

Roll No. **INTERMEDIATE (IPC)**

MAY 2014

GROUP I - PAPER 2

Total No. of Questions – **BUSINESS LAWS, ETHICS** Total No. of Printed Pages – 8

AND COMMUNICATION

Time Allowed – 3 Hours

Maximum Marks – 100

JCR-H

Answers to questions are to be given only in English except in the case of candidates who have opted for Hindi medium. If a candidate has not opted for Hindi medium, his / her answers in Hindi will not be valued.

Question No. 1 is compulsory.

Attempt any **five** questions from the remaining **six** questions.

- | | Marks |
|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------|
| 1. (a) Sunil borrowed a sum of ₹ 3 lakh from Rajendra. Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Sunil is lawful ? | 5 |
| (b) Anson Limited held equity shares in Booban Limited. Later on Anson Limited became a subsidiary company of Booban Limited. Decide under the Companies Act, 1956 whether it is necessary for Anson Limited to surrender the equity shares of Booban Limited ? | 5 |
| (c) State with reasons whether the following statements are correct or incorrect : | |
| (i) "Consumer Interest" and "Public Interest" are synonymous. | 3 |
| (ii) The phrase "Iron Law of Responsibility" means that the institution of business exists only because it performs invaluable services towards its promoters. | 2 |
| (d) What important factors should be considered to make oral communication effective ? | 5 |

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2. (a) (i) Nimbaheda Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965 whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment ? 4
- (ii) Aswani who was an employee of Sun Televisions Limited, retired on 1st January, 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December, 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972 whether Aswani will succeed in his claim ? 4
- (b) What problems may arise at work place when ethical behaviour is not adopted ? 4
- (c) Briefly explain the "Grapevine Chains" propounded by the experts in relation to informal way of communication. 4
3. (a) Explain the law relating to liability of joint promisors in a contract. 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay ₹ 1,50,000/- to 'A'. Lateron 'F' became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt. 'A' recovers the whole amount from 'D' through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'. 8
- (b) What are the objects of the "Central Consumer Protection Council" in relation to protection of rights of the consumers ? 4
- (c) Explain those elements which can be used to influence an "Organisational Culture". 4

(3)

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Marks

4. (a) State the provisions relating to "Information Memorandum" under Section 60 B of the Companies Act, 1956. **8**
- (b) What do you understand by the term "Acid Rain" ? How does it adversely affect the environment ? **4**
- (c) Draft a notice for calling the meeting of the Board of Directors of a company. In this meeting following transactions have to be proposed : **4**
- (i) Mr. X to be co-opted as an Additional Director.
- (ii) Decision to be taken to buy-back company's equity shares.
5. (a) (i) 'A' issued a cheque for ₹ 5,000/- to 'B', 'B' did not present the cheque for payment within reasonable period. The Bank fails. However, when the cheque was ought to be presented to the bank, there was sufficient fund to make payment of the cheque. Now, 'B' demands payment from 'A'. Decide the liability of 'A' under the Negotiable Instruments Act, 1881. **4**
- (ii) Ram has ₹ 2,000/- in his bank account and he has no authority to overdraw. He issued a cheque for ₹ 5000/- to Gopal which was dishonoured by the bank. Point out whether Gopal must necessarily give notice of dishonour to Ram under the Negotiable Instruments Act, 1881 ? **4**
- (b) Which matters are considered to be "Ordinary" matters at the Annual General Meeting of a company ? What kind of resolution is required to be passed for 'ordinary business' and for 'special business' in an Annual General Meeting under the Companies Act, 1956 ? **4**
- (c) What do you understand by "Discrimination" ? Which basic elements are involved in discrimination in employment ? **4**

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6. (a) What restrictions are applicable under the Companies Act, 1956 when Articles of Association of a company are altered ? 8
- (b) Draft a 'Gift Deed' assuming your own facts regarding parties and subject matter relating to gift. 4
- (c) State whether the following statements are correct or incorrect : 4
- (i) The concept of legal personality of a company is of absolute nature.
- (ii) Contracts entered into by a company after its incorporation and before it is entitled to commence business are not binding until the company becomes entitled to commence business.
- (iii) A minor on his attaining majority can validate any agreement which was entered into when he was minor and which was void.
- (iv) Maintenance and Champerty are void in England but not in India, till they are not opposed to public policy.
7. Attempt any **four** of the following :
- (a) Solar Industries Limited sold its unit to Mars Industries Limited and contributed 30% contribution in the Pension Scheme. The transferee company refused to bear the balance 70% contribution in the Pension Scheme. Decide, under the Employees' Provident Fund and Miscellaneous Provisions Act, 1952, the liability of remaining contribution. 4
- (b) What is "Return of Allotment" ? List the documents which have to be enclosed when shares are allotted on discount. 4
- (c) Decide, under the Companies Act, 1956 whether Mr. Prabhu can incorporate a new company using the phrase "Electoral Trust" with the name of the company. 4
- (d) What are the guidelines for "Active Listening" ? 4
- (e) Which threats are existing in environment which adversely affect the fundamental principles of ethics ? 4

(5)

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(Hindi Version)

उन परीक्षार्थियों को छोड़कर जिन्होंने हिन्दी माध्यम चुना है, प्रश्नों के उत्तर केवल अंग्रेजी में ही देना है।

