

PAPER – 2: BUSINESS LAW, ETHICS AND COMMUNICATION

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR NOVEMBER, 2021 EXAMINATIONS

Applicability for November, 2021 examinations

- Study Material (July 2015 edition)- Module 1 (except Chapter 2)
[Chapter 2 is to be referred from *Supplementary Study Material (hosted on website)]
- **Supplementary Study Material (hosted on website)- for Chapter 6: The Companies Act, 2013
- Study Material (July 2015 edition)- Module 3

****Note:** The updated Chapter 2 and updated Chapter 6 as contained in the Supplementary Study Material have been fully revised as per amendments upto 30th April 2021. Hence, the students are advised that Chapter 2 of Module 1 and Module 2 (which is comprised of Chapter 6 only) may be read from this Supplementary Study Material.

For November 2021 examinations, amendments upto 30th April, 2021 examinations are relevant (which are incorporated in the Supplementary Study Material).

PART II: QUESTIONS AND ANSWERS

Questions

DIVISION A: CASE SCENARIO/ MULTIPLE CHOICE QUESTIONS

1. Ramesh started a new venture of on-line business of supply of grocery items at the door step of consumers. Initially it was having the area of operations of Jaipur City only. He employed some young boys having their own bikes and allocated the areas which they were accustomed of it, for making delivery of the grocery items as per their orders. He also got developed a website and Mobile App to receive the orders on-line. His friend Sudhanshu who is a Chartered Accountant, suggested him to corporatize this business form, from proprietorship business to a One Person Company (OPC). Ramesh agreed and a OPC was incorporated in the name of “Ask Ramesh4Online Grocery (OPC) Pvt Ltd.” (for short OPC-1). In this OPC Ramesh became the member and director and Sudha (the mother of Ramesh) was made as nominee.

After a year Ramesh got married with Rachna. Since the business of on-line supply of grocery was on rising trend, day by day, he thought to start a new business of supply of Milk and Milk Products and another OPC in the name of “Rachna Milk Products (OPC) Pvt Ltd” (for short OPC-2) was incorporated with the help of his professional friend Sudhanshu. In this OPC-2, Rachna (his wife) became the member and director and Ramesh was named as Nominee.

To summarise the position, the information is tabulated as under:

Name of OPC	Ask Ramesh4Online Grocery (OPC) Pvt Ltd [OPC-1]	Rachna Milk Products (OPC) Pvt Ltd [OPC-2]
Member and Director	Ramesh	Rachna
Nominee	Sudha (Mother of Ramesh)	Ramesh (Husband of Rachna)

After some time, Sudha (the mother of Ramesh) passed away. However, before the death, Sudha had made a WILL, in which she mentioned that after her demise, her another son Suresh be made nominee in the OPC-1. When Suresh came to know this fact, he argued with Ramesh to fulfil the wish of Sudha as per her WILL (Mother of Ramesh and Suresh), but Ramesh denied this and appointed Rachna (his wife) as nominee.

Aggrieved from the decision of Ramesh for not nominating him (Suresh), Suresh threatened Ramesh to take appropriate legal action against him for not honouring the WILL of mother Sudha and consulted his lawyer. Meanwhile due to continuous threatening and hot talks between Suresh and Ramesh, Rachna became mentally upset and became insane, as certified by the medical doctor, so lost her capacity to contract. In this situation, Ramesh being the nominee in OPC-2 became member and director of this OPC-2.

One of the friends of Ramesh advised him to do some charitable work of providing free education to the girl children of his native village near by Jaipur. Ramesh thought about this proposal and asked his professional friend Sudhanshu to convert this OPC-2 into Section 8 company.

