

PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

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

Question 1

(a) A had borrowed from B the amounts as detailed below :

Date of Borrowing	Amount	Due Date
01-06-2018	25,000	01-08-2018
15-06-2018	37,500	03-08-2018
27-06-2018	13,000	15-08-2018
01-07-2018	24,000	21-08-2018

On 15-08-2018, A paid B ₹ 13,000 with a request to appropriate the same against amount borrowed on 27-06-2018. Does A, as a debtor, have a right to decide the debt towards which payment is to be appropriated? Explain with reference to Indian Contract Act, 1872. **(5 Marks)**

(b) ACE Builders Ltd. issued a prospectus which contained mis-statement about the prospects of the Company from a project to be undertaken with an intent to defraud the applicants for securities. Discuss the provisions of law relating to criminal liability for mis-statement in the prospectus under the Section 34 of the Companies Act, 2013. **(5 Marks)**

(c) "Various performance and reporting standards have been introduced as external standards." In the context of this, comment on the following standards:

(i) Social Accountability 8000 and

(ii) AA 1000

(5 Marks)

(d) "There are certain barriers to effective communication." Explain and state the role of the following types of barriers and its effects on the communication.

(i) Filtering and

(ii) Cultural Barriers

(5 Marks)

Answer

(a) According to section 59 of the Indian Contract Act, 1872, "Where a debtor, owing several distinct debts to one person, makes a payment to him either with express intimation or under circumstances implying that the payment is to be applied to the discharge of some particular debt, the payment, if accepted, must be applied accordingly".

Where a debtor owes a number of debts and he pays an amount with express or implied instructions towards appropriation, the debtor is at will to appropriate to any debt and the creditor is bound by it. This is set out in the Latin Maxim of "quicquid sovitur, sovit

sectionundum modum solventis" meaning that whatever is paid, is paid according to intention or manner of party paying. The right of debtor to decide the appropriation is also known as decision in Clayton's case.

Hence, in the given question A, the debtor has a right to decide the debt towards which the payment of ₹ 13,000 (made on 15.8.2018) is to be appropriated.

(b) Criminal liability for misstatements in prospectus (Section 34):

1. Mis-statements in prospectus: Where a prospectus is issued, circulated or distributed, and it includes in relation to it **(i)** any statement which is untrue or misleading in form or context in which it is included, or **(ii)** where any inclusion or omission of any matter is likely to mislead,

then every person who authorizes the issue of such prospectus shall be liable under section 447 of the Companies Act, 2013:

2. Punishment for the mis-statement: Where any person who is found to be guilty of fraud, shall be punishable with imprisonment for a term which shall not be less than 6 months but which may extend to 10 years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud.

Provided that where the fraud in question involves public interest, the term of imprisonment shall not be less than 3 years.

(c) (i) Social Accountability 8000: SA 8000 is a comprehensive, global, verifiable performance standard for auditing and certifying compliance with corporate responsibility. The heart of the standard is the belief that all workplaces should be managed in such a manner that basic human rights are supported and that management is prepared to accept accountability for this. SA8000 is an international standard for improving working conditions. This standard is based on the principles of the international human rights norms as described in International Labour Organization conventions, the United Nations Convention on the Rights of the Child and the Universal Declaration of Human Rights. The requirements of this standard apply regardless of geographic location, industry sector, or company size.

(ii) AA1000: Launched in 1999, based on John Elkington's Triple Bottom Line (3 BL) reporting, AA1000 is an accountability standard designed to complement the Global Reporting Initiative's (GRI) Reporting Guidelines with the objective to improve accountability and performance by learning through stakeholder engagement. The AA1000 Stakeholder Engagement Standard (AA1000SES) is a generally applicable, open-source framework for improving the quality of the design, implementation, assessment, communication and assurance of stakeholder engagement. The AA1000 Assurance Standard was launched in 2003 as the world's first sustainability assurance standard and applies to the principles of Materiality, Completeness and Responsiveness.