वह परीक्षार्थी जिसने हिन्दी माध्यम नहीं चुना है, यदि हिन्दी में उत्तर देता है,

तो उसके हिन्दी में दिये गये उत्तरों का मूल्यांकन नहीं होगा।

प्रश्न संख्या 1 अनिवार्य है।

शेष छः प्रश्नों में से किन्हीं पाँच प्रश्नों के उत्तर दीजिए।

Marks

1. (अ) सुनील ने राजेन्द्र से ₹ 3 लाख की रकम उधार ली। सुनील ने राजेन्द्र को अपनी भूमि का विक्रय करने के लिये अभिकर्ता (एजेन्ट) नियुक्त किया और उसे प्राधिकृत किया कि विक्रय के आगम से कर्ज की रकम का समायोजन कर ले। बाद में सुनील ने एजेन्सी का खण्डन (प्रतिसंहरण) कर दिया। भारतीय संविदा अधिनियम, 1872 के उपबन्धों के अन्तर्गत निर्णीत कीजिये कि क्या सुनील द्वारा उक्त एजेन्सी का खण्डन किया जाना वैध है? **5**
- (ब) एन्सन लिमिटेड के पास बूबन लिमिटेड के समता अंश थे। बाद में एन्सन लिमिटेड बूबन लिमिटेड की सहायक कम्पनी बन गई। कम्पनी अधिनियम, 1956 के अन्तर्गत निर्णीत कीजिये कि क्या एन्सन लिमिटेड के लिये यह आवश्यक है कि वह बूबन लिमिटेड के समता अंशों का समर्पण करे। **5**
- (स) कारण सहित बताइये कि क्या निम्न कथन सही है अथवा गलत –
- (i) “उपभोक्ता हित” एवम् “लोक हित” समानार्थी हैं। **3**
- (ii) “जिम्मेदारी की लौह विधि” पद का अर्थ है कि व्यापार की संस्था का अस्तित्व केवल इसलिये है कि वह अपने प्रवर्तकों के लिये अमूल्य सेवा प्रदान करती है। **2**
- (द) मौखिक संचार को प्रभावी बनाने के लिये किन महत्वपूर्ण कारकों पर विचार किया जाना चाहिये? **5**

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P.T.O.

2. (अ) (i) निम्बाहेडा टेक्सटाइल्स लिमिटेड की देश के तीन पृथक स्थानों पर तीन पृथक इकाइयाँ 4
है। उक्त कम्पनी की प्रत्येक इकाई पृथक तुलन-पत्र एवं लाभ-हानि लेखा तैयार करती
है और रखरखाव करती है। इनमें से एक इकाई को लगातार हानि हो रही है और
इसलिये इस इकाई के कर्मचारियों को बोनस की अदायगी नहीं होती। बोनस भुगतान
अधिनियम, 1965 के अन्तर्गत निर्णीत कीजिये कि उक्त इकाई के कर्मचारी इस आधार
पर बोनस का दावा कर सकते हैं कि हानि वाली इकाई एक ही उद्यम
(establishment) का भाग है ?
- (ii) असवानी जो सन टेलिविजन्स लिमिटेड का एक कर्मचारी था, 30 वर्षों की नियमित 4
सेवा के बाद 1 जनवरी, 2013 को सेवानिवृत्त हुआ। कम्पनी ने दिसम्बर, 2013 के
अन्त तक असवानी को प्रेचुइटी की रकम की अदायगी नहीं की। अब असवानी ब्याज
के साथ प्रेचुइटी की रकम का दावा करता है। प्रेचुइटी भुगतान अधिनियम, 1972 के
अन्तर्गत निर्णीत कीजिये कि क्या असवानी अपने दावों में सफल होगा ?
- (ब) कार्यस्थल पर नीतिगत व्यवहार को नहीं अपनाने से कौन सी समस्याएँ उत्पन्न हो सकती है ? 4
- (स) संचार के अनौपचारिक तरीके के सम्बन्ध में विशेषज्ञों द्वारा प्रतिपादित अंगूरलता की कड़ियाँ 4
(प्रेपवाइन चैन्स) को संक्षेप में समझाइये।
3. (अ) एक संविदा में संयुक्त वचनदाताओं के दायित्व की विधि को समझाइये। ग, घ एवं च जो 8
एक फर्म में भागीदार हैं, क को ₹ 1,50,000/- की अदायगी का संयुक्त वचन देते हैं। बाद में
च दिवालिया हो जाता है और उसकी निजी आस्तियाँ उसके अंश का केवल 1/5 अदा करने
के लिये पर्याप्त हैं। कानूनी कार्यवाही के माध्यम से क सम्पूर्ण रकम ग से वसूल लेता है।
भारतीय संविदा अधिनियम, 1872 के अन्तर्गत निर्णीत कीजिये कि ग किस सीमा तक घ से
रकम की वसूली कर सकता है।
- (ब) उपभोक्ताओं के अधिकारों के संरक्षण के सम्बन्ध में केन्द्रीय उपभोक्ता संरक्षण परिषद के क्या 4
उद्देश्य हैं ?
- (स) उन तत्त्वों को बताइये जिनका उपयोग “संगठनात्मक संस्कृति” को प्रभावित करने के लिये 4
किया जा सकता है।

