

**BATCH – GI-1, GI-3 & GI-5**

DATE: 01.08.2017

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) BREACH OF CONTRACT: DAMAGES: Section 73 of the Indian Contract Act, 1872 lays down that when a contract has been broken the party who suffers by such breach is entitled to receive from the party who has broken the contract compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract to be likely to result from the breach of it.
- The leading case on this point is "Hadley v. Baxendale" in which it was decided by the Court that the special circumstances under which the contract was actually made were communicated by the plaintiff to the defendant, and thus known to both the parties to the contract, the damages resulting from the breach of such contract which they would reasonably contemplate, would be the amount of injury which would ordinarily follow from the breach of contract under these special circumstances so known and communicated. **2M**
- The problem asked in this question is based on the provisions of Section 73 of the Indian Contract Act, 1872. In the instant case 'X' had intimated to 'Z' that he was purchasing water bottles from him for the purpose of performing his contract with 'Y'. Thus, 'Z' had the knowledge of the special circumstances. Therefore, 'X' is entitled to claim from 'Z' ` 500/- at the rate of 0.50 paise i.e. 1000 water bottles x 0.50 paise (difference between the procuring price of water bottles and contracted selling price to 'Y' ) being the amount of profit 'X' would have made by the performance of his contract with 'Y'. **2M**
- If 'X' had not informed 'Z' of 'Y's contract then the amount of damages would have been the difference between the contract price and the market price on the day of default. In other words, the amount of damages would be ` 750/- (i.e. 1000 water bottles x 0.75 paise). **1M**
- (5 Marks)**
- (b) DOCTRINE OF INDOOR MANAGEMENT (THE COMPANIES ACT, 2013): According to the "doctrine of indoor management" the outsiders, dealing with the company though are supposed to have satisfied themselves regarding the competence of the company to enter into the proposed contracts are also entitled to assume that as far as the internal compliance to procedures and regulations by the company is concerned, everything has been done properly. They are bound to examine the registered documents of the company and ensure that the proposed dealing is not inconsistent therewith, but they are not bound to do more. They are fully entitled to presume regularity and compliance by the company with the internal procedures as required by the Memorandum and the Articles. This doctrine is a limitation of the doctrine of "constructive notice" and popularly known as the rule laid down in the celebrated case of Royal British Bank v. Turquand. Thus, the doctrine of indoor management aims to protect outsiders against the company. **3M**

Exceptions: In the following circumstances an outsider dealing with the company can not claim any relief on the ground of “indoor management”:

1. Knowledge of irregularity: Where a person dealing with a company has actual or constructive notice of the irregularity as regards internal management, he can not claim the benefit under the rule of indoor management. (T.R. PRATT (Bombay) Ltd. v. E.D. Sasson & Co. Ltd.)
2. Negligence: Where a person dealing with a company could discover the irregularity if he had made proper inquiries, he can not claim the benefit of the rule of indoor management. The protection of this rule is also not available where the circumstances surrounding the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry (Anand Bihari Lal v. Dinshaw & Co.), (Under-Wood v. Bank of Liver Pool).
3. Act void ab initio and forgery: Where the acts done in the name of a company are void ab initio, the doctrine of indoor management does not apply. The doctrine applies only to irregularities that otherwise might affect a genuine transaction.
4. Acts outside the scope of apparent authority: If an officer of a company enters into a contract with a third party and if the act of the officer is apparently beyond the scope of his authority, the company is not bound (Kreditbank Cassel v. Schenkers Ltd.). **(5 Marks)**

(c)

- (i) **INCORRECT:** The given statement “Fairness and Justice” are two different approaches as a source of ethical standards is incorrect. Aristotle and other Greek philosophers have contributed the idea that all equals should be treated equally. Today we use this idea to say that ethical actions treat all human beings equally or if unequally, then fairly based on some standard that is defensible. We pay people more based on their harder work or the greater amount that they contribute to an organization, and say that is fair. But there is a debate over CEO salaries that are hundreds of times larger than the pay of others; may ask whether the huge disparity is based on a defensible standard or whether it is the result of an imbalance of power and hence is unfair. **(3 Marks)**

