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Trend Analysis
Frequency Table Showing Distribution of Marks
In Past 10 CA Intermediate (IPC) Examinations

Name of the Chapter	May 2011	Nov. 2011	May 2012	Nov. 2012	May 2013	Nov. 2013	May 2014	Nov. 2014	May 2015	Nov 2015
<u>Business Law</u>										
The Indian Contract Act, 1872	9	15	15	14	13	15	15	15	15	13
The Negotiable Instrument Act, 1881	9	8	8	9	8	8	8	8	8	10
The Payment of Bonus Act, 1965	8	4	4	4	5	4	4	4	4	4
The Employees Provident Fund and Miscellaneous Provisions Act, 1952	4	4	4	4	4	4	4	4	4	4
The Payment of Gratuity Act, 1972	8	4	4	4	4	4	4	4	4	4
<u>Company Law</u>										
Company Law	34	35	35	35	37	35	35	35	35	35
<u>Business Ethics</u>										
Introduction to Business Ethics	2	6.5	2.5	6.5	8	8		2	3	9
Corporate Governance										
Corporate Social Responsibility		8	4		4	4	2	8	4	
Workplace Ethics	12	4	6.5	4	8	2	8	4	4	4
Environment Ethics	4	2.5	4	2.5			4	7	6	4
Ethics in Marketing and Consumer Protection		4	4	8	4	4	7		4	4
Ethics in Accounting and Finance	10		4			7	4	4	4	
<u>Communication</u>										
Essentials of Communication	12	12	13	9	4	8	9	13	5	13
Interpersonal Communication Skills	8	4	4	4	4		4	4	4	8
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Past Exam Questions

Bonus Act

1. In 2009, the Electronics Corporation, a public sector establishment under the Department of Science and Technology, Government of Rajasthan starts to sell mobile sets manufactured by it, in addition to TV sets, so as to compete with private sector establishments of mobile sets in the market. The income from sale of mobile sets is 30 percent of the gross income of the corporation. The employees of the corporation went to strike for demand of Bonus. Decide whether the demand of the employees is tenable under the provisions of the Payment Of Bonus Act,1965. Would your answer be different if the income from sale of mobile sets is only 10 percent of the gross income of the Corporation?

Answer:

The employees are entitled to bonus –

- since the Act applies to Electronics Corporation
- since the income of Electronics Corporation from sale of mobile sets (by competing with private sector) is 20% or more of its gross total income

If the income from sale of mobile sets is only 10% - then, the Act shall not apply to Electronics Corporation, and so the employees shall not have any right to demand bonus

2. Standard Airways Ltd was incorporated at Chennai in the year 2005 employing 125 workmen. Due to strike of workers, mismanagement in the company and accidental loss of the assets the company suffered heavy losses continuously since its incorporation, resulting which the large part of the capital and assets were wiped out. Consequently, the company moved an application to the government of Tamilnadu requesting to exempt the company fully from the application of provisions of Payment Of Bonus Act,1965. Decide whether the government of Tamilnadu may grant exemption to the Company. State the Provisions of law in this regard as stated under the Payment of Bonus Act,1965.

Answer:

- a) **The Appropriate Government is the Government of Tamil Nadu** - Since Standard Airways Ltd does not have branches in more than one state.
- b) **The Government of Tamil Nadu is empowered to grant exemption –**
- i. since exemption u/s 36 may be granted, if appropriate Government is satisfied that it is not in public interest to apply all or any of the provisions of this Act to an establishment or class of establishment
 - ii. Provided that before granting exemption, appropriate Government shall consider financial position and other relevant circumstances
 - iii. since incurring heavy losses continuously and wiping out of large part of capital and assets establish that financial position of the company is not sound

Since strike of workers and mismanagement in the company are such grounds as would amount to 'relevant circumstances' for seeking exemption from the provisions of the Act

3. **Examine whether the Payment of Bonus Act,1965 be applicable to the following cases:**

- a) **C, who is working in a social welfare organization**

- a) **D, an employee employed by an establishment engaged in an industry carried on by a department of the central government**

Answer:

- a) **The Act is not applicable to C** - since the Act does not apply to a social welfare organization
b) **The Act is not applicable to D** - since the Act does not apply to employees engaged by a Department of CG

4. **A workshop is employing 50 workmen. A shop-supervisor is drawing monthly wages of Rs. 9000. HRD paid annual bonus to all employees except the supervisor. The supervisor contends that he is also entitled to bonus. Referring to the provisions of the payment of Bonus Act,1965 decide whether the HRD's action is correct**

Answer:

Shop Supervisor is entitled to bonus -

- a) Since he is an 'employee'
b) Since he is employed on salary or wage not exceeding Rs.10,000 per month[sec. 2(13)]

5. **Decide whether the following persons are entitled to get bonus under Bonus Act,1965:**

- a) **An apprentice**
b) **A retrenched employee**
c) **A dismissed employee**
d) **A piece-rated worker**

Answer:

- a) **An apprentice is not eligible** - Since he is expressly excluded from the definition of employee [Sec. 2(13)].
b) **A retrenched employee is eligible** - Provided he has worked for a minimum period of 30 days in the AY (Sec 8)
c) **A dismissed employee is eligible** - Provided he has worked for a minimum period of 30 days in the AY (Sec 8) and Provided he is not disqualified as per Sec.9
d) **A piece-rated worker is eligible** - Provided he has worked for a minimum period of 30 days in the AY (sec 8)

6. **During the financial year 2010-2011 Mr. Ram was a temporary employee in ayurved products limited and drawing a salary of Rs.6000/- per month. On the basis of charge of violent behavior within the premises of the company he was prevented from working in the company for 60 days pending inquiry. Since there was no adverse conclusion against him, he was reinstated in the service with back salary. He worked for the remaining ten months in that financial year and thereafter resigned from the service. Afterwards, when Bonus was paid to other employees, the company refused to pay bonus to Mr. Ram. Decide whether Mr. Ram will be entitled to bonus under the provisions of the payment of Bonus Act,1965.**

Answer:

- a) **Mr. Ram is an employee** - since his salary or wage is not more than 10,000(it is immaterial that he is temporary employee) [Sec. 2(13)]
b) **Mr. Ram is eligible to receive bonus -**
▪ Since he has worked for 10 months(i.e. 30 days or more during AY)(Sec. 8)

- Since it is immaterial that the employment of RAM was of temporary nature or Permanent nature

c) Mr. Ram is not disqualified u/s 9 - since he has not been dismissed from service (Sec. 9)

d) Conclusion -

- Employer's refusal to pay bonus to RAM is not valid

Ram is entitled to bonus for the entire period of 12 months since absence for period of 2 months due to suspension was not due to any fault of RAM [Project manager, Ahmadabad project, ONGC v shyam kumar sahegal]

7. Navin Shah is working as a salesman in a company on salary basis. The following payments were made to him by the company during the previous financial year.

- Overtime allowance**
- Dearness allowance**
- Commission on sales**
- Employer's contribution towards pension fund**
- Value of free food**

Examine as to which of the above payments from part of 'salary' of Navin Shah under the provisions of the Payment of Bonus Act, 1965.

Answer:

- Items to be included in 'salary' or 'wage' -**
 - Dearness allowance
 - Value of free food (provided it is given in lieu of salary)
- Items not to be included in 'salary' or 'wage'**
 - Overtime allowance
 - Commission on sales
 - Employer's contribution towards pension fund

8. During the accounting year 2005-2006, XYZ limited to which the Payment of Bonus Act, 1965 applies suffered heavy losses. The Board of Directors of the said company decided not to give bonus to the employees. The employees of the company move to the court for relief. Decide in the light of the provisions of the said act whether the employees will get relief.

Answer:

- Decision of the Board is not valid** - since in every AY, every employer is bound to pay minimum bonus to every employee who has worked for 30 days or more (Sec. 10 read with Sec. 8)
- Employees can get the relief** - by applying to AG (or such authority as may be specified by AG) for recovery of bonus due to them (Sec. 21)

9. Mr. D joined as supervisor on monthly salary of Rs. 9,900 on 01.02.2009 and resigned from his job on 28.2.2009. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. D knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of payment of Bonus Act, 1965

Answer:

The claim of Mr. D is not valid -

- Since he has not worked for at least 30 working days in the AY 2008-2009 (Sec 8)

- Although he is covered in the definition of 'employee', i.e. he is employed on a salary or wage not exceeding Rs.10,000 per month

10. What are the days on which an employee shall be deemed to have worked for the purpose of computation of Bonus payable to him? state with reasons whether such computation of number of working days on which an employee has worked is required in an establishment paying minimum bonus to its employees where none of the employees earned less than Rs 2,400 in an accounting year.

Answer:

- Days that are deemed to be 'working days' are - Specified u/s 14**
- The minimum bonus is - 8.33% of salary or wage earned by the employee during the AY or Rs.100, whichever is higher (Sec. 10)**
- Proportionate reduction in minimum bonus of Rs.100 shall be made - where an employee has not worked for all the working days during an AY (Sec. 13)**
- An employee whose salary or wage earned is Rs.2,400 in the AY - shall be entitled to Rs.199.92 (Rs.2,400 *8.33%) as minimum bonus, which is more than minimum bonus of Rs. 100 specified u/s 10**
- Computation of number of working days is not required - in an establishment where none of the employees earned less than Rs.2,400 in an AY, since the Minimum bonus of Rs.100, and so the limit of Rs. 100 becomes irrelevant in such an establishment**

11. The amount of bonus payable to N, a probationer chemist in global chemical limited is Rs. 12,000, during the AY 2007-2008. A sum of Rs. 10,000 was paid to her and Rs. 2,000 was deducted by the company under the pretext of proportionate deduction in bonus for two months maternity leave on full pay availed by her during the year. N files a suit against the company for recovery of the deducted amount. Examine the validity of N's claim under the provisions of the payment of Bonus Act, 1965

Answer:

N's claim is valid - since the period for which a female employee has been on maternity leave with salary or wages shall be deemed to be the 'Working Days'

12. X is an employee in a company. The amount of bonus payable to him during the year 2007-08 is Rs.14,000. the company deducted a sum of Rs.4,000 against 'Puja Bonus' already paid to him during the said year and paid the remaining amount. X files a suit against the company for recovery of the deducted amount. Decide, under the Payment of Bonus Act,1965 whether X would be given any relief by the court.

Answer:

Adjustment of Puja bonus already paid is possible - Since any interim, customary or Puja bonus paid by the employer may be deducted from bonus payable during that accounting year.

13. A is an employee of a company. The amount of the bonus payable to A during the year 2006-07 is Rs.10,000, but the company paid him Rs.7,000 only and a sum of Rs.3,000 was deducted from his bonus against the loss suffered by the company due to misconduct of A during the same accounting year. A files a suit against the company for recovery of the

deduction amount. Decide whether A would be given any relief by court under the provisions of Payment of Bonus Act,1965?what will be your answer, if the losses are related to the AY 2005-06?

Answer:

- a) **A shall not be given any relief by the court** - Since the company is entitled to deduct from the amount of bonus payable, the financial loss suffered by it due to misconduct of employee
- b) **If the company suffered loss during the AY 2005-06** - then, the company shall not be entitled to deduct from the amount of bonus payable, the financial loss suffered by it in AY 2005-06, since the right to make deduction is available only in respect of bonus for the same AY

14. The management of Shakti Mills Ltd. Entered into an agreement with their employees to pay them bonus based on production in lieu of bonus based on profits, from the accounting year 2007. the employees further agreed to forego their right to receive minimum bonus and instead accept 25% of their salary/wage as bonus based on productivity. Is such an agreement valid? Examine in the light of the provisions of the Payment Of Bonus Act,1965.

Answer:

- a) **The agreement of Shakti Mills Ltd. With its employees is void** -
 - in so far as it purports to deprive the employee of their right to minimum bonus
 - in so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.
- b) **The employees are entitled to receive minimum bonus** - since the agreement is null and void to such extent as explained above

15. ABC Textiles Ltd. Employed 20 full-time and 5 part-time employees who were drawing salary of less than Rs.10,000 per month. After completing service of 28 days, in an accounting year, 10 full-time employees submitted their resignations and left the service of the company. The board of directors of this company decided not to give the bonus to employees, who resigned, to the remaining full-time employees and to the part-time employees. Against this decision, all the employees, applied to the authorities for relief. Decide, stating the provisions of the Payment of Bonus Act, 1965, whether the employees, who resigned, remaining full-time employees and part-time employees will get the relief

Answer:

- a) **The Act is applicable to the establishment** -
 - Since the establishment has employed 20 or more persons during any day of the AY
 - Since if the provisions of the Act become applicable to an establishment once, they shall continue to be applicable notwithstanding subsequent reduction in the number of person employed (Sec. 1)
- b) **20 full-time and 5 part-time employees** - Are 'employees' within the definition of employee'[Sec. 2(13)]
- c) **The 10 full-time employees who resigned are not eligible for bonus** - Since they have not worked for 30 days (Sec. 8)
- d) **The remaining 10 full-time employees and all 5 part time employees are eligible for bonus** Since they have worked for 30 days or more during the AY(Sec. 8)
Since even a part-time employee is entitled to bonus (Automobile karmchari sangh v Industrial Tribunal)

THE PAYMENT OF GRATUITY ACT, 1972

1. K is an employee of RST Ltd, a software company which works five days in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether K is entitled to gratuity payable under the Act. Would your answer remain the same in case RST Ltd. works 6 days in a week?

Answer:

- a) **No. of working days for K as per sec. 2A -**
= Days actually worked + Days on which a female employee was on maternity leave provided that the period of maternity leave does not exceed 12 weeks
= 150 days + 50 days = 200 days
- b) **K shall be deemed to be in continuous service -** since she has worked for not less than 190 days in the establishment which works for less than 6 days in a week.
- c) **K is entitled to gratuity -** since she was in continuous service, as per sec. 2A
- d) **K shall not be entitled to gratuity if RST Ltd works 6 days in a week -** since in such a case, the legal requirement for being in continuous service is that the employee should have worked for 240 days, whereas K worked only for 200 days.
2. E was an employee of Tea Estate Ltd. The whole of the undertaking of Tea Estate Ltd. was taken over by a new company- Asia Tea Estate Ltd. The services of E remained continuous in new company. After serving for one year E met with an accident and became permanently disabled. E applied to the new company for the payment of gratuity. The company refused to pay gratuity on the ground that E has served only for a year in the company.

Examine the validity of the refusal of the directors in the light of the provisions of the Payment of Gratuity Act, 1972

Answer:

The refusal of the directors of the directors is not valid -

- Since E is entitled to gratuity;
 - Since the condition of continuous service of five year is not applicable in case the employment of an employee is terminated due to death or disablement due to accident or disease.
3. **Examine with reasons, the validity of the following nominations made.**
- a) J nominated N(his son) as a nominees.
- b) M nominated S(his wife) and K(a friend) as nominees.
- c) R who does not have a family nominated A(a close relative) as a nominees.
- d) G nominated N(a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

G nominated N(a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to N.

Answer:

- a) **Nominated by J in favour of N is valid -** Since N is a member of the family of J(since son is covered under the definition of 'family').
- b) **Nominated by M -**

- In favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family').
- In favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

c) Nominated by R in favour of A is valid –

- Although A is not covered under the definition of family;
- Since, if the employee does not have a family, then, nomination may be made in favour of any person.

4. Examine with reasons, the validity of the following nominations made under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.

a) J nominated N (his son) as a nominee.

b) M nominated S (his wife) and K (a friend) as nominees.

c) R who does not have a family nominated A (a close relative) as a nominee.

d) G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to Z.

e) G nominated N (a friend) as a nominee because he does not have a family at the time of nomination. Later, after one year he gets married to N.

Answer:

a) Nominated by J in favour of N is valid - Since N is a member of the family of J (since son is covered under the definition of 'family')

b) Nominated by M –

- In favour of S is valid, since S is a member of the family of M (since wife is covered under the definition of 'family').
- In favour of K is void, since K is not a member of the family of M (since K is only a friend, and a friend is not covered under the definition of 'family').

c) Nominated by R in favour of A is valid –

- Although A is not covered under the definition of family;
- Since, if the employee does not have a family, then, nomination may be made in favour of any person.

d) Nominated by G in favour of N is valid but it becomes void immediately on marriage -

Since a nomination made in favour of a person who is not a member of the family, becomes void immediately when the employee subsequently acquires a family.

e) Nominated by G in favour of N is valid but it becomes void immediately on marriage –

- Since a nomination made in favour of a person who is not a member of a family, becomes void immediately when the employee subsequently acquires a family.
- since it is immaterial as to whether the person in whose favour nomination was made before marriage, is the same one to whom G has married.

5. National Steels Ltd. decided to forfeit the amount of gratuity of its employees A, B and C on account of disorderly and other acts which caused loss to the property belonging to the company. A, B and C, committed the following acts:

a) A refused to surrender the occupied land belonging to the company.

b) B committed theft under law involves offence of moral turpitude.

c) C, after superannuation, continued to occupy the quarter of the company for six months.

Against the decision of the company, A, B and C applied to the court for relief. The company contended that the right to gratuity in the light of the Payment of Gratuity Act, 1972.

Answer:

- a) Forfeiture of gratuity of Mr. A is not valid** – since refusal of an employee to surrender the occupied land belonging to the company is not sufficient ground to withhold gratuity under sec. 4(6) (*Travancore Plywood Industries Ltd. Vs. Regional Joint Labour Commissioner*).
 - b) Forfeiture of gratuity of Mr. B is valid** –
 - since he has committed an act which constitutes an offence involving moral turpitude
 - provided that such offence is committed by him in the course of his employment.
 - c) Forfeiture of gratuity of Mr. C is not valid** –
 - since the company is entitled to deduct from the gratuity payable the charges or rent due for six months;
 - but occupying company's quarter does not entitle the company to forfeit the gratuity payable (*Wazir Chand Vs. Union of India*)
- 6. Mr. X was an employee of Mutual Developers Ltd. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial conditions the company is unable to pay the gratuity. Mr. X applied to the appropriate authority for the recovery of the amount of gratuity.**

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer:

- a) The refusal of the company to pay gratuity is not valid** –
 - Since it is the statutory obligation of the employer to pay gratuity to Mr. X;
 - Since no such ground is provided under the Act for non-payment of Gratuity.
- b) Mr. X is entitled to recover gratuity** – In accordance with the provisions of Sec. 8

Since 2010

THE EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS PROVISION ACT, 1952

1. Vimal is an employee in a company. The following payments were made to him during the previous year.

- a) Piece rate wages
- b) Productivity bonus
- c) Additional dearness allowance
- d) Value of Puja gift

Examine as to which of the above payments form part of “Basic Wage” of Vimal under the Employees Provident Fund and Miscellaneous Provisions Act,1952.

Answer:

- a) Piece rate wages - Is a part of ‘Basic wages’
- b) Productivity bonus - Is not a part of ‘Basic wages’
- c) Additional dearness allowance - Is not a part of ‘Basic wages’
- d) Value of Puja gift - Is not a part of ‘Basic wages’

2. A Company which is covered by the Employee’s Provident Funds and Miscellaneous Provisions Act,1952 was adjudged insolvent and an order for winding up was made. State, in this connection, whether the Provident Fund is attachable and whether the payment of Provident Fund contribution be considered as priority over other debts of the Company.

Answer:

a) **When is Sec. 11 attracted?**

- If the employer, being a company, is ordered to be wound up or
- In any other case, the employer is adjudged an insolvent.

b) **Effect of Sec. 11**

- Where the employer is a company, such amount as is due from the employer (whether in respect of the employee’s contribution or employer’s contribution) before the order of winding up is made, shall be included among the debts which are to be paid in priority to all other debts in the distribution of the property of the company being wound up. In other words, the contribution due from the employer shall amount to ‘preferential payment’.
- In any other case, such amount as is due from the employer (whether in respect of the employee’s contribution or employer’s contribution) before the order of adjudication is made, shall be included among the debts which are to be paid in priority to all other debts in the distribution of the property of the insolvent.

3. Manorama Group of Industries sold its textile unit to Giant Group of Industries. Manorama Group contributed 25% of total contribution in Pension Scheme, which was due before sale under the provisions of the Employee’s Provident Funds and Miscellaneous Provisions Act,1952. The transferee company (Giant Group of Industries) refused to bear the remaining 75% contribution in the Pension Scheme. Decide, in the light of Employee’s Provident Funds and Miscellaneous Provisions Act,1952, who will be liable to pay for the remaining contribution in case of transfer of establishment and upto what extent?

Answer:

Joint and several liability - Manorama Group of Industries and Giant Group of Industries shall be jointly and severally liable to pay the remaining 75% liability on account of contribution due under the pension scheme.

Limitation of liability - Liability of Giant Group of Industries shall be limited to the value of assets obtained by it under the transfer of the establishment.

4. **Mr. D joined as supervisor on monthly salary of Rs. 3,400 on 01.02.2007 and resigned from his job on 28.2.2007. The company declared a bonus of 20% to all eligible employees and paid it on time. Mr. D knowing the facts made a claim to HRD, which in turn rejected the claim. Examine the validity in the light of the provisions of payment of Bonus Act,1965**

Answer:

- a) **Mr. D is an 'employee'** - Since he is employed on a salary or wage not exceeding Rs.10,000[Sec. 2(13)]
 - b) **Mr. D is not eligible for bonus** - Since he has not worked for 30 days or more(Sec 8)
5. **State with reasons whether the following persons are entitled to receive bonus under the Payment of Bonus Act,1965:**
- a) **An apprentice under the Apprentice Act**
 - b) **A probationer**
 - c) **An employee employed through contractors on building operations**
 - d) **A retrenched employee**
 - e) **A dismissed employee reinstated with back wages**

Answer:

- a) **An apprentice is not eligible** - Since he is expressly excluded from the definition of employee [Sec. 2(13)].
 - b) **A Probationer is eligible** - Provided he has worked for a minimum period of 30 days in the AY (Sec.8).
 - c) **An employee employed through contractors on building operations** - Since the exemption given u/s 32 has been withdrawn vide Payment of Bonus(amendment) Act, 2007, w.r.e.f.01.04.2006
 - d) **A retrenched employee is eligible** - Provided he has worked for a minimum period of 30 days in the AY (Sec 8)
 - e) **A dismissed employee is eligible** - Provided he has worked for a minimum period of 30 days in the AY (Sec 8) and Provided he is not disqualified as per Sec.9
6. **X. a temporary employee drawing a salary of Rs.3000 per month, in an establishment to which the Payment of Bonus Act,1965 applies was prevented by the employers from working in the establishment for two months during the financial year 2001-2002,pending certain inquiry. Since there were no adverse findings 'X' was re-instated in service. Later, when the bonus was to be paid to other employees, the employers refuse to pay bonus to 'X', even though he has worked for the remaining ten months in the year. Referring to the provisions of the Payment of Bonus Act,1965 examine the validity of employer's refusal to pay bonus to 'X'.**

Answer:

- a) **X is an employee** - since his salary or wage is not more than 10,000(it is immaterial that he is temporary employee) [Sec. 2(13)]
- b) **X is eligible to receive bonus** -
 - Since he has worked for 10 months(i.e. 30 days or more during AY)(Sec. 8)
 - Since it is immaterial that the employment of X was of temporary nature or Permanent nature

c) **X is not disqualified u/s 9** - since he has not been dismissed from service (Sec. 9)

d) **Conclusion -**

- Employer's refusal to pay bonus to X is not valid
- X is entitled to bonus for the entire period of 12 months since absence for period of 2 months due to suspension was not due to any fault of X [Project manager, Ahmadabad project, ONGC v shyam kumar sahegal]

7. **Referring to the provisions of the Payment of Bonus Act, 1965. State whether the following persons are entitled to receive bonus under the Act.**

a) **An apprentice**

b) **An employee dismissed on the ground of misconduct**

c) **A temporary workman**

d) **A piece-rated worker**

Answer:

a) **An apprentice is not eligible** - Since he is expressly excluded from the definition of employee [Sec. 2(13)].

b) **An employee dismissed on the ground of misconduct is not eligible -**

Provide misconduct by him attract any of the following reasons given u/s 9:

- i. Committing fraud
- ii. Riotous or violent behavior while on the premises of the establishment
- iii. Committing theft, misappropriation or sabotage of any property of establishment

However if the misconduct by the employee does not attract Sec. 9 then employee is eligible to receive bonus, but the employer shall have a right to decide from bonus payable the amount of financial loss caused to him (Sec. 18)

c) **A temporary employee is eligible** - Provided he has worked for a minimum period of 30 days in the AY (sec 8)

d) **A piece-rated worker is eligible** - Provided he has worked for a minimum period of 30 days in the AY (sec 8)

8. **Q. Decide with reasons in the light of the Payment of Bonus Act, 1965. State whether the following persons are entitled to receive bonus.**

a) **A university teacher**

b) **An employee of the 'NABARD'**

c) **A reinstated employee without wages for the period of dismissal**

d) **A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,00 per month**

e) **An apprentice**

Answer:

a) **A university teacher is not eligible** - Since the Act does not apply to universities or other educational institutions, institutions established not for purposes of profit (Sec. 32)

b) **An employee of the 'NABARD'** - Provided he has worked for a minimum period of 30 days in the AY (Sec. 8).

c) **A reinstated employee without wages for the period of dismissal -**

- Provided he has worked for a minimum period of 30 days in the AY (Sec 8)
- since it is immaterial as to whether the employee was reinstated with or without wages for the period of dismissal

- d) **A retrenched employee who worked for 45 days in a year on a salary of Rs. 4,00 per month**
- since he is covered in the definition of employee, as his salary or wage does not exceed Rs.10,000[Sec. 2(13)]
 - Since he has worked for 30 days or more in the AY (Sec 8)
- e) **An apprentice is not eligible** - Since he is expressly excluded from the definition of employee [Sec. 2(13)].

9. **Ajanta Wooden Toys Limited was established at Kolkata in the year 2005 employing 100 workmen. Since then the company suffered the losses, but minimum bonus was paid in the accounting years of 2006 and 2007. In the accounting year 2008 the company earned huge profits. After mitigating the previous losses the company is having surplus profits and wants to pay the bonus to its workmen. Ajanta Wooden Toys Limited wants legal advice on the following issues:**

- How much minimum and maximum bonus may be paid to the workmen?**
- Whether the company may adjust the puja bonus already paid to the workmen while calculating the amount of bonus payable to workmen of that accounting year**
- Company wants to give wooden toys as bonus instead in cash. Whether the company can do so?**

Advise the Ajanta Wooden Toys Limited stating the provisions of the Payment of Bonus Act,1965

Answer:

- The Minimum bonus shall be** - 8.33% of salary or wage earned by the employee during the AT or Rs.100, whichever is higher (Sec. 10)
- The Maximum bonus shall be** - 20% of salary or wage earned by the employee during the AY (Sec. 11)
- Adjustment of puja bonus already paid is possible** - Since any interim, customary or puja bonus paid by the employer may be deducted from bonus payable during that AY (Sec. 17)
- Giving toys as bonus instead of cash is not possible** - Since the bonus shall always be paid in cash, i.e. money only (Sec. 19)

10. **On 1st january,2002 Agam Textiles Ltd. Agreed with the employees for payment of an annual bonus linked with production or productivity instead of bonus based on profits subject to the limit of 30% of their salary/wages during the relevant AY. It was also agreed by the employees that they will not claim minimum bonus stated under section 10 of Payment of Bonus Act,1965. As per the agreement, the employees of Agam textiles Ltd claimed annual bonus linked with production or productivity in the relevant AY. On refusal of company the employees of company moved to the court for relief. Decide with reference to the provisions of the payment of Bonus Act,1965 whether the employees will get the relief? In spite of the aforesaid agreement whether the employees are still entitled to receive minimum bonus.**

Answer:

- The agreement of Agam Textiles Ltd. With its employees is void** -
 - in so far as it purports to deprive the employee of their right to minimum bonus
 - in so far as it purports to entitle the employees to receive bonus exceeding 20% of salary or wages.

b) **The employees are entitled to receive minimum bonus** – since the agreement is null and void to such extent as explained above

11. **Z was an employee of Universal Ltd. He retired from the company on 31st March, 2010 and died after few months. Y was heir of Z, applied within the prescribed time to the company for payment of due bonus of Z. The company refused to pay the bonus. Examine the validity of company's refusal and also state the procedure to recover the bonus under the provisions of the Payment of Bonus Act, 1965.**

Answer:

a) **Company's refusal to pay bonus is not valid** –

- since legal heirs of an employee, who has died, are entitled to bonus
- since for the purpose of Sec. 21, the term 'employee' includes 'an employee who is no longer in employment'

b) **Procedure to recover bonus is** - as specified u/s 21, if the bonus is not paid within the prescribed time limit, viz. within 8 months of end of AY

XYZ Ltd, Mumbai refused to pay bonus to its employees on the ground that an authorized controller appointed by the Mumbai government controls its management and as such is exempt from the liability to pay bonus. Referring to the provisions of the Payment of Bonus Act, 1965, decide whether the plea of company is tenable.

Answer:

a) **The Plea of the company is not valid** –

- since the grounds for 'non-applicability' of the Act given u/s 32 do not cover any ground where an authorized controller is appointed by the government.
- since as per sec. 10, it is the duty of the employer to pay minimum bonus to every employee who is eligible for bonus, in every AY
- since appointment of authorized controller by the government is a temporary phenomenon
- since the employer, XYZ Ltd, has not been granted by AG any exemption from the provisions of the Act u/s 36.

R, a 57 years old district judge was appointed by Central Government as Presiding Officer of the Employees Provident Funds Appellate Tribunal from a period of five years. After 3 years, he(R) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the government till that date. Examine the validity of R's action to cease work under the provisions of the Employee's Provident Funds and Miscellaneous Provisions Act, 1952.

Answer:

a) **R continues to be in office** –

- Till the remaining period of his office, viz. 2 years
- Till his successor enters upon his office; or
- Till the expiry of 3 months from the date of resignation.
Whichever is the earliest.

b) **R's decision to cease work** – Is not valid, unless he is permitted by CG to relinquish his office sooner.

ADDITIONAL QUESTIONS FOR PRACTICE

LABOUR LAW

1. Under the provisions of the Payment of Bonus Act, 1965 decide whether the following employees are entitled for bonus:

- (i) Employee employed by educational institutions;
- (ii) A reinstated employee without wages for the period of dismissal.

Answer

The Payment of Bonus Act, 1965- According to Section 2 (13) and Section 8, 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 and on a salary less than ₹10,000 per month.

- a) Employee employed by Universities and other Educational Institutions are not entitled for bonus because the employees of such institutions are excluded from the operation of the Act as per section 32 of the Payment of Bonus Act, 1965.
- b) According to section 14 of the Payment of Bonus Act, 1965, an employee shall be deemed to have worked in an establishment in any accounting year in the following cases:
 - being laid off under an agreement or under the Industrial Disputes Act, 1947, or any other applicable law
 - on leave with salary / wages
 - absent due to temporary disablement caused by an accident in the course of employment
 - on maternity leave with salary / wages

Since an employee reinstated without wages for the period of dismissal does not fall in any of the aforementioned cases, in fact, use of word dismissal here presumes that he was not laid off but terminated and so he is not entitled to bonus for the period of dismissal.

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

Answer

- a) According to Section 3 of the Payment of Bonus Act, 1965, where an establishment consists of departments or undertakings or has branches irrespective of whether they are situated in the same place or in different places, all such departments or undertakings or branches are to be treated as part of the same establishment for the purpose of computation of bonus under the Act. But proviso to the section states that where for any accounting year a separate balance sheet and profit and loss account are prepared and maintained in respect of any such department or undertaking or branch, then, such department or undertaking or branch shall be treated as a separate establishment for the purpose of computation of bonus under this Act for that year, unless such department or undertaking or branch was, immediately before the commencement of that accounting year treated as part of the establishment for the purpose of computation of bonus.
- b) Referring to the provisions of Section 3, Nimbaheda Textiles Ltd., is engaged at three different units located at three separate places in the country where separate balance sheet and profit & loss account are being maintained for the three units separately and hence the proviso to

Section 3 will be applicable in this case. For the purpose of Bonus under the Act, the units will be treated as three separate establishments and accordingly, the employees of the unit incurring losses cannot claim bonus on the ground that the unit incurring loss is a part of one single establishment. However, the employees of the loss making unit can claim the minimum bonus as per section 10 of the Payment of Bonus Act, 1965.

