



IPCC – May 2018

PAPER 2: BUSINESS LAW, ETHICS AND
COMMUNICATION

Test Code:

Branch (MULTIPLE) Date : 04.10.2017

(100 Marks)

Note: *Question No.1 is compulsory. Candidates are required to answer any five questions from the remaining six questions.*

Question 1

a. Guidelines to handle communication ethics dilemmas:

- (a) Maintain candour: Candour refers to truthfulness, honesty, frankness and one should stick to these elements while communicating with others. **(1 mark)**
- (b) Keep message accurate: At the time of relaying information from one source to another, communicate the original message as accurately as possible. **(1 mark)**
- (c) Secrecy: One has to maintain secrecy and confidence in communication. So one should not divulge such information to others **(1 mark)**
- (d) Ensure timeliness of communication: The timing of messages can be critical. Delay in sending messages can be assumed unethical. **(1 mark)**
- (e) Avoid deception: Ethical communicators are always vigilant in their quest to avoid deception, fabrication, intentional distortion or withholding of information in their communication. **(1/2 mark)**
- (f) Confront unethical behaviour: One must confront an unethical behaviour in order to ensure a consistent ethical view point. **(1/2 mark)**

b. Bailee's Duties and Liabilities: The problem as asked in the question is based on the provisions of Section 163(4) of the Indian Contract Act, 1872. As per the section, "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed." **(3 marks)**

Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. So M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them also. **(2 marks)**

c. Definition of Indemnity Bond: A contract of indemnity as defined under Section 124 of the Indian Contract Act, 1872 is a contract by which one party promises to safe the other from loss cost to him by the contract of the promisor himself or by the contract of any other person. The bond which is given for such protection is called Indemnity Bond. **(2 marks)**

INDEMNITY BOND(3 marks)

I, Mr. Ajay Sinha, S/oresident ofdo hereby

agree to indemnify the XYZ Ltd. for any loss that may occur for seeking release of dividend for 150 shares of ` 1500 /-.

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

Date:

Signature

Place:

Mr. Ajay Sinha

- d. Refusal of registration and appeal against refusal** : The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal. **(1 mark)**

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to re gister the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal. **(2 marks)**

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of 10 days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved.

In the present case Mr. Amar can make an appeal before the tribunal. **(2 marks)**

Question 2

- a. **Problem related to Dishonour of cheque: Liability of Promoter:** According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from/out of that account for discharging any debt or liability, and if it is dishonoured by banker

on sufficient grounds, such person shall be deemed to have committed an offence and shall be liable. **(2 marks)**

In the instant case, Mr. Bean, a promoter has taken a loan on behalf of company. He is neither a director nor a person in-charge of the Company. He sent a cheque from the company's account which was subsequently dishonoured. In this case, Mr. Bean, the promoter is neither a director nor a person-in-charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company. Therefore, Mr. Bean, has not committed an offence under section 138 of the Negotiable Instruments Act, 1881 and he cannot be held liable for dishonor of the said cheque. **(2 marks)**

- b. The problem as asked in the question is based on the provisions of the Companies Act, 2013 as contained in Section 101. Accordingly, the notice may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. If, however, a member wants the notice to be served on him under a certificate or by registered post with or with acknowledgement due and has deposited money with the company to defray the incidental expenditure thereof, the notice must be served accordingly, otherwise service will not be deemed to have been effected.

(4marks)

Accordingly, the questions as asked may be answered as under:

- (i) The contention of Prem shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid. **(2 marks)**
- (ii) In view of the provisions of the Companies Act, 2013, the company is not bound to send notice to Prem at the address outside India. Therefore, answer in the second case shall differ from the first one. **(2 marks)**

- c. **Corporate Governance:** Simply stated, 'Governance' means the process of decision making and the process by which decisions are implemented. The term corporate governance is understood and defined in various ways. Corporate governance can be defined as the formal system of accountability and control for ethical and socially responsible organisational decisions and use of resources and accountability relates to how well the content of workplace decisions is aligned with the organisations strategic direction. Control involves the process of auditing and improving organisation decisions and actions. **(2 marks)**

Good corporate governance has the following major characteristics **(2 marks)**

1. Participatory
2. Consensus oriented

3. Accountable
4. Transparent
5. Responsive
6. Effective and efficient
7. Equitable and inclusive and
8. Follows the rule of law.

Question 3

- 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. **(2 marks)**

Hence, Ritesh'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. **(2 marks)**

- b. The term Electronic filing indicates the process of getting services electronically with a comprehensive on-line portal.

Some of the advantages of MCA 21 are:

1. Expeditious incorporation of companies;
2. Simplified and ease of convenience in filing of Forms/ Returns;
3. Better compliance management;
4. Total transparency through e-Governance;
5. Customer centric approach;
6. Increased usage of professional certificate for ensuring authenticity and reliability of the Forms / Returns;
7. Building up a centralised database repository of corporate operating
8. Enhanced service level fulfillment;
9. Inspection of public documents of companies anytime from anywhere;
10. Registration as well as verification of charges anytime from anywhere;
11. Timely redressal of investor grievances;
12. Availability of more time for MCA employees for monitoring and supervision **(4 marks)**

- c. **Dormant Company (Section 455 of the Companies Act, 2013)**

Where a company is formed and registered under this Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of dormant company. **(1 mark)**

“Inactive company” means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial

years, or has not filed financial statements and annual returns during the last two financial years. **(1 mark)**

