

PAPER – 2: BUSINESS LAWS, ETHICS & COMMUNICATION

PART – I: ANNOUNCEMENTS STATING APPLICABILITY & NON-APPLICABILITY FOR NOVEMBER, 2015 EXAMINATION

I. Applicability for November 2015 examinations

Applicability of relevant amendments/Circulars/Notifications/Regulations etc. for the period 1st May 2014 to 30th April, 2015 relating to Business Law, Ethics and Communication at Intermediate (IPC) for November 2015, Examination:

(i) The Companies Act, 2013

Sl. No.	Amendment related to the topic	Content
1.	Associate Company	Vide General Circular no. 24/2014 dated 25th of June 2014 Ministry of Corporate Affairs issued a clarification with regard to holding of shares in a fiduciary capacity by associate company under section 2(6) of the Companies Act, 2013.
2.	Delegation of power and functions to ROC under the sections related to the Memorandum, Companies with charitable objects,& Alteration of memorandum	As per the Notification S.O. 1353(E), dated 9th Of July, 2014 and in supersession of the notification of the Government of India, MCA, dated the 10.07.2012 vide no. S.O. 1538(E), dated 10.07.2012, Central Government hereby delegates to the ROC the power & functions vested in it under the following sections of the said Act- 4(2), 8, 13(2) which deals with the memorandum, Companies with charitable objects,& Alteration of memorandum respectively.
3.	Delegation of powers and functions to the Regional Director(RD) under the sections related to the Memorandum, Companies with charitable objects,& Alteration of	Vide Notification S.O. 1352(E) dated 21.05.2014 and in supersession of the notification of the Government of India, MCA, dated the 10.07.2012 the Central Govt. hereby delegates to the RD at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad & Shillong, the power & functions vested in it under the following sections of the said Act, subject to the condition that the Central Govt.

	memorandum, Rectification of name of company and Commencement of business.	may revoke such delegation of powers or may itself exercise the powers & functions under the sections, 8(6), 13(4) &(5), 16, 11(3) if in its opinion, such course of action is necessary in the public interest;: These sections deals with Memorandum, Companies with charitable objects,& Alteration of memorandum, Rectification of name of company and Commencement of business.
4.	Registration of names of the Companies	Vide General Circular No. 29/2014 dated 11th of July 2014 the Ministry of Corporate Affairs directed Registrar to ensure that registration of names of the Companies shall be in consonance with the provisions of the Emblems and Names (Prevention of Improper Use) Act, 1950.
5.	Registration of names of the Companies	General Circular No. 02/2014, dated 11.02.2014 was issued on the use of word 'National' and 'Bank' in the names of Companies or LLP.
6.	Private Placement	As per the Companies (Prospectus and Allotment of Securities) Amendment Rules, 2014, dated 30th June 2014 further a new proviso has been added with respect to an offer or invitation for non-convertible debentures It says that when an offer or invitation for non-convertible debentures is made within a period of six months from the date of commencement of these rules, the special resolution may be passed within the said period of six months from the date of commencement of these rules.
8.	Acceptance of deposits from public	As per the Companies (Removal of Difficulties) Second Order, 2014 dated 2nd of June, 2014 and the Companies (Removal of Difficulties) Fourth Order, 2014 dated 6th of June 2014, the Central Government hereby makes the order that

		until a date is notified by the Central Government, the Company Law Board shall exercise the jurisdiction, powers, authority and functions of the Tribunal.
9.	Further issue of Capital	As per the Companies (Share Capital and Debenture) Amendment Rules, 2014, dated 18th of June, 2014, after Sub-Rule (2) of rule 13 related to issue of shares on preferential basis, following sub-rule (3) has been inserted stating that the price of shares or other securities to be issued on preferential basis shall not be less than the price determined on the basis of valuation report of a registered valuer.
10.	Debenture	Conditions for the issue of secured debentures by a company prescribed under the Companies (Share Capital and Debentures) Rules, 2014. According to which issue of secured debentures may be made, provided the date of its redemption shall not exceed ten years from the date of issue And also inclusion of amendment as per the Companies (Share Capital and Debentures) Amendment Rules, 2014 .According to which classes of companies that may issue secured debentures for a period exceeding ten years but not exceeding thirty years.
11.	Debenture redemption reserve (DRR) account	After the "RBI (Amendment) Act, 1997" the following is inserted "and for Housing Finance Companies registered with the National Housing Bank" as per the Companies (Share Capital and Debentures) Amendment Rules, 2014
12.	Voting through electronic means	Clarifications on issues associated with e-voting procedure issued by the Ministry of Corporate Affairs vide General Circular No. 20/2014 dated 17th June 2014 for clarity and ensuring uniformity

