

## PAPER – 2 : BUSINESS LAWS, ETHICS AND COMMUNICATION

Question No. 1 is compulsory.

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

### Question 1

- (a) K entered into a contract with P for the purchase of 1000 bags of rice at the rate of ₹ 1,000 per bag. P has not supplied the goods within the due date and due to this K suffered a loss of ₹ 1,00,000 as he has to purchase these bags at the rate of ₹ 1,100 per bag from the market to deliver the same to its customers.

Decide how much compensation can be claimed by K from P. **(5 Marks)**

- (b) Mr. A and B are partners in a firm AB & Co. since the last 10 years. Now their business has crossed ₹ 20 crores and they want to form a private limited company to take over the firm's business and to expand it at large scale. They approached their auditor to assist to incorporate a company in the name of AB Trading Private Ltd. Explain in brief what documents are required to be filed with the Registrar of Companies? **(5 Marks)**

- (c) State the social issues with which business corporations have been concerned since a long time. **(5 Marks)**

- (d) "In business organisations various types of groups are formed." In this context discuss various types of groups. **(5 Marks)**

### Answer

- (a) The given problem is related to compensation for loss or damage caused by breach of contract covered under section 73 of the Indian Contract Act, 1872.

According to the provision, when a contract has been broken, the party who suffers by such breach is entitled to receive, from the party who has broken the contract, compensation for any loss or damage caused to him thereby, which naturally arose in the usual course of things from such breach, or which the parties knew, when they made the contract, to be likely to result from the breach of it.

In estimating the loss or damage arising from a breach of contract, the means which existed of remedying the inconvenience caused by the non-performance of the contract must be taken into account.

Given facts states that K entered into contract with P for purchase of 1000 bags of rice at the rate of ₹ 1,000 per bag. P breaks his promise as to supply of goods within the due date. This act of P resulted loss to K of ₹ 1,00,000 as he has to purchase these bags @ of ₹ 1,100 per bag from market to deliver it further to its customers.

Accordingly, as per the provision in the given situation, K is entitled to receive from P by way of compensation, the sum, by which the contract price falls short of the price (i.e., @ ₹ 100 per bag) from the market price on the day of default. The amount of damages will be ₹ 1,00,000 (i.e., 1000 of rice bags x ₹ 100).

- (b) As per section 3 (1)(b) of the Companies Act, 2013, a Private company may be formed for any lawful purpose with two or more persons by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration of company.

**Document to be filed with the Registrar of Companies:**

After getting the name approved, the following documents along with the application and prescribed fee, are to be filed with the Registrar:-

- (1) Memorandum of Association
  - (2) Articles of Association
  - (3) The agreement, if any, which the company proposed to enter into with any individual for appointment as its Managing or Whole Time Director or Manager.
  - (4) A declaration that the requirements of the Act and the rules framed there under have been complied with. This declaration is required to be signed by an advocate of the Supreme Court or High Court or an attorney or a pleader having the right to appear before High Court or a Company Secretary or a Chartered Accountant in whole time practice in India who is engaged in the formation of a company, or by person named in the Articles as a Director, Manager or Secretary of the company.
  - (5) A company shall, on and from the fifteenth day of incorporation and all times thereafter, have a registered office capable of receiving and acknowledging all communications and notices as may be addressed to it.
  - (6) Apart from the above the company shall furnish to the Registrar a verification of a registered office under Section 12(2) within 30 days of incorporation in such manner as prescribed.
- (c) Social issues with which business corporations have been concerned since a long time may be divided under following three categories:
- **Social problems external to the corporation** that were not caused by any direct business action like poverty, drug abuse, decay of the cities and so on.
  - **The external impact of regular economic activities.** For example pollution caused by production; the quality, safety, reliability of goods and services; deception in marketing practices, the social impact of plant closures and plant location belong to this category.
  - **Issues within the firm and tied up with regular economic activities**, like equal employment opportunity, occupational health and safety, the quality of work life and industrial democracy.

The second and third categories are of increasing importance and are tied up with the regular economic operations of business. Improved social performance demands changes in these operations.

**(d) Types of Groups in Organization:**

To run the business activities smoothly and effectively business organisations form various types of groups, some of them are as follows :-

1. **Self-directed teams** – autonomous and self-regulated groups of employees empowered to make decisions.
2. **Quality Circles** –a small group of workers from the same area who voluntarily perform quality control activities within their work area. It discusses quality problems, investigate causes, recommend solutions and take corrective actions.
3. **Committees** – are of various types (a) Standing Committee which are permanent in nature and highly empowered. (b) An advisory Committee comprises of experts in particular fields (c) An adhoc committee is setup for a particular purpose and after the goal is achieved, it is dissolved.
4. **Task Force** – Task force is like Committee but it is usually temporary. Task force has wide power to take action and properly fix responsibility for investigation, results and proper implementation of decisions.

