

PAPER – 2: BUSINESS LAW, ETHICS & COMMUNICATION

PART – I: ANNOUNCEMENTS STATING APPLICABILITY FOR MAY, 2019 EXAMINATIONS

Applicability for May, 2019 examinations

The Study Material (July 2015 edition), along with the “Supplementary Study Paper for May 2019 examination and onwards” is relevant for May 2019 examinations.

Supplementary Study Paper contains the relevant amendments in the subject pertaining to business law for the period 1st May 2015 to 30th April, 2018. Further, Chapter 6 – The Companies Act, 2013, has been fully revised as per amendments upto 30th April, 2018. Hence, the students are advised that Module-2 (which is comprised of Chapter 6) of this paper is now to be read from this supplementary study paper.

Further, all relevant amendments/ circulars/ notifications etc. in the Business Law and Company law part for the period 1st May 2018 to 31st October, 2018 are mentioned below:

Relevant Legislative amendments from 1 st May 2018 to 31 st October, 2018			
The Companies Act, 2013/ Corporate Laws			
Sl. No.	Amendments related to	Relevant Amendments	Page no. #
I.	Companies (Amendment) Act, 2017	Following sections of the Companies Act, 2013 (hereinafter referred to as the principal Act) have been amended by the Companies (Amendment) Act, 2017 via Notifications: S.O. 1833 (E) dated 7 th May, 2018; S.O. 2422(E) dated 13 th June, 2018; SO. 3299(E) dated 5 th July, 2018; S.O. 3300(E) dated 5 th July, 2018; S.O. 3684(E) dated 27 th July, 2018; S.O. 3838(E) dated 31 st July, 2018; S.O. 3921(E) dated 7 th August, 2018 and S.O. 4907(E) dated 19 th September, 2018.	
		1. In section 2 of the Companies Act, 2013 (hereinafter referred to as the principal Act)-	
		(i) in clause (6) , for the Explanation, the following Explanation shall be substituted, namely:— <i>'Explanation.—For the purpose of this clause,—</i> (a) the expression "significant influence" means control of at least twenty per cent. of total voting power, or control of or participation in business decisions under an agreement;	Pg 12 of SSP

		<p>(b) the expression "joint venture" means a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement;;</p> <p>Enforcement Date: 7th May, 2018</p>	
		<p>(ii) in clause (87), in sub-clause (ii), for the words "total share capital", the words "total voting power" shall be substituted;</p> <p>Enforcement Date: 7th May, 2018</p>	Pg 28 of SSP
		<p>2. In section 7 of the principal Act, in sub-section (1), in item (c), for the words "an affidavit", the words "a declaration" shall be substituted.</p> <p>Enforcement Date: 27th July, 2018</p>	Pg 61 of SSP
		<p>3. In section 12 of the principal Act,—</p> <p>(i) in sub-section (1), for the words "on and from the fifteenth day of its incorporation", the words "within thirty days of its incorporation" shall be substituted;</p> <p>(ii) in sub-section (4), for the words "within fifteen days", the words "within thirty days" shall be substituted.</p> <p>Enforcement Date: 27th July, 2018</p>	Pg 65 of SSP
		<p>4. In section 26 of the principal Act, in sub-section (1),—</p> <p>(i) after the words "signed and shall", the following shall be inserted, namely:—</p> <p>"state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government:</p> <p>Provided that until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial</p>	Pg 84 of SSP

		<p>information or reports on financial information shall apply.";</p> <p>(ii) clauses (a), (b) and (d) shall be omitted.</p> <p>Enforcement Date: 7th May, 2018</p>	<p>Pg 84, 85 & 86 of SSP</p>
		<p>5. For section 42 of the principal Act, the following section shall be substituted, namely:—</p> <p>'42. (1) A company may, subject to the provisions of this section, make a private placement of securities.</p> <p>(2) A private placement shall be made only to a select group of persons who have been identified by the Board (herein referred to as "identified persons"), whose number shall not exceed fifty or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of provisions of clause (b) of sub-section (1) of section 62], in a financial year subject to such conditions as may be prescribed.</p> <p>(3) A company making private placement shall issue private placement offer and application in such form and manner as may be prescribed to identified persons, whose names and addresses are recorded by the company in such manner as may be prescribed:</p> <p>Provided that the private placement offer and application shall not carry any right of renunciation.</p> <p>Explanation I.—"private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.</p> <p>Explanation II.—"qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements)</p>	<p>Pg 107, 108, 109, 110 & 111 of SSP</p>

