

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

Division A

1. (i) (d)
(ii) (c)
(iii) (d)
2. (i) (a)
(ii) (d)
(iii) (c)
3. (c)
4. (c)
5. (c)
6. (b)
7. (d)
8. (b)
9. (a)
10. (d)
11. (c)
12. (b)
13. (d)
14. (b)
15. (c)
16. (b)

Division B

1. (a) According to section 42 of the Companies Act, 2013 any private or public company may make private placement through issue of a private placement offer letter.

However, the offer shall be made to the persons not exceeding fifty or such higher number as may be prescribed, in a financial year. For counting number of persons, Qualified Institutional Buyers (QIBs) and employees of the company being offered securities under a scheme of employees' stock option will not be considered.

Further, Rule 14 (2) of *the Companies (Prospectus and Allotment of Securities) Rules, 2014* prescribes maximum of 200 persons who can be offered securities under the private placement in a financial year, though this limit should be counted separately for each type of security.

It is to be noted that if a company makes an offer or invitation to more than the prescribed number of persons, it shall be deemed to be an offer to the public and accordingly, it shall be governed by the provisions relating to prospectus.

Also, a company is not permitted to make fresh offer under this section if the allotment with respect to any offer made earlier has not been completed or otherwise, that offer has been withdrawn or abandoned by the company. This provision is applicable even if the issue is of different kind of security.

Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions will apply accordingly.

In the given case Prakash Limited, though a public company but the private placement provisions allow even a public company to raise funds through this route. The company has given offer to 55 persons out of which 4 are qualified institutional buyers and hence, the offer is given effectively to only 51 persons which is well within the limit of 200 persons. From this point of view, the company complies the private placement provisions.

However, as per the question, the company has given another private placement offer of debentures before completing the allotment in respect of first offer and therefore, the second offer does not comply with the provisions of section 42. Hence, the offers given by the company will be treated as public offer.

In case the company gives offer for debentures in the same financial year after allotment of equity shares is complete then both the offers can well be treated as private placement offers.

- (b) **The Rights Approach (The Deontological Approach):** Some philosophers and ethicists suggest that the ethical action is the one that best protects and respects the moral rights of those affected. This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral rights -including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on-is widely debated; some now argue that non-humans have rights, too. Also, it is often said that rights imply duties-in particular, the duty to respect others' rights.
- (c) 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.

2. (a) **Computation of Salary / Wages:** According to Section 2(21) of the Payment of Bonus Act, 1965 salary and wages means all remuneration other than remuneration in respect of overtime work, capable of being expressed in terms of money, which would if the terms of employment, express or implied, were fulfilled, be payable to an employee in respect of his employment, or of work done in such employment and includes dearness allowance, i.e. all cash payment by whatever name called, paid to an employee on account of a rise in the cost of living. But the term excludes:

- (i) Any other allowance which the employee is for the time being entitled to;
- (ii) The value of any house accommodation or of supply of light, water, medical attendance or other amenities of any service or of any concessional supply of food grains or other articles;
- (iii) Any traveling concession;
- (iv) Any bonus including incentive, production or attendance bonus;
- (v) Any contribution paid or payable by the employer to any pension fund or for benefit of the employee under any law for the time being in force.
- (vi) Any retrenchment compensation or any gratuity or other retirement benefit payable to the employee or any ex-gratia payment made to him; and
- (vii) Any commission payable to the employee.

It has been clarified in the explanation to the section that where an employee is given, in lieu of the whole or part of the salary or wage payable to him, free food allowance or free food by his employer, such food allowance or the value of such food shall be deemed to form part of the salary or wage for such employee.

In view of the provisions of Section 2(21) explained above, the payment of dearness allowance and value of free food by the employer forms part of salary of Mr. Meeshu while remaining three payments i.e. payment for overtime, commission on sales and employer's contribution towards pension funds shall not form part of his salary.

(b) (i) Increased Sales and Customer Loyalty

A number of studies have suggested a large and growing market for the products and services of companies perceived to be socially responsible. While businesses must satisfy customers' key buying criteria, such as price, quality, availability, safety and convenience.

(ii) Increased Ability to Attract and Retain Employees

Companies perceived to have strong CSR commitments often find it easier to recruit and retain employees, resulting in a reduction in turnover and associated recruitment and training costs. Even in difficult labour markets, potential employees evaluate a company's CSR performance to determine whether it is the right "fit".

(c) The grapevine becomes active when the following factors are present:

- (i) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.
- (ii) Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.
- (iii) Formation of a coterie or favoured group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like-minded companions, at whatever level they may be. Mostly they find them at their own level, but other levels are not barred. This type of communication is being seriously studied by psychologists and management experts.