- (d) (i) **Filtering:** Filtering means that the sender of a message manipulates information in such a way that it will be seen more favourably by the receiver. A manager, for example, likes to tell his boss what he feels his boss wants to hear. In this process, he is filtering information. The net result is that the man at the top never gets objective information. In the same way, the people at the lower levels condense and synthesise information so as to get maximum benefits for themselves. They hold back or ignore some important part of information. The more vertical levels in the organisation, the more chances there are for filtering. This is a very frequently occurring communication problem.
- (ii) **Cultural Barriers:** We live in a culturally diverse world, and so we could encounter individuals from different races, religions, and nationalities. We have to be especially careful in this regard as we have to operate in international environment. The same category of words, phrases, symbols, actions, colours mean different things to people of different countries or different cultural backgrounds. For example, in the United States people love to be called by their first names while in Britain, and to a large extent also in India, people like to be addressed by their last name. In the North American States a sign of 'O' made with the forefinger and thumb stands for 'OK' while in the Southern States it is construed as obscenity.
- The desire to communicate is the first step in being effective. The desire to connect with another human being is the bond that will express itself clearly. A genuine effort to understand another person goes a long way in the path to communication. Knowing about other cultures and being proactive will help to develop these skills.

Question 2

- (a) (i) *In September 2016 there was a labour unrest and as a result fire broke out in ABC Cotton Mills in which a major part of the factory and stock was destroyed resulting in severe financial loss to the establishment. ABC Cotton Mills submitted an application to the Appropriate Government for grant of exemption from paying minimum bonus.*
- Discuss whether such exemption could be granted to the Mills by Appropriate Government under the provisions of Payment of Bonus Act, 1965? (4 Marks)*
- (ii) *Mr. X was the owner of a factory to which the Payment of Gratuity Act, 1972 was applicable. Mr. X had appointed Mr. D as the Labour Officer for the Factory and given his specific instructions for ensuring compliance with provisions of various labour laws. Subsequently it was found that Mr. D had made certain false statements and manipulated the records which had resulted in non-payment of gratuity to certain employees in contravention of the provisions of Payment of Gratuity Act, 1972. The Inspector detected the irregularities and sent notice to Mr. X. Does Mr. X have any defense? Explain with reference to provisions of Payment of Gratuity Act, 1972. (4 Marks)*

- (b) "Pollution in any form is dangerous to society." In the context of this, comment on (i) Air pollution and (ii) Water pollution. **(4 Marks)**
- (c) What is Emotional Intelligence? Discuss the social competence associated with the Emotional Intelligence. **(4 Marks)**

Answer

- (a) (i) The Payment of Bonus Act, 1965 creates liability on the part of employer to pay the minimum bonus and confers a right to the workmen, as mentioned in Section 10. The obligation and right is subject to exemption under Section 36. Under section 36 if the Appropriate Government having regard to the financial position and other relevant circumstances of any establishment or class of establishment is of opinion that it will not be in public interest to apply all or any of the provisions of this Act thereto, it may by notification in the Official Gazette, exempt for such period as may be specified therein and subject to such conditions as it may think fit to impose, such establishment or class of establishments from all or any of the provisions of this Act.

The expression 'financial position' includes loss suffered by the establishment during the accounting year. The expression 'other relevant circumstances' will include every consideration as to whether the workmen had principally contributed to the financial loss of the company during that accounting year.

As per the above provisions, ABC Cotton Mills could be granted exemption by appropriate Government.

However, if the bonus liability is negligible compared to the loss suffered and the losses sustained by the employer is not due to the misconduct of employees, company will not be relieved of the liability of paying the minimum bonus.

