

**Ans (1) (a)** The definition of 'consideration' makes it clear that consideration need not be received by promisor himself. It can be received by third person also. Similarly, consideration need not be given by promisee himself. It can be given by third person also.

The given case is similar to the case of **Chinnaya V. Ramayya**. One of the condition of the gift deed was to pay the annuity of Rs. 2000 every year to B. Ms. A had executed an agreement in pursuance of the gift deed to pay the annuity to Mr B. Here this agreement is not a gratuitous agreement. Consideration had been furnished to Ms. A by Mr. Singh. As long as there is consideration in a contract, it is immaterial as to who has given this consideration. So, the contention of Ms. A is not tenable. Mr. B can enforce the agreement through court.

**Ans (1)(b)(i) Incorrect:** As per the section 177 of the Contract Act, If the pawnor makes default in the payment of the debt, or the performance of the promise in respect of which the goods were pledged, the pawnee may bring a suit against the pawnor upon the debt or the promise, and retain the goods pledged as a collateral security; or he may sell the thing pledged on giving the pawnor a reasonable notice of the sale.

**Ans (1)(b)(ii) Incorrect:** Section 202 of the Indian Contract Act, 1872, provides that where the agent has himself an interest in the property which forms the subject matter of agency, the agency cannot in the absence of an express contract, be terminated to the prejudice of such interest. This rule is applicable only when the agency is created for the protection of the interest arises of the agent, it does not apply where the interest after the creation of agency.

**Ans (1)(c)(i) Contract of Indemnity:** A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or by the conduct of any other person, is called a 'contract of indemnity'.

**Ans (1)(c)(ii) Can not be enforced either by A's representative or by B:** Contract gets discharged on death or insanity when personal skill or ability is involved.

**Ans (1)(c)(iii) Valid:** A minor is not competent to create any liability under any contract but he can be a beneficiary in a contract. A negotiable instrument can be drawn in favour of a minor.

**Ans. 2(a)** As per Companies Act, 1956, a company having a share capital which has issued a prospectus inviting the public to subscribe for its shares cannot commence any business or exercise any borrowing power unless it has received the "Certificate of Commencement of Business".

So, in this case, Noble Meters Ltd. is not entitled to commence its business without obtaining the certificate of commencement of Business.

Noble Meters Ltd is advised to fulfill the following conditions for obtaining the certificate of commencement of Business from the ROC under Companies Act, 1956:

- (i) the minimum no. of shares which have to be paid for in cash has been subscribed & allotted.
- (ii) every director has paid, in respect of shares for which he is bound to pay an amount equal to what is payable on shares offered to the public on application & allotment. [Qualification shares]
- (iii) no money is or may become liable to be paid to applicants of any shares or debentures offered to public subscription by reason of any failure to apply for or to obtain permission for the shares or debentures to be dealt in on any recognized stock Exchange, and
- (iv) A statutory declaration by the secretary or one of the directors that the aforesaid requirements have been complied with, is filed with the Registrars.

**Ans.2 (b) (i) False;** The article of Association of a company cannot be altered by passing an ordinary resolution in the meeting of the shareholders.

Reason: Section 31 vests the companies with power to alter or add to its article but the alteration will be effective only if **Special Resolution** is passed in the meeting of shareholder.

**(ii) False;** A transferee does not become a member of the company when the instrument of transfer is submitted with the company.

**Reason:** A transferee becomes member of the company only when his name is written in the Register of members.

**Ans.2 (c) (i) 2) Pre-incorporation contracts.**

**Reason:** Pre incorporation contracts are those contracts which are entered into by the agents / trustees / promoters, on behalf of a company, which has not yet come into existence.

**(ii) 4) Shelf Prospectus**

Reason: Shelf Prospectus means a prospectus issued by the financial institution or bank for one or more issues of the securities or less of securities specified in that prospectus. Public financial institution tap the capital market more than once in a year so away out of to avoid needless repetition is Shelf Prospectus.

