

BATCH : GI-1, GI-3 & GI-5

DATE: 20.09.2017

MAXIMUM MARKS: 100

TIMING: 3 Hours

PAPER 2 : LAW**Q. No. 1 is compulsory. Attempt any 5 out of remaining 6 questions****Answer 1:**

- (a) The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in it in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Smt. Prakash by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. [Fisher V. Bell (1961) Q.B. 394 Pharmaceutical Society of Great Britain V. Boots Cash Chemists]. **[Provision – 3 Marks, Conclusion – 2 Marks]**

- (b) Under section 67 (2)⁶ of the Companies Act, 2013 no public company is allowed to give, directly or indirectly or by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months with a view to enabling them to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

Provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Apex Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them. However, the key managerial personnel will not be eligible for such assistance.

[Provision – 3 Marks, Conclusion – 2 Marks]

- (c) The following are the main contents are required for drafting an annual report of a company.

1. Leadership team : including top Management.
2. Directors report
3. Financial Statements - Balance Sheet and Profit and Loss Account including Auditors report
4. Corporate social responsibility
5. Graphs

[Marks Shall be awarded on the basis of overall performance of candidate]

(d) Business Letter – acknowledging receipt of goods:

MEHTA CHEMICALS LIMITED

Regd. Office : 15, Okhla Estate, New Delhi - 110016

Phone : 6132757, Fax : 6132767

E-mail: mehtachem@rediffmail.com , website: www.mehtachem.org

Messrs. Shippers & Perfect Delivers Dated:

16, Nariman Point

Mumbai

Sir

Subject: Acknowledging the receipt of Consignment No _____

Reference: Our request 24/FD/55 – dated 1st June, 2011

We acknowledge with thanks the receipt of above consignment in our godown and we are arranging the payment of proceeds towards the said consignment by way of crossed cheque in favour of your company within a period of next 15 days.

We solicit your relationship in our future

dealings. Thanking you

Yours faithfully

For on behalf of Mehta Chemicals Ltd.

[Marks Shall be awarded on the basis of overall performance of candidate]**(4 x 5 = 20 Marks)****Answer 2:**

(a) Problem on Agency: Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessities. But the legal presumption can be rebutted in the following cases:

- (i) Where the goods purchased on credit are not necessities.
- (ii) Where the wife is given sufficient money for purchasing necessities.
- (iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
- (iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in cases (iii) and (iv).

Applying the above conditions in the given case 'Q' will succeed. He can recover the said amount from 'P' if sarees purchased by 'R' are necessities for her.

[Provision – 2 Marks, Conclusion – 2 Marks]

(b)The problem stated in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 53. The section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud. (Section 53).

Thus applying the above provisions it is quite clear that X who originally induced Y in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as X himself was a party to the fraud.

[Provision – 2 Marks, Conclusion – 2 Marks]

(c)The facts of the problem are identical with the facts of a case known as H.N.D. Mulla Feroze Vs. C.Y. Somaya Julu, J(2004) 55 SCL (AP) wherein the Andhra Pradesh High Court held that although the petitioner has a legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instruments Act, 1881. Therefore X also is not liable for the cheque but legally liable for the payments for the goods.

[Provision – 2 Marks, Conclusion – 2 Marks]

(d)According to Section 3 of the Payment of Bonus Act, 1965, where an establishment consists of departments or undertakings or has branches irrespective of whether they are situated in the same place or in different places, all such departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under the Act. But proviso to the section states that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Referring to the provisions of Section 3, Company, is engaged at three different units located at three separate places in the country where separate balance sheet and profit & loss account are being maintained for the three units separately and hence the proviso to Section 3 will be applicable in this case. For the purpose of Bonus under the Act, the units will be treated as three separate establishments and accordingly, the employees of the unit incurring losses cannot claim bonus on the ground that the unit incurring loss is a part of one single establishment. However, the employees of the loss making unit can claim the minimum bonus as per section 10 of the Payment of Bonus Act, 1965.

[Provision – 2 Marks, Conclusion – 2 Marks]

(4 x 4 = 16 Marks)

Answer 3:

(a) Section 124 of the Indian Contract Act, 1872 says that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".

Section 126 of the Indian Contract Act says that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default." is called as "contract of guarantee".

