

## PAPER – 2: BUSINESS LAWS, ETHICS & COMMUNICATION

### PART – I: ANNOUNCEMENTS STATING APPLICABILITY & NON-APPLICABILITY FOR MAY, 2016 EXAMINATION

#### I. Applicability for May 2016 examinations

Applicability of relevant amendments/Circulars/Notifications/Regulations etc. for the period 1st May 2015 to 31<sup>st</sup> October, 2015 relating to Business Law, Ethics and Communication at Intermediate (IPC) for May 2016, Examination:

##### (i) The Companies Act, 2013

Sl. No.	Amendment related to the topic	Content
1	The Companies (Acceptance of Deposits) Second Amendment Rules, 2015	Vide Notification No. G.S.R. 695(E) dated 15th September 2015, the Ministry of Corporate Affairs makes the Companies (Acceptance of Deposits) Second Amendment Rules, 2015 further to amend the Companies (Acceptance of Deposits) Rules, 2014. This amendment has substituted sub-clause (viii) of clause (c), sub-rule (1), rule 2.
2	The Companies (Management and Administration) Amendment Rules, 2015.	Vide Notification No. G.S.R. 669(E) dated 28th August 2015, the MCA makes the Companies (Management and Administration) Amendment Rules, 2015 further to amend the Companies (Management and Administration) Rules, 2014. Through this amendment, rule 23, in sub-rule (I) for the words 'not more than five lakh rupees', the words 'not less than five lakh rupees' shall be substituted.
3	Exemptions to companies covered under section 8	Vide Notification G.S.R. 466(E) dated 5 <sup>th</sup> June 2015, the Central Government in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with certain exceptions, modifications and adaptations to a body to which a license is granted under the section 8 of the Act.
4	Exemptions to private companies	Vide Notification no. G.S.R. 464(E), dated 5 <sup>th</sup> June 2015 the Central Government in the interest of public, hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with certain exceptions, modifications and adaptations to a private company.

5	Exemptions to Nidhi companies	Vide Notification G.S.R. 465(E) dated 5 June 2015 the Central Government hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with such exceptions, modifications and adaptations to Nidhis.
6	Exemptions to Government Companies	Vide Notification dated G.S.R.463(E) dated 5 June 2015 the Central Government hereby directs that certain provisions of the Companies Act, 2013, shall not apply or shall apply with such exceptions, modifications and adaptations to a Government company.
7	The Companies (Amendment) Act, 2015	Vide Notification dated 29th May 2015, Central Government declared the date of enforcement of provisions of sections 1 to 12 and 15 to 23 of the Companies (Amendment) Act, 2015.
8	Delegation of power and functions to Regional Directors under section 94 (5) of the Companies Act, 2013	In exercise of the powers conferred by Section 458 of the Companies Act, 2013 (18 of 2013), the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong the powers and functions vested in it under sub-section (5) of Section 94 of the Companies Act, 2013, subject to the condition that the Central Government may revoke such delegation of powers or may itself exercise the powers under the said sub-section, if in its opinion such a course of action is necessary in the public interest.

- (ii) **The Negotiable Instruments (Amendment) Second Ordinance, 2015** : In exercise of the powers conferred by Article 123(1) of the Constitution, the President promulgated the ordinance called the Negotiable Instruments (Amendment) Second Ordinance, 2015 with effect from 15<sup>th</sup> June, 2015. Amendments are made with an object to address the difficulties faced by the payee or the lender of the money in filing cases under section 138 of the said Act, because of which large number of cases are stuck, so the jurisdiction for offence under section 138 has been clearly defined. For detail click the following link-

[http://www.prsindia.org/uploads/media/Negotiable%20instrument/Negotiable%20Instruments%20\(A\)%20second%20Ordinance.pdf](http://www.prsindia.org/uploads/media/Negotiable%20instrument/Negotiable%20Instruments%20(A)%20second%20Ordinance.pdf)

Students are advised to refer the study material (July 2015 edition) along with the practice manual (July 2015 edition).

