

MOCK TEST PAPER – 1
INTERMEDIATE (IPC): GROUP – I
PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION
SUGGESTED ANSWERS/HINTS

1. (a) According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number in case of a public company, five members personally present if the number of members as on the date of meeting is not more than one thousand, shall be the quorum.

In this case the quorum for holding a general meeting is 7 members to be personally present (higher of 5 or 7). For the purpose of quorum, only those members are counted who are entitled to vote on resolution proposed to be passed in the meeting.

Again, only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum.

If a company is a member of another company, it may authorize a person by resolution to act as its representative at a meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum. Where two or more companies which are members of another company, appoint a single person as their representative then each such company will be counted as quorum at a meeting of the latter company.

Further the President of India or Governor of a State, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present.

In view of the above there are only three members personally present.

'A' will be included for the purpose of quorum. D will have two votes for the purpose of quorum as he represents two companies 'Y Ltd.' and 'Z Ltd.' E, F, G and H are not to be included as they are not members but representing as proxies for the members.

Thus, it can be said that the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

- (b) **Meaning of Undue Influence:** Section 16 of the Indian Contract Act, 1872, states that a contract is said to be induced by undue influence where the relations subsisting between the parties are such that the parties are in a position to dominate the will of the other and used that position to obtain an unfair advantage over the other.

A person is deemed to be in that position:

- (a) where he holds real or apparent authority over the other or stands in a fiduciary relation to him;
- (b) where he makes a contract with a person whose mental capacity is temporarily or permanently affected by reason of old age, illness or mental or bodily distress.
- (c) where a man who is in position to dominate the will of the other enters into contract with him and the transaction appears to be unconscionable, the burden of proving that it is fair, is on him, who is in such a position.

When one of the parties who has obtained the benefits of a transaction is in a position to dominate the will of the other, and the transaction between the parties appears to be unconscionable, the law raises a presumption of undue influence [section 16(3)]. Every transaction where the terms are to the disadvantage of one of the parties need not necessarily be considered to be unconscionable.

If the contract is to the advantage of one of the parties but the same has been made in the ordinary course of business the presumption of undue influence would not be raised.

In the given problem, Aakash applies to the banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. Aakash accepts the loan on these terms. This is a transaction in the ordinary course of business, and the contract is not induced by undue influence. As between parties on an equal footing, the court will not hold a bargain to be unconscionable merely on the ground of high interest. Only where the lender is in a position to dominate the will of the borrower, the relief is granted on the ground of undue influence. But this is not the situation in this problem, and therefore, there is no undue influence.

(c) Common Policies under CSR are as under:

- Commitment to diversity in hiring employees and barring discrimination;
- Adoption of internal controls reform;
- Management teams that view employees as assets rather than costs;
- High performance workplaces that integrate the views of line employees into decision-making processes;
- Adoption of operating policies that exceed compliance with social and environmental laws;
- Advanced resource productivity, focused on the use of natural resources in a more productive, efficient and profitable fashion (such as recycled content and product recycling); and
- Taking responsibility for conditions under which goods are produced directly or by contract employees domestically or abroad.

(d) Tips for improving interpersonal skills: Lines of communication must be open between people who rely on one another to get work done. Poor interpersonal communication skills, which include active listening, result in low productivity simply because one does not have the tools needed to influence, persuade and negotiate which are necessary for workplace success. To get this success the following tips are suggested:

- (i) **Congruency in communication elements:** If the words used are incongruent with the other interpersonal communication dynamics interpersonal communication is adversely affected. Since communication is shared meaning, words must send the same message as the other interpersonal communication dynamics – body language, facial expression, posture, movement, tone of voice to help emphasize the truth, sincerity and reliability of the communication. A consistent message ensures effective communication.
- (ii) **Listening effectively:** Effective or active listening is very important skill to enhance interpersonal communication. Listening helps to build strong personal relationships. The process of communication completes when the message as intended by the sender is understood by the receiver. Most of the persons assume that listening is natural trait, but practically very few of us listen properly. One needs to give the communicator of the message sufficient attention and make an effort to understand his view point.

2. (a) (1) Incorrect.

The given statement is Incorrect. According to Section 31A of the payment of Bonus Act, 1965 any such agreement 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 to receiving minimum bonus.

- (2) Incorrect.** As per section 18 of the Payment of Bonus Act, 1965, where in any accounting year, an employee is found guilty of misconduct causing financial loss to the employer, then the employer can lawfully deduct the amount of loss from the amount of bonus payable by

him to the employee in respect of that accounting year only in order to compensate loss. In this case, the employee shall get the balance, if there be any, but not completely denied from getting the bonus.

