

PAPER – 3: LAW, ETHICS AND COMMUNICATION

PART – I

Question Nos.1 and 2 are compulsory. Attempt any eight questions from the rest.

Question 1

- (a) A, the bailor, pledges a cinema projector and other accessories with Cine Association Co-operative Bank Limited, the bailee, for a loan. A requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between A, the bailor and Bank, the bailee? (5 Marks)
- (b) State with reasons whether the following statements are correct or incorrect:
- (i) An agreement entered into with a minor may be ratified on his attaining majority.
- (ii) Any variation in terms of contract made between the principal debtor and a creditor without the consent of the surety, automatically discharges the liability of the surety. (2×1=2 Marks)
- (c) Pick out the correct answer from the following and give reasons:
- (i) An agreement to subscribe to or contribute a plate or prize of the value of Rs.500 or above to be awarded to the winner of a horse race is
- (1) Void
- (2) Valid
- (3) Illegal
- (4) Unenforceable
- (ii) Substitution of new contract for an existing contract between the same parties is known as:
- (1) Remission
- (2) Alteration
- (3) Rescission
- (4) Novation
- (iii) In legal terms, a person who takes the instrument bona fide for value before it is overdue, in good faith, is known as
- (1) Holder in due course
- (2) Holder
- (3) Holder for value
- (4) None of the above. (3 ×1=3 Marks)

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Answer

(a) Delivery to pawnee under Indian Contract Act, 1872

The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 149 (delivery to bailee and pledge). The Section provides that the delivery of the goods to the bailee may be made by actual or constructive delivery or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.

In the given problem the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by A, the bailor is construed as possession by bailee/pawnee, the Bank. A constructive pledge comes into existence as soon as the pawnor, without actually delivering the goods, promises to deliver them on demand. The transaction was, therefore, a valid pledge. On this point, the decision given by the Andhra Pradesh High Court in Bank of Chittur Ltd. vs. Narasimhulu AIR 1966 AP 163 is relevant.

(b) (i) Incorrect

Reasons: In accordance with the provisions of the Indian Contract Act, 1872 as contained in Section 11, "every person is competent to contract who is of the age of majority" Accordingly, a person who is minor is incompetent to contract. The law declares that an agreement entered into with a minor is void. As a minor's agreement is void ab initio, he cannot validate it by ratification on attaining his majority. Ratification in law is treated as equivalent to a validation of previous authority, and it follows that, as a general rule, a person or body of persons, not competent to authorize an act, can not give it validity by ratifying it. Of course, such a person (minor) can enter into a fresh agreement, but the earlier amount received cannot be treated as consideration for the new agreement. (Relevant cases on this point are Mohiri Bibi vs. D.D. Ghosh and Nazir Ahmed vs. Jeevandas).

(ii) Correct

According to Section 133 of the Indian Contract Act, 1872 the surety's liability will be discharged if any variance is made, without his consent, in the terms of the contract between the principal debtor and the creditor.

(c) (i) Answer No (2) : Valid: According to the exception stated under Section 30 of the Indian Contract Act, 1872, a subscription, or contribution or agreement to subscribe or contribute, made or entered into for or towards any plate, prize or sum of money, of the value or amount of five hundred rupees or upwards, to be awarded to the winner of any horse race, shall not be deemed to be unlawful.

(ii) Answer No (4): Novation: Substitution of new contract for an existing contract between the same parties is known as novation under Section 62 of the Indian Contract Act, 1872.

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- (iii) Answer No (1): Holder in due course: A person who takes the instrument bona fide for value before it is overdue, in good faith, is known as holder in due course, under Section 9 of the Negotiable Instruments Act, 1881.

Question 2

- (a) The articles of ABC Limited provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. X, a member, of the ABC Limited was holding 200 equity shares of the company. X transferred his shares to Y one month before the date on which the meeting was due. The name of Y could not be entered in the Register of Members as the application for transfer of shares was pending. X attended the meeting but he was prohibited by the company from exercising his voting right on the ground that he has not held his shares for the specified period as provided in the articles before the date of the meeting.

