PAPER – 2: BUSINESS LAW, ETHICS & COMMUNICATION

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR NOVEMBER, 2018 EXAMINATIONS

Applicability for November, 2018 examinations

The Study Material (July 2015 edition), Practice Manual (April 2016 edition) along with the "Supplementary Study Paper for November 2017 examinations and onwards" is relevant for November 2018 examinations. Supplementary Study Paper 2017 contains all relevant amendments/ circulars/ notifications etc. in the Business and the Company law part made from 1st May 2015 to 30th April, 2017. Further, all relevant amendments/ circulars/ notifications etc. in the Business Law and Company law part for the period 1st May 2017 to 30th April, 2018 are mentioned below:

Relevant Legislative amendments from 1st May, 2017 to 30th April, 2018				
The Companies Act, 2013/ Corporate Laws				
Sl. No.	**Amendments related to**	**Relevant Amendments**	**Page no. #**	**Earlier Law**
1.	Exemptions to Government Companies Vide Notification G.S.R. 582(E) Dated 13th June, 2017	The Central Government amends the Notification G.S.R. 463(E), dated 5th June 2015, whereby Exceptions, Modifications and Adaptations were provided in case of Government companies. Following is the amendments: In sub-section (2) of section 96, for the words "such other place as the Central Government may approve in this behalf", the words "such other place within the city, town or village in which the registered office of the company is situate or such other place as the Central Government may approve in this behalf" shall be substituted.	Pg 6.128 of SM and Pg 12 of SSP.	**Such other place as the Central Government may approve in this behalf**.

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	Insertion of Paragraph 2A in the principal notification G.S.R. 463(E), dated 5th June 2015	The aforesaid exceptions, modifications and adaptations [i.e. as given in Notification G.S.R. 463(E), dated 5th June 2015 and Notification G.S.R. 582(E) Dated 13th June, 2017] shall be applicable to a Government company which has not committed a default in filing of its financial statements under section 137 of the Companies Act or annual return under section 92 of the said Act with the Registrar.		
2.	Exemptions to Private Companies Vide Notification G.S.R. 583(E) Dated 13th June, 2017	The Central Government amends the Notification G.S.R. 464(E), dated 5th June 2015 whereby Exceptions, Modifications and Adaptations were provided in case of Private companies. Following are the amendments: (1) In Chapter V, clauses (a) to (e) of sub-section (2) of **section 73**, shall not apply to a private company- (A) which accepts from its members monies not exceeding one hundred per cent. of aggregate of the paid up share capital, free reserves and securities premium account; or (B) which is a start-up, for five years from the date of its incorporation; or (C) which fulfils all of the following conditions, namely:- (a) which is not an associate or a subsidiary company of any other company; (b) if the borrowings of such a company from banks or financial institutions or any body	Pg 15 of SSP and 6.63 of SM	(1) Clause (a) to (e) of Section 73 provides conditions for acceptance of deposits from members. Notification dated 5th June, 2015, provided that Clause (a) to (e) of Sub-section 2 of Section 73 shall not apply to private Companies which accepts from its members monies not exceeding one hundred per cent, of aggregate of the paid up share capital and free reserves, and

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		corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section: Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.		such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
		(2) In Chapter VII, clause (g) of sub-section (1) of section 92, shall apply to private companies which are small companies, namely:- "(g) aggregate amount of remuneration drawn by directors;"	Pg 6.124 of SM	(2) clause (g) of sub-section (1) of section 92 is read as "remuneration of directors and key managerial personnel"
		(3) In Chapter VII, proviso to sub-section (1) of section 92, For the proviso, the following proviso shall be substituted, namely:- "Provided that in relation to One Person Company, small company and private company (if such private company is a start-up), the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company."	Pg 6.125 of SM	(3) Whereas with respect to One Person Company and small company, the annual return shall be signed by the company secretary, or where there is no company secretary, by the director of the company.