**Question 2**

- (a) (i) *N Limited, a manufacturing company situated in Pune Industrial Estate, wants to declare bonus to their employees for the year ended 31-03-2017. Find out the available funds for distribution of bonus to employees on the basis of the following information:*

Gross Profit ₹ 1,20,00,000

*The company has to provide for the following items to arrive at the available funds.*

(a)	<i>Depreciation on assets to be provided as per the Companies Act, 2013. ₹ 28,00,000. Depreciation to be provided as per the Income Tax Act, 1961.</i>	₹ 41,50,000
(b)	<i>Development rebate</i>	₹ 3,40,000
(c)	<i>Direct taxes payable</i>	₹ 10,00,000
(d)	<i>Paid up equity capital as on 1-4-2016</i>	₹ 1,00,00,000
(e)	<i>Reserves and Surplus</i>	₹ 25,00,000

**(4 Marks)**

- (ii) *X is due to retire as a factory manager from a Paint Manufacturing Company and his present salary is ₹ 40,000. He has worked in the factory for about 22 years and was on leave for 6 months in the 15th year due to an injury suffered at the factory. After recovery he resumed his duty as a Chief Supervisor and worked for 7 years. In June 2017, he damaged an engine part and the company has to incur a sum of ₹ 1,00,000*

*to set right the machinery and the loss is not yet recovered from him. Please calculate the amount of gratuity payable to him.* **(4 Marks)**

(b) *What do you mean by corporate citizenship? Explain the benefits of corporate citizenship.* **(4 Marks)**

(c) *What functions are performed by interpersonal communication? Discuss briefly.* **(4 Marks)**

#### Answer

(a) (i) The given problem is related to section 6 of the Payment of Bonus Act, 1965 which deals with the prior deduction from gross profit.

The following sums shall be deducted from gross profit as prior charges:

- **Depreciation:** Any amount by way of depreciation admissible under the Income Tax Act or under the provisions of the agriculture income tax law.
- **Development Rebate or Allowance:** Any amount by way of development rebate, or investment allowance or development allowance which the employer is entitled to deduct from his income under the Income-tax Act.
- **Direct Taxes:** Subject to the provisions of Section 7, any direct tax which the employer is liable to pay for the accounting year in respect of his income, profits and gains during that year.
- **Return on Capital etc.:** Such further sums as are specified in respect of the employer in the Third Schedule. This schedule prescribes the categories of employer (company, banking company, corporations, cooperative society etc.) who are entitled for permissible deductions. Further sums to be deducted, in the case of company, are :
  - The dividends payable on its preference share capital for the accounting year calculated at the actual rate at which such dividends are payable;
  - 8.5 per cent of its paid up equity share capital as at the commencement of the accounting year;
  - 6 per cent of its reserves shown in its balance sheet as at the commencement of the accounting year, including any profits carried forward from the previous accounting year:

Accordingly, the following deductions shall be made from the gross profits (i.e., 1,20,00,000) for the year 31-03- 2017 for the distribution of bonus to employees –

Gross profit as given above (A)	1,20,00,000
Less: Prior deductions from Gross Profit	
(a) Depreciation allowable as per Income Tax Act	41,50,000

(b) Development rebate	3,40,000
(c) Direct taxes payable	10,00,000
(d) Since the company is a manufacturing company, it has to provide allocation of 8.5% if its paid up capital as the commencement of the accounting year (8.5% on ₹ 1,00,00,000)	8,50,000
(e) 6% of the reserves shown in the balance sheet as at the commencement of the accounting year including any profits carried forward from the previous year (6% on ₹ 25,00,000)	1,50,000
Total deductions (B)	64,90,000
Net available funds in terms of Sec. 6 (A-B)	55,10,000

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

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

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

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

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

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

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

- (b) The term **corporate citizenship** denotes the extent to which businesses meet the legal, ethical, economic and voluntary responsibilities placed on them by their stakeholders. Companies can best benefit their stakeholders by fulfilling their economic, legal, ethical and discretionary responsibilities.