- (ii) **CORRECT:** Inclusion of environmental consideration as a part of corporate strategy improves corporate performance is a correct statement. Environmental consideration is a part of corporate strategy, which means incorporating environmental issues in the process of developing a product, in new investments and in the organizational set up. A good environmental practice improves corporate performance. In many industries it has been found that environmental friendly practices have resulted in more saving; for example the process of recycling the waste. Thus, environmental considerations play a key role in corporate strategy. Markets of new millennium will be able to create wealth if they respond to the challenges of sustainable development, as unsustainable products will become obsolete. **(2 Marks)**

(d) **FACTORS LEADING TO GRAPEVINE COMMUNICATION**

The grapevine becomes active when the following factors are present:

1. Feeling of uncertainty or lack of sense of direction when the organization is passing through a difficult period.
2. Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.

3. 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.

(1 Mark)

(5 Marks)

**Answer 2:**

**(a) QUASI-CONTRACTS: MEANING; FEATURES; IDENTIFIED CIRCUMSTANCES (SECTIONS 68 TO 72 OF THE INDIAN CONTRACT ACT, 1872):**

**MEANING AND SALIENT FEATURES:** Even in the absence of a contract, certain social relationships give rise to certain specific obligations to be performed by certain persons. These are known as “quasi-contracts” as they create some obligations as in the case of regular contracts. Quasi-contracts are based on the principles of equity, justice and good conscience. The salient features of quasi-contracts are: Firstly, such a right is always a right to money and generally, though not always, to a liquidated sum of money; Secondly, it does not arise from any agreement between the parties concerned but the obligation is imposed by law and; Thirdly, the rights available are not against all the world but against a particular person or persons only, so in this respect it resembles to a contractual right.

(4 Marks)

**CIRCUMSTANCES IDENTIFIED AS QUASI-CONTRACTS:**

1. Claim for necessaries supplied to persons incapable of contracting: Any person supplying necessaries of life to persons who are incapable of contracting is entitled to claim the price from the other person’s property. Similarly, where money is paid to such persons for purchase of necessaries, reimbursement can be claimed.
2. Right to recover money paid for another person: A person who has paid a sum of money which another person is obliged to pay, is entitled to be reimbursed by that other person provided that the payment has been made by him to protect his own interest.
3. Obligation of person enjoying benefits of non-gratuitous act: Where a person lawfully does anything for another person, or delivers anything to him not intending to do so gratuitously and such other person enjoys the benefit thereof, the latter is bound to pay compensation to the former in respect of, or to restore, the thing so done or delivered.
4. Responsibility of finder of goods: A person who finds goods belonging to another person and takes them into his custody is subject to same responsibility as if he were a bailee.
5. Liability for money paid or thing delivered by mistake or by coercion: A person to whom money has been paid or anything delivered by mistake or under coercion, must repay or return it.

(4 Marks)

In all the above cases contractual liability arises without any agreement between the parties.

(8 Marks)

**(b) UN GUIDELINES: CONSUMER PROTECTION:** The United Nations Guidelines Themes on consumer protection call upon Governments to develop, strengthen and maintain a strong consumer policy and provide for enhanced protection of consumers by enunciating various steps and measures consisting around eight themes (UNCTAD,

2001). These eight themes are as follows:

1. Physical safety;
2. Economic interests;
3. Standards;
4. Essential goods and services;
5. Redress;
6. Education and information;
7. Specific areas concerning health; and
8. Sustainable consumption

(1/2 Mark for each valid point)

**(4 Marks)**

**(c) TYPES OF GROUPS IN ORGANIZATION:** There may be following types of group in an organization:

1. Self directed teams: Autonomous and self regulated groups of employees empowered to make decisions.
2. Quality Circles: "Quality Circle" has been defined as "a group of workers from the same area who usually meet for an hour each week to discuss their quality problems, investigate causes, recommend solutions and take corrective actions when authority is in their purview". In other words, "Quality Circle" is a small group to perform voluntarily quality control activities within their work area.
3. Committees: Committees in an organization are of various types i.e. (a) Standing Committee, which is permanent in nature and highly empowered; (b) Advisory Committee, comprises of experts in particular fields; (c) Adhoc Committee, set up for a particular purpose and dissolved when the goal is achieved.
4. Task Force: Task force is like a Committee but it is usually temporary. Task force has wide power to take action and properly fix responsibility for investigation, results and proper implementation of decisions.