		<p>Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.</p> <p><i>Explanation III.</i>—If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of this Chapter.</p> <p>(4) Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:</p> <p>Provided that a company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar in accordance with sub-section (8).</p> <p>(5) No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company:</p> <p>Provided that, subject to the maximum number of identified persons under sub-section (2), a company may, at any time, make more than one issue of securities to such class of identified persons as may be prescribed.</p> <p>(6) A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities and if the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the expiry of</p>	
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		<p>sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent. per annum from the expiry of the sixtieth day.</p> <p>Provided that monies received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—</p> <p>(a) for adjustment against allotment of securities; or</p> <p>(b) for the repayment of monies where the company is unable to allot securities.</p> <p>(7) No company issuing securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.</p> <p>(8) A company making any allotment of securities under this section, shall file with the Registrar a return of allotment within fifteen days from the date of the allotment in such manner as may be prescribed, including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.</p> <p>(9) If a company defaults in filing the return of allotment within the period prescribed under sub-section (8), the company, its promoters and directors shall be liable to a penalty for each default of one thousand rupees for each day during which such default continues but not exceeding twenty-five lakh rupees.</p> <p>(10) Subject to sub-section (11), if a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or two crore rupees, whichever is lower, and the company shall also refund all monies with interest as</p>	
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		<p>specified in sub-section (6) to subscribers within a period of thirty days of the order imposing the penalty.</p> <p>(11) Notwithstanding anything contained in sub-section (9) and sub-section (10), any private placement issue not made in compliance of the provisions of sub-section (2) shall be deemed to be a public offer and all the provisions of this Act and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.'</p> <p>Enforcement Date: 7th August, 2018</p>	
		<p>6. In section 54, in sub-section (1), clause (c) shall be omitted.</p> <p>Enforcement Date: 7th May, 2018</p>	Pg 123 of SSP
		<p>7. In section 73 of the principal Act, in sub-section (2),—</p> <p>(i) for clause (c), the following clause shall be substituted, namely:—</p> <p>"(c) depositing, on or before the thirtieth day of April each year, such sum which shall not be less than twenty per cent. of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;"</p> <p>(ii) clause (d) shall be omitted;</p> <p>(iii) in clause (e), for the words "such deposits;", the following shall be substituted, namely:—</p> <p>"such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default;"</p> <p>Enforcement Date: 15th August, 2018</p>	Pg 153 of SSP

		<p>8. In section 74, in sub-section (1), for clause (b), the following clause shall be substituted, namely:—</p> <p>"(b) repay within three years from such commencement or on or before expiry of the period for which the deposits were accepted, whichever is earlier:</p> <p>Provided that renewal of any such deposits shall be done in accordance with the provisions of Chapter V and the rules made thereunder."</p> <p>Enforcement Date: 15th August, 2018</p>	Pg 160 of SSP
		<p>9. In section 77 of the principal Act, in sub-section (1), after the third proviso, the following proviso shall be inserted, namely:—</p> <p>"Provided also that this section shall not apply to such charges as may be prescribed in consultation with the Reserve Bank of India."</p> <p>Enforcement Date: 7th May, 2018</p>	Pg 165 of SSP
		<p>10. In section 78 of the principal Act, for the words and figures "register the charge within the period specified in section 77", the words, brackets and figures "register the charge within the period of thirty days referred to in sub-section (1) of section 77" shall be substituted.</p> <p>Enforcement Date : 7th May, 2018</p>	Pg 166 of SSP
		<p>11. In section 82 of the principal Act, in sub-section (1),—</p> <p>(i) the words, brackets and figures "and the provisions of sub-section (1) of section 77 shall, as far as may be, apply to an intimation given under this section" shall be omitted;</p> <p>(ii) the following proviso shall be inserted, namely:—</p> <p>"Provided that the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to</p>	Pg 169 of SSP

		<p>be made within a period of three hundred days of such payment or satisfaction on payment of such additional fees as may be prescribed."</p> <p>Enforcement Date: : 5th July, 2018</p>	
		<p>12. In section 89 of the principal Act,—</p> <p>(i) in sub-section (6), the words and figures, "within the time specified under section 403" shall be omitted;</p> <p>(ii) in sub-section (7), for the words and figures, "under the first proviso to sub-section (1) of section 403", the word "therein", shall be substituted;</p> <p>(iii) after sub-section (9), the following sub-section shall be inserted, namely:—</p> <p>"(10) For the purposes of this section and section 90, beneficial interest in a share includes, directly or indirectly, through any contract, arrangement or otherwise, the right or entitlement of a person alone or together with any other person to—</p> <p>(i) exercise or cause to be exercised any or all of the rights attached to such share; or</p> <p>(ii) receive or participate in any dividend or other distribution in respect of such share."</p> <p>Enforcement Date: 7th May, 2018 [for (i) and (ii)]</p> <p>13th June, 2018 [for (iii)]</p>	<p>Pg 182 of SSP</p>
		<p>13. For section 90 of the principal Act, the following section shall be substituted, namely:—</p> <p>'(1) Every individual, who acting alone or together, or through one or more persons or trust, including a trust and persons resident outside India, holds beneficial interests, of not less than twenty-five per cent. or such other percentage as may be prescribed, in shares of a company or the</p>	<p>Pg 183 of SSP</p>

