

PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any five questions from the remaining six questions.

Question 1

- (a) *Amit stands surety for 'Bikram' for any amount which 'Chander' may lend to 'Bikram' from time to time during the next three months subject to a maximum amount of ₹ 1,00,000 (one lakh only). One month later 'Amit' revokes the surety, when 'Chander' had already lent to 'Bikram' ₹ 10,000 (ten thousand). Referring to the provisions of the Indian Contract Act, 1872. Decide:*
- (i) *Whether 'Amit' is discharged from all the liabilities to 'Chander' for any subsequent loan given to 'Bikram'?*
- (ii) *What would be your answer in case 'Bikram' makes a default in paying back to 'Chander' the already borrowed amount of ₹ 10,000? (5 Marks)*
- (b) *MNO Private Limited, a subsidiary of PQR Limited, decides to give a loan of ₹ 4,00,000 to the HR (Human Resource) Manager, who is not a Key Managerial Personnel (KMP) of MNO Private Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up Equity Shares of ₹ 1000 each in MNO Private Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013. (5 Marks)*
- (c) *State with reason whether the following statements are correct or incorrect:*
- (i) *Business Ethics helps to promote public reputation. (3 Marks)*
- (ii) *In the long-run, those business entities which responds to society needs favorably will survive. (2 Marks)*
- (d) *State reasons for selecting oral mode of communications instead of written mode of communications. (5 Marks)*

Answer

- (a) **Revocation of continuing guarantee:** The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:
1. **By Notice:** A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
 2. **By death of surety:** The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131).

So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.

- (i) Thus applying the above provisions in the given case, Amit is discharged from all the liabilities to Chander for any subsequent loan.
- (ii) Answer in the second case would differ i.e. Amit is liable to Chander for ₹ 10,000 on default of Bikram since the loan was taken before the notice of revocation was given to Chander.

(b) Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be a Key Managerial Personnel;
- (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
- (c) The shares to be subscribed must be fully paid shares

Section 2 (51) of the Companies Act, 2013 defines the "Key Managerial Personnel" (KMP) whereby a KMP includes the Chief Executive, Company Secretary, Whole Time Director, Chief Financial Officer or any other officer who may be prescribed.

In the given instance, HR Manager is not a KMP of the MNO Private Ltd. He is drawing salary of ₹ 30, 000 per month and loan taken to buy 500 partly paid up equity shares of ₹ 1000 each in MNO Private Ltd.

Keeping the above provisions of law in mind, the company's (MNO Private Ltd.) decision is invalid due to two reasons:

- i. The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakhs.
 - ii. The shares subscribed are partly paid shares where as the benefit is available only for subscribing fully paid shares.
- (c) (i) Correct:** Ethics helps to promote a strong public image. An organization that pays attention to its ethics can portray a strong and positive image to the public. People see such organizations as valuing people more than profit and striving to operate with the integrity and honour.
- (ii) Correct.** 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.
- (d) Reasons for selecting oral mode of communications:** Oral Communication is a face to face communication with others. Oral communication is characterized by seven Cs – Candidness, Clarity, Completeness, Conciseness, Concreteness, Correctness, and

Courtesy. These act as principles for selecting the mode of oral communication. In addition to above seven principles it has its own benefits as under:

- (i) More personal and informal.
- (ii) Make immediate impact.
- (iii) Provides opportunity for interaction and feedback.
- (iv) Helps us to correct ourselves (our message according to the feedback and non-verbal cues received from the listener).
- (v) Better for conveying feelings and emotions.
- (vi) More effective because one can understand the message better by observing facial expressions, eye contact, tone of voice, gestures, postures etc of the sender.

It is said that it does not matter what you say, what matters is how you say it. Your way of saying includes your choice of words, your confidence and sincerity.