4. (अ) कम्पनी अधिनियम, 1956 की धारा 60-ख के अन्तर्गत "सूचना प्रविवरण" (इन्फोर्मेशन मेमोरेण्डम) सम्बन्धी उपबन्धों को बताइये । 8
- (ब) "अम्लीय वर्षा" शब्दावली से आप क्या समझते हैं ? पर्यावरण पर यह किस प्रकार प्रतिकूल प्रभाव डालती है ? 4
- (स) एक कम्पनी के संचालक मण्डल की सभा आयोजित करने के लिये सभा की सूचना का प्रारूप बनाइये । इस सभा में निम्न कार्य प्रस्तावित होने हैं : 4
- (i) श्री 'क' को अतिरिक्त संचालक के रूप में लिया जाना ।
- (ii) कम्पनी के समता अंशों की पुनः खरीद का निर्णय लिया जाना ।
5. (अ) (i) 'अ' ने ₹ 5,000/- का एक चैक 'ब' को जारी किया । 'ब' ने चैक को समुचित अवधि में भुगतान हेतु प्रस्तुत नहीं किया । बैंक दिवालिया हो जाता है । यद्यपि जब चैक को भुगतान हेतु प्रस्तुत किया जाना था, चैक के भुगतान के लिये पर्याप्त निधि थी । अब 'ब', 'अ' से भुगतान की माँग करता है । परक्राम्य विलेख अधिनियम, 1881 के अन्तर्गत 'अ' के दायित्व का निर्धारण कीजिये । 4
- (ii) राम के बैंक खाते में ₹ 2,000/- है और उसे बैंक अधिविकर्ष का प्राधिकार नहीं है । उसने गोपाल को ₹ 5000/- का चैक जारी किया जिसको बैंक ने अनादरित कर दिया । परक्राम्य विलेख अधिनियम, 1881 के अन्तर्गत बताइये कि क्या गोपाल द्वारा राम को अनादरण की सूचना दिया जाना आवश्यक है ? 4
- (ब) एक कम्पनी की वार्षिक साधारण सभा में किन मामलों को साधारण कार्य माना जाता है ? कम्पनी अधिनियम, 1956 के अन्तर्गत एक वार्षिक साधारण सभा में "साधारण कार्य" एवम् 'विशेष कार्य' के लिये किस प्रकार के संकल्प की आवश्यकता है ? 4
- (स) "भेदभाव" से आप क्या समझते हैं ? नियोजन में भेदभाव में कौन से मूल तत्त्व सम्मिलित हैं ? 4

6. (अ) जब एक कम्पनी के अन्तर्नियमों में परिवर्तन किया जाता है तो कम्पनी अधिनियम, 1956 के अन्तर्गत कौन से प्रतिबन्ध लागू होते हैं ? 8
- (ब) दान के सम्बन्ध में पक्षकारों एवम् विषय वस्तु के स्वयं के तथ्यों की उपधारणा करते हुए एक दान-विलेख की रचना कीजिये । 4
- (स) बताइये कि निम्नलिखित तथ्य सही हैं अथवा गलत : 4
- (i) कम्पनी के विधिक व्यक्तित्व की उपधारणा अत्यान्तिक प्रकृति की है ।
- (ii) निगमन के पश्चात् और व्यवसाय आरम्भ करने के लिये अधिकृत होने से पूर्व जो संविदा (करार) किये जाते हैं वे कम्पनी पर तब तक बाध्यकारी नहीं होते, जब तक इसे व्यवसाय आरम्भ करने का प्रमाण-पत्र नहीं मिल जाता ।
- (iii) एक अवयस्क, वयस्क हो जाने के बाद उन करारों को वैध बना सकता है जो उसने अवयस्कता काल में किये थे एवम् व्यर्थ थे ।
- (iv) 'वाद पोषण' एवं 'वाद क्रय' के करार इंग्लैण्ड में शून्य हैं, भारत में नहीं जब तक कि वे लोकनीति के विरुद्ध न हों ।
7. निम्न में से किन्हीं चार के उत्तर दीजिये :
- (अ) सोलर इण्डस्ट्रीज लिमिटेड ने अपना यूनिट मार्स इण्डस्ट्रीज लिमिटेड को अन्तरित किया और पेंशन स्कीम में 30% अभिदान दे दिया । अन्तरिती कम्पनी ने पेंशन स्कीम के शेष 70% अभिदान देने से मना कर दिया । कर्मचारी भविष्य निधि एवम् विविध प्रावधान अधिनियम, 1952 के अन्तर्गत शेष अभिदान का दायित्व निर्धारित कीजिये । 4
- (ब) 'अंश आबन्टन विवरणी' क्या है ? यदि अंशों का आबन्टन बट्टे पर किया गया हो तो विवरणी के साथ संलग्न किये जाने वाले दस्तावेज बताइये । 4
- (स) कम्पनी अधिनियम, 1956 के अन्तर्गत क्या मि. प्रभु एक नई कम्पनी का निगमन कम्पनी के नाम के साथ "इलेक्टोरल ट्रस्ट" (Electoral Trust) के पद के साथ कर सकते हैं ? 4
- (द) "प्रभावी श्रवण" के लिये कौन से मार्गदर्शन हैं ? 4
- (च) पर्यावरण में वे कौन से भय अस्तित्व में हैं जो नीतिशास्त्र के मूल सिद्धान्तों पर प्रतिकूल प्रभाव डालते हैं ? 4

PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

Attempt any **five** questions from the remaining **six** questions.

Question 1

- (a) Sunil borrowed a sum of ₹ 3 lakh from Rajendra. Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Sunil is lawful ?
(5 Marks)
- (b) Anson Limited held equity shares in Booban Limited. Later on, Anson Limited became a subsidiary company of Booban Limited. Decide under the Companies Act, 1956, whether it is necessary for Anson Limited to surrender the equity shares of Booban Limited?
(5 Marks)
- (c) State with reasons whether the following statements are correct or incorrect :
- (i) “Consumer Interest” and “Public Interest” are synonymous. (3 Marks)
- (ii) The phrase ‘Iron Law of Responsibility’ means that the institution of business exists only because it performs invaluable services towards its promoters. (2 Marks)
- (d) What important factors should be considered to make oral communication effective?
(5 Marks)

Answer

- (a) The given problem is based on the provision related to ‘agency coupled with interest’. According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency, and such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest. In the instant case the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.
- Thus, when Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Rajendra and the said agency is not revocable. The revocation of agency by Sunil is not lawful.
- (b) As per section 42 of the Companies Act, 1956, a body corporate cannot be a member of a company which is its Holding company and any allotment or transfer of shares in a company to its subsidiary or nominee for its subsidiary shall be void, **except**:

- ◆ Where the subsidiary is concerned as the legal representative of a deceased member of the holding company; or
- ◆ Where the subsidiary is concerned as trustee, unless the holding company or a subsidiary thereof is beneficially interested under the trust and is not so interested only by way of security for the purposes of a transaction entered into by it in the ordinary course of a business which includes the lending of money
- ◆ This section shall not however, prevent a subsidiary from continuing to be a member of its holding company if it was a member thereof either at the commencement of the said Act or before becoming a subsidiary of the holding company but except in the cases referred to in sub-section (2), the subsidiary shall have no right to vote at meetings of the holding company or of any class of members thereof [sec 42(3)]

Since Anson Ltd., held shares of Booban Limited., before it became its subsidiary, as per the provisions of the Companies Act, 1956 [section 42(3)], it is not necessary for Anson Limited to surrender those shares in Booban Limited on its becoming subsidiary of Booban Limited. Thus, Anson Limited can continue to hold shares in Booban Limited but Anson Limited will not have the right to vote at the meetings of Booban Limited in respect of the shares held by it.