Based on the above facts, answer the following MCQs:

- 1.1 Since Rachna, being insane, lost the capacity to contract, Ramesh (who was nominee) became the member of OPC-2. Now who will make nomination for this OPC:
 - (a) Ramesh in the capacity of husband of Rachna can nominate any person as Nominee of OPC-2
 - (b) Ramesh (who was nominee) of OPC-2 has now become member of this OPC and now as a member of this OPC he can nominate any person as per his choice as Nominee for this OPC.
 - (c) When no person is nominated, the Central Govt. will make nomination of such OPC-2.
 - (d) When no person is nominated the Registrar shall order the company to be wound up.
- 1.2 Whether conversion of OPC-2 into a company governed by Section 8 is permissible?
 - (a) Yes, OPC can be converted into Section 8 company
 - (b) No, OPC cannot be converted into Section 8 company

- (c) This OPC-2 can be converted into section 8 company, provided the Central Govt give license
- (d) Providing of free education to girl child do not come under the specified objects mentioned for eligibility incorporation of section 8 company
- 1.3 Ramesh is a member in OPC-1 and became a member in another OPC-2 (on 2nd April, 2020) by virtue of his being a nominee in that OPC-2. Ramesh shall, by what date, meet the eligibility criteria that an individual can be a member in only one OPC:
- (a) 17th May 2020
- (b) 25th August 2020
- (c) 26th August 2020
- (d) 29th September 2020
- 1.4 After the demise of Sudha (the mother of Ramesh), Rachna was nominated by Ramesh for OPC-1 as Nominee. But now Rachna has become insane, so what recourse you will suggest to Ramesh:
- (a) Ramesh is required to nominate another person as nominee
- (b) Ramesh should wait till Rachna becomes good of her health and able to have the capacity to contract
- (c) Although Rachna has become insane, but if she is able to sign, her nomination in OPC-1 may continue
- (d) Sudhanshu (the Chartered Accountant) who helped in incorporation of OPC-1, may act as legal consultant on behalf of Rachna
2. Ronak and Bhowmik are brothers and they are engaged in the business of dairy. Ronak is having 10 cows. The monthly revenue and expenses of the cows is tabulated as under:

S. No.	Particulars	(₹)
1.	Revenue: (25 litres per cow per day) *(10 cows) * (Sale Price ₹ 40 per litre) * (30 days in a month) = 3,00,000.	3,00,000
2.	Expenses: i. For feeding: (300 per cow per day) *(10 cows) * (30 days in a month) = 90,000 ii. Medical Expenses (Salary to a Veterinary Doctor per month: 10,000 iii. Labour's Salary: (2 person *10,000) = 20,000 iv. Petrol exp for milk delivery van: Lump sum = 10,000	(1,30,000)

	Total Exp= 90,000+10,000+20,000+10,000 =1,30,000	
3.	Savings per month	1,70,000
4.	Yearly savings = 1,70,000*12 months	20,40,000
5.	Salary to Bhowmik for looking after Ronak's Dairy business: 10,000*12 = 1,20,000	(1,20,000)
6.	Less: Contingency Expenditure	(20,000)
7.	Net Revenue to be collected (after a year)	19,00,000

Ronak's son Chirag is doing Engineering in Dairy Science from Denmark and is in Final Year. He learnt a lot by his engineering education and want to invite his father to know the technical aspects of dairy business. Chirag insisted his parents to come to Denmark and stay for a year to learn the nitty gritty of the dairy business and also enjoy the life in travelling nearby places.

Ronak, talked to his brother Bhowmik and explained his plan to visit to Denmark for a year and requested to take care of his cows. The labourers are engaged for the maintenance of cows and delivery of the milk, and Bhowmik is just to have a watch over it, collect the revenues etc. and take care of the cows, till he returns back from Denmark. Ronak also offered Bhowmik that for taking care of his dairy business, he will pay to him ₹ 10000 per month. Ronak also told Bhowmik that the cows are covered under the Insurance Policy, for which he has already paid advance premium and also shared the Insurance Policy with Bhowmik. However, Ronak did not disclosed that one cow is under sickness, it very often falls sick and needs to be taken care. Bhowmik agreed and the cows were shifted to Bhowmik's Dairy Farm House.

Ronak and his wife went to Denmark to stay with their son and to understand the dairy business there and to visit the near places.

Bhowmik was now looking after the dairy business of Ronak along with his dairy business. During the year, 2 cows gave the birth to 2 calves. One cow, which often used to fall ill, had also influenced the other cows, as a result, one cow of Bhowmik, and one cow of Ronak which remained in close contact with this sick cow, also fell sick. All the three cows (2 of Ronak and 1 of Bhowmik) died.