**(iii) 4)** 15 months as may be extended by Registrar of Companies to 18 months.

Reason: Section 166(1) states that the gap between two Annual General Meeting must not be more than 15 months. And one AGM must be held in each calendar years. As per second Proviso, ROC may extend the time of AGM upto 3 months except in case of first AGM.

**Ans (3)** As per the section of 36 of the Bonus Act the appropriate government may exempt any establishment or class of establishment from all or any of the provisions of this Act. The appropriate government shall consider the financial position and other relevant circumstances before granting any exemption. Before granting any exemption, the appropriate government must form an opinion that it will not be in public interest to apply all or any of the provisions of this Act to such establishment or class of establishments.

As per the above explanation it is clear that Government of Tamilnadu may grant exemption to the Company, if it is in public interest.

**Ans (4)** The present problem relates to 'discharge of a party' as explained under section 40. Ordinarily, a holder in due course has a right to recover the payment of the negotiable instrument from all the prior parties.

However, as per section 40, if the holder of a negotiable instrument, without consent of the endorser shall be discharged from liability. Simply speaking, if the holder cancels the name of any party liable on instrument, such a party and all parties subsequent to him are discharged.

In the given case, the holder (N) cancels the endorsement made by Q and R, without obtaining S's consent. The result of such cancellation is that S's remedy against Q and R has been destroyed. Therefore, Q and R and the party subsequent to Q and R (i.e. S) are discharged. Accordingly, N is not entitled to recover anything from 'S' under the provisions of Negotiable Instruments Act, 1881.

**Ans. 5.** Gratuity is payable to an employee on termination of his employment after he has rendered continuous service for not less than five years companies cannot refuse payment of gratuity an account of its financial position.

Here Mr. X after completing 30 years of continuous service is entitled to gratuity. If such amount is not paid by employer, then he may apply to controlling authority who shall, on receipt of such application issue a certificate to the collector specifying the amount due and compound interest at specified rate. Before issuing such certificate the authority must give reasonable opportunity to employer for showing cannot against issue of certificate. The collection shall after recurring certificate, recover the gratuity amount and interest as arrear of land revenue & pay the same to person entitled (Sec 8).

#### **Ans. 6 Composition of the Committee**

- (a) The Central Government has the power to constitute an Executive Committee.
- (b) Executive committee shall consist of 13 members.
- (c) The members of the Executive Committee are selected out of the members of the Central Board.
  - (i) Chairman – appointed by the Central Government
  - (ii) 2 persons – representatives of the Central Government
  - (iii) 3 persons – representatives of the State Government
  - (iv) 3 persons – representatives of the employers
  - (v) 3 persons – representatives of the employees
  - (vi) Central Provident Fund Commissioner as a member.

**Ans. 7** Section 11 of companies Act states that no company, association or partnership consisting of more than 20 members (10 in case of banking business) can be formed for the purpose of carrying on any business for gain unless it is registered as a company under companies Act or under other Indian law.

A "Single" Joint Hindu Family may carry on business without getting itself registered, whatever may be number of members. But if two Joint Hindu Families carry on business "Jointly" then the provisions of section 11 become applicable. For calculating number of members in this case, the "minor" member of both the families shall not be considered. If a minor become major and than number exceeds, the said association will become illegal.

As per the given question, United Traders Association does not recognise the legal status. This association was constituted by two joint Hindu Families consisting of 21 major and 5 minor member. So, Section 11 becomes

applicable to this Association, and the number of major member is more than 20, so it should registered under any Indian law.

But since the united Traders Association is not registered under companies Act or any other Indian law, so the said Association becomes "ILLEGAL".

Yes, there will be a change in the status if the said Association reduces its members to 15. The said Association will not be repaise to get itself registered under any law.

**Ans. 8** Rights of Mr. "X" against the company with reference to aforesaid shares are:

(i) Since Mr. X is the true owner of shares, he can have his name restored in Register of Members, as it is the case of forged transfer. A forged transfer is a Nullity and does not have legal effect. Due to forged transfer, Mr. "Y & Z" will not get any legal right.