3. State whether the following establishment are entitled to payment of bonus under the Payment of Bonus Act, 1965.

- a) Defense canteen
- b) Institutions engaged in Social or welfare activities
- c) Delhi Development authority

Answer

- a) Not entitled for bonus as per Section 32(iv),
- b) Not entitled for bonus as per section 32(v),
- c) Not entitled as per section 32 (iv)

4. S is employed in Golden ice-cream factory, a seasonal establishment. The factory was in operation for four months only during the financial year 2009- 10. S was not in continuous service during this period. However, he has worked only for sixty days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether S is entitled to gratuity payable under the Act. Would your answer be the same in case S works for 100 days?

Answer

- a) Sub section 3 of Section 2 A of the Payment of Gratuity Act, 1972 provides that where an employee, employed in a seasonal establishment, is not in continuous service within the meaning of clause(1), for any period of one year or six months, he shall be deemed to be in continuous service under the employer for such period if he has actually worked for not less than seventy-five percent of the number of days on which the establishment was in operation during such period.
- b) In the given problem, as per above provision, S has worked only for sixty days that are less than 75% of number of days therefore, he shall not be eligible for getting any gratuity in first case. In the second case, since the S has worked for 100 days that are more than 75% of no. of days therefore, he is entitled for gratuity.

1. Mr. X was an employee of Mutual Developers Limited. He retired from the company after completing 30 years of continuous service. He applied to the company for the payment of gratuity within the prescribed time. The company refused to pay the gratuity and contended that due to stringent financial condition the company is unable to pay the gratuity. Mr. X applied to the Appropriate Authority for the recovery of the amount of gratuity.

Examine the validity of the contention of the company and also state the provisions of law to recover the gratuity under the Payment of Gratuity Act, 1972.

Answer

- a) Gratuity shall be payable to an employee on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease under Section 4(1) of the Payment of Gratuity Act,1972.
- b) Further, section 7(2) provides that as soon as gratuity becomes payable, the employer shall, whether the application for the payment of gratuity has been given or not by the employee, determine the amount of gratuity and give notice in writing to the person to whom the gratuity is payable and also to the controlling authority specifying the amount of gratuity so determined.
- c) The employer shall arrange to pay the amount of gratuity within 30 days for the date of its becoming due/payable to the person to whom it is payable [Section 7(3)], along with simple

interest (at rates specified) if it is not paid within the period specified except where the delay in the payment is due to the fault of the employee and the employer has obtained permission thereon from the Controlling Authority [Section 7(3A)].

- d) If the gratuity payable under the Act is not paid by the employer within the prescribed time to the person entitled thereto, the Controlling Authority shall issue a certificate for the amount to the Collector to recover the same along with compound interest at such rate as prescribed by the Central Government from the date of expiry of the prescribed time as land revenue arrears, to enable the person entitled to get the amount, after receiving the application from the aggrieved person (Section 8).
- e) Before issuing the certificate for such recovery the Controlling Authority shall give the employer a reasonable opportunity of showing cause against the issue of such certificate. The amount of interest payable under the Section shall not exceed the amount of gratuity payable under this Act in no case (Section 8).
- f) In the given case the facts are commensurate with provisions of law as stated above under Sections 7 and 8 of the Payment of Gratuity Act, 1972. Therefore, Mr. X is entitled to recover gratuity as he has completed the service of 30 years. The company cannot take the plea of stringent financial conditions for not paying the gratuity to Mr. X. On the refusal by the company, Mr. X can apply to the appropriate authority and the company will be liable to pay the gratuity along with interest as decided by such authority.

2. Wazir Chand happens to be a retired Railway servant who occupies the Government quarter, and even after superannuation continued to occupy the Government quarter. For such continuance, the Government, in accordance with Rules, has charged penal rent from the retired Wazir Chand and after adjusting the dues of the Government, the balance amount of the gratuity, 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 gratuity in the lights of the provision of the Payment of Gratuity Act, 1972.

Answer

- a) According to Section 4(6) of the Payment of Gratuity Act, 1972, if the services of an employee have been terminated for;
 - i. any act
 - ii. willful omission or
 - iii. negligence

causing any damage or loss to, destruction of property belonging to the employer, then the gratuity shall be forfeited to the extent of damage or loss so caused. Wazir Chand even after superannuation continued to occupy the quarter and the Government in accordance with the rules, charged the penal rent from him and after adjusting other dues, the balance gratuity amount was offered to be paid to him.

- b) In the case of Wazir Chand Vs Union of India, the Court has decided that Wazir Chand having unauthorisedly occupied the Government quarter, was liable to pay the penal rent in accordance with rules and therefore, there is no illegality in those dues being adjusted against the death-cum retirement dues of the ex-employee.

3. Examine how disputes are resolved under the Payment of Gratuity Act, 1972.

Answer

- a) Under section 7(4)(a) if there is any dispute regarding the amount of gratuity payable to an employee or admissibility of any claim of or in relation to, an employee for payment of gratuity or the person entitled to receive the gratuity, the employer shall deposit, such amount as he admits to be payable by him as gratuity, to the controlling authority.
- b) Section 7(4)(b) further provide that where there is a dispute with regard to any matter or matters specified in Clause (a), the employer or employee or any other person raising the dispute may make an application to the Controlling Authority for deciding the dispute.

- c) The controlling authority shall, after due inquiry and after giving the reasonable opportunity of being heard to the parties to the dispute, determine the matter or matters in dispute. After such inquiry if any amount is found to be payable to the employee, the controlling authority shall direct the employer to deposit with it such amount or the difference of amount so determined and the amount already deposited by the employer to the controlling authority.
- d) The controlling authority shall pay the amount deposited by the employer including the excess amount, if any, to the person entitled thereto. As soon as the employer made the said deposit, the controlling authority shall pay the amount to the applicant where he is the employee or where the applicant is not the employee, to the nominee or as the case may be, the guardian of such nominee or legal heir of the employee, if he is satisfied that there is no dispute as to the right of the applicant to receive the amount of gratuity.
- e) For the purpose of conducting inquiry, the controlling authority shall have the same powers as are vested in a court, while trying a suit, under the Code of Civil Procedure, 1908. The proceeding made by him will be the 'judicial proceedings' within the meaning of Sections 93 & 228 for the purposes of Section 196, Indian Penal Code the controlling authority will avail all the powers like enforcing the attendance, production of documents, receiving evidences on affidavits and issuing commission for the examination of witnesses. [Section 7(4)]

4. State whether the following statement is true or false and give reason therefore with reference to the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. "The chairman of the Executive Committee is appointed by the Central Board".

Answer

This statement is false because under section 5AA (2) clause (a) the Chairman of the Executive Committee is appointed by the Central Government from among the members of the Central Board.

5. An employee of a limited company filed a claim for provident fund settlement with the Provident Fund Commissioner. However, he did not get any settlement from the authority even after six month's. Referring to the EPF & MP Act, 1952 what course of action an authority should have taken in this respect.

Answer

The Provident Fund "claims" complete in all respects submitted along with the requisite documents are required to be settled and the benefit amount paid to the beneficiaries within 30 days from the date of its receipt of the complete "claims" by the Commissioner.

If there is any deficiency in the claim, the same shall be recorded in writing and communicated to the applicant within 30 days from the date of receipt of such application.

In case the Commissioner fails without sufficient cause to settle a claim complete in all respects within 30 days, the Commissioner shall be liable for the delay beyond the said period and penal interest at the rate of 12% per annum may be charged on the benefit amount and the same may be deducted from the salary of the Commissioner.

6. Describe the procedure for determination of moneys, due and escaped from employer under EPF & MP Act, 1952? Or Explain the provisions of Employees' Provident Funds and Miscellaneous Provisions Act, 1952 with regard to determination of 'Escaped Amount' after an officer has passed an order concerning 'Determination of Amount' due from an Employer under the Act.

Answer

Determination of moneys due from employers (Section 7A) :

- a) **Power to authorities to determine the due amount-** Section 7A (1) of the Act gives power to

the authorities mentioned therein i.e., Central PF Commissioner, Additional Central PF Commissioner, Deputy PF Commissioner or any Regional PF Commissioner Assistant PF Commissioner to determine by order, the amount due from an employer under the provisions of the Act and the Pension or the Insurance Schemes and also decide the following additional matters:

- amount due as contribution.
 - the date from which the same is due.
 - the administrative charges.
 - amount to be transferred under Sections 15 or 17 of the Act.
 - any other charges payable by the employer under the Act.
- b) **Power to conduct enquiry-** The authorities have been given power to conduct such enquiry as may be deemed necessary and for this they have been granted the same powers as are vested in a Court.
- c) **Opportunity to an employer represent his case-** Further under sub section (3), an order must not be made unless the employer concerned is given a reasonable opportunity of representing his case.
- d) **Failure of employer/ employee to attend enquiry, produce documents etc.-** Under sub section (3A) where the employer, employee or any other person required to attend the inquiry under Subsection (1) fails to attend such inquiry without assigning any valid reason or fails to produce any document or to file any report or return when called upon to do so, the officer conducting the inquiry may decide the applicability of the Act or determine the amount due from any employer, as the case may be, on the basis of the evidence adduced during such inquiry and other documents available on record.
- e) **Set-aside of an order passes against an employer ex-parte-** Further under sub section (4) of section 7A where an order under Sub-section (1) is passed against an employer ex parte, he may, within three months from the date of communication of such order, apply to the officer for setting aside such order and if he satisfies the officer that the show cause notice was not duly served or that he was prevented by any sufficient cause from appearing when the inquiry was held, the officer shall make an order setting aside his earlier order and shall appoint a date for proceeding with the inquiry.No such order shall be set aside merely on the ground that there has been an irregularity in the service of show cause notice if the officer is satisfied that the employer had notice of the date of hearing and had sufficient time to appear before the officer.
- f) **Appeal to an order-** It is also explained that where an appeal has been preferred under this Act against an order passed ex parte and such appeal has been disposed of otherwise than on the ground that appellant has withdrawn the appeal, no application shall lie under this Sub-section for setting aside the ex parte order. Under sub section (5) no order passed under this section shall be set aside on any application under Sub-section (4), under notice thereof has been served on the opposite party.
- g) **Quasi - judicial nature of proceedings -** Thus, the scope of enquiry and manner of conducting the enquiry is at the discretion of the authority. As the proceedings shall be quasi-judicial and shall vitally affect the rights of the parties the principle of natural justice must be strictly followed in deciding the dispute in the proceeding. The employer is entitled to a reasonable opportunity of being heard. The order made under this section shall be final and will not be called in question in any Court of law.
- h) **Determination of escaped amount (Section 7C) :** Where an order determining the amount due from an employer under Section 7A or Section 7B has been passed and if the officer who passed the order :

- has reason to believe that by reason of the omission or failure on the part of the employer to make any document or report available, or to disclose, fully and truly, all material facts necessary for determining the correct amount due from the employer, any amount so due from such employer for any period has escaped his notice;
- has, in consequence of information in his possession, reason to believe that any amount to be determined under Section 7A or Section 7B has escaped from his determination for any period notwithstanding that there has been no omission or failure as mentioned in clause (a) on the part of the employer.
- He may, within a period of five years from the date of communication of the order passed under Section 7A or Section 7B, re-open the case and pass appropriate order re-determining the amount due from the employer in accordance with provisions of this Act.
- However, no order re- determining the amount due from the employer shall be passed under this section unless the employer is given a reasonable opportunity of representing his case by other documents available on record.

7. Examine the provisions in respect of review of orders passed under Section 7 A of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

Review of orders – According to section 7B of the EPF & Miscellaneous Provisions Act, 1952, an order passed under section 7A can be reviewed as follows:

- a) Any person aggrieved by an order made under sub-section (1) of section 7(A) but from which no appeal has been preferred under this Act, and who, from the discovery of new and important matter or evidence which, after the exercise of due diligence was not within his knowledge or could not be produced by him at the time when the order was made, or on account of some mistake or error apparent on the face of the record or for any other sufficient reason, desires to obtain a review of such order, may apply for a review of that order to the officer who passed the order. Such officer may also on his own motion review his order if he is satisfied that it is necessary so to do on any such ground.
- b) Every application for the aforesaid review shall be filed in such form and manner and within such time as may be specified in the Scheme; and
- c) Where it appears to the officer receiving an application for review that there is no sufficient ground for a review, he shall reject the application.
- d) Where the officer is of opinion that the application for review should be granted, he shall grant the same.
- e) No appeal shall lie against the order of the officer rejecting an application for review but an appeal under this Act shall lie against an order passed under review as if the order passed under review were the original order passed by him under section 7A.

8. Examine the rules relating to review of order regarding determination of applicability of the EPF & MP Act, 1952 and the money due.

Answer

- a) Under section 7B (1) of the EPF & Misc 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:
 - 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; or
 - ii. There is some mistake or error apparent on the records; or
 - iii. Any other sufficient reason

- b) It may be noted further that no application for review can be made if an appeal has been filed under the Act.
- c) Under section 7B (2), every application under sub section (1) above, is required to be filed in such form and manner and within such time as may be prescribed in the Scheme.
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 (3) and (4)].
- d) 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)].
- e) In *Balu Fire Clay Niwas v. U.O.I., 2003 LLR 578 (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.

9. R, a 57 years old district judge was appointed by the Central Government as Presiding Officer of the Employee's Provident Funds Appellate Tribunal for a period of five years. After three years, he (R) resigns from his office and ceases to work with immediate effect without handing over the charge to his successor, who was not appointed by the Government till that date. Examine the validity of R's action to cease work under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

- a) Section 7 F (1) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 provides that the Presiding Officer of a Employees' Provident Funds Appellate Tribunal may by notice in writing under his hand addressed to the Central Government, resign his office provided that the Presiding Officer shall, unless he is permitted by the Central Government to relinquish his office sooner, continue to hold office until the expiry of three months from the date of receipt of such notice or until a person duly appointed as his successor enters upon his office or until the expiry of his term of office, whichever is the earliest.
- b) Hence, R's action is invalid as per above provisions. He is supposed to continue for three months unless he is relieved earlier by the Central Government or his successor appointed by the Central Government has taken up the office, whichever is earlier.

10.State whether the following statement is true or false and give reason therefore with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

"An employer generally has to deposit 50% of the money due from him so as to go on appeal

Answer

This statement is false as an employer under Section 7-O of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 has to deposit 75% of the money due from him so as to go on appeal.

11.S retired from the services of PQR Limited, on 31st March, 2009. He had a sum of ₹5 lac in his Provident Fund Account. It has become due for payment to S on 30th April, 2009 but the company made the payment of the said amount after one year. S claimed for the payment of interest on due amount at the rate of 15 percent per -annum for one year. Decide, whether the claim of S is tenable under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Answer

According Section 7Q of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 the employer shall be liable to pay simple interest @ of 12% per annum or at such higher rate as may be specified in the Scheme on any amount due from him under this Act from the date on which the amount has become so due till the date of its actual payment:

Provided that higher rate of interest specified in the Scheme shall not exceed the lending rate of interest charged by any scheduled bank. As per above provision, S can claim for the payment of interest on due amount @ 12 percent per annum or at the rate specified in the Scheme, whichever

is higher, for one year. Here in the absence of specified rate he(S) can claim only 12 percent per annum interest on the due amount. Hence claim of S for interest rate of 15% is not tenable.

12. An Inspector appointed under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 makes an inspection at 10 p.m. (five hours after factory timings) and seeks to take copies of the "Shareholders' Register". How far under the Act is his action reasonable?

Answer

- a) Under Section 13(2) of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, an Inspector can inspect and make copies of, or take extract from any book, register or other document maintained in relation to the establishment and, where he has reason to believe that any may think fit, such book, register or other document or portions thereof as he may consider relevant in respect of that offence.
- b) Further, under section 13 (2) (b) the inspector can enter and search any establishment at any reasonable time which cannot be 5 hours after the factory timings
- c) In the present case the Inspector had sought to take copies of the "Shareholders' Register" which is irrelevant document for the purpose of EPF and MP Act, 1952. Moreover, he has visited the office after the working hours (10.00 pm) which is not reasonable. Hence, the actions of the inspector are completely unreasonable under the EPF & Misc Provisions Act, 1952

13. State whether the following statement is true or false and give reason therefor with reference to the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

"Default in payment of contribution by employer is a cognizable offence".

Answer

This statement is true because according to Section 14AB of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, offences relating to default in payment of contribution by the employer is a cognizable offence.

A cognizable offence is defined in section 2 of the Criminal Penal Code as one where the police can arrest a person without warrant under the law in force.

14. An employee leaves the establishments in which he was employed and gets employment in another establishment wherein he has been employed. Explain the procedure laid down in the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 in this relation.

Or

Describe in brief the mode of transfer of balance to the credit of Provident Fund Account of an employee leaving one organisation and joining another organisation, to the new employer under the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.

Or

An employee working in an establishment covered by the E.P.F. and M.P. Act, leaves his employment and takes up employment in another establishment. State in this connection:

- a) **How shall the amount accumulated to his P.F. Account be transferred?**
- b) **What steps shall be taken if the establishment in which he has joined is not covered by the Act?**
- c) **What would be your answer if the establishment in which he was previously working is not covered by the Act?**

Answer

- a) Section 17 A (1) provides that where an employee employed in an establishment to which this Act applies leaves his employment and obtains re-employment in another establishment to which this Act does not apply, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him shall be transferred, within such time as may be specified by the Central Government in this behalf, to the credit of his account in the provident fund of the establishment in which he is re-employed, if the employee so desires and the rules in relation to that provident fund permit such transfer.
- b) Similarly under sub section (2) where an employee employed in an establishment to which this Act does not apply leaves his employment and obtains re-employment in another establishment to which this Act applies, the amount of accumulations to the credit of such employee in the provident fund of the establishment left by him may, if the employee so desires and the rules in relation to such provident fund permit, be transferred to the credit of his account in the Fund or as the case may be, in the provident fund of the establishment in which he is re-employed.



COMPANY LAW

Q1. ABC Pvt. Ltd., Company is Private Company having five member only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end?

Ans.

The existence of the company does not come to an end	<ul style="list-style-type: none"> -since the existence of the company does not depend upon the life of any or all members of the company; - since the existence of the company can come to an end only in accordance with the provision of law, viz. dissolution of the company; -since one of the characteristics of the company of the company is 'perpetual succession'
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Q2. F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Company and agreed with each to hold a block of investment as an agent for it. The dividend and interest income received by the company was handed back to F as a pretended loan. This way F divided his income into three parts in a bid to reduce his tax liability.

Decide, for what purpose three company were established? Whether the legal personality of all the three company may be disregarded?

Ans.

The three companies were established	-for the purpose of avoiding tax liability, and not for any legitimate purpose.
The legal personality of all the three companies shall be disregarded	-since, on simpler facts, it was held in Re, Sir Dinshaw Maneckjee Pettit that each of those three companies was a sham, and therefore, income earned by all the three companies was to be treated as the income of the assessed.

Q3. The paid-up share capital of XYZ (Private) Company Limited is Rs. 20 lakhs consisting of 2,00,000 Equity shares of Rs. 10 each fully paid-up. ABC (Private) Limited and its subsidiary DEF (Private) Limited are holding 60,000 and 50,000 shares respectively in XYZ (Private) Company Limited.

Examine with reference to the provision of the Companies Act, 2013 whether XYZ (Private) Company Limited is a subsidiaries of ABC (Private) Limited. Would your answer be different if DEF (Private) Limited is holding 1, 10,000 shares in XYZ (Private) Company Limited?

Ans.

Total ESC of XYZ (Private) Co. Ltd.	-is Rs.20,00,000.
ESC held by ABC (Private) Ltd. In XYZ (Private) Co. Ltd.	-is RS.6,00,000
ESC held by DEF (Private) Ltd. In XYZ (Private) Co. Ltd.	-is RS.5,00,000

	-is Rs.11,00,000 since for the purpose of determining holding subsidiary relationship, the share capital held in XYZ(Private) Ltd. By ABC (Private) Ltd. On its own (viz. Rs.6, 00,000) together with share capital held in XYZ (Private) Ltd. By its Subsidiary DEF (Private) Ltd. (viz. Rs.5, 00,000) shall be considered.
XYZ (Private) Co. Ltd. Is a subsidiary of ABC(Private) Ltd.	-since ABC(Private) Ltd. Exercises and controls more than half of the share capital of XYZ(Private)Ltd.
Answer would remain same	-even if DEF (Private) Ltd. Is holding 1, 10,000 shares in XYZ (Private) Ltd.? And no shares are held by ABC (Private) Ltd. In XYZ(Private) Ltd.

Q4. The paid up share capital of Advanced casting Private Ltd. Is Rs. One core consisting of 8,00,000 equity shares of Rs. 10 each fully paid up and 2,00,000 cumulative preference share of Rs 10 each fully paid up. Quality forging Pvt. Ltd and supreme Engineering Pvt.Ltd. are holding 3,00,000 equity share and 1,50,000 equity share respectively in Advanced Castings Private Ltd. Quality Forgings Pvt. Ltd. And Supreme Engineering Pvt. Ltd. Are the subsidiaries of Unique Machineries Pvt. Ltd. Examine with reference to the provisions of the company Act, 2013 whether advanced Castings Private Ltd. Is a subsidiary of Unique Machineries Pvt. Ltd. Will your answer be different, if Unique Machineries Pvt. Ltd. Controls the composition of Board of Directors of Advanced Castings Private Ltd.?

Ans.

Total ESC of Advanced Castings Pvt. Ltd.	-is Rs. 80,00,000.
ESC holding by Quality Forgings Pvt. Ltd. In Advanced Castings Pvt. Ltd.	-is Rs. 30,00,000
ESC held by Supreme Engineering Pvt. Ltd. In Advanced Casting Pvt. Ltd.	-is Rs. 15,00,000.
ESC held by Unique Machineries Pvt. Ltd. In Advanced Casting Pvt. Ltd .	-is Rs. 45,00,000 since for the purpose of determining holding- subsidiary relationship, ESC hold in advanced Casting (Private) Ltd. By its Subsidiaries Quality Forgings Pvt. Ltd . (vizRs. 30,00,000) and Supreme Engineering Pvt. Ltd. (viz. Rs. 15,00,000)shall be considered.
Advanced Casting Pvt. Ltd. Is a subsidiary of Unique Machineries Pvt. Ltd.	-since Unique Machineries Pvt. Ltd. Holds more than one- half of ESC of Advanced Casting Pvt. Ltd.
Answer would remain same	-even if Unique Machineries Pvt. Ltd. Controls the composition of Board of Directors of Advanced Costing Pvt. Ltd.

Q5. The United Traders Association was constituted by two Joint Hindu Families consisting of 51 major and 5 minor members. The association was carrying the business of trading as retailers with the objects for acquisitions of gain. The Association was not registered as a company under the companies Act or other law.

State whether United Traders Association is having any legal status? Will there be any change in the status of this Association if the member of the United Traders Association is subsequently reduced to 45.

Ans.

United Traders Association is an illegal association	-since the number of adult members exceeds 50
Effect of subsequent reduction in number of members	-would not make any change in the status of United Traders Association, since an illegal association continues to be an illegal association even though, subsequently, the number of members is reduced below 50.

Q6. K Ltd. Was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was received and used by it. Shortly after incorporation, the company went into liquidation and the debt could not be paid by the company for the purchases of the above furniture. As a result supplier sued the promoters of the company for the recovery of money.

Examine whether promoters can be held liable for the payment under the following situation:

- (i) When the company has already adopted the contract after incorporation?**
- (ii) When the company makes a fresh contract with the suppliers in substitution of pre-incorporation contract?**

(i) If the company adopts the contract after incorporation	-the company shall be liable for the payment of furniture used by it; -the promoters shall not be personally liable.
(ii) If the company makes a fresh contract	-the answer shall remain same as in (i) above.

Q7. Sunrise Limited submitted the document for incorporation on 5th October, 2014. It was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2014. The company on 14th October, 2014 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. decide under the provision of the Companies Act, 2013 whether the company can be exempted from the said contractual liability.

Ans.

The company is not bound by the contract entered into on 14.10.2014	-since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into. -thus, the company, is exempted from the said liability.
However, the company shall be bound by the contract entered into on 20.10.2014, if -	-the company, after incorporation, has adopted the pre-incorporation contract in accordance with the provisions of Sec. 15 and 19 of Specific Relief Act, 1963

Q8. Before the incorporation of the company, the promoters of the company entered into an agreement with Mr. Jainson to buy an immovable property on behalf of the company. After incorporation, the company refused to buy the said property. Advise Mr. Jainson whether he has any remedy under the provisions of the Companies Act?

Ans.

Mr. Jainson has no remedy against the company	-since a pre-incorporation contract is not binding on the company, as the company was not in existence when such contract was entered into; -Thus, the company is exempted from the said liability
Mr. Jainson may hold the promoters liable	-for any loss incurred by him, since if a pre-incorporation contract is not adopted by the company after incorporation, the promoters are personally liable.

Q9. The articles of association of a limited company provided that 'X' shall be the law officer of the company and he shall not be removed except on the ground of proved misconduct. The company removed him even though he was not guilty of misconduct. Decide, whether company's action is valid?

Ans.

Company's action is valid, and 'X' has no remedy against the company	-since the memorandum and articles do not bind a company to the outsiders (Sec.10 of the Companies Act, 2013); -since, unless 'X'/A proves a contract independent of the articles, he cannot enforce any right against the company as he has no right to rely on the articles/[<i>Eley v Positive Govt. Security Life Assurance Co.</i>]
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Q10. The objects clause of the Memorandum of Association of the XYZ (Pvt.) Ltd., New Delhi, authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. The Company, subsequently, refused to admit the liability to 'A' on the ground of 'ultra virus' the company.

Advise whether stand of the company is legally valid and if so, give reasons in support of your answer.

Ans.

The Company is not liable to A	-since the partnership agreement for trading in mangoes is an ultra virus contract, and an ultra vires contract is void ab initio, and is not binding on the company or the other party; -since the power to enter into partnership is not an ancillary or incidental power; -since such power can be legally exercised by the company only if the object clause of memorandum expressly authorizes the company to enter into partnership.
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Q11. The principal business of XYZ Company Ltd. Was the acquisition of vacant plots of land and to erect the houses. In the course of transaction the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. And received an agreed fee of Rs. 2 lakhs for arranging the finance. The memorandum of association of the company authorizes the company to carry on any other trade or business which can in the opinion of the

board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provision of the companies Act, examine the validity of the contract carried out by XYZ Company Ltd. With ABC Ltd.

Ans.

Arranging finance or financier is an ultra vires Act	-since it falls outside the object clause of memorandum; -since an object contained in the object clause is not valid if it authorizes the company to carry on any other trade or business which can be advantageously carried on by the company.
The contract entered into by the company is ultra vires	-since the company has no power to arrange finance or financier; -since the board cannot take the defense that the memorandum authorizes the company to carry on any business which can be advantageously carried on in connection with company's present business (since, it is a 'specified purpose' given u/s 17 for alteration of object clause, but it cannot be the ground or basis for carrying on a business which is out the object clause); -unless the memorandum is first altered by complying with the requirement of Sec. 17, and afterwards the business of arranging finance is carried on.

Q12. The object clause of the Memorandum of association of LSR Pvt. Ltd. Lucknow authorized to do trading in fruits and vegetables. The company, however entered into a partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. the company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. give reasons in support of your answer.?

Ans.

The company is not liable to J	-since the partnership agreement for trading in steel is an ultra vires contract, and an ultra vires contract is void ab initio, and is not binding on the company or the other party; -since the power to enter into partnership is not an ancillary or incidental power; -since such power can be legally exercised by the company only if the object clause of memorandum expressly authorizes the company to enter partnership.
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Q13. X, a chemical manufacturing company distributed 20 lac (Rs. Twenty lac) to scientific institution for furtherance of scientific education and research. Referring to the provisions of the companies Act, decide whether the said distribution of money was "Ultra vires" the company?

Ans.

Donation of Rs. 20Lakh for furtherance of scientific education and research is permissible	-since it is incidental or ancillary to the main objects of the company; -since it is conducive to the continued growth of the company as chemical manufacturers as was held in <i>Evans v Brunner, Mood & Co. Ltd.</i>
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Q14. The objects clause of the Memorandum of association of RST Ltd. Authorizes it to publish and sell text-books for students. the company, however entered into an agreement with Q to supply 100 laptops of worth Rs. 5 lac for resale purpose. Subsequently, the company refused to make payment on the ground that the transaction was ultra vires the company. Examine the validity of the company's refusal for the payment to Q under the provisions of the companies Act.

Ans.

The contract to purchase laptops	-is an ultra vires contract, and is therefore, void ab initio.
Q cannot enforce the contract against RST Limited	-since the contract is ultra vires; -since no party to an ultra vires contract has a right to sue.
The court may order RST Ltd. To deliver back the laptops to Q	-if the laptops are still in the possession of the company; -if the Court, applying the principle of equity, deems it fit considering the circumstances of the case.

Q15. The Secretary of a Company issued a share certificate to 'A' under the company's seal with his own signature and the signature of a director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realize the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name .

Ans.

A or B is not entitled to shares	-since in case of forgery, there is not a defect in consent, but absence of consent, and therefore the share certificate issued by way of forgery is invalid(<i>Ruben v Great Fingall Consolidated company</i>)
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Q16. P the secretary of XYZ Ltd. Issued a share certificate in favour of A purporting to be signed by the directors and the secretary and the seal of the company affixed to it. In fact the secretary forged the signature of the directors and has affixed the seal without authority. Can A hold the company liable for the share covered by the share certificate, under the provision of the Companies Act?

Ans.

A is not entitled to shares and he cannot hold the company liable for any loss	-since in case of forgery, there is not a defect in consent, but absence of consent, and therefore the share certificate issued by way of forgery is invalid (<i>Ruben v Grate Fingall Consolidated Company</i>).
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Q17. Under the Article of Association of sunshine Ltd. Company directors had power to borrow up to Rs. 10,000 without the consent of the general meeting. The Directors themselves lent Rs. 35,000 to the company without such consent and took debentures of the Company . Decide under the provisions of the Companies Act, whether the company is liable? If so, what is the extent of liability of the company in this case?

Ans.

The company is not liable for Rs. 35,000	-since, the benefit of doctrine of indoor management can be availed of only by an outsider who has no knowledge of any irregularity in the internal management of the company.
The liability of the company is limited to Rs. 10,000	-since the directors, having knowledge of the fact that the limit of borrowings specified under the articles would be exceeded, themselves lent Rs. 35000 without the consent of the general meeting; -since on the similar facts as in the given case, same decision was given in <i>Howard v Patent Ivory Manufacturing Company</i> .

Q18. With a view to issue shares to the general public a prospectus containing some false information was issued by a company Mr. X received a copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher prices which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground that the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, examine whether X's claim for damages is justified.?

Ans.

Mr. X is not an original allottee of shares	-since he purchased the shares from the market, and not from the company.
Mr. X cannot claim damages from the company	-since Mr. X is not an original allottee of shares; -since Mr. X did not subscribe for shares on the faith of a misleading prospectus (<i>Peek v Gurney</i>).

Q19. Peek Ltd. Co. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained false statement Mr. X purchased some partly paid share of the company in good faith on the stock Exchange. Subsequently, the company was wound up and the name of Mr. X was in the list of contributors. Decide:

- (i) Whether Mr. X is liable to pay the unpaid amount?
- (ii) Can Mr. X sue the directors of the company to recover damages?

Ans.