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	Insertion of Paragraph 2A in the principal notification G.S.R. 464(E), dated 5th June 2015	The aforesaid exceptions, modifications and adaptations shall be applicable to a Private company which has not committed a default in filing of its financial statements under section 137 or annual return under section 92 of the said Act with the Registrar.		
3.	Vide notification S.O. 3086(E) dated 20th September 2017	The Central Government hereby appoints the 20th September, 2017 as the date on which proviso to clause (87) of section 2 of the said Act shall come into force. The proviso to section 2(87) shall be read as, "Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed."	Pg 6.8	- (The proviso is newly notified)
4.	Companies (Amendment) Act, 2017	Following sections of the Companies Act, 2013 have been amended by the Companies (Amendment) Act, 2017 with effect from 26th January, 2018 [Notification S.O. 351 (E)] and from 9th February, 2018 [Notification S. O. 630 (E)]		
		1. In **section 2** of the Companies Act, 2013 (hereinafter referred to as the principal Act)- **Enforcement Date: 9th February, 2018**		
		(i) in **clause (30)**, the following proviso shall be inserted, namely:	**(i)** Pg 6.103 of SM	**(i)** – (The proviso is newly inserted)

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		"Provided that— (a) the instruments referred to in Chapter III-D of the Reserve Bank of India Act, 1934; and (b) such other instrument, as may be prescribed by the Central Government in consultation with the Reserve Bank of India, issued by a company, shall not be treated as debenture;";		
		(ii) in **clause (46)**, the following Explanation shall be inserted, namely:— *'Explanation*.—For the purposes of this clause, the expression "company" includes any body corporate;';	**(ii)** Pg 6.8 of SM	**(ii)** – (The explanation is newly inserted)
		(iii) in **clause (71)**, in sub-clause (a), after the word "company;", the word "and" shall be inserted;	**(iii)** Pg 6.8 of SM (read with Pg 8 of SSP)	**(ii)** – (The word is newly inserted)
		(iv) in **clause (72)**, in the proviso, in clause (A), after the words "State Act", the words "other than this Act or the previous company law" shall be inserted;	**(iv)** Pg 6.15 of SM	**(iv)** Provided that no institution shall be so notified unless— (A) it has been established or constituted by or under any Central or State Act;
		(v) in **clause (85)**- (a) in sub-clause (i), for the words "five crore rupees",	**(v)** Pg 6.8 of SM	**(v)** (i) paid-up share capital of which does not

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		the words "ten crore rupees" shall be substituted;		exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than **five crore rupees**; or
		(v) in **clause (85)**- (b) in sub-clause (ii),- (A) for the words "as per its last profit and loss account", the words "as per profit and loss account for the immediately preceding financial year" shall be substituted; (B) for the words "twenty crore rupees", the words "one hundred crore rupees" shall be substituted;	**(v)** Pg 6.8 of SM	(ii) turnover of which **as per its last profit and loss account** does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than **twenty crore rupees**:
		2. After section 3 of the principal Act, the following section shall be inserted, namely:- "**3A**. If at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so	After section 3 page 6.16 SM	- (The section is newly inserted)

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		carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.". **Enforcement Date: 9th February, 2018**		
		3. In **section 4** of the principal Act, in sub-section (5), for clause (i), the following shall be substituted, namely:- "(i) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of twenty days from the date of approval or such other period as may be prescribed: Provided that in case of an application for reservation of name or for change of its name by an existing company, the Registrar may reserve the name for a period of sixty days from the date of approval."	Pg 6.27 of SM	Clause (i) of sub section (5) of section 4 was given as: **"(b) Upon receipt of an application under sub-section (4), the Registrar may, on the basis of information and documents furnished along with the application, reserve the name for a period of sixty days from the date of the application."**

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		Enforcement Date: 26th January, 2018		
		4. In **section 21** of the principal Act, for the words "an officer of the company", the words "an officer or employee of the company" shall be substituted **Enforcement Date: 9th February, 2018**	Pg 6.40 of SM	(ii) **an officer of the company** duly authorised by the Board in this behalf.
		5. In **section 35** of the principal Act, in sub-section (2), after clause (b), the following clause shall be inserted, namely:- "(c) that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by sub-section (5) of section 26 to the issue of the prospectus and had not withdrawn that	Pg 6.53 of SM	- (The clause is newly inserted)

