

(GCF-19, GCF-20, GCF-21, GCF-22, GCF-23, VCF-4, SCF-8,
NOV-20 PD & GD, Foundation Nov. 19 Rep.)

DATE: 05.08.2020

MAXIMUM MARKS: 100

TIMING: 3¼ Hours

BUSINESS LAW & BUSINESS CORRESPONDENCE & REPORTING

Question No. 1 is Compulsory. Answer any four question from the remaining five questions.

Wherever necessary, suitable assumptions should be made and disclosed by way of note forming part of the answer.

Working Notes should form part of the answer.

Answer 1:

- (a) N's suit will not be valid because the performance of a promise is contingent upon the mere will and pleasure of the promisor; hence, there is no contract. } 2 M
As per section 29 of the Indian Contract Act, 1872 – agreements, the meaning of which is not certain, or capable of being made certain, are void". } 2 M

Answer:

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

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

However, the company and members are not bound to outsiders in respect of anything contained in memorandum/articles by which such outsiders have been given any rights. This is based on the general rule of law that a stranger to a contract cannot acquire any right under the contract. } 1 M

In this case, Articles conferred a right on „X', the law officer that he shall not be removed except on the ground of proved misconduct. In view of the legal position explained above, „X' cannot enforce the right conferred on him by the articles against the company. Hence the action taken by the company (i.e. removal of „X' even though he was not guilty of misconduct) is valid. } 2 M

Answer:

- (c) **Dissolution of firm Vs. Dissolution of Partnership :**

S. No.	Basis of Difference	Dissolution of Firm	Dissolution of Partnership
1.	Continuation of business	It involves discontinuation of business in partnership.	It does not affect continuation of business. It involves only reconstitution of the firm.
2.	Winding up	It involves winding up of the firm and requires realization of assets and settlement of liabilities.	It involves only reconstitution and requires only revaluation of assets and liabilities of the firm.
3.	Order of court	A firm may be dissolved by the order of the court.	Dissolution of partnership is not ordered by the court.
4.	Scope	It necessarily involves dissolution of partnership.	It may or may not involve dissolution of firm.
5.	Final closure of books	It involves final closure of books of the firm.	It does not involve final closure of the books.

(1M each for every correct 4 points)

Answer 2:

- (a) Corporate Veil refers to a legal concept whereby the company is identified separately from the members of the company.
 The term Corporate Veil refers to the concept that members of a company are shielded from liability connected to the company's actions. If the company incurs any debts or contravenes any laws, the corporate veil concept implies that members should not be liable for those errors. In other words, they enjoy corporate insulation. Thus, the shareholders are protected from the acts of the company.
 The **Salomon Vs. Salomon and Co Ltd.** laid down the foundation of the concept of corporate veil or independent corporate personality.

2 M**Lifting of Corporate Veil:**

The following are the cases where company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members:

- (1) **To determine the character of the company i.e. to find out whether co-enemy or friend:** In the law relating to trading with the enemy where the test of control is adopted. The leading case in this point is **Daimler Co. Ltd. vs. Continental Tyre & Rubber Co.,** For this purpose, the Court may examine the character of the persons who are really at the helm of affairs of the company.
- (2) **To protect revenue/tax:** In certain matters concerning the law of taxes, duties and stamps particularly where question of the controlling interest is in issue.
 - (i) Where corporate entity is used to **evade or circumvent tax**, the Court can disregard the corporate entity [**Juggilal vs. Commissioner of Income Tax AIR (SC)**].
 - (ii) In [**Dinshaw Maneckjee Petit**]
- (3) **To avoid a legal obligation:** Where it was found that the sole purpose for the formation of the company was to use it as a device to reduce the amount to be paid by way of bonus to workmen, the Supreme Court upheld the piercing of the veil to look at the real transaction (**The Workmen Employed in Associated Rubber Industries Limited, Bhavnagar vs. The Associated Rubber Industries Ltd., Bhavnagar and another**).
- (4) **Formation of subsidiaries to act as agents:** A company may sometimes be regarded as an agent or trustee of its members, or of another company, and may therefore be deemed to have lost its individuality in favour of its principal. Here the principal will be held liable for the acts of that company.
 In the case of **Merchandise Transport Limited vs. British Transport Commission (1982)**.
- (5) **Company formed for fraud/improper conduct or to defeat law:** Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations. [**Gilford Motor Co. vs. Horne**]