The conditions under which the guarantee is invalid or void are stated in section 142, 143 and 144 of the Indian Contract Act are:

- (i) Guarantee obtained by means of misrepresentation.
- (ii) creditor obtained any guarantee by means of keeping silence as to material circumstances.
- (iii) When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

[Marks Shall be awarded on the basis of overall performance of candidate]

(b) Under section 6(1), each employee who has completed one year of service, shall make, within such time, in such form and in such manner, as may be prescribed, nomination for the purpose of the second proviso to sub-section (1) of Section 4. The time, form and manner in case of employees in establishment where Central Government is 'Appropriate Government, are as under:

- a. nomination shall be made in form 'F' in duplicate;
- b. Nomination shall be given to employer or sent by registered post. The employee should get proper receipt or acknowledgement from employer who shall fill details in the form and return one copy to the employee.
- c. Nomination shall be submitted within 30 days after completion of service of one year.
- d. An employee who did not have family but acquired family later should submit nomination form in duplicate in form G within 90 days after acquiring family.
- e. Notice of change in nomination shall be filed in form H.

[Marks Shall be awarded on the basis of overall performance of candidate]

(c) Holding and Subsidiary Companies are relative terms. A company is a holding company of another only if the other is its subsidiary. Section 2 (87) of the Companies Act 2013 lays down the circumstances under which a company becomes a subsidiary company of another company which becomes its holding company. These circumstances are as under:

- (a) When the holding company controls the composition of Board of Directors of the subsidiary company or companies, or
- (b) When the holding company exercises or controls more than one half of the total share capital either on its own or together with one or more of its subsidiary companies, or
- (c) Where a company is the holding company of the company which fulfils any of the above conditions, e.g., if A Ltd. is the holding company of B Ltd., but C Ltd. is the holding company of A Ltd., then B Ltd. will automatically become a

subsidiary of C Ltd.

[Marks Shall be awarded on the basis of overall performance of candidate]

- (d) Section 5 (1) of the Companies Act, 2013 states that the Articles of a company contain the regulations for the management of a company. Further section 5 (2) provides that the Articles of a company shall contain all matters that are prescribed under the Act and also such additional matters as may be considered necessary for the management of the company.

Removal of Law Officer: The Memorandum and Articles of Association of a company are binding upon company and its members and they are bound to observe all the provisions of memorandum and articles as if they have signed the same [Section 10(1)].

However, the company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract.

In this case, Articles conferred a right on 'X', the law officer that he shall not be removed except on the ground of proved misconduct. In view of the legal position explained above, 'X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of 'X' even though he was not guilty of misconduct) is valid. (*Eley V Positive Govt. Security Life Assurance Co., Major General ShantaShamsherjung V Kamani Bros. P. Ltd.*)

However, by altering the Articles by a special resolution under section 14 of the Act and Mr. X can be removed.

[Provision – 2 Marks, Conclusion – 2 Marks]

Answer 4:

(a) Red-herring Prospectus (Section 32 of the Companies Act, 2013): A red-herring prospectus means a prospectus which does not include complete particulars of the price or the quantum of securities offered therein [Explanation to Section 32]. Section 2 (70) of the Companies Act, 2013 defines a prospectus includes a red herring prospectus within its meaning. Hence, a red herring prospectus is a prospectus within the meaning of section 2 (70).

Under section 32 (1) a public company proposing to make an offer of securities may issue a red herring prospectus prior to the issue of a prospectus. Therefore, the issue of a red herring prospectus does not absolve a company from issuing a regular prospectus in accordance with the relevant provisions of the Companies Act 2013.

According to section 32 (1) a company proposing to issue a red herring prospectus under sub-section (1) shall file it with the Registrar at least three days prior to the opening of the subscription list and the offer.

Section 32 (3) states that a red herring prospectus shall carry the same obligations as are applicable to a prospectus and any variation between the red herring prospectus and a prospectus shall be highlighted as variations in the prospectus.

Section 32 (4) states that upon the closing of the offer of securities, the prospectus stating therein the total capital raised, whether by way of debt or share capital, and the closing price of the securities and any other details as are not included in the red

herring prospectus shall be filed with the Registrar and the Securities and Exchange Board.

On the basis of offers received, company will finalise the issue price and issue size and then close the offer. After closure of offer of securities, a final prospectus will be prepared stating the total capital raised whether by way of debts, or share capital and the closing price of securities and any other details as were not complete in red-herring prospectus. The prospectus will be filled with ROC and also with SEBI in case of listed company.

