

PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Question 1

- (a) PM Ltd., contracts with Gupta Traders to make and deliver certain machinery to them by 30.6.2014 for ₹ 21.50 Lakhs. Due to labour strike, PM Ltd. could not manufacture and deliver the machinery to Gupta Traders. Later Gupta Traders procured the machinery from another manufacturer for ₹ 22.75 lakhs. Gupta Traders was also prevented from performing a contract which it had made with Zenith Traders at the time of their contract with PM Ltd. and were compelled to pay compensation for breach of contract. Advise Gupta Traders the amount of compensation which it can claim from PM Ltd., referring to the legal provisions of the Indian Contract Act, 1872. (5 Marks)
- (b) ABC Company Ltd. is holding 46% of total equity shares in SVS Company Ltd. The Board of Directors of SVS Company Ltd. (incorporated on January 1st 2014) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to ABC Company Ltd. on the ground that it was already holding a high percentage of the total number of shares already issued, in SVS Company Ltd. The Articles of Association of SVS Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1st 2014 new shares were offered to all the shareholders except ABC Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SVS Company Limited of not offering any further shares to ABC Company Limited. (5 Marks)
- (c) Explain the term "Virtue Approach" as one of the sources of Ethical Standards? (5 Marks)
- (d) What is meant by corporate culture? Enumerate the important elements of corporate culture? (5 Marks)

Answer

- (a) Section 73 of the Indian Contract Act, 1872 provides for compensation for loss or damage caused by breach of contract. According to it, when a contract has been broken, the party who suffers by such breach is entitled to receive from the party who has broken the contract, compensation for any loss or damage caused to him thereby which naturally arose in the usual course of things from such breach or which the parties knew when they made the contract, to be likely to result from the breach of it. Such compensation is not given for any remote and indirect loss or damage sustained by reason of the breach. It is further provided in the explanation to the section that in estimating the loss or damage from a breach of contract, the means which existed of remedying the

inconvenience caused by the non-performance of the contract must be taken into account.

Applying the above principle of law to the given case, PM Ltd. is obliged to compensate for the loss of ₹ 1.25 lakhs (i.e. ₹ 22.75 lakhs – ₹ 21.50 lakhs) which had naturally arisen due to default in performing the contract by the specified date.

Regarding the amount of compensation which Gupta Traders were compelled to make to Zenith Traders, it depends upon the fact whether PM Ltd. knew about the contract of Gupta Traders for supply of the contracted machinery to Zenith Traders on the specified date. If so, PM Ltd. is also obliged to reimburse the compensation which Gupta Traders had to pay to Zenith Traders for breach of contract. Otherwise PM Ltd. is not liable for that.

- (b) The legal issues in the present problem in the question is covered under Section 62 (1) of the Companies Act, 2013 and facts stated pertains to the case *Gas Meter Co. Ltd. Vs Diaphragm & General leather Co. Ltd.*

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. The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

Further in case of *Gas Meter Co. Ltd. Vs Diaphragm & General leather Co. Ltd.*, where the facts of the case were similar to those given in the present case, the articles of Diaphragm & General leather Co. Ltd. provided that the new shares should first be offered to the existing shareholders. However, the company offered new shares to all shareholders excepting Gas Co. Ltd., which held its controlling shares. It was held that Diaphragm & General leather Co. Ltd. had no legal authority under the Companies Act to do so.

Therefore, in the given case, SVS Company Ltd.'s decision not to offer any further shares to ABC Company Ltd. on the ground that ABC Company Ltd. already held a high percentage of shareholding in SVS Company Ltd., is not valid for the reason that it is violative of the provisions of Section 62 (1) (a) of the Companies Act, 2013 as also substantiated by the ruling in the above referred case.

- (c) Many philosophers and ethicists have suggested five sources of ethical standards. They are Utilitarian Approach, Rights Approach, Fairness or Justice Approach, Common Good Approach and Virtue Approach.

The Virtue Approach is a very ancient approach to ethics. It is that ethical actions which ought to be consistent with certain ideal virtues that provide for the full development of our humanity. These virtues are dispositions and habits that enable us to act according to the highest potential of our character and on behalf of values like truth and beauty.