(1 Mark Each)

Answer:

- (b) **Essential elements to incorporate LLP** - Under the LLP Act, 2008, the following elements are very essential to form a LLP in India:
- (i) To complete and submit incorporation document in the form prescribed with the Registrar electronically;
 - (ii) To have at least two partners for incorporation of LLP [Individual or body corporate];
 - (iii) To have registered office in India to which all communications will be made and received;
 - (iv) To appoint minimum two individuals as designated partners who will be responsible for number of duties including doing of all acts, matters and things as are required to be done by the LLP. Atleast one of them should be resident in India.
 - (v) A person or nominee of body corporate intending to be appointed as designated partner of LLP should hold a Designated Partner Identification Number (DPIN) allotted by MCA.
 - (vi) To execute a partnership agreement between the partners inter se or between the LLP and its partners. In the absence of any agreement the provisions as set out in First Schedule of LLP Act, 2008 will be applied.
 - (vii) LLP Name.

(1M for each correct 5 points)

Answer 3:**(a) RIGHTS OF TRANSFeree OF A PARTNER'S SHARE (SECTION 29)**

1. A share in a partnership is transferable like any other property, but as the partnership relationship is based on mutual confidence, the assignee of a partner's interest by sale, mortgage or otherwise cannot enjoy the same rights and privileges as the original partner. } 1 M
2. Such transferee of a partner's share is not entitled:
 - a) To interfere with the conduct of the business
 - b) To require accounts
 - c) To inspect books of the firm.

Note:- He is only entitled to receive the share of the profits of the transferring partner and he is bound to accept the profits as agreed to by the partners, i.e., he cannot challenge the accounts. } 2 M
3. On the dissolution of the firm or on the retirement of the transferring partner, the transferee will be entitled, against the remaining partners:
 - a) To receive the share of the assets of the firm to which the transferring partner was entitled, and
 - b) For the purpose of ascertaining the share, he is entitled to an account as from the date of the dissolution. } 2 M

Note:-

1. Partnership relation is based on mutual confidence there for the assignee of such interest cannot enjoy the same rights and privileges as the original partner. He can enjoy only the rights to receive the share of the agreed profit of the assignor.
2. Such transferee of the share is not the partner of the firm therefore he cannot bind the firm or all other partners.

(1/2M for Each)

Answer:

- (b) **Effects of sub-sale or pledge by buyer (Section 53):** The right of lien or stoppage in transit is not affected by the buyer selling or pledging the goods unless the seller has assented to it. This is based on the principle that a second buyer cannot stand in a better position than his seller. (The First buyer).
The right of stoppage is defeated if the buyer has transferred the document of title or pledges the goods to a sub-buyer in good faith and for consideration.
- Exceptions:**
- (a) When the seller has assented to the sale, mortgage or other disposition of the goods made by the buyer.
 - (b) When a document of title to goods has been transferred to the buyer and the buyer transfers the documents to a person who has bought goods in good faith and for value i.e. for price.

3 M

(1½ M for Each)

Answer 4:

- (a) Compensation is not to be given for any remote and indirect loss or damage sustained by reasons of the breach. **(Section 73 of the Contract Act and the rule in Hadley vs. Baxendale).**
- HADLEY vs. BAXENDALE- Facts**
- The crankshaft of P's flour mill had broken. He gives it to D, a common carrier who promised to deliver it to the foundry in 2 days where the new shaft was to be made. The mill stopped working, D delayed the delivery of the crankshaft so the mill remained idle for another 5 days. P received the repaired crankshaft 7 days later than he would have otherwise received. Consequently, P sued D for damages not only for the delay in the delivering the broken part but also for loss of profits suffered by the mill for not having been worked. The count held that P was entitled only to ordinary damages and D was not liable for the loss of profits because the only information given by P to D was that the article to be carried was the broken shaft of a mill and it was not made known to them that the delay would result in loss of profits.