		in the e-voting procedure.
13.	Declaration in respect of beneficial interest in any share	A proviso has been inserted under Rule 9 sub rule 3 by the Companies (Management and Administration) Second Amendment Rules, 2014 with respect to section 89 of the Companies Act, 2013. "Provided that nothing contained in this rule with respect to section 89 of the Companies Act, 2013 shall apply in relation to a trust which is created, to set up a Mutual Fund or Venture Capital Fund or such other fund as may be approved by the Securities and Exchange Board of India".
14.	Annual return	As per the Companies (Management and Administration) Second Amendment Rules, 2014 a changes have been carried out in the Companies (Management and Administration) Amendment Rules, 2014 in Rule 13 whereby the words "either value or volume of the shares" is omitted along with the explanation giving meaning of 'change'.
15.	Voting and right to demand a poll	Vide Notification dated 19th March, 2015, Central Government further amended the Companies(Management and Administration) Rules, 2014 by issuing the Companies (Management and Administration) Amendment Rules, 2015 whereby replacing the rule 20 of the Companies (Management and Administration) Rules, 2014 relating to the Voting through electronic means.
16.	Place of keeping and inspection of registers, returns, etc	Vide Notification dated 31st March, 2015, the Central Government hereby delegates to the Regional Directors at Mumbai, Kolkata, Chennai, Noida, Ahmedabad, Hyderabad and Shillong, the powers and functions vested in it under sub-section (5) of section 94 of the Companies Act,2013.

(ii) The Employees' Provident Funds & Miscellaneous Provisions Act, 1952

Revised statutory wage ceiling from ₹ 6500/- to ₹ 15,000 per month under the Employees Provident Funds (Amendment) Scheme, 2014, Employees Pension (Amendment) Scheme 2014 and the Employees Deposit Linked Insurance (Amendment) Scheme, 2014.

Students are advised to refer the study material (July 2014 edition) along with the practice manual (December 2014 edition).

II. Non-Applicability for November 2015 examinations

(i) The following sections of the Companies Act, 2013 are not applicable for November 2015 examinations: Section 48 relating to "Variation of shareholders' right", **Section 66** related to "Reduction of share capital", **Section 75** relating to 'damages for fraud', **Section 97** relating to "Power of tribunal to call AGM", **Section 98** relating to "Power of Tribunal to call meetings of members, etc., and **Section 99** relating to "Punishment for default in complying with provisions of sections 96 to 98", of the Companies Act, 2013.

(ii) The Companies (Amendment) Act, 2015

PART – II : QUESTIONS AND ANSWERS**QUESTIONS****PART – A: BUSINESS LAWS****The Indian Contract Act, 1872**

1. (a) Mr. David started "self service" system in his shop. Ms. Marry entered the shop, took a basket and after taking articles of her choice into the basket reached the cashier for payments. The cashier refuses to accept the price. Can Mr. David be compelled to sell the said articles to Ms. Marry? Decide.
- (b) Rishi proposed to sell his house to Rajan. Rajan sent his acceptance by post. Next day, Rajan sends a telegram withdrawing his acceptance. Examine the validity of the acceptance in the light of the following:
 - (i) The telegram of revocation of acceptance was received by Rishi before the letter of acceptance.
 - (ii) The telegram of revocation and letter of acceptance both reached together.
2. (a) Explain in brief the rules relating to 'Acceptance' of an offer under the provisions of the Indian Contract Act, 1872.
- (b) A, the bailor, pledges a cinema projector and other accessories with Cine Association Co-operative Bank Limited, the bailee, for a loan. A requests the bank to allow the pledged goods to remain in his possession and promises to hold the

same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between A, the bailor and Bank, the bailee?

The Negotiable Instruments Act, 1881

3. (a) John, a shareholder of a Company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. John, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether John has committed an offence under Section 138 of the Act and decide whether he (John) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store).
- (b) Mr. Big, a major, and Minion, a minor, executed a promissory note in favour of Ms. Purva. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on Mr. Big and Minion.
4. 'P' draws a cheque for ₹ 50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer.

The Payment of Bonus Act, 1965

5. Peter is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year–
 - (i) overtime allowance,
 - (ii) dearness allowance
 - (iii) commission on sales
 - (iv) employer's contribution towards pension fund
 - (v) value of food.Examine as to which of the above payments form part of "salary" of Peter under the provisions of the Payment of Bonus Act, 1965.
6. Achal limited company earned super profits during financial year. It intends to give maximum bonus to its employees. In this regard you are asked to advice the company on permissible maximum bonus under the Payment of Bonus Act, 1965.