- (ii) According to section 10 of the Payment of Gratuity Act, 1972, where an employer is charged with an offence punishable under this Act, he can, after giving three days clear notice of his intention to do so, bring any other person whom he charges as the actual offender, before the court at the time fixed for hearing the charge, and if, after the offence has been proved, employer proves to the satisfaction of the court that-(i) he has used due diligence to enforce the execution of this Act, and (ii) the said person committed the offence in question without his knowledge, consent or connivance. There the other person responsible for the occurrence shall be convicted of the offences and shall be liable to the like punishment as if he were the employer and the employer shall be discharged from any liability under the Act in respect of such offence.

Thus, If Mr. X can prove his innocence to the satisfaction of court as per the provisions of section 10 of the Payment of Gratuity Act, 1972, then he will be discharged.

- (b) **Air Pollution:** Air pollution has increased exponentially as industrialization expanded. The most prevalent forms of air pollution are the gases and particulates spewed out by autos and industrial processes, which affect the quality of the air we breathe.

Air pollutants also affect vegetation decreasing agricultural yields, deteriorate exposed construction materials through corrosion, discoloration, and rot, are hazardous to health and life and threaten disastrous global damage in the form of global warming, destruction of the stratospheric ozone layer and acid rains.

Water Pollution: Over the past many years the oceans have been used as disposal sites for intermediate and low-level radioactive wastes. Oceanographers have found traces of plutonium, cesium, and other radioactive materials in seawater that have apparently leaked from the sealed drums in which radioactive wastes are disposed.

Water is essential to human life as well as to industrial growth and development, the world's per capita supplies of water are shrinking. An increase in population and economic activity particularly in urban areas, has resulted in increased demands for water. To meet these demands, water is being increasingly diverted from agricultural irrigation to provide water for cities.

- (c) **Emotional Intelligence:** Emotional intelligence refers to the capacity to recognizing your own feelings and those of others, for motivating yourself, and for managing emotions well in yourself and in your relationships.

Social competencies associated with emotional intelligence are as follows:

Social Awareness:

1. Empathy: Sensing others emotions, understanding their perspective and taking active interest in their concerns.
2. Organizational awareness: Leading the current decision, networks and politics at the organizational level.
3. Service: Recognizing and meeting follower, client or customer needs.

Relationship Management:

1. Inspirational leadership: Guiding and motivating with a compelling vision.
2. Influence: wielding a range of tactics for persuasions
3. Developing others: Bolstering others' abilities through coaching, feedback and guidance.
4. Change catalyst: Initiating, managing, and leading in a new direction
5. Conflict management: resolving disagreements
6. Building bonds: Cultivating and maintaining a web of relationships
7. Teamwork and collaboration: Cooperation and team building

Question 3

- (a) (i) Y advances Z a loan of ₹ 10,000 on the guarantee of X, at an interest of 10%. Subsequently, as Z was having some financial problems, Y reduced the rate of interest to 7% and also extended time for repayment of loan without the consent of X. Z becomes insolvent. Can Y sue X for recovery of amount? **(4 Marks)**
- (ii) Amar offered to sell his flat to Akbar for ₹ 1,00,000. Akbar replied purporting to accept the offer and wrote to Amar promising to pay the amount in 5 equal instalments of ₹ 20,000 each. Examine the legal position. **(4 Marks)**
- (b) Discuss any four practices widely recognized as discriminatory at the workplace. **(4 Marks)**
- (c) "Consensus means overwhelming agreement, but in reaching the consensus one has to go through a process of orientation." Discuss and explain the process for building consensus. **(4 Marks)**

Answer

- (a) (i) According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.
- Accordingly, Y cannot sue X, because a surety (X) is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor (Z), no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety.
- (ii) **The acceptance must be communicated:** In order to conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract.
- Further, when a proposal is accepted, the offeree must have knowledge of the offer made to him. Otherwise there is no acceptance. The acceptance must specifically relate to the offer made. Only then it will materialize into a contract. As per the facts of the question, Amar offered to sell his flat to Akbar for ₹ 1,00,000. Akbar replied purporting to accept the offer and promised to pay the amount in five equal instalments of ₹ 20,000 each. The reply by Akbar becomes a counter offer and it is up to Amar to accept it or not.
- (b) The following practices are recognized as discriminatory:
- 1. Recruitment Practices:** Firms that rely solely on the word-of-mouth referrals of present employees to recruit new workers tend to recruit only from those racial and

sexual groups that are already represented in their labor force. In such a case, recruitment would tend to be discriminatory.