1 M

3 M

Answer:

- (b) As per **Section 41** of the Indian Contract Act, 1872, when a promisee accepts performance of the promise from a third person, he cannot afterwards enforce it against the promisor. That is, performance by a stranger, accepted by the promisee, produces the result of discharging the promisor, although the latter has neither authorised nor ratified the act of the third party.
- Therefore B can sue A only for Rs. 4000.] **1M**

3 M

Answer:

- (c) **PASSING OF RISK (Section 26)**
- Risk Prima facie passes with ownership.
 - Risk passes to the buyer when the property i.e. ownership is passed to the buyer. The general rule is, "unless otherwise agreed, the goods remain at the seller's risk until the property therein is transferred to the buyer, but when the property therein is transferred to the buyer, the goods are at the buyer's risk whether delivery has been made or not".
- Exceptions:**
- (i) If delivery has been **delayed** by the fault of the seller or the buyer, then the loss or risk arising out of the goods will have to be borne by the defaulter party and in this case ownership in the goods is immaterial for deciding the risk arising out of the goods.
 - (ii) The duties and liabilities of the seller or the buyer as **bailee** of goods for the other party remain unaffected even when the risk has passed generally.

2 M

2 M

Answer 5:**(a) RESERVATION OF RIGHT OF DISPOSAL (SECTION 25)**

- Where there is a contract for the sale of **specific goods** or where goods are subsequently appropriated to the contract, the seller may, by the terms of the contract or appropriation, reserve the right of disposal of the goods until **certain conditions are fulfilled**. 1 M
- In such case, notwithstanding the delivery of the goods to a buyer, or to a carrier or other bailee for the purpose of transmission to the buyer, the property in the goods does not pass to the buyer until the conditions imposed by the seller are fulfilled. 1 M

Circumstances under which the right to disposal may be reserved: In the following circumstances, seller is presumed to have reserved the right of disposal:

- (1) If the goods are shipped or delivered to a railway administration for carriage and by the bill of lading or railway receipt, as the case may be, the goods are deliverable to the order of the seller or his agent, then the **seller will be prima facie deemed to have reserved to the right of disposal**.
- (2) Where the seller draws a bill on the buyer for the price and sends to him the bill of exchange together with the bill of lading or (as the case may be) the railway receipt to secure acceptance or payment thereof, the buyer must return the bill of lading, if he does not accept or pay the bill. If he wrongfully retains it, property does not pass to him.

(1½ M for Each)

Answer:**(b) Modes of revocation of Offer:**

- (i) By notice of revocation
- (ii) **By lapse of time:** The time for acceptance can lapse if the acceptance is not given within the specified time and where no time is specified, then within a reasonable time. This is for the reason that proposer should not be made to wait indefinitely. It was held in **Ramsgate Victoria Hotel Co. Vs Montefiore**, that a person who applied for shares in June was not bound by an allotment made in November. This decision was also followed in **India Cooperative Navigation and Trading Co. Ltd. Vs Padamsey Premji**. However these decisions now will have no relevance in the context of allotment of shares since the Companies Act, 2013 has several provisions specifically covering these issues.
- (iii) **By non fulfillment of condition precedent:** Where the acceptor fails to fulfill a condition precedent to acceptance the proposal gets revoked. This principle is laid down in Section 6 of the Act. The Offeror for instance may impose certain conditions such as executing a certain document or depositing certain amount as earnest money. Failure to satisfy any condition will result in lapse of the proposal. As stated earlier „condition precedent' to acceptance prevents an obligation from coming into existence until the condition is satisfied. Suppose where „A' proposes to sell his house to be „B' for Rs. 5 lakhs provided „B' leases his land to „A'. If „B' refuses to lease the land, the Offer of „A' is revoked automatically.
- (iv) **By death or insanity:** Death or insanity of the proposer would result in automatic revocation of the proposal but only if the fact of death or insanity comes to the knowledge of the acceptor.
- (v) By counter Offer
- (vi) By the non acceptance of the Offer according to the prescribed or usual mode
- (vii) By subsequent illegality
- (viii) By cross offer
- (ix) By destruction of subject matter.