(ii) Mr. 'X' is a red owner, so he can claim dividend which may not have been paid to him during the intervening period. [e.g. case law Barton V/S North Staffordshire]

Rights of Mr. "Y" and Mr. "Z" against the company.

(a) Company RBB Ltd. has issued a 250 equity shares certificate to the transferee Mr. Y on a forged transfer, and further Mr. Y has sold 150 equity shares to Mr. "Z" who is an innocent buyer.

So, Mr. Z will not get any title to be registered as a shareholder. In such a case, Mr. Z can claim for damages from company as he acted on the ground of share certificate of company [eg: case law: Balkis consolidated co. Ltd. V/S Tamleinson]

(b) Since the comp RBS Ltd. is put to a loss by reason of forged transfer, it may recover loss from Mr. Y, because it may Mr. Y who procured registration.

(c) Also, Mr. Y must take case to sec. that he is not getting a certificate from the company on a forged transfer, because how in this case, he will be liable to indemnify the company against consequences of damages which the comp RBS Ltd. have to be paid to the true owner of shares that is Mr. X.

Also, though Mr. Y acted with good faith, still he has to indemnify company. [Sheffield corp V/S Barclay].

**Ans. 9 Sec. 62** of companies act, 1956 applicable here. The prospectus containing the inaccurate report of expert was not issued by Modern Furniture Ltd. so the company is not liable for any remedy against it by Mr. X.

Mr. X Purchased the shares of Modern Furniture Ltd. on the basis of prospectus containing inaccurate expert report, so in this case Mr. X have remedy against the expert.

But in this case, the expert will not be liable if the expert proves that:

- (i) After giving his consent, he had withdrawn his consent in writing before delivery of a copy of prospectus to ROC, or,
- (ii) After delivery of a copy of prospectus to ROC, but before allotment he on becoming awarded untrue statement in prospectus, withdraw his consent in writing, and gave reasonable public notice of same and reasons for it, or
- (iii) He was competent to give report and he had reasonable grounds to believe, and did up to the time of allotment of shares or debentures, believe that statement was TRUE.

**Ans. 10** According to Section 79A, a company can issue sweat equity shares to employees or directors at a discount or for consideration other than cash. And for this the company has to pass a special Resolution to give effect to this. For passing special Resolution, a notice sent for meeting must specify that a special resolution has to be passed for such consideration.

As in given question, M.H. Company Ltd. served a notice of general meeting upon its shareholders. The notice stated that the issue of sweat equity shares would be considered at such meeting. Mr. 'A' a shareholder of M.H. Comp Ltd. complains that the issue of sweat equity shares was not specified fully in the notice. So, as per section 79A, Mr. A's complaint was valid according to provisions of the companies Act, 1956.

The comp M.H. Ltd. must have sent a proper notice of passing SR for the purpose of issue of sweat equity shares. But, the company didn't comply with this provision of proper notice, so the notice becomes invalid, and Mr. A's complaint is tenable.

### **Ethics**

**Ans. 11 (a)** An organization, whether a business or a government agency, is first and foremost a human society. If an employer does not take steps to create a work place where the employees have a clear & common understanding

of what is right and wrong, and fees free to discuss and ask question about ethical issues and report violations, significant problems could arise, including:

- i) Increased risk of employees making unethical decisions
- ii) Increased tendency of employees to report violation to outside regulatory authorities (whistle blowing) because they lack internal forum.
- iii) Inability to recruit and retain top people.
- iv) Diminished reputation in the industry & the community
- v) Significant legal exposure and loss of competitive advantage in the market place.

And thus from the above problems it is clear that how important is ethical behavior at work place.

**11 (b) Ans.** The institution of business exists only because it performs invaluable services for society. Society gives business its license to exist and this can be amended at any time if it fails to live up to society's expectations.

Therefore, if a business intends to retain its existence, it must respond to society's needs constructively. This is known as iron law of responsibility. In the long run those who do not use power in a manner that society consider responsible, will tend to lose it.

