

**PRELIMINARY EXAMINATION:  
SOLUTION : LAW, ETHICS & COMMUNICATION**

**Q.1 (a) MODES OF DISCHARGE OF A SURETY**

**1. BY REVOCATION : (U/s130)**

- (a) **By notice (Sec. 130):** A specific guarantee may be revoked by giving a notice. This is possible in case of prospective guarantee. In case of continuing guarantee, notice shall be effective only for future transactions.
- (b) **By death (Sec. 131) :** In case of specific guarantee, if the liability has already accrued, the estate of the deceased surety if any will be liable, whereas in case of continuing guarantee, death discharges future transactions. For past transactions, the estate if any will be held liable.
- (c) **By novation :** The original contract will get discharged.

**2. BY CONDUCT OF CREDITOR :**

- (a) **By variance in terms of contract (Sec. 133):** Any variations in the terms without the consent of the surety, discharges the surety as to transactions subsequent to the variance.

**Example :** Raju employs Nitin as a clerk on monthly salary. Veena stands surety for Nitin's duly accounting for all sum received as a clerk. Raju and Nitin subsequently change from monthly salary to commission without Veena's consent. Veena will be discharged.

- (b) **By release of the principal debtor (Sec. 134) :** In case the creditor, discharges the principal debtor or by any act or omission of the creditor, the principal debtor gets discharged, then the surety will also be discharged.

**Example :** Raju employs Nitin to build a house within a fixed time period. Veena stands guarantor for performance. However, the raw materials are to be supplied by Raju. If Raju omits to supply the raw materials, Veena is discharged.

- (c) **By arrangement (Sec. 135):** A contract between the creditor and principal debtor whereby the creditor agrees to extend time or promises not to sue him (principal debtor), discharges the surety unless the surety consents.

However, the surety will not be discharged when :

- (i) the creditor agrees with a third party, to extend time to the principal debtor.
- (ii) the creditor forbears to sue or enforce other remedies against the principal debtor.
- (iii) where there are co-sureties, release of one co-surety will not discharge others, nor will it free the surety so released from his responsibility to other sureties.
- (d) **Creditor's act or omission impairing surety's eventual remedy (Sec. 139):** Where the act of omission affects surety's remedy, surety being innocent will be discharged.

**Example :** Raju employs Nitin as an accountant. Veena stands guarantee for the money collected by Nitin. However, Raju was required to check the accounts monthly. Raju checks after 6 months and finds there is misappropriation. Veena is discharged on account of omission.

- (e) **Loss of security (Sec. 141):** A surety on discharging the liability of the creditor, will step into the shoes of the creditor and will also get vested with all the security the creditor had. If the creditor parts or loses the security, the liability of the surety will be reduced to the extent to loss of security.

**Example :** Raju advances a loan of ₹ 50,000 to Nitin. Veena stands a guarantor for the repayment. Nitin also gives jewels worth ₹ 20,000 as security. Raju without the consent of Veena, returns the jewels to Nitin. If Nitin fails to repay the amount, Veena will be liable to repay only ₹ 30,000 and not ₹ 50,000.

### 3. BY IN VALIDATION OF CONTRACT :

- (a) **Guarantee obtained by misrepresentation :** Any guarantee which has been obtained by misrepresentation made by a creditor or with his knowledge and assent, concerning a material fact is invalid.
- (b) **Guarantee obtained by concealment :** Any guarantee obtained by concealing material circumstances or facts is invalid.
- (c) **Failure of co-surety to join a surety :** When a person agrees to be a surety provided somebody joins as a co-surety, the guarantee is invalid unless some person joins.

#### Q.1 (b) AGM Airlines Limited

Day of holding the AGM	7 <sup>th</sup> November, 2005
Day of dispatch of notice	16 <sup>th</sup> October, 2005
Days to be excluded	<ul style="list-style-type: none"> <li>▪ Day of holding the AGM (i.e., 7<sup>th</sup> November, 2005)</li> <li>▪ Day of dispatch of notice (16<sup>th</sup> October, 2005)</li> <li>▪ 2 days for service of notice (i.e. 17<sup>th</sup> and 18<sup>th</sup> October, 2005).</li> </ul>
Number of days' notice given	19 days.
Number of days notice required u/s 101	21 days
(i) AGM has not been validly called	- since 21 day's notice of the AGM has not been given to the members.
(ii) The notice is short	- by 2 days.
(iii) The shortfall may be condoned	- if consent of 95% the members entitled to vote in the AGM is obtained writing.