- 3. (a) Attachment of Provident Fund:** According to Section 10 of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the amount standing to the credit of any member in the fund or of any exempted employee in a provident fund shall not in any way be capable of being assigned or charged and shall not be liable to attachment under any decree or order of any court in respect of any debt or liability incurred by the member or the exempted employee, and neither the official assignee appointed under the Presidency Towns Insolvency Act nor any receiver appointed under the Provincial Insolvency Act shall be entitled to or have any claim on, any such amount.

The amounts standing to the credit of aforesaid categories of persons at the time of their death and payable to their nominees under the scheme or the rules, and the amount shall be free from any debt or other liability incurred by the deceased or the nominee before the death of the member or of the exempted employee and shall also not be liable to attachment under any decree or order of any court.

- (b)** A copy of every instrument evidencing any creation or modification of charge and required to be filed with the Registrar shall be verified as follows:

- (a) **in case property is situated outside India:** where the instrument or deed relates solely to the property situated outside India, the copy shall be verified by a certificate issued either under the seal, if any, of the company, or under the hand of any director or company secretary of the company or an authorised officer of the charge holder or under the hand of some person other than the company who is interested in the mortgage or charge;
- (b) **in case property is situated in India (whether wholly or partly):** where the instrument or deed relates to the property situated in India (whether wholly or partly), the copy shall be verified by a certificate issued under the hand of any director or company secretary of the company or an authorised officer of the charge holder.

- (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; confusion and conflict will develop and result in the opportunity for unethical behavior.
- (d) **Tips for improving interpersonal skills:** Lines of communication must be open between people who rely on one another to get work done. Poor interpersonal communication skills, which include active listening, result in low productivity simply because one does not have the tools needed to influence, persuade and negotiate which are necessary for workplace success. To get this success the following tips are suggested:
 - (i) **Congruency in communication elements:** If the words used are incongruent with the other interpersonal communication dynamics interpersonal communication is adversely affected. Since communication is shared meaning, words must send the same message as the other interpersonal communication dynamics – body language, facial expression, posture, movement, tone of voice to help emphasize the truth, sincerity and reliability of the communication. A consistent message ensures effective communication.
 - (ii) **Listening effectively:** Effective or active listening is very important skill to enhance interpersonal communication. Listening helps to build strong personal relationships. The process of communication completes when the message as intended by the sender is understood by the receiver. Most of the persons assume that listening is natural trait, but practically very few of us listen properly. One needs to give the communicator of the message sufficient attention and make an effort to understand his view point.
4. (a) 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 Rs. 2,00,000 from Rajeev Ltd.
- (b) The dynamic environment in which businesses operate today may usher a broad range of circumstances because of which compliance with the fundamental principles may potentially be threatened. Such threats may be classified as follows:-
 - (i) Self-interest threats, which may occur as a result of the financial or other interests of a finance and accounting professional or of an immediate or close family member:
 - (ii) Self-review threats, which may occur when a previous judgement needs to be reevaluated by the finance and accounting professional responsible for that judgement:
 - (iii) Advocacy threats occur when a professional promotes a position or opinion to the point that subsequent objectivity may be compromised:

- (iv) Familiarity threats occur when finance and accounting professional has close relationship in the work environment and such relationship impair his selfless attitude towards work.
- (v) Intimidation threats occur when a professional may be prohibited from acting objectively by threats, actual or perceived.

(c) Notice of the First Meeting of the Board of Directors

Nimrit Limited

To,

Date__

(Director)

Dear Sir/Madam,

This is to inform you that the first meeting of the Board of Directors will be held at the Registered Office of the company on 1st February, 2020 at 3 p.m. to transact the business as per the enclosed agenda.

You are requested to please attend the meeting.

Yours faithfully,

Secretary

For and on behalf of the

Board of Directors

Place :

Date

Agenda:

- (i) Election of the Chairman of the Meeting.
- (ii) To produce the Certificate of Incorporation, the Memorandum and the Articles of Association.
- (iii) Election of the Chairman of the Company.
- (iv) Appointment of Managing Director.
- (v) Appointment of Auditors.
- (vi) Appointment of Bankers and approval of the opening of a Bank Account and its operation.
- (vii) Approval of the statement of preliminary expenses by the promoters and adoption of the preliminary contracts and underwriting contracts.
- (viii) Any other business with the permission of the chairman

- 5. (a)** In terms of section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say 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:

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Since, Kavya Ltd. is holding more than one half (50 crores out of 80 crores) of the total share capital of Kavya Ltd., it (Amjali Ltd.) is holding of Kavya Ltd.