Honesty, courage, compassion, generosity, tolerance, love, fidelity, integrity, fairness, self-control, and prudence are all examples of virtues. Virtue ethics asks of any action, "What kind of person will I become if I do this?" or "Is this action consistent with my acting at my best?"

- (d) **Corporate Culture:** Corporate Culture is basically described as the personality of an organization, or simply as "how things are done around here." It guides how employees think, act and feel. Corporate culture is a broad term used to define the unique personality or character of an organization, and includes such elements as core values and beliefs, corporate ethics, and rules of behaviour norms that are shared by people and groups in an organization and that control the way they interact with each other and with stakeholders outside the organization.

Elements of Corporate Culture: A number of elements that can be used to describe or influence Corporate/Organization Culture are:

- **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.

Question 2

- (a) (i) *During the financial year 2015-16 Mr. Mohan who was a temporary employee in Golden Products Limited and was drawing a salary of ₹ 6,000 per month. On the basis of charges of violent behaviour within the premises of the company, he was prevented from working in the company for 60 days pending certain inquiry. Since there was no adverse findings against him, he was reinstated in service with back salary. He worked for the remaining ten months in that financial year and thereafter resigned from the service. Afterwards, when bonus was paid to other employees,*

the company refused to pay bonus to Mr. Mohan. Decide, whether Mr. Mohan will be entitled to bonus under the provisions of the Payments of Bonus Act, 1965?

(4 Marks)

(ii) Explain the provisions of the Payment of Gratuity Act, 1972 in respect of forfeiture of amount of gratuity payable to an employee. Also explain how the gratuity payable to a disabled employee is calculated.

(4 Marks)

(b) "Certain fundamental principles need to be adhered with for behaving in an ethical manner." Explain the Principle of Integrity and the Principle of Objectivity in this respect.

(4 Marks)

(c) Write short notes on the following:

(i) Advantages of Ethical Communication.

(ii) The Press Communique.

(2 + 2 = 4 Marks)

Answer

(a) (i) As per Section 9 of the Payment of Bonus Act, 1965, an employee shall be disqualified from receiving bonus under this Act, if he is dismissed from service for -

(a) fraud; or

(b) riotous or violent behavior while on the premises of the establishment; or

(c) theft, misappropriation or sabotage of any property of the establishment.

The above provision involves the following legal process:

(i) When an employee is charged for any of the above acts, an inquiry is essential;

(ii) The allegedly guilty employee is suspended for the period of the inquiry till submission of the inquiry report. In case he is found guilty, he may be dismissed or reinstated after warning but without wages for the period of suspension. On the other hand, if he is found innocent, he will have to be reinstated with back wages as per the provisions of various labour laws including the Industrial Disputes Act.

(iii) It makes no difference whether the employee is temporary or permanent.

It is clear from the above provision that if an employee is reinstated with back wages, due to the fact that he did not commit the disqualifying act (as per the enquiry report), in his case, the point of disqualification does not arise. Therefore, he is entitled to receive bonus for the full year.

Therefore, refusal of Golden Products Limited is not valid and Mr. Mohan will be entitled to the bonus under the Payment of Bonus Act, 1965.

- (ii) **Forfeiture of gratuity:** Section 4(6) of the Payment of Gratuity Act, 1972 deals with cases in which gratuity payable to an employee may be forfeited.

According to clause (a) of the said sub section, the gratuity of an employee whose services have been terminated for any act, willful omission or negligence causing any damage or loss to, or destruction of property belonging to the employer, shall be forfeited to the extent of the damage or loss so caused.

Further, clause (b) provides that the gratuity payable to an employee may be wholly or partially forfeited if the services of such employee have been terminated for –

- (i) his riotous or disorderly conduct or any other act of violence on his part, or
- (ii) any act which constitutes an offence involving moral turpitude, provided that such offence is committed by him in the course of his employment.

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.