		<p>right to exercise, or the actual exercising of significant influence or control as defined in clause (27) of section 2, over the company (herein referred to as "significant beneficial owner"), shall make a declaration to the company, specifying the nature of his interest and other particulars, in such manner and within such period of acquisition of the beneficial interest or rights and any change thereof, as may be prescribed:</p> <p>Provided that the Central Government may prescribe a class or classes of persons who shall not be required to make declaration under this sub-section.</p> <p>(2) Every company shall maintain a register of the interest declared by individuals under sub-section (1) and changes therein which shall include the name of individual, his date of birth, address, details of ownership in the company and such other details as may be prescribed.</p> <p>(3) The register maintained under sub-section (2) shall be open to inspection by any member of the company on payment of such fees as may be prescribed.</p> <p>(4) Every company shall file a return of significant beneficial owners of the company and changes therein with the Registrar containing names, addresses and other details as may be prescribed within such time, in such form and manner as may be prescribed.</p> <p>(5) A company shall give notice, in the prescribed manner, to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe—</p> <p>(a) to be a significant beneficial owner of the company;</p> <p>(b) to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; or</p> <p>(c) to have been a significant beneficial owner of the company at any time during the three years immediately preceding the date on which the notice is issued,</p>	
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		<p>and who is not registered as a significant beneficial owner with the company as required under this section.</p> <p>(6) The information required by the notice under sub-section (5) shall be given by the concerned person within a period not exceeding thirty days of the date of the notice.</p> <p>(7) The company shall,—</p> <p>(a) where that person fails to give the company the information required by the notice within the time specified therein; or</p> <p>(b) where the information given is not satisfactory,</p> <p>apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice, for an order directing that the shares in question be subject to restrictions with regard to transfer of interest, suspension of all rights attached to the shares and such other matters as may be prescribed.</p> <p>(8) On any application made under sub-section (7), the Tribunal may, after giving an opportunity of being heard to the parties concerned, make such order restricting the rights attached with the shares within a period of sixty days of receipt of application or such other period as may be prescribed.</p> <p>(9) The company or the person aggrieved by the order of the Tribunal may make an application to the Tribunal for relaxation or lifting of the restrictions placed under sub-section (8).</p> <p>(10) If any person fails to make a declaration as required under sub-section (1), he shall be punishable with fine which shall not be less than one lakh rupees but which may extend to ten lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p> <p>(11) If a company, required to maintain register under sub-section (2) and file the information under sub-section (4), fails to do so or denies</p>	
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		<p>inspection as provided therein, the company and every officer of the company who is in default shall be punishable with fine which shall not be less than ten lakh rupees but which may extend to fifty lakh rupees and where the failure is a continuing one, with a further fine which may extend to one thousand rupees for every day after the first during which the failure continues.</p> <p>(12) If any person wilfully furnishes any false or incorrect information or suppresses any material information of which he is aware in the declaration made under this section, he shall be liable to action under section 447.'</p> <p>Enforcement Date: 13th June, 2018</p>	
		<p>14. In section 92 of the principal Act,—</p> <p>(i) in sub-section (4), the words and figures, "within the time as specified, under section 403" shall be omitted;</p> <p>(ii) in sub-section (5), for the words and figures, "under section 403 with additional fees" the word "therein" shall be substituted.</p> <p>Enforcement Date: 7th May, 2018</p>	Pg 186 of SSP
		<p>15. Section 93 of the principal Act shall be omitted.</p> <p>Enforcement Date: 13th June, 2018</p>	Pg 187 of SSP
		<p>16. In section 94 of the principal Act,—</p> <p>(i) in sub-section (1), in the first proviso, the words "and the Registrar has been given a copy of the proposed special resolution in advance" shall be omitted;</p> <p>(ii) in sub-section (3), the following proviso shall be inserted, namely:— "Provided that such particulars of the register or index or return as may be prescribed shall not be available for inspection under sub-section (2) or</p>	Pg 188 of SSP