2. **Screening Practices:** Job qualifications are discriminatory when they are not relevant to the job to be performed (e.g., requiring a high school diploma or a credential for an essentially manual task.). Job interviews are discriminatory if the interviewer routinely disqualifies certain class of people - for example assumptions about occupations "suitable for women" or the propriety of putting women in "male "environments.
 3. **Promotion Practices:** Promotion, job progression, and transfer practices are discriminatory when employers place males on job tracks separate from those open to women and minorities. When promotions rely on the subjective recommendations of immediate supervisors.
 4. **Conditions of Employment:** Many times, wages and salaries are discriminatory to the extent that equal wages and salaries are not given to people who are doing essentially the same work. Another issue is related to fair wages and treatment to workers. Companies subcontracting manufacturing operations abroad are now aware of the ethical issues associated with supporting facilities like child labour that abuse and/or underpay their work forces. Such facilities have been termed "sweatshops."
 5. **Dismissal:** Firing an employee on the basis of his or her race or sex is a clear form of discrimination. Less blatant but still discriminatory are layoff policies that rely on a seniority system, in which women and minorities have the lowest seniority because of past discrimination.
- (c) **Consensus Building:** Consensus means overwhelming agreement. Most consensus building efforts set out to achieve unanimity. The process of consensus building involves the following:
- ◆ *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."
 - ◆ *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.

Question 4

- (a) (i) *PQR Ltd. had issued 10000 shares of ₹ 10 each, on which company called up ₹ 7.50 per share. However, Mr. C, a shareholder of PQR Ltd., deposited in advance the remaining amount due on his shares without any calls made by PQR Ltd. Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr. C, which will arise by the payment of calls made in advance.* **(4 Marks)**
- (ii) *A company cannot issue shares at a discount as per Section 53 of the Companies Act, 2013. Explain the exception to this provision, if any, with reference to Companies Act, 2013.* **(4 Marks)**
- (b) *What do you understand by Ecological Ethics? Explain.* **(4 Marks)**
- (c) *What are the merits of grapevine phenomenon in communication? Explain.* **(4 Marks)**

Answer

- (a) (i) Section 50 (1) of the Companies Act, 2013 states that a company may, if so authorised by its articles, accept from any member, the whole or a part of the amount remaining unpaid on any shares held by him, even if no part of that amount has been called up. Hence, the Companies Act recognizes the right of a company to receive calls in advance provided it is authorized by its Articles to do so.

In the given case Mr. C, a shareholder of the 'PQR Ltd', has deposited in advance the remaining amount due on his shares without any calls made by 'PQR Ltd'. Hence, there is no irregularity in the transaction.

When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:

- (i) The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up [Section 50(2)].
- (ii) The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.

- (iii) The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
- (iv) The amount received in advance of calls is not refundable.
- (v) In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
- (vi) The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

[Note: It has been presumed that 'PQR Ltd' was authorized by its articles to accept the unpaid calls.]

- (ii) Under section 53 (1) of the Companies Act, 2013 a company cannot issue shares at a discount except as provided in section 54.

Under section 53 (2) any share issued by a company at a discount shall be void.

Hence, the general rule under section 53 is that a company cannot issue shares at a discount. However, section 54 provides that a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled, namely:-

- (a) the issue is authorised by a special resolution passed by the company;
 - (b) the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued;
 - (c) not less than one year has, at the date of such issue, elapsed since the date on which the company had commenced business; and
 - (d) where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as may be prescribed.
- (b) **Ecological Ethics:** The problem of pollution and other environmental issues can best be framed in terms of our duty to recognize and preserve the ecological systems within which we live. An ecological system is an interrelated and interdependent set of organisms and since the various parts of an ecological system are interrelated, the activities of one of its parts will affect all other parts. Business and all social firms are parts of a larger ecological system.