- (c) (i) **Incorrect** : Apparently it seems that public interest and consumer interest are synonymous but it is not so. They may be differentiated as under :-
- ◆ In the name of public interest, many governmental policies are formulated which manifest themselves in anti-competitive behavior. If the consumer is at the fulcrum, consumer interest and welfare should have primacy in all governmental policy formulations.
 - ◆ Consumer is a member of a broad class of people who purchase, use, maintain and dispose of products and services. They are being affected by pricing policy, financing practice, quality of goods, services and trade practices. They are clearly distinguished from manufacturers who produce goods for wholesalers, retailers who sell goods in public interest.
 - ◆ Public interest is something in which the society as a whole has some interest and is seen as an externality to competitive markets. There is also a justifiable apprehension that in the name of public interest, Governmental policies may be fashioned and introduced which may not be in the ultimate interest of the consumers. In fact, in such situations, there is a possibility that a conflict could arise between public interest and consumer interest.
- (ii) **Incorrect: The** phrase "Iron Law of Responsibility" means the institution of business exists only because it performs invaluable services for society. Society gives business its license to exist and this can be amended or revoked at any time if it fails to live upto society's expectations. Therefore, if a business intends to retain its

existing social role and power, it must respond to society's needs constructively rather than it performs invaluable services towards its promoters.

- (d) Factors to be considered for oral effective communication: Oral communication, which is face-to-face communication with others, has its own benefits. The only shortcoming of oral communication is that it is spontaneous and if one communicates incorrectly, the message will not get understood. It is primarily due to this reason one needs to develop effective oral communication skills as a message, if not understood at appropriate time, can lead to disaster.

In order to provide a fair and candid exchange of ideas, the following factors to be considered to make the oral communication effective:

- ◆ Consider the objective
- ◆ Think about the interest level of the receiver
- ◆ Be sincere
- ◆ Use simple language, familiar words
- ◆ Be brief and precise
- ◆ Avoid vagueness and generalities
- ◆ Give full facts
- ◆ Assume nothing
- ◆ Use polite words and tone
- ◆ Cut out insulting message
- ◆ Say something interesting and pleasing to the recipient
- ◆ Allow time to respond
- ◆ To make the oral communication effective, the speaker should converse slowly with proper semantic pauses to enable the listener receive and register in mind whatever is said by the speaker and there should be a due correlation between the pace of speaking and the rate of listening.

Question 2

- (a) (i) *Nimbaheda Textiles Limited has three separate units at three separate places in the country. Every unit of the said company prepares and maintains separate Balance Sheet and Profit and Loss Account. One of these units is incurring continuous losses and hence bonus is not paid to the employees of this unit. Decide, under the Payment of Bonus Act, 1965, whether the employees of the said unit can claim bonus on the ground that the unit incurring loss is a part of one single establishment?* (4 Marks)

- (ii) *Aswani who was an employee of Sun Televisions Limited, retired on 1st January 2013 after 30 years of continuous service. The company did not pay the amount of gratuity to Aswani till the end of December 2013. Now, Aswani claims the amount of gratuity along with interest. Decide, under the Payment of Gratuity Act, 1972, whether Aswani will succeed in his claim? (4 Marks)*
- (b) *What problems may arise at work place when ethical behaviour is not adopted? (4 Marks)*
- (c) *Briefly explain the "Grapevine Chains" propounded by the experts in relation to informal way of communication. (4 Marks)*

Answer

- (a) (i) According to Section 3 of the Payment of Bonus Act, 1965, where an establishment consists of departments or undertakings or has branches irrespective of whether they are situated in the same place or in different places, all such departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under the Act. But proviso to the section states that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.

Referring to the provisions of Section 3, Nimbaheda Textiles Ltd., is engaged at three different units located at three separate places in the country where separate balance sheet and profit & loss account are being maintained for the three units separately and hence the proviso to Section 3 will be applicable in this case. For the purpose of Bonus under the Act, the units will be treated as three separate establishments and accordingly, the employees of the unit incurring losses cannot claim bonus on the ground that the unit incurring loss is a part of one single establishment. However, the employees of the loss making unit can claim the minimum bonus as per section 10 of the Payment of Bonus Act, 1965.

- (ii) As per the provisions of section 4(1) of the Payment of Gratuity Act, 1972, gratuity shall be payable to an "employee" (defined in section 2(e) of the Act) 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;

Further, as per the provisions of section 7(3), the employer shall arrange to pay the amount of gratuity within thirty days from the date it becomes payable to the person as gratuity, whether the application for the payment of gratuity has been given or not by the employee.

Section 8 of the Act deals with Recovery of gratuity – If the amount of gratuity payable under this Act is not paid by the employer, within the prescribed time, to the person entitled thereto, the controlling authority shall, on an application made to it in this behalf by the aggrieved person, issue a certificate for that amount to the Collector, who shall recover the same, together with compound interest thereon at such rate as the Central Government may, by notification, specify, from the date of expiry of the prescribed time, as arrears of land revenue and pay the same to the person entitled thereto provided that the controlling authority shall, before issuing a certificate under this section, give the employer a reasonable opportunity of showing cause against the issue of such certificate provided further that the amount of interest payable under this section shall, in no case exceed the amount of gratuity payable under this Act.