		for taking extracts or copies under this sub-section."	
		Enforcement Date: 13th June, 2018	
		<p>17. In section 96 of the principal Act, in sub-section (2), in the proviso, for the words "Provided that", the following shall be substituted, namely:— "Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance: Provided further that".</p> <p>Enforcement Date: 13th June, 2018</p>	Pg 227 of SSP
		<p>18. In section 117 of the principal Act,—</p> <p>(i) in sub-section (1), the words and figures "within the time specified under section 403" shall be omitted;</p> <p>(ii) in sub-section (2),— (a) for the words and figures "under section 403 with additional fees", the word "therein" shall be substituted; (b) for the words "not be less than five lakh rupees", the words "not be less than one lakh rupees" shall be substituted; (c) for the words "one lakh rupees", the words "fifty thousand rupees" shall be substituted;</p> <p>(iii) in sub-section (3),— (a) clause (e) shall be omitted; (b) in clause (g), in the proviso, the word "and" shall be omitted and the following proviso shall be inserted, namely:— "Provided further that nothing contained in this clause shall apply to a banking company in respect of a resolution passed to grant loans, or give guarantee or provide security in respect of</p>	Pg 220/221 of SSP

		loans under clause (f) of sub-section (3) of section 179 in the ordinary course of its business; and."	
		Enforcement Date: 7th May, 2018	
		<p>19. In section 121 of the principal Act,—</p> <p>(i) in sub-section (2), the words and figures "within the time as specified, under section 403" shall be omitted;</p> <p>(ii) in sub-section (3), for the words and figures "under section 403 with additional fees", the word "therein" shall be substituted.</p> <p>Enforcement Date: 7th May, 2018</p>	Pg 229 of SSP
II.	Notification G.S.R. 433(E) dated 7 th May, 2018	<p>The Central Government has amended the Companies (Specification of Definitions Details) Rules, 2014, by the Companies (Specification of Definitions Details) Amendment Rules, 2018. It shall come into force on 7th May, 2018.</p> <p>In the Companies (Specification of Definitions Details) Rules, 2014, in rule 2, in sub-rule (1), clause (r) shall be omitted.</p> <p>Please note: The said clause (r) deals with 'Total Share Capital'</p>	Pg 28 of SSP
III.	Notification G.S.R. 434(E) dated 7 th May, 2018	<p>The Central Government has amended the Companies (Share Capital and Debentures) Rules, 2014, by the Companies (Share Capital and Debentures) Second Amendment Rules, 2018. It shall come into force on 7th May, 2018.</p> <p>In the Companies (Share Capital and Debentures) Rules, 2014, in the principal rules, in rule 8, in sub-rule (1), in the Explanation, in clause (i) in sub-clause (a), the words "for at least last one year" shall be omitted.</p>	Pg 124 of SSP
IV.	Notification G.S.R. 612 (E) dated 5 th July, 2018	The Central Government has amended the Companies (Acceptance of Deposits) Rules, 2014, by the Companies (Acceptance of	Pg 158 of SSP

		Deposits) Amendment Rules, 2018. It shall come into force on 15 th August, 2018. In the Companies (Acceptance of Deposits) Rules, 2014 in rule 14, in sub-rule (1), clause (k) shall be omitted;	
V.	Notification G.S.R. 708(E) dated 27 th July, 2018	The Central Government has amended the Companies (Incorporation) Rules, 2014, by the Companies (Incorporation) Third Amendment Rules, 2018. It shall come into force on 27 th July, 2018. In the Companies (Incorporation) Rules, 2014._ (a) in rule 3, for Explanation to sub-rule (1), the following shall be substituted, namely:- “Explanation I. - For the purposes of this rule, the term "resident in India" means a person who has stayed in India for a period of not less than one hundred and eighty two days during the immediately preceding financial year. Explanation II.- For the purposes of this rule, while counting the number of days of stay of a director in India for the financial year 2018-2019, any period of stay between 01.01.2018 till the date of notification of this rule shall also be counted”;	Pg 47 of SSP
The Negotiable Instruments Act, 1881			
	Amendments to the Negotiable Instruments Act, 1881	The Ministry of Law and Justice has made amendments to the Negotiable Instruments Act, 1881 through the Negotiable Instruments (Amendment) Act, 2018. This Amendment Act received the assent of the President and published in the Official Gazette on 2 nd August, 2018.	
		In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), after section 143, the following section shall be inserted, namely:— “143A. Power to direct interim compensation . (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Court trying an offence under section 138 may order the	- (The section is newly inserted)

		<p>drawer of the cheque to pay interim compensation to the complainant—</p> <p>(a) in a summary trial or a summons case, where he pleads not guilty to the accusation made in the complaint; and</p> <p>(b) in any other case, upon framing of charge.</p> <p>(2) The interim compensation under sub-section (1) shall not exceed twenty per cent. of the amount of the cheque.</p> <p>(3) The interim compensation shall be paid within sixty days from the date of the order under sub-section (1), or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the drawer of the cheque.</p> <p>(4) If the drawer of the cheque is acquitted, the Court shall direct the complainant to repay to the drawer the amount of interim compensation, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.</p> <p>(5) The interim compensation payable under this section may be recovered as if it were a fine under section 421 of the Code of Criminal Procedure, 1973.</p> <p>(6) The amount of fine imposed under section 138 or the amount of compensation awarded under section 357 of the Code of Criminal Procedure, 1973, shall be reduced by the amount paid or recovered as interim compensation under this section.”.</p>	
		<p>(2) In the principal Act, after section 147, the following section shall be inserted, namely:—</p> <p>“148. Power of Appellate Court to order payment pending appeal against conviction.</p> <p>(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973, in an appeal</p>	<p>-</p> <p>(The section is newly inserted)</p>