(c) Write a note on Ethical Dilemma. (Pg. No. 3)

(d) Oral communication is characterized by seven Cs- candidness, clarity, completeness, conciseness, concreteness, correctness and courtesy. Explain. (Pg. No. 60)

Q.2. (a) 1. **Articles of Association:** 'Articles' means the articles of associations of a company as altered from time to time or applied in pursuance of any previous company law or of this Act.

The articles of association of a company are its rules and regulations, which are framed to manage its internal affairs. Just as the memorandum contains the fundamental conditions upon which along the company is allowed to be incorporated, so also the articles are the internal regulations of the company (Guinness vs. Land Corporation of Ireland 22 Ch. D. 349, 381). These general functions of the articles have been aptly summed up by Lord Cairns in Ashbury Carriage Co. vs. Riche as follows:

"The articles play a part subsidiary to memorandum of association. They accept the memorandum as the charter of incorporation, and so accepting it the articles

proceed to define the duties, the rights and powers of the governing body as between themselves and the company and the mode and form in which the business of the company is to be carried on, and the mode and form in which changes in the internal regulation of the company may from time to time be made.”

The document containing the articles of association of a company is a business document; hence it has to be construed strictly. It regulates domestic management of a company and creates certain rights and obligations between the members and the company [S.S. Rajkumar vs. Perfect Castings (P) Ltd. [1968] 38 Camp. Case 187].

The articles of association are in fact the bye-laws of the company according to which director and other officers are required to perform their functions as regards the management of the company, its accounts and audit. It is important therefore that the auditor should study them and, while doing so he should note the provisions therein in respect of relevant matters.

Section 5 of the Companies Act, 2013 seeks to provide the contents and model of articles of association. The section lays the following law-

- (1) **Contains regulations:** The articles of a company shall contain the regulations for management of the company.
- (2) **Inclusion of matters:** The articles shall also contain such matters, as are prescribed under the rules. However, a company may also include such additional matters in its articles as may be considered necessary for its management.
- (3) **Contain provisions for Entrenchment:** The articles may contain provisions for entrenchment (to protect something) to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with.
- (4) **Manner of inclusion of the Entrenchment provision:** The provisions for entrenchment shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.
- (5) **Notice to the registrar of the entrenchment provision:** Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.
- (6) **Forms of articles:** The articles of a company shall be in respective forms specified in Tables, F, G, H, I and J in Schedule I as may be applicable to such company.
- (7) **Model articles:** A company may adopt all or any of the regulations contained in the model articles applicable to such company.
- (8) **Company registered after the commencement of this Act:** In case of any company, which is registered after the commencement of this Act, in so far as the registered articles of such company do not exclude or modify the regulations contained in the model articles applicable to such company, those regulations shall, so far as applicable, be the regulations of that company in the same manner and to the extent as if they were contained in the duly registered articles of the company.
- (9) **Section not apply on company registered under any previous company law:** Nothing in this section shall apply to the articles of a company registered under any previous company law, unless amended under this Act.

- (b) What are the major characteristics of good corporate governance in any organisation? (Pg. No. 10)
- (c) Define Communication and explain the importance of communication. (Pg. No. 56)

**Q.3 (a) Procedure For The Payment Of Gratuity as initiated by Employee**

<b>Who is required to make Application?</b>	<ol style="list-style-type: none"> <li>1. An employee who is eligible for payment of gratuity.</li> <li>2. Any person authorised in writing by such employee.</li> <li>3. Nominee (in case nomination exists).</li> <li>4. Legal heir (in case of no nomination)</li> </ol>
<b>To whom Application is to be made</b>	Application shall be made to employer.
<b>Time Limit for Application</b>	<ul style="list-style-type: none"> <li>• By Nominee within 30 days from the date gratuity becomes payable</li> </ul>
	<ul style="list-style-type: none"> <li>• By Legal heir within 1 year from the date gratuity becomes payable</li> </ul>
	<ul style="list-style-type: none"> <li>• By Employee/ authorised person within 30 days from the date gratuity becomes payable.</li> </ul>
	<b>Note</b> : Employee may apply before 30 days of date of superannuation or retirement if such date is known in advance.
<b>Manner of Making Application</b>	The application shall be made in writing.
<b>Form of Application</b>	<b>For Nominee</b> - Form J <b>For Legal heirs</b> – Form 'K' <b>For Employee or His Authorised Person</b> - Form 'I'
<b>Content of Application</b>	The application shall require the employer to pay the gratuity to the employee.

