

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

DIVISION A

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|-----|-----|-----|-----|-----|-----|-----|-----|-----|-----|
| 1 | 2 | 3 | 4 | 5 | 6 | 7 | 8 | 9 | 10 |
| (b) | (d) | (b) | (c) | (b) | (b) | (b) | (a) | (d) | (c) |
| 11 | 12 | 13 | 14 | 15 | 16 | 17 | 18 | 19 | 20 |
| (d) | (d) | (b) | (a) | (b) | (c) | (b) | (a) | (c) | (b) |
| 21 | 22 | | | | | | | | |
| (c) | (b) | | | | | | | | |

DIVISION B

1. (a) As per Rule 3 of the Companies (Incorporation) Rules, 2014, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the Chapter II of the Act.

According to the above provisions, following are the answers to the given circumstances:

- (i) Where, if the promoters increases the paid up capital of the company by Rs. 10.00 lakh during 2017-2018 i.e., to Rs. 55 lakh (45+10= 55), MNO (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees. This could be done by the MNO by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.
- (ii) Where if the turnover of the MNO during 2017-18 was Rs. 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e, Rs. 2 crore for voluntarily conversion of MNO (OPC) into any other kind of company.

- (b) **Moral vs. Ethics:** Following are the points of difference between Ethics and Moral :

- (i) The word 'Ethics' is derived from Ancient Greek 'éthikos' meaning 'character'. The word 'moral' is derived from Latin 'mos' meaning 'custom'.
- (ii) Character is the essence of values and habits of a person or group. It serves the analysis and employment of concepts such as right and wrong, good and evil and acting with responsibility. Moral is defined as relating to principles of right and wrong.
- (iii) Character is a personal attitude, while custom is defined by a group over a period of time. For example People have character, Societies have custom.
- (iv) Morals are accepted from an authority (such as cultural, religious etc.) while ethics are accepted because they follow from personally accepted principles. An ethical view might be based on an idea of personal property that should not be taken without social consent. Moral norms can usually be expressed as general rules and statements such as 'always tell the truth'.

(v) Morals work on smaller scale than ethics, more reliably, but by addressing human needs for belonging and emulation, while ethics has a much wider scope.

(c) **Process of Communication:** Communication is a two-way process in which there is an exchange of ideas or thoughts linking the sender and receiver towards a mutually accepted direction or goal consisting of 7 elements which are as under:

1. **Sender:** The process of communication begins with a sender, the person who has an idea and desires to exchange it.
2. **Encoding:** The sender puts his/her ideas or facts into words, symbols, pictures or gestures that the receiver can understand.
3. **Message:** A message refers to what is being communicated. It may be verbal or non-verbal.
4. **Channel:** Channel is the medium through which message is transmitted to the sender. Channel may be in oral or written forms.
5. **Receiver:** It is any person who notices and attaches some meaning to a message.
6. **Decoding:** The receiver translates the words and symbols used in the message into ideas and interpret it to attain its meaning.
7. **Feedback:** Ultimately receiver reacts or responds to the communication sent by the sender. It could be based on clear interpretation of the symbols sent or misunderstanding or misinterpretation of the symbols sent.

2. (a) The following deductions shall be made from the gross profits (i.e., 1,20,00,000) for the year 31-03-2018 for the distribution of bonus to employees –

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|--|------------------|
| Gross profit as given above (A) | 1,20,00,000 |
| <i>Less:</i> Prior deductions from Gross Profit | |
| (a) Depreciation allowable as per Income Tax Act | 41,50,000 |
| (b) Development rebate | 3,40,000 |
| (c) Direct taxes payable | 10,00,000 |
| (d) Return on Capital Since the company is a manufacturing company, it has to provide allocation of 8.5% if its paid up capital as the commencement of the accounting year (8.5% on Rs. 1,00,00,000/-) | 8,50,000 |
| (e) Return on Capital 6% of the reserves shown in the balance sheet as at the commencement of the accounting year including any profits carried forward from the previous year (6% on Rs. 25,00,000) | 1,50,000 |
| Total deductions (B) | 64,90,000 |
| Net available funds in terms of Sec. 6 (A-B) | 55,10,000 |

Therefore, the funds available for distribution of bonus to employees is Rs. 55,10,000.

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

Business and Industry are closely linked with environment and resource utilization. Production process and strategy for eco-friendly technologies throughout the product life cycle and minimization of waste play major role in protection of the environment and conservation of

resources. Business, Industry and multinational corporations have to recognize environmental management as the priority area and a key determinant to sustainable development. Sound management of wastes is among the major environmental issues for maintaining the quality of Earth's environment and achieving sustainable development.