- (b) Certain fundamental principles need to be adhered with for behaving in an ethical manner. From among those principles, **the Principle of Integrity** and **the Principle of objectivity** have been explained below:

1. **The principle of integrity:** The dictionary meaning of integrity is veracity. Accordingly, the principle calls upon all accounting and finance professionals to adhere to honesty and straight forwardness while discharging their respective professional duties. In addition, the following acts of responsibility would help to comply with the Integrity principle.

- ◆ Avoid being involved in activities which would impair the goodwill of the organization;
- ◆ Communicate adverse as well as favourable information with those concerned;
- ◆ Refuse any gift or favour which could influence actions taken or to be taken;
- ◆ Refuse to get involved in any activity which would adversely affect the achievement of an organisation's objective;
- ◆ Avoid conflicts and advise related parties on apparent conflicts which could arise in the future.

2. **The principle of objectivity:** This principle requires accounting and finance professionals to stick to their professional and financial judgement. They should not allow bias, conflicting interests or undue influence of others to override their business judgements. They should communicate information fairly and objectively in such a way that the communication with the end user is complete and transparent.
- (c) (i) **Advantages of Ethical Communication:** Ethical communication promotes long-term business success and profit. However, improving profits isn't reason enough to be ethical. As soon as the cost of being ethical outweighed the benefits, ethical choices would no longer be possible. One advantage of ethics is long-term integrity. Surveys report that all employees want to work for organizations with high ethical standards. Competent people are likely to search for organizations that maintain high ethical standards. When competent people migrate toward ethical firms, everyone benefits because both competence and ethics are perpetuated.
- (ii) **The Press Communique:** The press communiques are issued when some important government decisions or announcements are made such as cabinet appointments, conclusion of the foreign dignitaries' visits, international agreement, etc. The press communique is formal in character. It carries the name of the ministry or department, the place and date at the bottom left-hand corner of the release. Generally, the press is expected to reproduce the press communique without any substantial change. No heading or subheading is given on press communiques.

Question 3

- (a) (i) *Ram, the bailor, pledges a cinema projector and other accessories with Movie Association Co-operative Bank Limited, the bailee, for a loan. Ram requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between Ram, the bailor and Bank, the bailee? (4 Marks)*
- (ii) *What do you understand by "coercion", describe its effect on the validity of a contract? (4 Marks)*
- (b) *"The UN Guidelines call upon Governments to develop, strengthen and maintain a strong consumer policy, and provide for enhanced protection of consumer by enunciating various steps and measures around eight themes." State what are these eight themes. (4 Marks)*
- (c) *What important factors should be considered to make oral communication effective? Explain in brief. (4 Marks)*

Answer

- (a) (i) The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 149. The Section provides that the delivery of the goods to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Delivery may be actual or constructive or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.

In the given problem the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by Ram, the bailor is construed as possession by bailee (pawnee), the Bank. A constructive pledge comes into existence as soon as the pawnor, without actually delivering the goods, promises to deliver them on demand. The transaction was, therefore, a valid pledge.

- (ii) **“Coercion”** is the committing or threatening to commit any act forbidden by the Indian Penal Code 1860, or the unlawful detaining or threatening to detain any property, to the prejudice of any person whatever, with the intention of causing any person to enter into an agreement. (Section 15 of the Indian Contract Act, 1872).

It is also important to note that it is immaterial whether the Indian Penal Code, 1860 is or is not in force at the place where the coercion is employed.

Effects on validity: According to section 19 of the Act, when consent to an agreement is caused by coercion, the contract is voidable at the option of the party, whose consent was so caused. The aggrieved party, whose consent was so caused can enforce the agreement or treat it as void and rescind it. It is seen that in all these cases though the agreement amounts to a contract, it is voidable. The injured party might insist on being placed in the same position in which he might have been had the vitiating circumstances not been present.