**II. Non-Applicability for May 2016 examinations**

S.No.	Section No.	Section title
1.	Section 48	Variation of shareholders' right
2.	Section 66	Reduction of share capital
3.	Section 75	damages for fraud
4.	Section 97	Power of tribunal to call AGM
5.	Section 98	Power of Tribunal to call meetings of members, Etc.
6.	Section 99	Punishment for default in complying with provisions of sections 96 to 98

**PART – II : QUESTIONS AND ANSWERS**  
**QUESTIONS**

**PART – A: BUSINESS LAWS****The Indian Contract Act, 1872**

1. (a) Vishal, aged 16 years, was studying in an engineering college. On 1 March, 2013 he took a loan of ₹ 1 lakh from Shekhar for the payment of his college fee and agreed to pay by 30<sup>th</sup> May, 2014. Vishal possesses assets worth ₹ 10 lakhs. On due date Vishal fails to pay back the loan to Shekhar. Shekhar now wants to recover the loan from Vishal out of his assets. Whether Shekhar would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.
- (b) What is the meaning of the term 'Reciprocal Promise'. In what forms the performance of reciprocal promise can take place according to the provision of the Indian Contract Act, 1872.
2. (a) Father promised to pay his son a sum of rupees one lakh if the son passed C.A. examination in the first attempt. The son passed the examination in the first attempt, but father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872?
- (b) Mr. Yadav of Delhi engaged Mr. Shekhawat as his agent to buy a house in West Extension area. Mr. Shekhawat bought a house for ₹ 50 lakhs in the name of a nominee and then purchased it himself for ₹ 60 lakhs. He then sold the same house to Mr. Yadav for ₹ 62 lakhs. Mr. Yadav later comes to know the mischief of Mr. Shekhawat and tries to recover the excess amount paid to Mr. Shekhawat. Is he entitled to recover any amount from Mr. Shekhawat? If so, how much? Explain.

**The Negotiable Instruments Act, 1881**

3. Ram, a legal successor of Shyam, the deceased person, signs a Bill of Exchange in his own name admitted a liability of ₹ 1,50,000 i.e. the extent to which he inherits the assets from the deceased payable to Mohan after 3 months from 1<sup>st</sup> January, 2015. On maturity, when Mohan presents the bill to Ram, he (Ram) refuses to pay for the bill on the ground that since the original liability was that of Shyam, the deceased, therefore he is not liable to pay for the bill.

Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether Mohan can succeed in recovering ₹ 1,50,000 from Ram.

4. A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-
- (i) Whether D can sue the prior parties of the bill, and
  - (ii) Whether the prior parties other than D have any right of action inter se?

Give your answer in reference to the Provisions of the Negotiable Instruments Act, 1881.

**The Payment of Bonus Act, 1965**

5. Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act:
- (i) An apprentice;
  - (ii) An employee dismissed on the ground of misconduct;
  - (iii) A temporary workman;
  - (iv) A piece-rated worker;
  - (v) An employee getting a salary of ₹ 12,000 per month.
6. Precious Wooden Toys Limited was established at Kolkota in the year 2012 employing 100 workmen. Since then, the company suffered losses, but minimum bonus was paid in the accounting years of 2013 and 2014. In the accounting year 2015, 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. Precious 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 Precious Wooden Toys Limited, stating the provisions of the Payment of Bonus Act, 1965.

**The Employees' Provident Funds and Miscellaneous Provisions Act, 1952**

7. State the provisions of the 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?
8. X, an employee in ABC Ltd (covered by the EPF and MP Act, 1952) died in an accident. State to whom the amount standing in his account to be payable under the provisions of the Act.

**The Payment of Gratuity Act, 1972**

9. Examine the validity of the following nominations in respect of payment of gratuity as per the provisions of the Payment of Gratuity Act, 1972. Also specify the provisions in this reference:
  - (i) 'R' who has 4 members in his family wants to nominate one of his friend for the purpose of gratuity.
  - (ii) 'S' who has no family, nominated one of his friend for the purpose of gratuity. Afterwards he acquired family but did not change the nomination.
10. An employee who is governed by the Payment of Gratuity Act, 1972 committed a theft in the course of his employment. And consequently his services was terminated. State in this connection, whether the gratuity payable to him shall be wholly or partly forfeited.

**The Companies Act, 2013**

11. Sujeev, a shareholder, holding 2000 shares of ₹ 100 per share of Touchwood Pharma Ltd. The company has called and collected ₹ 60 per share. Sujeev has paid ₹ 40 per share (the balance amount not yet demanded by the company) as calls in advance. At the time of annual general meeting of the company, he demanded that he is entitled to vote in respect of the advance money paid by him. The directors of the company rejected his demand. He claimed for refund of calls in advance amount paid by him with interest.  
Examine the validity of Sujeev's claim for voting or refund of money with interest with reference to the provisions of the Companies Act, 2013.
12. Lotus valley Ltd. issued a prospectus with the object of setting up of a chain of hotels. However, later it decided to set-up a Pharmaceutical Manufacturing unit. Keeping in view of the provisions of the Companies Act, 2013, state whether Lotus valley Ltd. can do so and if it can be done, also state the procedure to be followed for variation in the objects in the prospectus.
13. Can a non-profit organization be registered as a company under the Companies Act, 2013? If so, what procedure does it have to adopt?
14. ADJ Limited decides to buy-back its own shares. Advise the company's Board of Directors about the sources out of which the company can buy-back its own shares.