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		consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.". **Enforcement Date: 9th February, 2018**		
		6. In **section 47**, in sub-section (1), for the words, figures and brackets "provisions of section 43 and sub-section (2) of section 50", the words, figures and brackets "provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188" shall be substituted. **Enforcement Date: 9th February, 2018**	Pg 6.84 of SM	In Point (i) of Para 3.4, the following may be added, " Subject to the provisions of section 43, sub-section (2) of section 50 and sub-section (1) of section 188,"
		7. In **section 53** of the principal Act,- (i) in sub-section (2), for the words "discounted price", the word "discount" shall be substituted; **Enforcement Date: 9th February, 2018**	Pg 6.89 of SM	For (i) Any share issued by a company at a **discounted price** shall be void.
		7. In **section 53** of the principal Act,- (ii) after sub-section (2), the following sub-section shall be inserted, namely:-	Pg 6.89 of SM	(ii): - (The sub- section is newly inserted)

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		"(2A) Notwithstanding anything contained in sub-sections (1) and (2), a company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949.". **Enforcement Date: 9th February, 2018**		
		8. In **section 62** of the principal Act,- (i) in sub-section (1), in clause (c), for the words "of a registered valuer subject to such conditions as may be prescribed", the words and figures "of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed" shall be substituted; **Enforcement Date: 9th February, 2018**	Pg 6.85 of SM	**(i)** (c) to any persons, if it is authorised by a special resolution, ….. is determined by the valuation report **of a registered valuer** subject to such conditions as prescribed …… the Companies (Share capital and Debentures) Rules, 2014.
		8. In **section 62** of the principal Act,-	Pg 6.85 of SM	**(ii)** **The notice of offer of shares**

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		(ii) for sub-section (2), the following sub-section shall be substituted, namely:- "(2) The notice referred to in sub-clause (i) of clause (a) of sub-section (1) shall be dispatched through registered post or speed post or through electronic mode or courier or any other mode having proof of delivery to all the existing shareholders at least three days before the opening of the issue.". **Enforcement Date: 9th February, 2018**		**shall be despatched through registered post or speed post or through electronic mode to all the existing shareholders at least three days before the opening of the issue.**
		9. In **section 76A** of the principal Act,- (a) in clause (a), for the words, "one crore rupees", the words "one crore rupees or twice the amount of deposit accepted by the company, whichever is lower" shall be substituted; **Enforcement Date: 9th February, 2018**	Pg 10 of SSP	(a) the company .....shall not be less than **one crore rupees** but which may extend to ten crore rupees; and
		9. In **section 76A** of the principal Act,- (b) in clause (b),- (i) for the words "seven years or with fine", the words "seven years and with fine" shall be substituted; (ii) the words "or with both" shall be omitted	Pg 10 of SSP	(b) every officer .....with imprisonment which may extend to **seven years or with fine** which shall not be less than twenty-five lakh rupees but which may extend to two crore

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		Enforcement Date: 9th February, 2018		rupees, **or with both**
		10. In section 100 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:- "Provided that an extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.". **Enforcement Date: 9th February, 2018**	Pg 6.130 of SM	- (The proviso is newly inserted) The amendment to be added in Point (1)
		11. In section 101 of the principal Act, in sub-section (1), for the proviso, the following proviso shall be substituted, namely:- "Provided that a general meeting may be called after giving shorter notice than that specified in this sub-section if consent, in writing or by electronic mode, is accorded thereto- (i) in the case of an annual general meeting, by not less than ninty-five per cent. of the members entitled to vote thereat; and (ii) in the case of any other general meeting, by members of the company- (a) holding, if the company has a share	Pg 6.135 of SM	**However, section also provides that a general meeting may be called after giving a shorter notice if consent is given in writing or by electronic mode by not less than ninety-five per cent. of the members entitled to vote at such meeting.**

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		capital, majority in number of members entitled to vote and who represent not less than ninety-five per cent. of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or (b) having, if the company has no share capital, not less than ninety-five per cent. of the total voting power exercisable at that meeting: Provided further that where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account for the purposes of this sub-section in respect of the former resolution or resolutions and not in respect of the latter.". **Enforcement Date: 9th February, 2018**		
		12. In section 110 of the principal Act, in sub-section (1), the following proviso shall be inserted, namely:- "Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by	Pg 6.163 of SM	- (The proviso is newly inserted)