When the insurance claim was lodged, the insurance company refused to pass on the claim on the following reasons:

- One cow of Ronak which was running sick was not insured.
- Post mortem Report of another two cows (one of Ronak and another of Bhowmik) revealed that these two cows were in close touch of the sick cow and due to infections, these two cows also died.

When Ronak returned back to India, he demanded his cows back. Bhowmik returned 8 cows (10-2) but did not returned calves. Bhowmik informed Ronak that due to one sick cow (of Ronak) his cow also became sick and died and no insurance claim was admitted.

Based on the above facts, answer the following MCQs:

- 2.1 What was the fault on the part of Ronak (bailor) in this case?
- (a) Ronak has not taken the Insurance Policy of the sick cow.
 - (b) Ronak have not informed the continuous sickness of his cow, to Bhowmik
 - (c) Ronak has left the cows to his brothers and went to Denmark to enjoy the travelling and tourism.
 - (d) Ronak, before going to Denmark, should have sold this sick cow.
- 2.2 Can Bhowmik claim damages for loss of his cow, which died, since this cow, remained in the close contact of the sick cow of Ronak:
- (a) Ronak is not liable for such loss.
 - (b) Bhowmik should himself take care of his cow.
 - (c) Ronak is liable to pay the price of the deceased cow of Bhowmik, since this cow died on account close contact of sick cow of Ronak.
 - (d) Bhowmik should be vigilant in taking care of the cows.
- 2.3 Whether Bhowmik is responsible to give delivery of two calves which took birth during the year, when Ronak was on his tour to Denmark:
- (a) Bhowmik is not bound to give delivery of two calves, since he has already lost his own cow due to mistake of not disclosing the sickness of Ronak's cow by him (Ronak).
 - (b) Bhowmik is duty bound to hand over the delivery of two calves.
 - (c) Ronak should not insist for delivery of the calves.
 - (d) Bhowmik can keep the calves with him as the calves were born when the cows were in Bhowmik's custody.
- 2.4 Bhowmik returns only 8 cows, since 2 cows of Ronak died. Whether Ronak is entitled to claim damages for 2 cows:
- (a) Ronak is not entitled to claim damages.
 - (b) Ronak is entitled to claim damages only, if he can prove that Bhowmik has not taken care of the cows as a prudent person, not taken the medical help of the doctor etc.
 - (c) Bhowmik should morally paid the loss of cows to his brother Ronak

- (d) Bhowmik should not claim his salary, since Ronak has already suffered the loss of two cows.
3. A Limited made a public issue of Debentures. The articles of the company authorises the payment of underwriting commission at 2 per cent of the issue price. The company has negotiated with the proposed underwriters, Gama Brokers and has finalised the rate at 2.25 per cent. The amount that the company is eligible to pay as underwriting commission is:
- (a) 5%
 - (b) 2%
 - (c) 2.5%
 - (d) 2.25%
4. Krishna Religious Publishers Limited has received application money of ₹ 20,00,000 (2,00,000 equity shares of ₹ 10 each) on 10th October, 2019 from the applicants who applied for allotment of shares in response to a private placement offer of securities made by the company to them. Select the latest date by which the company must allot the shares against the application money so received.
- (a) 9th November, 2019
 - (b) 24th November, 2019
 - (c) 9th December, 2019.
 - (d) 8th January, 2020
5. Such shares which are issued by a company to its directors or employees at a discount or for a consideration other than cash for working extraordinary hard and achieving desired output is honoured with:
- (a) Equity Shares
 - (b) Preference Shares
 - (c) Sweat Equity Shares
 - (d) Redeemable preference shares

DIVISION B: DESCRIPTIVE QUESTIONS

PART A: BUSINESS LAWS

The Indian Contract Act, 1872

1. Mr. Yadav, a cargo owner, chartered a vessel to carry a cargo of wheat from a foreign port to Chennai. The vessel got stranded on a reef in the sea 300 miles from the destination. The ship's managing agents signed a salvage agreement for Mr. Yadav. The goods (wheat) being perishable, the salvors stored it at their own expense. Salvors intimated the whole incident to the cargo owner. Mr. Yadav refuse to reimburse the Salvor, as it is the Ship-

owner, being the bailee of the cargo, who was liable to reimburse the salvor until the contract remained unexpired. Referring to the provision of The Indian Contract Act 1872, do you acknowledge or decline the act of Salvor, as an agent of necessity, for Mr. Yadav. Explain?