Where a contract is voidable and the party entitled to avoid it decides to do so by rescinding it, he must restore any benefit which he might have received from the other party. He cannot avoid the contract and at the same time enjoy the benefit under the rescinded/avoided contract. (Section 64)

- (b) **Themes for UN Guidelines:** The UN Guidelines call upon governments to develop, strengthen and maintain a strong consumer policy and provide for enhanced protection of consumers by enunciating various steps and measures around eight themes (UNCTAD, 2001). These eight themes are:
1. Physical safety
 2. Economic interests

3. Standards
4. Essential goods and services
5. Redress
6. Education and information
7. Specific areas concerning health
8. Sustainable consumption

(c) **Factors to be considered for effective oral communication:** Oral communication which is face-to-face communication with others, has its own benefits. The only shortcoming of oral communication is that it is spontaneous and if one communicates incorrectly, the message will not get understood. It is primarily due to this reason one needs to develop effective oral communication skills as a message, if not understood at appropriate time, can lead to disaster.

In order to provide a fair and candid exchange of ideas, the following factors are to be considered to make the oral communication effective:

- ◆ Consider the objective
- ◆ Think about the interest level of the receiver
- ◆ Be sincere
- ◆ Use simple language, familiar words
- ◆ Be brief and precise
- ◆ Avoid vagueness and generalities
- ◆ Give full facts
- ◆ Assume nothing
- ◆ Use polite words and tone
- ◆ Cut out insulting message
- ◆ Say something interesting and pleasing to the recipient
- ◆ Allow time to respond

To make the oral communication effective, the speaker should converse slowly with proper semantic pauses to enable the listener receive and register in mind whatever is said by the speaker and there should be a due correlation between the pace of speaking and the rate of listening.

Question 4

- (a) (i) *In a General Meeting of PQR Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes must contain fair and correct summary of*

the proceedings thereat. Decide, whether the contention of M is maintainable under the provisions of the Companies Act, 2013? (4 Marks)

- (ii) *The object clause of the Memorandum of Vardhman Industries Ltd., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real-estate business the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause.* (4 Marks)

State whether the company can make such change as per the provisions of the Companies Act, 2013?

- (b) *Write short notes on:*

(i) *United Nation Global Compact*

(ii) *The Iron Law of Responsibility* (2 + 2 = 4 Marks)

- (c) *Piyush Company Ltd. proposed to launch new technologies in its Annual General Meeting to accomplish from coming financial year so that their profit rate may be increased. But the strong resistance was there against the change. State the reasons why people afraid of changes in the system.* (4 Marks)

Answer

- (a) (i) Under Section 118 (5) of the Companies Act, 2013, there shall not be included in the Minutes of a meeting, any matter which, in the opinion of the Chairman of the meeting:

(i) is or could reasonably be regarded as defamatory of any person;

(ii) is irrelevant or immaterial to the proceeding; or

(iii) is detrimental to the interests of the company;

Further, under section 118(6) the chairman shall exercise absolute discretion in regard to the inclusion or non-inclusion of any matter in the Minutes on the grounds specified in sub-section (5) above.

Hence, in view of the above, the contention of M, a shareholder of PQR Limited is not valid because the Chairman has absolute discretion on the inclusion or exclusion of any matter in the minutes for aforesaid reasons.

- (ii) **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 permits any alteration to the objects clause with ease. Vardhman Industries Ltd. can make the required changes in the object clause of its Memorandum of Association.

- (b) (i) **United Nations Global Compact:** The Global Compact is a voluntary international corporate citizenship network initiated to support the participation of both the private sector and other social sectors to advance responsible corporate citizenship and universal social and environmental principles to meet the challenges of globalization. The UN Global Compact was formally launched in September 2000.
- (ii) **The Iron Law of Responsibility:** The institution of business exists only because it performs invaluable services for society. Society gives business its license to exist and this can be amended or revoked at any time if it fails to live up to society's expectations. Therefore, if a business intends to retain its existing social role and power, it must respond to society's needs constructively. This is known as the "Iron Law of Responsibility". In the long-run those who do not use power in a manner that society considers responsible, will tend to lose it.
- (c) **Resistance to Change:** No matter whether a change is of major proportions or is objectively rather small, the change manager must anticipate that people in the organization are going to find reasons to resist changes. It is a basic tenet of human behavior that any belief or value that has been previously successful in meeting needs, will resist change.