**Notice For Payment Of Gratuity [Rule 8]** : Time Limit within which Notice must be issued

<b>If the claim for gratuity is found admissible on verification</b>	Within 15 days of receipt of application, the employer must issue a notice in <b>Form 'L'</b> to the applicant employee, nominee or legal heir, as the case may be, specifying the amount of gratuity payable and fixing a date, not being later than the 30th day after the date of receipt of the application, for payment thereof, or
<b>If the claim for gratuity is not found admissible</b>	Within 15 days of receipt of application, the employer must issue a notice in <b>Form 'M'</b> to the applicant employee, Nominee Or legal heir, as the case may Be Specifying the reasons why the claim For gratuity is not considered admissible along with a copy endorsed to the controlling authority.

**Employer's Duty to deposit Gratuity with Controlling Authority [Sec. 7(4)(a)] :**

The employer shall deposit with the controlling authority such amount as he admits to be payable by him as gratuity.

**Right to make Application to Controlling Authority [Sec. 7(4)(b)] :** Where there is a dispute the employer or employee or any other person raising the dispute may make an application to the controlling authority for deciding the dispute.

**Power of Controlling Authority to decide the dispute etc. [Sec. 7(4)(c)(d)(e)]**

The controlling authority shall, after due inquiry and after giving the parties to the dispute a reasonable opportunity of being heard, determine the matter or matters in dispute and if, as a result of such inquiry any amount is found to be payable to the employee, the controlling authority shall direct the employer to pay such amount or, as the case may be, such amount as reduced by the amount already deposited by the Employer to the Employee.

(b) Explain the importance of ethical behavior at the workplace. **(Pg. No. 23)**

(c) Elaborate guidelines for active listening. **(Pg. No. 84)**

**Q.4. (a) Section – 4 (4) :** A person may make an application in form INC – I to the registrar for the reservation of name for a proposed company along with fees.

Such an application shall be for

- (a) Name of the proposed company.
- (b) Change of Name.

**Section – 4(5) :**

- (i) Upon receipt of an application in form INC – I ROC shall Reserve the name and the promoters shall within 60 days of filing of form INC – I shall Incorporate the company with the reserved name.
- (ii) Where after reservation of name under clause (i) if it is found that name was applied by furnishing a wrong or Incorrect information then.
  - (a) If the company is not yet incorporated, then the reserved name shall be cancelled and person making application shall be punished with a penalty of ₹ 1 lakh.
  - (b) If the company has been incorporated within the reserved name then ROC May
    - (1) Direct the company change its name with period of 3 months.
    - (2) Strike off the name from registrar.
    - (3) Order for winding up.

**Section – 4 (1) :**

If it is private Limited Company then the word “Private Limited” must be specified in the name and if public company then the word “Limited” must be specified in the name.

**Section 4(2) :**

While sending the names in form INC – I following rules shall be complied with.

- (a) Proposed name shall not be Identical with or resemble too nearly with the name of the existing company.
- (b) It should not be an undesirable name, According to CG, undesirable names shall include :
  - (1) Misleading Name

- (2) Unethical Name  
 (3) Such a Name shall constitute an offence under any law.  
 (c) It shall not be name as specified under the list of names given in the Emblems and names Act, 1950.  
 (d) Abbreviated Names based on the Names of the promoter or Directors Representing 1<sup>st</sup> alphabet is Not Permissible.

**Section – 4 (3) :**

Further the proposed Name shall not draw an Expression that the proposed company is under the patronage of Central Government or State Government unless prior approval is obtained by Central Government.

- (b) What is meant by 'Environmental Ethics'? How does its non-adoption lead to 3 Ps Viz., Polluter, Pays and Principles? Explain. **(Pg. No. 36)**
- (c) Suggest guidelines to handle communication ethics dilemmas. **(Pg. No. 103)**

**Q.5. (a)**

Nominal value of ESC of ABC Pvt. Ltd.	- is ₹ 80,00,000.
Nominal value of ESC held by PQR Pvt. Ltd. in ABC Pvt. Ltd.	- is ₹ 30,00,000
Nominal value of ESC held by MNO Pvt. Ltd. in ABC Pvt. Ltd.	- is ₹ 15,00,000
Nominal value of ESC held by UMC Pvt. Ltd. in ABC Pvt. Ltd.	- is ₹ 45,00,000, since shares held by the Subsidiary companies shall be deemed to be held by the Holding company.
ABC Pvt. Ltd. is a subsidiary of UMC Pvt. Ltd.	- Since UMC Pvt. Ltd. holds more than half in nominal value of ESC of ABC Pvt. Ltd.
Answer would remain same	- even if UMC Pvt. Ltd. controls the composition of Board of Directors of ABC Pvt. Ltd.