		<p>by the drawer against conviction under section 138, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty per cent. of the fine or compensation awarded by the trial Court:</p> <p>Provided that the amount payable under this sub-section shall be in addition to any interim compensation paid by the appellant under section 143A.</p> <p>(2) The amount referred to in sub-section (1) shall be deposited within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the appellant.</p> <p>(3) The Appellate Court may direct the release of the amount deposited by the appellant to the complainant at any time during the pendency of the appeal:</p> <p>Provided that if the appellant is acquitted, the Court shall direct the complainant to repay to the appellant the amount so released, with interest at the bank rate as published by the Reserve Bank of India, prevalent at the beginning of the relevant financial year, within sixty days from the date of the order, or within such further period not exceeding thirty days as may be directed by the Court on sufficient cause being shown by the complainant.”.</p>	
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Page number of the Study material (SM)/ Supplementary study paper (SSP) with reference of relevant provisions

Please note: The Ministry of Corporate Affairs has replaced Rule 14 of the Companies (Prospectus and Allotment of Securities) Rule, 2014 through Companies (Prospectus and Allotment of Securities) Second Rule, 2018. Hence, students are advised not to read the content related to Rule 14(2) of the Companies (Prospectus and Allotment of Securities) Rule, 2014 as contained on pages 110 and Page 111 of SSP. [For May 2019 examinations the said amended rule has not been made applicable for the students.]

PART – II : QUESTIONS AND ANSWERS

QUESTIONS

DIVISION A - MULTIPLE CHOICE QUESTIONS

1. Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife?
 - (a) Since blood relation can only be appointed as nominee in case of OPC, Rajesh needs to appoint his son Rakshak.
 - (b) Rajesh can appoint his friend Ramnivas as nominee in his OPC
 - (c) Roopali is not agreeable to the proposal of Rajesh and hence, Rajesh cannot change her as the nominee
 - (d) Either Rakshak or Mr. Ramnivas can be appointed as nominee
2. A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares:
 - (a) The articles of association of the company shall authorize issue of shares with differential rights;
 - (b) The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
 - (c) The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;
 - (d) The company shall have consistent track record of distributable profits for the last three years;
3. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.
 - (a) There is no relationship between A Ltd. and C Ltd.
 - (b) C Ltd. is deemed to be the subsidiary of A Ltd.
 - (c) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
 - (d) C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd.

4. Shruti, a common friend of Suchitra and Sukanya, got incorporated OPC sometime before and during a chit-chat with her friends informed them that there is some limit on the maximum capital which her OPC can have and she would have to convert her OPC either into a private or public limited company if such limit exceeded. Suchitra and Sukanya who are desirous of forming a private limited company for carrying on textile trading business, are unsure about the maximum capital which a private limited company can have. Advise.
- (a) A private limited company can have maximum of ₹ One crore as share capital.
 - (b) A private limited company can have maximum of ₹ Two crores as share capital.
 - (c) A private limited company can have maximum of ₹ Five crores as share capital.
 - (d) A private limited company can have unlimited share capital.
5. Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.
- (a) Latest by 20th July, 2018
 - (b) Latest by 27th July, 2018
 - (c) Latest by 4th August, 2018
 - (d) Latest by 4th September, 2018
6. Aman contracts to indemnify Megha against the consequences of any proceedings which Chandar may take against Megha in respect of a sum of ₹ 15000/- advanced by Chandar to Megha. Now, Megha who is called upon to pay the sum of money to Chandar but she fails to do so. Now, as per the provisions of the Indian Contract Act, 1872, advise the future course of action to be taken by Chandar.
- (a) Chandar can recover the amount only from Megha
 - (b) Chandar can recover the full amount from Aman
 - (c) Chandar cannot recover the amount from Aman
 - (d) Chandar can recover at least 10% of the total amount from Megha

DIVISION B - DETAILED QUESTIONS

PART – A: BUSINESS LAWS

The Indian Contract Act, 1872

1. Mr. Pal, an old man, by a registered deed of gift, granted certain land property to Anisha, his daughter. By the terms of the deed, it was stipulated that an annuity of ₹ 20,000 should be paid every year to B, who was the brother of Mr. Pal. On the same day Anisha made a promise to B and executed in his favour an agreement to give effect to the stipulation.