Mr. X is not an original allottee of shares	-since he purchased shares from the secondary market, viz. stock exchange
(i) Mr. X is liable to pay the unpaid calls	-since Mr. X holds partly paid shares; -since he is liable as a contributory.
(ii) Mr. X cannot sue the directors to recover damages	-since Mr. X has no cause of action against the company or the directors as he did not subscribe for shares on the faith of a misleading prospectus (<i>Peek v Gurney</i>)

Q20. M applies for share on the basis of a prospectus which contains mis-statement. The share are allotted to him, who afterwards transfers them to N. can N bring an action for a rescission on the ground of mis-statement? Decide under the provision of the companies Act.

Ans.

Mr. N is not an original allottee of shares	-since he obtained the shares by way of transfer from M.
Mr. N cannot claim damages from the company	-since Mr. N is not an original allottee of shares; -since Mr. N did not subscribe for shares on the faith of a misleading prospects (<i>Peek v Gurney</i>).

Q21. Modern Furniture's Ltd. Was willing to purchase teakwood estate in Chhattisgarh state. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh state. The report was found inaccurate. Mr. 'X' purchased the shares of Modern Furniture Ltd. On the basis of the above statement in the prospectus. Will Mr. 'X' Have any remedy against the company? When an expert will not be liable? State the provisions of the companies Act, in this respects?

Ans.

Mr. X is entitled to repudiate the allotment	-since he purchased the shares relying on a mis-statement contained in the prospectus.
An expert is not liable	-if he proves that the prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

Q22. The board of directors of a company decides to pay 5% of issue price as underwriting commission to the underwriters. On the other hand the articles of association of the company permit only 3% commission. The Board of directors further decides to pay the commission out of the proceeds of the shares capital. Are the decisions taken by the Board of directors valid under the companies Act, 2013?

Ans.

The company cannot pay under writing commission of 5%	-since the rate of underwriting commission cannot be more than 5% of issue price of share or such lower rate as prescribed under the articles (3% in the present case); -since the maximum permissible underwriting commission in this case is 3%
The company may pay underwriting commission out of the proceeds of the shares capital	-since Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules,2014 expressly permits payments of underwriting commission out of the proceeds of the issue ,i.e. out of the proceeds of share capital.

Q23. Unique Builders Ltd. Decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures.

The company further decides to pay underwriting commission in the form of flats. Examine the validity of the above arrangements under the provision of the Companies Act, 2013.

Ans.

The company cannot pay underwriting commission of 2.5%	-since the rate of underwriting commission cannot be more than 2.5% of issue price of debentures or such lower rates as prescribed under the articles (2% in the present case); -since the maximum permissible underwriting commission in this case is 2%
Payment of underwriting commission in the form of flats is permissible	-since underwriting commission may be paid in cash or in kind or in lump sum or by way of a percentage [<i>Booth v New Africander Gold Mining Co.</i>]; -since there is no prohibition on payment of underwriting commission in kind.

Q24. The Board of Directors of XYZ Pvt. Ltd. A subsidiary of SRN Ltd., decides to grant a loan of Rs. 2.00 lac to P, the finance manager of the company getting salary of Rs. 30,000 per month, to buy 400 partly paid-up equity shares of Rs. 1,000 each of XYZ Ltd. Examine the validity of Board's decisions with reference to the provision of the Companies Act.

Ans.

The board's decision is not valid	-since the loan of Rs. 2lac given to the Finance Manager exceeds 6's months salary of the manager; -since the loan is giving for purchase of partly paid shares.
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Q25. ABC Company Ltd. At a general meeting of members of the company passes an ordinary resolution to buy-back 30% of its equity share capital. The articles of the company empower the company for buy-back of shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity share .explaining the provision of the Companies Act, and stating the sources through which the buy-back of company's own shares be effected, examine;

- (i) Whether company proposal is in order?
- (ii) Would your answer be still the same case the company, instead of 30%, decides to buy-back only 20% of its equity share capital?

(i) The proposal of the company to buy-back its shares is not valid	-since the company has passed ordinary resolution instead of SR, as required u/s 68; -since the company proposes to buy-back 30% of the equity share capital which exceeds the statutory ceiling of 25% of total paid up equity capital; -since the company proposes to buy-back out of the proceeds of an earlier issue of same kind of shares, which is prohibited u/s 68.
(ii) The decision to buy-back 20% of equity share	-since buy-back by passing Ordinary resolution is violative of Sec. 68; -since buy-back out of the proceeds of an earlier issue of same

capital shall not be valid

kind of shares is prohibited u/s 68.

Q26. 'Sunrise Ltd.' Is authorized by its articles to accept the whole or any part of the amount of remaining unpaid calls from any members although no part of that amount has been called up. 'X', a shareholder of the Sunrise Ltd., Deposits in advance the remaining amount due on his shares without any calls made by 'Sunrise Ltd.' Referring to the provision of the companies Act, decide the rights and liabilities of Mr. X which will arise on the payment of calls made in advance.

Ans.

Acceptance of calls in advance by Sunrise Ltd. Is valid (Sec. 50 of the companies Act, 2013)	<ul style="list-style-type: none"> -since Sunrise Ltd. Ltd. Has express provision in the articles authorizing it to accepts calls in advance ; -since the power to receive call in advance has been exercised for the benefit of the company.
Rights and liabilities of X	<ul style="list-style-type: none"> -X shall not be entitled to any voting rights in respect of 'calls in advance' until the call becomes presently payable (Sec. 50 of the Companies Act, 2013). -The dividend is paid on the nominal value of a share. However, sunrise Ltd Shall pay divined in proportion to the paid up capital held by each member, if the articles so provide (Sec. 51 of the Companies Act, 2013). -Interest on calls in advance shall be paid to X at such rate as may be specified in the articles. -X becomes an unsecured creditor of the company. -the amount paid as calls in advance is non-refundable. -The liability of X to pay the future calls is extinguished to the extent of calls paid in advance by him. -In case of surplus in winding up, before repayment of capital to the members, the amount paid as calls in advance along with interest shall berepaid to X.

Q27. Gold Ltd. Invited application for the issue of 5,00,000 Equity shares of Rs. 10 each through a public issue. As per prospectus, application were required to pay only Rs. 2 on application . 'A' applies for 500 shares and deposits Rs. 5,000 to the company because he did not properly go through the terms of the offer. Later, he applies to the company seeking refund of the excess amount paid by him. Referring to the provision of Companies Act, decide whether the company is bound to refund the excess money to 'A'.

Ans.

Mr. A can claim refund of Rs. 4,000	<ul style="list-style-type: none"> -since the excess amount of Rs. 4,000 has been paid by Mr. A by mistake; -since the excess amount of Rs. 4,000 cannot be treated as 'calls in advance' as the given case, Mr. A is not a member holding 1,000 shares as on the date.
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Q28. DJA Company Ltd. Is holding 40% of total equity shares in MR company Ltd. The Board of Directors of MR Company Ltd. (incorporated on 1-1-1998) decided to raise the paid-up equity share capital by issuing further shares and also decided not to offer any shares to DJA Company Ltd. On the grounded that it was already holding a high percentage of shares in MR

company Ltd. Articles of Association of MR Company Ltd. Provides that the new shares be offered to the existing shareholders of the company. On 1-9-2014 new shares were offered to all the share holder except DJ A Company Ltd. Referring to the provision of the Companies Act, 2013 examine the validity of decision of Board of Directors of MR Company Ltd of not offering any further shares to DJ A Company Ltd.

Ans.

The decision of the Board is not valid	-since the refusal to offer shares to DJ A Company on the ground that it is already holding a high percentage of shares, is not a valid ground as per Sec. 62 the company Act,2013.
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Q29. 500 Equity shares in 'XYZ Ltd'. Were acquired by Mr. 'B' but the signature of Mr. 'A', the transferor, on the transfer deed was forged. Mr. 'B' after getting the shares registered by the company in his name, sold 200 equity shares to Mr. 'C' on the strength of the share certificate issued by 'XYZ' Ltd. Mr. 'B' and Mr. 'C' were not aware of the forgery. What are the rights of Mr. 'A', 'B' and 'C' against the company with reference to the aforesaid shares?

Ans.

Rights of Mr. A	He can compel the company to restore his name on the register of member (since a forged transfer is without any legal effect and the true owner continues to be the member of the company).
Liabilities of B	'B' is liable to compensate the loss caused to the company since he had lodged the forged transfer deed, even though he was not aware of the forgery.
Rights of C	-The company can refuse to register 'C' as a member. -The company is liable to 'C' since the company had issued share certificate to B, and therefore, the company shall be stopped from denying the liability accruing to it from its own default.

Q30. 'A' commits forgery and thereby obtains a certificates of transfer of shares from a company and transfers the shares to 'B' for value acting in good faith. Company refuses to transfer the shares to 'B'. whether the company can refuse? Decide the liability of 'A' and of the company towards 'B'.

Ans.

Right of the true owner	He can compel the company to restore his name on the register of member (since a forged transfer is without any legal effect and the true owner continues to be the member of the company).
Liabilities of A	'A' is liable to compensate the loss caused to the company since he had lodged the forged transfer deed.
Rights of B	-The company can refuse to register 'B' as a member. -The company is liable to 'B' since the company had issued share certificate to A, and therefore, the company shall be stopped from denying the liability accruing to it from its own default.

Q31. X a registered shareholder of Y Ltd. Left his share certificates with his broker. A forged the transfer deed in favour of Z, accompanied by these share certificates lodged the transfer deed along with the share certificates with the company for registration. The company

secretary who had certain doubts, wrote to X informing him of the proposed transfer and in the absence of a reply from him (X) within the stipulated time, registered the transfer of shares in the name of Z. subsequent, Z sold the shares to J and J's name was placed in the register of shareholder. Later on, X discovered that forgery has taken place.

Referring to the provisions of the Companies Act, state the remedy available to X and Z in the giving case. Explain.

Ans.

Right of Mr. X	He can compel the company to restore his name on the register of member (since a forged transfer is without any legal effect and the true owner continues to be the member of the company).
Liabilities of Z	'Z' is liable to compensate the loss caused to the company since he had lodged the forged transfer deed, even though he was not aware of the forgery.
Rights of J	-The company can refuse to register 'J' as a member. -The company is liable to 'J' since the company had issued share certificate to Z, and therefore, the company shall be stopped from denying the liability accruing to it from its own default.

Q32. Mr. 'Y', the transferee, acquired 250 equity shares of BRS Ltd. From Mr. 'X' the transferor. But the signature of Mr. 'X' the transferor, on the transfer deed was forged Mr. 'Y' after getting the shares registered by the company is his name, sold 150 equity shares to Mr. 'Z' on the basis of the share certificate issued by BRC Ltd. Mr. 'Y' and 'Z' were not aware of the forgery. State the rights of Mr. 'X', 'Y' and 'Z' against the company with reference to the aforesaid shares.

Ans.

Right of Mr. X	He can compel the company to restore his name on the register of member (since a forged transfer is without any legal effect and the true owner continues to be the member of the company).
Liabilities of Y	'Y' is liable to compensate the loss caused to the company since he had lodged the forged transfer deed, even though he was not aware of the forgery.
Rights of Z	-The company can refuse to register 'Z' as a member. -The company is liable to 'Z' since the company had issued share certificate to Y, and therefore, the company shall be stopped from denying the liability accruing to it from its own default.

Q33. A company issued 20 partly paid equity shares and registered them in the name of the minor describing him as minor. The father of the minor signed the application on the minor's behalf. After some time company went into liquidation. The company filed a suit against father of the minor to recover the remaining amount on the shares. Whether the company will succeed? Advise.

Ans.

The company cannot recover unpaid calls on shares	-from the minor since an allotment of partly paid shares to a minor dose not bind him to pay the unpaid calls; -from the father of the minor since signing an application for the shares on minor's behalf dose not create any contractual relationship between the father of minor and the company.
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Q34. M/s Honest Cycles Ltd. Has received an application for transfer of 1,000 equity shares of Rs. 10 each fully paid up in favour of Mr. Balak. on scrutiny of the application from it was found that the application is minor. Advise the company regarding the contractual liability of a minor and whether shares can be allotted to Balak by way of transfer.

Ans.

The company is advised to transfer fully paid shares to Mr. Balak

-since a minor can become a member, if the shares are fully paid up;
-since there is no question of liability of minor if the shares are fully paid up.

Q35. X. a minor purchased 500 equity shares of Rs. 10 each of a company, on which only Rs. 5 per share were paid, from the Mumbai stock exchange, and submitted an application to the company for transfer of these shares in his name. examining the provisions of the companies Act, decide whether these shares can be transferred to X.

Ans.

The company is advice not to transfer partly paid shares to X, the minor

-since a minor is not bound to pay the unpaid calls;
-since such transfer dose not create any contractual relations between the minor and the company;
-since, if the shares are transferred to the minor, the minor or the company may afterwards, repudiate such transfer.

Q36. RSP Ltd. Allotted 500 fully paid-up shares of Rs. 100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Register of members. Later on, the company come to know of the fact. The company cancelled the allotment and struck-off his name in the Register of members and also forfeited his entire share money. He filed a suit against the action of the company .decide whether Z would be given any relief by the court under the provisions of the Companies Act.

Ans.

The cancellation of allotment of shares to minor is not valid

-since a minor can become a member, if the share are fully paid up;
-since there is no question of liability of minor if the share are fully paid up.

Forfeiture of money paid by the minor is not valid

-since the company has no right to cancel the allotment to minor;
-since, even in a case where partly paid shares are allotted to a minor, and afterwards such allotment is repudiated by the company, the company has no right to forfeit the money sharepaid by the minor, i.e. the minor is entitled to receive back the money paid by him.

Q37. A Ltd. Held equity in B Ltd. later on Anson Ltd. become a subsidiary company of B Ltd. decide under the company Act, 2013 whether it is necessary for Anson Ltd. to surrender the equity share of B Ltd ?

Ans.

A Ltd. can continue to hold equity shares in B Ltd	-since A Ltd. became a shareholder in B Ltd. even before it became a subsidiary company of B Ltd.
A Ltd. shall not have any right to vote	-in any general meeting of B Ltd.

Q38. A charges required registration with Registrar of Company was created on 1st August, 2014 by XYZ Ltd. the Secretary of the company realized on the 15th September, 2014 that the charge was not filed with the Registrar. State the steps to be taken by the Secretary to get the charge registered with the Registrar.

Ans.

Registrar may register the charge created on 01-08-2008	-since if a charge is not registered within 30 days of its creation, the Registrar may, on application made to him by the company, allow the registration of charge after 30 days of its creation, but within 300 days of creation of charge. the company shall pay such additional fees as may be prescribed.
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Q39. ABC Ltd. realized on 2nd November,2014 that particulars of charge created on 12th September, 2014 in favor of a Bank were not filed with the Registrar of companies for Registration. what procedure should the company follow to get the charge registered with the Registrar of companies ? would the procedure be different if the charge was created on 12th August, 2013 instead of 12th September, 2014 ? Explain with reference to the relevant provisions of the companies Act, 2013.

Ans.

Registrar may register the charge created on 12.09.2014	-since if a charge is not registered within 30 days of its creation, the Registrar may, on application made to him by the company, allow the registration of charge after 30 days of its creation, but within 300 days of creation of charge. the company shall pay such additional fees as may be prescribed (Sec,77).
CG may condone the delay if the charge was created on 12.08.2014	-since if a charge is not registered within 300 days of its creation, the company may make an application to CG for condonation of delay, and CG may condone such delay, i.e. CG may allow the extension of time for registration of the charge (Sec.87)

Q40. Dev Ltd. issued a notice for holding of its annual general meeting on 7th November,2014. the notice was posted to the members on 16.10.2014. some members of the company allege that the company had not complied withthe provisions of the companies Act, 2013 with regard to the period of notice and as such the meeting was not validly called. referring to the provisions of the Act, decide-

- (i) Whether the meeting has been validly called ?**
- (ii) If there is a shortfall in the number of days by which the notice fall short of the statutory requirement, state and explain by how many days does the notice fall short of the statutory requirement?**
- (iii) Can the shortfall, if any, be condoned ?**

Ans.

Day of holding the AGM	7th November,2014.
Day of dispatch of notice	16th October,2014.
Days to be excluded	-Day of holding the AGM(i.e., 7th November, 2014) -Day of dispatch of notice (16th October, 2014) -2 days for service of notice (i.e. 17th and 18th October,2014.)
Numbers of days notice given	19 days
Number of days notice required u/s 101	21 days.
(i) AGM has not been validly called	-since 21 days' notice of the AGM has not been given to the members.
(ii) The notice is short	-by 2 days.
(iii) The shortfall may be condoned	-if consent is given for such shorter notice by at least 95% of the members entitled to vote at such AGM.

Q41. ABC Limited served a notice of a general meeting upon its members. the notice stated that a resolution to increase the Share Capital of the company would be considered at the meeting . A member complains to the company that the amount of the proposed increase was not specified in the notice. In the light of the provisions of the Companies Act, 2013 examine the validity of the notice.

Ans.

Increase in share capital	-is an item of special business.
Explanatory statement is required	-for every item of special business.
Material facts must be disclosed	-in the explanatory statement.
Amount of proposed increase in share capital	-is a material fact which ought to be disclosed in the explanatory statement; -since the explanatory statement must contain all the information and all the facts that may enable the members to understand the meaning, scope and implications of he items of business and to take decision thereon.
The notice is not valid in the given case	-since the provisions of Sec. 102 are mandatory; -since notice given, or any resolution passed in the GM, without containing the explanatory statement or without disclosing the material facts, is invalid.

Q42. 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 the M.H. Company Ltd. Complains that the issue of sweat equity shares was not specified fully in the notice. Is the notice issued by M.H. Company Ltd. regarding issue of sweat equity shares valid according to the provisions of the company Companies Act, 2013? Explain Fully.

Ans.

Issue of sweat equity shares	-is an item of special business
Explanatory statement is required	-for an item of special business.
Material facts must be disclosed	-in the explanatory statement.
Material facts in the given case are-	a) Number of shares b) Current market price c) Consideration d) The class of directors or employees to whom such equity shares shall be issued (Sec. 54 of the Companies Act, 2013)
The notice is not valid in the given case	-since the provision of Sec. 102 are mandatory; -since notice given, or any resolution passed in the GM, without containing the explanatory statement or without disclosing the material facts, is invalid.

Q43. The articles of association of X Ltd. require the personal presence of 7 members to constitute quorum of general meetings. The following persons were present in the extraordinary general meeting to consider the appointment of Managing Director:

- A, the representative of Governor of Madhya Pradesh
- B and C, shareholders of preference shares,
- D, representing Y Ltd. and Z Ltd.
- E,F,G and H as proxies of shareholders.

Can it be said that the quorum was present in the meeting?

Ans.

A shall be treated as a member personally present	-since he is the representative of the Governor of Madhya Pradesh(Sec.112)
B and C are not members personally present	-since preference share holders can vote only in relation to such matters which directly affect their rights: -since appointment of MD does not directly affect the rights of preference shareholders.
D shall be treated as two members personally present	-since each of the two body corporate shall be treated as a member personally present (Sec. 113)
E, F, G and H are not members personally present	-since the words 'personally present' exclude proxies.
The quorum is not present in the given case	-since the quorum can be increased by the articles (from 5 to 7, in the given case); -since only 3 members are personally present in the given case, but quorum required is 7.

Q44. DJA Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. A was the only preference shareholder who attended the meeting . He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, Examine the validity of the meeting and the resolution passed thereat.

Ans.

Share V Dawes	-A meeting means coming together of more than one person. Therefore, one member cannot constitute a meeting.
The meeting and resolutions passed thereat are not valid	-since presence of a single member(viz, Mr. A) does not constitute a meeting;

	-since same judgment was given in Share v Dawes.
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Q45. The quorum for a general meeting of a public company is 15 members personally present according to the provision of the articles of association of the company. Examine with reference to the provisions of the Companies Act, 2013, whether there is proper

(i) 13 members personally present

(ii) 2 members represented by proxies who are not members of the company

(iii) One person representing two member companies.

Ans.

Required quorum	- 15 members personally present (since the quorum can be increased by the articles).
Member personally present	-13.
Members present by proxies	-2. - Not counted in quorum.
Representative	- representing two companies is counted as two members personally present (Sec. 113)
Total number of members personally present	- 15
Whether quorum is present ?	-yes.

Q46. State the legal position in the following circumstance with reference to the provision in the Companies Act, 2013. At an adjourned extraordinary general meeting of a public Ltd. Company adjourned for want of quorum, only 3 members are personally present.

Ans.

The quorum is present at the adjourned EGM	-since if an EGM is not held for want of quorum, and at the adjourned EGM also, quorum is not present, then, the members present shall be the quorum (Sec. 103(3))
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Q47. K, a member of MNO Ltd. appoints L as his proxy to attend the general meeting of the company. Later he (K) also attends the meeting. both K (the member) and L (the proxy) vote on a particular resolution in the meeting K's vote was declared invalid by the Chairman stating that since he has appointed the proxy and L's vote has been considered as valid. K objects to decision of the Chairman. Decide, under the provision of the companies Act, 2013 whether K's objections shall be tenable.

Ans.

The appointment of L as proxy is revoked	-when K, the member, himself attends the GM.
Vote of L, the proxy, is void	-since, when K, the member, himself attends the GM, the proxy is revoked, and so, L has no right to vote.
K's objection is tenable	-since the chairman has erroneously considered L's vote as valid.

Q48. A, a shareholder, of a company, appointed B, as a proxy, to attend the general meeting of the shareholders. later on A, himself, attended the meeting and voted on a resolution. Decide, whether A can do so ?

Ans.

The appointment of B as proxy is revoked	-when A, the member, himself attends the GM.
Vote of A, the member, is valid	-since, when A, the member, himself attends the GM, the proxy is revoked and so A the member, is entitled to vote.

Q49. Annual General Meeting of a public company was scheduled to be held on 15.12.2003 Mr. A, a shareholder, issued two proxies in respect of the shares held by him in favour of Mr. 'X' and Mr. 'Y'. the proxy in favour of 'Y' was lodged on 12.12.2003 and the one in favour of Mr. X was lodged on 15.12.2003. the company rejected the proxy in favour of Mr. Y as the proxy in favour of Mr.Y was of dated 12.12.2003 and that in favour of Mr. X was of dated 13.12.2003. is the rejection by the company in order?

Ans.

Proxy in favour of Y	-dated 12.12.2003, lodged with the company on 12.12.2003.
Proxy in favour of X	-dated 13.12.2003, lodged with the company on 15.12.2003
Proxy in favour of X shall be rejected	-since proxy from appointing X as proxy was not lodged with the company within the prescribed time, i.e. at least 48 hours before the AGM.
Proxy in favour of Y shall be valid	-and, therefore, the action taken by the company is not valid

Q50. The Chairman of the meeting of a company received a proxy 54 hours before the time fixed for the start of the meeting . He refused to accept the proxy on the ground that the Articles of the company provided that a proxy must be filed 60 hours before the start of the meeting. Decide, under the provisions of the Companies Act, whether the proxy holder can compel the chairman to admit the proxy ?

Ans.

The refusal of the Chairman is not valid	-since a proxy lodged with the company 48 hours before the time fixed for commencement of the meeting is valid; -since the time limit of 48 hours can be decreased, but cannot be increased.
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Q51. Annual General meeting , of MGR Ltd. is convened on 28th December, 2013. Mr. J, who is a member of the company approaches the company on 28th December, 2013 and demand inspection of proxies lodged with the company. Explain the legal position as stated under the companies Act, 2013 in this regard.

Ans.

Mr. J is not entitled to inspect proxies	-since a member who intends to inspect the proxies has to give notice to the company of his intention to do so, at least 3 days before the commencement of the GM.
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Q52. What is the concepts of proxy in relation to the meeting of a Company ? Decide the appointment and rights of a proxy, under the Companies Act, 2013, in the following cases:

- (i) When a body corporate is a member in the Company.**
- (ii) When a foreign company is a member in the company.**

Ans.

(i) A body corporate is entitled appoint a representative	-as per the provision of Sec. 113. -Such representative shall be entitled to exercise the same rights and powers (including the right to vote by proxy) on behalf of such body corporate, as if it were an individual member.
(ii) The foreign company is also entitled to	-since the provision of Sec. 113 are applicable not only to companies but also to foreign companies : -since Sec.113 uses the words "a body corporate (whether a company within the

appoint a representative as per Sec. 113	meaning of this Act or not)".
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Q53. C, a member of LS & Co. Ltd., holding some shares in his own name on which final call money has not been paid, is denied by the company voting right at a general meeting on the ground that the articles of association do not permit a member to vote if he has not paid the calls on the shares held by him.

With reference to the provisions of the Companies Act, 2013 examine the validity of company's denial to C of his voting right.

Ans.

The decision of the company is valid	-since the member is restrained from exercising his voting right on one of the grounds specified u/s 106 of the Companies Act, 2013 (viz, non-payment of calls on shares); -since the ground restricting voting right is contained in the articles.
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Q54. The articles of ABC Ltd. provided that only those shareholders would be entitled to vote whose names have been there on the Register of Members for two months before the date of the meeting. X, a member, of the ABC Ltd. was holding 200 equity shares of the company. X transferred his shares to Y before one month from the date on which the meeting was due. the name of Y could not be entered in the Register of Members as the application of transfer of shares was pending. X attended the meeting but he was prohibited by the company from exercising his voting right on the ground that he has not hold his share for specified period as provided in the articles before the date of the meeting.

state whether X can exercise his voting right in the meeting? state also the grounds upon which X may be excluded from exercising his voting rights in the meeting of the shareholders.

Ans.

X is entitled to vote at the GM	-since a company cannot restrict the voting rights of a member on any ground other than the grounds specified u/s 106; -since the restriction of voting right on the ground that a member has held his shares for 2 months, is not a specified ground u/s 106.
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Q55. J hold 100 partly paid up shares of LKM Ltd. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. J contested the decision of the chairman, Referring to the provisions of the Companies Act, 2013 decide whether the contention of J is valid.

Ans.

The contention of J is not valid	-since he is restrained from exercising his voting right on one of the grounds specified u/s 106 of the Companies Act, 2013 (viz. non-payment of calls on shares); -since the ground restricting voting right is contained in the articles.
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Q56. At a general meeting of a company, a matter was to be passed by a special resolution. out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes

were found invalid . the remaining 10 members abstained from voting, the Chairman of the meeting declared the resolution as passed.

With reference to the provision of the companies Act,2013 examine the validity of the chairman's declaration.

Ans.

Votes cast in favour	20
Votes cast against the resolution	5
Invalid votes	5
Members abstained from voting	10
SR is passed, and therefore Chairman's declaration is valid	-since votes cast in favour of the resolution (viz.,20) are not less than 3 times the votes cast against the resolution (viz., 5). -since vote cancelled absent members and members abstaining from voting are ignored.

Q57. For a special resolution in a Company's general meeting, 10 voting in favoure, 2 against and 4 abstained. the chairman declared the resolution as passed. is it a valid resolution as per the provision of the Companies Act,2013

Ans.

Votes cast in favour	10
Votes cast against the resolution	2
Members abstained from voting	4
SR is passed	-since votes cast in favour of there re solution (viz.,10)are not less than 3 times the votes cast against the resolution (viz 2). -since member abstaining from voting are ignored.

Q58. Developers Ltd. held a general meeting of shareholders for passing a special resolution regarding alteration of Articles of Association .out of the members present in the meeting 20 voted in favour 4 against and 8 members did not vote and abstained from voting . The Chairman of the meeting declared the resolution as passed. Is it a valid resolution as per the provisions of the Companies Act, 2013 ?

Ans.

Votes cast in favour	20
Votes cast against the resolution	4
Members abstained from voting	8
SR is passed	- since votes cast in favour of resolution (viz., 20) are not less than 3 times the votes cast against the resolution (viz.,4). -since member abstaining from voting are ignored.

Q59.The minutes of the meeting must contain fair and correct summary of the proceedings thereat. Can the chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a director of the company. The chairman declines to do so. State how the matter can be resolved

Chairman has the power	<ul style="list-style-type: none"> To determine whether a matter is defamatory of any person or not To direct not to include in the minutes any matter which is defamatory of any person
Refusal by chairman is valid	<ul style="list-style-type: none"> since the matter discussed in GM is, in the opinion of the chairman, defamatory of a director

Q60. XYZ Ltd held its annual general meeting on September 17, 2006. The meeting was presided over by Mr. V, the chairman of the company's Board of Director. On 17th September, 2006, Mr. V, the chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. V and by whom.

Minutes of AGM are to be signed by a director duly authorised by Board	<p>Within a period of 30 days of conclusion of AGM, i.e. on or before 15.10.2006</p> <p>Since in case of death or inability of the chairman of the same GM, the minutes are to be signed by a director duly authorised by the Board in this itself</p>
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Q61. MN Ltd held its AGM on 27th March, 2008. Mr. M the chairman of the said meeting died on 1st April, 2008, when minutes of the annual general meeting were not yet recorded and signed. How would you deal with the situation? Would your answer be different in case the meeting held on 27th March, 2008 was a Board meeting?

Minutes of AGM are to be signed by a director duly authorised by board	<ul style="list-style-type: none"> within 30 days of the conclusion of AGM, i.e. on or before 26.04.2008 since in case of death or inability of the chairman of the same GM, the minutes are to be signed by a director duly authorised by the board in this behalf
In case the meeting held was a board meeting, then-	<ul style="list-style-type: none"> the minutes are required to be signed within 30 days of the conclusion of such meeting by the chairman of the same meeting, viz. 27.03.08 or the chairman of next succeeding board meeting

Q62) In a general meeting of PQR Ltd the chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide whether the contention of M is maintainable under the provisions of Companies Act, 2013

Chairman has the absolute discretion	<ul style="list-style-type: none"> To determine whether a matter is determinable to the interest of the company or not To direct not to include in the minutes any matter which is detrimental to the interest of the company
Refusal by chairman is valid	Since the matter discussed in GM is, in the opinion of the chairman, detrimental to the interest of the company
Contention of M is not tenable	In view of the above stated legal position

Q63) As a corporate Professional advise your client company whether the foll matters can be transacted by getting a resolution passed through Postal Ballots:

- (i) issue of shares with differential voting rights**
- (ii) sale of whole of the undertaking of a company**
- (iii) buy-back of own shares by the company**

In issue of shares with differential voting rights	<ul style="list-style-type: none"> • Shall be transacted by passing a resolution by postal ballot • unless the company is One person Company or the number of the members of the company is upto 200
Sale of whole of the undertaking of a company	<ul style="list-style-type: none"> • Shall be transacted by passing a resolution by postal ballot • unless the company is One person Company or the number of the members of the company is upto 200
Buy-back of own shares by the company	<ul style="list-style-type: none"> • Shall be transacted by passing a resolution by postal ballot • unless the company is One person Company or the number of the members of the company is upto 200

Q64) To remove the managing Director, 40% members of the Global Ltd, submitted requisition for holding EGM. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the MD did not allot the holding of meeting at the registered office of the company, the said meeting was held at some other place and a resolution for removal of the MD was passed. Examine the validity of the said meeting and the resolution passed therein in the light of the provisions of the Companies Act, 2013

The requisition is valid	<ul style="list-style-type: none"> • Assuming that the requisitionists hold at least 10 % of the paid up share capital of the company • since the requisition need not disclose the reasons behind the resolution proposed at the EGM
Holding of EGM at a place other than the registered office is valid	<ul style="list-style-type: none"> • since the Board failed to call the EGM within the time prescribed u/s 100, thereby entitling the members to call, hold and conduct the EGM • since the registered office was kept lock, and so it was not possible for the requisitionistes to hold the EGM in the same manner in which GM's are ordinarily held
Resolution removing the MD is valid	Since the EGM was called, held and conducted, and the resolution removing MD was passed in accordance with the provisions of the Companies Act, 2013

Communication

1. What important factors should be considered to make oral communication effective?

Answer :

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

the oral communication effective:

- a) Consider the objective
- b) Think about the interest level of the receiver
- c) Be sincere
- d) Use simple language, familiar words
- e) Be brief and precise
- f) Avoid vagueness and generalities
- g) Give full facts
- h) Assume nothing
- i) Use polite words and tone
- j) Cut out insulting message
- k) Say something interesting and pleasing to the recipient
- l) Allow time to respond

To make the oral communication effective, the speaker should converse slowly with proper semantic pauses to enable the listener receive and register in mind whatever is said by the speaker and there should be a due correlation between the pace of speaking and the rate of listening

2. What are the tips for improving inter-personal skills in a business organization ?

Answer :

a) ***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.

b) ***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. One needs to give the communicator of the message sufficient attention and make an effort to understand his view point.