(1M for each correct 7 points)

Answer 6:

- (a) **Misrepresentation:** According to Section 18 of the Indian Contract Act, 1872, misrepresentation is present:
1. When a person positively asserts that a fact is true when his information does not warrant it to be so, though he believes it to be true. {1½ M}
 2. When there is any breach of duty by a person, which brings an advantage to the person committing it by misleading another to his prejudice. {1½ M}
 3. When a party causes, however, innocently, the other party to the agreement to make a mistake as to the substance of the thing which is the subject of the agreement. {1½ M}
- The aggrieved party, in case of misrepresentation by the other party, can avoid or rescind the contract [Section 19, Indian Contract Act, 1872]. The aggrieved party loses the right to rescind the contract if he, after becoming aware of the misrepresentation, takes a benefit under the contract or in some way affirms it. Accordingly in the given case, Suraj could not rescind the contract, as his acceptance to the offer of Sohan to bear 40% of the cost of repairs impliedly amounts to final acceptance of the sale [Long v. Lloyd, (1958)]. {1½ M}

Answer:

- (b) **Doctrine of Constructive Notice:** Section 399 of the Companies Act, 2013 provides that any person can inspect by electronic means any document kept by the Registrar, or make a record of the same, or get a copy or extracts of any document, including certificate of incorporation of any company, on payment of prescribed fees. The memorandum and articles of association of a company when registered with Registrar of Companies, become public documents, and they are available for inspection to any person, on the payment of a nominal fees. In other words, Section 399 confers the right of inspection to all. It is, therefore, the duty of every person dealing with a company to inspect its documents and make sure that his contract is in conformity with their provisions but whether a person reads them or not, it will be presumed that he knows the contents of the documents. This kind of presumed/implied notice is called constructive notice. {2½ M}
- By constructive notice is meant:**
- (i) Whether a person reads the documents or not, he is presumed to have knowledge of the contents of the documents,
He is not only presumed to have read the documents but also understood them in their true perspective, and
 - (ii) Every person dealing with the company not only has the constructive notice of the memorandum and articles, but also of all the other related documents, such as Special Resolutions etc., which are required to be registered with the Registrar. {2½ M}
- Thus, if a person enters into a contract which is beyond the powers of the company as defined in the memorandum, or outside the authority of directors as per memorandum or articles, he cannot acquire any rights under the contract against the company.
- Exception:** Doctrine of indoor management. 1M

PAPER : BUSINESS CORRESPONDENCE & REPORTING

The Question Paper comprises of 5 questions of 10 marks each.
Question No. 7 is compulsory. Out of questions 8 to 11, attempt any three.

SECTION-B : BUSINESS CORRESPONDENCE & REPORTING (40 MARKS)**Answer 7:**

- (a) (1) Option c
(2) Option d
(3) Option b
(4) Option a
(5) Option c
- } {1 Mark Each}

Answer:

- (b) Playing of National anthem in movie halls (Heading) } {1 M}
- (I) The Court's order withdrawn
- (II) Court makes it optional; cannot have a mandate on the issue
- (III) Consequences
- (a) Govt intervenes; calls for a ministerial discussion
- (b) Proposes a hold on the court's judicial rule
- (c) Suggest changes in the Prevention of Insults to National Honour Act
- } {1 M}
- (IV) Justice Chadrachud suggests, no end to 'moral policing'
- (V) Consequences
- (a) Violence amongst people.
- (b) Harassment of public.
- (c) Disrespect in the society.
- } {1 M}

Key Used:

- (1) Order= order
- (2) Withdrawn= withdrawn
- (3) Makes= makes
- (4) Cannot= cannot
- (5) Govt= government
- (6) Ministerial=ministerial
- (7) Discussion=discussion
- (8) Proposes=proposes
- (9) Judicial=judicial
- (10) Changes= changes
- (11) Prevention=prevention
- (12) National= national
- (13) Consequences= consequences
- (14) Violence=violence
- (15) Amongst= amongst
- (16) People= people
- (17) Harassment=harassment
- (18) Public=public
- (19) Disrespect=disrespect
- (20) Society= society
- } {Any 5 Keys 2 Marks}

Answer 8:

- (a) Cultural barriers: Understanding cultural aspects of communication refers to having knowledge of different cultures in order to communicate effectively with cross culture people. Understanding various cultures in this era of globalization is an absolute necessity as the existence of cultural differences between people from various countries, regions tribes and, religions, where words and symbols may be interpreted differently can result in communication barriers and miscommunications. Multinational companies offer special courses and documents to familiarize their staff with the culture of the country where they are based for work. {1 M}
- In addition, every organization too has its own work culture. In fact, departments within the same company may also differ in their expectations, norms and ideologies. This can impact intra and inter organizational communication. {1 M}
- The same principle applies to families and family groups, where people have different expectations according to their background and traditions leading to friction and misunderstanding. A very simple example is of the way food is served by a member of a family. It can be the cause of appreciation or displeasure. {1 M}

Answer:

- (b) (i) The Principal was approached by the students for their rights. {1 Mark Each}
- (ii) Studies should be given first priority.