Anisha failed to pay the stipulated sum. In an action against her by B, she contended that since B had not furnished any consideration, he has no right of action.

Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of Anisha is valid?

2. Prem, aged 16 years, was studying in an engineering college. On 1st March, 2017 he took a loan of ₹ 1 lakh from Salim for the payment of his college fee and agreed to pay by 30th May, 2018. Prem possesses assets worth ₹ 10 lakhs. On due date Prem fails to pay back the loan to Salim. Salim now wants to recover the loan from Prem out of his assets. Whether Salim would succeed? Decide, referring to the provisions of the Indian Contract Act, 1872.

The Negotiable Instruments Act, 1881

3. Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how a rights of the parties are to be adjusted.

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

The Payment of Bonus Act, 1965

4. Mr. Navin joined as supervisor on monthly salary of ₹ 13,400 on 1. 02. 2018 and resigned from his job on 28.02.2018. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. Navin knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of the Payment of Bonus Act, 1965.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

5. An employee of a limited company filed a claim for provident fund settlement with the Provident Fund Commissioner. However, he did not get any settlement from the authority even after six months. Referring to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 what course of action an authority should have taken in this respect.

The Payment of Gratuity Act, 1972

6. An employee, working in an establishment which is governed by the Payment of Gratuity Act, 1972, committed a theft in the course of his employment. And consequently his services was terminated. State in this connection, whether the gratuity payable to him shall be wholly or partly forfeited.

The Companies Act, 2013

7. MNO a One Person company (OPC) was incorporated during the year 2015-16 with an authorised capital of ₹ 45 lakhs (4.5 lakhs shares of ₹ 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2015-16 and 2016-17 was ₹ 2

crores and ₹ 2.5 crores respectively. Promoter of the company seeks your advice in the following circumstances, whether MNO (OPC) can convert into any other kind of company during 2017-18. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:

- (i) If promoter increases the paid up capital of the company by ₹ 10 lakhs during 2017-18
 - (ii) If turnover of the company during 2017-18 was ₹ 3 crores.
8. The paid-up share capital of Altar Private Limited is ₹ 1 crore, consisting of 8 lacs Equity Shares of ₹ 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of ₹10 each, fully paid-up. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited?
9. Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of ₹ 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old.

PART – B: ETHICS

10. State the objectives of the Central Consumer Protection Council in India.
11. What reasons force a marketing executive to adopt ethical practices in marketing? Explain.
12. Write note on:
- (i) Harassment at workplace.
 - (ii) Ecological ethics

PART – C: COMMUNICATION

13. Explain the functions of interpersonal communication.
14. "Once the process of consensus building has begun, mediators try to assist the parties in their efforts to generate a creative resolution of differences". State in brief the process which should be followed by mediators to resolve the differences between the parties.
15. The Board of Safe Gopal Ltd., appoint and authorize Mr. Shah giving powers to sell and sign transfer deeds for transfer of shares and debentures by executing an instrument of the "Power of Attorney". Draft such instrument of "Power of Attorney".

SUGGESTED ANSWERS/HINTS

DIVISION A - ANSWER TO MULTIPLE CHOICE QUESTIONS

Question No.	1	2	3	4	5	6
Correct Option	(b)	(c)	(b)	(d)	(b)	(b)

DIVISION B - ANSWER TO DETAILED QUESTIONS

1. The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in section 2(d) and on the principle 'privity of consideration'. Consideration is one of the essential elements to make a contract valid and it can flow from the promisee or any other person. In view of the clear language used in definition of 'consideration' in Section 2(d) "... the promisee or any other person....", it is not necessary that consideration should be furnished by the promisee only. A promise is enforceable if there is some consideration for it and it is quite immaterial whether it moves from the promisee or any other person. The leading authority in the decision of the *Chinnaya Vs. Ramayya*, held that the consideration can legitimately move from a third party and it is an accepted principle of law in India.

In the given problem, Mr. Pal has entered into a contract with Anisha, but Mr. B has not given any consideration to Anisha but the consideration did flow from Mr. Pal to Anisha and such consideration from third party is sufficient to enforce the promise of Anisha, the daughter, to pay an annuity to B. Further, the deed of gift and the promise made by Anisha to B to pay the annuity were executed simultaneously and therefore they should be regarded as one transaction and there was sufficient consideration for it.

Thus, a stranger to the contract cannot enforce the contract but a stranger to the consideration may enforce it.