**The benefits of “good corporate citizenship” include:**

- A stable socio-political-legal environment for business as well as enhanced competitive advantage through better corporate reputation and brand image.
- improved employee recruitment, retention and motivation, improved stakeholder relations and a more secure environment to operate.

- (c) **Functions of Interpersonal Communication:** Interpersonal communication is important because of the following functions it achieves:

- i. **Gaining Information:** interpersonal communication helps to gain knowledge about another individual, so that one can interact with other more effectively.
- ii. **Building Understanding:** Interpersonal communication helps to understand better what someone says in a given context. Words can mean very different things depending on how they are said or in what context. **Content Messages** refer to the surface level meaning of a message. **Relationship Messages** refer to how a message is said. The two are sent simultaneously, but each affects the meaning assigned to the communication and helps us understand each other better.
- iii. **Establishing Identity:** Interpersonal communication establishes an identity based on our relationships and the image one present to others.
- iv. **Interpersonal Needs:** interpersonal communication expresses interpersonal needs. Such as inclusion, control, and affection.
  - Inclusion is the need to establish identity with others.
  - Control is the need to exercise leadership and prove one's abilities.
  - Affection is the need to develop relationships with people. Groups are an excellent way to make friends and establish relationships.

**Question 3**

- (a) (i) A promised to repay a loan of ₹ 1,00,000 payable to C and D jointly. Discuss what are the rights of joint promises (C and D) against A. **(4 Marks)**
- (ii) Give any four differences between bailment and pledge. **(4 Marks)**
- (b) Explain the concept of Green Accounting System. Also discuss its benefits. **(4 Marks)**
- (c) Discuss any four NCA's credo for ethical communication. **(4 Marks)**

**Answer****(a) (i) Rights of joint promises**

According to section 45 of the Indian Contract Act, 1872, "When a person has made a promise to two or more persons jointly, then unless a contrary intention appears from the contract, the right to claim performance rests, as between him and them, with them during their joint lives, and after the death of any of them with the representatives of such deceased person jointly with the survivor or survivors, and after the death of the last survivor, with the representatives of all jointly".

Accordingly, Joint Promisees (C and D) have a right to claim the loan amount from A during his life. If A dies, same right is available to the joint Promisees against his representative/s.

**(ii) Distinction between bailment and pledge:** The following are the distinction between bailment and pledge:

- (a) **As to purpose:** Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.
  - (b) **As to right of sale:** The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
  - (c) **As to right of using goods:** Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.
  - (d) **Consideration:** In pledge there is always a consideration whereas in a bailment there may or may not be consideration.
  - (e) **Discharge of contract:** Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.
- (b) Green accounting systems and its benefits:** 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 the 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. Price signal will also influence behaviour to avoid exploitation or excessive utilization of natural resources. Such measures would facilitate the approach of "Polluter Pay Principle". Removing subsidies that encourage environmental damage is another measure.

- (c) **NCA's credo for ethical communication:** The National Communication Association (NCA) states: "ethical communication enhances human worth and dignity by fostering truthfulness, fairness, responsibility, personal integrity, and respect for self and other: Following are the credo for ethical communication:
- (i) Truthfulness, accuracy, honesty, and reason are essential to the integrity of communication.
  - (ii) Endorse freedom of expression, diversity of perspective, and tolerance of dissent to achieve the informed and responsible decision making fundamental to a civil society.
  - (iii) Strive to understand and respect other communicators before evaluating and responding to their messages.
  - (iv) Access to communication resources and opportunities are necessary to fulfill human potential and contribute to the well being of families, communities, and society.
  - (v) Promote communication climates of caring and mutual understanding that respect the unique needs and characteristics of individual communicators.
  - (vi) Condemn communication that degrades individuals and humanity through distortion, intolerance, intimidation, coercion, hatred, and violence.
  - (vii) Commit to the courageous expression of personal convictions in pursuit of fairness and justice.
  - (viii) Advocate sharing information, opinions, and feelings when facing significant choices while also respecting privacy and confidentiality.
  - (ix) Unethical communication threatens the quality of all communication and consequently the well being of individuals and the society in which we live.
  - (x) Accept responsibility for the short- and long-term consequences for our own communication and expect the same of others.

**Question 4**

- (a) (i) *The Board of Directors of PV Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.*
- Please advise the company about the procedure to be followed for alteration of Articles of Association.* **(4 Marks)**
- (ii) *What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Company Act, 2013.* **(4 Marks)**
- (b) *Discuss reasons forcing marketing executives to adopt ethical behavior in marketing.* **(4 Marks)**



(c) Discuss any four qualities of a critical thinker.