A business organization, sensitive to community would, in its own self-interest, like to have a better community in which to conduct its business. To achieve that, it would implement special programs for social welfare. The resulting benefit would be:

- i) Decrease in crime.
- ii) Easier labour recruitment.
- iii) Reduced employee turnover and absenteeism.
- iv) Easier access to international capital, better condition for loans on international money markets.
- v) Dependable and preferred as supplier, exporters etc. of responsibly manufactured components.

A better society would produce a better environment in which the business may gain long-term PROFIT MAXIMISATION.

**Ans 12 .** Marketing executives should practice ethical behavior because it is morally correct though insufficient motivation for everyone. So let us consider four pragmatic reasons for ethical behavior:

- i) To Reverse The Declining Public confidence in marketing:- Periodically we here about misleading package labels, false claim in adds etc, though such practices are limited to only a small proportion of all marketing, the reputation of all marketers are damaged.
- ii) To Avoid Increase In Government Regulation: Business apathy, resistance have taken response to unethical behavior which simply increase the probability of more government regulation. Indeed most of the government limitations on marketing are the result of managements failure to live up to its ethical responsibility.
- iii) To Regain the power Granted by Society: marketing executives wield a great deal of social power, however there is responsibility teed to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in long run.
- iv) To Protect the Image of the Organisation: Buyers often form an impression of an entire organization based on their contact with one person. More often than not, that person represent the marketing function. You may base your opinion of retail store on the behavior of a single sales clerk.

**Ans. 13 (a)** Correct, Fairness and honesty are at the heart of business ethics. Businesspersons are expected not to harm customer, 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 the product use. Another aspect of fairness relates to competition, companies sometimes gain control over market by using questionable practices that harm competition and business too. So, we can conclude that yes fairness and honesty are pillars of success in the business.

**Ans. 13 (b)** Incorrect, The root word for ethics is the Greek "ethos" meaning character while the root word of or moral is latin "Mos" meaning "custom". Character and custom, however, provide two very different standards for defining what is right and wrong. Character is personal attribute, while custom is defined by a group overtime. People have character societies have customs. Another way to look at the distinction is to say that morals are accepted from an authority (culture, religion etc.) while ethics are accepted because they follow from personally accepted principals. So there is a vast distinction between ethics and moral and hence the statement is FALSE.

**Ans. 14 (a)** The network or pathway in informal communication is known as grapevine. In the context of an organisation the flow of information in informal communication is called, 'grapevine' because of the origin and direction of the flow of these messages cannot be easily fraud.

The merits and demerits of grape vine form of communication all as follows :

**Merits**

- (i) Speed : Speed in the most removable fast since there is no formed barriers and no stopping.
- (ii) Support system : A grapevine is an informal support system development by employees within an organization. It ways them closer and gives man innovouse satisfaction.
- (iii) Feedback : The managers get to income the reason of must subordinate. Thus feedback is quick. Employees attitudes and reactions to plans and policies can be ascertained by managers through informal and interactions.
- (iv) Psychological Satisfaction – The grapevine gives immense psychological to the workers and strengthens their solidarity. It drawn them nearly to each other and thus keeps the organization intact as a social entity. It builds team spirit among the employees.

**Disadvantages**

- (i) US exdible : A grapevine is less credible than a formal channel of communication. It cannot be taken seriously as involves only a month.
- (ii) Leakage : Information may get leaked at the wrong time the word 'open secret' in an orgnisation can often be attributable to such take.
- (iii) Incomplete and distorted information – The information passed through the grapevine does not carry compete information nor does it reveal the complete picture. The reason for this is that information transmitted through the grapevine carry rumors and distorted facts.
- (iv) Adverse effect on reputation – The grapevine often gives a distorted picture of the actual situation and spread rumors loose takes about responsible people leaving an adverse effect on the image of the organization.

**Ans. 14 (b)**

**Communication  
T K R Limited  
Statutory meeting of the company  
Held on 20<sup>th</sup> December, 2009**

The Statutory meeting must be held at least months after the date, the company is entitled to commence business; and before the expiry of 6 months from the date, the company is entitled to commence business.