Business firms depend on the natural environment for their energy, material resources, waste disposal and that environment in turn is affected by the commercial activities of business firms. Unless business recognize the interrelationship and interdependencies of the ecological systems within which they operate and unless they ensure that their activities will not seriously injure these systems one cannot hope to deal with the problem of pollution.

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

(c) Merits of the grapevine phenomenon:

- (a) Speedy transmission:** It transmits information very speedily. A rumour spreads like wild fire.
- (b) Feedback value:** The managers or top bosses of an organisation get the feedback regarding their policies, decisions, memos etc.
- (c) Support to other channels:** It is a supplementary or parallel channel of communication.
- (d) Psychological satisfaction:** It gives immense psychological satisfaction to the workers and strengthens their solidarity.

Question 5

- (a) (i) *X draws a bill of exchange on Y. Y authorises his agent Z to sign the bill on his behalf to signify acceptance of the same. Z while signing the bill did not indicate that he is signing it on behalf of Y. Will Z be personally liable? Discuss with reference to the provisions of the Negotiable Instruments Act, 1881. (4 Marks)*
- (ii) *X is the holder of a bill of exchange of which Y is the payee and it contains the following endorsement in blank*

<i>First endorsement, "Y"</i>	<i>Second endorsement, "C"</i>
<i>Third endorsement, "D"</i>	<i>Fourth endorsement, "E"</i>

X, the holder, intentionally strikes out the endorsement by D and C. Will E be liable to X? Discuss with reference to the provisions of the Negotiable Instruments Act, 1881. (4 Marks)
- (b) *Define the term Small Company as defined in Companies Act, 2013. (4 Marks)*
- (c) *Comment on the "Utilitarian Approach" and the "Rights Approach" as sources of ethical standards. (4 Marks)*

Answer

- (a) (i) Acceptance is ordinarily made by the drawee by signing of his name across the face of the bill and by delivery. Acceptance, therefore, means the signification of assent to the order of the drawer by delivery or notification thereof.

Under Section 26 and 27 of the Negotiable Instruments Act, 1881, every person capable of legally entering into a contract, may make, draw, accept endorse, deliver and negotiate a promissory note, bill of exchange or cheque, himself or through a duly authorised agent. The agent may sign in two ways, viz, (a) he may sign the principal's name, for it is immaterial what hand actually signs the name of the principal, when in fact there exists an authority for the agent to put it there; (b) he may sign by procuration stating on the face of the instrument that he signs as agent. It is thus essential that the agent, while putting his signature to the instrument, must have either express or implied authority to enter, for his principal who must be *sui juris*, into the particular contract.

From a perusal of Sections 27 and 28 it is, however, evident that a general authority to transact business and to discharge debt does not confer upon an agent the power to endorse bills of exchange so as to bind his principal; nor can an agent escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability [*Parmode Kumar Pate vs. Damodar Sahu I.L.R. (1953) Cuttack 221*].

In the given question, Z, the agent, while signing the bill of exchange, did not indicate that he is signing it on behalf of Y.

Since, Z did not indicate that he is signing the bill the exchange as an agent, he cannot escape personal liability unless he indicates that he signs as an agent and does not intend to incur personal liability.

- (ii) According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

Thus, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

In the given question, X, the holder, intentionally struck out the endorsement by D and C. In that case the liability of D and C upon the bill will come to an end. But if the endorsements of D and C are struck out without the consent of E, X will not be entitled to recover anything from E the reason being that as between D and E, D is the principal debtor and E is surety. If D is released by the holder under Section 39 of the Act, E, being surety, will be discharged.