Question 2

- (a) (i) *State with reasons whether the following persons are entitled to receive bonus under the Payment of Bonus Act, 1965:*

(I) *A retrenched employee.*

(II) *A dismissed employee reinstated with back wages. (2 + 2 = 4 Marks)*

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

Examine the validity of the refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972. (4 Marks)

- (b) *Explain the pragmatic reasons for maintaining ethical behaviour in marketing through marketing executives. (4 Marks)*

- (c) *Write short notes on the following:*

(I) *Proxemics*

(II) *Haptics*

(2 x 2 = 4 Marks)

Answer

- (a) (i) **Entitlement to Bonus**

(I) **Retrenched Employee:** Retrenched Employee is eligible to get bonus provided that he has worked for minimum qualifying period of 30 days in the

accounting year and who has drawn a salary of less than ₹ 10,000 per month in the year. (*East Asiatic Co. (P) Ltd. Vs Industrial Tribunal*)

- (II) **A dismissed employee re-instated with back wages:** According to section 9 of the Payment of Bonus Act, 1965 an employee who is dismissed from service for fraud or riotous or violent behaviour on the premises of the establishment or who is guilty of theft, mis-appropriation or sabotage of the property of any establishment, is disqualified from receiving bonus for the accounting year. A dismissed employee who has been reinstated with back wages is clearly not guilty of the above crimes nor has he been dismissed. Hence, he is entitled to bonus (*Gammon India Ltd Vs Niranjan Das*)
- (ii) **Entitlement to Gratuity:** According to Section 4 (1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation, or, on his retirement or resignation or on his death or disablement due to accident or disease.

The proviso to the said section states that the condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.

Disablement has been explained as such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

Further, by the change of ownership, the relationship of employer and employees subsists and the new employer cannot escape from the liability of payment of gratuity to the employees; it was held in the case of *Pattathurila K. Damodaran Vs M. Kassim Kanju (1993) 1 LLJ 1211 (Ker)*.

The given problem fulfils all the above requirements as stated. Therefore, Mr. X is entitled to recover gratuity after becoming permanently disabled and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

- (b) **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. Some times a single sales clerk may pervert the market opinion in relation to that company which he represents.

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

- (c) (I) **Proxemics:** It is form of a non-verbal communication which refers to the space that exists between us when we talk or relate to each other as well the way we organize space around us. We can also call it 'space language" as the following four space zones indicate the type of communication and the relationship of the source and receiver:

Intimate – Physical contact to 18 inches.

Personal – 18 inches to 4 feet.

Social – 4 to 12 feet

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

- (II) **Haptics:** It is communication through touch .How we use touch sends important messages about us. It reveals our perceptions of status, our attitudes and even our needs. The amount of touching we do or find acceptable is at least in part culturally conditioned.

Question 3

- (a) (i) *Under what circumstances the original contract need not be performed as stated under section 62 to 67 of the Indian Contract Act, 1872? (4 Marks)*
- (ii) *Mr. U offered to sell his house to Mr. X for ₹ 15,00,000. Mr. X accepted the offer by post. On the very next day Mr. X sent a telegram revoking the acceptance which reached Mr. U before the letter of acceptance. Is the revocation of acceptance*

valid? Would it make any difference if both the letter of acceptance and the telegram of revocation of acceptance reach Mr. U at the same time? (4 Marks)

- (b) (i) *Explain any four sources of ethical standard. (4 Marks)*
 (ii) *List out the characteristics of group personality under Group Dynamics. (4 Marks)*