State whether X can exercise his voting right in the meeting. State also the grounds upon which X may be excluded from exercising his voting rights in the meeting of the shareholders. (5 Marks)

- (b) State whether the following statements are true or false and give reasons:
- (i) A share warrant is a bearer instrument and the bearer is entitled to the shares specified in the share warrant.
 - (ii) Every Company which is registered under the Companies Act, 1956, need not have their own Articles of Association. (2 × 1 = 2 Marks)
- (c) Pick out the correct answer from the following and give reasons:
- (i) Statutory meeting is to be called by:
 - (1) Government Company
 - (2) Private Company having share capital
 - (3) Public Company having share capital
 - (4) Foreign Company.
 - (ii) The Securities Premium Account can not be utilized:
 - (1) In writing off the preliminary expenses of the company
 - (2) In writing off the expenses of commission paid on issue of share of the company
 - (3) For redemption of redeemable preference shares
 - (4) In providing for the premium payable on the redemption of redeemable preference shares.

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- (iii) A "Statement in lieu of Prospectus" must be filed before the allotment of the shares with the Registrar of Companies by:
- (1) A Private Company
 - (2) A Guarantee Company
 - (3) A Public Company which issues the prospectus to the public
 - (4) A Public Company which does not issue the prospectus to the public.

(3 ×1 = 3 Marks)

Answer

(a) "Entitlement to voting rights of shares holders"

- (1) Section 182 of the Companies Act, 1956 states that a public company, or a private company which is a subsidiary of a public company, shall not prohibit any member from exercising his voting right on the ground that he has not held his share or other interest in the company for any specified period preceding the date on which the vote is taken, or any other ground except the grounds stated under Section 181 of the Companies Act, 1956.

Examining the provisions of Section 182 it is clear that X can exercise his voting right in the shareholders' meeting of ABC Ltd though the articles of the company prohibits the same on the ground that he has not held his shares for the specified period before the meeting or on any other ground. The decision of Anathalakshmi vs. H.I & F Trust AIR 1951 Mad 927, is relevant to this point.

- (2) According to Section 181 of the Companies Act, 1956, the only grounds on which the right of an equity shareholder to vote may be excluded are (i) non-payment of calls by a member, (ii) non-payment of other sums due against a member, and (iii) where the company has exercised the right of lien on his shares.

- (b) (i) Correct : According to Section 114 (1) of the Companies Act,1956 a public company limited by shares, if so authorized by its articles, may issue, with the prior approval of the Central Government, for fully paid up shares, under its common seal, a warrant stating that the bearer of the warrant is entitled to the shares therein specified. Section 114(3) states that a share warrant shall entitle the bearer thereof of the shares therein specified and the shares so specified may be transferred by delivery of the warrant.

Thus it is clear that a share warrant is a bearer document of title to shares specified therein. On conversion of shares into share warrant, the name of the shareholder is struck off from the register of members.

- (ii) Incorrect : Every company limited by guarantee or an unlimited or a private limited company is required to register its own articles along with the Memorandum of Association. If a public company limited by shares does not register its articles, the regulations contained in Table A would be applicable as if these were the articles of

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the company. In the case of a public company limited by shares and registered after the commencement of the Act, Table A shall apply in so far as it has not been excluded or modified by special articles. A guarantee company, an unlimited and a private company may adopt some of the provisions stated in Tables C,D and E but they must have their own Articles which should not be inconsistent with the provisions of the Companies Act, 1956.

(c) (i) Statutory meeting

Answer No. (3): Public Company having share capital: In accordance with the provisions of Section 165 every company limited by shares and every company limited by guarantee having share capital may call the statutory meeting. Other companies need not call the statutory meeting.

(ii) Securities Premium Account

Answer No. (3): For redemption of redeemable preference shares: Securities Premium account can not be utilized for redemption of redeemable preference shares as it has not been covered under Section 78(2). However, if the articles so permit it may also be utilized for other purposes (in Re Hyderabad Industries Ltd, 2004).

(iii) Statement in lieu of Prospectus

Answer No. (4): A public company which does not issue prospectus to the public: According to the provisions of Section 70 of the Companies Act,1956, a public company, which does not issue a prospectus to the public, has to file a statement in lieu of prospectus before the allotment of the shares with the Registrar of companies.