Reasons why people resent or resist change:

1. One major reason why people resist change is the potential for loss on a personal level. Objectively, there may be little threat, but people may act as if there is one. Some of the things people feel are at risk during change processes are:
 - Security
 - Friends and contacts
 - Money
 - Freedom
 - Pride and satisfaction
 - Responsibility

- Authority
 - Good working conditions
 - Status
2. While a feeling of threat is a primary reason why people resist change, there are other factors that can mobilize people into resisting any change from a status quo. These include:
- Change not needed – status quo is working fine
 - Proposed change does more harm than good
 - Lack of respect for person responsible for the change
 - Objectionable way of implementing the change
 - Negative attitude towards the organization before change
 - No opportunity to have input into change
 - Change perceived as implying personal criticism
 - Change simply adds more work and confusion
 - Change requires more effort to keep status quo
 - Bad timing of the change
 - A desire to challenge authority
 - Hearing about the change secondhand
3. The uncertainty principle: This states that when people are faced with ambiguous or uncertain situations, where they feel they do not know what to expect, they will resist moving into those situations.

Question 5

- (a) (i) Q draw a bill on S but signs it in the fictitious name of R. The bill is payable to the order of R. The bill is duly accepted by S. P obtains the bill from Q thus becoming its holder in due course. Can S avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881. (4 Marks)
- (ii) A drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as inform the bank to stop the payment. Decide whether it constitutes an offence against the drawer under the Negotiable Instruments Act 1881? (4 Marks)
- (b) Explain the provisions of the Companies Act, 2013 relating to "Resolutions requiring Special Notice". State the resolutions that require "Special Notice" under the Act. (4 Marks)

- (c) What do you mean by the term "Acid Rain"? How does it adversely affect the environment? (4 Marks)

Answer

- (a) (i) The problem is based on the provision of Section 42 of the Negotiable Instruments Act, 1881. In case a bill of exchange is drawn payable to the drawer's order in a fictitious name and is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious. Accordingly, in the instant case, S cannot avoid payment by raising the plea that the drawer (R) is fictitious. The only condition is that the signature of R as drawer and as endorser must be in the same handwriting.
- (ii) **Offence under the Negotiable Instruments Act, 1881:** This problem is based on the case of *Modi Cements Ltd. Vs. Kuchil Kumar Nandi*, [1998] 2 CLJ 8. In this case the Supreme Court held that once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows [As per the provisions of Section 139 of the Negotiable Instruments Act, 1881, it shall be presumed, unless the contrary is proved, that the holder of a cheque received the cheque of the nature referred to in Section 138 for the discharge, in whole or in part, or any debt or other liability] and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138. The object of Sections 138 to 142 of the Act is to promote the efficacy of the banking operations and to ensure credibility in transacting business through cheques. Section 138 is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person from out of that account for the discharge in whole or in part of any debt or other liability, is returned by the bank unpaid either because of insufficiency of amount to honour the cheques or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.
- (b) **Special Notice:** Under section 115 of the Companies Act, 2013 where, by any provision contained in this Act or in the articles of a company, special notice is required of any resolution, notice of the intention to move such resolution shall be given to the company by such number of members holding not less than one per cent of total voting power or holding shares on which such aggregate sum not exceeding five lakh rupees, as may be prescribed, has been paid-up and the company shall give its members notice of the resolution in such manner as may be prescribed.

Special notice is required to move, the following resolutions and any such further resolutions as may be prescribed by the Articles:

- (i) Section 140: a resolution appointing an auditor other than the retiring one.

- (ii) Section 140: a resolution providing expressly that the retiring auditor shall not be reappointed.
 - (iii) Section 169: a resolution purporting to remove a director before the expiry of his period of office.
 - (iv) Section 169: a resolution to appoint another director in place of the removed director.
- (c) Like Global Warming, “Acid Rain” is a threat to the environment that is closely related to the combustion of fossil fuels (oil, coal and natural gases) which are heavily used by utilities to produce electricity. Burning fossil fuels, particularly coal containing high levels of sulphur, releases large quantities of sulphur oxides and nitrogen oxides into the atmosphere. When these gases are carried into the air, they combine with water vapour in clouds to form nitric acid and sulphuric acid. These acids are then carried down in rain, which often falls hundreds of miles away from the original sources of the oxides raising the acidity of the water sources. It also soaks into soils and falls directly on trees and other vegetations.