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952

7. State the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 regulating the quantum of contribution to be made by the employer and employee to the provident fund. Is it possible for an employee to increase the amount of his contribution to the provident fund more than the minimum contribution as statutorily prescribed?
8. Satish retired from the services of Life Management Limited, on 31st March, 2014. He had a sum of ₹ 5 lac in his Provident Fund Account. It has become due for payment to Satish on 30th April, 2014 but the company made the payment of the said amount after one year. Satish claimed for the payment of interest on due amount at the rate of 15 percent per-annum for one year. Decide, whether the claim of Satish is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

The Payment of Gratuity Act, 1972

9. When an employee becomes disabled due to any accident or disease and is unable to do the same work and re-employed on the reduced wages, how the gratuity of such employee shall be, computed under the provisions of the Payment of Gratuity Act, 1972?
10. Elle was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company - Asia Tea Estate Ltd. The services of Elle remained continuous in new company. After serving for one year Elle met with an accident and became permanently disabled. Elle applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that Elle has served only for a year in the company.

Examine the validity of the refusal of the company in the light of the provisions of the Payment of Gratuity Act, 1972.

The Companies Act, 2013

11. An association of 120 persons has been formed with the object of acquisition of gain. Now, due to an internal mismanagement, the said association has applied for being wound up under the provisions of the Companies Act, 2013. Advice.
12. XYZ Co. Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchase of above furniture. As a result suppliers sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for payment under the following situations:

- (i) When the company has already adopted the contract after incorporation?

- (ii) When the company makes a fresh contract with the suppliers in terms of pre incorporation contract?
13. Explain the meaning of ordinary and special resolutions as discussed under the Companies Act, 2013.
14. Write a note on 'Report on Annual General Meeting' under the Companies Act, 2013.
15. An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

PART – B: ETHICS

16. Explain the meaning of the terms 'ethics' and 'business ethics'. What kind of awareness is required for being ethical in business.
17. State the elements which create discrimination in employment in the business organizations.
18. State in brief the guidelines for managing ethics and to prevent the need for whistle-blowing in the work place.
19. (i) What is meant by 'Environmental ethics'? How does its non-adoption lead to 3 Ps Viz., Polluter Pays and Principles? Explain.
- (ii) Explain the reasons for unethical behaviour among finance and accounting professionals.
20. Examine the following hypothetical situation and give a brief analytical note on it.
- Kalam Ltd. has been the leading scientific equipment manufacturing company in South India. But it suddenly finds that certain companies from North India that do not have anywhere near its own kind of clout in their own turfs, are trying to enter the south Indian market. But because of its superior clout, Kalam Ltd coerces them to enter into agreement with itself such that they do not sell at prices above that of its own products. Please comment on the legality of such agreements. Conversely, if Kalam Ltd were to enter into agreements with distributors such that the distributors are prevented from marketing the products of the North Indian companies, would that be illegal?

PART – C: COMMUNICATION

21. "Importance of communication is increasing day-by-day in the business organizations". State the reasons for this increasing importance.
22. Explain the functions of interpersonal communication.
23. Explain Consensus Building.

24. Mr. Atul has not received a dividend warrant of ₹ 1,500 for 150 shares of Xtra Ltd. Draft an indemnity bond, to be given to the company for seeing release of Dividend.
25. Draft a business letter, presuming your facts that you have received the goods from the company and you are sending payments.

SUGGESTED ANSWERS/HINTS

1. (a) **Invitation to offer** : The offer should be distinguished from an invitation to offer. An offer is the final expression of willingness by the offeror to be bound by his offer should the party chooses to accept it. Where a party, without expressing his final willingness, proposes certain terms on which he is willing to negotiate, he does not make an offer, but invites only the other party to make an offer on those terms. This is the basic distinction between offer and invitation to offer.

The display of articles with a price in a self-service shop is merely an invitation to offer. It is in no sense an offer for sale, the acceptance of which constitutes a contract. In this case, Ms. Marry by selecting some articles and approaching the cashier for payment simply made an offer to buy the articles selected by her. If the cashier does not accept the price, the interested buyer cannot compel him to sell. [*Fisher V. Bell (1961) Q.B. 394 Pharmaceutical society of Great Britain V. Boots Cash Chemists*].

- (b) The problem is related with the communication and time of acceptance and its revocation. As per Section 4 of the Indian Contract Act, 1872, the communication of an acceptance is a complete as against the acceptor when it comes to the knowledge of the proposer.

An acceptance may be revoked at any time before the communication of the acceptance is complete as against the acceptor, but not afterwards.

Referring to the above provisions

- (i) Yes, the revocation of acceptance by Rajan (the acceptor) is valid.
 - (ii) If Rishi opens the telegram first (and this would be normally so in case of a rational person) and reads it, the acceptance stands revoked. If he opens the letter first and reads it, revocation of acceptance is not possible as the contract has already been concluded.
2. (a) Following are the general rules regarding acceptance under the Indian Contract Act, 1872.
 - (i) Acceptance must be absolute and unqualified. As per section 7 of the Act, acceptance is valid only when it is absolute and unqualified or unconditional.