(4 Marks)

**Answer**

(a) (i) **Alteration in Articles of Association:** Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

- (1) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
- (2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
- (4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration. **[Section 15]**

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

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

1. Under section 105 (1) any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as a proxy to attend and vote at the meeting on his behalf.
2. A proxy shall not have the right to speak at such meeting and shall not be entitled to vote except on a poll. This means that a proxy cannot vote on a resolution by a show of hands.
3. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.
4. Under section 105 (6) the instrument appointing a proxy shall be in writing; and be signed by the appointer or his attorney duly authorised in writing or, if the

appointer is a body corporate, be under its seal or be signed by an officer or an attorney duly authorised by it.

5. Under section 105 (7) an instrument appointing a proxy, if in the form as may be prescribed, shall not be questioned on the ground that it fails to comply with any special requirements specified for such instrument by the articles of a company.

(b) **Reasons for adopting ethical behaviour in marketing:** Marketing executives should practice ethical behaviour because it is morally correct. To maintain ethical behaviour in marketing, the following positive reasons may be useful to the marketing executives:

1. **To reverse declining public confidence in marketing:** Sometime misleading package labels, false claim in advertisement, phony list prices, infringement of trademarks pervert the market trends and such behaviour damages the marketers' reputation. To reverse this situation, business leaders must demonstrate convincingly that they are aware of their ethical responsibility and will fulfill it. Companies must set high ethical standards and enforce them. Moreover, it is in management's interest to be concerned with the well being of consumers, since they are the lifeblood of a business.
2. **To avoid increase in government regulation:** Business apathy, resistance, or token responses to unethical behaviour increase the probability of more governmental regulation. The governmental limitations may also result from management's failure to live up to its ethical responsibilities. Moreover, once the government control is introduced, it is rarely removed.
3. **To retain power granted by society:** Marketing executives wield a great deal of social power as they influence markets and speak out on economic issues. However, there is a responsibility tied to that power. If marketers do not use their power in a socially acceptable manner, that power will be lost in the long run.
4. **To protect the image of the organisation:** Buyers often form an impression of an entire organisation based on their contact with one person. That person represents the marketing function. Some times a single sales clerk may pervert the market opinion in relation to that company which he represents.

Therefore, the ethical behaviour in marketing may be strengthened only through the behaviour of the marketing executives.

(c) **Qualities of a Critical Thinker:** By combining the skills of critical thinking with the appropriate mindset, one can make better decisions and adopt more effective courses of action.

To develop as a critical thinker one must be motivated to develop the following attributes:

- (i) **Open-minded** –willing to accept and explore alternative approaches and ideas.
- (ii) **Well-informed** – Knows the facts and what is happening on all fronts.

- (iii) **Experimental**– Think through “what if” scenarios to create probable options and then test the theories to determine what will work and what won’t.
- (iv) **Contextual**– Keeps in mind the appropriate context when thinking things through. Apply factors of analysis that are relevant or appropriate.
- (v) **Reserved in Making Conclusions** – Know when a conclusion is “fact” and when it is not. Only true conclusions support decisions.

**Question 5**

- (a) (i) *What is meant by "Sans recourse endorsement" on a bill of exchange? How does it differ from "sans frais endorsement"?* **(4 Marks)**
- (ii) *Y draws a bill of exchange on Z for ₹ 5,000 payable to his order. Z accepts the bill but subsequently dishonours it by non-payment. Y sues Z on the bill. Z proves that bill was accepted for value of ₹ 3,000 and an accommodation to the balance of ₹ 2,000. How much amount Y can recover from Z?* **(4 Marks)**
- (b) *WW Limited has an authorized share capital of 1,00,000 equity shares of ₹ 100 per share and an amount of ₹ 3 crores in its Share Premium Account as on 31-3-2017. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice.* **(4 Marks)**
- (c) *Discuss the problems that may arise at workplace when ethical behavior is not adopted.* **(4 Marks)**

**Answer**

- (a) (i) **Sans Recourse:** By adding the words ‘Sans Recourse’ after the endorsement the endorser declines to accept any liability on the instrument of any subsequent party. Sometimes, when an endorser who so excludes his liability as an endorser afterwards becomes the holder of the same instrument. In such a case, all intermediate endorsers are liable to him.  
**Sans Frais:** These words when added at the end of the endorsement, indicate that no expenses should be incurred on account of the bill.  
**Difference:** Any endorser can exclude personal liability by endorsing “sans recourse” i.e. without recourse. However, “Sans Frais” endorsement, indicate that no expenses should be incurred on account of the bill.  
Thus, we can say that in case of ‘sans recourse endorsement’, if bill is dishonoured at any stage after it is endorsed sans recourse by endorser, the endorser will not be liable for whole amount of the bill whereas in case of sans frais endorsement, if bill is dishonoured at any stage after its endorsement, the endorser will not be liable for expenses incurred, but he will be liable for the original sum of the bill.
- (ii) According to the provisions of Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange

or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

As per the facts, Z accepts the bill for value of ₹ 3000, so the parties standing in immediate relation to each other, cannot recover more than the actual consideration paid. Accordingly, Y can recover only ₹ 3000.