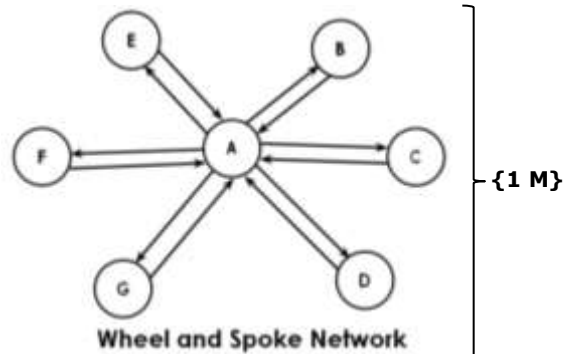
Answer:

- (c) (i) Tabular Agenda:

Time	Topic	Attendees	Speaker	Duration	
9:30 am	Introduction and Welcome note	<ul style="list-style-type: none"> MD Chief Operating Officer Head (Admin) Sr. Manager HR Manager HR Executives 	Head HR	5 minutes	{1 M}
9:35 am	<ul style="list-style-type: none"> Staff Matters Fresh Appointments and interns in Sales & Marketing Transfers Promotions Training Approvals Study Leave Approvals Cash Rewards 	-do-	Sr. Manager HR	30 mins	{1 M}
10:05 am	Presentation / Discussion on Staff Motivation Programmes	-do-	Chief Operating Officer	15 mins	{1 M}
10:20 am	Tea/Breakfast	Tea/Breakfast		40 mins	
11:00 am	Circulation roster for housekeeping staff/ peons	<ul style="list-style-type: none"> Chief Operating Officer Head (Admin) Sr. Manager HR Manager HR Executives 	Head(Admin)	15 mins	{1 M}
11:15 am	Open House	-do-	All members	20 mins	
11:35 am	Vote of Thanks	All participants	Chief Operating Officer	5 mins	{1 M}

Answer 9:**(a)** Wheel & Spoke Network:

This is an organization where there is a single controlling authority who gives instructions and orders to all employees working under him/her. All employees get instructions directly from the leader and report back to him/her. It is direct and efficient for a small business/company, but inappropriate way of communication in a large organization with many people. A company with many employees needs more decision makers or nothing would get done. Can a large conglomerate like Reliance or Tata Sons have one person making decisions? Moreover, if the central figure is not competent, the entire business will suffer.

**Answer:**

- (b)** (i) Teacher appreciated the girl that she had been working hard
 (ii) Uncle complained that he was unwell.

Answer:

(c) (i) Aditya Narula Resume hints
 Following is a standard format, with subheadings for fresher like Aditya:

- Name and contact details
- Objective Summary
- Academic Qualifications and Achievements
- Co-curricular Achievements
- Training Programs attended/completed
- Strengths
- Interests/Hobbies
- Declaration
- Signature

{1/2
For
Mark
Each
Point}

Answer 10:

(a) Several aspects must keep in mind while interacting with others for our communication to convey the intended message.

1. Clear: Any spoken or written communication should state the purpose of message clearly. The language should be simple. Sentences ought to be short as the core message is lost in long, convoluted sentences. Each idea or point must be explained in a separate bulleted points or paragraphs. Make it easy for the reader to grasp the intent of the communiqué.
2. Concise: Brevity is the essence of business communication. No one has the time to read long drawn out essays. Besides, the core content is lost in elaborate details. Avoid using too many irrelevant words or adjectives, for example, 'you see', 'I mean to say', etc. Ensure that there are no repetitions.

