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COMMERCE & LAW PROGRAM DIVISION (CLPD)

CA-IPCC

NOV. - 2014 (ATTEMPT)

Total number of questions : 7 | Time allowed : 3 hours | Maximum Marks : 100 | Date : 10-11-2014

PAPER-2

EXAMINATION
PAPER WITH SOLUTION

SUBJECT : LAW, ETHICS & COMMUNICATION

NOTE 1. Question No. 1 is compulsory. Answer any five questions from the remaining six questions.
2. Working notes should form part of the answers.

1. **(a)** X sent a consignment of goods worth ₹ 2,90,000 by railway got railway receipt for the same. He obtianed an advance of ₹ 2,60,000 from the bank and endorsed and delivered the railway receipt in favour of the bank way of security for the advance. The railway failed to deliver the goods at the destination. The bank filed suit against the railway for ₹ 2.90,000.Decide in the light of povisions of the indian Contract Act, 1872, whether the bank would succeed in the said suit ? **[5 Marks]**

Sol. (a) As per Sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. As a pledgee, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them.

In Morvi Mercantile Bank Ltd. vs. Union of India, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. However, the amount over and above his interest is to be held by him in trust for the pledgor. Thus, the bank will succeed in this claim of ₹ 2,90,000 against Railway.

1. **(b)** The XYZ Traders Association was constituted by four joint Hindu families consisting of 25 major and 2 minors ,members.The Association was carrying on the business of trading as retailers with the object for acquisition of gains.The Association was not registered as a company under the Companies Act, 1956 or any other law.

State whether the XYZ Traders Association is having any legal status ? Will there by any change in the status of this Association if the members of the XYZ Traders Association subsequently were reduced to18 ? [5 Marks]

Sol. (b) Section 11 of the Companies Act, 1956 provides that no company, association or partnership consisting of more than 10 persons for the purpose of carrying on the business of banking and more than 20 persons for the purpose of carrying on any other business can be formed unless it is registered under the Companies Act or is formed in pursuance of some other Indian Law. Thus if such an association violates the provisions of Section 11 it is an "Illegal Association" although none of the objects for which it may have been formed is illegal.

This Section does not apply to a joint Hindu family but where the business is being carried on by two or more joint Hindu families the provisions of Section 11 shall be applicable. For computing the number of members for this purpose, minor members of such families shall be excluded.

Hence, the United Traders Association constituted by two joint Hindu Families is an Illegal Association according to the provisions of Section 11 as stated above.

Further, such Association of more than 20 persons, if unregistered is invalid at its inception and cannot be validated by subsequent reduction in the number of members to below 20.

(Madan Lal vs. Janki Prasad)

1. **(c)** State with reasons whether the following statements are correct or incorrect :

(i) Economic growth can not be possible without ecological costs. **[3 Marks]**

(ii) Ethics programs are not helping to manage values associated with quality management,strategic planning and diversity. **[2 Marks]**

Sol. (c) (i) **Correct :** Economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. Industrialization and rapid development have affected the environment. Everybody should realize that such development is related to environmental damage and resource depletion.

Therefore, an element of resource regeneration and positive approach to environment has to be incorporated in development programs. Sustainable development refers to maintaining development over time. in such a manner that meets the needs of the present without comprising the ability of future generations to meet their own needs.

Therefore it is suggested that economic growth has to be environmentally sustainable because it is sure that there is no economic growth without ecological cost.

(ii) **Correct :** Ethics programs help identifying preferred values and ensuring that organizational behaviors are aligned with those values. This includes recording the values, developing policies and procedures to align behaviours with preferred values, and then training all personnel about the policies and procedures. This overall effort is very useful for several other programs in the workplace that require behaviors to be aligned with values, including quality management, strategic planning and diversity management.