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

(c) **Tips for improving interpersonal skills:** Lines of communication must be open between people who rely on one another to get work done. Poor interpersonal communication skills, which include active listening, result in low productivity simply because one does not have the tools needed to influence, persuade and negotiate which are necessary for workplace success. To get this success the following tips are suggested:

- (i) Congruency in communication elements: If the words used are incongruent with the other interpersonal communication dynamics interpersonal communication is adversely affected. Since communication is shared meaning, words must send the same message as the other interpersonal communication dynamics – body language, facial expression, posture, movement, tone of voice to help emphasize the truth, sincerity and reliability of the communication. A consistent message ensures effective communication.
- (ii) Listening effectively: Effective or active listening is very important skill to enhance interpersonal communication. Listening helps to build strong personal relationships. The process of communication completes when the message as intended by the sender is understood by the receiver. Most of the persons assume that listening is natural trait, but practically very few of us listen properly. One needs to give the communicator of the message sufficient attention and make an effort to understand his view point.

3. (a) **Calculation of Gratuity amount:** [Section 4(2) of the Payment of Gratuity Act, 1972]

For every completed year of service or part thereof in excess of six months, the employer shall pay gratuity to an employee at the rate of fifteen days wages based on the rate of wages last drawn by the employee concerned.

In the case of a monthly rated employee, the fifteen days wages shall be calculated by dividing the monthly rate of wages last drawn by him by twenty-six and multiplying the quotient by fifteen.

Mr. K is entitled to get the gratuity for the full period of 22 years which he worked in the factory. The layoff is due to an injury suffered by him at the factory only and is considered as an injury during employment. Therefore, he is eligible for full gratuity as per the provisions of the Gratuity Act, 1972. Accordingly, gratuity shall be calculated as follows.

Facts given states that K, retired from his 22 years of service with present salary Rs. 40, 000 (wages last drawn). Accordingly, gratuity shall be calculated as -

| | |
|--|-----------------|
| a) Present salary | Rs. 40,000 |
| b) No. of years of eligible service | 22 years |
| c) Eligible amount of gratuity as per Sec. 4(2) Rs. 40,000/- x 22 years x 15/26 | Rs. 5,07,692.31 |

- (b) A proxy is an instrument in writing executed by a share holder authorising another person to attend a meeting and to vote thereat on his behalf and in his absence. The term also applies to the person so appointed in such case a proxy is a person appointed by a member of a company, to attend a meeting of the company and vote thereat on his behalf.

The various provisions relating to the appointment of a proxy is contained in section 105 of the Companies Act, 2013 are as under:

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.
5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

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

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

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

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

Techniques for Negotiation:

- (a) Spirling agreements: Begin by reaching a minimum agreement even though it is not related to the objectives and build, hit by hit, on this first agreement.
- (b) Changing of position: Formulate the proposals in a different way, without changing the final result.
- (c) Gathering information: Ask for information from the other party to clarify their position

- (d) Making the cake bigger: Offer alternatives that may be agreeable to the other party, without changing the terms.
 - (e) Commitments: Formalize agreements orally and in writing before ending the negotiation.
4. (a) **Delivery of Bags:** According to Section 56 of the Indian Contract Act, 1872 when the performance of a contract becomes impossible or unlawful subsequent to its formation, the contract becomes void, this is termed as 'supervening impossibility' (i.e. impossibility which does not exist at the time of making the contract, but which arises subsequently).

But impossibility of performance is, as a rule, not an excuse from performance. It means that when a person has promised to do something, he must perform his promise unless the performance becomes absolutely impossible. Whether a promise becomes absolutely impossible depends upon the facts of each case.

The performance does not become absolutely impossible on account of strikes, lockout and civil disturbances and the contract in such a case is not discharged unless otherwise agreed by the parties to the contract (*Budget V Bennington; Jacobs V Credit Lyonnais*).

In this case Mr. Akhilesh could not deliver the bags as promised because of strike by the workers. This difficulty in performance cannot be considered as impossible of performance attracting Section 56 and hence Mr. Akhilesh is liable to Mr. Shekhar for non-performance of contract.

- (b) The problem as asked in the question is based on the provisions of Section 2(f) of the Competition Act, 2002. The Section provides that "consumer" means any person who buys any goods for a consideration which has been paid or promised or partly paid or partly promised or under any system of deferred payment and includes any user of such goods other than the person who buys such goods for consideration paid or promised or partly paid or partly promised or under any system of deferred payment when such use is made with the approval of such person whether such purchase of goods is for resale or for any commercial purpose or for personal use.

Hence, Section 2(f) of the Competition Act, 2002 provides that whether purchase of goods is for resale or for any commercial purpose or for personal use, the purchaser is a consumer. Thus, consumer will also include a person who purchases goods for re-sale. Therefore the contention of XYZ Ltd. is not valid and not tenable.