What conditions are attached to the buy-back scheme of the company in accordance with the provisions of the Companies Act, 2013? Explain.

15. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.
  - (i) In an Annual General Meeting of a company having share capital, 80 members present in person or by proxy holding more than 1/10<sup>th</sup> of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.
  - (ii) In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn.

#### **PART – B: ETHICS**

16. “To pay proper attention to business ethics is certainly beneficial in the interest of business. Describe four such benefits which may be obtained by paying attention to business ethics.
17. What is Corporate Social Responsibility? Why it is needed in Indian Business environment?
18. What do you understand by the term 'discrimination' in employment as sometime found in an establishment? Explain the basic elements of 'discrimination'.
19. (i) What is meant by 'Environmental ethics'? How does its non-adoption lead to 3 Ps Viz., Polluter Pays and Principles? Explain.  
(ii) What are the objects of the “Central Consumer Protection Council” in relation to protection of rights of the consumers?
20. What are the fundamental principles of ethics applicable to the persons of finance and accounting profession?

#### **PART – C: COMMUNICATION**

21. What are the factors that lead to grapevine communication?
22. What do you understand by 'Group conflicts'? How shall these be managed effectively? Explain.
23. State the reasons for accepting the change in the present management set-up of the corporate culture in a business organisation.
24. Mr. Somnath has not received a dividend warrant of ₹ 1,700 for 170 shares of Cute Fabrics Ltd. Draft an indemnity bond, to be given to the company for seeing release of Dividend.

25. Ashoka Paper Limited was incorporated in September, 2015. Now the company wants to hold its first meeting of the Board of Directors. Draft a notice of the said meeting along with agenda.

### SUGGESTED ANSWERS/HINTS

1. (a) According to Section 11 of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Vishal who is a minor is incompetent to contract and any agreement with him is void [*Mohori Bibi Vs Dharmodas Ghose 1903, 30 Cal, 539 (PC)*].

Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessaries of life to him. It says that though minor is not personally liable to pay the price of necessaries supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessaries suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity.

Thus, according to the above provision, Shekhar will be entitled to recover the amount of loan given to Vishal for payment of the college fees from the property of the minor.

- (b) The law relating to reciprocal promise are set out in Sections 51 to 54 of the Indian Contract Act, 1872.

**General observation:** A contract may consist of (i) an act and a promise or (ii) two promises one being the consideration for the other.

The second type of contract which involves two promises, one promise from each to the other party is known as "Reciprocal promise".

The performance of reciprocal promise can take in different forms-

- (i) **Simultaneously performance of reciprocal promise [Section 51]:** In this case, promises have to be performed simultaneously. The conditions and performances are concurrent. If one of the parties does not perform his promise, the other also need not perform his promise.
- (ii) **Performance of reciprocal promise where the order is expressly fixed:** Where the order of performance is expressly fixed, the promise must be performed in that order only.

- (iii) **Performance of reciprocal promise by implication:** Where the performance of reciprocal promise is not fixed expressly, some times the order is understood by implication.
  - (iv) **Effect of one party preventing another from performing promise [Section 53]:** When in a contract consisting of reciprocal promises one party prevents the other from performing his promise, the contract becomes voidable at the option of the party so prevented. The person so prevented is entitled to get compensation for any loss he may have sustained for the non-performance.
  - (v) **Effects of default as to promise to be performed first:** Section 54 of the Act provides that promises may be such that:
    - (A) one of them cannot be performed or
    - (B) its performance cannot be demanded till the other has been performed.
  - (vi) **Position of legal and illegal parts of Reciprocal promises:** Reciprocal promise to do certain things that are legal and certain others that are not legal – Section 57 of the Act provides that if reciprocal promises have two parts, the first part being legal and the second part being illegal, the legal part is a valid contract and the illegal part is void.
  - (vii) **Alternative promise one branch being illegal:** “In the case of the alternative promise, one branch of which is legal and the other illegal, the legal branch alone can be enforced”.
2. (a) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 10. According to the provisions, there should be an intention to create legal relationship between the parties. Agreements of a social nature or domestic nature do not contemplate legal relationship and as such are not contracts, which can be enforced. This principle has been laid down in the case of *Balfour vs. Balfour (1912 2 KB. 571)*. Accordingly, applying the above provisions and the case decision, son cannot recover the amount of ` 1 lakh from father for the reasons explained above.
- (b) The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:
- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
  - (2) claim from the agent any benefit, which may have resulted to him from the transaction.