1. **(d)** Prepare the detailed checklist for composing business message in an orgarnization. **[5 Marks]**

Sol. (d) Check-list for composing the buisness message is as follows :

(1) *Recognise good organisation*

- **(a)** Subject and purpose are clear
- **(b)** Information is directly related to subject and purpose.
- **(c)** Ideas are grouped and presented logically
- **(d)** All necessary information is included

(2) *Achieve good organization through outlining*

- **(a)** Decide what to say
  - **(i)** Main idea
  - **(ii)** Major points
  - **(iii)** Evidence
- **(b)** Organise the message to respond the audience is probable reaction-
  - **(i)** use the direct approach when audience will be neutral, pleased, interested, or eager.
  - **(ii)** use the indecent approach when audience will be displeased, interested, or unwilling.

(3) *Choose the appropriate organisation plan*

(a) Short Messages

(i) Direct request

(ii) Routine, good news and good message

(iii) Bad news message

(iv) Persuasive Message

(b) Longer message

(i) Information pattern

(ii) Analytical pattern.

2. (a) (I) Under the provisions of the Payment of Bonus Act. 1965 decide whether the following employees are entitled for bonus : **[4 Marks]**

(i) Employee employd by educational institutions

(ii) A reinstated employee without wages for the period of dismissal.

Sol. (I) Every employee of an establishment covered under the Payment of Bonus Act, 1965 is entitled to bonus from his employer in an accounting year provided he has worked in that establishment for not less than thirty working days in the year on a salary less that ₹ 10,000 per month. ***[Section 2(13) and Section 8]***

(i) In the given problem an employee employed by educational institutions are not entitled for bonus because the employees of Universities and other educational institutions are excluded from the operation of the Act as per Section 32 of the Payment of Bonus Act, 1965.

(ii) A reinstated employee without wages for the period of dismissal is also not entitled for bonus because only a dismissed employee reinstated with back wages is entitled to bonus. ***[Gammon India Ltd. Vs. Niranjan Das (1984)]***. In this case the employee has been reinstated without wages.

(II) Wazir Chand happens to be a retired Railway servant who occupies the Government quarter, and and even after superannuation continued to occupy the Goverment quarter. For such continuance , the government, in accordance with Rules , has charged penal rent from retired Wazir chand and after adjusting the dues of the government, the balance amount of the grauity. which was payable, has been offered to be paid.

Examine the contention of the government and the decision taken by government to adjust the amount of grauity in the lights of the provision of the Payment of Grauity Act1972. **[4 Marks]**

Sol. (II) It was held in ***K.C. Mathew vs. Plantation Corporation of Kerala Ltd. (2001) (Kerala)***, that withholding of gratuity is not permissible except under those circumstances enumerated in Section 4(6) of the Payment of Gratuity Act, 1972 and that the right to gratuity is a statutory right and none can be deprived of it except as provided by the law.

If the employer has to be paid any amount regarding any type of charge by the employee and if he has not paid for the same during the course of his service, then the employer can adjust the amount from the gratuity of the employee.

In the instant case, Wazir Chand after superannuation continued to occupy the Government quarter of the Railways. Therefore, the Government is entitled to charge the rent from him and after adjusting other dues the remaining amount of gratuity may be paid ***[relevant case is Wazir Chand vs. Union of India (2001) (SC)].***

2. **(b)** Examine the concept of Corporate Social Responsibility (CSR) and also explain in brief some of the key strategies which can be used by companies while implementing CSR polices and practices.

[4 Marks]

Sol. **(b)** The concept of Corporate Social Responsibility (CSR) focuses on the idea that beyond making profit, a business has social obligations. It is the responsibility of the companies to produce an overall positive impact on the society. CSR is pursued by business to balance their economic, environmental and social objectives while at the same time addressing stakeholders' expectations and enhancing shareholders' values.

Corporate Social Responsibility is the continuing commitment by businesses 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.

Each company differs in how it implements Corporate Social Responsibility (CSR). The distinction depends on such factors as the company's size, sector, culture and the commitment of its leadership.

Below are some key strategies that companies can use when implementing CSR policies and practices in a company.