3. Explain the concept of “Negotiation”. What are its techniques ?

Answer :

Negotiation: Negotiation occurs when two or more parties either individuals or groups discuss specific proposals in order to find a mutually acceptable agreement. 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) ***Spiraling agreements:***

Begin by reaching a minimums 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.



ETHICS

1. "To maintain social contract between society and business, the trusteeship relations are essential". Describe the role of business ethics in this reference.

Answer :

- a) Mahatma Gandhi, the father of the nation, had aptly said that trusteeship provides a means for transforming the present capitalist order of society into an egalitarian one.
- b) A business man has to act only as a trustee of the society for whatever he has gained from the society. Everything finally belongs to the society. Society bestows upon business the authority to own and use land and natural resources. In return the society has the right to expect that productive organizations will enhance the general interests of consumers, employees and community.
- c) Business ethics is required to implement the laws of land, customs, expectations of community, principles of morality, etc.
- d) The products and services of an organization affect its employees, the community and society as a whole.
- e) Business ethics also serve the management discipline. Business houses may also use their financial and public influence to address social problems like poverty, crime, equal rights, environmental problems, public health and education.
- f) Society at large has also come to realize that since businessmen are making profits by using the country's resources, they owe it to the country to work for its development.
- g) Sound workplace ethics ensure that a company's employees are highly motivated and identify themselves with their employer.
- h) Following ethical business practices safeguard a company from getting entangled with law enforcement agencies.
- i) A reputation for highly ethical behavior also ensures increased sales and customer loyalty.
- j) Certain eco-friendly practices also reduce operation costs. Thus, society derives benefits as well as business prospers when businesses are ethically driven.

2. State whether the statement is correct or incorrect with brief reason:

**'The Governance Model positions management as accountable solely to investors'. Or
The responsibility of the corporate management lies towards shareholders only.**

Answer: Incorrect:

The traditional governance model positions management as accountable not to investors only but a growing number of corporations in the late part of the 20th century accept that constituents like employees, trade unions, customers, suppliers along with the investors are affected by corporate activity and therefore the corporate must be answerable to them also. Such constituents of an organization are also called the stakeholders.

3. What is meant by 'Sustainable Development'? State the special responsibilities of the industries that are based on natural resources. How the adoption of Green Accounting System helps in avoiding policy decisions which are non-sustainable for the country?

OR

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.

Answer:

- a) **Sustainable Development:** Literally sustainable development refers to maintaining development over time. It may be defined as development that meets the needs of the present without compromising the ability of future generations to meet their own needs. A nation or society should satisfy its requirements – social, economic and others – without jeopardizing the interests of future generations.
- b) **Special responsibilities of industries based on natural resources :** Industries that are based on natural resources, like minerals, timber, fibre, and foodstuffs etc. have a special responsibility for :
- adopting practices that have built-in environmental consideration
 - introducing processes that minimize the use of natural resources and energy, reduce waste, and prevent pollution.
 - making products that are ‘environment-friendly’, with minimum adverse impact on people and ecosystem.
- c) **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. There is no doubt, that with the public opinion moving towards accountable socio-economic structures, ethical and eco-friendly business practices would be standard corporate norms.

4. What corporate governance measures are required to be implemented by the Indian Companies as per clause 49 of the listing agreement? Explain in brief.

Answer

- a)
- 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. Many companies have established ethics and/or social responsibility committees on their boards to review strategic plans, assess progress and offer guidance on social responsibilities of their business. In addition to having committees and boards, some companies have adopted guidelines governing their own policies and practices around such issues like board diversity, independence and compensation.
- b) 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

INDIAN CONTRACT ACT

CPT QUESTIONS

1. **Father promised to pay his son a sum of ₹ 1 lakh if the son passes C.A examination in the first attempt. The son passed the examination in the first attempt, but the father failed to pay the amount as promised. Son files a suit for recovery of the amount. State along with reasons whether son can recover the amount under the Indian Contract Act, 1872.**

Answer

FACTS:

Father promised to pay his son a sum of ₹ 1 lakh if the son passes C.A examination in the first attempt. The son passed the examination in the first attempt, but the father failed to pay the amount as promised. Son files a suit for recovery of the amount.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

There is no contract between the father and son-since there is no intention to create legal relations, as it is a domestic or social agreement and since there the father does not receive any consideration.

The son cannot sue the father for recovering ₹ 1 lakh, since there is no contract between the father and the son.

CONCLUSION:

From the above provisions, son cannot recover the amount under the Indian Contract Act, 1872.

2. **Mr. D started “Self-Service” system in his shop. Mr. A entered the shop, took a basket and after taking the article of his choice into the basket reached the cashier for payments. The cashier refused to accept the price. Can Mr. D be compelled by Mr. A to sell the said article?**

Decide.

Answer

FACTS:

Mr. D started “Self-Service” system in his shop. Mr. A entered the shop, took a basket and after taking the article of his choice into the basket reached the cashier for payments. The cashier refused to accept the price.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872 ,

Display of goods in the shop for sale is an invitation to offer and not an offer.

Selection of goods by Mr. A results in an offer from Mr. A to the cashier.

Refusal by cashier to accept the price results in rejection of offer of Mr. A.

Mr. D cannot be compelled to sell the said articles, since no contract concluded between Mr. D and Mr. A.

CONCLUSION:

Hence, Mr. D cannot be compelled by Mr. A to sell the said article.

3. **“Good Girl” Soap Co. advertised that it would give a reward of ₹ 1,000 who developed skin disease after using “Good Girl” soap of the company for a certain period according to the printed directions, Miss Rakhi purchased the advertised “Good Girl” and developed skin disease inspite of using this soap according to the printed instructions. She claimed reward of rs.1000.the company refused the reward on ground that offer was not made to her and that in any case she had not n communicated her acceptance of the offer.**

Decide whether Miss Rekha can claim the reward or not.

Answer

FACTS:

“Good Girl” Soap Co. advertised that it would give a reward of ₹ 1,000 who developed skin disease after using, “Good Girl” soap of the company for a certain period according to the printed

directions, Miss Rakhi purchased the advertised "Good Girl" and developed skin disease inspite of using this soap according to the printed instructions. She claimed reward of ₹ 1,000, the company refused the reward on ground that offer was not made to her and that in any case she had not communicated her acceptance of the offer.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872, Miss Rakhi can claim the reward, since there is a contract between Miss Rakhi and Good Girl Soap Co. and since in case of a general offer, the acceptance of offer is not to be given by way of communication of acceptance, but is given by way of performance of the terms and conditions of the offer.

CONCLUSION:

Hence Miss Rekha can claim the reward.

4. Ramswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance. Examine the validity of acceptance in the light of following

i. The telegram of revocation of acceptance was received by Ramaswami before the letter of acceptance.

ii. The telegram of revocation and the letter of acceptance both reached together.

Answer**FACTS:**

Ramswami proposed to sell his house to Ramanathan. Ramanathan sent his acceptance by post. Next day, Ramanathan sends a telegram withdrawing his acceptance.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

(i) The revocation is valid and there is no contract, since revocation of acceptance binds the offeror if letter of revocation of acceptance is received by the offeror before receipt of letter of acceptance.

(ii) The revocation is valid and there is no contract, if Ramaswamy opens the telegram (containing the revocation of acceptance) first and reads it.

CONCLUSION:

The revocation is not valid and the contract is formed, if Ramaswamy opens the letter (containing the acceptance) first and reads it.

5. X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ₹ 5,000 per month to N (the sister of executant). Consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her. Decide with reasons under the provisions of the Indian Contract Act, 1872 whether M is liable to pay the said sum to N.

Answer**FACTS:**

X transferred his house to his daughter M by way of gift. The gift deed, executed by X, contained a direction that M shall pay a sum of ₹ 5,000 per month to N (the sister of executant).consequently M executed an instrument in favour of N agreeing to pay the said sum. Afterwards, M refused to pay the sum to N saying that she is not liable to N because no consideration had moved from her.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872 ,

M is liable to pay to N the amount of ₹ 5,000 per month, since there is a contract between M and N. Since in consideration of payment of ₹ 5,000 per month to N, M has received house of X. Since M has received consideration, although she has not received such consideration from the other party to the contract, viz. N. Since privity of consideration is not required, i.e, consideration need not move from the other party to the contract.

CONCLUSION:

Hence, M is liable to pay the said sum to N.

6. **Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of deed, it was stipulated that an annuity of Rs.2000 should be paid every year to B, who was the brother of Mr. Singh. On the same day, A made a promise with B and executed in his favour an agreement to give effect to stipulation, A failed to pay the stipulated sum. In an action against her by B, she contented that since B had not furnished any consideration, he has no rights of action.**

Examining the provisions of Indian Contract Act, 1872, decide whether the contention of A is valid?

Answer**FACTS:**

Mr. Singh, an old man, by a registered deed of gift, granted certain landed property to A, his daughter. By the terms of deed, it was stipulated that an annuity of Rs.2000 should be paid every year to B, who was the brother of Mr. Singh. On the same day, A made a promise with B and executed in his favour an agreement to give effect to stipulation, A failed to pay the stipulated sum. In an action against her by B, she contented that since B had not furnished any consideration, he has no rights of action.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

'Privity of consideration is not required', since so long as there is consideration for promise, it is immaterial as to who has furnished it.

Since, if a party receives consideration, the contract is valid, even though the person furnishing the consideration is not a party to the contract.

Since as long as there is consideration in a contract, it is immaterial as to who has given this consideration.

Contention of A is not valid- since privity of consideration is not required, as explained.

CONCLUSION:

Examining the provisions of Indian Contract Act, 1872, the contention of A is not valid.

7. **X, a minor was studying in M.com in a college. On 1st July, 2005 he took a loan of ₹ 10,000 from B for a payment of his college fees and to purchase books and agreed to pay by 31st December 2005, X possesses assets worth ₹ 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of the Indian Contract Act, 1872 decide whether B would succeed?**

Answer**FACTS:**

X, a minor was studying in M.com in a college. On 1st July, 2005 he took a loan of ₹ 10,000 from B for a payment of his college fees and to purchase books and agreed to pay by 31st December 2005, X possesses assets worth ₹ 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

Loan of ₹ 10,000 is on account of necessities, since 'necessities' means necessities of life as per the social status and conditions of life of the minor.

Since food, clothing, housing and education have been held to be the 'necessities'.

X is liable to B for ₹ 10,000, since the person who supplies necessities to the incompetent person is entitled to be reimbursed from the property of such incompetent person, but X shall not be personally liable.

CONCLUSION:

X is liable to B for ₹ 10,000

8. **W is the wife of H, who is lunatic, purchases a diamond set of ₹ 10 lacs from the Beauty Jeweller on credit. Referring to the provisions of the Indian Contract Act, 1872, decide whether the Beauty Jeweller is entitled to claim the above amount from the property of H?**

Answer

FACTS:

W is the wife of H, who is lunatic, purchases a diamond set of ₹ 10 lacs from the Beauty Jeweller on credit

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

Jeweller is not entitled to recover amount of diamond set from H, since H is not competent to contract, since H is not liable u/s 68, as the diamond set of ₹ 10 lacs sold to his wife is not 'necessities'.

CONCLUSION:

The Beauty Jeweller is not entitled to claim the above amount from the property of H.

9. **'A' applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan as these terms. Whether the contract is induced by undue influence?**

Answer

FACTS:

'A' applies to a banker for a loan at a time when there is stringency in the money market. The banker declines to make the loan except at an unusually high rate of interest. A accepts the loan as these terms

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

The banker has not obtained any unfair advantage, since there is stringency in the money market, thereby resulting in increase in interest rates.

Since the loan is made by the banker in the ordinary course of business.

There is no undue influence, since, as between the parties on equal footing, the Court does not hold a transaction to be unconscionable merely on the ground of high rate of interest.

CONCLUSION:

Hence, the contract is not induced by undue influence.

10. **Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract. Decide.**

Answer

FACTS:

Sohan induced Suraj to buy his motorcycle saying that it was in a very good condition. After taking the motorcycle, Suraj complained that there were many defects in the motorcycle. Sohan proposed to get it repaired and promised to pay 40% cost of repairs. After a few days, the motorcycle did not work at all. Now Suraj wants to rescind the contract

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872

Suraj has impliedly affirmed the contract, by not avoiding the contract, but recovering 40% of the cost of repairs from Sohan.

Suraj cannot rescind the contract, since he has already affirmed the contract.

CONCLUSION:

Suraj cannot rescind the contract.

11. Mr. Seth an industrialist has been fighting a long drawn litigation with Mr. Rama another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ₹ 5 lacs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refuses to pay. Decide whether Mr. X can recover the amount promised by Mr. Seth under the provisions of the Indian Contract Act, 1872.

Answer

FACTS:

Mr. Seth an industrialist has been fighting a long drawn litigation with Mr. Rama another industrialist. To support his legal campaign Mr. Seth enlists the services of Mr. X a legal expert stating that an amount of ₹ 5 lacs would be paid, if Mr. X does not take up the brief of Mr. Raman. Mr. X agrees, but at the end of the litigation, Mr. Seth refuses to pay.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872

Mr. X cannot recover ₹ 5 lacs from Mr. Seth, since the given agreement restrains Mr. X from exercising a lawful profession and so this agreement is in restraint of trade.

CONCLUSION:

Hence, Mr. X cannot recover ₹ 5 lacs from Mr. Seth.

12. Miss X, a film actress agreed to work exclusively for a period of two years, for a film production company. However, during the said period she enters into a contract to work for another film producer. Discuss the right of aggrieved film production company under the Indian Contract Act 1872.

Answer

FACTS:

Miss X, a film actress agreed to work exclusively for a period of two years, for a film production company. However, during the said period she enters into a contract to work for another film producer.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

Restraint of Miss X is valid, since an agreement of service under which an employee agrees to serve a certain employer for a certain duration, and that he will not serve anybody else during such period is a valid agreement.

Miss X cannot be compelled to work with the film production company, since specific performance is generally not allowed where personal performance is required.

Miss X may be restrained from working for another producer, since, in case of breach of a negative term of a contract, the defaulting party is generally restrained from doing what he promised to do.

CONCLUSION:

Hence, restraint of Miss X is valid, Miss X cannot be compelled to work with the film production company and Miss X may be restrained from working for another producer.

13. "X", agreed to become an assistant for 5 years to "Y" who was a Doctor practicing at Ludhiana. It was also agreed that during the term of agreement 'X' will not practice on his account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practice on his own. Referring to the provisions of the Indian Contract Act 1872, decide whether 'X' could be restrained from doing so?

Answer

FACT:

"X", agreed to become an assistant for 5 years to "Y" who was a Doctor practicing at Ludhiana. It was also agreed that during the term of agreement 'X' will not practice on his account in Ludhiana. At the end of one year, 'X' left the assistantship of 'Y' and began to practice on his own.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

Restraint on X is valid, since an agreement of service under which an employee agrees to serve a certain employer for a certain duration, and that he will not serve anybody else during such period is a valid agreement.

X may be restrained from practicing on his own account, since, in case of breach of a negative term of a contract, the defaulting party is generally restrained from doing what he promised not to do.

CONCLUSION:

Hence, restraint on X is valid and X may be restrained from practicing on his own account

14. Dubious Textile enters into a contract with Retail Garment Show Room for supply of 1000 pieces of Cotton shirts at ₹ 300 per shirt to be supplied on or before 31st December, 2004. However on 1st November, 2004 Dubious Textiles informs the Retail Garment Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto ₹ 350 per shirt.

Examine the rights of the Retail Garment Show Room in this regard.

Answer

FACT:

Dubious Textile enters into a contract with Retail Garment Show Room for supply of 1000 pieces of Cotton shirts at Rs.300 per shirt to be supplied on or before 31st December, 2004. However on 1st November, 2004 Dubious Textiles informs the Retail Garment Show Room that he is not willing to supply the goods as the price of Cotton shirts in the meantime has gone upto Rs.350 per shirt.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

If Retail Garments Show Room waits till 31st December, 2004, Dubious Textile shall be liable to pay damages (equal to difference between the contract price and price as on 31st December, 2004) , if it fails to supply the cotton shirts upto 31st December, 2004.

If Retail Garments Show Room does not wait till 31st December, 2004, Dubious Textile shall be liable to pay damages (equal to difference between the contract price and price as on 1st November, 2004)

CONCLUSION:

Hence the rights are given as above in the respective situation.

15. A contracted with b to supply him (B) 500 tons of iron-steel @ ₹ 5,000 per ton, to be delivered at a specified time. Thereafter, A contracts with C for purchase of 500 tons of iron-steel @ ₹ 4,800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered with B.C failed to perform his contract in due course. Consequently, A could not procure any iron-steel and B rescinded the contract. What would be the amount of damages which A could claim from C in the circumstances? Explain with references to provisions of the Indian Contract Act, 1872.

Answer

FACTS:

A contracted with b to supply him (B) 500 tons of iron-steel @ ₹ 5,000 per ton, to be delivered at a specified time. Thereafter , A contracts with C for purchase of 500 tons of iron-steel @ ₹ 4,800 per ton, and at the same time told 'C' that he did so for the purpose of performing his contract entered with B.C failed to perform his contract in due course. Consequently, A could not procure any iron-steel and B rescinded the contract.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872,

A can recover ₹ 1 lakh as special damages from C, since it was within C's knowledge that breach of contract by him (C) would result in non-performance of contract between A and B resulting in loss of ₹ 1 lakh (i.e., the difference between ₹ 5,000 per ton and ₹ 4,800 per ton for 500 tons) to A.

CONCLUSION:

Hence, A can recover special damages.

16. Y holds agriculture land in Gujarat on a lease granted by X, the owner. The land's revenue payable by X to the government being in arrear, his land is advertised for sale by the government. Under the revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the government, the sum due from X. Referring to the provisions of the Indian Contract Act, 1872 decide whether X is liable to make good to Y, the amount paid so?

Answer

FACT:

Y holds agriculture land in Gujarat on a lease granted by X, the owner. The land's revenue payable by X to the government being in arrear, his land is advertised for sale by the government. Under the revenue law, the consequence of such sale will be termination of Y's lease. Y, in order to prevent the sale and the consequent termination of his own lease, pays the government, the sum due from X.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872, X is liable to pay to Y the amount paid by Y to the government, since there is a contract between X and Y, viz. quasi contract.

Since X is bound to make the payment of land revenue to the government.

Since Y is interested in such payment.

Since Y is not himself liable for such payment.

CONCLUSION:

Hence, X is liable to pay to Y the amount paid by Y to the government.

17. Z rents out his house situated in Mumbai to W for a rent of ₹ 10,000 per month. A sum of ₹ 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the Corporation, the sum due from Z to avoid legal consequences. Referring to the provisions of the Indian Contract Act, 1872 decide whether W is entitled to get reimbursement of the said amount from Z?

Answer

FACTS:

Z rents out his house situated in Mumbai to W for a rent of ₹ 10,000 per month. A sum of ₹ 5 lac, the house tax payable by Z to the Municipal Corporation being in arrears, his house is advertised for sale by the corporation. W pays the Corporation, the sum due from Z to avoid legal consequences.

ISSUES:

According to the provisions of the INDIAN CONTRACT ACT, 1872, W is entitled to recover from Z the amount paid to the Municipal Corporation, since there is no contract between W and Z, viz. quasi contract,

Since Z is bound to make the payment of house tax to the Municipal Corporation

Since W is interested in such payment.

Since W is not himself liable for such payment.

CONCLUSION:

W is entitled to get reimbursement of the said amount from Z

CONTRACT OF GUARANTEE

1. 'A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of ₹ 50,000. One month later A revokes the guarantee, when C had lent to B ₹ 5,000. Referring to the provisions of the Indian contract Act, 1872, decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan, what would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. ₹ 5,000?

Answer

FACTS:

'A' stands surety for 'B' for any amount which 'C' may lend to B from time to time during the next three months subject to a maximum of ₹ 50,000. One month later A revokes the guarantee, when C had lent to B ₹ 5,000

ISSUES:

According to the provisions of the Indian Contract Act, 1872, A is discharged from all the liabilities in respect of any loan given by C to B after the date of revocation of continuing guarantee.

A is not discharged for the loan of ₹ 5,000 already given by C to B.

CONCLUSION:

'A' is discharged from all the liabilities to 'C' for any subsequent loan, 'A' is not discharged for the loan of ₹ 5,000 already given by C to B.

2. Ravi becomes guarantor for Ashok for the amount which may be given to him by Nalin within six months. The maximum limit of the said amount is ₹ 1 lac. After two months, Ravi withdraws his guarantee upto the time of revocation of guarantee. Nalin had given to Ashok ₹ 20,000

Referring to the provisions of the Indian Contract Act, 1872 decide-

- i. Whether Ravi is discharged from his liabilities to Nalin for any subsequent loan?
- ii. Whether Ravi is liable if Ashok fails to pay the amount of ₹ 20,000 to Nalin?

Answer

According to the provisions of the Indian Contract Act, 1872,

(i) Ravi is discharged from all the liabilities in respect of any loan by Nalin to Ashok after the date of revocation of continuing guarantee.

(ii) Ravi is not discharged for the loan of ₹ 20,000 already given by Nalin to Ashok.

3. A gives to C a continuing guarantee to the extent of ₹ 5,000 for the vegetables to be supplied by C to B from time to time on credit. Afterwards, B, became embarrassed and without the knowledge of A, B and C contract that C shall continue to supply B with vegetables for ready money, and that the payments shall be applied to the existing debts between B and C. Examine the provisions of Indian Contract Act, 1872, decide whether A is liable on his guarantee given to C.

Answer

FACTS:

A gives to C a continuing guarantee to the extent of ₹ 5000 for the vegetables to be supplied by C to B from time to time on credit. Afterwards, B, became embarrassed and without the knowledge of A, B and C contract that C shall continue to supply B with vegetables for ready money, and that the payments shall be applied to the existing debts between B and C.

ISSUES:

According to the provisions of the Indian Contract Act, 1872, A is not liable to C for the transactions that take place after variation between B and C, since a surety is discharged if any variation is made in a contract of guarantee without the consent of the surety.

CONCLUSION:

Hence, examining the provisions of Indian Contract Act, 1872, A is not liable on his guarantee given to C.

4. A contracts with B for fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction, C guarantees A's performance of the contract. B does not supply the necessary material as per the agreement. Is C discharged from his liability?

Answer

FACTS:

A contracts with B for fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction, C guarantees A's performance of the contract. B does not supply the necessary material as per the agreement.

ISSUES:

According to the provisions of the Indian Contract Act, 1872, C is discharged from liability, since the surety is discharged by any act or omission of the creditor, the legal consequence of which is discharge of the principal debtor. Since failure to supply the necessary material by B amounts to an omission on the part of the creditor resulting in discharge of A and consequently, discharging C.

CONCLUSION:

Hence C discharged from his liability.

5. C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability?

Answer

FACTS:

C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B.

ISSUES:

According to the provisions of the Indian Contract Act, 1872, A is not discharged from his liability, since where a contract to give time to the principal debtor is made by the creditor with a third person, and not with the principal debtor, the surety is not discharged.

CONCLUSION:

Hence, A is not discharged from his liability.

6. B owes C a debt guaranteed by A, C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is A discharged? Decide with reference to the provisions of the Indian Contract Act, 1872.

Answer

FACTS:

B owes C a debt guaranteed by A, C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent.

ISSUES:

According to the provisions of the Indian Contract Act, 1872, A is not discharged, since mere forbearance on the part of the creditor to sue the principal debtor does not discharge the surety.

CONCLUSION:

Hence, A is not discharged with reference to the provisions of the Indian Contract Act, 1872.

CONTRACT OF BAILMENT

1. Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872.

- i. V parks his car at a parking lot, locks it, and keeps the key with himself**
- ii. Seizure of goods by customs authorities**

Answer

According to the provisions of the Indian Contract Act, 1872,

- i. Parking the car and keeping the key with himself, does not result in a valid bailment, and since delivery of goods does not take place in such a case (delivery here would refer to symbolic delivery, viz. delivery of keys of the car)
- ii. Seizure of goods by custom authorities, results in a valid contract of bailment, since all the essentials of a valid contract of bailment are satisfied in such a case.

2. M lends a sum of ₹ 5,000 to B, on security of two shares of a Limited Company on 1st April 2007. On 15th June, 2007, the company issued two bonus. B returns the loan amount of ₹ 5,000 with interest but M returns only two shares which were pledged and refuses to give the two shares. Advise B in the light of the provisions of the Indian Contract Act, 1872.

Answer

FACTS:

M lends a sum of ₹ 5,000 to B, on security of two shares of a Limited Company on 1st April, 2007. On 15th June, 2007, the company issued two bonus. B returns the loan amount of ₹ 5,000 with interest but M returns only two shares which were pledged and refuses to give the two shares.

ISSUES:

According to the provisions of the Indian Contract Act, 1872 B is entitled to the two bonus shares, since the bailor (pawnor, in case of pledge of goods) is entitled to any accretion to the goods, and the issue of two bonus shares by the company amounts to accretion to the goods.

CONCLUSION:

Hence, B is entitled to the two bonus shares.

3. Sunil delivered his car to Mahesh for repairs. Mahesh completed work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of the car. In the meantime a big fire occurred in the neighbourhood and the car was destroyed, decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872.

Answer

FACTS:

Sunil delivered his car to Mahesh for repairs. Mahesh completed work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of the car. In the meantime a big fire occurred in the neighbourhood and the car was destroyed.

ISSUES:

According to the provisions of the Indian Contract Act, 1872 it is duty of Mahesh to return the car to Sunil, without demand by Sunil, after completion of repairs. Mahesh is liable for the loss of car by fire, since Mahesh failed to return the car within reasonable time of completion of repairs, even though the car was destroyed without Mahesh's fault or negligence or due to extra-ordinary circumstances or acts of god.

CONCLUSION:

Hence, Mahesh is liable for the loss of car by fire.

4. A hires a carriage of B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay, discuss the liability of B.

Answer

FACTS:

A hires a carriage of B and agrees to pay ₹ 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay.

ISSUES:

According to the provisions of the Indian Contract Act, 1872 hire of carriage of B by A amounts to non-gratuitous bailment. It is duty of B to disclose to A that the carriage was unsafe (even though he was unaware about it). Thus, A is entitled to compensation for injuries suffered by him due to non-disclosure of faults in the carriage.

CONCLUSION:

Hence, A is entitled to compensation.



CONTRACT OF PLEDGE

1. Ravi sent a consignment of goods worth ₹ 60,000 by railway and got railway receipt. He obtained an advance of ₹ 30,000 from the bank and endorsed and delivered the railway receipt in favour of bank in way of security. The railway failed to deliver the goods at destination. The bank filed a suit against the railway for ₹ 60,000. Decide in light of provisions of Indian Contract Act, 1872. Whether the bank would succeed in the said suit?

Answer

FACTS:

Ravi sent a consignment of goods worth ₹ 60,000 by railway and got railway receipt. He obtained an advance of ₹ 30,000 from the bank and endorsed and delivered the railway receipt in favour of bank in way of security railway failed to deliver the goods at destination. The bank filed a suit against the railway for ₹ 60,000.

ISSUES:

According to the provisions of the Indian Contract Act, 1872, the contract between Ravi and Bank is a contract of pledge, since deposit of title deeds with the bank as security against an advance constitutes a pledge.

Rights of pawnee, if a third person wrongfully deprives the pawnee of the use of the goods pawned, or does any injury to the goods, the pawnee is entitled to all the remedies as the owner might have exercised as if the goods were not pawned.

The bank would succeed in suit filed against the railways for whole sum of ₹ 60,000, since in case of pledge, the pawnee can exercise all the rights which the pawnor could exercise in respect of such goods, if the goods are damaged or some third party deprives the pawnee of such goods.

The bank shall pay over to Ravi a sum of ₹ 30,000, since the compensation received by the pawnee shall be divided among the pawnor and pawnee as per their respective interests.

CONCLUSION:

In light of provisions of Indian Contract Act, 1872, the bank would succeed in the said suit.

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CONTRACT OF AGENCY

1. R of New Delhi sends his agent M to purchase certain goods from Global Enterprise, Mumbai on credit for him. Later on R pays the amount for the goods purchased. On another occasion, he again sends M to purchase goods but this time pays sufficient cash to M for the purpose. M, however again purchases the goods from Global Enterprises but on credit and soon thereafter he dies. Global Enterprise files a suit against R for recovery of the said amount. Decide whether Global Enterprise would be given any relief by the court under the provisions of the Indian Contract Act, 1872.

Answer

FACTS:

R of New Delhi sends his agent M to purchase certain goods from Global Enterprise, Mumbai on credit for him. Later on R pays the amount for the goods purchased. On another occasion, he again sends M to purchase goods but this time pays sufficient cash to M for the purpose. M, however again purchases the goods from Global Enterprises but on credit and soon thereafter he dies. Global Enterprise files a suit against R for recovery of the said amount

ISSUE:

According to the provisions of Indian Contract Act, 1872, R is liable to Global Enterprise for goods purchased by M, since the principal is bound to third parties for all such acts of the agent as are within the scope of authority of the agent.

Since on a previous occasion, purchase of goods by M on behalf of R, and subsequent payment for such goods by R, established that it was within the scope of authority of M to purchase goods on credit on behalf of R.

CONCLUSION:

Under the provisions of the Indian Contract Act, 1872 R is liable to Global Enterprise for goods purchased by M.

2. R is the wife of P. She purchased some sarees on credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q will succeed?

Answer

FACTS:

R is the wife of P. She purchased some sarees on credit from Q. Q demanded the amount from P. P refused. Q filed a suit against P for the said amount.

ISSUES:

According to the provisions of Indian Contract Act, 1872, Q is entitled to sue P, since a husband is liable for the necessities supplied to his wife.

Since the wife has an implied authority to pledge his husband's credit for necessities and it is a legal presumption that a married woman is an agent of her husband.

CONCLUSION:

Hence, Q is entitled to sue.

3. Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of nominee and then purchased it himself for ₹ 24 lakhs. He then sold the same house to Mr. Ahuja for ₹ 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain.

Answer

FACTS:

Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ₹ 20 lakhs in the name of nominee and then purchased it himself for Rs.24 lakhs. He then sold the same house to Mr. Ahuja for ₹ 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh.

ISSUES:

According to the provisions of Indian Contract Act, 1872, non-disclosure of profit of ₹ 6 lakhs amounts to breach of duty by Mr. Singh, since Mr. Singh without disclosing all material facts and without obtaining the consent of Mr. Ahuja, dealt in the business of agency on his own account, since Mr. Singh made a secret profit. And also Mr. Ahuja is entitled to repudiate the contract or to claim from Mr. Singh ₹ 6 lakhs

CONCLUSION:

Hence, Mr. Ahuja is entitled to repudiate the contract or to claim from Mr. Singh ₹ 6 lakhs.



NEGOTIABLE INSTRUMENTS ACT

1. Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of following Promissory Notes:

(i) I owe you a sum of ₹ 1,000 'A' tell 'B'.

(ii) 'X' promises to pay 'Y' a sum of ₹ 10,000, six months after 'Y's marriage with 'Z'.

Answer

(i) It is not a valid promissory note, since A has not made any promise to pay Rs.1000 to B (mere acknowledgement of indebtedness does not result in a valid promissory note). And A has not made any instrument in writing.

(ii) It is not a valid promissory note, since the promise is conditional (as Y's marriage with Z is not certain to happen)

2. S writes, "I promise to pay 'B' a sum of ₹ 500, seven days after my marriage with 'C'. Is this promissory note?"

Answer

FACTS:

S writes, I promise to pay 'B' a sum of ₹ 500, seven days after my marriage with 'C'. Is this promissory note

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 the promise by S does not constitute a valid promissory note, since the promise is conditional (as marriage of S with C is not certain to happen).