Applying the above provisions of law to the question, Mr. Aswani will succeed and the company M/s. Sun Television Ltd., is required to pay gratuity along with interest as per the application of section 8 of the Act.

- (b) Problems may arise at work place because an organization, whether a business or government agency, is first and foremost a human society. If an employer does not take steps to create a work environment where the employees have a clear, common understanding of what is right and wrong, and feel free to discuss and ask questions about ethical issues and report violations, significant problems could arise, including :-
- (i) Increased risk of employees making unethical decisions
 - (ii) Increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum.
 - (iii) Inability to recruit and retain top and competent people
 - (iv) Diminished reputation in the industry and the community
 - (v) Significant legal exposure and loss of competitive advantage in the marketplace
- Therefore, ethical behaviour is essential to working environment at the work place.
- (c) **Grapevine Chains:** Specialists in this field have identified four types of grapevine chains in informal communication.
- (i) **Single Strand Chain:** In this type of chain, “A” tells something to “B” who tells it to “C” and so on. This type of chain is the least accurate in passing on the information or message.

- (ii) Gossip Chain: In it, a person seeks out and tells everyone the information he has obtained. This chain is often used when information or a message regarding a 'not-on-job' nature is being conveyed.
- (iii) Probability Chain: In it, individuals are indifferent to the persons to whom they are passing some information. This chain is found when the information is somewhat interesting but not really significant.
- (iv) Cluster Chain: In this type of chain, "A" tells something to a few selected individuals and then some of these individuals inform a few other selected individuals. It has been found that the cluster chain is the dominant grapevine pattern in an organization. Only few persons are "liaison individuals" who pass on the information they have obtained and then they are likely to share it with the people they trust. Most informal communication flows through this chain.

Question 3

- (a) *Explain the law relating to liability of joint promisors in a contract. 'D', 'E' and 'F' who are partners in a firm, jointly promised to pay ₹ 1,50,000/- to 'A'. Later-on, 'F' became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt. 'A' recovers the whole amount from 'D' through a legal action. Decide, under the provisions of the Indian Contract Act, 1872 the extent to which 'D' can recover the amount from 'E'.*
(8 Marks)
- (b) *What are the objects of the "Central Consumer Protection Council" in relation to protection of rights of the consumers?*
(4 Marks)
- (c) *Explain those elements which can be used to influence an "Organizational Culture".*
(4 Marks)

Answer

- (a) The legal liability of a joint promisor, joint promisee and other connected issues are set out in Sections 42, 43 and 44 of the Indian Contract Act, 1872. In terms of section 42 of the Act "When two or more persons have made a joint promise then unless a contrary intention appears from the contract, all such persons, during their joint lives, and after the death of any one of them, his representative jointly with the survivor or survivors and after the death of the last survivor, representatives of all jointly must fulfill the promise".
Further, the promisee can enforce his right against any one of the joint promisor and if he does so then the rights and duties of the other promisors is to make contributions. In terms of section 43 of the Act, (i) when two or more persons make joint promise, the promisee can compel any one of the joint promisors to perform the whole of promise. (ii) in the above situation, the performing promisor can enforce contribution from other joint promisors, in the absence of express agreement to the contrary.

Section 44 of the Act, states that in the matter of release of one of the joint promisors, it must be understood that such a release does not discharge other joint promisors nor does the released joint promisor stand released to other joint promisor or promisors.

Hence, in the instant case, D, E and F who are partners in a firm, jointly promised to pay ₹ 1,50,000/- to A. Later on, F became insolvent and his private assets are sufficient to pay only 1/5th of his share of debt i.e. ₹ 10,000/- (1/5th of ₹ 50,000/-) (Amount to be contributed by F is ₹ 50,000/- (1/3rd of ₹ 1,50,000/-). A recovers the whole amount from D through a legal action.

Here, D is entitled to receive

- (a) From F's assets : ₹ 10,000/-
- (b) From E: ₹ 70,000/- (₹ 50,000/- being his own share + ½ (50,000 – 10,000) i.e. ₹ 20,000/- being one half share of total loss of ₹ 40,000/- due to F's insolvency).

Thus, in the above case, under the provisions of the Indian Contract Act, 1872, D can recover ₹ 70,000/- from E.

- (b) The objects of the Central Consumer Protection Council shall be 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 (or services, as the case may be) so as to protect the consumer against unfair trade practices;
 - (iii) The right to be assured, wherever possible, access to a variety of goods, and services at competitive prices;
 - (iv) The right to be heard and to be assured that consumer's interest will receive due consideration at appropriate terms;
 - (v) The right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and
 - (vi) The right to consumer education
- (c) A number of elements that can be used to describe or influence Organizational Culture and they are:-
 - ◆ The Paradigm: What the organization is about; what it does; its mission; its values.
 - ◆ Control Systems: The processes in place to monitor what is going on
 - ◆ Organizational Structures: Reporting lines, hierarchies, and the way that work flows through the business.
 - ◆ Power Structures: Who makes the decisions and how power is distributed across the organization.

- ◆ Symbols: These include the logos and designs, but would extend to symbols of power, such as car parking spaces and executive washrooms.
- ◆ Rituals and Routines: Management meetings, board reports and so on may become more habitual than necessary.
- ◆ Stories and Myths: build up about people and events, and convey a message about what is valued within the organization.

Communicating the corporate culture effectively is paramount. For example, at General Electric (GE), corporate values are so important to the company that Jack Welch, the former legendary CEO of the company, had them inscribed and distributed to all GE employees at every level of the Company.