Question.3

Skypark Wooden Toys Limited was established at Kolkota in the year 2005 employing 100 workmen. Since then, the company suffered losses, but minimum bonus was paid in the accounting years of 2006 and 2007. In the accounting year 2008 the company earned huge profits. After mitigating the previous losses the company is having surplus profits and wants to pay the bonus to its workmen. Skypark Wooden Toys Limited wants legal advice on the following issues:

- (a) How much minimum and maximum bonus may be paid to the workmen?
- (b) Whether the company may adjust the puja bonus already paid to the workmen while calculating the amount of bonus payable to workmen for that accounting year.
- (c) Company wants to give wooden toys as bonus instead of cash. Whether the company can do so?

Advise Skypark Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965. (5 Marks)

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Answer

Payment of bonus

In accordance with the provisions of Section 10 of the Payment of Bonus Act, 1965, every employer shall be bound to pay to every employee in respect of any accounting year, a minimum bonus which shall be 8.33 percent of the salary or wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. Where an employee has not completed 15 years of age at the beginning of the accounting year, the minimum bonus payable is 8.33% or Rs.60 whichever is higher. Even in the case of loss, minimum bonus has to be paid.

Further, in accordance with the provisions of Section 11(1) the maximum bonus payable to the employee is 20% in any accounting year. Section 17 of the Act is related to the adjustment of customary or interim bonus. Bonus should be paid only in cash by the employer.

The legal advice asked in the problem may be given on the basis of the provisions of the Act accordingly:

(a) As regards to minimum and maximum bonus: The workmen of the Skypark Wooden Toys Ltd. are entitled to get 8.33% of the salary or wage earned during that particular accounting year. The maximum bonus payable is 20% of the salary or wage earned during that particular accounting year. Even if the employer suffers losses during that accounting year the company is bound to pay minimum bonus as prescribed by Section 10. (Related case is *Jalan Trading Co. vs. D.M Aney AIR 1979 SC 233*).

(b) As regards adjustment of Puja Bonus:

In accordance with the provisions of Section 17 of the Payment of Bonus Act, 1965 where, in an accounting year an employer has paid any puja bonus or other customary bonus to an employee, the employer shall be entitled to deduct (adjust) the amount of bonus so paid from the amount of bonus payable to the employee in respect of that accounting year and the employee shall be entitled to receive only the balance. Therefore Skypark Wooden Toys Ltd. may adjust the puja bonus already paid from the amount of bonus payable to the workmen and the workmen shall be entitled to receive only the balance.

(c) The amount payable to an employee by way of bonus under the Payment of Bonus Act, 1965, shall be paid only in cash by the employer. Therefore, Skypark Wooden Toys Ltd. cannot distribute wooden toys as bonus, instead of cash. It is against the statutory provisions.

Question.4

Mr. 'Wise' obtains fraudulently from 'R' a crossed cheque "Not Negotiable". He transfers the cheque to 'V', who gets the cheque encashed from ANS Bank Limited which is not the drawee bank. 'R' on coming to know about the fraudulent act of Mr. 'Wise' sues ANS Bank for the recovery of the money. Examine with reference to the relevant provisions of The Negotiable Instruments Act, 1881, whether 'R' will succeed in his claim. Would your answer be still the

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same in case Mr. 'Wise' does not transfer the cheque and gets the cheque encashed from ANS Bank himself? (5 Marks)

Answer

According to Section 130 of the Negotiable Instruments Act 1881, a person taking a cheque crossed generally or specially bearing in either case the words 'not negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took had. In consequence, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect.

Thus, based on the above provisions, it can be concluded that if the holder has a good title, he can still transfer it with a good title; but if the transferor has a defective title, the transferee is affected by such defects and he cannot claim the right of a holder in due course by proving that he purchased the instrument in good faith and for value. As Mr. Wise in the given case had obtained the cheque fraudulently, he had no title to it and could not give to the bank any title to the cheque or money and the bank would be liable for the amount of the cheque for encashment (Great Western Railway Co. Ltd. vs. London and County Banking Co).

The answer in the second case would not change and shall remain the same for the reasons given above.

Thus R in both the cases shall succeed in his claim from ANS Bank.

Question.5

National Steels Limited decided to forfeit the amount of gratuity of its employees A,B and C on account of disorderly conduct and other acts which caused loss to the property belonging to the company. A, B and C, committed the following acts:

- (i) A refused to surrender the occupied land belonging to the company.
- (ii) B committed theft under law involving offence of moral turpitude.
- (iii) C after superannuation continued to occupy the quarter of the company for six months.