(b) According section 2(85) of the Companies Act, 2013, "small company" means a company, other than a public company,—

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

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;
 - (B) a company registered under section 8; or
 - (C) a company or body corporate governed by any special Act;
- (c) 1. **The Utilitarian Approach:** Some ethicists emphasize that the ethical action is the one that provides the most- good or does the least harm, or, to put it another way, produces the greatest balance of good over harm. The ethical corporate action, then, is the one that produces the greatest good and does the least harm for all who are affected - customers, employees, shareholders, the community, and the environment. The utilitarian approach deals with consequences; it tries both to increase the good done and to reduce the harm done.
2. **The Rights Approach (The Deontological Approach):** Some philosophers and ethicists suggest that the ethical action is the one that best protects and respects the moral rights of those affected. This approach starts from the belief that humans have a dignity based on their human nature per se or on their ability to choose freely what they do with their lives. On the basis of such dignity, they have a right to be treated as ends and not merely as means to other ends. The list of moral rights - including the rights to make one's own choices about what kind of life to lead, to be told the truth, not to be injured, to a degree of privacy, and so on-is widely debated; some now argue that non-humans have rights, too. Also, it is often said that rights imply duties-in particular, the duty to respect others' rights.

Question 6

- (a) *XYZ Energy Ltd., set up with the object of setting up a windmill project, raised money from public through prospectus and still has unutilised amount out of the money raised. XYZ Energy Ltd. proposes to change its objects and for this purpose consent of shareholders has to be obtained by passing a special resolution by Postal ballot. Explain the procedure to be followed for transacting the business of the general meeting of members of a company through postal ballot for passing special resolution. (8 Marks)*
- (b) *State whether following statements are correct or incorrect:*
- (i) *Extraordinary Meeting of a company could be held only four times in a year.*

- (ii) *A cheque endorsed 'Not Negotiable' cannot further be endorsed.*
 - (iii) *A holder of a 'generally' crossed cheque can cross it 'specially'.*
 - (iv) *'Transfer of shares' and 'transmission of shares' are synonymous. (1 x 4 = 4 Marks)*
- (c) *Draft an Indemnity Bond to be given to a Nationalized Bank by its depositor for the loss of Deposit certificates. (4 Marks)*

Answer

- (a) Section 110 of the Companies Act 2013, provides as under:

Sub section (1) states that a company—

- (a) shall, in respect of such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot; and
- (b) may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

In such manner as may be prescribed, instead of transacting such business at a general meeting.

Provided that any item of business required to be transacted by means of postal ballot under clause (a), may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

Sub section (2) states that if a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.

The procedure as laid down in the Rule 22 of the Companies (Management & Administration) Rules, 2014 read with the provisions of section 110 of the Companies Act, 2013 is as under:

- (i) Where a company is required to pass any resolution by way of postal ballot, it shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefore and requesting them to send their assent within a period of 30 days from the date of posting of the letter;
- (ii) The notice shall be sent by registered post or speed post or through electronic means like registered e-mail address or through courier service for facilitating the communication of the assent or dissent of the shareholder to the resolution within the said period of thirty days;
- (iii) An advertisement shall be published at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is situated, and having a wide circulation in that district and at least once

in English language in an English newspaper having a wide circulation in that district, about having dispatched the ballot papers and specifying the prescribed matters.