Therefore, based on the above provisions, Mr. Yadav is entitled to recover ₹ 12 lakhs from Mr. Shekhawat being the amount of profit earned by Mr. Shekhawat out of the transaction.

3. The problem is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 29. A legal representative of a deceased person who signs his own name on a negotiable instrument, is personally liable for the entire amount thereon, unless he expressly limits his liability to the extent of the assets received by him as such (Section 29).

Applying the above provisions to the given problem *Mohan* is entitled to recover ₹ 1,50,000/- from Ram. Ram cannot refuse to pay the amount since he has inherited the assets of the deceased. He will be liable to the extent of the full amount of the bill even if he inherits the property valued less than the amount of the bill. Thus, in this case he will be liable to full amount of ₹ 1,50,000/-.

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

(i) In the problem, as asked in the question, A has drawn a bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. According to provisions of the aforesaid section 43, the bill ultimately has been transferred to D with consideration. Therefore, D can sue any of the parties i.e. A, B or C, as D arrived a good title on it being taken with consideration.

(ii) As regards to the second part of the problem, the prior parties before D i.e., A, B, and C have no right of action inter se because first part of Section 43 has clearly lays down that a negotiable instrument, made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction prior to the parties who receive it on consideration.

5. (i) An Apprentice is not entitled to bonus within the meaning of "Employee" under section 2(13) of the Payment of Bonus Act, 1965 and as also decided in the case [*Wheel RIM Co. Vs. Govt. of Tamil Nadu (1971)*]
- (ii) An employee dismissed on the ground of misconduct shall be disqualified for any bonus under section 9 of the Payment of Bonus Act, 1965 only if the misconduct falls within the meaning of:

- (a) Fraud; or
- (b) Riotous or violent behaviour while on the premises of the establishment; or
- (c) Theft, misappropriation or sabotage of any property of the establishment.

It may be noted from the above grounds of disqualification, that “misconduct” is not mentioned. Misconduct is a broad term and can be interpreted to mean many things such as “insubordination”, “misbehavior” or even “deliberate sub standard performance or negligence”, but none of these will disqualify an employee from receiving bonus. Therefore, an employee dismissed on the ground of misconduct will be disqualified only if the conditions in a, b or c above can be established. [Pandian Roadways Corporation Ltd. Vs. Presiding Officer (1996)]

- (iii) A temporary workman is entitled to bonus on the basis of the total number of days worked by him.
- (iv) A piece-rated worker is entitled to bonus. [Mathuradas Kanji Vs. L.A. Tribunal (1958)]
- (v) Under section 2 (13) of the payment of Bonus Act, 1965 a person drawing a monthly salary of an amount in excess of ₹ 10,000, shall not fall within the meaning of an employee and consequently not eligible to receive bonus under the Act.

**6. 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 hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. Therefore, even in the case of loss, the minimum bonus has to be paid.

Further, in accordance with the provisions of Section 11(1) the maximum bonus payable to an employee is 20% of the salary or wage earned by him in any accounting year. Bonus at a rate higher than the minimum bonus of 8.33% is payable only when the allocable surplus computed in accordance with the provisions of the Payment of Bonus Act, 1965 exceeds the amount of minimum bonus payable subject to the maximum limit of 20%.

Section 17 of the Act provides for the adjustment of any customary or puja bonus or any advance bonus against the bonus payable under this Act for an accounting year and pay only the balance bonus after such deduction / adjustment to the employee.

Bonus should be paid only in cash by the employer.

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

- (a) **As regards minimum and maximum bonus:** The company has surplus profits after setting off past losses. It appears therefore, that the allocable surplus is higher

than the minimum bonus payable under the Act which is 8.33%. Hence, the company is bound to pay bonus at a rate higher than the minimum bonus rate but upto a maximum of 20%. Therefore, Precious Wooden Toys Ltd is bound to pay bonus at a rate higher than 8.33% depending on its allocable surplus but upto a maximum of 20%.

