

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

Division A

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

Division B

1. (a) **Restrictions on purchase by company or giving of loans by it for purchase of its share:** As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:
 - (a) The employee must not be a director or Key Managerial Personnel;
 - (b) The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
 - (c) The loan must be extended for subscribing fully paid-up shares.

In the given instance, Human Resource Manager Mr. Shyam Kumar is not a Key Managerial Personnel of the OEMR Limited. Further, he is drawing a salary of ₹ 40,000 per month and wants to avail loan for purchasing 500 partly paid-up equity shares of ₹ 1000 each of OEMR Limited in which he is employed.

Keeping the above facts and legal provisions in view, the decision of OEMR Limited in granting a loan of ₹ 4,00,000 for purchase of its partly paid-up shares to Human Resource Manager is invalid due to the following reasons:

- i. The amount of loan is more than 6 months' salary of Mr. Shyam Kumar, the HR Manager. It should have been restricted to ₹ 2,40,000 only.
- ii. The loan to be given by OEMR Limited to its HR Manager Mr. Shyam Kumar is meant for purchase of partly paid shares.

(b) Businesses as trustees: Mahatma Gandhi, the father of the nation, had aptly said that trusteeship provides a means for transforming the present capitalist order of society into an egalitarian one. A business man has to act only as a trustee of the society for whatever he has gained from the society. Everything finally belongs to the society. Society bestows upon business the authority to own and use land and natural resources. In return, the society has the right to expect that productive organizations will enhance the general interests of consumers, employees and community.

Business ethics is required to implement the laws of land, customs, expectations of community, principles of morality, etc. The products and services of an organization affect its employees, the community and society as a whole. Business ethics also subserve the management discipline. Business houses may also use their financial and public influence to address social problems like poverty, crime, equal rights, environmental problems, public health and education. Society at large has also come to realize that since businessmen are making profits by using the country's resources, they owe it to the country to work for its development. Sound workplace ethics ensure that a company's employees are highly motivated and identify themselves with their employer.

Following ethical business practices safeguard a company from getting entangled with law enforcement agencies. A reputation for highly ethical behaviour also ensures increased sales and customer loyalty. Certain eco-friendly practices also reduce operation costs. Thus, society derives benefits as well as business prospers when businesses are ethically driven.

(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.

2. **(a) (i)** Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act, 1972. Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.

The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

- (ii) If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).

Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).

In the given case, the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. Kamal is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. Kamal. On the refusal by the company, Mr. Kamal can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

- (b) **Correct:** The success of the business depends very much on fairness and honesty in the business. Fairness and honesty are at the heart of the business ethics and relate to the general values of decision maker. At a minimum, business professionals and persons are expected to follow all applicable laws and regulation. Even then, they are expected not to harm customers, employees, clients or competitors knowingly through deception, misrepresentation, coercion or discrimination.

One aspect of fairness and honesty is related to disclosure of potential harm caused by product use. For *example*, Mitsubishi Motors, a Japanese automaker, faced criminal charges and negative publicity after executives admitted that the company had systematically covered up customer complaints about tens of thousands of defective automobiles over a 20 year period in order to avoid expensive and embarrassing product recalls.

Another aspect of fairness relates to competition. Although numerous laws have been passed to foster competition and make monopolistic practices illegal, companies sometimes gain control over markets by using questionable practices that harm competition.

Rivals of Microsoft, for *example*, accused the software giant of using unfair and monopolistic practices to maintain market dominance with its Internet Explorer browser.

These aforesaid *examples* show that fairness and honesty pay in the long run; they secure the stability of the business and overall reputation in the business world. Therefore, we may say that fairness and honesty are the pillars of success in the business.

- (c) **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 other

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 other
- 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.

3. (a) As per Section 10 of the 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 exempted employee, and neither the official assignee appointed under the Presidency Town Insolvency Act, 1909, nor any receiver appointed under the Provincial Insolvency Act, 1920, shall be entitled to or have any claim on, any such amount. This protection also applies to provident fund, pension and insurance amount receivable by employee under the scheme.

The amount standing to the credit of the person at the time of his death is payable to his nominees under the scheme or the rules under this Act.

Further, 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) According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty days from the date on which the annual general meeting should have been held together with the statement specifying the reasons for not holding the annual general meeting.

Sub-section (5) of Section 92 also states that if any company fails to file its annual return under sub-section (4), before the expiry of the period specified therein, such company and its every officer who is in default shall be liable to a penalty of fifty thousand rupees and in case of continuing failure, with further penalty of one hundred rupees for each day during which such failure continues, subject to a maximum of five lakh rupees.

In the instant case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. The idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply, is incorrect. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

- (c) **Corporate Governance:** Simply stated, 'Governance' means the process of decision making and the process by which decisions are implemented. The term corporate governance is understood and defined in various ways. Corporate governance can be defined as the formal system of accountability and control for ethical and socially responsible organisational decisions and use of resources and accountability relates to how well the content of workplace decisions is aligned with the organisations strategic direction. Control involves the process of auditing and improving organisation decisions and actions. Good corporate governance has the following major

characteristics:

- (i) Participatory
- (ii) Consensus oriented
- (iii) Accountable
- (iv) Transparent
- (v) Responsive
- (vi) Effective and efficient
- (vii) Equitable and inclusive and
- (viii) Follows the rule of law.