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		electronic means under section 108, in the manner provided in that section.". **Enforcement Date: 9th February, 2018**		
5.	Notification G.S.R. 49 (E) dated 20th January, 2018	The Central Government has amended the Companies (Incorporation) Rules, 2014, by the Companies (Incorporation) Amendment Rules, 2018 vide Notification G.S.R. 49(E), dated 20th January, 2018. It shall come into force on 26th January, 2018. Following are the amendments: "In the principal rules, in rule 38, the following proviso shall be inserted- **(i)** in sub-rule (1), after the proviso, the following proviso shall be inserted, namely:- "provided further that in case of incorporation of a company having more than seven subscribers or where any of the subscriber to the MOA/AOA is signing at a place outside India, MOA/AOA shall be filed with INC-32 (SPICe) in the respective formats as specified in Table A to J in Schedule I without filing form INC-33 and INC-34"; **(ii)** In sub-rule (2), after the proviso, the following	Pg 26 of SSP	-

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		proviso shall be inserted, namely:- 'Provided further that in case of companies incorporated, with effect from the 26th day of January, 2018, with a nominal capital of less than or equal to rupees ten lakhs or in respect of companies not having a share capital whose number of members as stated in the articles of association does not exceed twenty, fee on INC-32 (SPICe) shall not be applicable"."		
6.	'Reservation of Name of Company' Notification G.S.R. 284(E) dated 23rd March, 2018	Rule 9: **Reservation of name** An application for reservation of name shall be made through the web service available at www.mca.gov.in by using [form RUN](Reserve Unique Name) along with fee as provided in the Companies (Registration offices and fees) Rules, 2014, which may either be approved or rejected, as the case may be, by the Registrar, Central Registration Centre after allowing re -submission of such application within fifteen days for rectification of the defects, if any.	Pg 6.27 of SM	- (This Rule may read with respect to point (iv) Requirement for reservation of the name of the company)
The Employees' Provident Funds and Miscellaneous Provisions Act, 1952				
7.	Amendments vide the Finance Act, 2017 (wef 26.5.2017)	The following amendments have been carried out in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952:		

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		(1) in section 2, for clause (m), the following clause shall be substituted, namely: (m) "Tribunal" means the Industrial Tribunal referred to in section 7 D;	-	(1) "Tribunal" means the Employees' Provident Funds Appellate Tribunal constituted under section 7D
		(2) for section 7D, the following section shall be substituted, namely:- "7D. The Industrial Tribunal constituted by the Central Government under sub-section (1) of section 7A of the Industrial Disputes Act, 1947 shall, on and from the commencement of Part XIV of Chapter VI of the Finance Act, 2017, be the Tribunal for the purposes of this Act and the said Tribunal shall exercise the jurisdiction, powers and authority conferred on it by or under this Act."	Pg 4.19 of SM	(2) Employees' Provident Fund Appellate Tribunal (Section 7D): The Central Government may, by notification in the Official Gazette, constitute one or more Appellate Tribunals to be known as the Employees' Provident Funds Appellate Tribunal *to* exercise the powers and discharge the functions conferred on such Tribunal by this Act and every such Tribunal shall have jurisdiction in respect of establishments situated in such area as may be specified in the notification constituting the Tribunal.

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				A Tribunal shall consist of one person only to be appointed by the Central Government. A person shall not be qualified for appointment as the Presiding Officer of a Tribunal (hereinafter referred to as the Presiding Officer), unless he is, or has been, or is qualified to be a Judge of a High Court; or a District Judge.
		(3) sections 7E, 7F, 7G and 7H shall be omitted	Pg 4.19	(3) The Study material contains only the citation of sections numbers 7E, 7F, 7G and 7H.
		(4) for section 18A, the following section shall be substituted, namely:— "18A. The authorities referred to in section 7A and every inspector shall be deemed to be a public servant within the meaning of section 21 of the Indian Penal Code."	Pg 4.33 of SM	**(4) Presiding Officer and other officers to be public servants (Section 18A): The Presiding Officer of a Tribunal, its officers and other employees, the authorities referred to in**