- (b) According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

The securities premium account may be applied by the company—

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
  - (b) in writing off the preliminary expenses of the company;
  - (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
  - (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
  - (e) for the purchase of its own shares or other securities under section 68.
- (c) The problems that may arise at workplace when ethical behaviour is not adopted are:
- (i) Increased risk of employees making unethical decisions.
  - (ii) Increased tendency of employees to report violations to outside regulatory authorities (whistle blowing) because they lack an adequate internal forum.
  - (iii) Inability to recruit and retain top people.
  - (iv) Diminished reputation in the industry and the community.
  - (v) Significant legal exposure and loss of competitive advantage in the market place.

#### Question 6

- (a) *MPN Limited wants to issue Global Depository Receipts. What are the conditions to be followed for issue of such receipts?* **(8 Marks)**

- (b) State whether following statements are correct or incorrect:
- (i) Only one person can form a company under the provisions of Companies Act, 2013.
  - (ii) Number of members in a private company under the Companies Act 2013, cannot exceed 50.
  - (iii) A collateral agreement to the void agreement is also void.
  - (iv) Minor cannot even be beneficiary in any contract in India. **(4 Marks)**
- (c) The statutory meeting of Ashoka Business Corporation Ltd was held on 15<sup>th</sup> Jan 2018 at its registered office at Mumbai. Being the secretary of the company draft the minutes of this statutory meeting of the company. **(4 Marks)**

**Answer**

- (a) According to section 41 of the Companies Act, 2013, a company may, after passing a special resolution in its general meeting, issue depository receipts in any foreign country. The Companies (Issue of Global Depository Receipts) Rules, 2014, provide the conditions for issue of depository receipts in a foreign country.

**Conditions for Issue of Depository Receipts:**

- (1) **Passing of Resolution:** The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorizing the company to do so.
- (2) **Approval of Shareholders:** The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting.  
Provided that a special resolution passed under section 62 for issue of shares underlying the depository receipts, shall be deemed to be a special resolution for the purpose of section 41 as well.
- (3) **Depository Receipts shall be Issued by an Overseas Depository Bank:** The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.
- (4) **Compliance with all the Provisions, Schemes, Regulations etc.:** The company shall ensure that all the applicable provisions of the scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after issue of depository receipts.
- (5) **Compliance Report to be placed at the meeting:** The company shall appoint a merchant banker or a practicing chartered accountant or a practicing cost accountant or a practicing company secretary to ensure all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practicing chartered accountant or practicing cost accountant or practicing company secretary, as the case may be, shall be placed at the meeting of the Board of Directors

of the company or of the committee of the Board of Directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts.

Provided that the committee of the Board of directors referred to above shall have at least one independent director in case the company is required to have independent directors.

- (b) (i) Incorrect  
 (ii) Incorrect  
 (iii) Incorrect  
 (iv) Incorrect

**(c) Minutes of the Statutory Meeting**

Minutes of the proceeding of the statutory meeting of Ashoka Business Corporation Limited held on 15<sup>th</sup> January 2018 at 11.00 a.m. at the Registered Office of the company at ..... Mumbai.

Mr. A	Chairman
Mr. B	Director
Mr. C	Director
Mr. C	Director
Mr. D	Secretary

and 120 members and 30 proxies.

The secretary read the notice convening the meeting.

The Chairman welcomed the members and reviewed the activities of the company since its incorporation.

The chairman informed the members that a list of members of the company has been placed on the table for the inspection of members.

With the permission of the members, the chairman read the Statutory Report. It was moved that the Statutory Report sent to the members with the notice of the meeting be approved. Accordingly, it was resolved that the Statutory Report be and is hereby approved.

All the pre-incorporation and provisional contracts were approved by the members of the company.

The meeting was ended with a vote of thanks by the members and chairman declared the meeting closed.