Against the decision of the company, A,B and C applied to the appropriate authorities for relief. The company contended that the right to gratuity is not a statutory right and the forfeiture of the amount of gratuity was within the law.

Examine the contention of the company and the decision taken by the company to forfeit the amount of gratuity in the light of the Payment of Gratuity Act, 1972. (5 Marks)

Answer

Forfeiture of Gratuity

In accordance with the provisions of Section 4(6) of the Payment of Gratuity Act, 1972, if the services of any employee have been terminated for any act, willful omission, or negligence causing any damage or loss to or destruction of, property belonging to the employer, the gratuity shall be forfeited to the extent of the damage or loss so caused; and if the services of such an employee have been terminated for any act which constitutes an offence involving

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moral turpitude, provided that such offence is committed by him in the course of his employment, the gratuity payable to the employee may be wholly or partially forfeited.

- (1) The problem asked in the question is based on the above provisions and the provisions of Section 4(1) of the Payment of Gratuity Act, 1972. Accordingly, gratuity shall be paid to the employee when he completes five years of continuous service on his superannuation, or on his retirement or resignation, or on his death or disablement due to accident or disease. The condition of the completion of five years' continuous service is not essential in case of the termination of the employment of any employee due to death or disablement. Looking to the provisions of Section 4(1), it is clear that withholding of gratuity is not permissible under any circumstances, except under those circumstances covered by Section 4(6). In *K. C. Mathew vs. Plantation Corporation of Kerala Ltd.* 2001 LLR (2) (Ker), it was held that withholding of gratuity is not permissible except under those circumstances enumerated in Section 4(6) and that the right to gratuity is a statutory right and none can be deprived of it except as provided by the law. Therefore, the contention of National Steels Ltd. is wrong.
- (2) The correctness of the decision taken by National Steels Ltd. regarding forfeiture of the gratuity amount of its employees A, B and C may be tested in the light of Section 4(6) of the Payment of Gratuity Act, 1972 as referred above.
 - (i) Accordingly, the refusal of an employee to surrender the occupied land belonging to the company is not sufficient ground to withhold gratuity under Section 4(6) of the Payment of Gratuity Act, 1972 (*Travancore Plywood Industries Ltd. vs. Regional Joint Labour Commissioner* [1966] II LLJ 85 Ker.). Hence, A's gratuity cannot be withheld.
 - (ii) The offence of theft committed by B, under law involves moral turpitude and his gratuity stands wholly forfeited in view of Section 4(6) of the Act (relevant case is *Bharat Gold Mines Ltd vs. Regional Labour Commissioner*, 1987, 70 FJR 11 (Karnataka)).
 - (iii) If the employer has to be paid any amount regarding any type of charge by the employee and if he has not paid for the same during the course of his service, then the employer can adjust the amount from the gratuity of the employee. In the instant case, C after superannuation continued to occupy the quarter of the company for six months. Therefore the company is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid (relevant case is *Wazir Chand vs. Union of India* 2001, LLR172 (SC)).

Question 6

State the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952 relating to the protection of the amount standing to the credit of an employee in the provident fund against attachment. (5 Marks)

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Answer

Protection of the amount standing to the credit of an employee in provident fund against attachment.

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

In case of death of such above person, the money will be payable to nominees and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court {Section 10(3)}.

Question 7

A issues an open 'bearer' cheque for Rs.10,000 in favour of B who strikes out the word 'bearer' and crosses the cheque. The cheque is thereafter negotiated to C and D. When it is finally presented by D's banker, it is returned with remarks "payment countermanded" by drawer. In response to a legal notice from D, A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether A's argument is valid or not? (5 Marks)

Answer

The cheque bears two alterations when it is presented to the paying banker. One, the word 'bearer' has been struck off and two, the cheque has been crossed. Both of these alterations do not amount to material alteration under the provisions of the Act and hence the liability of any including the drawer is not at all affected. 'A' is liable to pay the amount of the cheque to the holder.

Question 8

F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a bloc of investment as an agent for them. The dividend and interest income received by the companies was handed back to F as a pretended loan. This way, F divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded?

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Answer

The House of Lords in *Salomon Vs Salomon & Co. Ltd.* laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the corporate veil may be lifted by the courts. It means looking behind the corporate façade and disregarding the corporate entity. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, by taking shelter of the corporate nature, the courts have discretion to disregard the corporate entity in the matter of tax evasion.