- (iv) The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
 - (v) The board of directors shall appoint one scrutinizer, who is not in employment of the company, and who, in the opinion of the board can conduct the postal ballot voting process in a fair and transparent manner. The scrutinizer shall be willing to be appointed and be available for the purpose of ascertaining the requisite majority.
 - (vi) The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof.
 - (vii) If a resolution is passed by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been passed at a general meeting convened in that behalf.
 - (viii) If a shareholder sends his assent or dissent in writing on a postal ballot and thereafter any person fraudulently defaces or destroys the ballot paper or declaration of the identity of shareholder, such person shall be punishable with imprisonment for a term which may extend to six months or with fine or both;
 - (ix) The scrutinizer shall maintain a register either manually or electronically, to record the assent or dissent received, mentioning the particulars of name, address, folio number, number of shares, nominal value of shares, whether the shares have voting, differential voting or non-rights and the scrutinizer shall also maintain record for postal ballot which are received in defaced or mutilated form and forms which are invalid.
 - (x) The postal ballot and all other papers relating to postal ballot will be under the safe custody of the scrutinizer till the Chairman considers, approves and signs the minutes of the meeting. Thereafter, the scrutinizer shall return the ballot papers and other related papers/register to the company so as to preserve such ballot papers and other related papers/registers.
- (b) (i) Incorrect
(ii) Incorrect
(iii) Correct
(iv) Incorrect

(c)

Indemnity Bond

Mr. R, S/o Mr. X residing at, Mumbai do hereby agree to indemnify ABC Bank for any loss that may occur for seeking re-issue of Deposit Certificates (for a

sum of ₹.....) in duplicate. I further declare that personally I have not received the Deposit Certificates issued by the bank for which the bank is claiming that it has already been dispatched.

Date.....

Place: Mumbai

Signature

(Mr. R)

Question 7

Answer any **four** of the following:

- (a) *The Provident Fund Commissioner made an Order u/s 7A of the Employees' Provident Fund and Miscellaneous Provisions Act, 1952 determining the amount of contribution payable with respect to certain employees of ABC Private Limited. Subsequently ABC Private Ltd. discovered new evidence which would enable the company to get a favourable order. Whether the company can apply for review of Order passed under section 7A of the Act? Discuss. (4 Marks)*
- (b) *MPN Limited allotted shares to the public without issuing a prospectus. Discuss the validity of such allotment and list out any five circumstances when allotment can be deemed to be irregular. (4 Marks)*
- (c) *State the differences between the debenture and shares. (4 Marks)*
- (d) *What do you understand by Corporate Social Responsibility (CSR) and its policies? Discuss. (4 Marks)*
- (e) *Discuss in brief any four ethical dilemmas faced while making communication.*

Answer

- (a) According to section 7B (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 any person who is aggrieved by the order under Section 7A(1) can make an application to the officer who has passed the order, for review of the same in following cases:
 - (a) If new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence; or
 - (b) There is some mistake or error apparent on the records; or
 - (c) Any other sufficient reason

It may be noted further that no application for review can be made if an appeal has been filed under the Act. Such officer may also on his own motion review his order in such form and manner and within such time as may be specified in the scheme.

In the given question, ABC Private Limited has discovered new evidence which would enable the company to get a favourable order. Hence, the company can apply for the

review of order passed under section 7A Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

- (b) According to section 23 (1) of the Companies Act, 2013, a public company may issue securities to public through prospectus by complying with the provisions of the Act.

Thus, shares allotted to the public without issuing a prospectus by MNP Limited are not valid.

Circumstances of Irregular allotment: The Companies Act, 2013 does not separately provide for the term "Irregular Allotment" of securities. Hence, one will have to examine the requirements of a proper issue of securities and consider the consequences of non-fulfilment of those requirements.

In broad terms an allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 and 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4);
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

(c) **Distinction between debenture and share**

- (i) Shares are a part of the capital of a company whereas debentures constitute a loan.
- (ii) The shareholders are the owners of the company whereas debenture holders are creditors.
- (iii) Shareholders generally enjoy voting right whereas debenture holders do not have any voting right.
- (iv) Interest on debenture is payable even if there are no profits. But dividends can be paid to shareholders only out of the profits of the company.

- (v) Debentures generally have a charge on the assets of the company but shares do not carry any such charge.
- (vi) The rate of interest is fixed in the case of debentures whereas on equity shares the dividend may vary from year to year.
- (vii) Fixed amount of interest on debentures gets priority over dividend on shares.