(i) Mission, Vision and Value Statements

(ii) Cultural Values

(iii) Management Structures

(iv) Strategic Planning

(v) General Accountability

(vi) Employee Recognition and Rewards

(vii) Communications, Education and Training

(viii) CSR Reporting

2. **(c)** Explain the term " Scmantic Problems " a the source contributing towards wise factor. **[4 Marks]**

Sol. **(c)** Semantics is the systematic study of meaning. That is why the problems arising from expression or transmission of meaning in communication are called semantic problems.

Oral or written communication is based on words. And words, limited in number, may be used in unlimited ways. The meaning is in the mind of the sender and also in that of the receiver. But it is not always necessary for the meaning in the mind of the sender to be the same as in the mind of receiver. Much, therefore, depends on how the sender encodes his message. The sender has to take care that the receiver does not misconstrue his message, and gets the intended meaning. Quite often it does not happen in this way. That leads to semantic problems.

Further, the sender may resort to ambiguous or confusing signals. The receiver may mess up the message owing to inattention or may spoil decoding because of wrong or unexpected interpretation. The receiver's prejudices may also come in the way of his understanding the message in the right spirit. Thus the communication is always likely to affected by 'noise' that stands for so many things.

It can be ensured only if we aim at clarity, simplicity and brevity so that the receiver gets the intended meaning.

3. (a) Explain what is meant by " Supervening impossibility "as per the Indian Contract Act. 1872 and also state the situations which would not constitute grounds of impossibility.

[8 Marks]

Sol. (a) As per Section 56 of Indian Contract Act, 1872, events which make the performance of the contract impossible subsequent to formation of the contract known as supervening or subsequent impossibility. The effect of such impossibility is that it makes the contract void and the parties are discharged from further performance of the contract and thereby contract is discharged.

Non-Application of Doctrine of Supervening Impossibility

There are certain exceptions to the doctrine of supervening impossibility which are as follows:

(i) **Performance becoming difficult :** A contract is not discharged merely because its performance turns out to be difficult or burdensome. The parties will not be released from their obligations on account of rise or fall of price, depreciation or appreciation of currency obstacle to the execution of the contract or becoming more expensive or less profitable.

(ii) **Commercial impossibility :** Performance cannot be excused on the ground of commercial impossibility. A contract is not discharged merely because the necessary raw material is available at a very high rate or the expectation of higher profit will not be realized or the performance of contract has become costlier or the necessary transport is available at exorbitant rates or the contract has become costlier in terms of money or labour.

(iii) **Default of third person :** If the contract cannot be performed because of the default of a third person on whose work or conduct the promisor relied, the promisor is not discharged on the ground of frustration.

(iv) **Strikes, lockouts, riots or civil disturbances :** A contract is not discharged automatically on the ground of supervening impossibility due to a strike by the workers or lock-out by the owners or outbreak of riots or outbreak of some civil disturbance coming in the way of performance of the contract. However, the parties to the contract may agree to the contrary by making a clear provision in this regard.

(v) **Partial impossibility :** If a contract is made for the fulfillment of several objects, the failure of one or more of them does not discharge the contract.

(vi) **Self-Induced frustration :** If frustration is imposed by the conduct of the party himself, or by the conduct of those for whom he is responsible, or by party's deliberate or negligent act or choice, the contract is not discharged.

3. **(b)** The industries that are based on natural resources , like minerals, timber , fibre and foodstuffs, have some special responsibility for making " environment-friendly products ". Examine this statement and also explain in brief the concept of Green Accounting System.

[4 Marks]

Sol. **(b)** Industries that are based on natural resources, like minerals, timber, fibre, and foodstuffs etc. have a special responsibility for :

(i) adopting practices that have built-in environmental consideration

(ii) introducing processes that minimize the use of natural resources and energy, reduce waste, and prevent pollution.

(iii) making products that are 'environment-friendly', with minimum adverse impact on people and ecosystem.