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				Section 7-A and every inspector shall be deemed to be public servants within the meaning of Section 21 of the Indian Penal Code.
The Payment of Gratuity Act, 1972				
8.	The Payment of Gratuity (Amendment) Act, 2018	The Ministry of Law and Justice has made the following amendments to the Payment of Gratuity Act, 1972 through the Payment of Gratuity (Amendment) Act, 2018 which received the assent of the President of India on 28th March, 2018 and was published in the Official Gazette on 29th March, 2018.		
		1. In section 2, for clause (k), the following clause shall be substituted, namely:— '(k) "notification" means a notification published in the Official Gazette and the expression "notified" shall be construed accordingly;'	Pg 5.5 of SM	- Include section 2(k) in the SM
		2. In section 2A of the principal Act, in sub-section (2), in the Explanation, in clause (iv), for the words "twelve weeks", the words "such period as may be notified by the Central Government from time to time" shall be substituted.**	Pg 5.6 of SM	♦ in the case of a female, she has been on maternity leave; so, however, that the total period of such maternity leave does

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				not exceed **twelve weeks**.
		**The Central Government has specified that the total period of maternity leave in case of a female employee shall not exceed 26 weeks. [*Notification S.O. 1421(E) dated 29th March, 2018]*		
		3. In section 4 of the principal Act, in sub-section (3), for the words "ten lakh rupees", the words "such amount as may be notified by the Central Government from time to time" shall be substituted.***	Pg 5.9 of SM	*The Payment of Gratuity (Amendment) Act,* ***2010*** has amended section 4(3) of the Payment of Gratuity Act, 1972 by which the maximum amount of gratuity payable to an employee shall not exceed rupees **ten lakhs**.
		***The Central Government has specified that the amount of gratuity payable to an employee shall not exceed 20 Lakh rupees. [*Notification S.O. 1420 (E) dated 29th March, 2018]*		

 # Page number of the Study material (SM)/ Supplementary study paper (SSP) with reference of relevant provisions

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

PART – A: BUSINESS LAWS

The Indian Contract Act,1872

1. Mridul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Akshat. Due to heavy rains, Mridul was stranded for more than two days. Mridul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Akshat recover the loss from Mridul on the ground that Mridul had acted beyond his authority?

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2. Explaining the provisions of the Indian Contract Act, 1872, answer the following:

   (i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?

   (ii) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

The Negotiable Instruments Act, 1881

3. Mr. Varun draws a cheque of ₹ 11,000 and gives to Mr. Abhi by way of gift. State with reason whether -

   (1) Mr. Abhi is a holder in due course?

   (2) Mr. Abhi is entitled to receive the amount of ₹ 11,000 from the bank?

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

The Payment of Bonus Act, 1965

4. On 1st January, 2015, Stellar Industries Ltd. agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limits of 30% of their salary/ wages during the relevant accounting year. It was also agreed by the employees that they will not claim minimum bonus stated under section 10 of the Payment of Bonus Act, 1965. As per the aforesaid agreement the employees claimed bonus but the company refused to honour the agreement. On refusal of the company the employees moved to the court for relief. Decide as per the provisions of the Payment of Bonus Act, 1965 whether the employees will get the relief. Also, decide whether in spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

5. Mr. Suresh, an employee working in an establishment covered by the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, leaves his employment and takes up employment in another establishment. State in this connection:

   (i) How shall the amount accumulated to his P.F. Account be transferred?

   (ii) What steps shall be taken if the establishment in which he has joined is not covered by the Act?

   (iii) What would be your answer if the establishment in which he was previously working is not covered by the Act?

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The Payment of Gratuity Act, 1972

6. Mr. Green, an employee of Yellow Ltd. becomes disabled due to a disease and is unable to do the same work. He was then re-employed on the reduced wage. How the gratuity of Mr. Green shall be computed under the provisions of the Payment of Gratuity Act, 1972?

The Companies Act, 2013

7. Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Can these shares be offered to the Preference Shareholders?

8. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:

   (i) The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

   (ii) Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard?