Numerous studies have shown that many fish populations and other aquatic organisms are unable to survive in lakes and rivers that have become highly acidic due to acid rain. Other studies have shown that acid rain directly damages forests and indirectly destroys the wildlife and species that depend on forests for food and breeding. Acidic rain water can also contaminate drinking water. Acid rain can corrode and damage buildings, statues and other objects, particularly those made of iron, lime stone and marble thereby causing great threat to life and property over a long period of time.

Question 6

- (a) *A General Meeting was scheduled to be held on 15th April, 2016 at 4.00 P.M. As per the notice the members who are unable to attend the meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2016 was deposited by Mr. Y with the company at its Registered Office on 11-04-2016. However, Mr. X changes his mind and on 12-04-2016 gives another proxy to Mr. Z and it was deposited on the same day with the company. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2016 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2016. All the proxies viz., Y, Z, M and N were present before the meeting.*

According to the provisions of the Companies Act 2013, who would be the persons allowed to represent at proxies for members X and W respectively? (8 Marks)

- (b) *What is a Power of Attorney? Draft a Power of Attorney to execute a Sale Deed.*

(4 Marks)

- (c) State whether the following statements are correct or incorrect:
- (i) An agreement with alien friend is void but an agreement with alien enemy is valid.
 - (ii) Consumer purchases goods and health services for personal purposes only.
 - (iii) Right shares are those shares which are issued by newly formed company.
 - (iv) Television advertisements and visual clips giving required details can be treated as prospectus. (1 x 4 = 4 Marks)

Answer

- (a) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxy, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. Thus, in case of Member X, the proxy Z (and not Proxy Y) will be permitted to vote on his behalf. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

- (b) **Power of Attorney:** The law relating to power of attorney falls within the law of agency. A power of attorney is a written instrument empowering a specified person or persons to act for and in the name of person executing it. The instruments of power of attorney are classified into the following two categories:
- (i) Specific Power of Attorney
 - (ii) General Power of Attorney

POWER OF ATTORNEY TO EXECUTE A SALE DEED

BY THIS POWER OF ATTORNEY, Iagedyears, son of resident of hereby appointaged years, son ofresident of, as my Attorney to act in my name and on my behalf and do or execute all or any of the acts or things hereinafter mentioned, that is to say:

1. To receive from, aged about.....years, son of, resident ofthe Purchaser, the sum of Rupees (₹) only being the price agreed to be paid to me by the said Purchaser for the purchase of (give full description of property) under an agreement datedand to give proper receipt and discharge for the same.
2. To execute a sale-deed of the said property.
3. To present the said sale-deed for registration before the proper registration authority, to admit the execution thereof, to do all acts, deeds and things which may be necessary for registering the said sale-deed.
4. To execute or to do all acts, things or deeds or assurance for the completion of the sale of the said property.
5. To deliver possession of the said property to the Purchaser or his nominee.

AND I DO HEREBY AGREE to ratify all acts, things, deeds or proceedings lawfully done by my said *Attorney* on my behalf and in my name by virtue of this power of attorney and the same shall be binding on me in full force or effect.

IN WITNESS WHEREOF I have executed this power atthisday of20.....