CONCLUSION:

Hence, the above situation does not constitute to a valid promissory note.

3. Whether the following notes may be considered as valid Promissory Notes?

i. I promise to pay ₹ 5,000 or ₹ 7,000 to Mr. Ram

ii. I promise to pay Mohan ₹ 500, if he secures 60% marks in the examination.

iii. I promise to pay ₹ 3,000 to Ravi after 15 days of death of A.

Answer

(i) It is not a valid promissory note, since the amount payable is not certain.

(ii) It is not a valid promissory note, since the promise is conditional (since it is not certain that Mohan would secure 60% marks in examination).

(iii) It is a valid promissory note, since the promise is not conditional (since it is dependent upon the death of A, which is certain to happen, although the time of its happening is not certain).

4. A, a major, and B, a minor, executed a promissory note in favour of C. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on A and B.

Answer

FACTS:

A, a major, and B, a minor, executed a promissory note in favour of C. Examine with reference to the provisions of the Negotiable Instruments Act, the validity of the promissory note and whether it is binding on A and B.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, the promissory note is valid, since a negotiable instrument does not become invalid only because of the reason that any party to the negotiable instrument (viz., the maker, payee, endorser or endorsee) is a minor.

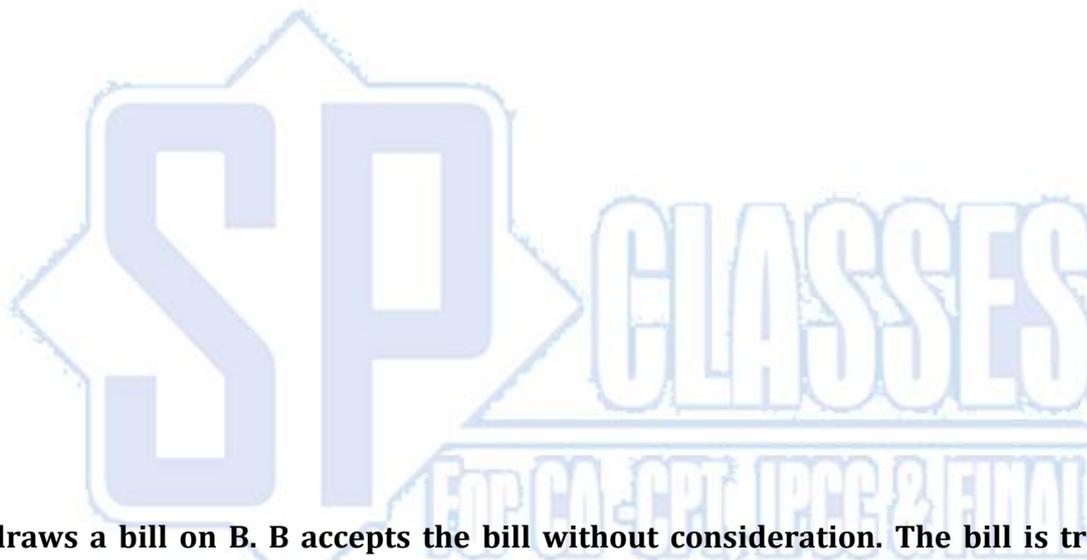
B is not liable since a minor is not liable on a negotiable instrument. And A is liable, since all the parties, except the minor are liable on a negotiable instrument drawn, accepted, endorsed or negotiated by a minor.

CONCLUSION:

Examining with reference to the provisions of the Negotiable Instruments Act, the promissory note is valid and it is binding on A.

5. Ascertain the 'date of maturity' of a bill payable 120 days after date. The bill of exchange was drawn on 1st June, 2005

Answer



6. A draws a bill on B. B accepts the bill without consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide -
- Whether D can sue the prior parties of the bill, and
 - Whether the prior parties other than D have any right of action interse?

Give your answer with reference to the Provisions of Negotiable Instruments Act, 1881?

Answer

FACTS:

A draws a bill on B. B accepts the bill without consideration. The bill is transferred to C without consideration. C transferred it to D for value.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, D can recover the amount of the bill from all the prior parties since D is a holder for value.

Also no party to D can recover the amount of the bill form any prior party since a negotiable instrument creates no obligation of payment between the parties if it was made, drawn, accepted, endorsed, or transferred with-out consideration.

7. 'A' draws a bill of exchange payable to himself on 'X', who accepts the bill without consideration just to accommodate 'A'. 'A' transfers the bill to 'P' for good consideration. State the rights of 'A' and 'P', would your answer be different if 'A' transferred the bill to 'P' after maturity.

Answer**FACTS:**

'A' draws a bill of exchange payable to himself on 'X', who accepts the bill without consideration just to accommodate 'A'. 'A' transfers the bill to 'P' for good consideration.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, A is not entitled to sue X, since there is no consideration between A and X, also there is no obligation to pay, if there is no consideration between the parties to the transaction.

P is entitled to sue A and X, since P is holder for consideration, and since a holder for consideration can sue the transferor for consideration and every party prior to him.

Even if A had transferred the bill after maturity, the answer would have remained the same, since the right to sue the transferor for consideration and every party prior to him, is available to 'holder for consideration', even though he is not a 'holder in due course'.

CONCLUSION:

Hence referring to the provisions of the Negotiable Instruments Act, 1881, A is not entitled to sue X, P is entitled to sue A and X, and Even if A had transferred the bill after maturity, the answer would have remained the same,

8. **P draws a bill on Q for ₹ 10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment files a suit against Q for payment of ₹ 10,000. Q proved that the bill was accepted for value of ₹ 7,000 and as an accommodation to the plaintiff for the balance amount i.e., Rs.3000 .Referring to the provisions of the Negotiable Instruments Act,1881, decide whether P would succeed in recovering the whole amount of the bill.**

Answer**FACTS:**

P draws a bill on Q for ₹ 10,000. Q accepts the bill. On maturity the bill was dishonoured by non-payment files a suit against Q for payment of ₹ 10,000. Q proved that the bill was accepted for value of Rs.7000 and as an accommodation to the plaintiff for the balance amount i.e., ₹ 3,000

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, P is entitled to recover only ₹ 7,000, since the consideration was originally absent in a part and so the drawer is entitled to receive only ₹ 7,000.

CONCLUSION:

Hence, referring to the provisions of the Negotiable Instruments Act, 1881 P is entitled to recover only ₹ 7,000

9. **A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs it and delivers it to B with a request to fill up the amount due payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C.**

Answer**FACTS:**

A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B, signs it and delivers it to B with a request to fill up the amount due payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, B is entitled to recover only such amount as was payable by A, since B stands in immediate relation with A.

Since the consideration consists of money, and the consideration was originally absent in part.

Also, C is entitled to recover the whole of cheque, since a holder in due course is entitled to receive whole of the amount of the negotiable instrument.

CONCLUSION:

Hence, referring to the provisions of the Negotiable Instruments Act, 1881

B is entitled to recover only such amount as was payable by A, and C is entitled to recover the whole of cheque.

10. Discuss with reasons, whether the following persons can be called as 'holder' under the Negotiable Instruments Act, 1881.

- i. X who obtains a cheque drawn by Y by way of gift.**
- ii. A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.**
- iii. M, who finds a cheque payable to bearer, on the road and retains it.**
- iv. B, the agent of C, is entrusted with an instrument without endorsement by C, who is payee.**
- v. B, who steals a blank cheque of A and forgets A's signature.**

Answer

- | | |
|------------------------|--|
| i. X is holder | Since X is entitled in his own name to the possession of the cheque and to receive the amount of the cheque. |
| ii. A is not a holder | Since he is not entitled to recover the amount of the cheque |
| iii. M is not a holder | Since the cheque was negotiated to him, and mere 'possession' does not make a person a holder, it is 'entitlement to possession' which makes a person 'holder'.
And M is not entitled to the possession and is not entitled to receive or recover the amount of the cheque, also a finder of a lost negotiable instrument has no right to receive the amount of the negotiable instrument |
| iv. B is not a holder | Since he is entitled to the possession of the negotiable instrument, but not in his own name and he is entitled to receive the amount of the negotiable instrument, but not in his own name. |
| v. B is not a holder | Since he is in wrongful possession of the negotiable instrument, also he is not at all entitled to the possession of the negotiable instrument.
He is not entitled to receive or recover the amount of the negotiable instrument, and a cheque containing forged signature of the drawer is a nullity, and does not confer any title to any person. |

11. B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1881, decide whether D can recover the money from A in the given case.

Answer

FACTS:

B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, D is HDC, since all the conditions given u/s 9 are satisfied, and D has acquired the negotiable instrument from C, and the title of C is not defective. Also it is immaterial that D had knowledge of the fraud.

D can recover payment from A, since HDC has the right to receive or recover payment of the negotiable instrument from all the prior parties

CONCLUSION:

Hence referring to the provisions of the Negotiable Instruments Act, 1881 D is a HDC, and D can recover payment from A.

12. J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it returned the bill to J. J tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such a manner that the bill seemed to have been folded for safe custody rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value. Is J liable to pay the bill under the provisions of the Negotiable Instruments Act, 1881.

Answer

FACTS:

J accepted a bill of exchange and gave it to K for the purpose of getting it discounted and handing over the proceeds to J. K having failed to discount it returned the bill to J. J tore the bill in two pieces with the intention of cancelling it and threw the pieces in the street. K picked up the pieces and pasted the two pieces together, in such a manner that the bill seemed to have been folded for safe custody rather than cancelled. K put it into circulation and it ultimately reached L, who took it in good faith and for value.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, L is a holder in due course, since he acquired the bill in good faith and for value and he became the processor of the bill payable to bearer. J cannot deny the validity of the bill, since no drawer or acceptor of a bill shall, in a suit by a holder in due course, be permitted to deny the validity of the bill as originally drawn, and thus, L who is the holder in due course, acquires a good title to the bill.

L is entitled to recover the payment of the bill from J and all prior parties, as a holder in due course has the right to sue all the prior parties.

CONCLUSION:

Hence, L is a holder in due course, J cannot deny the validity of the bill, and L is entitled to recover the payment of the bill from J and all prior parties

13. Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

A cheque marked 'Not Negotiable' is not transferable.

Answer

FACTS:

A cheque marked 'Not Negotiable' is not transferable.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 a cheque marked 'not negotiable' is transferable, but no transferee shall have a title better than that of the transferor, even though he acquired the cheque in good faith and without negligence.

CONCLUSION:

Hence, a cheque marked 'not negotiable' is transferable.

14. The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forges his name and pays the cheque into his own bank. Whether 'D' can recover the amount of cheque from 'A's banker. Decide

Answer

FACTS: The drawer, 'D' is induced by 'A' to draw a cheque in favour of P, who is an existing person. 'A' instead of sending the cheque to 'P', forges his name and pays the cheque into his own bank.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 D's banker is not liable, since a paying banker is not liable even if it is subsequently found that any endorsement on the cheque has been forged, and provided the paying banker made the payment in due course.

A's banker is not liable, since a collecting banker is not liable for any caused to the true owner due to defective title of holder, provided the collecting banker acted in good faith and without negligence while collecting the amount of the crossed cheque as an agent.

CONCLUSION:

Hence, D's banker is not liable, and A's banker is not liable, with reference to the Negotiable Instruments Act, 1881.

15. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his bankers. B, the drawee, wants to recover the amount from C's bankers.

Decide in light of the provisions of the Negotiable Instruments Act, 1881-

(i) Whether B, the drawer, can recover the amount of the cheque from C's bankers?

(ii) Whether C is the fictitious payee?

(iii) Would your answer be still the same in case C is a fictitious person?

Answer

FACTS:

A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected proceeds to the cheque through his bankers. B, the drawee, wants to recover the amount from C's bankers.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 B's banker is not liable, since a paying banker is not liable even if it is subsequently found that any endorsement on the cheque has been forged; provided the paying banker made the payment in due course.

A's banker is not liable since a collecting banker is not liable for any loss caused to the true owner due to defective title of the holder; provided the collecting banker acted in good faith and without negligence while collecting the amount of the crossed cheque as an agent.

C's banker is not liable, since it has neither collected nor paid the cheque and C is not the fictitious payee, since C exists. Also if C were a fictitious payee, the answer would have remained same, since protection is available to a collecting banker u/s 131 and paying banker u/s 85, irrespective of the fact that the payee is a fictitious person or not, and C's banker would have neither collected nor paid the cheque.

CONCLUSION:

Hence in light of the provisions of the Negotiable Instruments Act, 1881-A's banker is not liable C's banker is not liable, C is not the fictitious payee and answer would have remained same, if C were a fictitious payee.

16. A cheque payable to bearer is crossed generally and marked "not negotiable" the cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B.

Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the Negotiable Instruments Act, 1881.

Answer

FACTS:

A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B.

ISSUE:

According to the provisions of the Negotiable Instruments Act, 1881 B is liable to the true owner, since his title is not better than the title of the immediate transferor, who had either stolen or found the cheque, and was therefore, not en-titled to receive the amount of the cheque. The paying banker is not liable, provided it made the payment in due course, i.e. in good faith and without negligence. The collecting banker is not liable, since it has collected the payment of the cheque, acting as an agent, provided it has collected the payment of the cheque in good faith and without negligence.

CONCLUSION:

Hence, B is liable to the true owner and paying banker is not liable also the collecting banker is not liable.

17. A issues a cheque for ₹ 25,000 in favour of B. A has sufficient amount in his account with the bank. The cheque was not presented within reasonable time to the bank for payment and the bank, in the meantime, became bankrupt. Decide under the provisions of the Negotiable Instruments Act, 1881, whether B can recover money from A?

OR

'A' draws a cheque of ₹ 50,000. When the cheque ought to be presented to the drawee bank, the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of the drawer?

OR

B issued a cheque for Rs.1,25,000 in favour of S.B had sufficient amount in his account with the bank. The cheque was not presented within reasonable time to the bank for payment and the bank in meantime, became insolvent. Discuss, under the provisions of the Negotiable Instruments Act, 1881 whether S can recover money from B.

Answer

FACTS:

In the above all 3 cases, the drawer has drawn a cheque and he also has sufficient funds to make the payment of the cheque, but it is the Bank that fails before the cheque is presented.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, the drawer is discharged since he had sufficient balance when the cheque ought to be presented for the payment. The holder has defaulted in present-ing the cheque for payment within reasonable payment. And the drawer has suffered actual damages due to failure of the bank after issue of cheque but before presentation of the cheque.

CONCLUSION:

Hence referring to the provisions of the Negotiable Instruments Act, 1881 the drawer is discharged.

18.Examine, whether there is an offence under the Negotiable Instruments Act, 1881, if a drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as informs the bank to stop the payment.

OR

X draws a cheque in favour of Y. After having issued the cheque he informs Y not to present the cheque for payment. He also informs the bank to stop payment. Decide, under provisions of the Negotiable Instruments Act, 1881, whether the said acts of X constitute an offence against him

Answer

FACTS:

A drawer of a cheque after having issued the cheque, informs the drawee not to present the cheque as well as informs the bank to stop the payment.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, drawer has committed an offence u/s 138, since the words 'the cheque is returned by the bank unpaid due to insufficiency of funds in the account of the drawer' have to be given a wide interpretation to include dishonor of the cheque due to issue of the stop payment order given by the drawer to the bank, and also where the drawer asks the holder not to present the cheque.

CONCLUSION:

Hence, drawer has committed an offence u/s 138, with reference to the Negotiable Instruments Act, 1881.

19.V makes a gift of ₹ 10,000 to W through a cheque issued in favour of W. Later he (V) informs W not to present the cheque for payment and informs the bank also to stop payment. Examining the provisions of the Negotiable Instruments ACT, 1881, decide whether V's above acts constitute an offence.

Answer

FACTS:

V makes a gift of ₹ 10,000 to W through a cheque issued in favour of W. Later he (V) informs W not to present the cheque for payment and in-forms the bank also to stop payment

ISSUE:

According to the provisions of the Negotiable Instruments Act, 1881, V is not liable for offence u/s 138, since the drawer of the cheque is liable u/s 138 only if a cheque is issued to discharge a legally enforceable debt or other liability, also in present case, the cheque has been issued by V as a gift to W, and not for discharge of a legally enforceable debt or other liability.

Presumption of consideration is not applicable, since it can be proved that the cheque was given as gift.

CONSLUSION:

Thus, examining the provisions of the Negotiable Instruments ACT, 1881, V's above acts does not constitute an offence

20.State whether the following alterations are material under the Negotiable Instruments Act, 1881?

i. The holder of the bill inserts the word "or order" in the bill.

ii. The holder of the bearer cheque converts it into account payee cheque.

iii. A bill payable to X is converted into a bill payable to X and Y.

Answer

According to the provisions of the Negotiable Instruments Act, 1881

i. It is not a material alteration, since even after insertion of the words 'or order', the negotiable instrument continues to be an order instrument.

ii. It is a material alteration, sine it restricts the right of the holder to obtain the payment of the cheque in cash and to negotiate it, but such alteration is authorized by the Act, and so no party is discharged.

iii. It is a material alteration, since the right to receive the payment has been altered (before the alteration, the right to receive was with X, but after the alteration, the right is with X and Y jointly).

21.Mr. 'Wise' obtains fraudulently from 'R' a crossed cheque 'Not Negotiable'. He transfers the cheque to 'V', who gets the cheque encashed from ANS bank limited which is not the drawee bank. 'R' on coming to know about the fraudulent act of Mr. 'Wise' sues ANS bank limited for recovery of money. Examine with reference to relevant provisons of the Negotiable Instruments Act, 1881, whether 'R' will succeed in his claim? Would your answer be still the same in case Mr. 'Wise' does not transfer the cheque and gets the cheque encashed from ANS bank himself?**Answer****FACTS:**

Mr. 'Wise' obtains fraudulently from 'R' a crossed cheque 'Not Negotiable'. He transfers the cheque to 'V', who gets the cheque encashed from ANS bank limited which is not the drawee bank. 'R' on coming to know about the fraudulent act of Mr. 'Wise' sues ANS bank limited for recovery of money.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 the collecting banker is not liable towards R, since it has collected the payment of the cheque, acting as an agent, provided it has collected the payment of the cheque in good faith and without negligence,

Even if Mr. Wise collects the cheque himself, collecting banker is not liable for the same reasons cited above.

CONCLUSION:

Examining with reference to relevant provisions of the Negotiable Instruments Act, 1881, 'R' will not succeed in his claim also answer would be the same in case Mr. 'Wise' does not transfer the cheque and gets the cheque encashed from ANS bank himself.

22. A issues an open 'bearer' cheque for ₹ 10,000 in favor of B who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to C and D. when it is finally presented by D's banker, it is returned with remarks 'payment countermanded' by drawer. in response to this legal notice from D , A pleads that the cheque was alerted after it had been issued and therefore he is not bound to pay the cheque. Referring to the provisions of the Negotiable Instruments Act, 1881, decide whether A's argument is valid or not

Answer

FACTS:

A issues an open 'bearer' cheque for ₹ 10,000 in favor of B who strikes out the word 'bearer' and puts crossing across the cheque. The cheque is thereafter negotiated to C and D. when it is finally presented by D's banker, it is returned with remarks 'payment countermanded' by drawer. in response to this legal notice from D , A pleads that the cheque was altered after it had been issued and therefore he is not bound to pay the cheque.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 effects of striking off the word 'bearer', amounts to a material alteration. However, such material alteration is authorized by the Act, and hence the cheque is not discharged and remains valid.

Effects of crossing the cheque, amounts to a material alteration, and such alteration is authorized by the Act, and thus cheque is not discharged, it is valid.

A's agreement is not valid, since the reason for dishonor of the cheque is not 'material alteration', but 'payment countermanded by drawer'. Therefore, A is liable for the payment of the cheque, and he shall also be liable for dishonor of the cheque in accordance with the provisions of Sec. 138.

CONCLUSION:

Thus, referring to the provisions of the Negotiable Instruments Act, 1881, A's argument is not valid.

23. An acceptor accepts a bill of exchange but writes on it 'Accepted but payment will be made when goods delivered to me is sold' Decide the validity.

Answer

FACTS:

An acceptor accepts a bill of exchange but writes on it 'Accepted but payment will be made when goods delivered to me is sold'

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881 the acceptance is valid and the acceptor is liable, but it amounts to a qualified acceptance (since the acceptance is subject to some qualification or condition, viz., payment will be made when goods are sold). But, no other party shall be liable on the bill, unless it has given its consent to the qualified acceptance.

However, the holder is entitled to object to qualified acceptance, and treat the bill as dishonoured by non-acceptance, and in such a case, all the prior parties shall be liable towards the holder.

CONCLUSION:

Hence, the acceptance is valid and the acceptor is liable.

24. Examine the validity of the following in the light of the provisions of the Negotiable Instruments Act, 1881:

- i. An oral acceptance**
- ii. An acceptance by mere signature without writing the word 'accepted'.**

Answer

According to the provisions of the Negotiable Instruments Act, 1881

- i. The acceptance is not valid, since it is not given in writing and is not signed.
- ii. The acceptance is valid, since the drawee has signed the bill and writing the word 'accepted' is not a statutory requirement.

25. Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

A bill of exchange originally drawn by M for a sum of ₹ 10,000, but accepted by R only for ₹ 7,000.

Answer

FACTS:

A bill of exchange originally drawn by M for a sum of ₹ 10,000, but accepted by R only for ₹ 7,000.

ISSUE:

According to the provisions of the Negotiable Instruments Act, 1881 the acceptance is valid and the acceptor is liable for ₹ 7,000, but it amounts to qualified acceptance (since the acceptance is given for a part of the sum mentioned in the bill).

CONCLUSION:

Referring to the provisions of the Negotiable Instruments Act, 1881, the acceptance is valid.

26. Referring to the provisions of the Negotiable Instruments Act, 1881, examine whether acceptance of a bill of exchange in the following situations shall be treated as 'qualified acceptance where the acceptor':

- i. Undertakes to pay only ₹ 2,000 for a bill drawn for ₹ 5,000.**
- ii. Declares the payment to be independent of any other event:**
- iii. Writes: "accepted, payable at ABC bank."**

Answer

According to the provisions of the Negotiable Instruments Act, 1881

- i. The acceptance is qualified- since the acceptance is given for a part of the sum mentioned in the bill.
- ii. The acceptance is not qualified- since the acceptance is given without any condition or qualification.
- iii. The acceptance is not qualified- since an acceptance to pay at a particular place amounts to general acceptance (but if it is expressly stated that the bill shall be paid at the specified place only and not elsewhere, it amounts to a qualified acceptance).

27. X draws a bill on Y but signs it in the fictitious name of Z. the bill is payable to the order of Z. the bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881.

Answer**FACTS:**

X draws a bill on Y but signs it in the fictitious name of Z, the bill is payable to the order of Z, the bill is duly accepted by Y, M obtains the bill from X thus becoming its holder in due course

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, Y is liable to M for the payment of the bill, since where a bill is signed by the drawer in a fictitious name; the acceptor cannot allege against a holder in due course that the drawer is fictitious. And it can be proved that the signatures of the person signing in the capacity of the drawer and that of the person signing in the capacity of the endorser are in same handwriting.

CONCLUSION:

Hence, in the light of the provisions of the Negotiable Instruments Act, 1881. Y is liable to M for the payment of the bill.

28. 'N' is the holder of a bill of exchange made payable to the order of 'P'. The bill of exchange contains the following endorsements in blank:

First endorsement 'P',

Second endorsement 'Q',

Third endorsement 'R',

Fourth endorsement 'S',

'N' strikes out, without S's consent, the endorsements by 'Q' and 'R'. Decide with reasons whether 'N' is entitled to recover anything from S under the provisions of Negotiable Instruments ACT, 1881.

Answer**FACTS:**

'N' is the holder of a bill of exchange made payable to the order of 'P'. The bill of exchange contains the following endorsements in blank:

First endorsement-'P', Second endorsement-Q', Third endorsement 'R', Fourth endorsement- 'S', 'N' strikes out, without S's consent , the endorsements by 'Q' and 'R'.

ISSUES:

According to the provisions of the Negotiable Instruments Act, 1881, effects of striking off the name of an endorser, where the holder cancels the name of any party liable on the negotiable instrument, such a party and all parties subsequent to him are discharged. S is discharged, since the holder, N has struck off the name of Q and R, and S is the party subsequent to Q and R. N is not entitled to recover any-thing from S, since S has been discharged due to cancellation of endorsement of Q and R.

CONCLUSION:

Hence, referring to the provisions of the negotiable instruments Act, 1881, N is not entitled to recover anything from S.

29. Calculate the date of maturity of the following bill of exchange explaining the relevant rules relating to determination of the date of maturity as provided in the Negotiable Instruments Act, 1881:

- (i) A bill of exchange dated 31st August, 2007 is made payable 3 months after date**
- (ii) A Bill of Exchange drawn on 15th October, 2007 is payable 20 days after sight and the bill is presented for acceptance on 31st October, 2007**

Examine with reference to the provisions of the Negotiable Instruments Act, 1881.

Answer



AMOUNT OF GRATUITY

Monthly Rate Employee

$15/26 \times (\text{Last Drawn Wage}) \times$
(No. of years of service)

Piece Rate Employees

$15/26 \times (\text{Avg of last 3 months wages}) \times$
(No. of years of service)

Seasonal Establishment

Only During Season

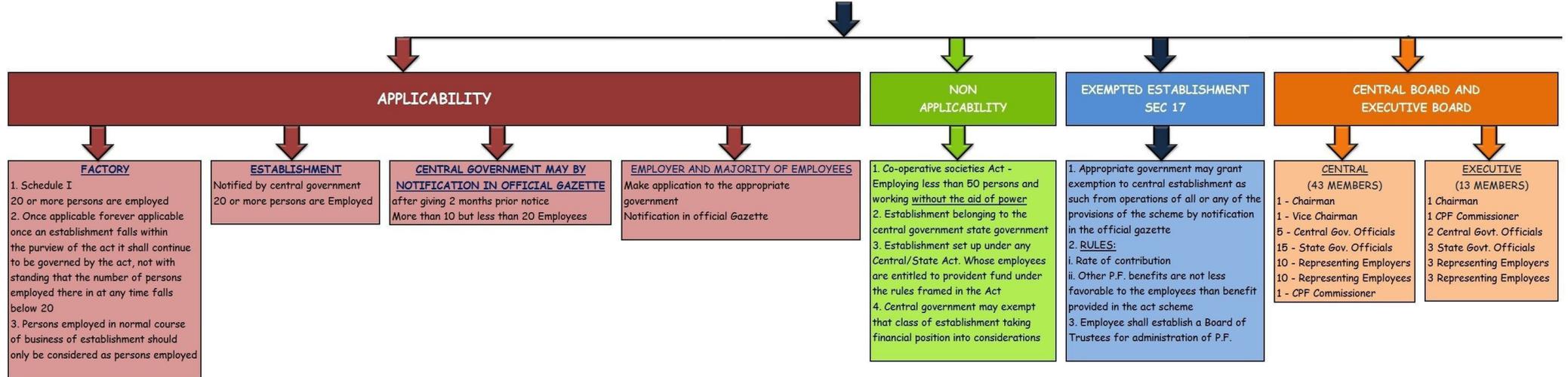
$7/26 \times (\text{Last Drawn Wage}) \times$
(No. of years of service)

Throughout
The Year

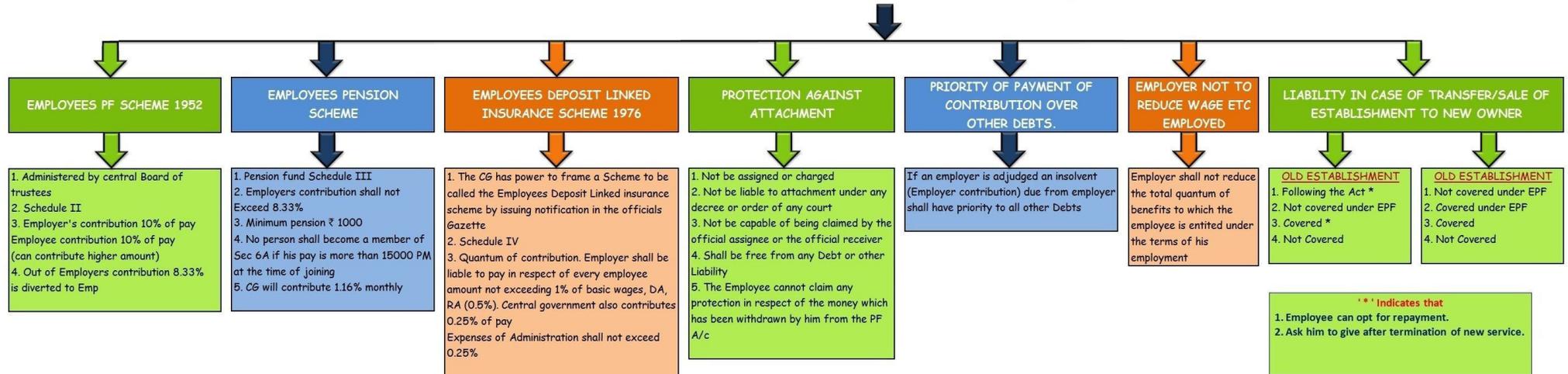
* SALARY / WAGES = BASIC + DA

CHART No.1

EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS, PROVISIONS ACT 1952



EMPLOYEES PROVIDENT FUND AND MISCELLANEOUS, PROVISIONS ACT 1952



Indian Contract Act (Contract of Guarantee)