Date

Secretary

Chairman

**[Note:** The nomenclature of statutory meeting does not directly appear in the Companies Act, 2013. Thus, the students may connote the same as Annual General Meeting or the first Annual General Meeting. Hence, with respect to the said question, answer may be given as per drafting minutes for statutory meeting or the Annual General Meeting or the First Annual General Meeting].

### Question 7

Answer any **four** of the following:

- (a) What constitutes cognizable offences under Provident Fund and Miscellaneous Provisions Act, 1952?
- (b) Discuss the procedure to be followed by Board of a Company to convert a public company into a private limited company.
- (c) Distinguish between transfer and transmission of shares.
- (d) Write a short note on Global Reporting Initiative.
- (e) State the importance of 'Active Listening' in the business communication skills.

**(4 x 4 = 16 Marks)**

### Answer

- (a) **Certain offences to be cognizable (Section 14AB):** This Section renders the offences relating to default in payment of contribution by the employer a cognizable offence. A cognizable offence is one where the police can arrest a person without warrant.

**Cognizance and trial of offence (Section 14AC):** This section deals with the complaints in regard to offences under the Act, the scheme or the Pension Scheme or Insurance Scheme and their cognizance.

The essential conditions of cognizance of offences are:

- (a) There must be a report in writing of the facts constituting such offence,
- (b) This report must be made with the previous sanction of the:
  - (i) Central Provident Fund Commissioner; or
  - (ii) Such officer as may be authorised by the Central Government;
- (c) The report must be made by an Inspector appointed under Section 13.

These conditions being co-existent, no Court inferior to that of a Presidency Magistrate or a Magistrate of the first class shall try any offence under this Act, or the Scheme or the Pension Scheme or the Insurance Scheme.

- (b) **Procedure for conversion of a Public Company into a Private Company:**

Section 14 (1) of the Companies Act, 2013 states that subject to the provisions of the Companies Act 2013 and the conditions contained in the Memorandum, a company may,

by special resolution, alter its Articles including alterations which may have the effect of converting a public company into a private company (or vice versa).

Further any alteration which has the effect of converting a public company into a private company will not have any effect except with the approval of the Tribunal which may pass such order as it deems fit.

Hence, the broad procedure for conversion of a public company into a private company would comprise of the following steps:

1. Check that the Memorandum of Association does not contain any restrictive clause. If yes, alteration of the Memorandum will be necessary through a special resolution;
2. Alteration of the Articles to incorporate the restrictions required under section 2 (68) by a special resolution
3. Application to the Tribunal for approval of the change
4. After the approval of the Tribunal, every alteration of the articles and a copy of the order of the Tribunal approving the alteration shall be filed with the Registrar, within a period of fifteen days, who shall register the same.
5. Any alteration of the articles registered as above shall be valid as if it were originally in the articles.

**(c) Distinction between transfer and transmission of shares**

	<b>Transfer of shares</b>		<b>Transmission of shares</b>
<b>1.</b>	It is effected by a voluntary/ deliberate act of the parties by way of a contract.	<b>1.</b>	It takes place by operation of law e.g. due to death, insolvency or lunacy of a member.
<b>2.</b>	It takes place for consideration.	<b>2.</b>	No consideration is involved.
<b>3.</b>	The transferor has to execute a valid instrument of transfer.	<b>3.</b>	There is no prescribed instrument of transfer.
<b>4.</b>	As soon as the transfer is complete, the liability of the transferor ceases.	<b>4.</b>	Shares continue to be subject to the original liabilities.

- (d) The Global Reporting Initiative (GRI):** It is a reporting standard established in 1997 with the mission of designing globally applicable guidelines for preparing enterprise-level sustainability reports including both social and environmental indicators. The GRI is convened by CERES (Coalition for Environmentally Responsible Economies) incorporates the active participation of corporations, non-governmental organizations, international organizations, United Nations agencies, consultants, accountancy organizations, business associations, universities, and other stakeholders from around the world. The Global Reporting Initiative's (GRI) vision is that reporting on economic, environmental, and social performance by all organizations becomes as routine and comparable as financial



reporting. GRI accomplishes this vision by developing, continually improving, and building capacity around the use of its Sustainability Reporting Framework.

**(e) Importance of Active listening:** It is important for several reasons:

- (i) It aids the organization in carrying out its missions.
- (ii) It helps individuals to advance in their careers.
- (iii) It provides information that helps them to learn about important happenings in the organization, as well as assisting them in doing their own jobs well.
- (iv) It also helps in building strong personal relationships.