordingly, applying the above provisions in the given case Jagdish is responsible to compensate Shree for the injuries sustained even if he was not aware of the defect in the carriage.

- 3. Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument with or without endorsement to a holder for consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

- (i) In the given situation, Arun has drawn a bill on Barun and Barun accepted the bill without consideration and transferred it to Tarun without consideration. Later on in the next transfer by Tarun to Deep is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to Deep with consideration. Therefore, Deep can sue any of the parties i.e. Arun, Barun or Tarun, as Deep arrived a good title on it being taken with consideration.
- (ii) As regards to the second part of the problem, the prior parties before Deep i.e., Arun, Barun, and Tarun have no right of action inter se because first part of Section 43 clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

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. This is to prevent 'circuitry of action'. But in this case X's original endorsement is 'sans recours' 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.

- (b) In case of cheques, the paying banker is given statutory protection against the payment of cheques having forged endorsements. And the banker cannot be held liable if it makes payment in good faith and without any negligence (Section 85, the Negotiable Instruments Act, 1881). But the banker will not be protected where the payment of a cheque is made on which the drawer's signature was forged. The reason for the same is that the banker is protected only in case of forgery of endorser's signature and not in case of forgery of drawer's signature.
5. According to section 19 of the Payment of Bonus Act, 1965 the employer is bound to pay in cash the bonus payable to an employee within eight months from the close of the accounting year.

In the present case, the bonus should be paid by 30th November 2017.

Hence, company's refusal to not pay the bonus is not valid under the Act.

The remedy available to Y the heir of Mr. A lies in section 21 of the Payment of Bonus Act under which an employee, his assignee or his heirs, can make an application for the recovery of the amount to the Appropriate Government within one year from the date on which the bonus becomes due. If the appropriate government or the prescribed authority is satisfied that any money is so due, it shall issue a certificate for that amount to the

Collector who shall proceed to recover the same in the same manner as an arrear of land revenue.

6. Section 20(1) of the Payment of Bonus Act, 1956 provides that, if in any accounting year, an establishment in public sector sells any goods produced or manufactured by it or if it renders any services in competition with an establishment in private sector and if the income from such sale or service or both is not less than 20% of the gross income of such establishment, then the provisions of the Payment of Bonus Act, 1956 shall apply in relation to establishment in private Sector.

In terms of section 20(2), the provisions of the Payment of Bonus Act, 1965 do not apply to an establishment in public sectors, except as provided under sub section 1 of section 20.

Thus, in the given situation since the income from sale of mobile sets is 30% (i.e. more than 20%) of the gross income of the Corporation, the demand of employees is tenable.

However, in the second case, as the income from sale of mobile sets is 10% (i.e. less than 20%) of the gross income of the Corporation, the demand of employees is not tenable.

7. **Transfer of accumulated amount to the credit of Employees' Provident Funds on change of employment**

Section 17 A (1) provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, 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.

Similarly, under sub section (2) where an employee employed in 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 may, if the employee so desires and the rules in relation to such provident fund permit, 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.

8. According to Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, Satinder can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here, in the absence of specified rate, Satinder can claim only 12 percent per annum interest on the due amount.

Hence, claim of Satinder for interest rate of 15% is not tenable.

9. (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 under Section 4(1) of the Payment of Gratuity Act, 1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

- (2) 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 along with 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 the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. Naresh is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. Naresh. On the refusal by the company, Mr. Naresh can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

10. According to sub-section 3 of 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, Mr. Kartik has worked for 95 days in Akshara Limited, and as per the above provision, Mr. Kartik has worked for more than 75 % of number of days on which the establishment was in operation i.e. 75 % of 120 days (1st of March to 30th June) = 90 days. Therefore, Mr. Kartik shall be entitled for gratuity.

11. Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the a number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. In relation to the case given, the conditions applicable under the above Rules are as under:
- (a) The payment of such commission shall be authorized in the company's articles of association;
 - (b) The commission may be paid out of proceeds of the issue or the profit of the company or both;
 - (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and in case of debentures, shall not exceed two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Exceptional Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

12. (a) Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:
- (i) is or could reasonably be regarded as defamatory of any person;
 - (ii) is irrelevant or immaterial to the proceeding; or
 - (iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of Manoj, a shareholder of Amit Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

- (b) Under section 62 (1) (c) of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

In the present case, Misha India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash and thus must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer.