- (b) According to section 74 of the Indian contract Act, 1872, “where a contract has been broken, if a sum is named in the contract as the amount to be paid in case of such breach, or if the contract contains any other stipulation by way of penalty, the party complaining of the breach, can claim whether or not actual damages or loss is proved to have been caused thereby, from the other party, a reasonable compensation not exceeding the amount so named, or as the case may be the penalty stipulated for.

In the given case, Mr. Anant contracts with Mr. Brahma that, if he practices as a surgeon within Calicut, he will pay Brahma Rs. 50,000. Anant starts practising as a surgeon in Calicut. According to the provisions, party complaining of the breach, can claim whether or not actual damages or loss is proved to have been caused thereby, from the other party, a reasonable compensation not exceeding the amount so named in the contract.

Accordingly, Brahma is entitled to such compensation, not exceeding Rs. 50,000 as the courts considers reasonable.

- (c) **Businesses as trustees:** A business man has to act only as a trustee of the society for whatever he has gained from the society. Everything finally belongs to the society. Society bestows upon business the authority to own and use land and natural resources. In return the society has the right to expect that productive organizations will enhance the general interests of consumers, employees and community.

Business ethics is required to implement the laws of land, customs, expectations of community, principles of morality, etc. The products and services of an organization affect its employees, the community and society as a whole. Business ethics also subserve the management discipline. Business houses may also use their financial and public influence to address social problems like poverty, crime, equal rights, environmental problems, public health and education. Society at large has also come to realize that since businessmen are making profits by using the country's resources, they owe it to the country to work for its development. Sound workplace ethics ensure that a company's employees are highly motivated and identify themselves with their employer. Following ethical business practices safeguard a company from getting entangled with law enforcement agencies. A reputation for highly ethical behaviour also ensures increased sales and customer loyalty. Certain eco-friendly practices also reduce operation costs. Thus, society derives benefits as well as business prospers when businesses are ethically driven.

- (d) **Advantages of Formal Communication:**

- (a) The formal channels account for most of the effectiveness of communication. Great care has to be taken in sending across any letter or report through the 'proper' formal channel.
- (b) Formal channels cover an ever – widening distance as organizations grow. Through them, it is easier to reach out to the branches of an organisation spread far and wide.
- (c) The formal channels, because of their tendency to filter information, keep the higher level managers from getting bogged down.
- (d) Formal channels of communication consolidate the organisation and satisfy the people in managerial position.
3. (a) (i) Section 40 of the Negotiable Instruments Act, 1881 deals with the discharge of endorser's liability. According to the law, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

As per the given facts, the bill A puts in suit against E, strikes out an endorsement made by C & D, without the consent of E.

According to the said provision, the holder, A of a negotiable instrument, without the consent of the endorser E, destroys or impairs the endorser's remedy against a prior parties (i.e., C & D), the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity.

Since, an endorser (E) is discharged from liability to the holder(A), therefore, A is not entitled to recover anything from Endorser E.

(ii) (1) **Incorrect.** As per section 85(1) of the Negotiable Instruments Act, 1881, banker shall be liable to bear the loss. If a cheque is forged and the banker makes a payment on the cheque, he cannot debit the account of his customer.

(2) **Incorrect.** As per the provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note in which no date of payment is specified will be treated as payable on demand. Hence, adding the words "on demand" does not alter the business effect of the instrument.

(b) Environmental consideration have become a part of corporate strategy, which means incorporating environmental issues in the process of developing a product, in new investments and in the organisational 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.

Thus, environmental considerations play a key role in corporate strategy.

(c) **Developing Critical thinking:** To develop critical thinking, following factors may be taken into consideration-

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

4. (a) (i) **Alteration of Objects Clause of Memorandum**

The Companies Act, 2013 has made alteration of the memorandum simpler and more flexible. Under section 13(1) of the Act, a company may, by a special resolution after complying with the procedure specified in this section, alter the provisions of its Memorandum.

In the case of alteration to the objects clause, Section 13(6) requires the filing of the Special Resolution by the company with the Registrar. Section 13 (9) states that the Registrar shall register any alteration to the Memorandum with respect to the objects of the company and certify the registration within a period of thirty days from the date of filing of the special resolution by the company. Section 13 (10) further stipulates that no alteration in the Memorandum shall take effect unless it has been registered with the Registrar as above.