- (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, Precious 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, Precious Wooden Toys Ltd. cannot distribute wooden toys, instead of cash, as bonus. It is against the statutory provisions.

7. **Contribution to Provident Fund under the EPF and Miscellaneous Provisions Act, 1952:** Section 6 of the EPF and MP 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 or 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 class of establishments.

8. 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.

The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules under this Act.

Further, 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.

9. The provisions regarding nomination of gratuity under the Gratuity Act, 1972 are as below:

(i) **Nomination in favour of one or more family members:** If an employee has a family at the time of making a nomination, the nomination shall be made in favour of one or more members of his family, and any nomination made by such employee in favour of a person who is not a member of his family shall be void. Therefore, the nomination of friend by R in the above case is void.

(ii) **Nomination by the employee having no family/ subsequently acquiring family:** If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family. Therefore, the nomination in the above case by 'S' is also void. He has to nominate from his family members for the purpose of gratuity.

10. **Reduction and forfeiture of Gratuity:** Under Section 4 (6)(a) of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall be forfeited by the employer.

Further, under section 4(6)(b), the gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of:

- (i) riotous or disorderly conduct or act of violence; or
- (ii) committing an offence involving moral turpitude in the course of his employment.

Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6)(b)(ii). [*Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central)*, (1987) 70 FJR 11 (Kern.)]

11. According to Section 50 of the Companies Act, 2013, a company may, if so authorized by the Articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares by him, even if no part of that amount has been called up. The amount so received or accepted is described as payment in advance of calls. When a company receives payment in advance of calls, the consequences will be as follows:
- (i) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable [Section 50].
  - (ii) The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.
  - (iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
  - (iv) The amount received in advance of calls is not refundable.
  - (v) In the event of winding up, the shareholder ranks after the creditors, but must be paid his amount with interest, if any, before the other shareholders are paid off.
  - (vi) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company. (*syke's case (1872) L.R. 13 Eq. 255*)

Therefore, according to the above provisions:-

- (i) Sujeev is not entitled to vote in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.
  - (ii) As per the provisions of law, the amount received in advance of calls is not refundable. However, Sujeev is entitled to claim interest on the amount of the call to the extent payable according to the Articles of Association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
12. As per Section 27 of the Companies Act, 2013, Lotus valley Ltd. can change the object mentioned in the prospectus. Section 27 of the Companies Act, 2013 deals with variation in the terms of contract or objects in the prospectus.

To change the object mentioned in the prospectus, Lotus valley Ltd. has to follow the under mentioned procedure:-

- (1) **Vary by special resolution:** A company shall not, at any time, vary the terms of a contract referred to in the prospectus or objects for which the prospectus was issued, except by way of special resolution.
- (2) **Notice of resolution to shareholders:** The details of the notice in respect of such resolution to shareholders, shall also be published in the newspapers (one in English and one in vernacular language) in the city where the registered office of

the company is situated indicating clearly the justification for such variation. Also that such company shall not use any amount raised by it through prospectus for buying, trading or otherwise dealing in equity shares of any other listed company.

- (3) **Exit offer to dissenting shareholders:** The dissenting shareholders being those shareholders who have not agreed to the proposal to vary the terms of contracts or objects referred to in the prospectus, shall be given an exit offer by promoters or controlling shareholders at such exit price, and in such manner and conditions as may be specified by the Securities and Exchange board by making regulations in this behalf.

Thus Lotus valley Ltd. can change the object mentioned in the prospectus from setting up a chain of hotels to setting up of a pharmaceutical manufacturing unit by following the above mentioned procedure.

- 13. Registration of a non-profit organisation as a company:** According to section 8 (1) of the Companies Act, 2013, the Central Government may allow person or an association of persons to be registered as a Company under the Companies Act if it has been set up for promoting commerce, arts, science, sports, education, research, social welfare religion, charity, protection of environment or any such other useful object and intends to apply its profits or other income in promotion of its objects. However, such company has to prohibit payment of any dividend to its members.

**Procedure:** An association of persons intending to carry any or all or some of the activities mentioned in section 8 (1) as mentioned above, has to apply to the Central Government seeking its permission for being set up as a company under the Act. The central government if satisfied on the above may by the issue of a licence in such manner as may be prescribed and on such conditions as it may deem fit, allow such association to be registered as a limited company under section 8 (1) without the addition of word "Limited" or words "Private Limited" as the case may be, to its name.