[Meaning 1 Marks, Circumstances 1 Marks, Requirement 2 Marks]

(b) The word "Charge" defined under section 2(16), has not been adequately defined in the Companies Act, 2013. So, the meaning of the term should be drawn from its use in normal parlance. A charge means a lien or a claim on an asset against a loan taken, providing that the owner cannot dispose off the asset without clearing off the loan. It also provides that in case the borrower defaults on the loan, the lender may dispose of the asset and use the proceeds to adjust his claim on the loan and pay the excess amount received to the borrower. Since, physical possession of the asset as a security is not possible in respect of all assets, those assets which cannot be physically taken over the by lender as securities, are charged in favour of the lender by executing a loan and a charge document.

Section 77 (1) clearly provides that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge- holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the Registrar within thirty days of its creation or such extended period as has been approved by the Registrar.

Crystallisation of a Floating Charge

Floating charge crystallizes under the following circumstances:

1. When the company goes into liquidation, or
2. When the company ceases to carry on business, or
3. When a receiver is appointed, or

When default is made in paying the principal and/or interest and the holder of the charge brings an action to enforce his security.

[Concept of Charge 2 Marks, Circumstances 2 Marks]

(c) The term E-filing indicates the process of getting services electronically with a comprehensive on-line portal.

Some of the advantages of MCA 21 are:

1. Expeditious incorporation of companies;
2. Simplified and ease of convenience in filing of Forms/ Returns ;
3. Better compliance management
4. Total transparency through e-Governance
5. Customer centric approach
6. Increased usage of professional certificate for ensuring authenticity and reliability of the Forms / Returns

7. Building up a centralised database repository of corporate operating
8. Enhanced service level fulfillment
9. Inspection of public documents of companies anytime from anywhere
10. Registration as well as verification of charges anytime from anywhere
11. Timely redressal of investor grievances
12. Availability of more time for MCA employees for monitoring and supervision

[Meaning 1 Marks, Advantage 3 Marks]

(d) Mahatma Gandhi, Father of India, promoted non-violence, justice and harmony between people of all faiths. He stressed that people follow ethical principles and listed following seven Social Sins:

- (i) Politics without Principles
- (ii) Wealth without Work
- (iii) Commerce without Morality
- (iv) Knowledge without Character
- (v) Pleasure without Conscience
- (vi) Science without Humanity
- (vii) Worship without Sacrifice.

The first deals with the political field. The Kings in Indian tradition were only the guardian executors and servants of 'Dharma'. For Gandhi, Rama was the symbol of a king dedicated to principles. The second dictum deals with the sphere of Economics. Tolstoy and Ruskin inspired Gandhi on the idea of bread- labour. Gandhiji developed the third maxim into the idea of trusteeship. A businessman has to act only as a trustee of the society for whatever he has gained from the society. Everything, finally, belongs to the society. The fourth dictum deals with knowledge. Education stands for the all round development of the individual and his character. Gandhi's system of basic education was the system for development of one's character. In this maxim, Gandhi emphasized on conscience. He said that pleasure without conscience is a sin. In sixth maxim, Gandhi held that science without the thought of the welfare of humanity is a sin. Science and humanity together pave the way for welfare of all. In religion, we worship, but if we are not ready to sacrifice for social service, worship has no value, it is a sin to worship without sacrifice.

[Marks Shall be awarded on the basis of overall performance of candidate]

Answer 5:

(a) **Step 1:** Promstor & Applicant of proposed company is required to download form No. INC-29 from the website of MCA. After downloading the form. Form No. INC-29 is required to filled.

Following information can be filled in INC-29:

- Reservation of a single name.
- Request for allotment of D in but upto max. 3 director.
- Request for in corporation.

Step 2: INC-30 must be filled for man of the company. And form No. 31 must be filled for AOA of the company.

Step 3: Form No. INC-30 & 31 must be attached with the form no. INC-29. These form's are required to be filled with the ROC in whose jurisdiction the proposed Company will be situated.

Step 4: If ROC finds some defection's or incompleteness above forms then he shall given an intimation the applicant so as to remove the diffects & Re-Submit the form within 15 days from the date of such intimation given by ROC.

Step 5: after Resubmission of document if registrar Still finds that the documents

are still defective or incomplete. The he shall give one move opportunity of 15 days So as to Remove such defectiveness or in completeness.