Answer

- (a) (i) **Contracts which need not to be performed:** A contract would not require performance under circumstances spelt out in Sections 62 to 67 of the Indian Contract Act, 1872. These circumstances are (i) novation, (ii) rescission, (iii) alteration and (iv) remission.
- (1) **Novation:** Novation means substitution. Where a given contract is substituted by a new contract, it is novation. The old contract, on novation ceases. It need not be performed. Novation can take place with mutual consent. However, novation can take place by substitution of new contract between the same parties or between different parties. Novation results in discharge of old contract.
 - (2) **Rescission:** In case of rescission, the old contract is cancelled and no new contract comes in its place. A contract is also discharged by rescission. Sometimes, parties may enter into an agreement to rescind the previous contract. Sometimes, the contract is rescinded by implication or by non-performance for a long time without each other complaining about it.
 - (3) **Alteration:** Where the contract is altered, the original contract is rescinded. Hence, the old one need not be performed whereas the new one has to be performed. Alteration involves both rescission and novation. The line of difference between alteration and novation is very thin. While there can be very minor alterations, there cannot be unilateral material alteration to a contract. If it is done it will be void.
 - (4) **Remission means waiver:** Section 63 of the Act deals with remission. It provides that "every promisee may dispense with or remit wholly or in part, the performance of the promise made to him or may extend the time for such performance or may accept instead of it any satisfaction which it thinks fit". Thus the promisee can waive either in full or in part the obligation of the promisor or extend the time for performance.
- (ii) **Communication and revocation of acceptance when complete:** The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is complete as against the acceptor when it comes to the knowledge of the proposer.

Whereas section 5 of the Indian Contract Act, 1872 says that an acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

- (i) Yes, the revocation of acceptance by Mr. X (the acceptor) is valid.
- (ii) If Mr. U opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.

(b) (i) Sources of Ethical Standards:

1. **The Utilitarian Approach:** Some ethicists emphasize that the ethical action is the one that provides the most good or does the least harm, or, to put it another way, produces the greatest balance of good over harm. The ethical corporate action, then, is the one that produces the greatest good and does the least harm for all who are affected - customers, employees, shareholders, the community, and the environment. The utilitarian approach deals with consequences; it tries both to increase the good done and to reduce the harm done.
2. **The Rights Approach (The Deontological Approach):** Other philosophers and ethicists suggest that the ethical action is the one that best protects and respects the moral rights of those affected. This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral rights -including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on-is widely debated; some now argue that non-humans have rights, too. Also, it is often said that rights imply duties-in particular, the duty to respect others' rights.
3. **The Fairness or Justice Approach:** Aristotle and other Greek philosophers have contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally-or if unequally, then fairly based on some standard that is defensible. We pay people more based on their harder work or the greater amount that they contribute to an organization, and say that is fair. But there is a debate over CEO salaries that are hundreds of times larger than the pay of others; many ask whether the huge disparity is based on a defensible standard or whether it is the result of an imbalance of power and hence is unfair.

4. **The Common Good Approach:** The Greek philosophers have also contributed the notion that life in community is a good in itself and our actions should contribute to that life. This approach suggests that the interlocking relationships of society are the basis of ethical reasoning and that respect and compassion for all others-especially the vulnerable-are requirements of such reasoning. This approach also calls attention to the common conditions that are important to the welfare of everyone. This may be a system of Laws, effective police and fire departments, health care, a public educational system, or even public recreational areas.
 5. **The Virtue Approach:** A very ancient approach to ethics is that ethical actions ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act according to the highest potential of our character and on behalf of values like truth and beauty. Honesty, courage, compassion, generosity, tolerance, love, fidelity, integrity, fairness, self-control, and prudence are all examples of virtues. Virtue ethics asks of any action, "What kind of person will I become if I do this?" or "Is this action consistent with my acting at my best?"
- (ii) **Characteristics of Group Personality:** Following are the characteristics of group personality:
- (a) **Spirit of Conformity:** Individual members soon come to realize that in order to gain recognition, admiration and respect from others they have to achieve a spirit of conformity. Our beliefs, opinions, and actions are influenced more by group opinion than by an individual's opinion, even if it is an expert's opinion.
 - (b) **Respect for group values:** Any working group is likely to maintain certain values and ideals which make it different from others. In order to deal effectively with a group we must understand its values which will guide us in foreseeing its programmes and actions.
 - (c) **Resistance to change:** It has been observed that a group generally does not take kindly to social changes. On the other hand the group may bring about its own changes, whether by dictation of its leader or by consensus. The degree to which a group resists change serves as an important index of its personality. It helps us in dealing with it efficiently.
 - (d) **Group prejudice:** Just as hardly any individual is free from prejudice, groups have their own clearly evident prejudices. It is a different matter that the individual members may not admit their prejudiced attitude to other's race, religion, nationality etc. But the fact is that the individual's prejudices get further intensified while coming in contact with other members of the group holding similar prejudices.