After the issue of the licence by the Central Government, an application must be made to the Registrar in the prescribe form after which the Registrar will register the association of persons as a company under section 8(1). Under section 8 (2) a company registered under section 8 (1) as above, shall enjoy all the privileges and be subject to all the obligations of a limited company.

This licence issued by the Central Government is revocable, and on revocation the Registrar shall put the words 'Limited' or 'Private Limited' against the company's name in the Register. But before such revocation, the Central Government must give the company a written notice of its intention to revoke the licence and provide an opportunity to it to be represented and heard in the matter.

**[Note:** As per the Notification S.O. 1353(E), dated 9th of July, 2014, the Central Government hereby delegates to the ROC the power & functions vested in it under the section 8(1) of the Companies Act, 2013, subject to the condition that the Central

*Government may revoke such delegation of powers or may itself exercise the powers & functions under the said sections, if in its opinion, such course of action is necessary in the public interest.]*

**14. Sources of funds for buy-back of shares:** Under section 68 (1) of the Companies Act, 2013 a company can purchase its own shares or other specified securities. The purchase should be out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

'Specified securities' includes employees' stock option or other securities as may be notified by the Central Government from time to time. [Explanation (1) under Section 68],

**Requirements to be complied with before buy-back:** Under section 68 (2) of the Companies Act, 2013 a company shall not purchase its own shares or other specified securities unless:

- (a) the buy-back is authorised by its articles;
- (b) a special resolution (also Declaration of Solvency to be filed with ROC & SEBI in case shares are listed on any recognised stock exchange), authorising the buy-back is passed at a general meeting of the company;
- (c) the buy-back is 25% or less than of the aggregate of the paid-up capital and free reserves of the company;

Provided that the buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.

- (d) the ratio of the aggregate of the secured and unsecured debt owed by the company is not more than twice the capital and free reserves after such buy-back;

Provided that the Central Government may prescribe a higher ratio of the debt than that specified under this clause for a class or classes of companies. The second explanation to section 68 clarifies that the expression "free reserves" shall include the securities premium account.

- (e) all the shares or other specified securities for buy-back are fully paid-up;
- (f) the buy-back of the shares or other specified securities listed on any recognised stock exchange is in accordance with the regulations made by SEBI in this behalf;



- (g) the buy-back in respect of shares or other specified securities other than those specified in Clause (f) above is in accordance with such guidelines as may be prescribed.

Under section 68 (3) of the Companies Act, 2013 the notice of the meeting at which the special resolution is proposed to be passed shall be accompanied by an explanatory statement stating;

- (a) a full and complete disclosure of all material facts;
- (b) the necessity for the buy-back;
- (c) the class of shares or securities intended to be purchased under the buy-back;
- (d) the amount to be involved under the buy-back; and
- (e) the time limit for completion of buy-back.

Under section 68 (4) of the Companies Act, 2013 every buy back must be completed within a period of one year from the date of the passing of the special resolution, or the Board Resolution where the buy back is upto 10% of the aggregate of the paid up capital and free reserves of the company.

Under section 68 (5) a company proposing to buy back its own shares must file with the Registrar and with SEBI a declaration of solvency signed by at least two directors out of which one must be the Managing Director. This must be filed before proceeding with the buy back.

**Requirements to be complied with after buy-back:**

- (1) The securities bought back should be extinguished and physically destroyed within 7 days after completion of buy-back [Section 68 (7)].
- (2) After completion of buy-back, a company cannot issue same kind of shares or security (which was bought back) for a period of 6 months. Allotment of rights issue renounced by members is also not permissible in this period. However, following are permitted:
  - (i) issue of security of a different class that is other than one which was bought back,
  - (ii) bonus issue,
  - (iii) subsisting obligations such as conversion of warrants,
  - (iv) stock option to employees
  - (v) sweat equity
  - (vi) conversion of preference shares or debentures into equity shares [Section 68(8)].