Step 6: After Re-Submission of forms For 2nd time if ROC Still find some incompetence or diffektivness then form No. INC-29 shall be Rejected.

Note: If he register or in corporate the company then certificate of incorporation shall be issued by Registrar in form No. INC-11.

[Marks Shall be awarded on the basis of overall performance of candidate]

(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.

[Provision – 2 Marks, Conclusion – 2 Marks]

(c) 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.

[Marks Shall be awarded on the basis of overall performance of candidate]

(d) Factors which influence the ethical behaviour at work- Ethical decisions in an organization are influenced by three key factors:

1. Individual moral standards: One may have great control over personal ethics outside workplace.
2. The influence of managers and co-workers: The activities and examples set by co-workers along with rules and policies established by the firm are critical in gaining consistent ethical compliance in an organization.
3. The opportunity to engage in misconduct: If a company fails to provide good examples and direction for appropriate conduct; confusion and conflict will develop and result in the opportunity for unethical behavior.

[Marks Shall be awarded on the basis of overall performance of candidate]

Answer 6:

(a) Self Interest Threats: Auditors: Employees:

- (i) Self interest threats for finance and accounting professionals working as consultants or auditors are given below:
 - (a) A financial interest in a client or jointly holding a financial interest with a client.
 - (b) Undue dependence on total fees from a client,
 - (c) Having a close business relationship with a client.
 - (d) Concern about the possibility of losing a client,
 - (e) Potential employment with a client.
 - (f) Contingent fees relating to an assurance engagement.
- (ii) Self interest threats for finance and accounting professionals working as an employee are given below:
 - (a) Financial interests, loans and guarantees in the company in which the professional is working.
 - (b) Incentive compensation arrangements.
 - (c) Inappropriate personal use of corporate assets.

(d) Concern over employment security.

(e) Commercial pressure from outside the employing organization.

[Marks Shall be awarded on the basis of overall performance of candidate]

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

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

(i) It aids the organization in carrying out its missions.

(ii) It helps individuals to advance in their careers.

(iii) It provides information that helps them to learn about important happenings in the organization, as well as assisting them in doing their own jobs well.

(iv) It also helps in building strong personal relationships.

[Meaning 1 Marks, Importance 3 Marks]

(c) Review of orders – According to section 7B of the EPF & Miscellaneous Provisions Act, 1952, an order passed under section 7A can be reviewed as follows:

1. Any person aggrieved by an order made under sub-section (1) of section 7(A) but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order, may apply for a review of that order to the officer who passed the order.
2. Such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.
3. Every application for the aforesaid review shall be filed in such form and manner and within such time as may be specified in the Scheme; and
4. Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.
5. Where the officer is of opinion that the application for review should be granted, he shall grant the same.
6. No appeal shall lie against the order of the officer rejecting an application for review but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

[Marks Shall be awarded on the basis of overall performance of candidate]

- (d) The law related to the noting and protest of negotiable instruments is enshrined in Section 99 to 104A of the Negotiable Instruments Act, 1881.

Noting: According to section 99, when a promissory note or bill of exchange has been dishonoured by non-acceptance, or non-payment the holder may cause such dishonour to be noted by a notary public upon the instrument, or on a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonour, the reason for the dishonour or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonour and the notary's charges.

Protest: According to section 100, when a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

The contents of a protest are laid down in section 101 of the Act. According to section 102, when a promissory note or bill of exchange is required to be protested, notice of such protest must be given instead of notice of dishonour, in the same manner and subject to the same conditions, but the notice may be given by the notary making the protest. Under section 103, all bills of exchange drawn payable at some other place than the place mentioned as the residence of the drawee, and which are dishonoured by non- acceptance, may, without further presentation to the drawee, be protested for non-payment in the place specified for payment, unless paid before or at maturity.

Neither noting nor protesting is compulsory in the case of inland bills. But under section 104, every foreign bill must be protested for dishonour, when such protest is required by law of the country where the bill was drawn. The merit of protest and noting is that it would become good prima-facie evidence in a court of law that the instrument has been dishonoured. It is pertinent to note that as per section 119 the court is bound to recognise a protest, but it may or not recognise noting.