- (e) Collective power: It need not be said that groups are always more powerful than individuals, how so ever influential the individual may be. That is why individuals may find it difficult to speak out their minds in groups. There is always the risk of the one-against-many situation cropping up.

Question 4

- (a) (i) *Explain the concept of Deemed Prospectus under the Companies Act, 2013. Under what circumstances prospectus need not be issued?* (4 Marks)
- (ii) *Diminution of share capital does not constitute a reduction within the meaning of Companies Act, 2013. State in what respects they differ from each other.* (4 Marks)
- (b) *What is meant by 'Critical thinking'? Suggest the measures to develop critical thinking.* (4 Marks)
- (c) *Prepare a check list for organizing the messages in a business firm as a job of composing business messages being assigned to you.* (4 Marks)

Answer

- (a) (i) **Deemed Prospectus:** Under section 25 (1) of the Companies Act, 2013 any document by which an offer for sale of any securities is made to the public and the company allots or agrees to allot securities in terms thereof, then such document shall for all purposes, be deemed to be a prospectus and all enactments and rules of law as to the contents in a prospectus and as to liability in respect of mis-statements and omissions therein shall apply and shall have effect as they apply to a prospectus.

From the above provision it is quite clear that the deemed prospectus is not intended to be a document with any exceptions or concessions vis a vis a prospectus. It only broadens the scope of a prospectus to include not only the formal document issued as a prospectus but also all nature of communication made by the company with the intention of selling an issue. It is designed to prevent companies from making mis leading statements through various documents, notices or circulars while keeping the formal prospectus document clean.

When Prospectus need not be issued: The issue of prospectus under Section 23 of the Companies Act, 2013 is not necessary in the following circumstances:

1. Where a person is a bona fide invitee to enter into an underwriting agreement with regard to any securities.
2. Where securities are offered through private placement by complying with the provisions related thereto in the Companies Act, 2013.
3. Where securities are issued through a rights issue or a bonus issue in accordance with the applicable provisions of the Act and in case of listed

companies also in accordance with the provisions of the rules and regulations made by SEBI in this behalf;

- (ii) **Diminution of Share Capital and Reduction of Share Capital:** The term “diminution” denotes a cancellation of that portion of the issued capital which has not been subscribed for. Section 61 of the 2013 Act states, the cancellation of “shares which at the date of the passing of the resolution in that behalf have not been taken or agreed to be taken by any person”.

Section 61 of the Companies Act, 2013 specifically states that diminution does not constitute a reduction within the meaning of the Companies Act. The expression “diminution of share capital” and “reduction of share capital” differ from each other in the following respects.

- (1) Reduction may involve reduction inter alia of issued capital, whereas diminution may be in respect of authorised capital but not of issued capital.
 - (2) If the articles authorise the procedure, diminution can be effected by an ordinary resolution, while reduction (which also need authorisation by articles), can be effected only by a special resolution.
 - (3) Diminution needs no confirmation by the Court [Section 61 of the Companies Act, 2013], but reduction needs such confirmation [Section 101 of the Companies Act, 1956].
 - (4) Where a company is ordered to add to its name the words “and reduced” these words shall until the expiry of the period specified in the order, be deemed to be part of the company’s name [Section 102(3) of the Companies Act, 1956], but such a provision does not exist in the case of diminution of the share capital as envisaged in Section 61.
 - (5) In the case of diminution, notice is to be given to the Registrar within 30 days from the date of cancellation whereupon the Registrar shall record the notice and make the necessary alteration in the memorandum or articles or both [Section 64 of the Companies Act, 2013]; whereas in the case of reduction more detailed procedure regarding notice to the Registrar has been prescribed by Section 103 of the Companies Act, 1956, though there is no such time limit as aforesaid (i.e.30 days).
- (b) **Critical Thinking:** Critical thinking is the discipline of rigorously and skillfully using information, experience, observation and reasoning to guide one's decisions, actions and beliefs. Critical thinking refers to the act of question of every step of the thinking process e.g. Have you considered all the facts? Have you tested your assumptions? Is your reasoning sound? Can you be sure your judgment is unbiased? Is your thinking process logical, rational and complete?