- Q.5. (b) Voting by Electronic Means:** According to section 108 of the Companies Act, 2013, the Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

According to the provided rules on the voting through electronic means:

- (1) Every listed company or a company having not less than one thousand shareholders, shall provide to its members facility to exercise their right to vote at general meetings by electronic means.
- (2) A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system in accordance with the provisions of this rule.

The expressions "voting by electronic means" or "electronic voting system" means a 'secured system' based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, such that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralized server with adequate 'cyber security';

The expression “secured system” means computer hardware, software, and procedure that –

- (a) are reasonably secure from unauthorized access and misuse;
- (b) provide a reasonable level of reliability and correct operation;
- (c) are reasonably suited to performing the intended functions; and
- (d) adhere to generally accepted security procedures.

Whereas, the expression “Cyber security” means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

- (3) A company which opts to provide the facility to its members to exercise their votes at any general meeting by electronic voting system shall follow the following procedure, namely;
- (i) the notices of the meeting shall be sent to all the members, auditors of the company, or directors either -
    - (a) by registered post or speed post ; or
    - (b) through electronic means like registered e-mail id;
    - (c) through courier service;
  - (ii) the notice shall also be placed on the website of the company, if any and of the agency forthwith after it is sent to the members;
  - (iii) the notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic means;
  - (iv) the notice shall clearly indicate the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner;
  - (v) the company shall cause an advertisement to be published, not less than five days before the date of beginning of the voting period.
  - (vi) the e-voting shall remain open for not less than one day and not more than three days:  
 Provided that in all such cases, such voting period shall be completed three days prior to the date of the general meeting;
  - (vii) during the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically:  
**Provided** that once the vote on a resolution is cast by the shareholder, he shall not be allowed to change it subsequently.
  - (viii) at the end of the voting period, the portal where votes are cast shall forthwith be blocked.
  - (ix) the Board of directors shall appoint one scrutinizer, who may be chartered Accountant in practice, Cost Accountant in practice, or Company Secretary in ractice or an advocate, but not in employment of the company and who, in the opinion of the Board can scrutinize the e-voting process in a fair and transparent manner:  
**Provided** that the scrutinizer so appointed may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system;
  - (x) the scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority;

- (xi) the scrutinizer shall, within a period of not exceeding three working days from the date of conclusion of e-voting period, unblock the votes in the presence of at least two witnesses not in the employment of the company and make a scrutinizer's report of the votes cast in favour or against, if any, forthwith to the Chairman;
- (xii) the scrutinizer shall maintain a register either manually or electronically to record the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights;
- (xiii) the register and all other papers relating to electronic voting shall remain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the register and other related papers to the company.
- (xiv) the results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency within two days of passing of the resolution at the relevant general meeting of members;
- (xv) subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant general meeting of members.

(c) Draft a notice for calling statutory meeting of the company.

(Pg. No. 115)

**Q.6. (a) (i) Doctrines of Constructive Notice :** In consequences of the registration of the memorandum and articles of association of the company with the Registrar of Companies, a person dealing with the company is deemed to have constructive notice of their contents. This is because these documents are construed as "public document" under Section 399 of the Companies Act, 2013. Accordingly if a person deals with a company in a manner incompatible with the provisions of the aforesaid documents or enters into transaction, which is ultra vires to these documents, he must do so at his peril. If someone supplies goods to a company in which it cannot deal according to its objects clause, he will not be able to recover the price from the company. Suppose the articles provide that a bill of exchange must be signed by two directors, if the bill is actually signed by one director only the holder thereof cannot claim payment thereon. However, the doctrine of constructive notice is not a positive one but a negative one like that of estoppel of which it forms parts. It operates only against the person who has been dealing with the company but not against the company itself; consequently he is prevented from alleging that he did not know that the constitution of the company rendered a particular act or a particular delegation of authority ultra vires. Thus, the doctrine is a "cloud" for the strangers.