- (3) The company should maintain a register showing securities bought back and consideration paid for the buy-back, date of cancellation of securities, date of extinguishment and physical destruction of securities and such other prescribed particulars [Section 68(9)].
  - (4) After completion of buy-back, a return has to be filed with the Registrar of Companies and Securities and Exchange Board of India if the company is listed within 30 days giving details as prescribed [Section 68(10)].
  - (5) If the buy-back is from free reserves, a sum equal to the nominal value of shares purchased will be transferred to capital redemption reserve account. Details of such transfer will be disclosed in the balance sheet of the company [(Section 69 (1))].
15. Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

**Order of demand for poll by the chairman of meeting:** Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and
- (b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

**Withdrawal of the demand:** The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

- (i) The chairman cannot reject the demand for poll subject to provision in the articles of company.
  - (ii) The chairman cannot reject the request of the members for withdrawing the demand of the Poll.
16. **Benefits which may be obtained by paying attention to business ethics:** Ethics is the concern for good behaviour – doing the right thing. In business, self interest prevails and there is always inconsistency between ethics and business. But it is a well settled principle that ethical behaviour creates a positive reputation that expands the opportunities for profit. The awareness regarding products and services of an organization, and the actions of its employees can affect its stakeholders and society as

a whole. Therefore, to pay proper attention to business ethics may be beneficial in the interest of business. These benefits may be enumerated as follows:

- (1) In the recent past ruthless exploitation of children and workers, trust control over the market, termination of employees based on personalities and other factors had affected society and a demand arose to place a high value on ethics, fairness and equal rights resulting in framing of anti-trust laws, establishment of governmental agencies and recognition of labour unions.
  - (2) Easier change management: Attention to business ethics is also critical during times of fundamental change. The apparent dilemma may be whether to be non profit or for profit. In such situations, often there is no clear moral compass to guide leaders about what is right or wrong. Continuing attention to ethics in the workplace sensitises leaders and staff for maintaining consistency in their actions.
  - (3) Strong team work and greater productivity: Ongoing attention and dialogues regarding ethical values in the workplace builds openness, integrity and a sense of community which leads to, among the employees, a strong alignment between their values and those of the organisation resulting in strong motivation and better performance.
  - (4) Enhanced employee growth: Attention to ethics in the workplace helps employees face the reality - both good and bad in the organisation and gain the confidence of dealing with complex work situations.
  - (5) Ethical programmes help guarantee that personnel policies are legal: A major objective of personnel policies is to ensure ethical treatment of employees. In matters of hiring, evaluating, disciplining, firing etc. An employer can be sued for breach of contract for failure to comply with any promise. The gap between corporate culture and actual practice has significant legal and ethical implications. Attention to ethics ensures highly ethical policies and procedures in the work place. Ethics management programmes are useful in managing diversity. Such programmes require the recognition and application of diverse values and perspectives which are the basis of a sound ethics management programme. Most organisations feel that cost of mechanisms to ensure ethical programme may be more helpful in minimizing the costs of litigations.
  - (6) Ethical programmes help to detect ethical issues and violations early, so that criminal acts “of omission” may be avoided.
  - (7) Ethical values help to manage values associated with quality management, strategic planning and diversity management.
17. The concept of Corporate Social Responsibility (CSR) focuses on the idea that beyond making profit, a business has social obligations. It is the responsibility of the companies to produce an overall positive impact on the society. CSR is pursued by business to balance their economic, environmental and social objectives while at the same time addressing

stakeholders' expectations and enhancing shareholders' values. Stakeholders, including shareholders, analysts, regulators, labour unions, employees, community organisations and mass media expect companies to be accountable not only for their own performance but for the performance of their entire supply chain. Issues such as peace, sustainable development, security, poverty alleviation, environmental quality and human rights have a profound effect on business and its environment.

Corporate Social Responsibility is the continuing commitment by businesses to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Need for social responsibility:

1. The iron law of responsibility
  2. To fulfil long term self-interest
  3. To establish a better public image
  4. To avoid government regulation and control
  5. To avoid misuse of National Resources and Economic Power
  6. To convert Resistances into Resources
  7. To minimise Environmental damage.
18. The root meaning of the term discriminate is "to distinguish one object from another". Employment discrimination is treating one person better than another because of their age, gender, race, religion or other protected class of status. Discrimination in employment is wrong because it violates the basic principle of equality. Discrimination is to treat people differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit.

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

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

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

19. (i) Ecological ethics is based on the idea that the environment should be protected not only for the sake of human beings but also for its own sake. The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal.

Business and Industry are closely linked with environment and resource utilization. Production process and strategy for eco-friendly technologies throughout the product life cycle and minimization of waste play major role in protection the environment and conservation of resources. Business, Industry and multinational corporations have to recognize environmental management as the priority area and a key determinant to sustainable development. Sound management of wastes is among the major environmental issues for maintaining the quality of Earth's environment and achieving sustainable development.

If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pays Principle". Removing subsidies that encourage environmental damage is another measure.