2. Rahul is the owner of electronics shop. Priyanka reached the shop to purchase an air conditioner whose compressor should be of copper. As Priyanka wanted to purchase the air conditioner on credit, Rahul demand a guarantor for such transaction. Mr. Arvind (a friend of Priyanka) came forward and gave the guarantee for payment of air conditioner. Rahul sold the air conditioner of a particular brand, misrepresenting that it is made of copper while it is made of aluminium. Neither Priyanka nor Mr. Arvind had the knowledge of fact that it is made of aluminium. On being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind. Explain with reference to the Indian Contract Act 1872, whether Mr. Arvind is liable to pay the price of air conditioner?
3. Mr. Gogia has contracted with Rajeev Ltd. on 1st January, 2019, to manufacture certain machinery and deliver it to Mr. Gogia by 31st May, 2019. Part of the contract price was to be paid in advance, and thus Mr. Gogia accordingly paid ₹ 2,00,000. An earthquake on 31st March, 2019, destroyed the area in which Rajeev Ltd. was situated which resulted in break in the operations of Rajeev Ltd for at least 1 year. Mr. Gogia thereupon requested the return of ₹ 2,00,000. This amount was not returned by Rajeev Ltd. only because considerable work had already been put into construction of the machinery. In the light of the provisions of the Indian Contract Act, 1872, please advise Mr. Gogia whether he can regain the amount from Rajeev Ltd.

The Negotiable Instruments Act, 1881

4. 'Akhil' made a promissory note for ₹4,500 payable to 'Bhuvan', and delivered the same to 'Bhuvan' on the condition that he ('Bhuvan') will demand payment only on the death of 'Chaman'. Before the death of 'Chaman', 'Bhuvan' indorsed and delivered the promissory note to 'Deepak', who receive the promissory note in good faith. On the date of maturity, 'Deepak' presented the promissory note for payment but 'Akhil' denied for payment by stating that he issued this promissory note on the condition that it can be paid only on the death of 'Chaman'. Can 'Deepak' recover the amount due on the promissory note from 'Akhil' under the provisions of the Negotiable Instrument Act 1881?

The Payment of Bonus Act, 1965

5. X, a temporary employee drawing a salary of ₹ 12,000 per month, in an establishment to which the Payment of Bonus Act, 1965 applies. He was prevented by the employers from working in the establishment for two months during the financial year 2019-2020, pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service. Later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act, 1965 examine the validity of employer's refusal to pay bonus to 'X' for the financial year 2019-20.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

6. Mr. Manoj is an employee with Nayna Limited. Nanya Limited is governed by the provisions of the Employees' Provident Funds and Miscellaneous Provisions Funds Act, 1952. Mr. Manoj wants to increase his contribution to Provident Fund. Whether the employer is also liable to proportionately increase his contribution to the above under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952? Explain.

The Payment of Gratuity Act, 1972

7. Giza Limited is a company dealing in the manufacture of fine crockeries made of very good quality ceramic. Due to the pandemic the production has been reduced by 10%. Mr. Gagan (who has been working with the company since last 6 years) has to be retrenched. Advise the company about the payment of gratuity to Mr. Gagan. Give your answer as per the provisions of the Payment of Gratuity Act, 1972.

The Companies Act, 2013

8. AB Limited issued equity shares of ₹ 1,00,000 (10000 shares of ₹ 10 each) on 01.04.2020 which have been fully subscribed whereby XY Limited holds 4000 shares and PQ Limited holds 2000 shares in AB Limited. AB Limited is also holding 20% equity shares of RS Limited before the date of issue of equity shares stated above. RS Limited controls the composition of Board of Directors of XY Limited and PQ Limited from 01.08.2020. Examine with relevant provisions of the Companies Act, 2013:
- (i) Whether AB Limited is a subsidiary of RS Limited?
 - (ii) Whether AB Limited can hold shares of RS Limited?
 - (iii) Whether AB Limited can vote at Annual General Meeting of RS Limited held on 30.09.2020?
9. 500 equity shares of ABC Limited were acquired by Mr. Amit, but the signature of Mr. Manoj, the transferor, on the transfer deed was forged. Mr. Amit, after getting the shares registered by the company in his name, sold 250 equity shares to Mr. Abhi on the strength of the share certificate issued by ABC Limited. Mr. Amit and Mr. Abhi were not aware of the forgery. What are the liabilities/rights of Mr. Manoj, Amit and Abhi against the company with reference to the aforesaid shares?
10. Yellow Pvt Ltd. is an unlisted company incorporated in the year 2012. The company have share capital of rupees fifty crores. The company has decided to issue sweat equity shares to its directors and employees. The company decided to issue 10% sweat equity shares (which in total will add up to 30% of its paid up equity shares), with a locking period of five years, as it is a start-up company. How would you justify these facts in relation to the provision for issue of sweat equity shares by a start-up company, with reference to the provision of the Company Act, 2013. Explain?
11. Sudarshan Exports Limited was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued

by the company contained some important extracts of the expert's report and number of trees in A.P. State. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Limited on the basis of the expert's report published in the prospectus. Will Mr. Alok have any remedy against the company?

12. Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013.

PART B: ETHICS

13. "Ethics are not based on feelings, religion, law, accepted social practice or science". Discuss the statement.
14. How ethical behaviour of an individual affects organization? What factors at work place could be responsible for developing negative attitude in an individual?
15. A retailer was purchasing goods regularly from Alpha Limited for the purpose of resale. There were defects in the goods in one of the purchase lot and as a result the retailer suffered loss of his share in competition. The retailer sued Alpha Limited for this reason. The company contended that the goods were purchased for the purpose of resale and therefore, not bound. Is it a valid contention? Explain the provisions of the Competition Act, 2002 in this regard.

Part C: Communication

16. "Departments divide and create barriers but without their co-operation it would be virtually impossible for an organization to function." In view of above discuss the causes which create problems during inter-departmental communication.
17. "To whom, what, when and how" are the factors in communicating change. Explain the statement.
18. Explain the factors which are responsible for the growing importance of communication of an organization.

SUGGESTED ANSWERS

DIVISION A - ANSWER TO CASE SCENARIO / MULTIPLE CHOICE QUESTIONS

- 1.1 (b)
1.2 (b)
1.3 (d)
1.4 (a)
2.1 (b)
2.2 (c)

2.3 (b)

2.4 (b)

3. (b)

4. (c)

5. (c)

DIVISION B - ANSWER TO DESCRIPTIVE QUESTIONS

1. Section 189 of Indian Contract Act 1872, defines agent's authority in an emergency. An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

In certain circumstances, a person who has been entrusted with another's property may have to incur unauthorized expenses to protect or preserve it. This is called an agency of necessity. Hence, in the above case the Salvor had implied authority from the cargo owner to take care of the cargo. They acted as agents of necessity on behalf of the cargo owner. Cargo owner were duty-bound towards salvor. Salvor is entitled to recover the agreed sum from Mr. Yadav and not from the ship owner, as a lien on the goods.

2. As per the provisions of section 142 of the Indian Contract Act 1872, where the guarantee has been obtained by means of misrepresentation made by the creditor concerning a material part of the transaction, the surety will be discharged. Further, according to provisions of section 134, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released, or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor.

In the given question, Priyanka wants to purchase air conditioner whose compressor should be of copper, on credit from Rahul. Mr. Arvind has given the guarantee for payment of price. Rahul sold the air conditioner of a particular brand on misrepresenting that it is made of copper while it is made of aluminium of which both Priyanka & Mr. Arvind were unaware. After being aware of the facts, Priyanka denied for payment of price. Rahul filed the suit against Mr. Arvind for payment of price.

On the basis of above provisions and facts of the case, as guarantee was obtained by Rahul by misrepresentation of the facts, Mr. Arvind will not be liable. He will be discharged from liability.

3. According to section 65 of the Indian Contract Act, 1872, when an agreement is discovered to be void, or when a contract becomes void, any person who has received any advantage under such agreement or contract is bound to restore, it, or to make compensation for it, to the person from whom he received it.

In the given case, the contract for supply of machinery by Rajeev Ltd. to Mr. Gogia by 31st May, 2019 was frustrated due to the occurrence of an earthquake on 31st March, 2019 which has led to the break in the operations of Rajeev Ltd. for at least one year.