{Any
3 Points,
Each
1 Mark}

3. Concrete: The content of your communiqué should be tangible. Base it on facts and figures. Abstract ideas and thoughts are liable to misinterpretation. Make sure that there is just sufficient detail to support your case/ argument and bring focus to the main message.
4. Coherent: Coherence in writing and speech refers to the logical bridge between words, sentences, and paragraphs. Main ideas and meaning can be difficult for the reader to follow if the writer jumps from one idea to another and uses contradictory words to express himself. The key to coherence is sequentially organized and logically presented information which is easily understood. All content under the topic should be relevant, interconnected and present information in a flow.
5. Complete: A complete communication conveys all facts and information required by the recipient. It keeps in mind the receiver's intellect and attitude and conveys the message accordingly. A complete communication helps in building the company's reputation, aids in better decision making as all relevant and required information is available with the receiver.
6. Courteous: Courtesy implies that the sender is polite, considerate, respectful, open and honest with the receiver. The sender of the message takes into consideration the viewpoints and feelings of the receiver of the message. Make sure nothing offensive or with hidden negative tone is included.
7. Listening for Understanding: We are bombarded by noise and sound in all our waking hours. We 'hear' conversations, news, gossip and many other forms of speech all the time. However, most of it is not listened to carefully and therefore, not understood, partially understood or misunderstood. A good listener does not only listen to the spoken words, but observes carefully the nonverbal cues to understand the complete message. He absorbs the given information, processes it, understands its context and meaning and to form an accurate, reasoned, intelligent response.
The listener has to be objective, practical and in control of his emotions. Often the understanding of a listener is coloured by his own emotions, judgments, opinions, and reactions to what is being said.
While listening for understanding, we focus on the individual and his agenda. A perceptive listener is able to satisfy a customer and suggest solutions as per the needs of the client.
8. Focus and Attention: Everyday work environment has multiple activities going on simultaneously. The ringing of the phone, an incoming email, or a number of tasks requiring your attention, anxiety related to work, emotional distress etc. can distract you. Such distractions are detrimental to the communication process with an individual or a group of people. You may overlook or completely miss important points or cues in the interaction. Thus, keeping your focus and attention during the communiqué is imperative for effective communication.
9. Emotional Awareness and Control: "Human behavior is not under the sole control of emotion or deliberation but results from the interaction of these two processes," Loewenstein said.
However, emotions play a major role in our interactions with other people. They are a powerful force that affect our perception of reality regardless of how hard we try to be unbiased. In fact, intense emotions can undermine a person's capacity for rational decision-making, even when the individual is aware of the need to make careful decisions.

Answer:

- (b) (i) Rajat is eating the cake.
(ii) Women led a conservative lifestyle in olden days } {1 Mark Each}

Answer:**(c)** Writing Formal Letters and Official Communication

(i) XYZ Electronics New Delhi.

Date: 20th Dec, 2018Manager, Customer Care XYZ Electronics
New Delhi.

Dear Sir/Ma'am

{2 M}

Sub: Complaint regarding the printer model CanXR 0987, Invoice No: Prin/CanXR/6 -12- 2018 {1 M}

This is regarding the printer that I bought on Dec 6, 2018. After installation, it worked fine for a few days. But lately every time a print command is given, it paper gets stuck and the scanning/photocopying option is not working at all. Please send your executive to examine the problem and rectify it at the earliest or get it replaced. I had bought the equipment to take print-outs at home for an urgent project work submission.

{2 M}

I request you to look into the problem urgently and send the expert tomorrow evening by 7PM. You can send the name and mobile number of the executive at my number XXXXXXXXXX. Looking forward to a prompt response.

(Signed) ABC

Answer 11:

- (a)** (i) Option a
(ii) Option d
(iii) Option b

{1 Mark Each}

Answer:

- (b)** (i) Option a
(ii) Option d

{1 Mark Each}

Answer:**(c)** (i) Hints:

- Causes of obesity
 - Erratic eating habits
 - Erratic sleeping pattern
 - Stress due to competition in studies
 - Junk food consumption
 - Not having balanced diet
 - Sedentary lifestyles
 - Lack of proper exercise

(Any 5 Points Each 1/2 Mark)

- Remedies
 - Follow proper regimen
 - Having home cooked food at regular intervals
 - Avoiding fatty foods and sugar rich drinks
 - Including fruits and vegetables in diet
 - Play a sport
 - Regular walks

(Any 5 Points Each 1/2 Mark)