Question 4

- (a) State the provisions relating to "Information Memorandum" under Section 60 B of the Companies Act, 1956. (8 Marks)
- (b) What do you understand by the term "Acid Rain" ? How does it adversely affect the environment ? (4 Marks)
- (c) Draft a notice for calling the meeting of the Board of Directors of a company. In this meeting, following transactions have to be proposed :- (4 Marks)
- (i) Mr. X to be co-opted as an Additional Director
 - (ii) Decision to be taken to buy-back company's equity shares.

Answer

- (a) According to section 2 (19 B) of the Companies Act, 1956, information memorandum means a process undertaken prior to filing of a prospectus by which a demand for the securities proposed to be issued by a company is elicited and the price and the terms of issue for such securities is assessed by means of a notice, circular, advertisement or document.

Section 60B of the Companies Act, 1956 provides the following regarding Information Memorandum.

- (1) A public company making an issue of securities may circulate information memorandum to the public prior to filing of a prospectus.
- (2) A company inviting subscription by an information memorandum shall be bound to file a prospectus prior to the opening of the subscription lists and the offer as a red-herring prospectus, at least three days before the opening of the offer.
- (3) The information memorandum and red-herring prospectus shall carry same obligations as are applicable in the case of a prospectus. A red-herring prospectus means a prospectus which does not have complete particulars on the price of the securities offered and the quantum of securities offered.

- (4) Any variation between the information memorandum and the red-herring prospectus shall be highlighted as variations by the issuing company.
 - (5) Every variation as made and highlighted in accordance with sub section (4) above shall be individually intimated to the persons invited to subscribe to the issue of securities.
 - (6) In the event of the issuing company or the underwriters to the issue have invited or received advance subscription by way of cash or post-dated cheques or stock invest, the company or such underwriters or bankers to the issue shall not encash such subscription moneys or post datedcheques or stock invest before the date of opening of the issue, without having individually intimated the prospective subscribers of the variation and without having offered an opportunity to such prospective subscribers to withdraw their application and cancel their post datedcheques or stock invest or return of subscription paid.
 - (7) The applicant or proposed subscriber shall exercise his right to withdraw from the application on any intimation of variation within seven days from the date of such intimation and shall indicate such withdrawal in writing to the company and the underwriters.
 - (8) Any application for subscription which is acted upon by the company or underwriters or bankers to the issue without having given enough information of any variations, or the particulars of withdrawing of offer or opportunity for cancelling the post datedcheques or stock invest or stop payments for such payments shall be void and the applicants shall be entitled to receive a refund or return of its post datedcheques or stock invest or subscription money or cancellation of its application, as if the said application had never been made and the applicants are entitled to receive back their original application and interest at the rate of fifteen percent from thedate of encashment till payment of realisation.
 - (9) Upon the closing of the offer of securities, a final prospectus stating therein the total capital raised whether by way, of debt or share capital and the closing price of the securities and any other details as were not complete in the red-herring prospectus shall be filed in a case of a listed public company with the Securities and Exchange Board of India and Registrar and in any other case with the Registrar only.
- (b) Like a Global Warming, "Acid Rain" is a threat to the environment that is closely related to the combustion of fossil fuels (oil, coal and natural gases) which are heavily used by utilities to produce electricity. Burning fossil fuels, particularly coal containing high levels of sulphur, releases large quantities of sulphur oxides and nitrogen oxides into the atmosphere. When these gases are carried into the air, they combine with water vapour in clouds to form nitric acid and sulphuric acid. These acids are then carried down in rain, which often falls hundreds of miles away from the original sources of the oxides raising the acidity of the water sources. It also soaks into soils and falls directly on trees and other vegetations.

Numerous studies have shown that many fish populations and other aquatic organisms are unable to survive in lakes and rivers that have become highly acidic due to acid rain.

Other studies have shown that acid rain directly damages forests and indirectly destroys the wildlife and species that depend on forests for food and breeding. Acidic rain water can also contaminate drinking water. Acid rain can corrode and damage buildings, statues and other objects, particularly those made of iron, lime stone and marble thereby causing great threat to life and property over a long period of time.

(c)

..... Limited
(Address)

Date :.....

Notice of the Meeting of the Board of Directors

Dear Sir / Madam,

This is to inform you that a meeting of the Board of Directors will be held at the Registered Office of the company on 2014 at(time). to transact the business as per the enclosed agenda.

You are requested to please attend the meeting.

Yours faithfully,

Secretary

For and on behalf of the

Board of Directors

Place :

Date :

Business Agenda

1. Confirmation of the minutes of the previous Board Meeting held on.
2. Co-option of Mr. X as an Additional Director of the company
3. Buy-back of 10% of the equity shares of the company
4. Any other matter with the permission of the Chair.

By order of the Board of Directors

(Signature)

Place :

Date :

Question 5

- (a) (i) 'A' issued a cheque for ₹ 5,000/- to 'B'. 'B' did not present the cheque for payment within reasonable period. The Bank fails. However, when the cheque was ought to be presented to the bank, there was sufficient fund to make payment of the cheque. Now, 'B' demands payment from 'A'. Decide the liability of 'A' under the Negotiable Instruments Act, 1881. (4 Marks)
- (ii) Ram has ₹ 2,000/- in his bank account and he has no authority to overdraw. He issued a cheque for ₹ 5,000/- to Gopal which was dis-honoured by the bank. Point out whether Gopal must necessarily give notice of dishonor to Ram under the Negotiable Instruments Act, 1881 ? (4 Marks)
- (b) Which matters are considered to be "Ordinary" matters at the Annual General Meeting of a company ? What kind of resolution is required to be passed for 'ordinary business' and for 'special business' in an Annual General Meeting under the Companies Act, 1956 ? (4 Marks)
- (c) What do you understand by "Discrimination" ? Which basic elements are involved in discrimination in employment ? (4 Marks)

Answer

- (a) (i) 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. Hence, 'A' is discharged from his liability to pay the amount of cheque to 'B'.
- (ii) As per the provision given under the Negotiable Instruments Act, 1881, in a suit against the drawer on an instrument being dishonored, notice of dishonor is a material part of the cause of action. However, there are certain cases where notice of dishonor is not necessary, when the party charged could not suffer damage for want of a notice. In such a case, it is sufficient if it is shown that at the time of drawing the instrument, there were no funds belonging to the drawer in the hands of the drawee. Thus, it is not necessary for Gopal to give notice of dishonor to Ram under section 98 of the Act [*Subrao vs. Sitaram 2 Bom. L.R. 891*].