**(i) Contents of Statutory Report**

- (a) Shares – No of shares allotted. The extent to which shares one paid up. Consideration for shares issued.
- (b) Cash received – Cash received by the company in respect of shares allotted.
- (c) Receipts and payment a/c - Abstract of receipts and payment upto the date within 7 days of the date report
- (d) Directors & auditors – Name, addresses and occupations of the directors, manager, secretary and auditors.
- (e) Contract :- Particulars of any contract, which is to be submitted to meeting for its approval.
- (f) Underwriting contract :- The extent to which underwriting contract has not been carried out and reasons therefore.
- (g) Arrears of calls : Arrears due on calls from every director and manager.
- (h) Commission or

Brokerage : The particulars of any commission or brokerage paid on shares or debentures to any director or manager.

**Note :** (i) Statutory meeting is held once in the oftime of the company.

- (ii) Default in holding statutory meeting is one of the grounds on lovien company may be would up by the cast.

**Ans. 15**

**Devrishi Limited  
Minutes of the Sta Annual General Meeting  
Held at registered office of the company at Mumbai, on 20<sup>th</sup> Aug. 2009.**

55 Shareholders and

6 Shareholders in proxy attended the meeting

- 2. The chairman commenced me proceeding the meeting. The chairman extended a very worm welcome to the members and introduce his colleagues on the board to the member. Thereafter, the chairman's speech was read.
- 3. After ascertaining that the requisite grown for the meeting was present, the chairman informed that the formed proceedings of the meeting could commerce.

4. The auditors report was read by secretary.
5. The chairman informed the meeting that the register of members and register of director's shareholders are kept open and accessible during the continuance of the annual general meeting.

The chairman proposed the following resolution for consideration and approval of members : -

- (i) Adoption of Annual Accounts.

"RESOLVED that the Audited Balance Sheet as at 31-03-2007 and the Profit & Loss Account for the year ended 31-3-2007 together with the Director's Report and Auditor's Report thereon be and hereby adopted."

The Chairman of the meeting invited if there were any questions on the same. The questions raised were answered.

- (ii) "RESOLVED that pursuant to the recommendation of the Directors, dividend at the rate of Rupees 2.00 per share on the equity Share Capital of the Company for the year ended 31<sup>st</sup> March, 2007.
- (iii) "RESOLVED that Shri A K Mishra, who is a Director by rotation and being eligible offers himself for same as a Director, be and is hereby re-appointed a Director of the Company".
- (iv) "RESOLVED that pursuant to the provision of section 224 and other applicable provisions of the Companies Act, 1956 as amended upto date, M/s. Purohit & Kulkarni, Chartered Accountants, Mumbai, be and are hereby appointed as the Auditors of the Company for the year 2007-2008 and to hold the Office of Auditors from the conclusion of this Annual General.

#### VOTE OF THANKS

As thus was no other business to be proposed, the meeting concluded with a vote of thanks to the chair.

Dated : 20<sup>th</sup> August, 2009

Signature of Chairman

**Ans 16.** Any partner may, at anytime during the subsistence of the partnership, retire from the firm giving atleast one month notice of his intension of doing so.

#### Partnership retirement deed

This must be executed on a stamp paper of appropriate value and copy sent to registrar of firms along with the prescribed form duly completed. The execution of retirement deed results in a reconstitution of the firm.

A, B and C were carrying on business in partnership and whereas A having expressed his desire to retire the partnership firm by mutual consent, the terms of retirement are hereby agreed as follows :

- (i) A will retire from me partnership effective from close of business on 31<sup>st</sup> March 09
- (ii) The firm is free to continue the business with all the assets and liabilities and use the same firm same with the remaining partners.
- (iii) The continuing partners (B, C) release C of all the debts and allegation including taxes due from the firm on the date of this deed to third parties.
- (iv) The parties hereby agree to execute even other document that may be necessary to give effect to this partnership retirement agreement.

#### WITNESS

1. Signature of B
2. " of C