- (ii) Acceptance must be in the prescribed manner. If the offer is not accepted in the prescribed manner, then the offeror may reject the acceptance within a reasonable time.
 - (iii) Acceptance must be communicated to the offeror. If acceptance is communicated to the person, other than the offeror, it will not create any legal relationship. Thus, to conclude a contract between the parties, the acceptance must be communicated in some perceptible form.
 - (iv) Acceptance must be given by the party to whom the offer is made.
 - (v) Acceptance must be given within the prescribed time or within a reasonable time.
 - (vi) Acceptance cannot be given before communication of an offer
 - (vii) Acceptance must be made before the offer lapses or is withdrawn.
 - (viii) Acceptance must show intention to fulfill the promise.
 - (ix) Acceptance cannot be presumed from silence
 - (x) Acceptance by conduct/performance of condition: Acceptance may also be by performance of some condition / act as required by the Offer or.
- (b) **Delivery to pawnee under Indian Contract Act, 1872:** The problem as asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 149 (delivery to bailee and pledgee). The Section provides that the delivery of the goods to the bailee may be made by actual or constructive delivery or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.
- In the given problem the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by A, the bailor is construed as possession by bailee/pawnee, the Bank. A constructive pledge comes into existence as soon as the pawnor, without actually delivering the goods, promises to deliver them on demand. The transaction was, therefore, a valid pledge. On this point, the decision given by the Andhra Pradesh High Court in *Bank of Chittur Ltd. vs. Narasimhulu AIR 1966 AP 163* is relevant.
3. (a) The facts of the problem are identical with the facts of a case known as *H.N.D. Mulla Feroze Vs. C.Y. Somaya Julu, J(2004) 55 SCL (AP)* wherein the Andhra Pradesh High Court held that although the petitioner has a legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Hence, it was held that the petitioner John could not be said to have committed the offence under Section

138 of the Negotiable Instruments Act, 1881. Therefore is not liable for the cheque but legally liable for the payments for the goods.

- (b) **Minor being a party to negotiable instrument:** According to section 26 of the Negotiable Instruments Act, 1881, every person competent to contract has capacity to incur liability by making, drawing, accepting, endorsing, delivering and negotiating a promissory note, bill of exchange or cheque.

As a minor's agreement is void, he cannot bind himself by becoming a party to a negotiable instrument. But he may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

In view of the provisions of Section 26 explained above, the promissory note executed by Mr. Big and Minion is valid even though a minor is a party to it. Minion, being a minor is not liable; but his immunity from liability does not absolve the other joint promisor, namely Mr. Big from liability [*Sulochana v. Pandiyan Bank Ltd., AIR (1975) Mad. 70*].

4. Section 84 of the Negotiable Instruments Act, 1881 provides that where a cheque is not presented for payment within a reasonable time of its issue and the drawer or person on whose account it is drawn had the right at the time when presentation ought to have been made, as between himself and the banker, to have the cheque paid and suffers actual damage through the delay, he is discharged from the liability, that is to say, to the extent to which such drawer or person is a creditor of the banker to a larger amount than would have been if such cheque had been paid. In determining what is a reasonable time, regard shall be had to the nature of the instrument, the usage of trade and of banker, and the facts of the particular case.

Applying the above provisions to the given problem since the payee has not presented the cheque to the drawer's bank within a reasonable time when the drawer had funds to pay the cheque, and the drawer has suffered actual damage, the drawer is discharged from the liability.

5. **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 Peter 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.

6. Where, in respect of any accounting year referred to in Section 10 of the Payment of Bonus Act, 1965, the allocable surplus exceeds the amount of minimum bonus payable to the employees under that section, the employer shall, in lieu of such minimum bonus, be bound to pay to every employee in respect of that accounting year bonus which shall be an amount in proportion to the salary or wage earned by the employee during the accounting year subject to a maximum 20% of such salary or wage.

In the given case therefore, the company will be free to give bonus at any rate exceeding 8.33% upto a maximum of 20% of the salary or wage earned by the employees during the accounting year. From the facts given, it may be presumed that the bonus at 20% may be payable.

However, in relation to the maximum bonus payable the most important term to understand is "allocable surplus". The eligibility for maximum bonus arises from the "allocable surplus" but is not limited by it, as the allocable surplus may justify a bonus at a rate higher than 20% but bonus will still be limited to 20%.

7. **Contribution to Provident Fund under the EPF and Miscellaneous Provisions Act, 1952:** Section 6 of the EPF and MP Act, 1952 regulates contribution to Provident Fund Scheme established under the Act.