(1 Mark for each point)

**(4 Marks)**

**Answer 3:**

(a)

(i) **TIME LIMIT FOR PAYMENT OF BONUS:** Section 19 of the Payment of Bonus Act, 1965 prescribes the time limit for the payment of bonus under the following conditions:

1. Under Section 19 (1) (a) of the said Act, where the dispute is between the employer and the employees regarding the payment of bonus and such dispute is under reference to the prescribed authority, the employer is bound to pay his employee bonus in cash within one month from the date on which the award becomes enforceable or the settlement comes into operation, in respect of such dispute.
2. Under Section 19 (1) (b) of the said Act, in all other cases, the payment of bonus is to be made within a period of 8 months from closing of the accounting year.  
But this period of 8 months may be extended up to a maximum of 2 years by the Appropriate Government or by any authority prescribed by the Appropriate Government only on an application to it by the employer and is satisfied that sufficient reasons exist for granting extension. Moreover, the extension can be made only by an order.

(2 Marks)

(2 Marks)

**(4 Marks)**

(ii) PAYMENT OF GRATUITY TO SEASONAL EMPLOYEE: Sub-section 3 of Section 2A of the Payment of Gratuity Act, 1972 provides that where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause (1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five percent of the number of days on which the establishment was in operation during such period. **(2 Marks)**

In the given problem, "N" has worked for 95 days in ABC Limited, and as per the above provision, "N" has worked for more than 75 % of number of days on which the establishment was in operation i.e. 75 % of 120 days (1<sup>st</sup> of March to 30<sup>th</sup> June) = 90 days. Therefore, "N" shall be entitled for gratuity. **(4 Marks)** **(2 Marks)**

(b) MEANING AND MEASURES OF CORPORATE GOVERNANCE :

MEANING: "Corporate governance is about promoting corporate fairness, transparency and accountability. It is concerned with the structures and processes for decision-making, accountability, control and behavior at the top level of organizations. It influences how the objectives of an organization are set and achieved, how risk is monitored and assessed and how performance is optimized. **(2 Marks)**

MEASURES: In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration, as well as ensuring proper disclosure of financial information and executive compensation. Many companies have established ethical and/or social responsibility committees on their Boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and Boards, some companies have adopted guidelines governing their own policies around such issues like board diversity, independence, and compensation. Indian companies are also required to comply with Clause 49 of the listing agreement. **(2 Marks)** **(4 Marks)**

(c)

(i) The given statement "Rumour and gossip are synonymous" is INCORRECT. **1M**

Rumours and gossip seem to be an inevitable part of everyday corporate life. Even though rumours and gossip often travel through the same network, there is a distinction between the terms. RUMOURS TEND TO FOCUS ON EVENTS AND INFORMATION, WHEREAS GOSSIP FOCUSES ON PEOPLE. Even though managers usually treat the information as "yet to be confirmed", it may cloud judgments about the employee. The information has a way of creeping into performance evaluations and promotion decisions, even if unintended. **(1 Mark)** **(2 Marks)**

(ii) The given statement "Lying breaks down the trust between individuals" is CORRECT. **1M**

A lie is a false statement intended to deceive. Of all the ethical dilemmas, lying would appear to be the least morally perplexing. Most would agree that "one ought not to lie". Yet lies in business are more common that many would care to admit. Lying break down the trust between individuals, shaking the foundation of ethical communication. **(1 Mark)** **(2 Marks)**

**Answer 4:****(a) DEBENTURE REDEMPTION RESERVE ACCOUNT (SECTION 71 OF THE COMPANIES ACT, 2013; COMPANIES (SHARE CAPITAL AND DEBENTURES) RULES, 2014):**

Where debentures are issued by a company under Section 71 of the Companies Act, 2013, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

As per the Companies (Share Capital and Debentures) Rules, 2014, the company shall create a Debenture Redemption Reserve for the purpose of redemption of debentures, in accordance with the conditions given below:

(a) The Debenture Redemption Reserve shall be created out of the profits of the company available for payment of dividend;

(b) The company shall create Debenture Redemption Reserve (DRR ) in accordance with the following conditions :

(i) No DRR is required for debentures issued by All India Financial Institutions (AIFIs ) regulated by Reserve Bank of India and Banking Companies for both public as well as privately placed debentures. For other Financial Institutions (FIs) within the meaning of clause (72) of Section 2 of the Companies Act, 2013, DRR will be as applicable to NBFCs registered with RBI.