Hence, the Companies Act, 2013 permits any alteration to the objects clause with ease. Vivek Industries Ltd. can make the required changes in the object clause of its Memorandum of Association.

- (ii) Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. John's contention is not valid.

- (b) **Pragmatic reasons for maintaining ethical behaviour:** Marketing executives should practice ethical behaviour because it is morally correct. To maintain ethical behaviour in marketing, the following positive reasons may be useful to the marketing executives:

1. **To reverse declining public confidence in marketing:** Sometime misleading package labels, false claim in advertisement, phony list prices, infringement of trademarks pervert the market trends and such behaviour damages the marketers' reputation. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well being of consumers, since they are the lifeblood of a business.
2. **To avoid increase in government regulation:** Business apathy, resistance, or token responses to unethical behaviour increase the probability of more governmental regulation. The governmental limitations may also result from management's failure to live up to its ethical responsibilities. Moreover, once the government control is introduced, it is rarely removed.
3. **To retain power granted by society:** Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is a responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
4. **To protect the image of the organisation:** Buyers often form an impression of an entire organisation based on their contact with one person. That person represents the marketing function. Sometimes a single sales clerk may pervert the market opinion in relation to that company which he represents.

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

- (c) **Guidelines to handle communication ethics dilemmas:**

- (1) **Maintain candour:** Candour refers to truthfulness, honesty, frankness and one should stick to these elements while communicating with others.
- (2) **Keep message accurate:** At the time of relaying information from one source to another, communicate the original message as accurately as possible.
- (3) **Secrecy:** One has to maintain secrecy and confidence in communication. So, one should not divulge such information to others.
- (4) **Ensure timeliness of communication:** The timing of messages can be critical. Delay in sending messages can be assumed unethical.
- (5) **Avoid deception:** Ethical communicators are always vigilant in their quest to avoid deception, fabrication, intentional distortion or withholding of information in their communication.
- (6) **Confront unethical behaviour:** One must confront an unethical behaviour in order to ensure a consistent ethical view point

5. (a) (i) Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company, or on any resolution to be moved thereat, shall be entitled during the period beginning twenty-four hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at any time during the business hours of the company, provided not less than three days' notice in writing of the intention so to inspect is given to the company.

In the given case, Sirhj has given proper notice.

However, such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting. So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

- (ii) In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:
- (1) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or
 - (2) the subsidiary company holds such shares as a trustee, or
 - (3) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

(b) **Characteristics of group personality-** Given below are the characteristics of group personality.

- (1) **Spirit of Conformity:** Individual members soon come to realize that in order to gain recognition, admiration and respect from others they have to achieve a spirit of conformity. Our beliefs, opinions, and actions are influenced more by group opinion than by an individual's opinion, even if it is an expert's opinion.
- (2) **Respect for group values:** Any working group is likely to maintain certain values and ideals which make it different from others. In order to deal effectively with a group, we must understand its values, which will guide us in foreseeing its programmes and actions.
- (3) **Resistance to change:** The group may bring about its own changes, whether by dictation of its leader or by consensus. The degree to which a group resists change serves as an important index of its personality. It helps us in dealing with it efficiently.
- (4) **Group prejudice:** Just as hardly any individual is free from prejudice, groups have their own clearly evident prejudices. It is a different matter that the individual members may not admit their prejudiced attitude to other's race, religion, nationality etc. But the fact is that the individual's prejudices get further intensified while coming in contact with other members of the group holding similar prejudices.
- (5) **Collective power:** Groups are always more powerful than individuals, how so ever influential the individual may be. That is why individuals may find it difficult to speak out their minds in groups. All of us are in need of people who adopt a friendly attitude towards us, not really those who are out to challenge us in a group.

Thus, the group as a whole always rules. The odd man out is always at a disadvantage.

(c) **Organization Values:** Values are the principles and ideas that people or organizations strongly believe in and consider important. When people are in doubt about decisions, they frequently rely on deep-seated values to help them make the right choice. In organizations, reliance on shared values makes setting goals easier in the face of the competing ideas, desires, and objectives of individual employees.

One can get a good idea about the values of an organization by examining its vision and mission statement. These statements are short descriptions of the purpose of organizations and the directions they try to take to achieve success. Many organizations post their vision and mission statements in several places so that employees know what the organization values are.

6. (a) **Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed.