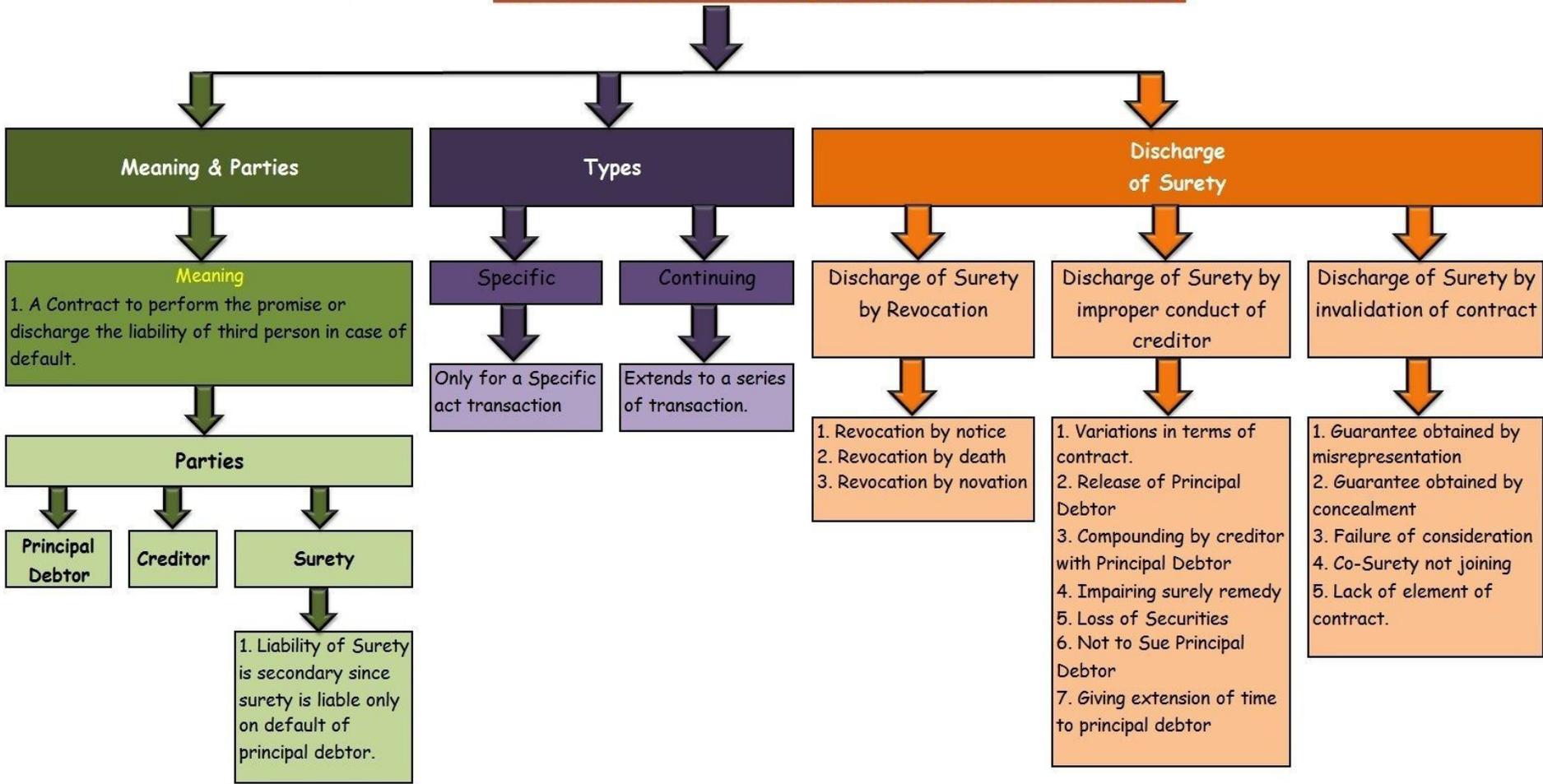
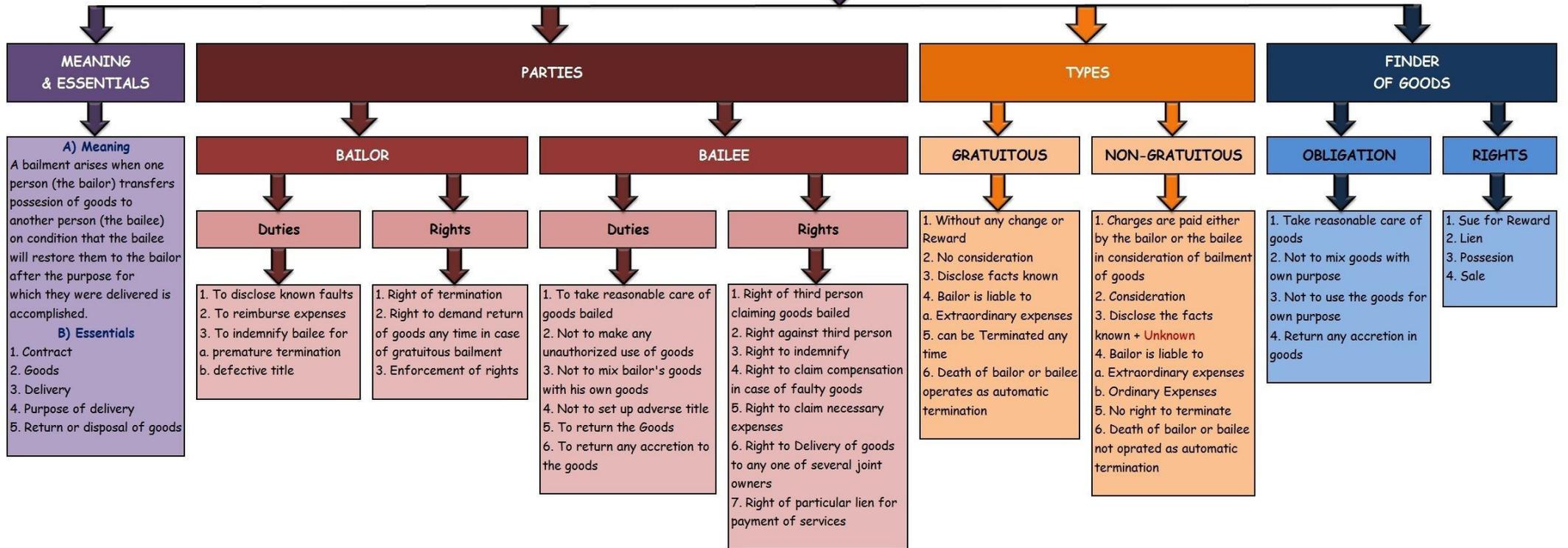


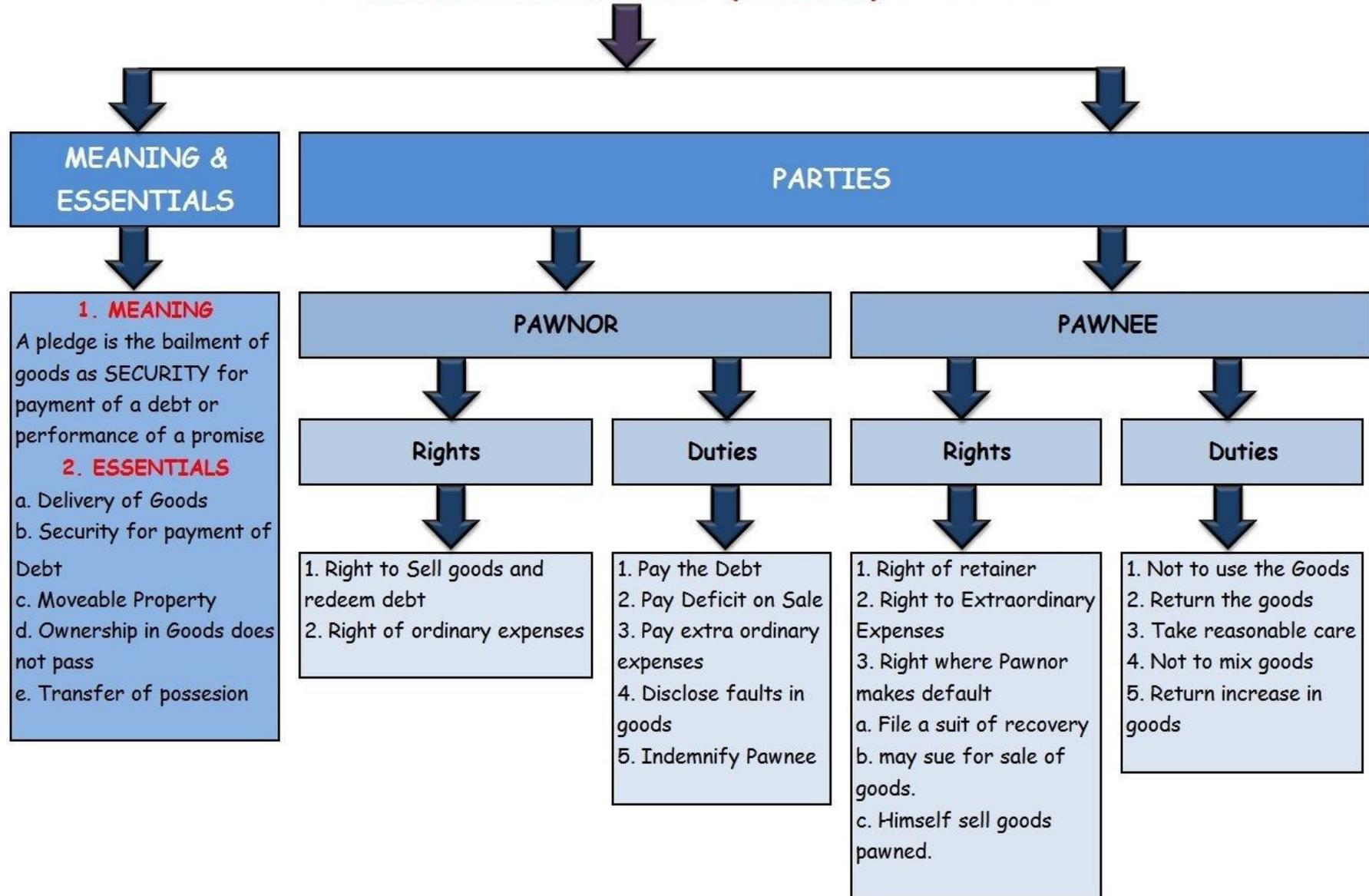
CHART No.3

Indian Contract Act (Contract of Bailment)

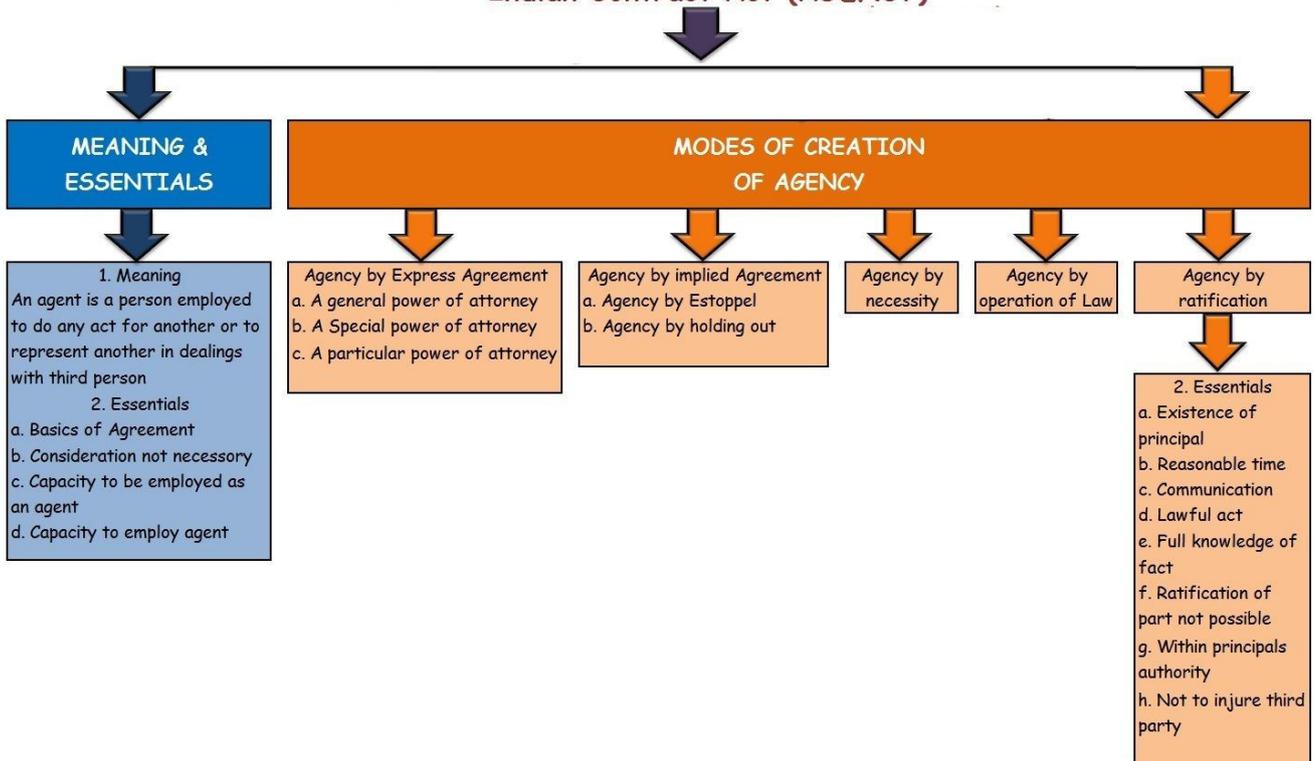


Kinds of Lien -		
BASIS	PARTICULAR LIEN	GENERAL LIEN
Nature of right	Particular lien gives right to retain only such goods in respect of which charges due remain unpaid.	General lien gives right to retain any goods belonging to another person for any amount due from him.
Conditions for exercising lien	Particular lien can be exercised only when some labour or skill has been expended on goods, resulting in an increase in value of goods.	General lien may be exercised even though no labour or skill has been expended on the goods.
Right to whom	Every bailee is entitled to particular Lien.	General lien can be exercised by only such persons as are specified u/s171, e.g.,bankers, factors,wharfingers. Attorneys of High Court, policy brokers, any other bailee may exercise general lien if there is an agreement to this effect.

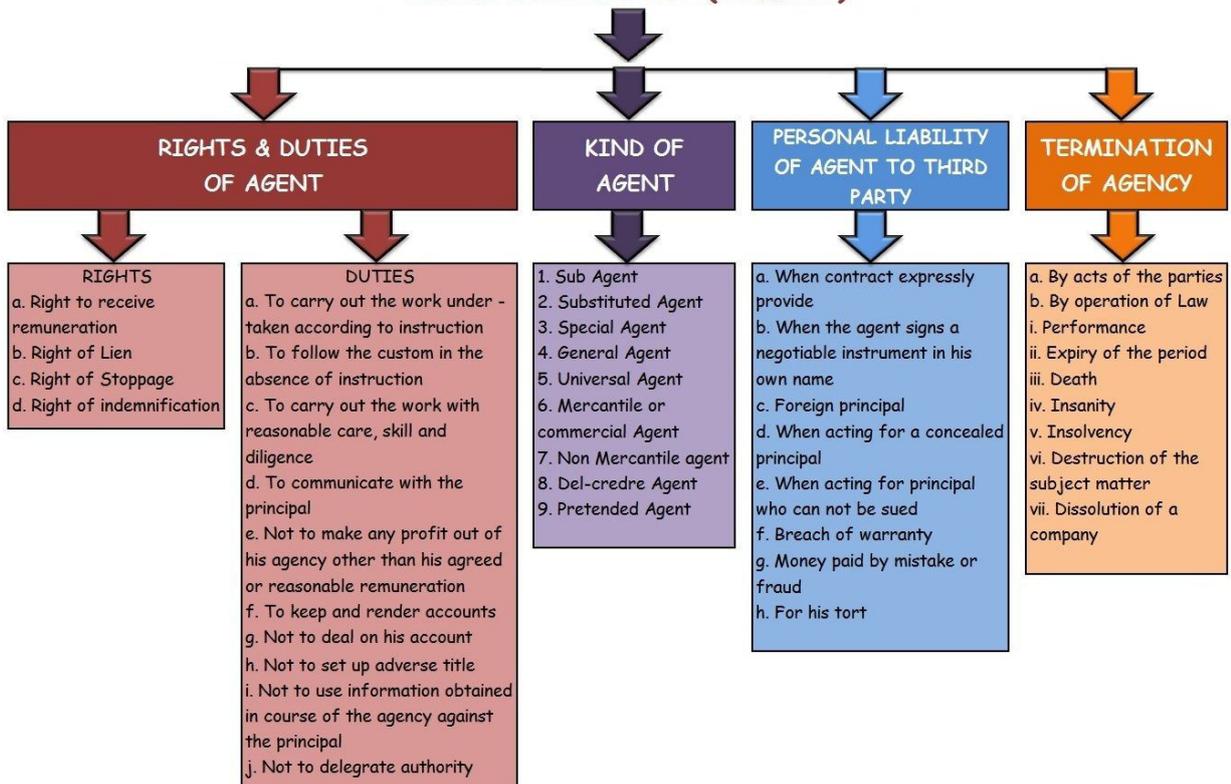
Indian Contract Act (PLEDGE)



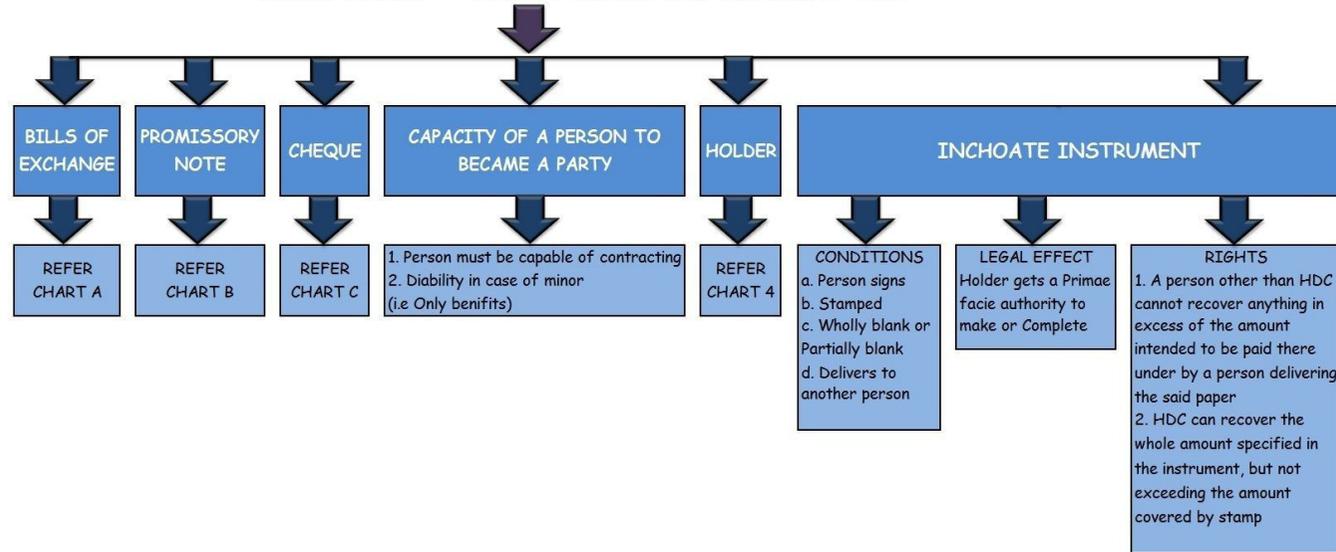
Indian Contract Act (AGENCY)



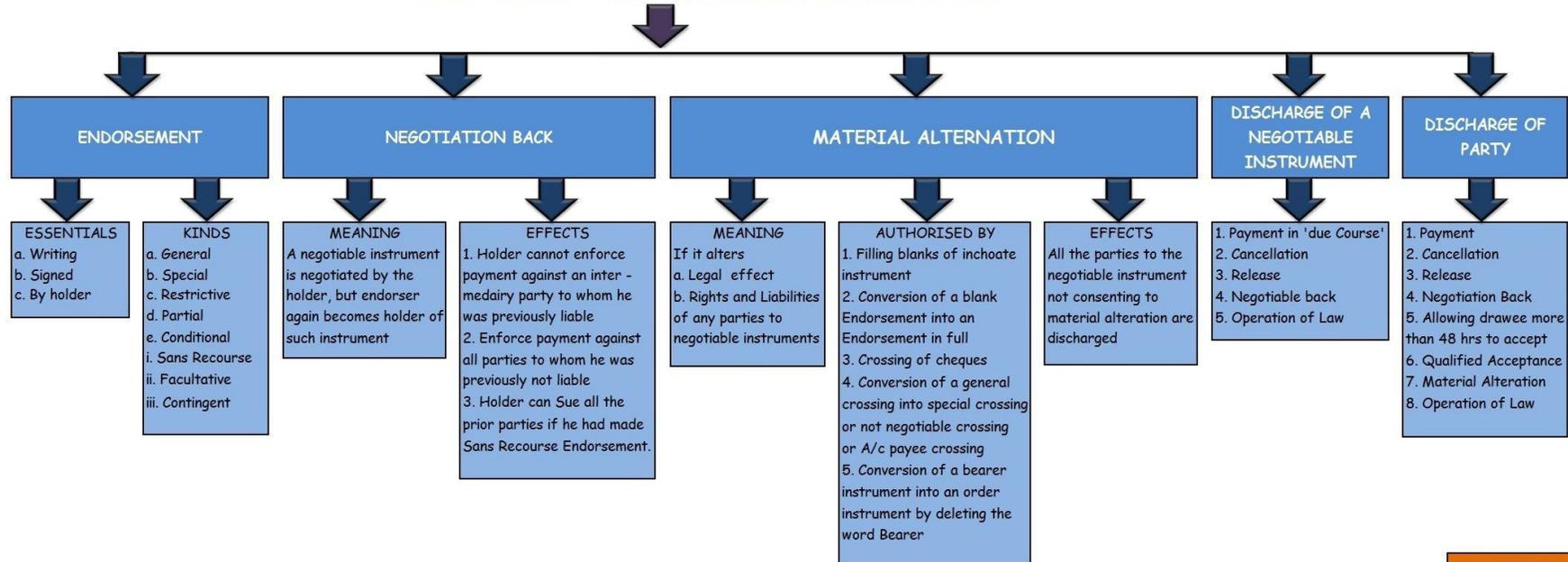
Indian Contract Act (AGENCY)



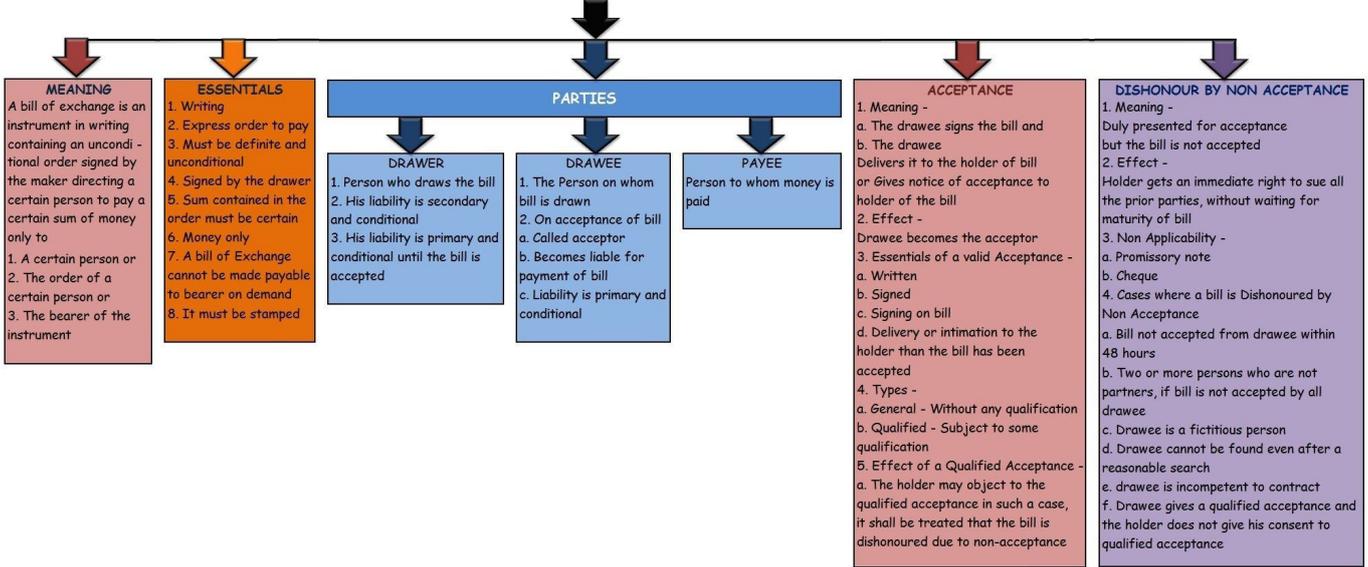
PAPA CHART - NEGOTIABLE INSTRUMENT ACT



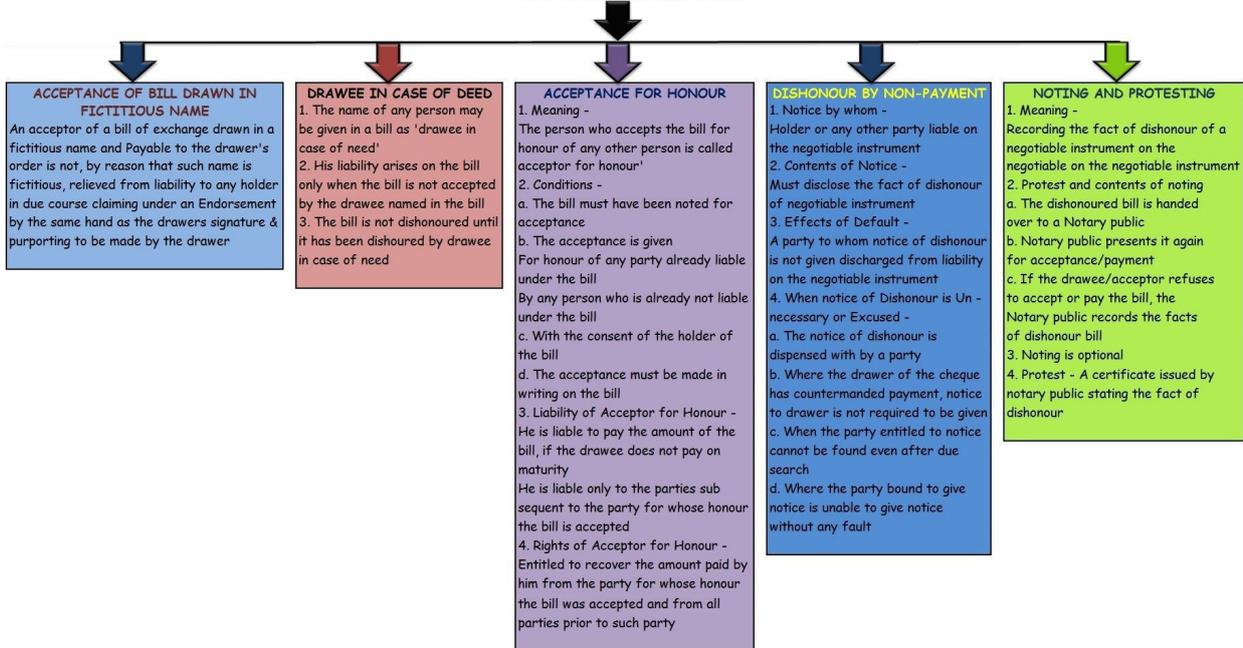
PAPA CHART - NEGOTIABLE INSTRUMENT ACT



**NEGOTIABLE INSTRUMENTS CHART (A)
BILL OF EXCHANGE**

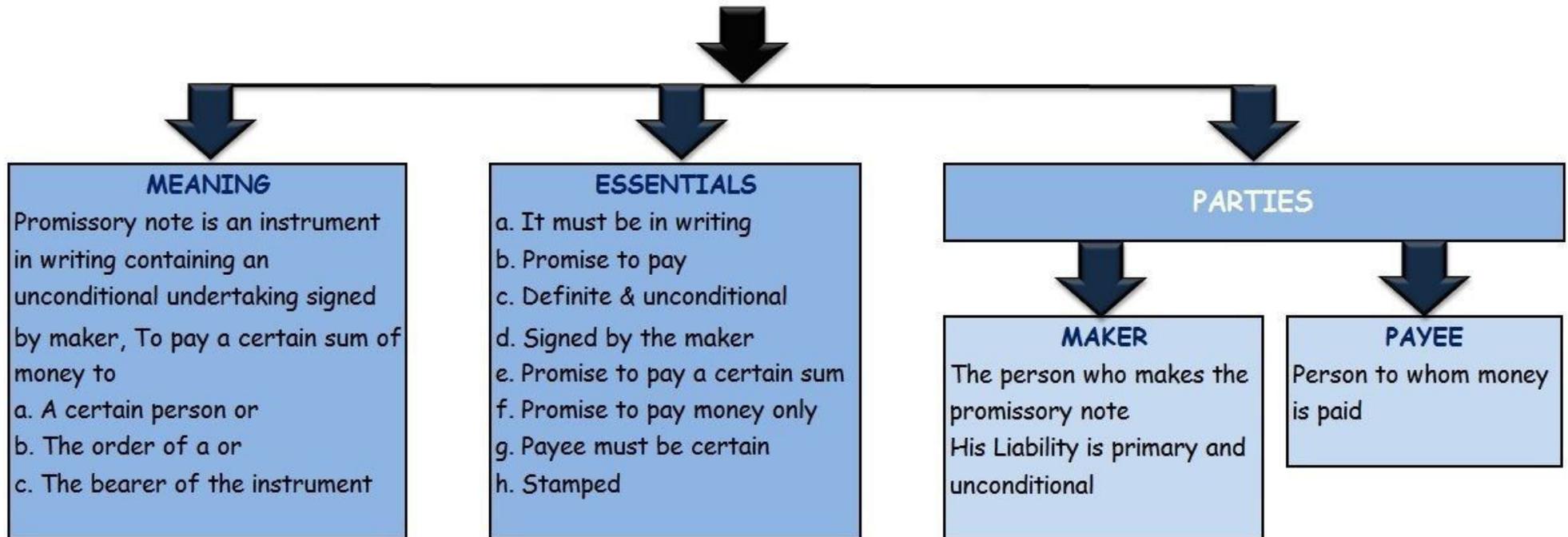


**NEGOTIABLE INSTRUMENTS CHART (A)
BILL OF EXCHANGE**



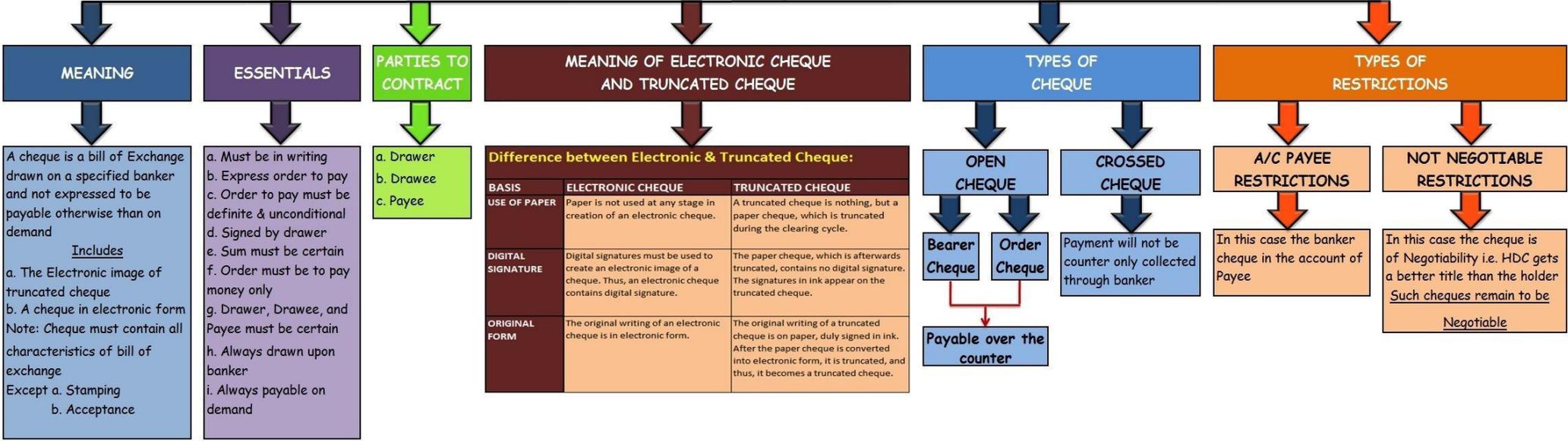
NEGOTIABLE INSTRUMENT CHART (B)

PROMISSORY NOTE



NEGOTIABLE INSTRUMENTS CHART (C)

CHEQUE



MEANING

A cheque is a bill of Exchange drawn on a specified banker and not expressed to be payable otherwise than on demand

Includes

- a. The Electronic image of truncated cheque
- b. A cheque in electronic form

Note: Cheque must contain all characteristics of bill of exchange

- Except a. Stamping
- b. Acceptance

ESSENTIALS

- a. Must be in writing
- b. Express order to pay
- c. Order to pay must be definite & unconditional
- d. Signed by drawer
- e. Sum must be certain
- f. Order must be to pay money only
- g. Drawer, Drawee, and Payee must be certain
- h. Always drawn upon banker
- i. Always payable on demand

PARTIES TO CONTRACT

- a. Drawer
- b. Drawee
- c. Payee

Difference between Electronic & Truncated Cheque:

BASIS	ELECTRONIC CHEQUE	TRUNCATED CHEQUE
USE OF PAPER	Paper is not used at any stage in creation of an electronic cheque.	A truncated cheque is nothing, but a paper cheque, which is truncated during the clearing cycle.
DIGITAL SIGNATURE	Digital signatures must be used to create an electronic image of a cheque. Thus, an electronic cheque contains digital signature.	The paper cheque, which is afterwards truncated, contains no digital signature. The signatures in ink appear on the truncated cheque.
ORIGINAL FORM	The original writing of an electronic cheque is in electronic form.	The original writing of a truncated cheque is on paper, duly signed in ink. After the paper cheque is converted into electronic form, it is truncated, and thus, it becomes a truncated cheque.