- (d) **Negotiation:** Negotiation occurs when two or more parties either individuals or groups discuss specific proposals in order to find a mutually acceptable agreement. Whether it is with an employer, family member or business associate, we all negotiate for things each day like higher salary, better service or solving a dispute with a co worker or family member. Negotiation is a common way of settling conflicts in business. When handled skillfully, negotiation can improve the position of one or even both but when poorly handled; it can leave a problem still unsolved and perhaps worse than before.

Techniques for Negotiation:

- (a) Spiraling agreements: Begin by reaching a minimum agreement even though it is not related to the objectives and build, hit by hit, on this first agreement.
 - (b) Changing of position: Formulate the proposals in a different way, without changing the final result.
 - (c) Gathering information: Ask for information from the other party to clarify their position
 - (d) Making the cake bigger: Offer alternatives that may be agreeable to the other party, without changing the terms.
 - (e) Commitments: Formalize agreements orally and in writing before ending the negotiation.
4. (a) According to Section 157 of the Indian Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the given question, Sriji's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Sriji's employee has mixed the two kinds of sugar, he (Sriji) must compensate Amar for the loss of his sugar.

- (b) As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

On the basis of above provision, P would succeed to recover ₹ 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to ₹ 7,000 only and an accommodation to P for ₹ 3,000.

(c) 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.

(d) **The Press Communiqué:** The press communiqués are issued when some important government decisions or announcements are made such as cabinet appointments, conclusion of the foreign dignitaries' visits, international agreement, etc. The press communiqué is formal in character. It carries the name of the ministry or department and the place the date at the bottom left-hand corner of the release. Generally, the press is expected to reproduce the press communiqué without any substantial change. No heading or subheading is given on press communiqués.

5. (a) **Small Company:** According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

- (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- (2) turnover of which as per its last profit and loss account for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act.
- (i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 45 lakh and having turnover of ₹ 3 crore. Since only one criteria of share capital of ₹ 50 Lakhs is met, but the second criteria of turnover of ₹ 2 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
- (ii) If the turnover of the company is ₹ 1.50 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.

(b) **CORRECT:** Inclusion of environmental consideration as a part of corporate strategy improves corporate performance is a correct statement.

Environmental consideration is a part of corporate strategy, which means incorporating environmental issues in the process of developing a product, in new investments and in the organizational set up. A good environmental practice improves corporate performance. In many

industries it has been found that environmental friendly practices have resulted in more saving; for example the process of recycling the waste. Thus, environmental considerations play a key role in corporate strategy. Markets of new millennium will be able to create wealth if they respond to the challenges of sustainable development, as unsustainable products will become obsolete.

(c) A sustainable innovation organisation should have:

- (a) Vision and strategy for innovation
- (b) Culture supporting innovation
- (c) Processes, practices and systems supporting innovation
- (d) Top management team leading to innovation.
- (e) Effective cross-financial teams.
- (f) Empowered employees driving innovation.
- (g) Finding the right balance between bureaucracy and chaos.

6. (a) Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company. Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking, then he may enter in the register of charges a memorandum of satisfaction that:

- ◆ the debt has been satisfied in whole or in part; or
- ◆ the part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Therefore, Ranjit can approach the Registrar and show evidence to his satisfaction that the charge has been duly settled and satisfied and request the Registrar to enter a memorandum of satisfaction noting the release of charge.

(b) **Co-sureties liable to contribute equally** (Section 146 of the Indian Contract Act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and whether under the same or different contracts and whether with or without the knowledge of each other, the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".

Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

(c) Creating an ethical environment in company: A sound ethical environment in a company may be created and corporate scandals may be avoided by adopting the following methods:

(i) Ensuring that employees are aware of their legal and ethical responsibilities.

Some ethical organisations are having policies to train and motivate employees towards ethical behaviour. To start with, such initiation should be from the top. A number of companies in India and abroad are being known for their quality and soundness of their ethics programmes. Companies like Raytheon, Texas Instruments, Wipro are pioneers in establishing ethical environment among the employees enabling them to take ethical decisions.

(ii) Providing a communication system between the management and employees so that anyone in the company can report fraud and mismanagement without the fear of being reprimanded.

In India, Wipro has introduced a helpline comprising of senior members of the company, who are available for guidance on any moral, legal or ethical issues that an employee of the company may face.

(iii) Ensuring fair treatment to those who act as whistle blowers:

This is perhaps the most important and sensitive issue. Fair treatment to whistle blowers is a basic necessity to check fraud. Some acts must be appreciated and that appreciation should be extended from within the company rather than outside.

(d) Indemnity Bond

Mr. A, S/o Mr. X residing at, Mumbai do hereby agree to indemnify Primal Bank for any loss that may occur for seeking re-issue of Deposit Certificates (for a sum of ₹.....) in duplicate. I further declare that personally I have not received the Deposit Certificates issued by the bank for which the bank is claiming that it has already been dispatched.

Date.....

Place: Mumbai

Signature
(Mr. A)