The rules framed under the Companies Act for the issue of secured debentures provide that before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

Further according to the rules, no person shall be appointed as a debenture trustee, if he -

- (i) Beneficially holds shares in the company;
- (ii) Is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- (iii) Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (iv) Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (v) Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (vi) Has any pecuniary relationship with the company amounting to two percent. or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (vii) is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel;

Thus, based on the above provisions answers to the given questions are:

- (i) A shareholder who has no beneficial interest, can be appointed as a debenture trustee.
- (ii) A creditor whom company owes Rs.499 cannot be so appointed. The amount owed is immaterial.
- (iii) A person who has given guarantee for repayment of principal and interest thereon in respect of debentures also cannot be appointed as a debenture trustee.

- (b) **Ecological Ethics:** The problem of pollution and other environmental issues can best be framed in terms of our duty to recognize and preserve the ecological systems within which we live. 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 other parts. Business and all social firms are parts of a larger ecological system.

Business firms depend on the natural environment for their energy, material resources, waste disposal and that environment in turn is affected by the commercial activities of business firms. Unless business recognize the interrelationship and interdependencies of the ecological systems

within which they operate and unless they ensure that their activities will not seriously injure these systems one cannot hope to deal with the problem of pollution.

Ecological ethics is based on the idea that the environment should be protected not only for the sake of human being but also for its own sake. The issue of environmental ethics goes beyond the problem relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal. It is the issue of exploitive human nature and attitudes that should be addressed in a rational way. Problems like global warming, ozone depletion and disposal of hazardous waste that concern the entire world. They require international co-operation and have to be tackled at the global level.

(c) **Group conflict:** Group conflict is an 'express struggle' between two inter-dependent parties who perceive incompatible goals, scarce resources and interference from the other party in achieving their goals. There are two aspects in relation to conflict:

1. **Expression:** The two sides must communicate/express about the problem for there to be conflict.
2. **Perception:** Conflict evolves perceptions in the two sides may only perceive that their goals, resources, and interference are incompatible with each other's.

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

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

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

7. (a) As per Section 8 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

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

Further, the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any Court.

- (b) The prescribed particulars of the charge together with the instrument, if any by which the charge is created or evidenced, or a copy thereof shall be filed with the Registrar within 30 days after the date of the creation of charge. [Section 77 (1)]. In this case particulars of charge have not been filed within the prescribed period of 30 days.

However, the Registrar is empowered under proviso to section 77 (1) to extend the period of 30 days by another 300 days on payment of such additional fee as may be prescribed. Taking advantage of this provision, Alpha Ltd., should immediately file the particulars of charge with the

Registrar and satisfy the Registrar that it had sufficient cause, for not filing the particulars of charge within 30 days of creation of charge.

There will be no change in the situation if the charge was created on 12th February, 2018.

(c) Nominations for gratuity: Normally, the gratuity is paid to the employee by his employer, where his services are terminated due to any reason in his lifetime, but after the death of the said employee, the earned gratuity is to be paid to his successors and to avoid any type of complications and controversies, the provision of the nomination by the employee to get the gratuity, in case of his death is made. The provisions are as below:

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

(2) Nomination by the employee having no family but subsequently acquiring family: If at the time of making a nomination the employee has no family, the nomination may be made in favour of any person or persons but if the employee subsequently acquires a family, such nomination shall forthwith become invalid and the employee shall make, within such time as may be prescribed, a fresh nomination in favour of one or more members of his family.

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

(i) The word 'Ethics' is derived from Ancient Greek 'éthikos' meaning 'character'. The word 'moral' is derived from Latin 'mos' meaning 'custom'.

(ii) Character is the essence of values and habits of a person or group. It serves the analysis and employment of concepts such as right and wrong, good and evil and acting with responsibility. Moral is defined as relating to principles of right and wrong.

(iii) Character is a personal attitude, while custom is defined by a group over a period of time. For example People have character, Societies have custom.

(iv) Morals are accepted from an authority (such as cultural, religious etc.) while ethics are accepted because they follow from personally accepted principles. An ethical view might be based on an idea of personal property that should not be taken without social consent. Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'.

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

(e) Specimen of press release announcing a new business location

------(Name and address of company)

- To serve you better with even more space, we are moving to a new facility on Vikas Marg, just near to V3S Mall, Delhi.
- To celebrate the expansion, we are offering up to 75 percent off our regular prices during the week of September 22-28, 2018.
- For preferred customers like you, we are holding a presale on September 20, 2018.
- Come and get the best buys while they last.