(d) **Corporate Social Responsibility (CSR):** Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large.

Corporate Social Responsibility is achieving commercial success in ways that honour ethical values and respect people, communities and the natural environment.

CSR Policies: Corporate Social Responsibility (CSR) refers to operating a business in a manner that accounts for the social and environmental impact created by the business. CSR means a commitment to developing policies that integrate responsible practices into daily business operations, and to reporting on progress made toward implementing these practices.

Common CSR policies include:

- Adoption of internal controls reforms;
 - Commitment to diversity in hiring employees and barring discrimination;
 - Management teams that view employees as assets rather than costs;
 - High performance workplaces that integrate the views of line employees into decision-making processes;
 - Adoption of operating policies that exceed compliance with social and environmental laws;
 - Advanced resource productivity, focused on the use of natural resources in a more productive, efficient and profitable fashion (such as recycled content and product recycling); and
 - Taking responsibility for conditions under which goods are produced directly or by contract employees domestically or abroad.
- (e) Some of the ethical dilemmas faced while communicating are:
- **Secrecy:** Secrets are kept for both honourable and dishonourable reasons; may be used to guard intimacy or to invade it. Here then lies the challenge for the manager: to determine when secrets are justifiable and when they are not. When the clamp of secrecy tightens too much, the result is lack of innovation.

On the other hand, organizations have a legitimate need to protect certain information. If competitors, for example, gain access to proprietary research and development, they can produce that product for a much lower net cost because they do not have to pay the research and development expenses.

- **Whistle-blowing:** Any employee who goes public with information about corporate abuses or negligence is known as a whistle-blower. Corporations and managers legitimately expect employee loyalty. Greed, jealousy, and revenge motivate some whistle-blowers. Some are simply misinformed. Some confuse public interest with private interest. Certainly, the community has a right to know about corporate practices that are potentially hazardous, yet courting the whistle-blower too aggressively can be problematic.
- **Leaks:** A leak is like anonymous whistle-blowing; one distinction being the propriety of the leak; namely, that the person who leaks information cannot be cross-examined. This often casts doubt on the credibility of the claim. The accused does not know who or why a person has chosen to release certain information. Employees may leak information to the press for honourable or dishonourable reasons. Leaks may cause organizational plans to be altered or forgone altogether. Leaks can be a form of political manoeuvring in the organization or a way to sabotage the career of a colleague competing for a job.
- **Rumour and gossip:** Rumours and gossip seem to be an inevitable part of everyday corporate life. Even though rumours and gossip often travel through the same networks, there is a distinction between the terms. Rumours tend to focus on events and information, whereas gossip focuses on people. Even though managers usually treat the information as "yet to be confirmed," it may cloud judgments about that employee. The information has a way of creeping into performance evaluations and promotion decisions, even if unintended.
- **Lying:** A lie is a false statement intended to deceive. Of all the ethical dilemmas discussed thus far, lying would appear to be the least morally perplexing. Most would agree that "one ought not to lie." Yet lies in business are more common than many would care to admit. Lying breaks down the trust between individuals, shaking the foundation of ethical communication.
- **Euphemisms:** By definition, a euphemism is using a less offensive expression instead of one that might cause distress. For example, using the expression "passed away" instead "died" is one of the more common examples. This usage is understandable. However, people frequently use these terms to obscure the truth. For example, a purchasing agent has a far easier time accepting a "consideration fee" than a "bribe." Petty office theft gets passed off as merely "permanently borrowing" the item instead of "stealing."
- **Ambiguity:** Ambiguity, like secrecy, can be used for ethical or unethical purposes. Language itself is made up of various words that carry values. So, by using words in certain ways, one can influence others behaviour and expectations. Communicators are to some extent held responsible for possible misinterpretations. This means that one must be aware of the probabilistic nature of communication, and need to consider not only their intentions, but also how their messages might be misunderstood.