Developing Critical thinking: To develop as a critical thinker, one must be motivated to develop the following attributes:

1. **Open-minded:** Readiness to accept and explore alternative approaches and ideas.
2. **Well informed:** Knowledge of the facts and what is happening on all fronts.
3. **Experimental:** Thinking through 'what if scenarios to create probable options and then test the theories to determine what will work and what will not be acceptable.
4. **Contextual:** Keeping in mind the appropriate context in the course of analyses. Apply factors of analysis is that are relevant or appropriate.
5. **Reserved in making conclusion:** Knowledge of when, a conclusion is a 'fact' and when it is not only true conclusions support decisions.

(c) Check-list for organising the message:

1. Recognise good organisation
 - (a) Subject and purpose are clear
 - (b) Information is directly related to subject and purpose.
 - (c) Ideas are grouped and presented logically
 - (d) All necessary information is included
2. Achieve good organization through outlining-
 - (a) Decide what to say
 - (i) Main idea
 - (ii) Major points
 - (iii) Evidence
 - (b) Organise the message to respond the audience is probable reaction-
 - (i) use the direct approach when audience will be neutral, pleased, interested, or eager.
 - (ii) use the indecent approach when audience will be displeased, interested, or unwilling.
3. Choose the appropriate organisation plan-
 - (a) Short Messages -
 - (i) Direct request
 - (ii) Routine, good news and good message
 - (iii) Bad news message
 - (iv) Persuasive Message

- (b) Longer message -
 (i) Information pattern
 (ii) Analytical pattern.

Question 5

- (a) (i) *Mr. A is the payee of an order cheque. Mr. B steals the cheque and forges Mr. A signatures and endorses the cheque in his own favour. Mr. B then further endorses the cheque to Mr. C, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881 and also state whether Mr. C can claim the privileges of a Holder-in-Due course?* (4 Marks)
- (ii) *Explain the concept and different forms of Restrictive and Qualified endorsement.* (4 Marks)
- (b) *Examine the validity of the following referring to the provisions of the Companies Act, 2013 and/or Rules:*
"The Articles of Association of X Ltd. contained a provision that upto 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The Board of Directors of X Ltd. decided to pay 5% underwriting commission. (4 Marks)
- (c) *Discuss different environmental phenomena of ethical concern?* (4 Marks)

Answer

- (a) (i) **Title to forged cheque under the Negotiable Instruments Act, 1881:** Forgery confers no title and a holder acquires no title to a forged instrument. A forged document is a nullity. The property in the instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified. In the case of forged endorsement, the person claiming under forged endorsement even if he is purchaser for value and in good faith, cannot acquire the rights of a holder in due course. Therefore, Mr. C acquires no title on the cheque (*Mercantile Bank vs. D'Silva, 30 Bom.L.R.1225*). Such a holder is not a holder in due course and hence no privilege is available.
- (ii) (1) **Restrictive Endorsement:** Such an endorsement has the effect of restricting further negotiation and transfer of the instrument.
Example: (1) Pay to A only S. Mukerjee
 (2) For the account of A only N. Aiyar
- (2) **Conditional or qualified endorsement:** Such an endorsement combines an order to pay with condition.
Example: Pay to A on safe receipt of goods.
V. Chopra

- (b) Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 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.

In the given problem, the articles of X Ltd have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid.