Witness:

Executant

- (c) (i) - Incorrect
(ii) - Incorrect
(iii) - Incorrect
(iv) - Incorrect

Question 7

Answer any **four** of the following:

- (a) *Sarika Group of Industries sold its textile unit to Big Group of Industries. Sarika Group contributed 25% of total contribution in Pension Scheme, which was due before sale under the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952. The transferee company (Big Group of Industries) refused to pay the remaining 75% contribution in the Pension Scheme. Decide, in the light of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent?*

(4 Marks)

- (b) *With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. Damu received copy of the prospectus from*

the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. Damu bought 4,000 shares through the stock exchange at a higher price which later on fell sharply. Damu sold these shares at a heavy loss. Mr. Damu claims damages from the company for the loss suffered on the ground that the prospectus issued by the company contained a false statement. Referring to the provision of the Companies Act, 2013 examine whether Damu's claims for damages is justified? (4 Marks)

- (c) *Describe the factors which influence the ethical behaviour at work in an organisation. (4 Marks)*
- (d) *What are the major causes of inter-departmental communication problems? Explain giving suitable examples. (4 Marks)*
- (e) *What is electronic filing? List at least five advantages of E-filing under MCA-21. (4 Marks)*

Answer

- (a) The problem as asked in the question is based on the provisions of Section 17-B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly, where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or license or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly or severally liable to pay the contribution and other sums due from the employer under the provisions of this Act of the Scheme or Pension Scheme, as the case may be, in respect of the period upto the date of such transfer. It is further provided in the Proviso to the said section that the liability of the transferee shall be limited to the value of the assets obtained by him on such transfer.

Accordingly, in the given case the transferor Sarika Group of Industries has paid only 25% of the total liability as contribution in Pension Scheme before sale of the establishment. With regards to remaining 75% liability, both the transferor and transferee companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee will be liable, to pay. However, the liability of the transferee company shall be limited to the value of assets obtained by it from the transfer.

- (b) Under section 2 (70) of the Companies Act, 2013, "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, Mr. Damu purchased shares through the stock exchange open market which cannot be said to have bought shares on the basis of prospectus. Mr. Damu cannot bring action for deceit against the directors. Mr. Damu will not succeed. It was held in the case of *Peek Vs. Gurney* that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

- (c) **Factors which influence the ethical behaviour at work-** Ethical decisions in an organization are influenced by three key factors:
1. **Individual moral standards:** One may have great control over personal ethics outside workplace.
 2. **The influence of managers and co-workers:** The activities and examples set by co-workers along with rules and policies established by the firm are critical in gaining consistent ethical compliance in an organization.
 3. **The opportunity to engage in misconduct:** If a company fails to provide good examples and direction for appropriate conduct and confusion, conflict will develop and result in the opportunity for unethical behaviour.
- (d) **Major causes of Interdepartmental communication problems:** Most organizations, to some degree, have difficulties with interdepartmental communication. Major causes of interdepartmental communication problems are:
- (i) **Departments are physically separated:** Office design may create barriers to effective interdepartmental relationships, because it subconsciously restricts natural communication impulses. To a great extent, office design determines who has access to whom by creating barriers to some departments and bridges to others. Because each office is unique, special factors have to be considered in each organization to make changes that will facilitate more effective communication between departments.
 - (ii) **Departments perform separate functions:** Barriers are also caused by different priorities. What may be the first priority for department X may be the last priority for department Y. Ordinarily this may not be a problem, except when department X is dependent on department Y, a destructive sequence of impatience, tension, and distrust may prevail. Territory battles usually occur because departments fight over scarce resources, prestige, or such other factors. But who really wins? Who loses? Even though a particular department may "win," the customer usually loses. The competitor may even win. Customer service or a competitive threat should inspire and bridge the gaps between departments.
- (e) The term Electronic filing indicates the process of getting services electronically with a comprehensive on-line portal.
- Some of the advantages of MCA 21 are:
1. Expeditious incorporation of companies;

2. Simplified and ease of convenience in filing of Forms/ Returns;
3. Better compliance management;
4. Total transparency through e-Governance;
5. Customer centric approach;
6. Increased usage of professional certificate for ensuring authenticity and reliability of the Forms / Returns;
7. Building up a centralised database repository of corporate operating
8. Enhanced service level fulfillment;
9. Inspection of public documents of companies anytime from anywhere;
10. Registration as well as verification of charges anytime from anywhere;
11. Timely redressal of investor grievances;
12. Availability of more time for MCA employees for monitoring and supervision.