2. According to Section 11 of the Indian Contract Act, 1872, a person who is of the age of majority to the law to which he is subject is competent to enter into any contract. A person who has completed the age of 18 years is a major and otherwise he will be treated as minor. Thus, Prem who is a minor is incompetent to contract and any agreement with him is void [*Mohori Bibi Vs Dharmodas Ghose*]. Section 68 of the Indian Contract Act, 1872 however, prescribes the liability of a minor for the supply of the things which are the necessities of life to him. It says that though minor is not personally liable to pay the price of necessities supplied to him or money lent for the purpose, the supplier or lender will be entitled to claim the money/price of goods or services which are necessities suited to his condition of life provided that the minor has a property. The liability of minor is only to the extent of the minor's property. This type of contract is called a Quasi-contract and the right of the supplier/lender is based on the principle of equity. Thus, according to the above provision, Salim will be entitled to recover the amount of loan given to Prem for payment of the college fees from the property of the minor.

3. The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to Umesh. Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole. So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him. He can change his mind and refuse to send the other half of the promissory note.

4. Under section 8 of the Payment of Bonus Act, 1965 an employee is entitled for bonus in an accounting year if he has worked in the establishment for not less than thirty working days in that year. Under section 2 (13), an employee is defined to include an employee drawing a salary of less than ₹ 21,000 per month.

In the given case, Mr. Navin was an eligible employee within the meaning of the term under section 2 (13) but became ineligible to receive bonus as he worked in the accounting year only for 28 days and hence will not be entitled to receive bonus.

5. The Provident Fund "claims" complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt of the complete "claims" by the Commissioner.

If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.

In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

6. **Reduction and forfeiture of Gratuity:** Under Section 4(6)(a) of the Payment of Gratuity Act, 1972, in the case of damage, loss or destruction of property of employer, due to the willful omission or negligence of the employee, the amount of gratuity to the extent of loss or damage shall be forfeited by the employer.

Further, under section 4(6)(b), the gratuity payable to an employee may be wholly or partially forfeited, where the services of an employee are terminated on the ground of:

- (i) riotous or disorderly conduct or act of violence; or
- (ii) committing an offence involving moral turpitude in the course of his employment.

Theft is an offence involving moral turpitude and consequently, if the services of an employee had been terminated for committing theft in the course of his employment, the gratuity payable to him under the provisions of the Act shall be wholly forfeited in view of Section 4(6)(b)(ii). [*Bharat Gold Mines Ltd. Vs Regional Labour Commissioner (Central)*].

7. As per Rule 3 of the *Companies (Incorporation) Rules, 2014*, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from

the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the Chapter II of the Act.

According to the above provisions, following are the answers to the given circumstances:

- (i) Where, if the promoters increase the paid up capital of the company by ₹ 10.00 lakh during 2017-2018 i.e., to ₹ 55 lakh (45+10= 55), MNO (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees. This could be done by MNO by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.
 - (ii) Where if the turnover of the MNO during 2017-18 was ₹ 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e., ₹ 2 crore for voluntarily conversion of MNO (OPC) into any other kind of company.
8. 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:

Explanation.—For the purposes of this clause,—

- (a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
- (b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors.

In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd. However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as the holding company of Altar Pvt. Ltd.

9. Sweat equity shares of a class of shares already issued.

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely—

- (i) the issue is **authorised by a special resolution** passed by the company;
- (ii) the **resolution specifies** the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
- (iii) where the equity shares of the company are **listed on a recognised stock** exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the *Companies (Share and Debentures) Rules, 2014*.

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

10. The objectives of the Central Consumer Protection Council in India are to promote and protect the rights of the consumers such as:-

- (i) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods/services so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, whichever possible, access to a variety of goods and services at competitive prices;
- (iv) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate terms;
- (v) the right to seek redressal against unfair trade practices;
- (vi) the right to consumer education.

11. Pragmatic reasons for maintaining ethical behaviour: Marketing executives should practice ethical behaviour because it is morally correct. To maintain ethical behaviour in marketing, the following positive reasons may be useful to the marketing executives:

1. **To reverse declining public confidence in marketing:** Sometime misleading package labels, false claim in advertisement, phony list prices, infringement of trademarks pervert the market trends and such behaviour damages the marketers' reputation. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfil it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well-being of consumers, since they are the lifeblood of a business.
2. **To avoid increase in government regulation:** Business apathy, resistance, or token responses to unethical behaviour increase the probability of more governmental regulation. The governmental limitations may also result from management's failure to live up to its ethical responsibilities. Moreover, once the government control is introduced, it is rarely removed.
3. **To retain power granted by society:** Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is a responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
4. **To protect the image of the organisation:** Buyers often form an impression of an entire organisation based on their contact with one person. That person represents the marketing function. Sometimes, a single sales clerk may pervert the market opinion in relation to that company which he represents.

Therefore, the ethical behaviour in marketing may be strengthened only through the behaviour of the marketing executives.