(ii) For NBFCs registered with RBI under Section 45-1A of the RBI (Amendment) Act, 1997, the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008, and no DRR is required in the case of privately placed debentures.

(iii) For other companies including manufacturing and infrastructure companies the adequacy of DRR will be 25% of the value of debentures issued through public issue as per present SEBI (Issue and Listing of Debt Securities) Regulations, 2008 and also 25% DRR is required in the case of privately placed debentures by listed companies. For unlisted companies issuing debentures on private placement basis, the DRR will be 25% of the value of debentures.

The Companies (Share Capital and Debentures) Rules, 2014 issued by the Ministry of Corporate Affairs (MCA) on 27<sup>th</sup> March, 2014, required companies to create debenture redemption reserve (DRR) equivalent to atleast fifty per cent of the amount raised through the debenture issue. Subsequently, the rules published in the Official Gazette on 3<sup>rd</sup> April, 2014 (effective from 1<sup>st</sup> April, 2014), changed the above requirement for creation of DRR.

The Gazette Rules exempt certain companies from creation of DRR and in case of other companies, reduce the percentage of DRR from 50% to 25% of the value of debentures.

(c) Every company required to create Debenture Redemption Reserve shall on or before 30th day of April in each year, as the case may be, a sum which shall be not less than 15%, of the amount of its debentures, maturing during the year ending on 31st day of March of the next year, in any one or more of the following methods, namely:

**1M****(3 Marks)**

- (i) in deposits with any scheduled bank, free from any charge or lien;
  - (ii) in unencumbered securities of the Central Government or any State Government;
  - (iii) in unencumbered securities mentioned in sub-clauses (a) to (d) and (ee) of Section 20 of the Indian Trust Act, 1882;
  - (iv) in unencumbered bonds issued by any other company which is notified under sub-clause (f) of Section 20 of the Indian Trust Act, 1882;
  - (v) the amount invested or deposited as above shall not be used for any purpose other than for redemption of debentures maturing during the year referred above: Provided that the amount remaining invested or deposited, as the case may be, shall not at any time fall below 15% of the amount of the debentures maturing during the year ending on the 31st day of March of that year.
- (d) in case of partly convertible debentures, Debenture Redemption Reserve shall be created in respect of non-convertible portion of debenture issue in accordance with this sub-rule. **1M**
- (e) the amount credited to the Debenture Redemption Reserve shall not be utilised by the company except for the purpose of redemption of debentures. **1M**

**(8 Marks)**

**(b) SUSTAINABLE DEVELOPMENT – MEANING OF; RESPONSIBILITIES OF INDUSTRIES:**

- MEANING OF SUSTAINABLE DEVELOPMENT: Literally sustainable development refers to maintaining development over time. It may be defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. A nation or society should satisfied its requirements – social, economic and others – without jeopardizing the interest of future generations. **1M**
- SPECIAL RESPONSIBILITIES OF INDUSTRIES BASED ON NATURAL RESOURCES: Industries that are based on natural resources, like minerals, timbre, fiber and foodstuffs etc. have a special responsibility for:
- (1) adopting practices that have built-in environmental consideration;
  - (2) introducing processes that minimize the use of natural resources and energy, reduce waste and prevent pollution; and
  - (3) making products that are “environment-friendly”, with minimum adverse impact on people and ecosystem. **(4 Marks)**