Green accounting systems : Conventional accounts may result in policy decisions which are non-sustainable for the country. Green accounting on the other hand is, focused on addressing such deficiencies in conventional accounts with respect to environment. If the environmental costs are properly reflected in the prices paid for goods and services then companies and ultimately the consumer would adjust market behaviour in a way that would reduce damage to environment, pollution and waste production. Such measures would facilitate the approach of 'polluter pays principle'. Removing subsidies that encourage environmental damage is another measure.

3. **(c)** "Once the process of consensus building has begun. mediators try to assist the parties in their effort to generate a creative resolution of differences. Examine this statement and also state in brief the pocess which should be followed by mediators to resolve the diffrences bwteen the parties. **[4 Marks]**

Sol. **(c)** Consensus means overwhelming agreement. Most consensus building efforts set out to achieve unanimity. The key indicator of whether or not a consensus has been reached is that everyone agrees with the final proposal and it is important that consensus be the product of a good-faith effort to meet the interests of all stakeholders.

Thus, consensus requires that someone frame a proposal after listening carefully to everyone's interests. Before the parties in a consensus building process come together, mediators (or facilitators) can play an important part in helping to identify the right participants, assist them in setting an agenda and clarifying the ground rules by which they will operate, and persuading non-compliant parties to participate.

The mediators should follow the process to resolve the differences between the parties which are as follows :

(i) **Problem-Solving Orientation :** It is important to be constructive and maintain a problemsolving orientation, even in the face of strong differences and personal antagonism.

(ii) **Engage in Active Listening :** Participants in every consensus building process should be encouraged (indeed, instructed, if necessary) to engage in what is known as active listening.

(iii) **Disagree Without Being Disagreeable :** Participants in every consensus building process should be instructed to "disagree without being disagreeable."

(iv) **Strive for the Greatest Degree of Transparency Possible :** To the greatest extent possible, consensus building processes should be transparent.

(v) **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.

4. (a) (i) Define the term "Free Reserves " as contained in the Companies Act, 2013.

[4 Marks]

(ii) Elucidate the circumstances in which a company cannot buy hack its own shares as per the provisions of the Companies Act, 2013. M/s Growmore Pharma Limited is pIanning to buyback of its shares during the current year but the company has defaulted in the payment of term loan & interest thereon to its bankers. The company seeks your advice as to how and when the company can buy hack its shares tinder these circuinstanees as per the provisions of the companies Act. 2013.

[4 Marks]

Sol. (a) (i) **Free reserves [Sec.2(43) of Companies Act, 2013]**

Free reserves means such reserves which, as per the latest audited balance sheet of a company, are available for distribution as dividend:

Provided that -

(a) any amount representing unrealised gains, notional gains or revaluation of assets, whether shown as a reserve or otherwise, or

(b) any change in carrying amount of an asset or of a liability recognised in equity, including surplus in profit and loss account on measurement of the asset or the liability at fair value, *shall not be treated as free reserves.*

Explanation : Definition has been modified under Companies Act, 2013 and now those reserves out of which dividend can be distributed are treated as free reserves and not include share premium. And also the definitions say that the specific classes of reserves shall not be treated as free reserves.

(ii) ***Section 70 of the Companies Act, 2013*** **prohibits the company for buy back in the certain circumstances :**

(1) The provision says that no company shall directly or indirectly purchase its own shares or other specified securities -

(a) through any subsidiary company including its own subsidiary companies; or

(b) through any investment company or group of investment companies; or

(c) if a default, is made by the company, in repayment of deposits or interest payament thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon to any financial institutions or banking company.

But where the default is remedied and a period of three years has lapsed after such default ceased to subsist.,there such buy-back is not prohibited.

(2) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123(Declaration of dividend), 127(Punishment for failure to distribute dividends), and section 129(Financial Statements).

In the light of above provisions, M/s Growmore Pharma Limited is not allowed to buy back its shares untill the default is remedied and 3 years have been elapsed after the default has been remedied.

4. (b) What corporate governance measures are required to the implemented by Indian Companies as per clause 49 of the listing agreement ? Explain in brief. **[4 Marks]**

Sol. (b) In general, corporate governance measures include appointing non-executive directors, placing constraints on management power and ownership concentration, as well as ensuring proper disclosure of financial information and executive compensation.