(1) The problem asked in the question is based upon the aforesaid facts. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the assessee himself. Therefore the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax.

(1) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to handover them over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckji Petit* AIR 1927 Bom.371 and *Juggilal vs. Commissioner of Income Tax* AIR (1969) SC (932).

Question 9

Annual General Meeting of MGR Limited is convened on 28th December, 2008. Mr. J, who is a member of the company, approaches the company on 28th December, 2008 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act, 1956 in this regard. (5 Marks)

Answer

Every member entitled to vote at a meeting of the company or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at anytime during the business hours of the company. Provided not less than 3 days' notice in writing of the intention to inspect is given to the company (Section 176[7] of the Companies Act, 1956).

In the given case, Mr. J who is a member approaches the company on 28th December and demands inspection of proxies lodged with the company. Based on the above provisions since prior notice had not been given by Mr. J to the company for inspecting the proxies, the company may refuse inspection of proxy forms.

Question 10

India Cosmetics Limited was a registered company under Indian Companies Act, 1956. Later on, another company, India Cosmetics and Accessories Limited was formed and registered. There being similarity in the names of both the Companies, India Cosmetics Limited lodged a

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complaint against India Cosmetics and Accessories Limited, with the Registrar of Companies, stating that there is sufficient similarity between these two names which may mislead or defraud the public. India Cosmetics and Accessories Limited is intending to alter its name.

Advise India Cosmetics and Accessories Limited to alter the name of the Company according to the provisions of the Companies Act, 1956. (5 Marks)

Answer

Similarity in the names of Companies

In accordance with Section 22(1) of the Companies Act, 1956, if through inadvertence or otherwise, a company on its first registration or on its registration by a new name, is registered by a name which in the opinion of the Central Government, is identical with, or too nearly resembles, the name by which a company in existence has been previously registered or resembles a registered trademark, whether under this Act or any previous company law, the first mentioned company, may by ordinary resolution and with the previous approval of the Central Government, signified in writing, change its name or new name.

The problem asked in the question is based upon the provision of Section 22(1) of the Companies Act, 1956. The new company registered under the name India Cosmetics Accessories Ltd. is identical in name with the existing India Cosmetics Limited. According to the aforesaid provisions of Section 22(1) the newly setup company should change its name. In such a case, the company can, on its own, change the name by obtaining previous approval of Central Government (new power delegated to Regional Director) and then by passing an ordinary resolution [Section 22(1)(a)] within 12 months of the registration. Such a change should be made within 3 months of the date of the direction of the Central Government being received or such longer period as the Central Government may deem fit to allow. The application for changing the name is required to be made to the Registrar of companies in Form 1A with a fee of Rs. 500.

Where the name of a company has been changed the Registrar shall issue fresh certificate of incorporation with the changed name. Such change of name shall not affect any of the company's rights or obligations or affect any legal proceedings by or against it. Any legal proceedings which might have been continued or commenced by or against the company by its former name, may be continued by its name under Section 23 of the Companies Act, 1956.

Question 11

While sanctioning working limit, the rate of interest had been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India. There was a change in the interest rate due to Reserve Bank of India notification issued later. The Bank insisted on filing a return of modification of charges. Is the stand of the bank correct? Discuss in the light of the provisions of the Companies Act, 1956. (5 Marks)

Answer

Section 135 of the Companies Act, 1956 provides that "whenever the terms or conditions or the extent or operation of any charge registered under this part are or is modified, it shall be

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the duty of the company to send to the Registrar the particulars of such modifications and the provisions of this part as to registration of a charge shall apply to modification of the charge."

Here the term modification includes variation of any terms of the agreement including variation of rate of interest (other than bank rate), which may be by mutual agreement or by operation of law. In the light of the above, the change in the rate of interest constitutes modification. Therefore the stand of the bank is correct.

Question 12

What is meant by "Abridged Prospectus"? Is it necessary to furnish abridged form of prospectus along with the application form for shares? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? (5 Marks)

Answer

(1) Meaning of Abridged Prospectus :-

According to Section 2(1) of the Companies Act, 1956, an abridged prospectus means memorandum containing such salient features of a prospectus as may be prescribed. The memorandum containing salient features of the prospectus accompanying the application forms 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.