13. In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total share capital either at its own or together with one or more of its subsidiary companies:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. together hold less than one half of the total share capital. Hence, Piyush Private Ltd. (holding of Jeevan Pvt. Ltd. and Sudhir Pvt) will not be a holding company of Saras Pvt. Ltd.

However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (Piyush Pvt. Ltd.) will be treated as the holding company of Saras Pvt. Ltd.

14. Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or

creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

15. Under section 102(2)(b) in the case of any meeting other than an AGM, all business transacted thereat shall be deemed to be special business.

Further under section 102 (1), a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting, namely:—

- (a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
 - (i) every director and the manager, if any;
 - (ii) every other key managerial personnel; and
 - (iii) relatives of the persons mentioned in sub-clauses (i) and (ii);
- (b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

16. **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:

- (i) **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. To start with, such initiation should be from the top. A number of companies in India and abroad are being known for their quality and soundness of their ethics programmes.

- (ii) **Providing a communication system between the management and employees so that anyone in the company can report fraud and mismanagement without the fear of being reprimanded**

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. 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.

17. Acid Rain” is a threat to the environment that is closely related to the combustion of fossil fuels (oil, coal and natural gases) which are heavily used by utilities to produce electricity. Burning fossil fuels, particularly coal containing high levels of sulphur, releases large quantities of sulphur oxides and nitrogen oxides into the atmosphere. When these gases are carried into the air, they combine with water vapour in clouds to form nitric acid and sulphuric acid. These acids are then carried down in rain, which often falls hundreds of miles away from the original sources of the oxides raising the acidity of the water sources. It also soaks into soils and falls directly on trees and other vegetations.

Numerous studies have shown that many fish populations and other aquatic organisms are unable to survive in lakes and rivers that have become highly acidic due to acid rain. Other studies have shown that acid rain directly damages forests and indirectly destroys the wildlife and species that depend on forests for food and breeding. Acidic rain water can also contaminate drinking water. Acid rain can corrode and damage buildings, statues and other objects, particularly those made of iron, lime stone and marble thereby causing great threat to life and property over a long period of time.

18. **Pragmatic reasons for maintaining ethical behaviour:** 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:

1. **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.
2. **To avoid increase in government regulation:** Business apathy, resistance, or token responses to unethical behaviour increase the probability of more governmental regulation. The governmental limitations may also result from management's failure

to live up to its ethical responsibilities. Moreover, once the government control is introduced, it is rarely removed.

3. **To retain 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 a 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.
4. **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.

19. **Role of different committees in regulating corporate governance:** The core roles of the various committees in regulation of corporate governance are as follows:
 1. **Board of Directors:** The Board's role is that of trusteeship to protect and enhance shareholders value through strategic supervision. The strategy should aim at accountability and fulfillment of goals.
 2. **Audit Committee:** They have to provide assurance to Board on adequacy of internal control systems and financial disclosures.
 3. **Compensation Committee:** The committee has to recommend to the Board compensation terms for executive Directors and the senior most level of management below the Executive Directors.
 4. **Nomination Committee:** It is to recommend to the Board nominations for membership of the Corporate Management Committee and the Board, and oversee succession to the senior most level of management below the Executive Directors.
 5. **Investor Services Committee:** It is to look into redressal of Shareholders' and Investors' grievances, approval of transmissions, sub-division of shares, issue of duplicate shares etc.
 6. **Corporate Management Committee:** Its primary role is strategic management of company's businesses within Board's approved direction/framework.
 7. **Divisional Management Committee:** It is to realize tactical and strategic objectives in accordance with Corporate Management Committee/Board approved plan.
20. The root meaning of the term discriminate is "to distinguish one object from another". Employment discrimination is treating one person better than another because of their age, gender, race, religion or other protected class of status. Discrimination in employment is wrong because it violates the basic principle of equality. Discrimination is to treat people

differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit.