The employer's contribution shall be 10% of the basic wages, dearness allowance and retaining allowance, if any payable to each of the employees whether employed by him directly or by or through a contractor.

The employee's contribution shall be equal to the contribution payable by the employer in respect of him.

In case the employee so desires, he may contribute an amount exceeding ten percent of his basic wages, dearness allowance and retaining allowance if any, subject to the condition that the employer shall not be under an obligation to pay any contribution over and above his contribution payable under this section.

Dearness allowance includes cash value of any food concession allowed to the employees. Retaining allowance means the sum paid for retaining the service, when the factory is not working.

The Central Government may by notification make the employer's contribution equal to 12% for certain establishments class of establishments.

8. According Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank.

As per above provision, Satish can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever is higher, for one year. Here in the absence of specified rate he (Satish) can claim only 12 percent per annum interest on the due amount.

Hence claim of Satish for interest rate of 15% is not tenable.

9. **Computation of Gratuity of a disabled employee:** According to Section 4 (4) of the Payment of Gratuity Act, 1972, when an employee becomes disabled due to any accident or disease and is not in a position to do the same work and re-employed on reduced wages on some other job, the gratuity will be calculated in two parts :-
- For the period preceding the disablement: on the basis of wages last drawn by the employee at the time of his disablement.
 - For the period subsequent to the disablement: On the basis of the reduced wages as drawn by him at the time of the termination of services.

In the case of *Bharat Commerce and Industries Vs. Ram Prasad*, it was decided that if for the purposes of computation of quantum of the amount of gratuity the terms of agreement or settlement are better than the Act, the employee is entitled for that benefit.

However, the maximum statutory ceiling limit as providing under Sub-Section 3 of Section 4 of the Act (the maximum amount of gratuity payable to an employee shall not exceed ₹ 10 lakh), cannot be reduced by mutual settlement or agreement.

10. According to Section 4 (1) of the Payment of Gratuity Act, 1972, 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.

The proviso to the subsection states that the condition of the completion of five years of continuous service is not essential in case of the termination of the employment of any employee due to death or disablement for the purpose of this section.

Disablement has been explained as such disablement which incapacitates an employee for the work which he was capable of performing before the accident or disease resulting in such disablement.

The given problem fulfils all the above requirements as stated. Therefore, Elle is entitled to recover gratuity after becoming permanently disabled and continuous service of five years is not required in this case. Hence, the company cannot refuse to pay gratuity on the ground that he has served only for a year.

11. According to section 464 of the Companies Act, 2013, no association or partnership consisting of more than prescribed number of persons shall be formed for the purpose of carrying on any business that has for its object the acquisition of gain by the association or partnership or by the individual members thereof, unless it is registered as a company under the Companies Act or is formed under any other law for the time being in force. Further, the prescribed number of persons shall not exceed 100.

The association as mentioned in the question exceed the prescribed number of members i.e., it consists of 120 members. Where an association is formed, which has membership in excess of the number aforementioned, will be an illegal association. Such a body will have no legal existence and it cannot be wound up under the Act, or even as an unregistered company. Neither a member of it would be able to sue it, nor would it be able to sue the member.

Further, every member of an association or partnership carrying on business in contravention of above law, shall be punishable with fine which may extend to one lakh rupees and shall also be personally liable for all liabilities incurred in such business.

12. The present contract has been entered into by the promoters for purchase of furniture. The terms of the contract provide for the payment by the XYZ Co Ltd after it is incorporated. A pre incorporation contract is not binding on the company as it was not in existence on the date of the contract. Such a contract can also not be entered into by promoters acting as agents of the company as the company not being in existence cannot appoint agents.

Therefore, the contract for the purchase of furniture cannot be binding on the company.

The promoters remain personally liable on a contract made on behalf of a company which is not yet in existence. Such a contract is deemed to have been entered into personally by the promoters and they are liable to pay damages for failure to perform the promises made in the company's name (*Scot v. Lord Ebury*), even though the contract expressly provided that only the company shall be answerable for performance.

In *Kelner v. Baxter* also it was held that the persons signing the contracts viz. Promoters were personally liable for the contract.

Further, a company cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purported to have been made on its behalf before it came into existence as ratification by the company when formed is legally impossible. The doctrine of ratification applies only if an agent contracts for a principal who is in existence and who is competent to contract at the time of contract by the agent.

The company can, if it desires, enter into a new contract, after its incorporation with the other party. The contract may be on the same basis and terms as given in the pre-incorporation contract made by the promoters. The adoption of the pre-incorporation contract by the company will not create a contract between the company and the other parties even though the option of the contract is made as one of the objects of the company in its Memorandum of Association. It is, therefore, safer for the promoters acting on behalf of the company about to be formed to provide in the contract that: (a) if the company makes a fresh contract in terms of the pre-incorporation contract, the liability of the promoters shall come to an end; and (b) if the company does not make a fresh contract within a limited time, either of the parties may rescind the contract.