**Q.6. (a) (ii)**

Non-disclosure of profit of ₹ 6 lakhs amount to breach of duty by Mr. Singh.	<ul style="list-style-type: none"> <li>- Since Mr. Singh, without disclosing all material facts and without obtaining the consent of Mr. Ahuja, dealt in the business of agency on his own account (Sec. 215);</li> <li>- Since Mr. Singh made a secret profit (Sec. 216)</li> </ul>
Rights of Mr. Ahuja	- Mr. Ahuja is entitled to repudiate the contract or to claim from Mr. Singh ₹ 6 lakhs.



**Q.6. (b) Appeal to EPFAT : Who can constitute EPF Appellate Tribunal?** The Central Government may, by notification in the Official Gazette, constitute one or more 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 areas specified in the notification.

**Composition of Tribunal:** A Tribunal shall consist of 1 person only to be appointed by the Central Government.

A person shall be qualified for appointment as the Presiding Officer of a Tribunal only, if he is, or has been, or is qualified to be a Judge of a High Court; or a District Judge.

**Powers of Tribunal (Section 7J) :**

- (a) A Tribunal shall have power to regulate its own procedure in all matters arising out of the exercise of its powers or of the discharge of its functions including the places at which the Tribunal shall have its sittings.
- (b) A Tribunal shall, have all the powers which are vested in the officers referred to in Section 7A.
- (c) Any proceeding before the Tribunal shall be deemed to be a judicial proceeding.
- (d) The Tribunal shall be deemed to be a Civil Court.

**Q.7. Answers any four of the following : (16 marks)**

**(a) Global Depository Receipts:** Section 41 of the Companies Act, 2013 is a newly added provision according to which company may issue global depository receipts to transact business with in a depository mode in any foreign country. The law says that: A company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country. The Companies **(Issue of Global Depository Receipts)** Rules, 2014, lays the conditions and the manner in which a company may issue depository receipts in a foreign country.

**Eligibility to issue depository receipts:** - A company may issue depository receipts provided it is eligible to do so in terms of the Scheme and relevant provisions of the Foreign Exchange Management Rules and Regulations.

"Scheme" means the Foreign Currency Convertible Bonds and Ordinary Shares (Through Depository Receipt Mechanism) Scheme, 1993 or any modification or re-enactment thereof.

**Conditions for issue of depository receipts:**

- (1) **Passing of resolution:** The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.
- (2) **Approval of shareholders:** The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting:
- (3) **Depository receipts shall be issued by an overseas depository bank:** The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank
- (4) **Compliance with all the provisions, schemes, regulations etc.:** The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.
- (5) **Compliance report to be placed at the meeting:** The company shall appoint a merchant banker or a practising chartered accountant or a practising cost

accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts.

**(b) DEEMED PROSPECTUS :**

**(a) Meaning of Deemed Prospectus : (Section – 25) of CA, 2013**

Where the company allots or agrees to allot any shares or debentures to issuing house and others with a view to such shares being offered to public for sale, any documents by which the offer for sale to public is made shall be deemed to be a prospectus issue by a company and all provisions applicable to prospectus shall apply with specified modification. [Section 25(1)]

**(b) Presumption as to Deemed Prospectus :** Unless contrary is proved, it shall be presumed that an allotment or an agreement to allot shares or debentures to the issuing houses was made with a view to offer them to public if it is shown—

- (i) that the shares were offered to the public for sale within 6 months after they were allotted or agreed to be allotted to issuing house, or
- (ii) that the whole consideration in respect of shares/debentures had not been received by the Company. [Section 25(2)]

**(c) Contents of Deemed Prospectus :**

- (i) The deemed prospectus issued by an issuing house u/s 64(1) must state the following matters the matters required by Section 56.
- (ii) The net amount of consideration received or to be received by the company in respect of these shares or debentures.
- (iii) The place and time at which the contract of allotment may be inspected. [Section 25(3)]

- (c)** What reasons force a marketing executive to adopt ethical practices in marketing? Explain. **(Pg. No. 38)**
- (d)** 'Consumer for personal use and consumer for commercial use are synonymous'. Comment. **(Pg. No. 41)**
- (e)** What are the merits and demerits of grape-vine form of Communication? **(Pg. No. 63)**