Indian Companies are required to comply with Clause 49 of the listing agreement primarily focusing on following areas:

(i) Board composition and procedure **(ii)** Audit Committee responsibilities

(iii) Subsidiary companies **(iv)** Risk management

(v) CEO/CFO certification of financial statements and internal controls

(vi) Legal compliance **(vii)** Other disclosures.

4. (c) Explain the key elements involved in the innovation frame work of an organisation. **[4 Marks]**

Sol. (c) The key elements in the innovation framework are as follows :

(i) **Accessibility :** Accessibility to everyone facilitates a feeling of teamwork, trust and equality. This not only includes the workers, but the customers and suppliers as well. Most organizations are infected by both visible and subtle barriers and limitations based on rank, position and structure. Hierarchical chains of commands, rank and titles affect workers' access to each other.

Access by everyone to everyone fosters creativity, helps the flow of innovative ideas, and speeds up the decision making process.

(ii) **Recognize and Reward Innovation :** The formal evaluation system also plays an important role. Companies reward activities they value. Employees know this, and react accordingly. Financial rewards have proven successful, but there are other and often more meaningful rewards such as personal recognition. Innovators can be recognized in company newsletters, trade publications, and the local media.

(iii) **Develop Company Programs That Encourage Innovation :** Some companies, such as IBM, allow their employees to take sabbaticals to work in a new environment or teach in a college. By placing employees in different environments, they can meet new people, come across new ideas, and, hopefully, generate their own novel approaches.

Another program that has been successful involves keeping a written record or log of all suggestions and the actions taken on those ideas. The list is then circulated around the company.

(iv) **Foster Informal Communication :** Employees often feel stifled when asked to fully justify ideas; they may be working on a hunch. Many of the questions cannot be answered fully until later in the innovation process. Moreover, the message sent to employees by requiring extensive paperwork is that results must be guaranteed and failure is unacceptable.

Informal communication can fill the gap. Managers can keep up-to-date by informally communicating with employees about projects or new ideas. Often, this kind of "checking up" proves more informative than endless reams of paperwork.

(v) **Information :** The right kind of information is called innoinformation. This type of information is critical to the vitality of the enterprise. Innoinformation consists of the plans, vision, goals, and all the new ideas affecting the enterprise. By providing Innoinformation everyone in the enterprise can see new opportunities, not just the people at the top.

(vi) **Framework :** The innovative enterprise must constantly adapt, create and innovate. Information and communication are the wind that sails the innovative enterprise toward its destination. Businesses must concern themselves with providing the right information at the right time, in the most effective manner possible. Successful entrepreneurs have consistent policies and a written business plan that defines short- and long-term requirements for growth and provides a framework for decisions.

5. (a) (i) Explain the terms 'Acceptance for Honour' and 'Drawee in case of need as used in the Negotiable Instrument Act. 1881. **[4 Marks]**

(ii) S by inducing T obtains a Bill of Exchange from him fraudulently in his (S) favour. Later, he enters into a commercial deal and endorses the bill to U towards consideration to him (U) for the deal. U takes the bill as a holder-in-due-course. U subsequently endorses the bill to S for value, as consideration to S for some other deal. On maturity the bill is dishonoured. S sues ' T ' for the recovery of the money. **[4 Marks]**

With reference to the provisions of the Negotiable Instruments Act. 1881 decide whether S will succeed in the case or not.

Sol. (a) (i) **Drawee in Case of Need (Section 7 of Negotiable Instruments Act, 1881) :**

"When in the bill or in any endorsement thereon the name of any person is given in addition to the drawee to be resorted to, in case of need, such person is called a *"Drawee in case of need"*. He is so called because primarily the payee is expected to approach the drawee and it is only in case there is a problem (e.g. either he has refused or is not available at the given address) that he would contact him. Where a drawee in case of need is named in a bill of exchange or in any indorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee.