Thus applying the above principles, the answers can be as under:

- (i) the promoters in the first case will be liable to the suppliers of furniture. There was no fresh contract entered into with the suppliers by the company. Therefore, promoters continue to be held personally liable in this case for the reasons given above.
 - (ii) in the second case obviously the liability of promoters comes to an end provided the fresh contract was entered into on the same terms as that of pre-incorporation contract.
13. (1) **Ordinary resolution:** A resolution shall be an ordinary resolution if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote, if any, of the Chairman, by members who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any, cast against the resolution by members, so entitled and voting.
- (2) **Special resolution:** A resolution shall be a special resolution when—
- (a) the intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
 - (b) the notice required under this Act has been duly given; and

- (c) the votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, by members who, being entitled so to do, vote in person or by proxy or by postal ballot, are required to be not less than three times the number of the votes, if any, cast against the resolution by members so entitled and voting.

14. Section 121 of the Companies Act, 2013 provides the preparation of report on each Annual General Meeting which is to be filed with the registrar. The section says that-

- (1) **Report to be prepared by the listed public company:** Every listed public company shall prepare in the prescribed manner a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.
- (2) **Filing of the report with the registrar:** The company shall file with the Registrar a copy of the report within thirty days of the conclusion of the Annual General Meeting with such fees as may be prescribed, or with such additional fees as may be prescribed, within the time as specified, under section 403.
- (3) **Default in filing of the report:** If the company fails to file the report before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

The rules provided on the Report on Annual General Meeting given under the Companies(Management and administration) rules, 2014 says that-

- (I) The report shall be prepared in the following manner, namely:-
 - (a) the report under this section shall be prepared in addition to the minutes of the general meeting;
 - (b) the report shall be signed and dated by the Chairman of the meeting or in case of his inability to sign, by any two directors of the company, one of whom shall be the Managing director, if there is one and company secretary of the company;
 - (c) the report shall contain the details in respect of the following, namely:-
 - (i) the day, date, hour and venue of the annual general meeting;
 - (ii) confirmation with respect to appointment of Chairman of the meeting;
 - (iii) number of members attending the meeting;
 - (iv) confirmation of quorum;

- (v) confirmation with respect to compliance of the Act and the Rules, secretarial standards made there under with respect to calling, convening and conducting the meeting;
 - (vi) business transacted at the meeting and result thereof;
 - (vii) particulars with respect to any adjournment, postponement of meeting, change in venue; and
 - (viii) any other points relevant for inclusion in the report.
- (d) the Report shall contain fair and correct summary of the proceedings of the meeting.
- (II) The copy of the report as prepared above, shall be filed with the Registrar in prescribed Form within thirty days of the conclusion of the Annual General Meeting along with the fee.

15. Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Section 34 imposes a criminal punishment on every person who authorises the issue of such prospectus Whereas section 35 more particularly includes a director of the company in the imposition of civil liability for such mis-statements.

The only situations when a director will not incur any liability for mis-statements in a prospectus are as under:

- (a) No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
- (b) No civil liability for any mis-statement under section 35 shall apply to a person if he proves that:
 - (i) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or
 - (ii) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Therefore, in the present case the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus. He will be liable for mis-statements in the prospectus.

16. **Ethics:** The term 'Ethics' has a variety of meanings. One of the meanings is 'Ethics' are the principles of conduct governing an individual or a group. Another definition describes ethics as relating to what is good or bad and having to do with moral duty and obligation.

Business Ethics: In a broad sense, ethics in business refers to the application of day-to-day moral and ethical norms to business. Business ethics are the principles and standards that determine acceptable conduct in business organisation.

Being ethical in business requires acting with an awareness of -

- (a) The need for complying with rules (e.g) (i) laws of the land, (ii) customs and expectation of the community (iii) principles of morality (iv) policies of the organization and (v) general concerns such as the needs of others and fairness.
- (b) How the products, services and actions of a business enterprise, can affect its stakeholders (i.e. employees, customers, suppliers, shareholders and community society as a whole) either positively or negatively.

17. The root meaning of the term discriminate is “to distinguish one object from another “ Employment discrimination is treating one person better than another because of their age, gender, race, religion or other protected class of status. Discrimination in employment is wrong because it violates the basic principle of equality. Discrimination is to treat people differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit.