- (ii) The objectives of the Central Consumer Protection Council in India are to promote and protect the rights of the consumers such as:-
- (a) the right to be protected against the marketing of goods and services which are hazardous to life and property;
  - (b) the right to be informed about the quality, quantity, potency, purity, standard and price of goods/services so as to protect the consumer against unfair trade practices;
  - (c) the right to be assured, whichever possible, access to a variety of goods and services at competitive prices;
  - (d) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate terms;
  - (e) the right to seek redressal against unfair trade practices;
  - (f) the right to consumer education.

- 20. Principles of Ethics:** The fundamental principles relating to ethics as applicable to accounting and finance professionals are as follows:
- (i) *The principle of integrity:* Integrity means veracity. The principle requires all accounting and finance personnel to be honest and straight-forward in discharging their respective professional duties.
  - (ii) *The principle of objectivity:* The principle requires accounting and financial professionals to stick to their professional and financial judgement without bias, conflicting interests, or under influence of others.
  - (iii) *The principle of confidentiality:* The principle requires accounting and financial professionals to refrain from disclosing confidential information related to their work.
  - (iv) *The principle of professional competence and due care:* The financial and accounting professional need to update their professional skill in the modern competitive environment.
  - (v) *The principle of professional behavior:* The principle requires accounting and financial professional to comply with relevant laws and regulations and avoid such action which may result into discrediting the profession.
- 21.** The grapevine becomes active when the following factors are present:
- (a) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.
  - (b) Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.
  - (c) Formation of a coterie or favoured group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like minded companions, at whatever level they may be. Mostly they find them at their own level, but other levels are not barred. This type of communication is being seriously studied by psychologists and management experts.
- 22. Group conflict:** Group conflict is an 'express struggle' between two inter-dependent parties who perceive incompatible goals, scarce resources and interference from the other party in achieving their goals. There are two aspects in relation to conflict:
- 1. **Expression:** The two sides must communicate/express about the problem for there to be conflict.
  - 2. **Perception:** Conflict evolves perceptions in the two sides may only perceive that their goals, resources, and interference are incompatible with each other's.

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

- (i) Presenting ideas or options
- (ii) Problem orientation- focusing attention the task
- (iii) Spontaneity - Communicating openly and honestly
- (iv) Empathy - understanding another person's thoughts.
- (v) Equality- asking for opinion s
- (vi) Willing to listen to the ideas of others.

Successfully managed conflicts can be constructive and can strengthen relationships in an organisation.

23. Generally, people resist change in an organization. Even after there are some people who accept or welcome change due to the following reasons:

1. **Personal Gain:** People will be more likely to accept change when they see the possibility that they will gain in some of the following areas:-
  - Increased security
  - Money
  - More authority
  - Status/Prestige
  - Better Working Conditions
  - Self-Satisfaction
  - Better Personal Contracts
  - Less time and efforts
2. **Other factors:**
  - Provide a new challenge
  - Respects/like the source
  - Likes the way change is being communicated
  - Reduces boredom
  - Provides opportunity for input
  - Improve future
  - Perception, that the change is necessary.

**24. Indemnity Bond**

Mr. Somnath S/o ..... R/o ..... do hereby agree to indemnify the Cute Fabrics Ltd. for any loss that may occur for seeking release of dividend for 170 shares of ₹ 1700.

I further declare that personally I have not received the dividend warrant in question.

Mr. Somnath

Date:

Signature

Place:

**25.****Notice of the First Meeting of the Board of Directors****Ashoka Paper Limited**

To,

Date

(Director)

Dear Sir/Madam,

This is to inform you that the first meeting of the Board of Directors will be held at the Registered Office of the company on 15<sup>th</sup> September, 2015 at 3 p.m. to transact the business as per the enclosed agenda.

You are requested to please attend the meeting.

Yours faithfully,

Secretary

For and on behalf of the

Board of Directors

Place : .....

Date .....

**Agenda:**

- (i) Election of the Chairman of the Meeting.
- (ii) To produce the Certificate of Incorporation, the Memorandum and the Articles of Association.
- (iii) Election of the Chairman of the Company.
- (iv) Appointment of Managing Director.
- (v) Appointment of Secretary.

- (vi) Appointment of Auditors.
- (vii) Appointment of Bankers and approval of the opening of a Bank Account and its operation.
- (viii) Adoption of the company's seal.
- (ix) Approval of the statement of preliminary expenses by the promoters and adoption of the preliminary contracts and underwriting contracts.
- (x) Any other business with the permission of the chairman.