- (c) Notice is hereby given that the 15th Annual General Meeting of the members of ABC Ltd. will be held on Monday the 14th day of September 2018 at the registered office of the Company at 10 a.m. to present the following business:

Ordinary Business:

To

1. Receive, consider and adopt the Audited Balance sheet of the company as on 31st March, 2018 and the Profit and Loss account for the year ended on that date and Audit's and director's response thereon.
2. To declare dividend for the year ended 31st March, 2018
3. To appoint a director in place of Mr.....
4. To appoint Statutory Auditors of the Company.

NOTE: A member entitled to attend and vote is entitled to appoint a proxy to attend and vote instead of himself and proxy need not be a member of the company.

For and on behalf of the Board of Directors.....

Registered Office.....

- 5. (a) A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section

105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

(b) 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.

(c) The key elements in the innovation framework are:

- (i) **Accessibility:** The major organizational challenge is to make everyone, particularly the workers as active participants in the work process. The innovative enterprise ensures everyone is accessible to each other at all levels within the organization.
- (ii) **Recognize and reward innovation:** One of the more radical steps an organization or manager can take is to make innovation a requirement of the job.
- (iii) **Develop company programs that encourage innovation:** Some companies 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.
- (iv) **Foster informal communication:** The paperwork involved in proposing or even pursuing a project can be a major roadblock to innovation. Employees often feel stifled when asked to fully justify ideas; they may be working on a hunch.
- (v) **Information:** The right kind of information is called innoinformation. This type of information is critical to the vitality of the enterprises. Innoinformation consists of the plans, vision, goals and all the new ideas affecting the enterprises. The innovative enterprise is looking forward continuously changing and adapting to the needs of the customer.
- (vi) **Framework:** The innovative enterprise must constantly adapt, create and innovate. Information and communication are the wind that sails the innovative enterprise towards its destination. Information and communication pose difficult challenges for most businesses. The difficulty lies in balancing the flow of information between providing too much or too little information.

6. (a) Sans Recourse: By adding the words 'Sans Recourse' after the endorsement the endorser declines to accept any liability on the instrument of any subsequent party. Sometimes, when an endorser who so excludes his liability as an endorser afterwards becomes the holder of the same instrument. In such a case, all intermediate endorsers are liable to him.

Sans Frais: These words when added at the end of the endorsement, indicate that no expenses should be incurred on account of the bill.

Difference: Any endorser can exclude personal liability by endorsing “sans recourse” i.e. without recourse. However, “Sans Frais” endorsement, indicate that no expenses should be incurred on account of the bill.

Thus, we can say that in case of ‘sans recourse endorsement’, if bill is dishonoured at any stage after it is endorsed sans recourse by endorser, the endorser will not be liable for whole amount of the bill whereas in case of sans frais endorsement, if bill is dishonoured at any stage after its endorsement, the endorser will not be liable for expenses incurred, but he will be liable for the original sum of the bill.

(b) In accordance with the provisions of Section 19 of the Companies Act, 2013, a subsidiary company cannot either by itself or through its nominees hold any shares in its holding company and no holding company shall allot or transfer its shares to any subsidiary companies. Any such allotment or transfer of shares in a company to its subsidiary is void. The section however does not apply where:

- (1) the subsidiary company holds shares in its holding company as the legal representative of a deceased member of the holding company, or
- (2) the subsidiary company holds such shares as a trustee, or
- (3) the subsidiary company was a shareholder in the holding company even before it became its subsidiary.

(c) **The reasons which lead to unethical behavior are as follows:**

(1) **Emphasis on short term results.**

This is one of the primary reasons which has led to the downfall of many companies like Enron and Worldcom.

(2) **Ignoring small unethical issues.**

It is a known fact that most of the compromises we make are small but however they lead us into committing large infractions. And ignoring minor lapses, lead to bigger and more huge mistakes.

(3) **Economic cycles.**

In good times, companies are relaxed in their accounting procedures or disclosures, as there is a pervasive feel-good effect. But when times of hardship follow, then the hit taken by them is almost fatal, as was proved in the Enron case. So, companies need to watch out for economic cycles and be vigilant in good times as well as bad.

(4) **Accounting rules.**

In the era of globalization and massive cross border flow of capital, accounting rules are changing faster than ever before. The rules have become more complex and it is difficult to identify deviations from these complex set of requirements. The complexity of these principles and rules and the difficulty associated with identifying abuse are reasons which may promote unethical behaviour.

(d) **Indemnity Bond**

Mr. A S/o resident do hereby agree to indemnify the XYZ Ltd. for any loss that may occur for seeking release of dividend for 150 shares of Rs. 1500.

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

Date:

Place:

Mr. A

Signature