Elements of Discrimination: Generally, the discrimination means to distinguish one object from another or treating people differently. It is usually intended to refer to the wrongful act of making a difference in treatment or favour on a basis other than individual merit. Such discrimination may also be related in employment in business organization. The elements which create discrimination may be summarized as follows:

- (i) If the decision against one or more employees is taken which is not based on individual merit, such as the ability to perform a given job, seniority or other morally legitimate qualification.
- (ii) If the decision has been derived solely from racial or sexual prejudice, false stereotypes other kind of morally unjustified attitude against members of which the employee belongs.
- (iii) If the decision has a harmful or negative impact on the interests of the employees, perhaps costing them jobs, promotions or better pay.

Discrimination in employment is wrong because it violates the basic principle of justice by differentiating between people on the basis of characteristics (race or sex) that are not relevant to the tasks they must perform. Looking to these aspects law has also been changed to conform to these moral requirements and to minimize the discrimination in employment in this respect.

18. **Managing ethics and preventing whistle-blowing:** The focus on core values and sound ethics, the hall mark of ethical management, is being recognized as an important way to ensure the long term effectiveness of governance structures and procedures and to avoid the need for whistle blowing.

Employers, who understand the importance of work place ethics, provide their work force with an effective framework and guiding principles of identity and address ethical issues as they arise. These guidelines for managing ethics and to avoid the need for whistle-blowing in the work place may be summarized as follows:-

- (a) Have a Code of Conduct and ethics.
- (b) Establishment open communication.
- (c) Make ethical decisions in group and make decision public whenever appropriate.
- (d) Integrate ethics with other management practices.
- (e) Use of cross functional teams when developing and implementing the ethics management programme.
- (f) Appointing an ombudsman.
- (g) Creating an atmosphere of trust.
- (h) Regularly updating of policies and procedures
- (i) Include a grievance policy for employees
- (j) Set an example from the top.

19. (i) Ecological ethics is based on the idea that the environment should be protected not only for the sake of human beings but also for its own sake. The issue of environmental ethics goes beyond the problems relating to protection of environment or nature in terms of pollution, resource utilization or waste disposal.

Business and Industry are closely linked with environment and resource utilization. Production process and strategy for eco-friendly technologies throughout the product life cycle and minimization of waste play major role in protecting the environment and conservation of resources. Business, Industry and multinational corporations have to recognize environmental management as the priority area and a key determinant to sustainable development. Sound management of wastes is among the major environmental issues for maintaining the quality of Earth's environment and achieving sustainable development.

If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pays Principle". Removing subsidies that encourage environmental damage is another measure.

- (ii) The reasons which lead to unethical behaviour among finance and accounting professionals are as follows:

1. **Emphasis on short term results** : This is one of the primary reasons which has led to the downfall of many companies like Enron and Worldcom.
 2. **Ignoring small unethical issues**: It is a known fact that most of the compromises we make are small, however, they lead us into committing large infractions. Ignoring minor lapses, lead to bigger and huge mistakes.
 3. **Economic cycles**: In good times, companies are relaxed in their accounting procedures or disclosures, as there is a pervasive feel-good effect. But when times of hardship follow, then the hit taken by them is almost fatal, as was proved in the Enron case. So companies need to watch out for economic cycles and be vigilant in good times as well as bad.
 4. **Accounting rules**: In the era of globalization and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour
20. The Competition Act, 2002 intends to provide, keeping in view of the economic development of the country, for the establishment of a Commission to prevent practices having adverse effect on competition, to promote and sustain competition in markets, to protect the interests of consumers and to ensure freedom of trade carried on by other participants in markets, in India, and for matters connected therewith or incidental thereto.

The Act deals with the following:

- **Prohibition of certain agreements**, which are considered to be anti-competitive in nature. Such agreements [namely tie in arrangements, exclusive dealings (supply and distribution), refusal to deal and resale price maintenance] shall be presumed as anti-competitive if they cause or are likely to cause an appreciable adverse effect on competition within India.
- **Abuse of dominant position** by imposing unfair or discriminatory conditions or limiting and restricting production of goods or services or indulging in practices resulting in denial of market access or through in any other mode are prohibited.
- **Regulation of combinations** which cause or likely to cause an appreciable adverse effect on competition within the relevant market in India.

In light of the above points, any agreement that Kalam Ltd. may enter into with its competitors from North India to tie-up the price at a certain level is prohibited. Such agreements would also amount to abuse of dominant position.

Conversely, agreements with distributors preventing the latter from distributing the goods of its competitors would also be illegal since they would restrict market access and can be deemed anti-competitive.