(2) Abridged prospectus to be issued along with application form:

A company can not issue application forms for shares or debentures unless the form is accompanied by abridged prospectus, according to Section 56(3) of the Companies Act, 1956. The abridged prospectus and application form should bear the same printed number. The investor may detach the share application form along the perforated line, after he has had an opportunity to study the contents of this abridged prospectus. The objective of this provision is to reduce the cost of issue as the detailed prospectus is a very bulky document whereas the contents of abridged prospectus are limited. Penalty for failure to comply with Section 56(3) can be a fine of up to Rs.50, 000.

(3) Circumstances under which the abridged prospectus containing all the prescribed details need not accompany the application forms: An abridged prospectus containing all the prescribed details need not accompany the application form in the following circumstances:

- (i) In case of bona fide underwriting agreement [Section 56(3)(a)]
- (ii) Where shares and debentures are not issued to the public [Section 56(3)(b)].
- (iii) where the offer is made only to existing members or debenture holders of the company [Section 56(5)(a)].
- (iv) In case of issue of shares or debentures which are in all respect similar to those previously issued and dealt in a recognized stock exchange [section 56(5)(b)].

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Part – II

Question No.13 is compulsory. Attempt any two question from the rest.

Question 13

- (a) "To maintain social contract between society and business, the trusteeship relations are essential". Describe the role of business ethics in this reference. (5 Marks)
- (b) Explain the factors that influence ethical behaviour of an employee. List out some examples of various ethical issues faced in a workplace. (5 Marks)

Answer

- (a) Businesses as trustees

Mahatma Gandhi, the father of the nation, has aptly said that trusteeship provides a means for transforming the present capitalist order of society into an egalitarian one. A business man has to act only as a trustee of the society for whatever he has gained from the society. Everything finally belongs to the society. Society bestows upon business the authority to own and use land and natural resources. In return the society has the right to expect that productive organizations will enhance the general interests of consumers, employees and community.

Business ethics is required to implement the laws of land, customs, expectations of community, principles of morality, etc. The products and services of an organization affect its employees, the community and society as a whole. Business ethics also subserve the management discipline. Business houses may also use their financial and public influence to address social problems like poverty, crime, equal rights, environmental problems, public health and education. Society at large has also come to realize that since businessmen are making profits by using the country's resources, they owe it to the country to work for its development. Sound workplace ethics ensures that a company's employees are highly motivated and identify themselves with their employer. Following ethical business practices safeguard a company from getting entangled with law enforcement agencies. A reputation for highly ethical behaviour also ensures increased sales and customer loyalty. Certain eco-friendly practices also reduce operation costs. Thus society benefits as well as business prospers when businesses are ethically driven.

- (b) Ethical decisions are influenced by three key factors: Individual moral standards, the influence of managers and co-workers and the opportunity to engage in misconduct. While one may have great control over personal ethics outside the workspace, co-workers and the management exert significant control on one's choices at work. The activities and examples set by co-workers along with rules and policies are critical in gaining consistent ethical compliance in an organization. If a company fails to provide good examples and direction for appropriate conduct, confusion and conflict will develop and result in the opportunity for unethical behaviour. Example: If the boss or co-workers leave work early, one may be tempted to do so as well. If one sees co-workers making

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personal long distance phone calls at work and charging them to the company, one may be more likely to do so also. In addition having sound personal values contributes to an ethical work place.

Some examples of ethical issues faced by an individual in the workplace are:

1. Relationships with suppliers and business partners
 - a. Bribery and immoral entertainment
 - b. Discrimination between suppliers
 - c. Dishonesty in making and keeping contracts
2. Relationship with customers
 - a. Unfair pricing
 - b. Cheating customers
 - c. Dishonest advertising
3. Relationship with employees
 - a. Discrimination in hiring, promoting, etc
 - b. Unequal treatment
4. Management of resources
 - a. Misuse of official funds
 - b. Tax evasion

Question 14

What is meant by 'Stakeholders'? Describe those stakeholders who are affected by or can affect the organization? (5 Marks)

Answer

Meaning of Stakeholders: - The traditional governance model positions management as accountable solely to investors or shareholders. But an increasing number of corporations accept that constituents other than shareholders are affected by corporate activity, and that the corporation must therefore be answerable and accountable to them. The word stakeholders describes such constituents of an organization – the individuals, groups or other organization(s) which are affected by, or can affect the organization in pursuit of its goals. A typical list of stakeholders of a company would be employees, trade unions, customers, shareholders and investors, suppliers, local communities, government and competitors.