9. M/s. Tulip Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

   (i) Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.

   (ii) Does Mr. Rich, holding 400 shares of total worth ₹ 4000 only, has the right to inspect the Register of Members?

10. Large Limited has a paid-up equity capital and free reserves to the extent of ₹ 50,00,000. The company is planning to buy-back shares to the extent of ₹ 4,50,000. The company approaches you for advice with regard to the following

    (i) Is special resolution required to be passed?

    (ii) What is the time limit for completion of buy-back?

    (iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back??

PART – B: ETHICS

11. "Ethics programs are not helping to manage values associated with quality management, strategic planning and diversity management." Do you agree? Give reasons.

12. What do you understand by the term 'discrimination' in employment as sometime found in an establishment? Explain the basic elements of 'discrimination'.

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13. Intimidation threats may occur when an accounting professional may be prohibited from acting objectively by threats, actual or perceived. Give two examples of each such threats when the accounting professional is working as:
    (i) An Auditor;
    (ii) An Employee in a Company
14. What is meant by 'Environmental ethics'? How does its non-adoption lead to 3 Ps Viz., Polluter Pays and Principles? Explain.
15. What is the role of the following factors in shaping the direction of the CSR domain:
    (i) Accountability Throughout the Value Chain
    (ii) Advances in Information Technology.

PART – C: COMMUNICATION

16. Explain the elements that can be used to influence an organisational culture.
17. What skills are needed for effective critical thinking?
18. Negotiation is said to be an art of finding a mutually acceptable agreement between parties. What are the various approaches through which the process of negotiation can be made acceptable?
19. State with reasons whether following statements are correct or incorrect.
    (i) Rumours and gossips are synonymous.
    (ii) Lying breaks down the trust between individuals.
20. Mr. Yash has not received a dividend warrant of ₹ 1,700 for 170 shares of Cloth Fabrics Ltd. Draft an indemnity bond, to be given to the company for seeing release of Dividend.

SUGGESTED ANSWERS/HINTS

1. An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would, for protecting his principal from losses under similar circumstances.

In the instant case, Mridul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of Akshat, the principal, with the intention of protecting Akshat from losses.

Here, Mridul acts in an emergency as a man of ordinary prudence, so Akshat will not succeed against him for recovering the loss.

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2. **(i)** According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

(ii) According to Section 136 of the Indian Contract Act, 1872, where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged. In the given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

3. According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means-

- any person
- who for consideration
- becomes the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof, (if payable to order),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In the instant case, Mr. Varun draws a cheque of ₹ 11,000 and gives to Mr. Abhi by way of gift.

(1) Mr. Abhi is holder but not a holder in due course since he did not get the cheque for value and consideration.

(2) Mr. Abhi's title is good and bonafide. As a holder he is entitled to receive ` 11,000 from the bank on whom the cheque is drawn.

4. As per section 31A of the Payment of Bonus Act, 1965, there may be an agreement or settlement by the employees with their employer for payment of an annual bonus linked with production or productivity in lieu of bonus based on profits, payable under the Act. When such an agreement has been entered into, the employees are entitled to receive bonus as per terms of the agreement/ settlement, subject to the following restrictions imposed by section 31A.

(a) Any such agreement/settlement whereby the employees relinquish their right to receive minimum bonus under section 10, shall be null and void in so far as it purports to deprive the employees of the right of receiving minimum bonus.

(b) If the bonus payable under such agreement exceeds 20% of the salary/ wages earned by the employees during the relevant accounting year, such employees are not entitled to the excess over 20% of salary/wages.

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In the given case Stellar Industries Ltd. agreed with the employees for payment of annual bonus linked with production or productivity instead of profits subject to the limit of 30% of their salary/wages during the relevant accounting year. According to Section 31A, the maximum bonus under this provision that can be given cannot exceed 20% of the salary/wages earned by the employee during the relevant accounting year. Hence, the maximum bonus may be paid up to 20% of the salary/ wages. If the company enters into agreement to pay more than 20%, then it will be against the provisions of the Payment of Bonus Act, 1965, therefore cannot be enforced.