- (c) **Different environmental phenomena of ethical concern:** An ecological system is an interrelated and interdependent set of organisms and environments, such as a lake, in which the fish depend on small aquatic organisms, which in turn live off decaying plant and fish waste products. Since the various parts of an ecological system are interrelated, the activities of one of its parts will affect all the other parts. Business firms (and all other social institutions) are parts of a larger ecological system. Business firms depend on the natural environment for their energy, material resources, and waste disposal, and that environment in turn is affected by the commercial activities of business firms.

The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal. It is the issues of exploitive human nature and attitudes that should be addressed in a rational way. Problems like Global warming, Ozone depletion and disposal of hazardous wastes that concern the entire world. They require International cooperation and have to be tackled at the global level.

Few decades ago, the corporate world, the industry or others engaged in the use of natural resources or environmental services were mainly concerned with good business in economic sense. There is now a growing concern for Social responsibility and ethical norms in all spheres of human activities; be it public behaviour, business or environment and there are ethical concerns to look after not only the interest of stakeholders but also that of community; as the regulatory / mandatory requirements have also become more stringent. This translates into providing safety for the workers at workplace, concern for their health, reducing pollution and incorporating environmental values in governance.

Question 6

- (a) *What is the importance of registered office of a company? State the procedure for shifting of a registered office of the company from one state to another state under the provisions of the Companies Act, 2013.* (8 Marks)
- (b) *Draft a notice for convening the Board of Directors Meeting of M/s. Growmore Limited where the agenda is to consider buy-back of company's equity share capital to an extent of 5% of its issued share capital and also where Mr. Anand is to be co-opted as an additional director.* (4 Marks)

- (c) State whether the following statements are correct or incorrect:
- (i) A limited company can become a partner in a partnership firm.
 - (ii) A special resolution is one to pass, requires the votes cast in favour be twice the votes cast against it.
 - (iii) A cheque marked "Not negotiable" is not transferable.
 - (iv) A promissory note duly executed in favour of a minor, is valid. (1 x 4 = 4 Marks)

Answer

(a) Importance of registered office:

- The importance of the registered office of a company is clearly established in two sections of the Companies Act, 2013. Section 11(1)(b) states that a company having share capital shall not commence business or exercise any borrowing powers unless it has filed with the registrar a verification of its registered office as required by section 12 (2) which requires every company to furnish to the registrar a verification of its registered office within a period of 30 days of its incorporation in such manner as may be prescribed.
- Further, section 12 (1) states that a company shall, on and from the fifteenth day of its incorporation and at every time thereafter, have a registered office capable of receiving and acknowledging all communications and notices addressed to it.
- Section 12 (3) further requires every company to:
 - Paint or affix its name and address of its registered office, and keep the same painted and affixed, on the outside of every office or place in which its business is carried on. Such display must be in a conspicuous position, in legible letters in characters and letters of the local language in addition to any other language (if chosen by the company);
 - Get its name, address of its registered office and the corporate identity number and other details, on all its business letters, bill heads, notices and other official publications;
- From the above provisions of the Companies Act, 2013, the extremely high importance of the registered office of a company can be well understood as it serves as the location where : (a) necessary documents may be served upon, or deposited; (b) notices, letters, etc., may be issued ; (c) inspection may be done, and (d) communication may be made. The domicile and the nationality of a company is determined by the place of its registered office. This is also important for determining the jurisdiction of the Court governing it.
- Notice of the situation of the registered office and of every change therein must be sent to the Registrar (otherwise than through a statement as to the address of the registered office in the annual report) within 30 days of the date of incorporation and

the date of change. This provision is designed to locate the spot where the records of the company could be inspected and where the letters should be addressed and notices served upon the company.