Since, Mr. Gogia obtains no benefit from the contract, and he has paid part of a sum before frustration, he can recover the money paid in advance because it can be said there has been total failure of consideration. Hence, Mr. Gogia can recover the amount of ₹ 2,00,000 from Rajeev Ltd.

4. By virtue of provisions of section 9 of the Negotiable Instrument Act 1881, any person who for consideration became the possessor of a negotiable instrument in good faith and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. While Sec.47 provides if a negotiable instrument is delivered to a person, upon condition, i.e. it will be effective on the happening of a certain event, such negotiable instrument cannot be further negotiated unless such event happens. However, if it is transferred to a holder in due course, his rights will not be affected by such condition.

'Akhil' issued a promissory note to 'Bhuvan' on the condition that he ('Bhuvan') will demand payment only on the death of 'Chaman'. Before the death of 'Chaman', 'Bhuvan' indorsed and delivered the promissory note to 'Deepak', who received the promissory note in good faith. On due date, 'Deepak' presented the promissory note for payment but 'Akhil' denied for payment.

From the above provisions and facts of the case, it can be said that 'Deepak' has received the promissory note in good faith, he is a holder in due course and his rights will not be affected by any condition attached to the instrument by any prior party. Therefore, 'Deepak' can recover the amount due on the promissory note from 'Akhil'.

5. **Entitlement for bonus under the Payment of Bonus Act, 1965:** Every employee of an establishment covered under the Act is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than 30 working days in the year and he draws a salary less than ₹ 21,000 per month. [Section 2(13) read with Section 8] In the given case, X has worked in the establishment for 10 months and draws a salary of ₹ 12,000/-, hence his entitlement to bonus is established. However, the point here is, whether he is entitled to receive bonus for the period of 2 months during which he was suspended pending certain inquiry against him. Subsequently, he was exonerated from the charges and was taken back on work.

Section 14 of the Payment of Bonus Act, 1965 lays down the days in a year when an employee is deemed to have worked in the establishment even though he did not actually attend the place of work. Under the said section, an employee is deemed to have worked also on the following days during the accounting year:

- (a) He has been laid off under an agreement or as permitted by standing orders under the Industrial Employment (Standing Orders) Act, 1946, or under the Industrial Disputes Act, 1947 or under any other law applicable to the establishment;
- (b) he has been on leave with salary or wage;
- (c) he has been absent due to temporary disablement caused by accident arising out of and in the course of his employment; and
- (d) the employee has been on maternity leave with salary or wage,

In the given case, X was suspended pending an inquiry; hence he did not attend office for 2 months. These 2 months shall be treated as days worked as it can be reasonably assumed that his suspension was under the Industrial Disputes Act, 1947.

Hence, X will be entitled to receive bonus for the full year and his employer is wrong to deny him bonus.

6. Under section 6 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, an employee may if he so desires, contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Hence, the employer is not required to match the increased contribution of an employee.

7. According to section 4 of the Payment of Gratuity Act, 1972 gratuity is payable to every employee on the termination of his employment if he has completed 5 years of continuous service.

Also, as per the case of *State of Punjab Vs. Labour Court* (1986), it was held that a retrenched employee is also eligible for gratuity.

Hence, in the case of a retrenched employee, he shall be eligible for gratuity upto the date of retrenchment if he has completed 5 years of service. In the given question, since Mr. Gagan has completed 5 years of service and it is assumed that he is retrenched in compliance with the applicable labour laws in this regard and has been paid the required compensation, so he will be eligible to receive the gratuity.

8. This given problem is based on sub-clause (87) of Clause 2 read with section 19 of the Companies Act, 2013.

As per sub-clause (87) of Clause 2 of the Companies Act, 2013 "subsidiary company" or "subsidiary", in relation to any other company (i.e., the holding company), means a company in which the holding company—

- (i) controls the composition of the Board of Directors; or
- (ii) exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

For the purposes of this clause, Explanation is given providing that a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in point (i) or point (ii) above, is of another subsidiary company of the holding company.