The employees of Stellar Industries Ltd. also agreed not to claim minimum bonus as stated in Section 10 of the Payment of Bonus Act, 1965, shall also be null and void as it purports to deprive the employees of their right of receiving minimum bonus. Hence, relief may be given by the court, by enforcing the payment of bonus to the employees, based on the production or productivity, as agreed, plus minimum bonus payable under the Payment of Bonus Act, 1965, subject to maximum of 20%.

5. **Transfer of accumulated amount to the credit of Employees' Provident Funds on change of employment**

Section 17 A (1) provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.

Similarly, under sub section (2) where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re- employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.

6. **Computation of Gratuity of a disabled employee:** According to Section 4 (4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts :-

- **For the period preceding the disablement**: on the basis of wages last drawn by the employee at the time of his disablement.
- **For the period subsequent to the disablement**: On the basis of the reduced wages as drawn by him at the time of the termination of services.

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In the case of *Bharat Commerce and Industries Vs. Ram Prasad*, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

As per section 4(3), the maximum amount of gratuity payable to an employee shall not exceed such amount as may be notified by the Central Government from time to time.

The Central Government has specified that the amount of gratuity payable to an employee shall not exceed 20 Lakh rupees. [*Notification S.O. 1420 (E) dated 29th March, 2018]*

7. Issue of Further Shares: Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may-be offered to other persons as well. These are as under-

(a) Under section 62 (1) (b) issue of further shares may be offered to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.

(b) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

(c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

Preference Shareholders - whether (Further Issue of Capital) can be offered to: From the wordings of Section 62 (1) (c), it is quite clear that these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

8. (i) According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled. Therefore, the

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meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

(ii) Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether 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.

It is further 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, Heavy 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 directors or key managerial personnel will not be eligible for such assistance.

9. (i) Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company and the Registrar has been given a copy of the proposed special resolution in advance.

So, Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

(ii) As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed.

Accordingly, a director Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section.

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10. Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares.

As per the Act, the company shall not purchase its own shares or other specified securities unless-

(a) The buy-back is authorized by its articles;

(b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where—

(1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and

(2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Time limit for Completion of Buy Back: As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.

As per the stated facts, Large Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000.

Referring to the above provisions, the answers will be as follows:

1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves (50,00,000x10/100= 5,00,000) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.

The above buy-back is possible when backed by the authorization by the articles of the company.

11. "Ethics programs are not helping to manage values associated with quality management, strategic planning and diversity management".

No. This is an incorrect statement.

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Reason: Ethics programs help identifying the preferred values and ensuring that organizational behaviours are aligned with those values. This includes recording the values, developing policies and procedures to align behaviours with preferred values and then providing training to all personnel about the policies and procedures. This overall effort is very useful for several other programs in the workplace that require behaviours to be aligned with values, including quality management, strategic planning and diversity management.

For example, total quality management initiatives include high priority on certain operating values, e.g. trust among stakeholders, performance, reliability, measurement and feedback.

12. 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: 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.

13. (i) Intimidation threat for finance and accounting professionals working as auditors:

(a) Being threatened with dismissal or replacement;

(b) Being threatened with litigation;

(c) Being pressured to reduce inappropriately the extent of work performed in order to reduce fees;

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(ii) Intimidation threat for finance and accounting professionals working as employees:

(a) Threat of dismissal or replacement of the finance and accounting professional or a close or immediate family member over a disagreement about the application of an accounting principle or the way in which financial information is to be reported for external use as well as for decision making purposes.

(b) A dominant personality attempting to influence the decision making process, for example with regard to the exclusion of irrelevant costs from projected cost estimates..

14. 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.

15. (i) Accountability Throughout the Value Chain: Over the past several years, the CSR agenda has been characterized by the expansion of boundaries of corporate accountability. Stakeholders increasingly hold companies accountable for the practices of their business partners throughout the entire value chain with special focus on suppliers, environmental, labour, and human rights practices.

(ii) Advances in Information Technology: The rapid growth of information technology has also served to sharpen the focus on the link between business and corporate social responsibility. Just as email, mobile phones and the Internet speed the pace of change and facilitate the growth of business, they also speed the flow of information about a company's CSR record.