In case of foreign bills, particularly, the drawer mentions another person, besides drawee, who may be approached for acceptance or/and payment in case the need arises.

Acceptor for Honour

When a bill of exchange has been noted or protested for non-acceptance or for better security, any person not being a party already liable thereon may, with the consent of the holder, by writing on the bill, accept the same for the honour of any party thereto. Such an acceptor is called as *"acceptor for honour"* .

Where the acceptor does not express for whose honour it is made, it shall be deemed to be made for the honour of the drawer. **(Section 110)**.

Liability of acceptor for honour (Section 111)

An acceptor for honour binds himself to all parties subsequent to the party for whose honour he accepts to pay the amount of the bill if the drawee does not, and such party and all prior parties are liable in their respective capacities to compensate the acceptor for honour for all loss or damage sustained by him in consequence of such acceptance.

(ii) The problem stated in the question is based on the provisions of the Negotiable Instruments Act, 1881 as contained in Section 53. The section provides: 'Once a negotiable instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud.

Thus applying the above provisions it is quite clear that S who originally induced T in obtaining the bill of exchange in question fraudulently, cannot succeed in the case. The reason is obvious as S himself was a party to the fraud.

5. (b) Explain what is meant by 'Finaricial statement" as per the Companies Act, 2013. **[4 Marks]**

Sol. (b) Financial statement [Sec.2(40) of Companies Act, 2013]

In relation to a company, includes -

(i) a balance sheet as at the end of the financial year;

(ii) a profit and loss account, or in the case of a company carrying on any activity not for profit, an income and expenditure account for the financial year;

(iii) cash flow statement for the financial year;

(iv) a statement of changes in equity, if applicable; and

(v) any explanatory note annexed to, or forming part of, any document referred to in subclause (i) to sub-clause (iv):

Provided that the financial statement, with respect to One Person Company, small company and dormant company, may not include the cash flow statement.

Explanation : The cash flow statement has been made a compulsory part of the financial statement except in the case of the OPCs, dormant companies and small companies.

5. (c) Describe the factors which influence the ethical behaviour at work in an organization. **[4 Marks]**

Sol. (c) Workplace ethics means how a person takes the decision at the work place. It includes those moral principles and code of conduct which must be followed by the people at their work places.

FACTORS INFLUNSING ETHICAL BEHAVIOUR AT WORK PLACE

Individual's moral standards + Influence of managers & Co. Workers + Opportunities to engage in misconduct ⟶ Factor influencing ethical behaviour at workplace

(i) Individual's moral standards

Every person evaluates the right or wrong of his decision and conduct on the basis of his own moral standards. Values are developed in childhood & tested later at the time of his behaviour at the work place.

A person might have negative approch and this developes because of the following :-

(a) Negative conduct or life experiences.

(b) Failure to recognize the unique personality by co-workers.

(c) Poor financial condition & industry target.

(d) Pressure to work and take decision immediately.

(ii) Influence of managers & Co-workers

When people worked in a group then their acts are effected by the behaviour of their co - workers and managers.

Sometimes the conduct of managers even affects the moral of their subordinates. If managers will act unethically, then workers would be inspired to do in the same manner.

(iii) Oppurtunity to engage in misconduct

Its being the very nature of human to deviate from right path in absense of any yard stick. Whenever the oppurtunity knocks, hardly any employee can keep him self aloof from indulging into fraud.

6. (a) Define the term underwriting and state the circumstances in which underwriting commission can be paid as per provisions of Section 76 of the Companies Act, 1956. **[8 Marks]**

Sol. (a) 'Underwriting' is a contract entered into between the company and certain parties (called underwriters) before the shares or debentures are offered to the public for subscription. The contract is that in case the whole or an agreed portion of the shares or debentures are not applied for, then the underwriters will themselves apply for subscribed shares or debentures; alternatively, they will procure persons to apply for them.