TYPES OF CHEQUE

- OPEN CHEQUE**
 - Bearer Cheque
 - Order Cheque

Payable over the counter

CROSSED CHEQUE

Payment will not be counter only collected through banker

TYPES OF RESTRICTIONS

- A/C PAYEE RESTRICTIONS**

In this case the banker cheque in the account of Payee

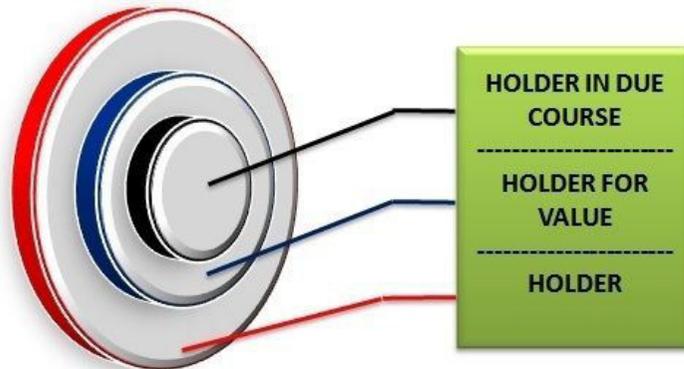
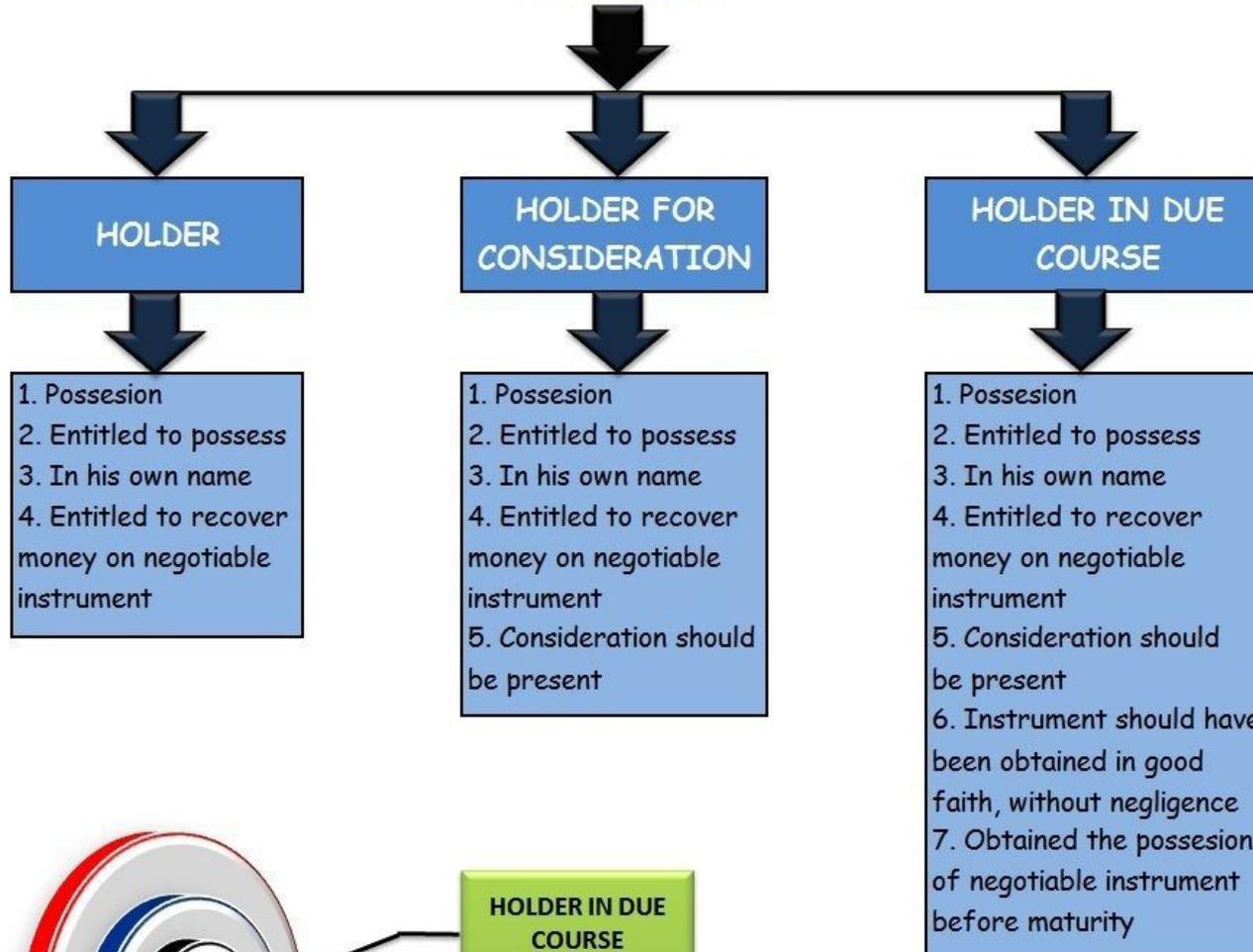
- NOT NEGOTIABLE RESTRICTIONS**

In this case the cheque is of Negotiability i.e. HDC gets a better title than the holder

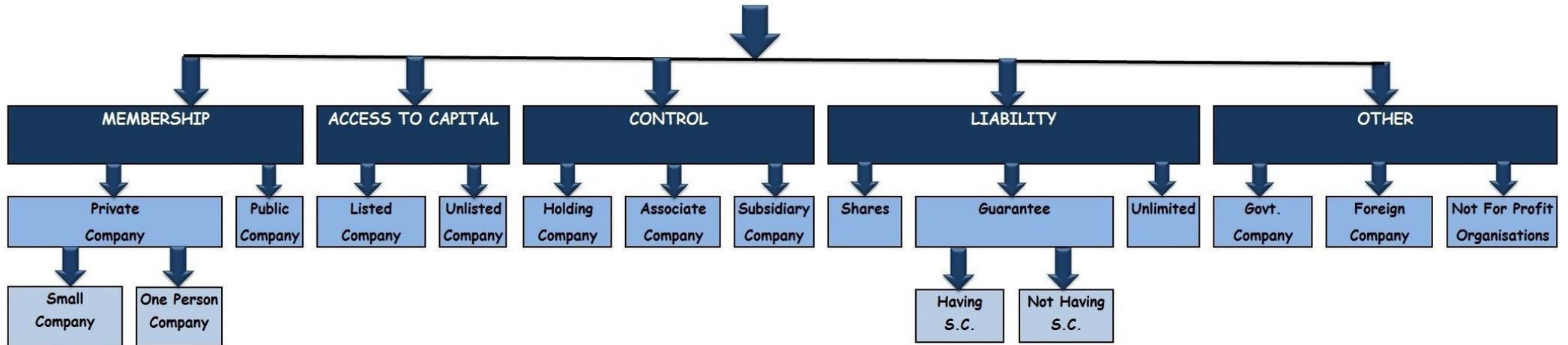
Such cheques remain to be Negotiable

NEGOTIABLE INSTRUMENT CHART

HOLDER



TYPES OF COMPANIES



KINDS OF SHARES



Types of Shares



Preference share: Preference shares are shares which have the following 2 preferential rights over the equity shares of the company

1. Dividend
2. Repayment of capital

Equity Share: Equity shares are those shares which are not preference shares



PARTICIPATION

DIVIDEND

CONVERSION

REDEMPTION



Participating

Non Participating

Cumulative

Non Cumulative

Convertible

Non Convertible

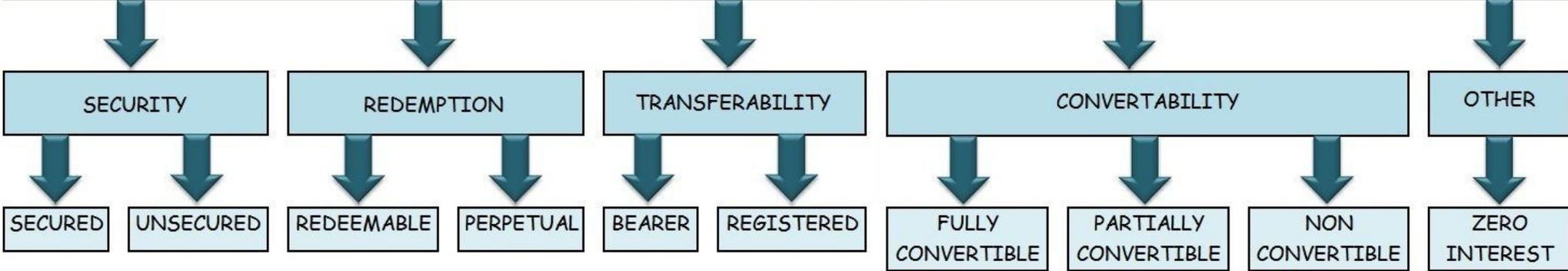
Redeemable

Non Redeemable

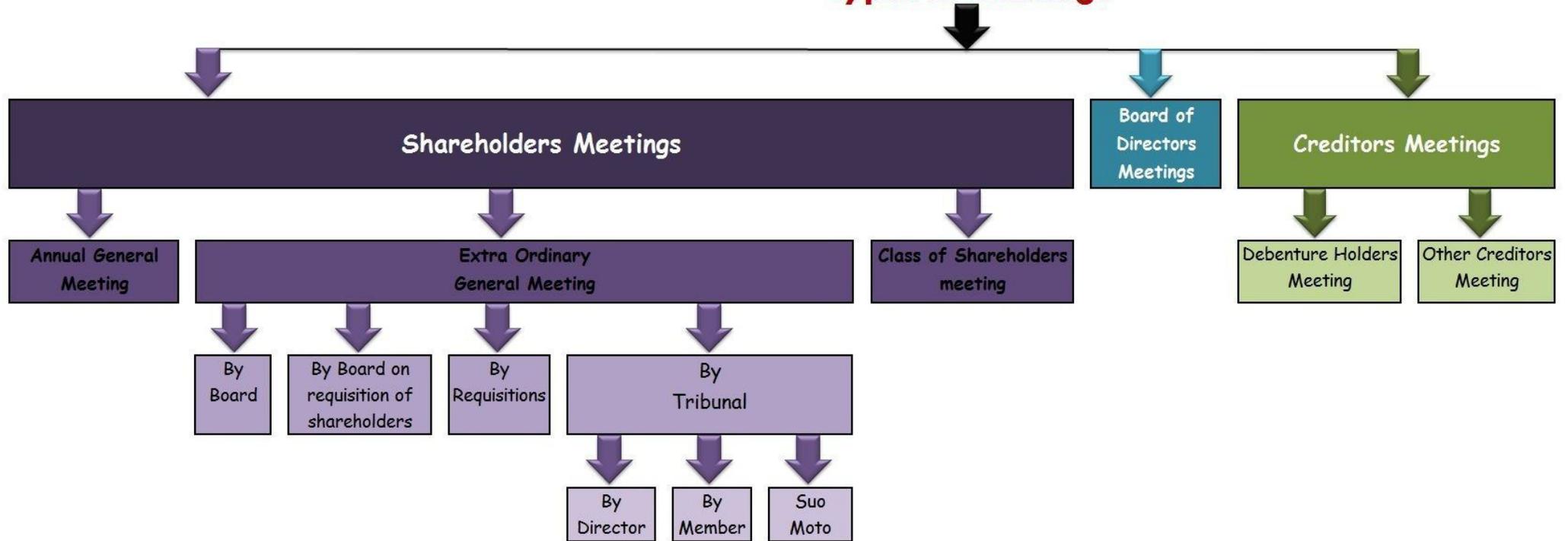
KINDS OF DEBENTURES



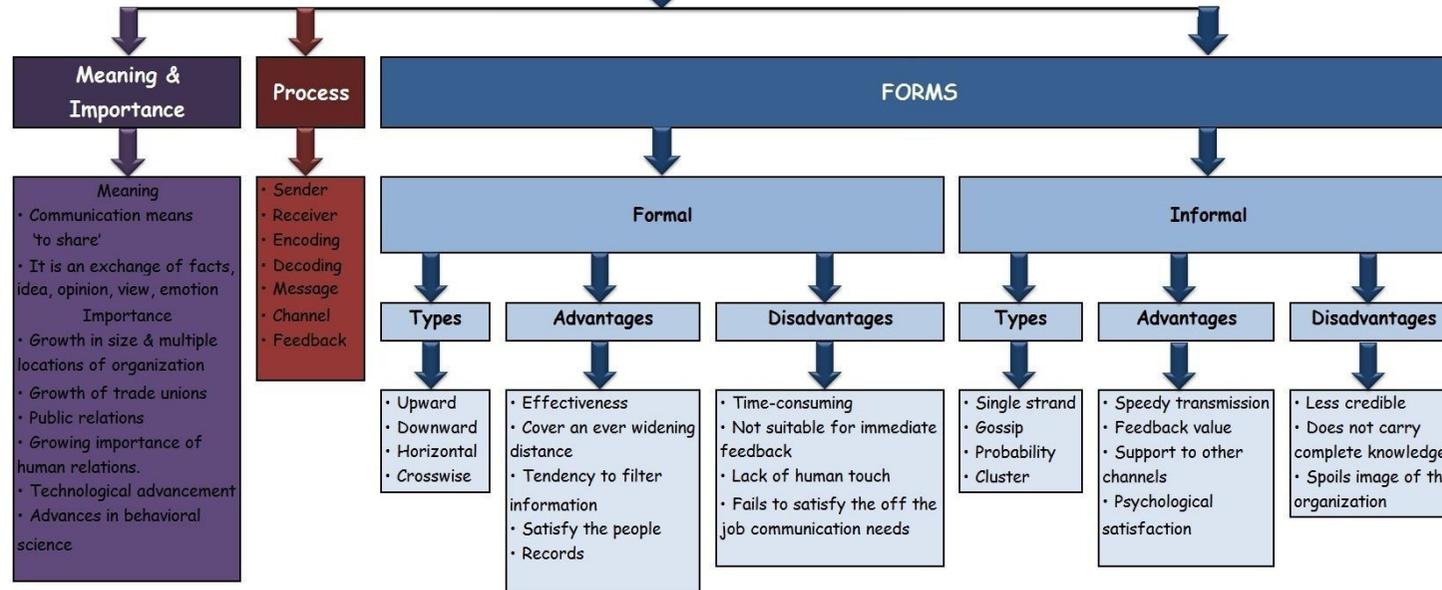
Types of Debentures



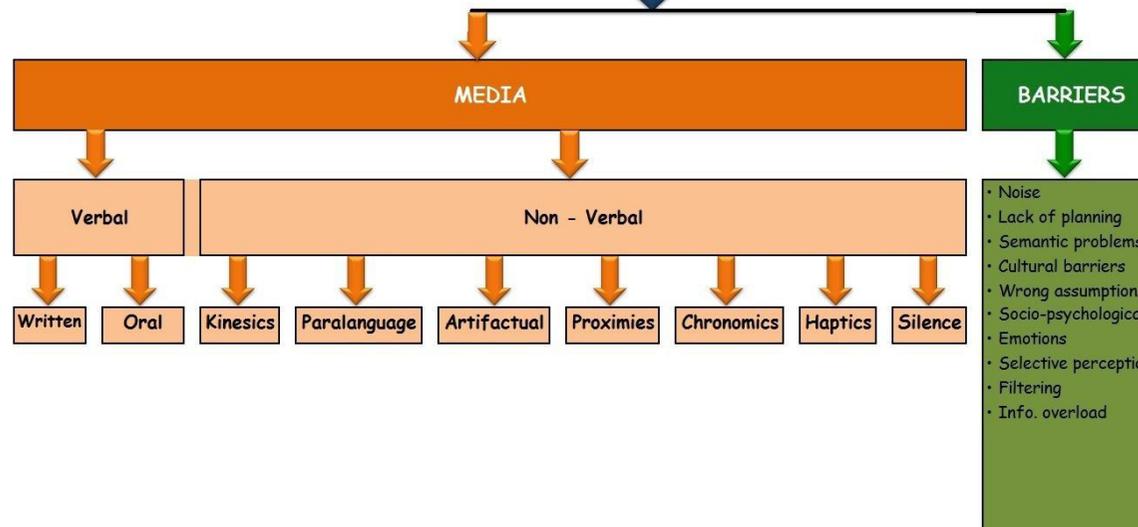
Types of Meetings



COMMUNICATION CHAPTER (1) Essentials of Communication

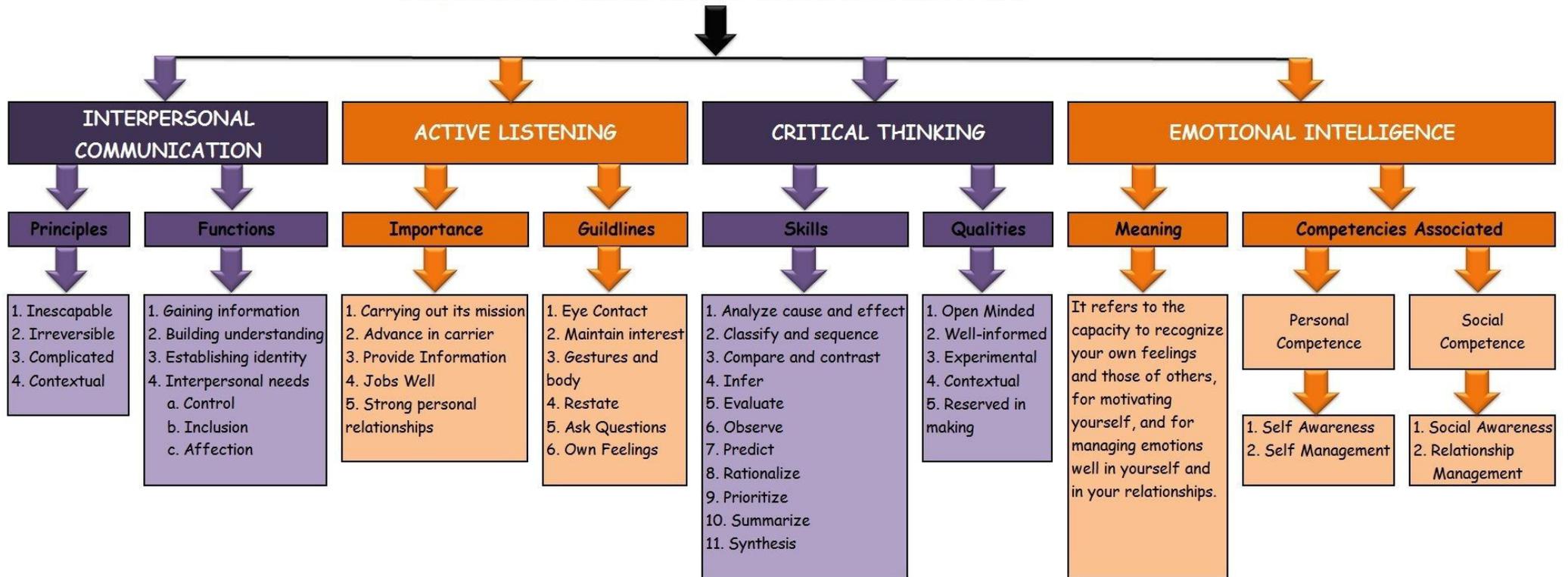


COMMUNICATION CHAPTER (1) Essentials of Communication

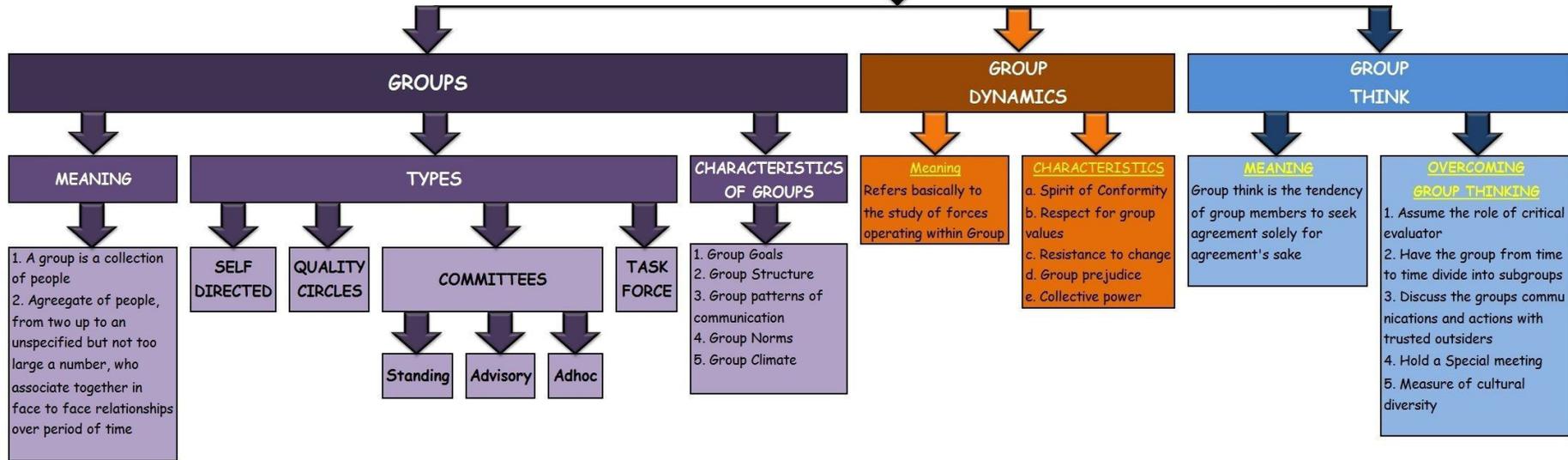


COMMUNICATION CHAPTER (2)

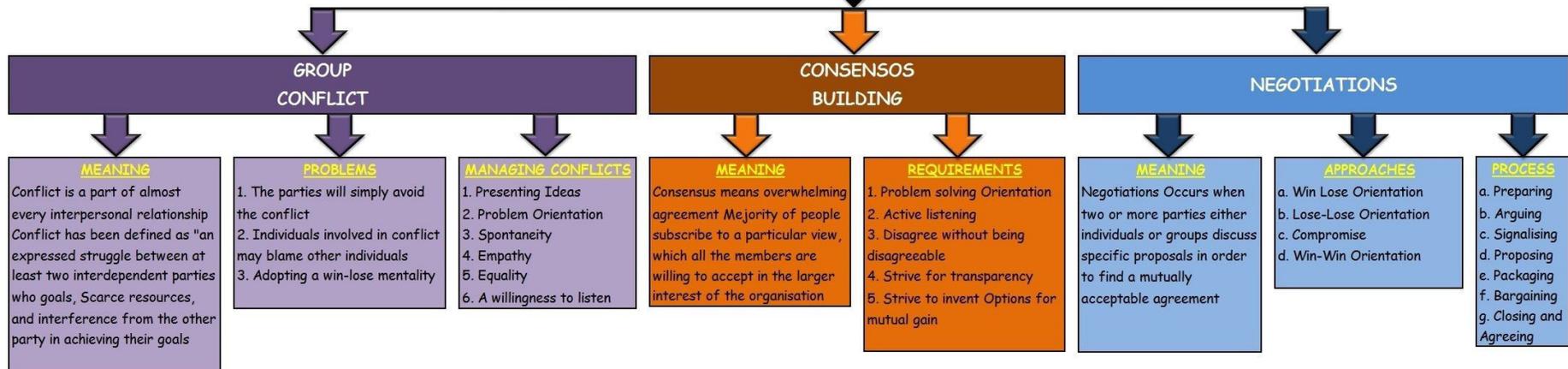
INTERPERSONAL COMMUNICATION SKILLS



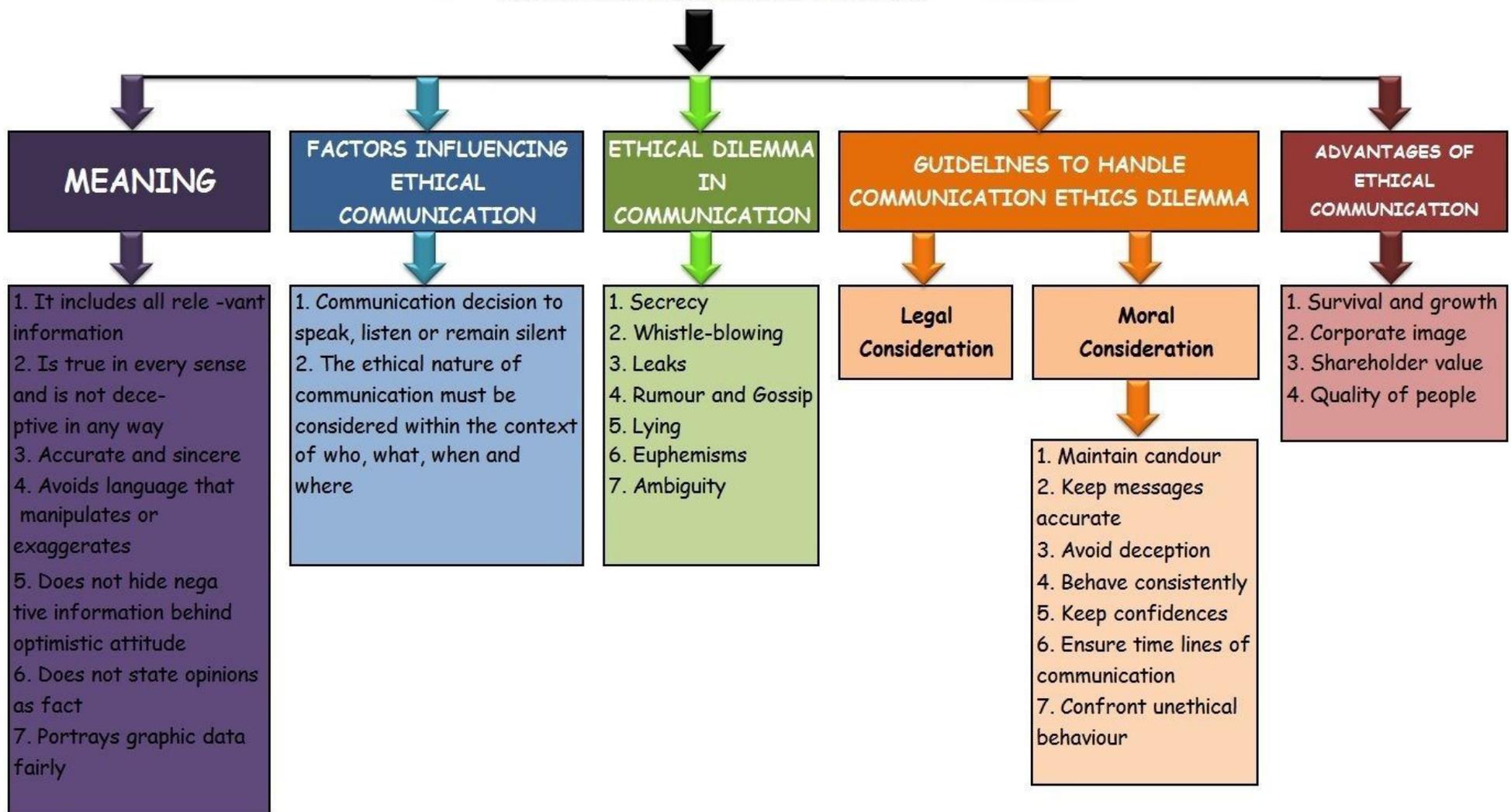
COMMUNICATION CHAPTER (3)
GROUP DYNAMICS



COMMUNICATION CHAPTER (3)
GROUP DYNAMICS



COMMUNICATION CHAPTER (4) COMMUNICATION ETHICS



COMMUNICATION CHAPTER (5) CORPORATE CULTURE CHANGE, INNOVATIVE SPIRIT

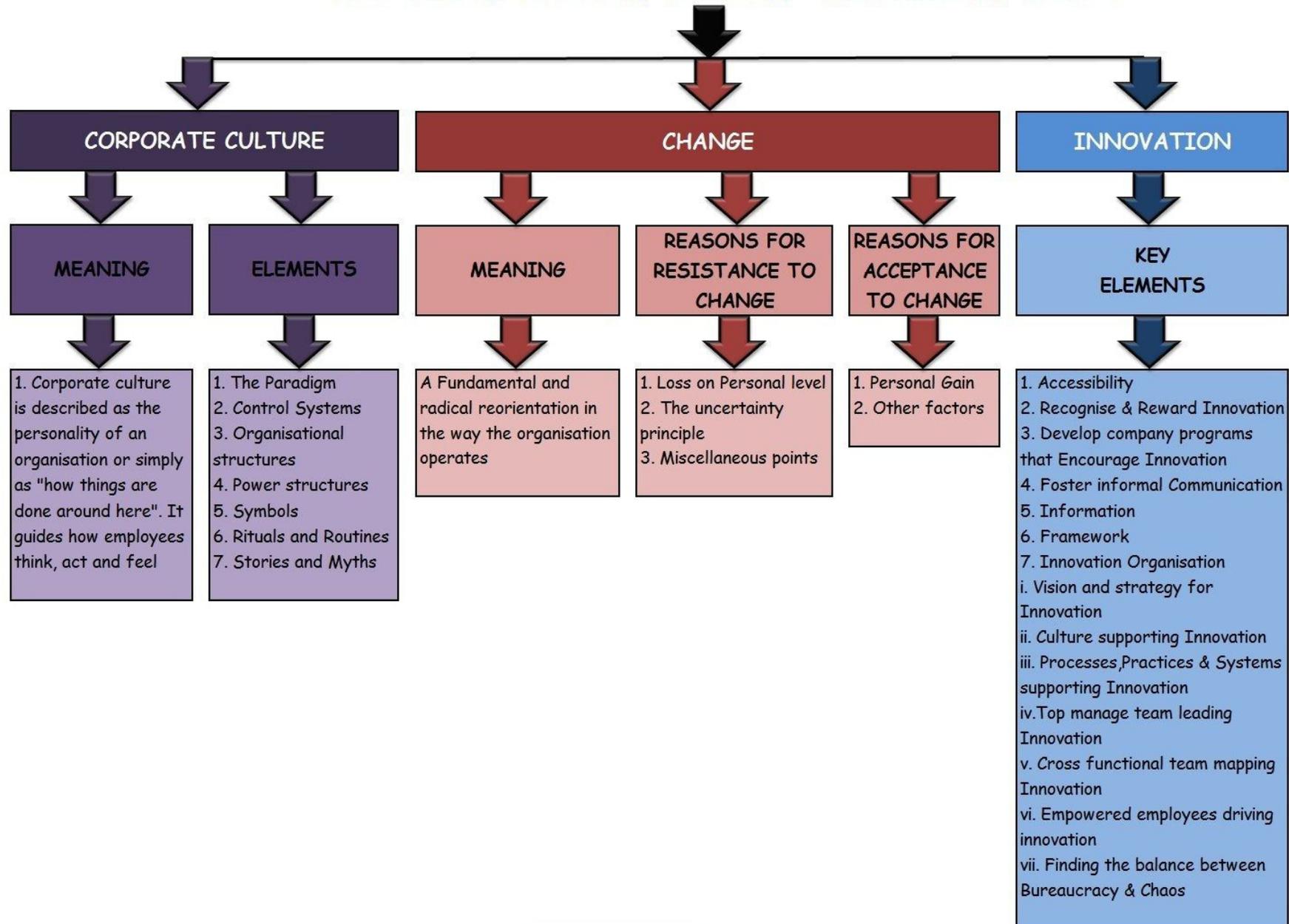
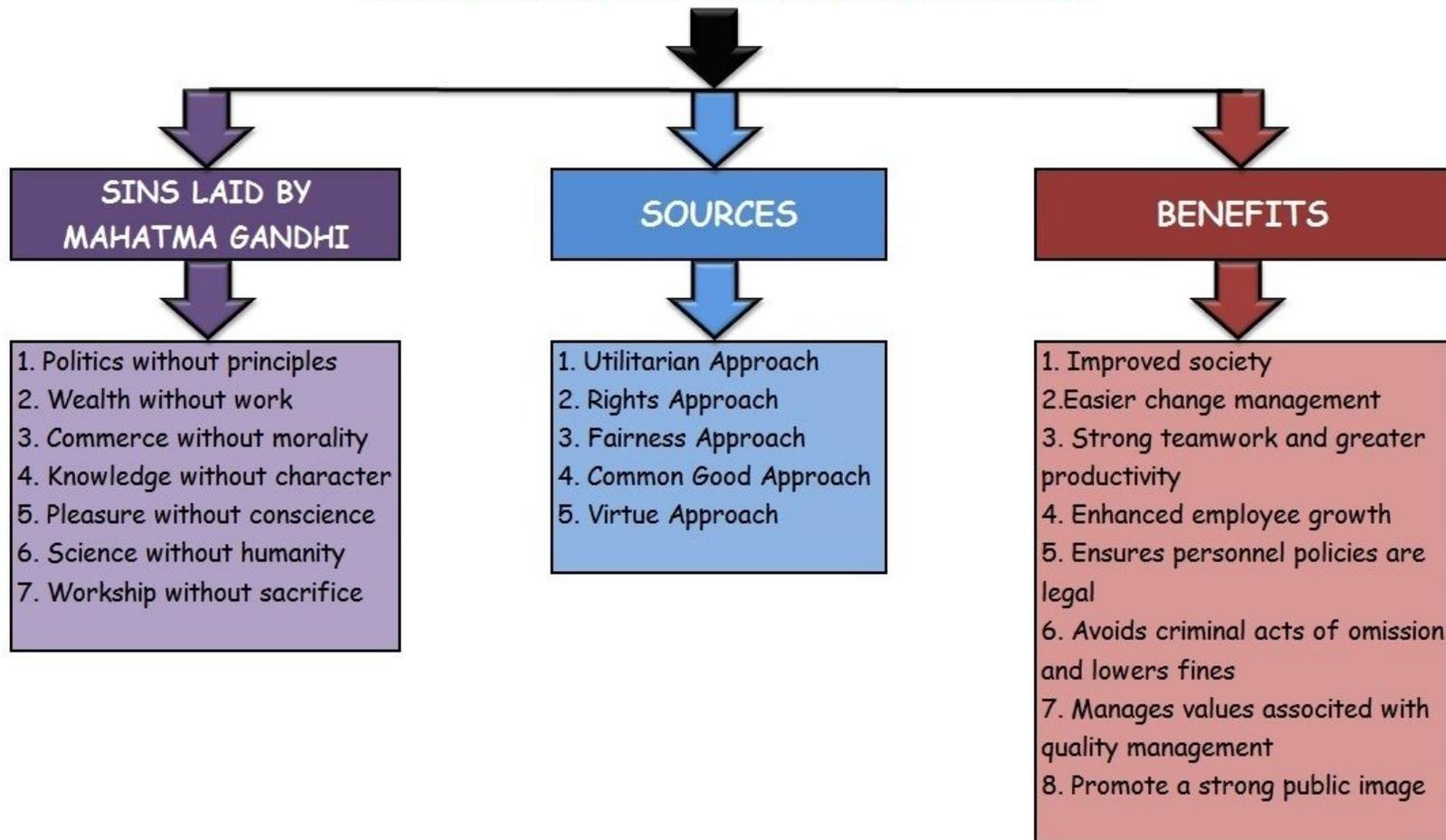