Whereas Section 19 provides that, no company shall, hold any shares in its holding company and no holding company shall allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

Provided that nothing in this sub-section shall apply to a case where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

Here in the instant case, AB Ltd. issued 10,000 equity shares on 1.4.2020 whereby XY Ltd. & PQ Ltd. holds 4000 & 2000 shares respectively in AB Ltd., Considering 1 share = 1 vote, XY Ltd. and PQ Ltd. together holds more than one-half (50%) of the total voting power. Therefore, AB Ltd. will be subsidiary to XY Ltd. & PQ Ltd. from 1.4.2020.

Whereas AB Ltd. is already holding 20% equity shares of RS Ltd. before the date of issue of equity shares i.e. 1.4.2020.

Further, RS Ltd. controls the composition of Board of Directors of XY Ltd. and PQ Ltd. from 01.08.2020. In the light of sub-clause (87) of Clause 2, RS Ltd. is a holding company of XY Ltd. and PQ Ltd. (Subsidiary companies).

Following are the answers to the questions:

- (i) Yes. In this case AB Ltd. shall be deemed to be a subsidiary company of the holding company (RS Ltd.) as RS Ltd. controls the composition of subsidiary companies XY Ltd. & PQ Ltd. as per explanation to sub-clause (87) of Clause 2.
 - (ii) Yes. In this case AB Limited is a subsidiary of RS Limited as AB Ltd. was holding 20% of equity shares of RS Ltd. even before it became a subsidiary company of the RS Ltd. (i.e. on 01.08.2020), according to the exception to section 19.
 - (iii) No. The subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee but not where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company. Therefore, AB Ltd. cannot vote at AGM of RS Ltd. held on 30.9.2020.
9. According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares.

However, a forged transfer is a nullity. It does not give the transferee (Mr. Amit) any title to the shares. Similarly, any transfer made by Mr. Amit (to Mr. Abhi) will also not give a good title to the shares as the title of the buyer is only as good as that of the seller.

Therefore, if the company acts on a forged transfer and removes the name of the real owner (Mr. Manoj) from the Register of Members, then the company is bound to restore the name of Mr. Manoj as the holder of the shares and to pay him any dividends which he ought to have received.

In the above case, therefore, Mr. Manoj has the right against the company to get the shares recorded in his name. However, neither Mr. Amit nor Mr. Abhi have any rights against the company even if they are bona fide purchasers. But as Mr. Abhi acted on the faith of share certificate issued by company, he can demand compensation from Mr. Amit.

10. Sweat Equity Shares is governed by Section 54 of the Companies Act, 2013 and Rule 8 of Companies (Share capital and debentures) Rules, 2014. According to Section 54 the company can issue sweat equity shares to its director and permanent employees of the company.

According to rule 8 (4) proviso, states that a start up company, is defined in a notification number Ministry of Commerce and industry Government of India, may issue sweat equity share not exceeding 50% of its paid up share capital up to 10 years from the date of its incorporation or registration.

According to Rule 8(5), the sweat equity shares issued to directors or employees shall be locked in/ non transferable for a period of three years from the date of allotment and the fact that the share certificates are under lock-in too.

Hence, in the above case the company can issue sweat equity shares by passing special resolution at its general meeting. The company as a startup company is right in issue of 10% sweat equity share as it is overall within the limit of 50% of its paid up share capital. But the lock in period of the shares is limited to maximum three years period from the date of allotment.

11. Under section 35 (1) of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Limited on the basis of the expert's report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case. Further, Section 35 also mentions punishment prescribed by section 36 i.e. punishment for fraud under section 447.

12. The term charge has been defined in section 2 (16) of the Companies Act, 2013 as ‘an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage’.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if any company is in default in complying with any of the provisions of this Chapter, the company shall be liable to a penalty of five lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

Further, if any person willfully furnishes any false or incorrect information or knowingly suppresses any material information which is required to be registered under section 77, he shall be liable for action under section 447 (punishment for fraud).

13. “Ethics are not based on feelings, religion, law, accepted social practice or science”

Many philosophers and ethicists have suggested five different sources of ethical standards on which ethics are based.

Five Sources of Ethical Standards

The Utilitarian Approach: The ethical corporate action is the one that produces the greatest good for the greatest number and does the least harm for all who are affected - customers, employees, shareholders, the community, and the environment.