Question 15

Answer any two out of four. You are required to state whether the statement is correct or incorrect with brief reasons.

- (a) Ethical behaviour is not essential to work environment at the workplace.

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- (b) In the long run those business firms which do not respond to society's needs favourably will survive.
- (c) There is no economic growth without ecological costs.
- (d) 'Consumer interest' and 'Public interest' are synonymous. ($2 \times 2\frac{1}{2} = 5$ Marks)

Answer

- (a) "Ethical behaviour is not essential....."

Answer : Incorrect. Every organization, whether a business or a government agency, is first and foremost a human society. In all these setups, ethical behaviour is essential to work environment. If an employer does not take steps to create a work environment where the employees have a clear, common understanding of what is right and wrong, and feel free to discuss and ask questions about ethical issues and report violations, some significant problems may arise namely:

- (i) Increased risk of employees making unethical decisions.
 - (ii) Increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum.
 - (iii) Inability to recruit and retain top people.
 - (iv) Diminished reputation in the industry and the community.
 - (v) Significant legal exposure and loss of competitive advantage in the market place.
- Therefore ethical behaviour is essential to work environment at the workplace.
- (b) "In the long run those business firms which do not respond to society's needs will survive."

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

- (c) "There is no economic growth without ecological cost"

Answer: Correct. Economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. Industrialization and rapid development have affected the environment. Everybody should realize that such development is related to environmental damage and resource depletion.

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

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

(d) Consumer interest and Public interest are synonymous:-

Answer: Incorrect : Apparently it seems that public interest and consumer interest are synonymous, but it is not so. They may be differentiated as under:

- (i) In the name of public interest, many Governmental policies are formulated which manifest themselves in anti-competitive behaviour. If the consumer is at the fulcrum, consumer interest and welfare should have primacy in all governmental policy formulations.
- (ii) Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. They are being affected by pricing policy, financing practice, quality of goods, services and trade practices. They are clearly distinguished from manufacturers who produce goods for wholesalers, retailers who sell goods in public interest.
- (iii) Public interest is something in which the society as a whole has some interest, and is seen as an externality to competitive markets. There is also a justifiable apprehension that in the name of public interest, Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. In fact in such situations, there is the possibility that a conflict could arise between public interest and consumer interest.

Question 16

Explain the reasons for unethical behaviour among finance and accounting professionals.

(5 Marks)

Answer

The reasons which lead to unethical behaviour are as follows:

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.

2. Ignoring small unethical issues.

It is a known fact that most of the compromises we make start small but however they lead us into committing large infractions. And ignoring minor lapses, lead to bigger and more colossal mistakes.

3. Economic cycles.

In good times, companies are slack in their accounting procedures or disclosures, as there is a pervasive feel-good effect. But when times of hardship follow, then the hit

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taken by them is almost fatal, as was proved in the Enron case. So companies need to watch out for economic cycles and be vigilant in good times as well as bad.

4. Accounting rules.

In the era of globalization and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.

PART – III

Question No.17 is compulsory. Attempt any two questions from the rest.

Question 17

- (a) Explain the factors which are responsible for the growing importance of communication of an organization. s (5 Marks)
- (b) Draft a circular for employees insisting on punctuality. (5 Marks)

Answer

- (a) The importance of communication in the industrial organization has increased immensely in these days. The following factors are responsible for the growing importance of communication:
 - (1) Growth in the size and multiple location of organizations : Most of the organization are growing larger and larger in size. The people are working in the country and abroad, of these organization. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.
 - (2) 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. Effective communication will create relationship between the management and the workers.
 - (3) Growing importance of human relations: Workers in an organization are not like machines. They have their own hopes and aspirations. Management has to recognize them and should work with the spirit of integration so that human relations may be maintained. This may only be achieved though effective communication.
 - (4) Public relations: Every organization has a social responsibility towards customers, government, suppliers and the public at large. Communication is the only way an organization can project a positive image of itself.
 - (5) Advances in behavioral sciences: Modern management is deeply influenced by exciting discoveries made in behavioral sciences like psychology, sociology,

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transactional analysis etc. All of them throw light on suitable aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationship. This is possible only through communication.