Further, as per the provisions of section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company and no holding company shall allot or transfer its shares to any 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—

- (a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
- (b) where the subsidiary company holds such shares as a trustee; or
- (c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company

In the given question, Kavya Ltd. cannot acquire the shares of Amjali Ltd. as the acquisition of shares does not fall within the ambit of any of the exceptions provided in section 19.

- (b) **Corporate Social Responsibility (CSR):** It is a concept that organizations, have an obligation to consider the interests of customers, employees, shareholders, communities, and ecological considerations in all aspects of their operations. This obligation is seen to extend beyond their statutory obligation to comply with legislation. CSR is closely linked with the principles of Sustainable Development, which argues that enterprises should make decisions based not only on financial factors such as profits or dividends, but also based on the immediate and long-term social and environmental consequences of their activities, especially taking into consideration the needs of future generations. It is an integrated combination of policies, programs, education, and practices which extend throughout a corporation's operations and into the communities in which they operate, about how companies voluntarily manage the business processes to produce an overall positive impact on society.

CSR can mean different things to different people:

- ◆ for an employee it can mean fair wages, no discrimination, acceptable working conditions etc.
- ◆ for a shareholder it can mean making responsible and transparent decisions regarding the use of capital.
- ◆ for suppliers it can mean receiving payment on time.
- ◆ for customers it can mean delivery on time, etc.
- ◆ for local communities and authorities it can mean taking measures to protect the environment from pollution.
- ◆ for non-governmental organisations and pressure groups it can mean disclosing business practices and performance on issues ranging from energy conservation and global warming to human rights and animal rights, from protection of the rainforests and endangered species to child and forced labour, etc.

For a company, however, it can simply be seen as responding to the needs and concerns of people who can influence the success of the company and/or whom the company can impact through its business activities, processes and products.

(c) **Elements influencing organisational Culture:** There are number of elements that can be used to describe or influence Organizational Culture. Some of these 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.

6. (a) Under section 20 of the Companies Act, 2013 a document may be served on a company or an officer thereof by sending it to the company or the officer at the registered office of the company by registered post or by speed post or by courier service or by leaving it at its registered office or by means of such electronic or other mode as may be prescribed. However, in case where securities are held with a depository, the records of the beneficial ownership may be served by such depository on the company by means of electronic or other mode.

Under section 20 (2), save as provided in the Act or the rule thereunder for filing of documents with the registrar in electronic mode, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed. However, a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.

- (b) According to Section 26 of the Negotiable Instruments Act, 1881, every person competent to contract (according to the law to which he is subject to) has capacity to bind himself and be bound by making, drawing, accepting, endorsing delivering and negotiating an instrument. A party having such capacity may himself put his signature or authorize some other person to do so.

A minor may draw, endorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be a drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto.

Therefore, in the instant case, the promissory note is valid and it is binding on Mr. Manoj Malik but not on Preet, a minor.

- (c) (i) **Codes of Conduct and Ethics:** A code of ethics specifies the ethical rules of operation in an organization. Codes of conduct specify actions in the workplace and codes of ethics are general guides to decisions about those actions, Examples of topics typically addressed by codes of conduct include: preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts and so on.
- (ii) **Appointing an ombudsperson:** The ombudsperson is responsible to help and coordinate in the development of the policies and procedures to institutionalise moral values in the workplace. This establishes a point of contact where employees can go to ask questions in confidence about the work situations they confront and seek advice.

(d) Power of Attorney to appear before Income Tax Authorities

I, ...S/o....., R/o.....and partner of the firm M/s.....with registered office at....., do hereby appoint Mr....., S/o....., R/o.....as attorney of the firm above named and authorize him for the purpose hereinafter mentioned :

1. That the said attorney shall appoint an advocate of his choice and hand him over the judgement of the tribunal of Income Tax and instruct him to file the appeal against the order, for the Assessment Year
2. That the said attorney shall execute Vakalatnama to the Advocate appointed by him and shall sign all the related papers under the supervision of the advocate.
3. That specimen signature of the said attorney is given below of this deed.
4. The said attorney shall generally do all other lawful acts necessary for the conduct of the said case.

I hereby declare that the acts done by the said attorney in connection with the work given to him shall be deemed to have been done by me and shall be binding on the firm and its partners.

IN WITNESS WHEREOF I have signed this power of attorney in the presence of the following witnesses:

Signature
(Holder of Power of Attorney)

WITNESSES:

- 1.....
- 2.....