Elements of Discrimination: Generally, the discrimination means to distinguish one object from another or treating people differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit. Such discrimination may also be related in employment in business organization. The elements which create discrimination may be summarized as follows:

- (i) If the decision against one or more employees is taken which is not based on individual merit, such as the ability to perform a given job, seniority or other morally legitimate qualification.
- (ii) If the decision has been derived solely from racial or sexual prejudice, false stereotypes other kind of morally unjustified attitude against members of which the employee belongs.
- (iii) If the decision has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions or better pay.

Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or sex) that are not relevant to the tasks they must perform. Looking to these aspects law has also been changed to conform to these moral requirements and to minimize the discrimination in employment in this respect.

21. Indemnity Bond

A contract of indemnity as defined under Section 124 of the Indian Contract Act, 1872 is a contract by which one party promises to save the other from loss caused to him by the contract of the promissory himself, or by the contract of any other person. A person who gives the indemnity is called indemnifier and a person for whom protection is given is called the indemnity holder. The model form of indemnity bond is given below:

Name of the Assessee:

P.A.N. No..... Assessment Year:.....

I son/ wife/ daughter of Resident of do hereby agree to indemnify the Government of India for any loss that may occur on giving credit for the Certified Photostat copies of the TDS Certificates//...../ for a sum of ₹..... being ... % of my share in the total TDS of ₹ of I further declare that the credit for consolidated TDS Certificate was not claimed in the hands of the Association of Persons,.....

Date:

Signature:

Place:

22. (a) **Guidelines for drafting a 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.

The press release should be written in a journalistic style. It should provide facts or information of interest to the readers and should attempt to cover all aspects of a specific subject. There should not be any loose ends. It should be on a subject which is recent or in news. The release should not be generally lengthy. It should be concise and to the point. It has not much place for subsidiary or background material.

The introduction or lead should be in a summary format as it is a news story.

The releases should have a consistent format. Generally, the name of the organization from where the release emanates is given on the top. The date and place are indicated on the top right side. The release should have a title and a sub-title also, if necessary. It should have a suitable introductory paragraph. In the case of releases from non-official organization, it is desirable also to mention the designation of the person issuing the release and his telephone number.

- (b) **The Press Communiqué:** The press communiqués are issued when some important government decisions or announcements are made such as cabinet appointments, conclusion of the foreign dignitaries' visits, international agreement, etc. The press communiqué is formal in character. It carries the name of the ministry or department and the place, the date at the bottom left-hand corner of the release. Generally, the press is expected to reproduce the press communiqué without any substantial change. No heading or subheading is given on press communiqués.

23. **The key elements in the innovation framework are:**

- (i) **Accessibility:** The major organizational challenge is to make everyone, particularly the workers as active participants in the work process. The innovative enterprise ensures everyone is accessible to each other at all levels within the organization.
- (ii) **Recognize and reward innovation:** One of the more radical steps an organization or manager can take is to make innovation a requirement of the job.
- (iii) **Develop company programs that encourage innovation:** Some companies allow their employees to take sabbaticals to work in a new environment or teach in a college. By placing employees in different environments, they can meet new people, come across new ideas and hopefully generate their own novel approaches.
- (iv) **Foster informal communication:** The paperwork involved in proposing or even pursuing a project can be a major roadblock to innovation. Employees often feel stifled when asked to fully justify ideas; they may be working on a hunch.

- (v) **Information:** The right kind of information is called innoinformation. This type of information is critical to the vitality of the enterprises. Innoinformation consists of the plans, vision, goals and all the new ideas affecting the enterprises. The innovative enterprise is looking forward continuously changing and adapting to the needs of the customer.
- (vi) **Framework:** The innovative enterprise must constantly adapt, create and innovate. Information and communication are the wind that sails the innovative enterprise towards its destination. Information and communication pose difficult challenges for most businesses. The difficulty lies in balancing the flow of information between providing too much or too little information.
24. According to the National communication Association, ethical communication is fundamental to responsible thinking, decision making and the development of relationship 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. In nutshell ethical communicators have a 'well developed sense of social responsibility'.

An ethical communication is one which:

- includes all relevant information
 - is true in every sense and is not deceptive in any way.
 - is 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.
25. **Emotional Intelligence:** Emotional intelligence refers to the capacity to recognizing your own feelings and those of others, for motivating yourself, and for managing emotions well in yourself and in your relationships.

Personal competencies associated with emotional intelligence are as follows:

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