- (b) In case of an Annual General Meeting, the items of business relating to; (i) the consideration of accounts, balance sheet and the reports of the Board of Directors and auditors; (ii) the declaration of Dividend; (iii) the appointment of directors in the place of those retiring; and (iv) appointment and fixation of remuneration of auditors are regarded as ordinary business.

All businesses, other than those under (i) to (iv) above transacted at the meeting are deemed to be special (Section 173 (1) (a) of the Companies Act, 1956). In the case of any other meeting, all business shall be deemed special.

In respect of ordinary business to be transacted at an AGM, the share- holders are required to pass ordinary resolution except for the appointment of auditors in the case of a company where not less than 25% of the subscribed capital is held, whether singly or in any combination by a public financial institution or a Government company or Central or State Government or a nationalized bank or an insurance company carrying on general insurance business requires special resolution to be passed even where the said business is ordinary. In respect of special business one may need to pass either ordinary resolution or special resolution depending upon the requirement of the Act and / or the articles of association of the company.

- (c) The root meaning of the term discriminate is “to distinguish one object from another” Discrimination is 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. Employment discrimination is treating one person better than another because of their age, gender, race, religion or other protected class status. Another approach to the morality of discrimination that also views it as a form of injustice is based on the formal “principle of equality”

Discrimination in employment involves three basic elements.

- ◆ First, it is decision against one or more employees (or prospective employees) that is not based on individual merit, such as the ability to perform a given job, seniority, or other morally legitimate qualifications.
- ◆ Second, the decision derives solely or in part from racial or sexual prejudice, false stereotypes, or some other kind of morally unjustified attitude against members of the class to which the employee(s) belongs.
- ◆ Third, the decision (or set of decisions) 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.

Question 6

- (a) *What restrictions are applicable under the Companies Act, 1956 when Articles of Association of a company are altered ?* (8 Marks)

- (b) Draft a 'Gift Deed' assuming your own facts regarding parties and subject matter relating to gift. (4 Marks)
- (c) State whether the following statements are correct or incorrect :- (4 Marks)
- (i) The concept of legal personality of a company is of absolute nature.
 - (ii) Contracts entered into by a company after its incorporation and before it is entitled to commence business are not binding until the company becomes entitled to commence business.
 - (iii) A minor on his attaining majority can validate any agreement which was entered into when he was minor and which was void.
 - (iv) Maintenance and Champerty are void in England but not in India, till they are not opposed to public policy.

Answer

- (a) Section 31 of the Companies Act, 1956 provides that every company has a right to alter or add to its articles. A company cannot divest itself of these powers. Matters as to which the memorandum is silent can be dealt with by the alteration of articles. Such alteration is effective by passing a special resolution. The right to alter the article is subject to the following limitations :-
- (i) The alteration must not exceed the powers given by memorandum or conflict with the provisions thereof.
 - (ii) It must not be inconsistent with any provisions of the Companies Act or any other statute.
 - (iii) It must not be illegal
 - (iv) It shall not be in fraud on minority or inflict a hardship on minority shareholders, without any corresponding benefits to the company as a whole.
 - (v) It must not be inconsistent with any order of the Court, under section 404 any subsequent alteration thereof which is inconsistent with such an order can be made by the company only with the leave of the Court.
 - (vi) It may have retrospective effect so long as it does not affect the things already done by the company (*Allen B. Gold Reef of West Africa [1909] SC 732*)
 - (vii) If a public company is converted into a private company, then the approval of Central Government is necessary [Section 31(1)]. In this regard, an injunction cannot be granted to prevent the adoption of new article which constituted a breach of contract. But if the company acts on them, it may be liable to damage [*Shirlaw Vs. Southern Foundaries Ltd., 1940 AC 701 (7560)*].
 - (viii) An alteration should not increase the liability of a member unless he has agreed thereto in writing (section 38)

- (ix) A reserve capital once created cannot be unreserved but may be cancelled on a reduction of capital (*Midland Railway Carriage Wagon Co. 1907*) Section 99.
- (x) Any irregular alteration which have been acted on for many years are binding.
- (xi) The alteration must be bonafide and for the benefit of the company as whole.

(b)

Gift Deed

THIS DEED OF GIFT made on this 15th day of May 2014 BETWEEN 'X' an Indian aged about 70 years, son of 'A' resident of(hereinafter called "the Donor") of the one part AND 'Y' an Indian aged about 30 years, son of 'B', resident of(hereinafter called "the Donee") of the other part :

WHEREAS the Donor has no issue and the donee is the nephew of the Donor and has been living with him since childhood in the house owned by Donor.

AND WHEREAS the Donor out of natural love and affection for his said nephew, is desirous of making a gift of the said house to the donee.

NOW THEREFORE THIS DEED WITNESSETH as follows:-

1. That in consideration of natural love and affection of Donor for the Donee, the donor hereby voluntarily transfers to the Donee free from all encumbrances whatsoever of the said house with all rights of easements, privileges appurtenant thereto and to hold the same unto the donee absolutely forever.
2. That the Donor or his heirs shall have no interest in the said house hereafter.
3. That the Donee hereby accepts the said transfer made by the Donor.
4. That the value of the said house is ₹ 5,00,000/- (Rupees Five Lakhs only).