The Rights Approach (The Deontological Approach): This approach determines the ethical action is the one that best protects and respects the moral rights of those affected.

The Fairness or Justice Approach: This approach is based on the idea that all equals should be treated equally to say that ethical actions treat all human beings equally -or if unequally, then fairly based on some standard that is defensible.

The Common Good Approach: This approach suggests the interlocking relationships of society that calls attention to the common conditions which are important to the welfare of everyone.

The Virtue Approach: This is an ancient approach to ethics that ethical actions ought to be consistent with certain ideal virtues (like Honesty, courage, love etc) that provide for the full development of our humanity.

Therefore, it is right to say that our ethics are not based on feelings, religion, law, accepted social practice, or science but based on the above-mentioned ideas and principles suggested by different ethicist and philosophers.

14. **How ethical behaviour of an individual affects organization:**

An ethical issue is an identifiable problem, situation or opportunity that requires a person to choose from several actions which could be evaluated as right or wrong. An individual's ethical behaviour affects not only his or her reputation within the company, but may also contribute to the way in which the company is perceived by others. Values reflect enduring

beliefs that one holds that influences attitudes, actions, and the choices one makes. As individuals, our values are shaped by our personal beliefs. Values developed in childhood and youth are constantly tested and on-the-job decisions reflect the employee's understanding of ethical responsibility.

Various socio-psychological factors could be responsible why individuals could develop negative attitudes or lose personal motivation.

- ◆ Negative work or life experiences.
- ◆ Employees failing to respect each others' unique personalities.
- ◆ Overly aggressive financial or business targets.
- ◆ Pressures to perform and take quick decisions

15. The problem as asked in the question is based on the provisions of Section 2(f) of the Competition Act, 2002. The Section provides that "consumer" means any person who buys any goods for a consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence Section 2(f) of the Competition Act, 2002 provides that whether purchase of goods is for resale or for any commercial purpose or for personal use, the purchaser is a consumer. Thus, consumer will also include a person who purchases goods for re-sale. Therefore, the contention of Alpha Limited is not valid and not tenable.

16. "Departments divide and create barriers but without their co-operation it would be virtually impossible for an organisation to function"

Avoiding unnecessary conflict, poor performance, time delays, and decisions that work at cross purposes are compelling reasons for taking active measures to improve interdepartmental communication. Major causes of interdepartmental communication problems are:

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.

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.

17. "To whom, what, when and how" are the factors in communicating change

There are four decisions that managers must make around communication in change situations:

1. TO WHOM
2. WHAT
3. WHEN
4. HOW

To whom: The basic rule is that communication should take place directly between the manager and employees when employees need to know or want to know.

What: In changed situations, it is good to communicate as much information about the change as is available.

When: In general, communicate as early as possible about change, but do not assume that once you have done this that the job is over. Communication should occur in anticipation of change, during the implementation, and after to assess its value to employees. Do it early, do it often!

How: Should one use oral or written communication?

Thus, the main role of the change manager is to work towards reducing the resistance towards change, and increasing the enthusiasm and level of commitment for the change.

18. The importance of communication in the industrial organization has increased immensely in these days. The following factors are responsible for the growing importance of communication:

- (i) **Growth in the size and multiple locations of organizations:** Most of the organizations are growing larger and larger in size. The people are working in the country and abroad, of these organizations. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.
- (ii) **Growth of trade unions:** Over the last so many decades, trade unions have been growing strong. No management can be successful without taking the trade unions into confidence. Effective communication will create relationship between the management and the workers.

- (iii) **Growing importance of human relations:** Workers in an organization are not like machines. They have their own hopes and aspirations. Management has to recognize them and should work with the spirit of integration so that human relations may be maintained. This may only be achieved through effective communication.
- (iv) **Public relations:** Every organization has a social responsibility towards customers, government, suppliers and the public at large. Communication is the only way an organization can project a positive image of itself.
- (v) **Advances in behavioral sciences:** Modern management is deeply influenced by exciting discoveries made in behavioral sciences like psychology, sociology, transactional analysis etc. All of them throw light on suitable aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationship. This is possible only through communication.
- (vi) **Technological advancement:** The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only the methods of work but also the compositions of groups. In such a situation, proper communication between superiors and subordinates becomes very necessary.