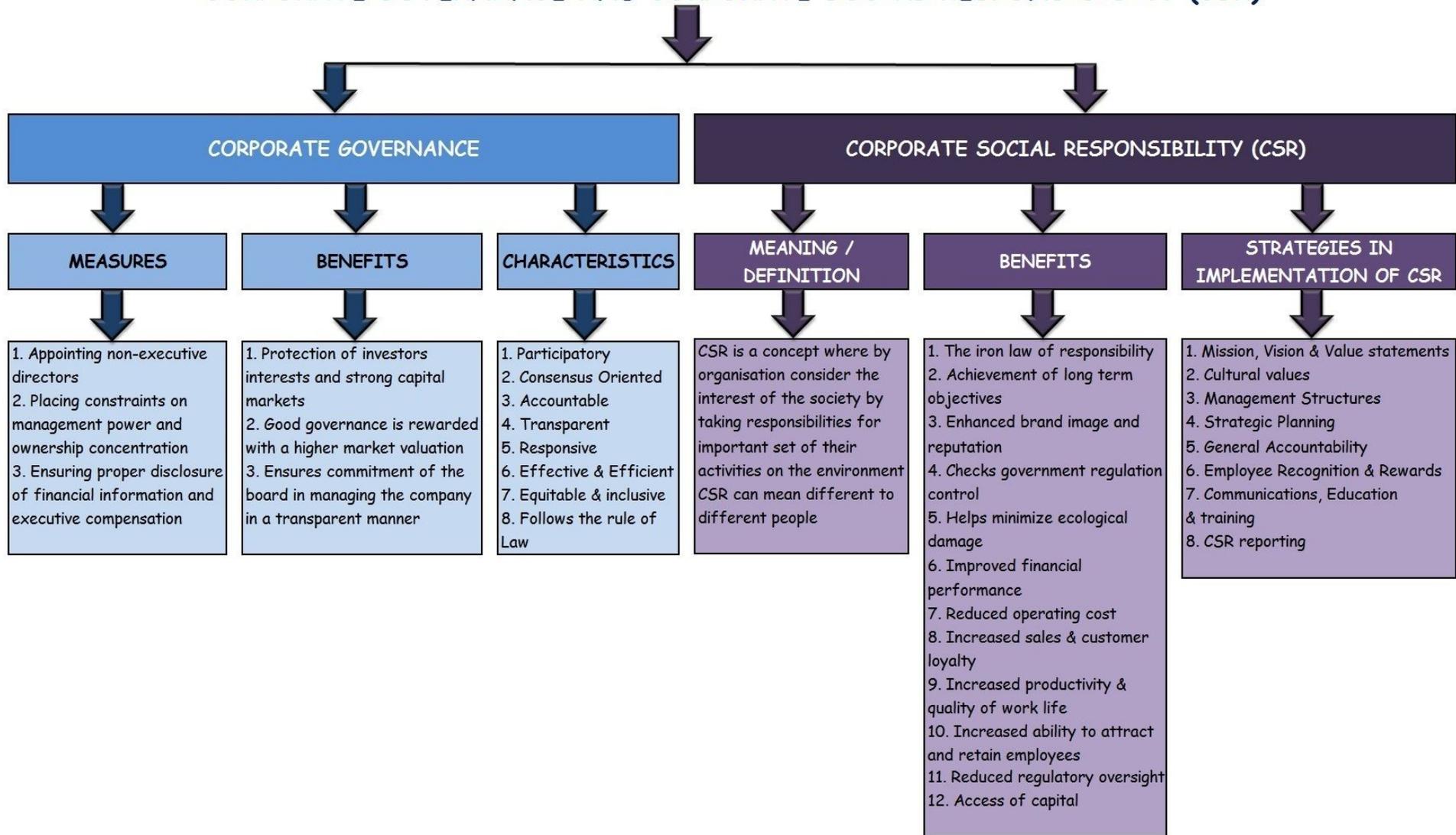
CHART No.20

ETHICS CHAPTER (1) PRINCIPLES OF BUSINESS ETHICS

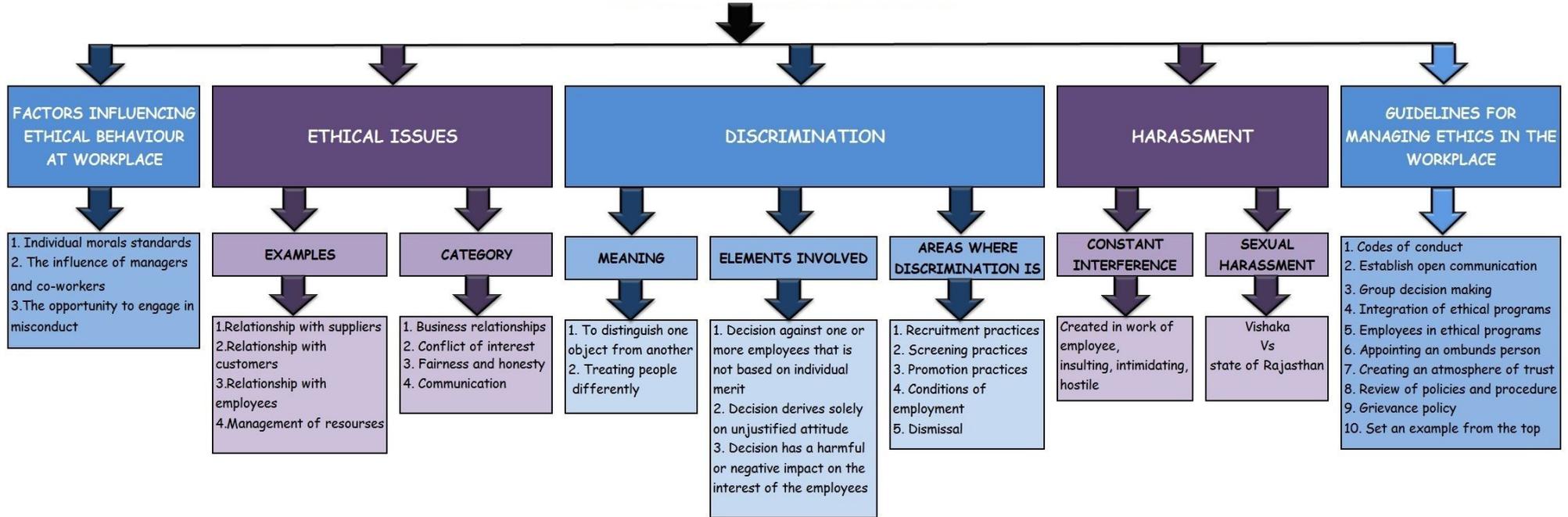


ETHICS CHAPTER (2)

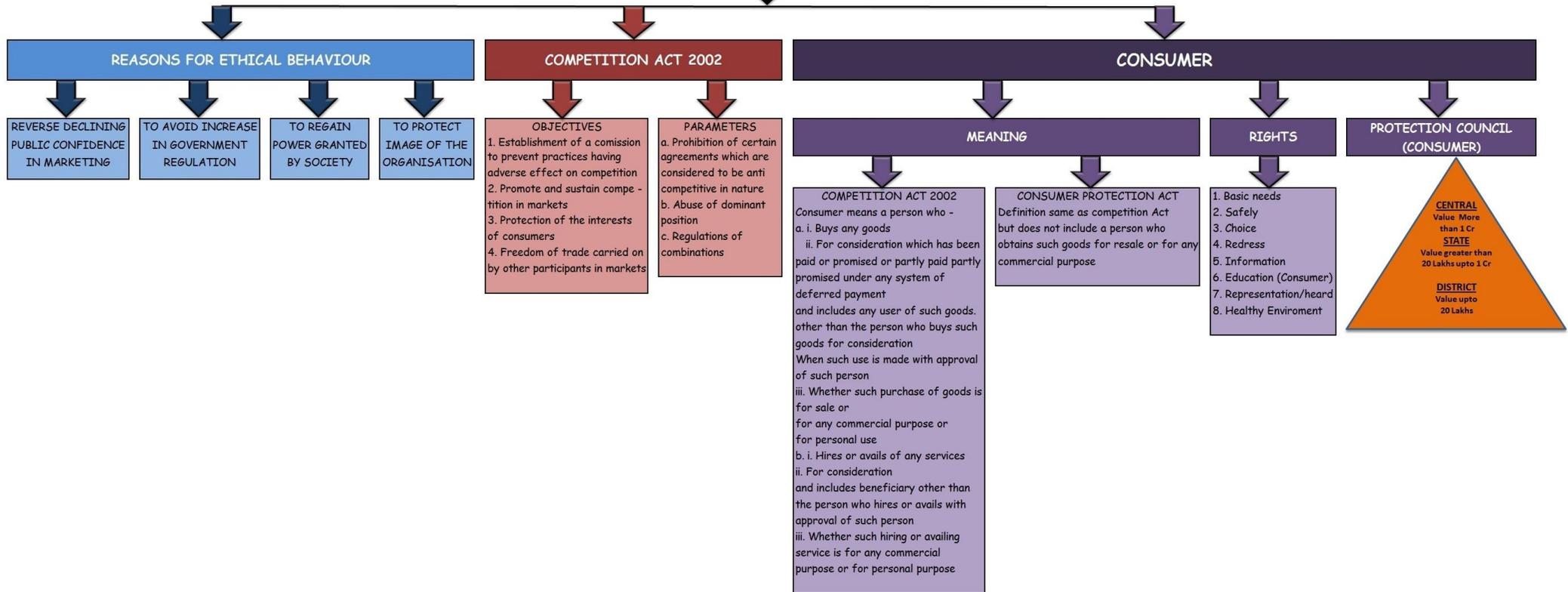
CORPORATE GOVERNANCE AND CORPORATE SOCIAL RESPONSIBILITY (CSR)



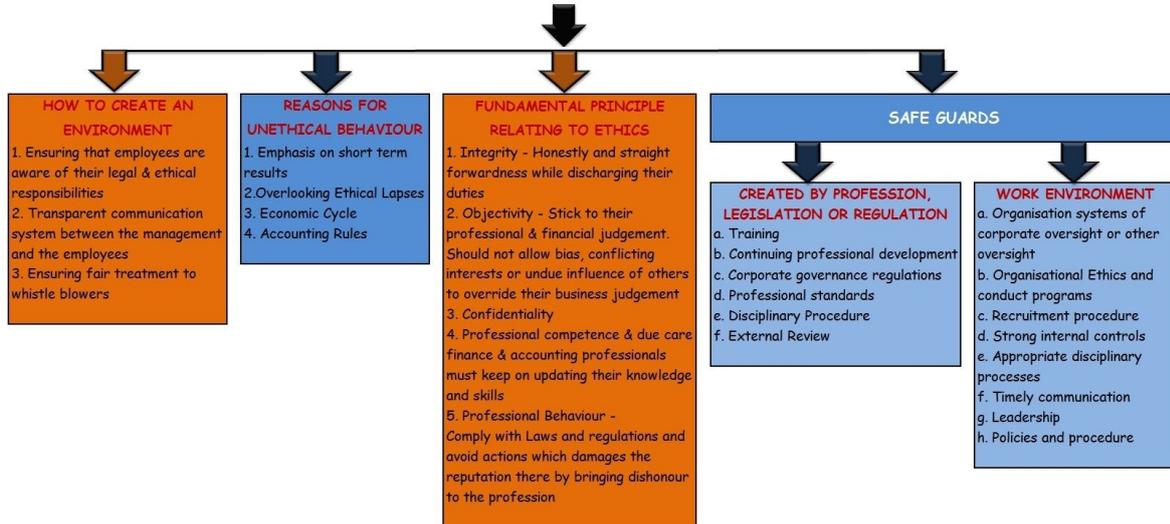
**ETHICS CHAPTER (3)
WORKPLACE ETHICS**



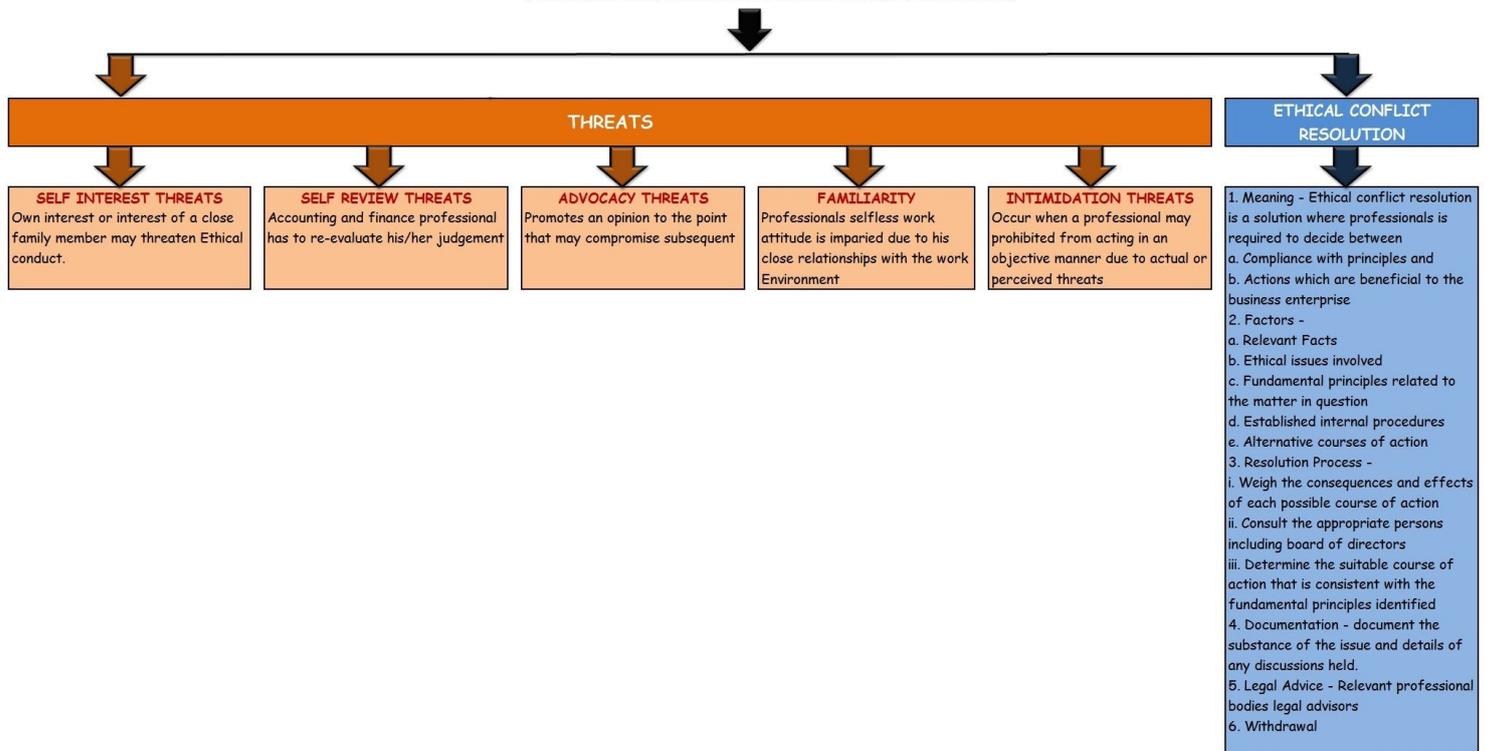
ETHICS CHAPTER (5)
ETHICS IN MARKETING AND CONSUMER PROTECTION



**ETHICS CHAPTER (6)
ETHICS IN ACCOUNTING AND FINANCE**



**ETHICS CHAPTER (6)
ETHICS IN ACCOUNTING AND FINANCE**



IPCC LAW ETHICS AND COMMUNICATION

By Ankita Mehta Patni

Glad to announce that full paper of Law in November 2016 came from my book

Suggested Answer Paper

Q No.	Question	Reference	Marks
1 (a)	'N', an Industrialist, has been fighting a long drawn litigation with 'S', another Industrialist. To support his legal campaign, 'N' enlists the services of 'R,' a Legal Expert, stating that an amount of ` 5 Lakhs would be paid, if 'R' does not take up the brief of 'S'. 'R' agrees, but at the end of the litigation, 'N' refuses to pay. Decide whether 'R' can recover the amount promised by 'N' under the provisions of the Indian Contract Act, 1872.	Refer Volume 2 - Page No. 22 Ans : Agreement between N and S falls in the category of an exception to an agreement in restraint of trade, as it is a Service Agreement, and hence shall be valid. Thus, R can recover the amount from N.	5
1 (b)	'V', the Transferee, acquired 300 Equity Shares of ABC Limited from 'S', the Transferor. But the signature of 'S', the Transferor, on the Transfer Deed was forged. 'V', after getting the Shares registered by the Company in his name and subsequently sold 250 Shares to 'X' on the basis of the Share Certificate issued by ABC Ltd. 'V' and 'X' were not aware of the forgery. Explain the rights of 'S', 'V' and 'X' against the Company with reference to the aforesaid Equity Shares under the provisions of the Companies Act, 2013.	Refer Volume 3- Page No. 115 Ans : Forged Transfer is a nullity. So, the True Owner (S) can have his name restored on the Register of Members and Claim Dividend, if any, not paid to him, during the intervening period. V & X: The Company, having issued a Share Certificate, is estopped from denying the liability under its own act. It has to compensate V & X for the loss suffered by them.	5
1 (c)	What is meant by "Environment Ethics"? How does its non- adoption lead to 3P's, viz. Polluter Pays Principle? Explain.	Refer Volume 1- Page No. 59	5
1 (d)	What do you mean by "Consensus-Building" in a group? Briefly explain the efforts taken by Mediators and Facilitators in the Consensus Building process.	Refer Volume 1- Page No. 103	5
2 (a) (i)	On 1 January 2015, Arihant Industries Ltd agreed with the employees for payment of an annual bonus linked with production or productivity, instead of bonus based on profits subject to the limits of 30% of their Salary Wages during the relevant accounting year. It was also agreed by the Employees that they will not claim Minimum Bonus stated u/s 10 of the Payment of Bonus Act, 1965. As per the aforesaid agreement, the Employees claimed bonus, but the Company refused to honour the agreement. On refusal of the Company, the employees moved to the Court for relief. Decide as per the provisions of the Payment of Bonus Act, 1965 whether the Employees will get the relief. Also decide whether inspite of the aforesaid agreement whether the Employees are still entitled to receive Minimum Bonus.	Refer Volume 1- Page no. 13, 15 Ans: 1. Company's decision to grant bonus of 30% based on production: Agreement providing for bonus exceeding 20% of the Salary / Wages earned by the Employee is null and void. Employees cannot get any relief from Court for recovering Bonus exceeding 20%. 2. Agreement with the Employees not to claim Minimum Bonus u/s 10: Agreement providing /restricting the Employee to receive less than Minimum Bonus of 8.33% of Salary / Wage is null and void. Employee can get relief from the Court for receiving the Minimum Bonus of 8.33%.	4

Q No.	Question	Reference	Marks
2 (a) (ii)	<p>'K' is an Employee of Bannari Ltd, which works five days in a week. 'K' was not in continuous service during the financial year 2015–2016. However, he worked only for 150 days and due to an accident arising in the course of his employment, he was on leave with full pay for 45 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide:</p> <p>1. Whether 'K' is entitled to Gratuity payable under the Act?</p> <p>2. Would your answer remain the same in case Bannari Ltd works 6 days in a week?</p>	<p>Refer Volume 1- page no. 18</p> <p>Ans : Total Working Days (including Accident Leave) = 150 + 45 = 195 days. If Bannari Ltd works 5 days a week, K is eligible for Gratuity as he has worked for > 190 days. If Bannari Ltd works 6 days a week, K is not eligible for Gratuity as he has worked for < 240 days.</p>	4
2 (b)	<p>Mr. Ram is a CEO of a Pharmaceutical Company. His R & D Department, while experimenting with a chemical molecule, sees the possibility that the molecule may be developed into drug for a rare, painful, life-threatening genetic disease that afflicts one child only in ten million. But to develop the drug, his Company, may have to invest huge sum of the Shareholder's money, despite the drug not having wide salability. Is Mr. Ram confronted by an Ethical Dilemma? If yes, how should he resolve the issue?</p>	<p>Ans : Mr. Ram has to choose between – (a) development of a Drug for a painful and life threatening disease which affects 1 in 10 Million, and (b) spending huge sum of Shareholders money for such development. Both are positive and ethically conflicting choices. As a socially responsible person, Ram has to think in terms of eliminating a serious illness, but at the same time he must be careful in dealing with Shareholders money.</p>	4
2 (c)	<p>Explain the "Socio-psychological Barriers" to effective communication.</p>	<p>Refer Volume 1- page 84</p>	4
3 (a) (i)	<p>State with reasons whether the following agreements are valid or void under the provisions of the Indian Contract Act, 1872:</p> <p>1. Vijay agrees with Saini to sell his black horse for `3,00,000. Unknown to both the parties, the horse was dead at the time of the agreement.</p> <p>2. Sarvesh sells the Goodwill of his shop to Vikas for `10,00,000 and promises not to carry on such business forever and anywhere in India.</p>	<p>Ans : Void in both the cases</p> <p>1. Sec. 20 – Mutual Mistake of fact</p> <p>2. Sec. 27 – Restraint of Trade</p>	4
3 (a) (ii)	<p>Explain the meaning of "Suit for Injunction" as per the provisions of the Indian Contract Act, 1872.</p>	<p>Refer Volume 2 - Page No 30</p>	4
3 (b)	<p>"To maintain social contract between society and business, the trusteeship relations are essential." Discuss the role of Business Ethics in this reference.</p>	<p>Refer Volume 1</p>	4
3 (c)	<p>What is meant by "Emotional Intelligence" and "Emotional Quotient"? State any six Social Competencies associated with Emotional Intelligence.</p>	<p>Refer Vol 1- Page 18</p>	4

Q No.	Question	Reference	Marks
4 (a) (i)	<p>XYZ Company Ltd, at a General Meeting of members of the Company passes an Ordinary resolution to buy-back 30% of its Equity Share Capital. The Articles of the Company empower the Company for buy-back of Equity Shares. The Company further decides that the payment for buy-back be made out of the proceeds of the Company's earlier issue of Equity Shares. Explaining the provisions of the Companies Act, 2013, and stating the sources through which the buy-back of Companies own Shares be executed. Examine:</p> <p>(1) Whether Company's proposal is in order?</p> <p>(2) Would your answer be still the same in case the Company instead of 30% decide to buy-back only 20% of its Equity Share Capital?</p>	<p>Refer volume 3- page No. 86</p> <p>Ans : Refer Sec.67: Company can Buy-Back to a maximum of 25% of Total Paid-Up Capital and Free Reserves of the Company in a financial year, by passing Special Resolution.</p> <p>Case 1: Buy Back of 30% is invalid, as it exceeds the specified limit.</p> <p>Case 2: Buy Back of 20% is within the limit of 25%, but should be approved by a Special Resolution, and not by Ordinary Resolution.</p>	4
4 (a) (ii)	<p>When is a Company required to issue a 'Shelf Prospectus' under the Provisions of the Companies Act, 2013? Explain the law relating to issuing and filing of such Prospectus.</p>	Refer Volume 3- page No. 54	4
4 (b)	<p>'S', an Hotelier, was purchasing butter regularly from EDF Ltd, for the purpose of use in his hotel. There were defects in the goods in one of the purchase lot and as a result 'S' suffered loss of his share in competition in Hotel Industry. The Hotelier 'S' sued the said Company for this reason. The Company contended that the goods were purchased for the commercial purpose therefore, not bound. Is it a valid contention? Explain the provisions of the Competition Act, 2002 in this regard.</p>	<p>Refer Volume 1- Page No. 62</p> <p>Ans : Under Competition Act 2002, "Consumer" includes a person who purchases goods for re-sale or for any commercial purpose or for personal use. So, EDF Ltd is liable for defects in the goods</p>	4
4 (c)	<p>Explain clearly the different type of Grapevine Chains in an Informal Communication.</p>	Refer Volume 1- Page No. 77	4
5 (a) (i)	<p>Discuss with reasons, in the following given conditions, whether 'M' can be called as a "holder" under the Negotiable Instruments Act, 1881:</p> <p>(1) 'M', the Payee of the cheque, who is prohibited by a Court Order from receiving the amount of the cheque.</p> <p>(2) 'M', the Agent of 'Q', is entrusted with an instrument without endorsement by 'Q', who is the Payee.</p>	<p>Refer Volume 2- Page No. 68</p> <p>Ans:</p> <p>(1) No. M is not entitled for any payment.</p> <p>(2) No. M is entitled to possess and receive the amount, only as Agent of Q and not in his own name.</p>	4

Q No.	Question	Reference	Marks
5 (a) (ii)	'F', by inducing 'G,' obtains a Bill of Exchange from him fraudulently in his (F) favour. Later, he enters into a commercial deal with 'H', and endorses the Bill to him (H) towards consideration for the deal. 'H' takes the bill as a Holder-in-due-course. 'H' subsequently endorses the bill to 'F' for value as consideration to 'F' for some other deal. On maturity, the bill is dishonoured. 'F' sues 'G' for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881, explain whether 'F' will succeed in this case.	Refer Volume 2- Page No. 69 1. Sec.53: 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 himself is not a party to the fraud. Once a N/I passes through the hands of Holder in due course, it gets cleansed of its defects. 2. Analysis & Conclusion: F who originally induced G in obtaining the Bill of Exchange in question fraudulently, cannot succeed in this case, as F himself is party to the fraud.	4
5 (b)	What are the provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a Company?	Refer Volume 3- Page No. 156	4
5 (c)	Write a short note on "Social Accountability 8000".	Refer Volume 1- Page No. 47	4
6 (a)	SV Technologies Limited is proposing to convene a General Meeting of its Members. Explain briefly the provisions of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the General Meeting through "Postal Ballot".	Refer Volume 3- Page No. 140	8
6 (b)	What is an Affidavit? Draft an Affidavit certifying that SF Ltd does not have any Tax Dues to the Central Government.	Refer Volume 1- page no. 124	4
6 (c)	State whether the following statements are Correct/ Incorrect:		4
	(i) The Shareholders of the Company in General Meeting cannot decrease the rate of dividend recommended by the Board of Directors.	Incorrect : Shareholders cannot declare Dividend at a rate higher than the one recommended by the Board. However, they may declare Dividend at a rate lower than the one recommended by the Board.	
	(ii) Debentures with Voting Rights can be issued only if permitted by Articles of Association.	Incorrect : any Company cannot issue any Debentures carrying voting rights at any Meeting of the Company, whether generally or in respect of any particular class of business	
	(iii) A Collateral Agreement to the Void Agreement is also Void.	Incorrect: Collateral Agreement is not affected	
	(iv) If one party fails to perform his obligation within the stipulated time, where time is not the essence of the contract, the other party can always rescind the contract on this ground.	Incorrect: Promisee is entitled for Compensation, not Rescission.	

Q No.	Question	Reference	Marks
7 (a)	Pioneer Mills Ltd has been regularly depositing the Provident Fund Contributions to the Government. Owing to adverse market conditions, the Company suffered losses for the past two years. The Company's Management is considering the reduction of Salary of the Employees to reduce the Company's Contribution to Provident Fund and instead, to pay Compensatory Allowance, so that the Employees pay package remains the same. Explain in terms of the Employees' Provident Fund and Miscellaneous Provision Act, 1952, whether the Company can effect such reduction.	Refer Volume 1- Page 34 Ans : The Company cannot effect such a reduction.	4
7 (b)	The Articles of Association of XYZ Ltd provides the Board of Directors has Authority to issue Bonds provided such issue is authorized by the Shareholders by a necessary resolution in the General Meeting of the Company. The Company was in need of funds and therefore, it issued the Bonds to Mr. X without passing any such resolution in General Meeting. Can Mr. X recover the money from the Company? Decide referring the relevant provisions of the Companies Act, 2013.	Refer Volume 3 - Page No 45 Hint: Company is not liable. The act of borrowing is void ab-initio in this case.	4
7 (c)	MNC Limited realized on 2 May 2016, that particulars of charge created on 12 March 2016 in favour of a Bank were not filed with Registrar of Companies for registration. What procedure should the Company follow to get the charge registered with the Registrar of Companies? Would be procedure be different if the charge was created on 12th February 2016, instead of 12 March 2016? Explain with reference to the relevant provisions of the Companies Act, 2013.	Refer Volume 3- page no. 149 Hint: (a) If the Charge is not registered within 30 days, it can be registered by payment of additional fees within next 300 days. (b) However, if the delay is beyond 300 days, Application can be made to the Central Government for condonation of delay.	4
7 (d)	State the elements which create Discrimination in Employment in Business Organizations.	Refer Volume 1 - page No. 51	4
7 (e)	What is meant by Active Listening? State the importance of Active Listening in the Business Communication Skill.	Refer Volume 1- Page No. 96	4