Procedure for shifting the registered office from one state to another state (Section 13, of the Companies Act, 2013):

In order to shift the registered office from one state to another the following procedure will have to be followed:

- (i) Hold a Board Meeting for the purpose of calling a general meeting of the members of the company in which the shifting of the registered office from one state to another will have to be approved;
- (ii) The general meeting of the members will have to pass a special resolution approving the change of address of the registered office from one state to another as required by section 13 (1) of the Companies Act 2013.
- (iii) Make an application to the Central Government in such form and manner as may be prescribed, for getting its approval under section 13 (4) of the Companies Act 2013.
- (iv) Under section 13 (7) of the Companies Act 2013, where an alteration of the Memorandum results in the transfer of the registered office of the company from one state to another, a certified copy of the order of the Central Government approving the alteration shall be filed by the company with the registrar of each of the states, within such time and in such manner as may be prescribed, and the registrars shall register the same. The registrar of the state where the registered office is being shifted to, shall issue a fresh certificate of incorporation indicating the alteration.
- (v) The change in name will be effective only after the issue of the fresh certificate of incorporation by the Registrar of the state where the registered office is being shifted to.

(b) Notice: Meeting of Board of Directors:

Notice is hereby given that meeting of the Board of Directors of the M/s Growmore Ltd. will be held at the registered office on.....at.....a.m./p.m. to transact the following:

Agenda

1. Confirmation of the minutes of the previous Board Meeting held on.....to.....
2. Discussion of the progress in business.
3. Co-option of Mr. Anand as an Additional Director of the company.
4. Buy back of 5% of the equity shares of the company.
5. Any other matter with the permission of the chair.

Place:.....

By Order of the Board of Directors

Date:.....

(c) (i) A limited company can become a partner in a partnership firm

Correct. According to Section 4 of the Indian Partnership Act, 1932, partnership is a contractual relationship between persons and a company falls within the definition of a person capable of contracting; therefore, there is no objection to a company in becoming a partner in a firm. Further, the limited liability element of a limited company is also not restrictive to a company becoming a partner in a firm even with an unlimited liability of the partnership firm and partners. This is, because, in a company it is the liability of members which is limited and not the company itself.

(ii) A special resolution is one, to pass, requires the votes cast in favour be twice the votes cast against it.

Incorrect. A resolution shall be a special resolution when the votes cast in favour of the resolution by members (whether on a show of hands, or on a poll, or by proxy), are not less than three times the number of votes, if any, cast against the resolution.

(iii) A cheque marked "Not Negotiable" is not transferable.

Incorrect. A cheque marked "not negotiable" is a transferable instrument. The inclusion of the words 'not negotiable' however makes a significant difference in the transferability of the cheques. The holder of such a cheque cannot acquire title better than that of the transferor.

(iv) A promissory note duly executed in favour of a minor, is valid.

Correct. As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself (Section 26 of the Negotiable Instruments Act, 1881).

Question 7

Answer any four of the following:

- (a) *State the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regulating the quantum of contribution to be made by the employer and employee to the Provident Fund. Is it possible for an employee to increase the amount of his contribution to the Provident Fund more than the minimum contribution as statutorily prescribed? (4 Marks)*
- (b) *A company refuses to register transfer of shares made by Mr. X to Mr. Y. The company does not even send a notice of refusal to Mr. X. or Mr. Y respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013. (4 Marks)*
- (c) *When is an allotment of shares treated as an irregular allotment? Briefly state the effects of an irregular allotment. (4 Marks)*
- (d) *Explain the practices widely recognized as discriminatory in employment. (4 Marks)*

(e) *What are the basic principles of inter-personal communication?* (4 Marks)

Answer

(a) **Contribution to Provident Fund under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952:** Section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regulates contribution to Provident Fund Scheme established under the Act.

The employer's contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any payable to each of the employees whether employed by him directly or by through a contractor.

The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

In case the employee so desires, he may contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Dearness allowance includes cash value of any food concession allowed to the employees. Retaining allowance means the sum paid for retaining the service, when the factory is not working.

The Central Government may by notification make the employer's contribution equal to 12% for certain establishments class of establishments.

(b) **Refusal of registration and appeal against refusal:** The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

(a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or

- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;.

In the present case Mr. X can make an appeal before the tribunal and claim damages.

- (c) **Irregular allotment:** The Companies Act, 2013 does not separately provide for the term “Irregular Allotment” of securities. Hence, one will have to examine the requirements of a proper issue of securities and consider the consequences of non fulfilment of those requirements.