[Noting 2 Marks, Protest 2 Marks]

(4 x 4 = 16 Marks)

Answer 7:

(a) Following are the salient characteristics of groups in an organization:

- (i) Group Goal: Every group establishes its own group goals that provide motivation for their existence.
- (ii) Group Structure: It is based on the roles to be performed.
- (iii) Group Patterns of Communication: It is the pattern of message flow in a group.
- (iv) Group Climate: It is the emotional environment of a group based on:
 - a. Bonding and trust among members
 - b. Participative spirit
 - c. Openness and
 - d. High performance goals

[Marks Shall be awarded on the basis of overall performance of candidate]

(b) Drafting of Gift Deed:

This Deed of gift is made of.....on this.....day of.....2007.
Between..... an Indian.....inhabitant residing at flat No., Cooperative

Housing Society Ltd.....(city), hereinafter called 'The Doner' of the one part and , also an Indian inhabitant of (City).....Residing at at.....(city) herein after called there 'Donee of the other part. Whereas the Doneeis the..... of donor.....and whereas the Doner is the member of society which is duly registered under Maharashtra Cooperative Societies Act, 1960. The donor has 5 fully paid shares of the said society. The donor has acquired a flat No. on thefloor and measuring:.....sqr. mtr. In the building situated at..... (city)

Whereas the Donor has full right title and in last in their said shares/flat more particularly described in this schedule.

And whereas the donor desired to gift his right, title and interest in the said share/flat in the said building of the said society described in the schedule hereunder written to the Donee hereto.

The Donor out of natural love and affection for the donee hereby transfer by way of gift his right title and interest in the said shares and the flat absolutely forever.

The Donee accept the gift and agrees to hold that right title and interest of the Donor in said shares/flat of the societies. In the interest whose of the parties hereto have here under set and subscribed their respective hands on the day and the year.

Signed and Delivered

In the presence of.....

1.

2.

Signed and Delivered:

By the named Donee.

In the presence of.....

1.

2.

[Marks Shall be awarded on the basis of overall performance of candidate]

(c) Moral vs. Ethics: Following are the points of difference between Ethics and Moral :

- (i) The word 'Éthics' is derived from Ancient Greek 'éthikos' meaning 'character'. The word 'moral' is derived from Latin 'mos' meaning 'custom'.
- (ii) Character is the essence of values and habits of a person or group. It severs the analysis and employment of concepts such as right and wrong, good and evil and acting with responsibility. Moral is defined as relating to principles of right and wrong.
- (iii) Character is a personal attitude, while custom is defined by a group over a period of time. For example People have character, Societies have custom.
- (iv) Morals are accepted from an authority (such as cultural, religious etc.) while ethics are accepted because they follow from personally accepted principles. An ethical view might be based on an idea of personal property that should not be taken without social consent. Moral norms can usually be expressed as general

rules and statements such as 'always tell the truth'.

- (v) Morals work on smaller scale than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.

[Marks Shall be awarded on the basis of overall performance of candidate]

(d)Section 110 of the Companies Act 2013, provides as under:

Sub section (1): Notwithstanding anything contained in this Act, a company—

- (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and
- (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

In such manner as may be prescribed, instead of transacting such business at a general meeting.

Sub section (2) states that if a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

The procedure as laid down in the Rule 22 of the Companies (Management & Administration) Rules, 2014 read with the provisions of section 110 of the Companies Act is as under:

- (i) Where a company is required to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent within a period of 30 days from the date of posting of the letter;
- (ii) The notice shall be sent by registered post or speed post or through electronic means like registered e-mail address or through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days;
- (iii) The board of directors shall appoint one scrutinizer, who is not in employment of the company, and who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
- (iv) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.
- (v) If a resolution is passed by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.
- (vi) If a shareholder sends his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defaces or destroys the ballot paper or declaration of the identity of shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or both; The scrutinizer shall maintain a register either manually or electronically, to record the assent or dissent received, mentioning the particulars of name,

address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form and forms which are invalid.

- (viii) The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/registers.

[Marks Shall be awarded on the basis of overall performance of candidate]

(e) No because corporate personality may be disregarded in following cases-

- (i) Trading with enemy country.
- (ii) Evasion of taxes.
- (iii) Forming a subsidiary company to act as its agent.
- (iv) The benefit of limited liability is destroyed by reducing the number of members below 7 in the case of public company and 2 in the case of private company for more than six months.
- (v) Under law relating to exchange control.
- (vi) Device of incorporation is adopted to defraud creditors or to avoid legal obligations.

[Conclusion 1 Marks, exceptions 3 Marks]

(5 x 4 = 20 Marks)