IN WITNESS WHEREOF the parties hereto have signed this deed atin presence of the witnesses on the day and year first hereinabove written.

SIGNED AND DELIVERED

By the within named "Donor"

In the presence of.....

1).....

2).....

SIGNED AND DELIVERED

By the within named "Donee"

In the presence of.....

1).....

2).....

- (c) (i) Incorrect
 (ii) Correct
 (iii) Incorrect
 (iv) Correct

Question 7

Attempt any **four** of the following :

- (a) *Solar Industries Limited sold its unit to Mars Industries Limited and contributed 30% contribution in the Pension Scheme. The transferee company refused to bear the balance 70% contribution in the Pension Scheme. Decide, under the employees' provident Fund and Miscellaneous Provisions Act, 1952, the liability of remaining contribution.* (4 Marks)
- (b) *What is "Return of Allotment" ? List the documents which have to be enclosed when shares are allotted on discount.* (4 Marks)
- (c) *Decide, under the Companies Act, 1956 whether Mr. Prabhu can incorporate a new company using the phrase "Electoral Trust" with the name of the company.* (4 Marks)
- (d) *What are the guidelines for "Active Listening"?* (4 Marks)
- (e) *Which threats are existing in environment which adversely affect the fundamental principles of ethics ?* (4 Marks)

Answer

- (a) The problem asked in the question is based on the provisions of section 17B of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. Accordingly, where an employer in relation to an establishment, transfers that establishment in whole or in part by sale, gift, lease or licence or in any other manner whatsoever, the employer and the person to whom the establishment is so transferred shall be jointly or severally liable to pay the contribution and other sums due from the employer under the provisions of this Act of the scheme or pension scheme, as the case may be, in respect of the period upto the date of such transfer. It is provided that the liability of the transferee shall be limited to the value of the assets obtained upto the date of transfer.

It would thus be evident from the aforesaid provisions that section 17B deals with the liability of transferor and transferee in regard to the money due under the Act, scheme or the Pension scheme. In the case of transfer of establishment brought in by sale, gift, lease etc., the liability of the transferor and the transferee is joint and several, but it is limited to the period upto the date of the transfer.

Therefore, applying the above provision of law, Solar Industries Ltd., has paid only 30% of the total liability as contribution in Pension Scheme before sale of the establishment. With regard to the remaining 70% liability both the transferor and the transferee

companies are jointly and severally liable to contribute. In case, the transferor refuses to contribute, the transferee is liable but the liability of the transferee (Mars Industries Limited) is limited to the extent of assets obtained by it from the transfer of the establishment.

- (b) According to section 75 of the Companies Act, 1956, whenever a company having a share capital makes any allotment of its shares, the company shall within 30 days thereafter file with the Registrar a Return of Allotment. It must contain the following particulars :

The number and nominal amount of shares allotted; the names, addresses, the occupation of the allottees; the amount, if any, paid or payable on each share. No share should be shown as allotted for cash unless cash has actually been received in respect of the allotment. Contracts in writing under which shares have been allotted for any consideration other than cash, must be produced for examination of the Registrar.

Where bonus shares have been issued, the returns must show the nominal amount of the shares allotted; names and addresses and occupations of the allottees and a copy of the resolution authorizing the issue of such shares.

Where the shares have been issued at a discount, the return must include a copy of the resolution authorizing such an issue, a copy of the Court/Tribunal's order sanctioning the issue, and where the rate of discount is more than ten percent, a copy of the order of the Central Government permitting the issue.

- (c) The Ministry of Corporate Affairs Vide General Circular No. 12/2013 dated 28.06.2013 has explained that name including phrase 'Electoral Trust' may be allowed for registration of companies to be formed under section 25 of the Companies Act, 1956 under the Electoral Trusts Scheme, 2013 as notified by the Central Board of Direct Taxes (CBDT).

However, the company to be formed under section 25 of the Companies Act, 1956, shall be the new company and such company will be required to comply with section 293-A of the Companies Act, 1956. Further, name application may be accompanied with an affidavit to the effect that the name to be obtained shall only be for the purpose of registration of companies under the Electoral Trust Scheme as notified by CBDT.

In the given case, the applicant, Mr. Prabhu can incorporate a new company using the phrase "Electoral Trust" with the name of the company by complying with the provisions of the above circular of Ministry of Corporate Affairs.

- (d) **Guidelines for Active Listening**

- ◆ Look at the person and suspend other things you are doing in order to understand the other person's concerns, intentions.

- ◆ Be interested in what the other person is saying. If you just can't make yourself interested, you will lose important information, so try taking notes. Doing so will keep your body and mind active.
 - ◆ Listen to the tone of voice and inflection; look at gestures and body language – these may carry an unspoken message.
 - ◆ Restate what the person said. Restating their meaning is a way for you to make sure you understand the person clearly.
 - ◆ Ask questions once in a while to clarify the meaning. Doing so will keep you alert and let the other person know that you have been listening and are interested in getting all the facts and ramifications.
 - ◆ Be aware of your own feelings and opinions.
- (e) The dynamic environment in which businesses operate today may usher a broad range of circumstances because of which compliance with the above mentioned fundamental principles may potentially be threatened. Such threats may be classified as follows:-
- (i) Self-interest threats, which may occur as a result of the financial or other interests of a finance and accounting professional or of an immediate or close family member:
 - (ii) Self-review threats, which may occur when a previous judgement needs to be reevaluated by the finance and accounting professional responsible for that judgement:
 - (iii) Advocacy threats occur when a professional promotes a position or opinion to the point that subsequent objectivity may be compromised :
 - (iv) Familiarity threats occur when finance and accounting professional has close relationship in the work environment and such relationship impair his selfless attitude towards work.
 - (v) Intimidation threats occur when a professional may be prohibited from acting objectively by threats, actual or perceived.