The company is least concerned with how the underwriters procure the purchasers. Thus, the underwriters expose themselves to a great risk in 'placing' the shares before the public. And in return for this exposure to the risk the underwriters get commission. The commission is payable on the amount of shares underwritten. It will be payable even if the underwriters are not ultimately called upon to take up any shares.

Payment of underwriting commission is regulated by the provisions of Companies Act, 1956 stating certain conditions as contained in Section 76. The conditions to be fulfilled are:

(i) the payment of commission should be authorised by the articles.

(ii) the names and addresses of the underwriters and the number of shares or debentures underwritten by each of them should be disclosed in the prospectus.

(iii) the amount of commission should not exceed, in the case of shares, 5% of the price at which the shares have been issued or the amount or rate authorised by the articles whichever is less, and in the case of debentures it should not exceed 2-1/2%.

(iv) the rate should be disclosed in the prospectus, or in the statement in lieu of prospectus and should be filed with the Registrar along with a copy of the underwriting contract before the payment of the commission.

(v) the number of shares or debentures which persons have agreed to subscribe absolutely or conditionally for commission, should be disclosed in the manner aforesaid.

Section 76 (4A) clarifies that commission to the underwriters is payable only in respect of those shares or debentures which are offered to the public for subscription. However where, (i) a person, who for a commission has subscribed (or agreed to subscribe) for shares or debentures of a company and before the issue of the prospectus (or statement in lieu of prospectus) for such shares or debentures, some other person (or persons) has subscribed for any or all of them, and (ii) such a fact together with the aggregate amount of commission payable to the underwriter is disclosed in such prospectus (or statement in lieu of prospectus), then the company may pay commission to the underwriter in the respect of his subscription irrespective of the fact that the shares or debentures have already been subscribed.

6. **(b)** Draft a ' Power of Attorney ' by an assessee authorizing a professional to appear before the Income Tax Authorities in respect of the pending taxation matter. **[4 Marks]**

Sol. **(b)** **Power of Attorney to appear before Income Tax Authorities :**

I/we……………,residing at………..….hereby authorize…………,to represent me/my firm/ my family in connection with………..…..for the year…………..His statement and explanation will be binding on me/us.

Place:

Date: Signature

I,……………….hereby declare that I am duly qualified to represent the above-mentioned person.

Place:

Date:

Address of Power of attorney holder Signature of Power of attorney holder

6. **(c)** State whether the following statements are correct or incorrect : **[4 Marks]**

(i) Under the Companies Act. 2013. if the General Mectimg is adjourned for want of' Quorum, then in case of change in the day, time , place of the adjourned meeting,the company is required to give not less than 7 days notice to the memebrs individually of by press announcement.

(ii) As per Section 51 of the Companies Act. 2013, a company may, if so authorized by its articles, pay dividends in proportion to the amount paid up on each shares.

(iii) The agreement towards compouding of an offence to avoid prosecution is void.

(iv) Bailee has no right to mix the goods bailed with his own goods without the constent of the bailor.

Sol. (c) (i) **Incorrect :** As per Sec.103 of Companies Act, 2013, where the meeting stands adjourned to the same day in the next week at the same time and place, or to such other date and such other time and place as the Board may determine, there the company shall give ***at least 3 days notice to the members*** either individually or by publishing an advertisement in the newspapers.

(ii) **Correct :** Section 51 of Companies Act, 2013 replaces the section 93(Payment of dividend in proportion to amount paid-up) of the Companies Act, 1956. Although, there being no change made in the provision.

(iii) **Incorrect :** Any agreement to stifle or prevent illegally any prosecution is void as it would amount to perversion or abuse of justice. However, under the Code of Criminal Procedure,1973 many offences are compoundable.

Therefore, any agreement towards compounding of an offence to avoid prosecution is not void but is very much enforceable.

(iv) **Correct :** If the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, and the *goods can be separated or divided*, the property in the goods remains in the parties respectively; but the bailee is bound to bear the expenses of separation or division , and any damages arising from the mixture **(Section 156 of Indian Contract Act, 1872)**.