**(c)**

- (i) THE PRESS COMMUNIQUE: The press communiqués are issued when some important government decisions or announcements are made such as cabinet appointments, conclusion of the foreign dignitaries’ visits, international agreement, etc. The press communiqué is formal in character. It carries the name of the ministry or department and the place, the date at the bottom left-hand corner of the release. Generally, the press is expected to reproduce the press communiqué without any substantial change. No heading or sub-heading is given on press communiqués. **(2 Marks)**
- (ii) THE PRESS NOTE: The press notes are less formal in character. They are issued on important matters, e.g. raising or lowering of tariff rates etc. The press note also carries the name of the ministry or department concerned and the place and date at the bottom left-hand corner. Heading or sub-heading are given in the press notes. **(2 Marks)**

## Answer 5:

(a)

**(i) Title to forged cheque under the Negotiable Instruments Act, 1881:**

Forgery confers no title and a holder acquires no title to a forged instrument. A forged document is a nullity. The property in the instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified. In the case of forged endorsement, the person claiming under forged endorsement even if he is purchaser for value and in good faith, cannot acquire the rights of a holder in due course.

Therefore, Mr. C acquires no title on the cheque (*Mercantile Bank vs. D'Silva*, 30 Bom.L.R.1225). Such a holder is not a holder in due course and hence no privilege is available. **(4 Marks)**

(ii)

**(1) Restrictive Endorsement:** Such an endorsement has the effect of restricting further negotiation and transfer of the instrument.

**Example:** (1) Pay to A only S. Mukerjee  
(2) For the account of A only N. Aiyar

**(2) Conditional or qualified endorsement:** Such an endorsement combines an order to pay with condition.

**Example:** Pay to A on safe receipt of goods.  
V. Chopra **(4 Marks)**

**(b)** Under the Companies (Prospectus and Allotment of Securities) Rules, 2014 the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

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

Therefore, the decision of the Board of Directors to pay 5% commission to the underwriters is invalid. **(4 Marks)**

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

The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal. It is the issues of exploitive human nature and attitudes that should be addressed in a rational way. Problems like Global warming, Ozone depletion and disposal of hazardous wastes that concern the entire world. They require International cooperation and have to be tackled at the global level. **(1 Mark)**



Few decades ago, the corporate world, the industry or others engaged in the use of natural resources or environmental services were mainly concerned with good business in economic sense. There is now a growing concern for Social responsibility and ethical norms in all spheres of human activities; be it public behaviour, business or environment and there are ethical concerns to look after not only the interest of stakeholders but also that of community; as the regulatory / mandatory requirements have also become more stringent. This translates into providing safety for the workers at workplace, concern for their health, reducing pollution and incorporating environmental values in governance. **(4 Marks)**

(1 Mark)

**Answer 6:****(a) Importance of registered office:**

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

(3 Marks)

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

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

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

(5 Marks)

**(8 Marks)**

**(b) Notice: Meeting of Board of Directors:**

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

**Agenda:**

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

(1 Mark)

(2 Marks)

Place:.....  
Date:.....

By Order of the Board of Directors

**(4 Marks)**

(1 Mark)

**(c)**

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

(1 Mark)

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

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

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

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

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

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

**(4 Marks)**

**Answer 7:**

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

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

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

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

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

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

**(4 Marks)**

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

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

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

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

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
  - (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;.
- In the present case Mr. X can make an appeal before the tribunal and claim damages.

(2 Marks)

**(4 Marks)**

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

(1 Mark)

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

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

(1 Mark for each valid point)

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

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

(1 Mark)

Similarly, in case the company has not received the minimum subscription amount within 30 days of the date of issue of the prospectus, it must refund the application money received by it within the stipulated time. Any allotment made in violation of

this will be void and the defaulting company and officers will be liable to further punishment as provided in section 39 (5).

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

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

**(4 Marks)**

**(d) Discriminatory Practices in Employment:** Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or sex) that are not relevant to the tasks they must perform.

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

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

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

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

**Conditions of Employment:** Many times wages and salaries are discriminatory to the extent that equal wages and salaries are not given to people who are doing essentially the same work. Another issue is related to fair wages and treatment to workers. Companies subcontracting manufacturing operations abroad are now aware of the ethical issues associated with supporting facilities like child labour that abuse and/or underpay their work forces. Such facilities have been termed "sweatshops."

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

**(4 Marks)**

(1 Mark for each valid point)

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

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

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

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

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

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

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

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

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

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

(4 Marks)

(1 Mark)

1 M

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