In broad terms, an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 and 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4);
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013

Effects of irregular allotment: The consequences of an irregular allotment depend on the nature of irregularity. However, the Companies Act, 2013 does not mention (unlike the previous Companies Act) that in case of an irregular allotment the contract is voidable at the option of the allottee.

Under section 26 (9) of the Companies Act, 2013 if a prospectus is issued in contravention of the provisions of section 26, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to three years or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Similarly, in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money

received by it within the stipulated time. Any allotment made in violation of this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39 (5).

Under section 40 (5) any default made in respect of getting the approval to listing of securities in one or more recognized stock exchange in case of a public issue, will render the company punishable with a fine which shall not be less than five lakh rupees but which may extend to fifty lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to three lakh rupees, or with both.

Hence, under various provisions of the Companies Act, 2013 stringent punishment has been provided for against irregular allotment of securities but the option of going ahead with such allotment even if desired by the allottee is not specifically permitted.

- (d) **Discriminatory Practices in Employment:** 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.

It is consequently understandable that the law has gradually been changed to conform to these moral requirements, and that there has been a growing recognition of the various ways in which discrimination in employment occurs. Among the practices now widely recognized as discriminatory are the following:

Recruitment Practices: Firms that rely solely on the word-of-mouth referrals of present employees to recruit new workers tend to recruit only from those racial and sexual groups that are already represented in their labor force. Also, when desirable job positions are only advertised in media that are not used by minorities or women or are classified as for men only, recruitment would also tend to be discriminatory.

Screening Practices: Job qualifications are discriminatory when they are not relevant to the job to be performed (e.g., requiring a high school diploma or a credential for an essentially manual task.). Job interviews are discriminatory if the interviewer routinely disqualifies certain class of people - for example assumptions about occupations "suitable for women" or the propriety of putting women in "male "environments.

Promotion Practices: Promotion, job progression, and transfer practices are discriminatory when employers place males on job tracks separate from those open to women and minorities. When promotions rely on the subjective recommendations of immediate supervisors.

Conditions of Employment: Many times wages and salaries are discriminatory to the extent that equal wages and salaries are not given to people who are doing essentially the same work. Another issue is related to fair wages and treatment to workers. Companies subcontracting manufacturing operations abroad are now aware of the ethical

issues associated with supporting facilities like child labour that abuse and/or underpay their work forces. Such facilities have been termed “sweatshops.”

Dismissal: Firing an employee on the basis of his or her race or sex is a clear form of discrimination. Less blatant but still discriminatory are layoff policies that rely on a seniority system, in which women and minorities have the lowest seniority because of past discrimination.

- (e) **Principle of Interpersonal Communication:** The following principles are key to interpersonal communication -

Interpersonal communication is inescapable: We cannot keep ourselves away from communication. The very attempt not to communicate, communicates something. Not only through words but also through the tone of voice and gestures, postures, facial expressions etc, we constantly communicate to others.

Interpersonal communication is irreversible: It is rightly said that a word uttered once can not be taken back.

Interpersonal communication is complicated: No form of communication is simple due to the number of variables involved; even simple requests can be extremely complex.

Interpersonal communication is contextual: Communication does not take place in isolation. They are context specific:

Psychological context: It refers to who the communicators are and what they bring to the interaction? Their needs, desires, values, personality etc all form the psychological context.

Relational context: This is concerning the nature of interaction and reactions and the way it all affects the communication process.

Situational context: Refers to social concept of communication viz. an interaction that takes place in a classroom will be very different from one that takes place in a board room.

Environmental context: It is all about the surroundings in which communication takes place e.g. Furniture location, noise level, temperature, season, time of day etc. are all examples of elements in the environmental context.

Cultural context: Includes all the learned behaviours and rules that affect the interaction. If one comes from a culture where it is considered rude to establish long, direct eye contact, one will out of politeness avoid eye contact. If the other person comes from a culture where long direct eye contact signals trustworthiness, then we have a basis for misunderstanding.