7. Attempt any four of the following :

(a) Examine the provisions in respect of Review of orders passed under Sectionn 7A of the Employees Provident Funds and Miscellaneous Provisions Act, 1952. **[4 Marks]**

Sol. (a) Any person aggrieved by order under Section 7A(1) can make application for review of the order in following cases :

(i) if new and important evidence is discovered which could not be produced earlier as it was not within his knowledge even after due diligence;

(ii) there is some mistake or error apparent on the records or

(iii) any other sufficient reason.

No application for review can be made if appeal was filed.

The officer can himself review the order on his own motion. [Section 7B(1)]. The officer can either reject the application for review if there are not sufficient grounds for review, or he can grant the review. [Section 7B(4)]. Appeal cannot be filed against order rejecting the application for review. However, if fresh order is passed after the review, appeal can be filed against such order [Section 7B(5)].Application for review should be made within such form and manner and in time as may be specified in the Scheme.

In ***Balu Fire Clay Niwas v. U.O.I. (2003)(Jhar HC)***, it was held that when statute provides for review, it cannot be contended that petitioner should have filed appeal against the order. It was also held that review petition should be disposed of by a speaking order.

7. (b) Who shall he considered as promoter according to the definition given in the Companies Act, 2013 ? Explain. **[4 Marks]**

Sol. (b) **Promoter [Sec.2(69) of Companies Act, 2013]**

Promoter means a person -

(a) Who has been named as such in a prospectus or is identified by the company in the annual return referred to in section 92; or

(b) Who has control over the affairs of the company, directly or indirectly whether as a shareholder, director or otherwise; or

(c) In accordance with whose advice, directions or instructions the Board of Directors of the company is accustomed to act.

Provided that nothing in sub-clause (c) shall apply to a person who is acting merely in a professional capacity.

7. (c) Define the term " charge " and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act. 2013.

[4 Marks]

Sol. (c) According to *section 2(16) of the Companies Act, 2013* "charge" has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

According to *section 86 of the Companies Act, 2013*, if any company contravenes any provision relating to the registration of charges contained under chapter VI of the Act, the company shall be punishable with fine which shall not be less than ₹ 1,00,000 but which may extend to ₹ 10,00,000 and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than ₹ 25,000 but which may extend to one lakh rupees, or with both.

7. (d) What are " Socio-pyeholcgical Barriers" to effective communication ? Explain.

[4 Marks]

Sol. (d) The attitudes and opinions, place in society and status consciousness arising from one's position in the hierarchical structure of the organization, one's relations with peers, seniors, juniors and family background -all these deeply affect one's ability to communicate both as a sender and receiver.

Status consciousness is widely known to be a serious communication barrier in organisations. It leads to psychological distancing which further leads to breakdown of communication or miscommunication. Often it is seen that a man high up in an organisation builds up a wall around himself.

This restricts participation of the less powerful in decision making. In the same way one's family background formulates one's attitude and communication skills.

7. **(e)** Describe the safeguards which may be created by finance and accounting profession and legislation to eliminate or reduce the threats to an acceptable level to ensure an ethical environment in an organization. **[4 Marks]**

Sol. **(e)** **Safeguards against threats faced by professional shall be to :**

(i) Ensure an ethical environment,

(ii) Increase the likelihood of identifying or deterring unethical behaviour and

(iii) Eliminate or reduce threats to acceptable level.

The following safeguards may be created by a business enterprise in the work environment :

(i) The employing organisations' systems or corporate oversight or other oversight structures.

(ii) The employing organisation's ethics and conduct programmes.

(iii) Recruitment procedures in the employing organisation emphasizing the importance of employing high caliber competent staff

(iv) Strong internal controls

(v) Appropriate disciplinary process

(vi) Leadership that stresses the importance of ethical behaviour and expectation that employees will act in an ethical manner.

(vii) Policies and procedures to implement and monitor the quality of employee performance.

(viii) Timely communication of the employing organisation's policies and procedures, including any changes to them, to all employees and appropriate training and education on such policies and procedures.