16. Elements influencing organisational Culture: There are number of elements that can be used to describe or influence Organizational Culture. Some of these are:

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- *The Paradigm:* What the organization is about; what it does; its mission; its values.
- *Control Systems:* The processes in place to monitor what is going on.
- *Organizational Structures:* Reporting lines, hierarchies, and the way that work flows through the business.
- *Power Structures:* Who makes the decisions and how power is distributed across the organization.
- *Symbols:* These include the logos and designs, but would extend to symbols of power, such as car parking spaces and executive washrooms!
- *Rituals and Routines:* Management meetings, board reports and so on may become more habitual than necessary.
- *Stories and Myths:* build up about people and events, and convey a message about what is valued within the organization.

Communicating the corporate culture effectively is paramount. For example, at General Electric (GE), corporate values are so important to the company, that Jack Welch, the former legendary CEO of the company, had them inscribed and distributed to all GE employees at every level of the company.

17. The skills needed for effective critical thinking are:

1. Analyze Cause and Effect: You must be able to separate the motive or reason for an action or event (the cause) from the result or outcome (the effect).
2. Classify and Sequence: You must be able to group items or sort them according to similar characteristics.
3. Compare and Contrast: You must be able to determine how things are similar and how they are different.
4. Infer: You must be skilled in reasoning and extending logic to come up with plausible options or outcomes.
5. Evaluate: You must be able to determine sound criteria for making choices and decisions.
6. Observe: You must be skilled in attending to the details of what actually happened.
7. Predict: You must be able to finding and analyze trends, and extend these to make sensible predictions about the future.
8. Rationalize: You must be able to apply the laws of reason (induction, deduction, analogy) in to judge an argument and determine its merits.
9. Prioritize: You must be able to determine the importance of an event or situation and put it in the correct perspective.
10. Summarize: You must be able to distill a brief report of what happened or what you have learned.

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11. Synthesize: You must be able to identify new possible outcome by using pieces of information that you already know.

18. Negotiation: Negotiation is a common way of settling issues between two or more disagreeing parties. When handled skillfully, negotiation can improve the position of one or even both but when poorly handled; it can leave a problem still unsolved and perhaps worse than before.

Approaches: Negotiation can be approached in four ways. Each of these approaches produces a different outcome.

Win-Lose Orientation: This is the approach taken by competitive communicators. The win-lose orientation is based on the assumption that only one side can reach its goals and that any victory by that party will be matched by the other's loss. Despite the fact that it produces losers as well as winners, a win-lose orientation can sometimes be the best approach to negotiating. For example, in a one-time commercial transaction (the sale of a car, for instance), concern for helping the other party may take a back seat in getting the best possible deal, without violation of ethical values.

Lose-Lose Orientation: With a lose-lose orientation, a conflict plays out in a way that damages both parties to such a degree that everyone feels like a loser. Nobody starts out seeking a lose-lose outcome, of course, but sometimes when people feel that a negotiating partner is blocking them, they wind up seeking revenge. For example, if customers feel cheated, they are likely to tell others about their dissatisfaction, costing the company future business.

Compromise: Sometimes it seems better to compromise than to fight battles in a competitive manner and risk a lose-lose outcome. There are cases in which compromise is the best obtainable outcome-usually when disputed resources are limited or scarce. For example, if two managers, both of whom need a separate full-time secretary but budget restrictions make this impossible, they may have to compromise by sharing one secretary.

Win-Win Orientation: A win-win approach differs significantly from the preceding negotiating styles. It is a collaborative approach to negotiation and assumes that solutions can be reached that satisfy the needs of all the parties. Most importantly, it looks beyond the conflicting means of both parties (my way versus your way) and focuses on satisfying the ends each is seeking. The key is to avoid taking polar positions (arguing over means) and instead to identify the ends or goals of both parties.

19. (i) The given statement "Rumour and gossip are synonymous" is incorrect.

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

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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.

(ii) The given statement "Lying breaks down the trust between individuals" is correct.

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.

20. Indemnity Bond

Mr. Yash S/o …….. R/o …… do hereby agree to indemnify the Cloth 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. Yash

Date: Signature

Place:

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