21. Reasons for increasing importance of communication: It is true that importance of communication is increasing day by day in the business organizations. The reasons for this growth may be stated as follows:

- (a) **Growth in the size and multiple locations of organization:** Most of the organizations are growing larger and large in size. The people working in these organizations may be spread over different states of a country or over different countries. Keeping in touch, sending directions across and getting feedback is possible only when communication lines are kept working effectively.
- (b) **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 in confidence. Only through effective communication can a meaningful relationship be built between the management and workers.
- (c) **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 above all as sensitive human beings and work towards a spirit of integration with them which effective communication helps to achieve.
- (d) **Public Relations:** Every organization has a social responsibility, towards customers, government, suppliers and the public at large. Communication with them is the only way an organization can project a positive image of itself.
- (e) **Advance in Behavioural Sciences:** Modern management is deeply influenced by exciting discoveries made in behavioural sciences like psychology, sociology, transactional analysis etc. All of them throw light on subtle aspects of human nature and help in developing a positive attitude towards life and building up meaningful relationships. And this is possible only through communication.
- (f) **Technological advancement:** The world is changing very fast, owing to scientific and technological advancements. These advancements deeply affect not only methods of work but also the composition of groups. In such a situation proper communication between superiors and subordinates becomes very necessary.

22. **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.

23. **Consensus Building:** Consensus means overwhelming agreement. Most consensus building efforts set out to achieve unanimity. The key indicator of whether or not a consensus has been reached is that everyone agrees with the final proposal and it is important that consensus be the product of a good-faith effort to meet the interests of all stakeholders. Thus, consensus requires that someone frame a proposal after listening carefully to everyone's interests. Before the parties in a consensus building process come together, mediators (or facilitators) can play an important part in helping to identify the right participants, assist them in setting an agenda and clarifying the ground rules by which they will operate, and persuading noncompliant parties to participate. Once the process has begun, mediators (and facilitators) try to assist the parties in their efforts to generate a creative resolution of differences.

- ◆ 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.
- ◆ 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 a procedure for checking to be sure that communications are being heard as intended.
- ◆ Disagree Without Being Disagreeable-Participants in every consensus building process should be instructed to "disagree without being disagreeable." This dictum should probably be included in the group's written ground rules.
- ◆ Strive for the Greatest Degree of Transparency Possible-To the greatest extent possible, consensus building processes 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.

- ◆ Strive to Invent Options for Mutual Gain-The goal 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.

24. Mr. Atul S/o resident do hereby agree to indemnify the Xtra Ltd. for any loss that may occur for seeking release of dividend for 150 shares of ₹ 1500.

I further declare that personally I have not received the dividend warrant in question.

Mr. Atul

Date:

Signature

Place:

25. **Business Letter - acknowledging receipt of goods:**

KUNAL CHEMICALS LIMITED

Regd. Office : 15, Okhla Estate, New Delhi - 110016

Phone : 6132757, Fax : 6132767

E-mail: kunalchem@rediffmail.com ,

website: www.kunalchem.org

Messrs. Shippers & Perfect Delivers

Dated:

16, Nariman Point

Mumbai

Sir

Subject: Acknowledging the receipt of Consignment No _____

Reference: Our request 24/FD/55 – dated 1st August, 2015

We acknowledge with thanks the receipt of above consignment in our godown and we are arranging the payment of proceeds towards the said consignment by way of crossed cheque in favour of your company within a period of next 15 days.

We solicit your relationship in our future dealings.

Thanking you

Yours faithfully

For on behalf of Kunal Chemicals Ltd.

Applicability of Pronouncements/Legislative Amendments/Circulars etc. for November, 2015 – Intermediate (IPC) Examination

Paper 1: Accounting

Accounting Standards

AS	1	:	Disclosure of Accounting Policies
AS	2	:	Valuation of Inventories
AS	3	:	Cash Flow Statements
AS	6	:	Depreciation Accounting
AS	7	:	Construction Contracts (Revised 2002)
AS	9	:	Revenue Recognition
AS	10	:	Accounting for Fixed Assets
AS	13	:	Accounting for Investments
AS	14	:	Accounting for Amalgamations

Note Regarding Applicability for Paper 1 :

The relevant notified Sections of the Companies Act, 2013 up to 31st March, 2015 and for other legislative amendments including relevant Notifications / Circulars / Rules / Guidelines issued by Regulating Authority up to 30th April, 2015.

Non-Applicability of Ind ASs:

The Ministry of Corporate Affairs has notified Roadmap for applicability of Indian Accounting Standards (Ind AS) vide Notification No. G.S.R.....(E) dated 16 February, 2015, for compliance by the class of companies specified in the said roadmap. The notification has been uploaded on www.mca.gov.in along with the thirty nine (39) Indian Accounting Standards (Ind AS). **Students may note that these Ind ASs are not applicable for November, 2015 Examination.**

Paper 2: Business Laws, Ethics and Communication

The Companies Act, 2013 : The relevant sections of the Companies Act, 2013, notified up to 31st March, 2015 along with significant Rules/ Notifications/ Circulars/ Clarifications/ Orders issued by the Ministry of Corporate Affairs upto 30th April, 2015.