- (6) Technological advancement: The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only the methods of work but also the compositions of groups. In such a situation, proper communication between superiors and subordinates becomes very necessary.

(b) Specimen Circular

Jaipee Electronics Ltd.
Civil Lines, Kanpur.

Circular No:

Date.....

To all employees

Recent surprise checks have revealed that there is considerable late coming and in some cases, even the standard instructions for ensuring punctual attendance are not followed. All employees are requested to strictly adhere to the arrival, departure and lunch timing of the office. Tendency to move around in the corridors and canteen would also be viewed seriously.

Cooperation of all employees is solicited.

Sd/-
J.P.Dutta
Manager – H.R

Question.18

What is meant by "Active listening"? State the importance of 'Active listening' in the business communication skills. (5 Marks)

Answer

Active Listening: - Most of us assume that listening is a natural trait, but practically very few of us listen properly. What we regularly do is-"we hear but do not listen". Hearing is through ears and listening is by mind. Listening happens when we understand and message as intended by sender. Many managers are so used to helping people solve problems that their first cause of action is transforming solutions and giving advice instead of listening with full attention directed towards understanding what the co-worker or staff member needs. Therefore, every employer and worker needs a listening ear.

If one does not learn how to listen, a great deal of what people are trying to tell you would be missed. In addition, appropriate response would not be possible. Active listening is important for several reasons.

- (i) It aids the organization in carrying out its missions.
- (ii) It helps individuals to advance in their careers.

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- (iii) It provides information that helps them to learn about important happenings in the organization, as well as assisting them in doing their own jobs well.
- (iv) It also helps in building strong personal relationships.

Question.19

A partnership firm was constituted by A, B and C partners, carrying on the business of shoe manufacturing. Later on, Nickson Shoe Manufacturing Co. Limited proposed to purchase the business of the firm to the Partners of the firm. The partners unanimously consented to it and agreed to dissolve the firm. Draft a Partnership Dissolution Deed in this respect. (5 Marks)

Answer

Partnership Dissolution Deed

This deed of dissolution executed on this day of 20th March 2009 between:

1. A S/o X, aged 35 years residing at Surya Nagar, Kanpur
2. B S/o Y, aged 40 years residing at Mani Nagar, Kanpur.
3. C S/o Z, aged 45 years residing at Asha Nagar , Kanpur.

AND WHEREAS the aforesaid partners by mutual consent agreed to constitute the firm by selling all the assets and liabilities of the firm to a new company incorporated under the name and style of Nickson Shoe manufacturing Co. Limited registered under the Indian companies Act, 1956. The terms and conditions are hereby agreed to in writing as follows.

The firm of the aforesaid partners stands dissolved as from 20th march 2009 from which date the assets and liabilities of the business of the firm as per annexure will vest with the Nickson shoe Manufacturing Co. Limited.

The aforesaid Partners have agreed to sale all the liabilities and assets of the firm to Nickson Shoe Manufacturing Co. Limited under a separate agreement.

The Partners release each other from all obligations arising from this deed dated 28, march, 2009. Further, all statutory liabilities like income tax shall be proportionately borne by the Partners as agreed in the partnership deed, and paid for even after the dissolution of the firm and the partners agree to notify the discontinuance of business to the Income Tax Authorities under section 176 and all other concerned authorities.

Signatures

----- Signature of A S/o X
-----Signature of B S/o Y
-----Signature of C S/o Z.

Question.20

SVA Limited dispatched Bonus Share Certificate to Mr.R.R did not receive the Bonus Share Certificate as it was lost in the transit. R applied to the company to issue the Bonus share certificate in duplicate. SVA Limited asked Mr. R to submit an Indemnity Bond so that Bonus

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Share Certificate in duplicate may be issued to him. Draft an Indemnity Bond to be given by R to the company for seeking release of Bonus Share Certificate in duplicate. (5 Marks)

Answer

Indemnity Bond

Mr. R S/o X resident of Mumbai do hereby agree to indemnify the SVA Limited for any loss that may occur for seeking release of Bonus Share Certificate in duplicate of 50 equity shares of Rs.10 each fully paid. I further declare that personally I have not received the Bonus Share Certificate issued by the company for which the company is claiming that it has already been despatched.

Date.....

Place: Mumbai

Signature

(Mr. R)