12. (i) **Harassment at workplace:** Harassment is "tormenting by subjecting to constant interference or intimidation". Law prohibits harassing acts and conduct that "creates an intimidating hostile or offensive working environment," which could be a term or condition of an individual's employment, either explicitly or implicitly or such conduct which has the purpose or effect of unreasonably interfering with an individual's work performance or creating an intimidating, hostile or offensive working environment. Another type of harassment is sexual harassment – situations in which an employee is coerced into giving in to another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise or even the job. Sexual harassment is prohibited and an employer is held responsible for all sexual harassment engaged in by employees, "regardless of whether the employer knew or should have known" the harassment was occurring and regardless of whether it was "forbidden by the employer."

- (ii) **Ecological Ethics:** The problem of pollution and other environmental issues can best be framed in terms of our duty to recognize and preserve the ecological systems within which we live. An ecological system is an interrelated and interdependent set of organisms and environments, such as a lake, in which the fish depend on small aquatic organisms, which in turn live off decaying plant and fish waste products. Since, the various parts of an ecological system are interrelated, the activities of one of its parts will affect all other parts. Business and all social firms are parts of a larger ecological system.

Business firms depend on the natural environment for their energy, material resources, waste disposal and that environment in turn is affected by the commercial activities of business firms. Thus, they are inter-dependent on each other.

Ecological ethics is based on the idea that the environment should be protected not only for the sake of human being but also for its own sake. The issue of environmental ethics goes beyond the problem relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal. It is the issue of exploitive human nature and attitudes that should be addressed in a rational way. Problems like global warming, ozone depletion and disposal of hazardous waste that concern the entire world. They require international co-operation and have to be tackled at the global level.

13. **Functions of Interpersonal Communication:** Interpersonal communication is important because of the following functions it achieves:

Gaining Information: One reason, we engage in interpersonal communication, is to gain knowledge about another individual. We attempt to gain information about others so that we can interact with them more effectively.

Building Understanding: Interpersonal communication helps us to understand better what someone says in a given context. Words can mean very different things depending on how they are said or in what context. **Content Messages** refer to the surface level meaning of a message. **Relationship Messages** refer to how a message is said. The two are sent simultaneously, but each affects the meaning assigned to the communication and helps us understand each other better.

Establishing Identity: We also engage in interpersonal communication to establish an identity based on our relationships and the image we present to others.

Interpersonal Needs: We also engage in interpersonal communication to express interpersonal needs. William Schutz has identified three such needs: inclusion, control, and affection.

- Inclusion is the need to establish identity with others.

- Control is the need to exercise leadership and prove one's abilities.
- Affection is the need to develop relationships with people. Groups are an excellent way to make friends and establish relationships.

14. Process which should be followed by mediators to resolve the differences between the parties- Efforts which help to generate a creative resolution are:

- (i) Problem – solving orientation** – It is important to be constructive and maintain a problem solving orientation, even in the face of strong differences and personal antagonism. It is in every participant's best interest to behave in a fashion, they would like others to follow. Concerns or disagreement should be expressed in an unconditionally constructive manner.
- (ii) Engage in active listening** – Participants in every consensus building process should be encouraged (indeed, instructed, if necessary) to engage in what is known as active listening.
- (iii) Disagree without being disagreeable** – Participants in every consensus building process should be instructed to 'disagree without being disagreeable'.
- (iv) Strive for the greatest degree of transparency possible** – To the greatest extent possible, consensus building process should be transparent. That is, the group's mandate, its agenda and ground rules, the list of participants and the groups or interests they are representing, the proposals they are considering, the decision rules they have adopted, their finances and their final report should, at an appropriate time, be open to scrutiny by anyone affected by the group's recommendations.
- (v) Strive to invent options for mutual gain** – The goals of a consensus building process ought to be to create as much value as possible and to ensure that whatever value is created be divided in ways that take account of all relevant considerations. The key to creating value is to invent options for mutual gain.

15. Power of Attorney to execute a deed for the transfer of shares & debentures :-

BY THIS POWER OF ATTORNEY, Gopal Ltd. (full details), the company hereby appoints Mr. Shah (full details) as Attorney of the company, to act in his name and on his behalf and to do or execute all or any of the acts or things relating to transfer of shares and debentures, that is to say:

1. To receive from.....(Full details), the transferee the sum of ₹.....(Rupees..... only) being the price agreed to be paid to the company by the said transferee for the purchase of (full description of shares and debentures) under an agreement dated.....and to give proper receipt and discharge for the same.

2. To execute a transfer deed of the said shares and debentures
3. To present the said transfer 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 transfer deed.
4. To execute or to do all acts, things or deeds or assurance for the completion of the transfer of the said shares and debentures.

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

IN WITNESS WHEREOF the company have executed this power atthis.....day of.....20.....

Witness:

1 _____

2 _____

Signature