“Significant accounting transaction” means any transaction other than **–(2 marks)**

- (i) payment of fees by a company to the Registrar;
- (ii) payments made by it to fulfil the requirements of this Act or any other law;
- (iii) allotment of shares to fulfil the requirements of this Act; and
- (iv) payments for maintenance of its office and records.

d. Safeguards to eliminate threats of unethical behaviour

Safeguards created by the profession, legislation or regulation about accounting and finance which may eliminate or reduce the threats relating to unethical behavior are as follows :

- (1) Educational, training and experience requirements for entry into the profession.
- (2) Continuing professional development requirements.
- (3) Corporate governance regulations.
- (4) Professional standards.
- (5) Professional or regulatory monitoring and disciplinary procedures.
- (6) External review by a legally empowered third party of the reports, returns, communications or information produced by concerned professionals.

(4 marks)

Question 4

- a. Mr. Ram is in a situation where he has to choose between carrying on the development of a drug for a painful and life threatening disease which afflicts one in ten million and the action of spending huge sum of shareholders’ money for such development. As we can see, both are positive and ethically right choices. As a socially responsible person he has to think in terms of eliminating a serious illness but at the same time he must be careful in dealing with shareholders’ money. This is a classic case of an ethical dilemma.

(2 marks)

Such an ethical dilemma must be resolved by addressing the following : **(2 marks)**

- (1) Defining the problem clearly.
- (2) How to define the problem if you stood on the other side of the fence?
- (3) How did the situation arise?
- (4) To whom are you loyal as a person and as a member of the organization?
- (5) What is your intention in making this decision?
- (6) How does this intention compare with the probable results?
- (7) Whom could your decision or action injure?
- (8) Can you discuss the problem with the affected parties before you make your decision?
- (9) Are you confident that your position will be valid over a long period?

(10) Could you disclose without any doubt your decision or action to your boss, your CEO, the Board of Directors, your family, society as a whole?

(11) What is the symbolic potential of your action if understood? Misunderstood?

(12) Under what conditions would you allow exceptions to your stand?

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

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

- c. **Acceptance of deposits from members:** According to Section 73 (2) of the Companies Act, 2013 a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely :- **(6 marks)**

- (1) issuance of a circular to its members including therein a statement showing the financial position of the company, the credit rating obtained, the total number of depositors and the amount due towards deposits in respect of any previous deposits accepted by the company and such other particulars in such form and in such manner as may be prescribed;
- (2) filing a copy of the circular along with such statement with the Registrar within thirty days before the date of issue of the circular;
- (3) depositing such sum which shall not be less than fifteen percent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as deposit repayment reserve account;
- (4) providing such deposit insurance in such manner and to such extent as may be prescribed;
- (5) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits; and

- (6) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company.

Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as “unsecured deposits” and shall be so quoted in every circular, form advertisement or in any document related to invitation or acceptance of deposits. **(1 mark)**

Hence Atul Ltd. can accept deposits from its members by following the above procedure. **(1 mark)**

Question 5

a. Payment of gratuity to employee who resigned (Section 4 of the Payment of Gratuity Act, 1972)

According to Section 4 (1) of the Payment of Gratuity Act, 1972 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.

- a. On his superannuation, or
- b. On his retirement or resignation, or
- c. On his death or disablement due to accident or disease,

The payability of gratuity to the employee is his right as well as the obligation of the employer.

(2 marks)

In the present case, Mr. Y was working in ABC Limited for the last seven years as an Accounts Executive. He resigned from service but his resignation was not accepted by the company. The company refused to pay the gratuity amount on the ground that his resignation was not accepted.

The intention of the ABC Limited is not correct as an employee resigning from service is also entitled to gratuity (Texmaco Ltd. v. Sri Ram Dhan, 1992 LLR 369 (Del); and non-acceptance of resignation is no hurdle in the way of an employee to claim gratuity (Mettur Spinning Mills v. Deputy Commissioner of Labour (1983) II LLJ 188)

In view of the above Mr. X is entitled to gratuity. **(2 marks)**

- b. Notice of Charge:** According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered under section 77 of the Companies Act, 2013, any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. **(2 marks)**

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the

date the charge is registered.

Thus, the contention of NRT Ltd. is correct. **(2 marks)**

- c. The iron law of responsibility:** The institution of business exists only because it performs invaluable services for society. Society gives business is license to exist and this can be amended or revoked at any time if fails to live up to society's expectations. Therefore, if a business intends to retain its existing social role and power, it must respond to society's needs constructively. This is known as the "Iron Law Responsibility. In the long term those who do not use power in a manner that society consider responsible, will tend to lose it. **(1 mark)**

Businesses have been delegated economic power and have access to productive resources of a community. They are obliged to use these resources for the common good of society so that more wealth for its betterment may be generated. Technical and creative resources are also helpful to it. A business organization sensitive to community needs would in its own self interest like to have a better community within which the business may be conducted. This way, the resulting benefits would be :

- a. Decrease in crime;
- b. Easier labour recruitment;
- c. Reduced employee absenteeism;
- d. Easier access to international capital, better conditions for loans on international money markets;
- e. Dependable and preferred as supplier, exporter, importer and retailer of responsibility manufactured components and products.

This way a better society would produce a better environment in which the business may gain long term profit maximization. **(3 marks)**

- d.** Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien. **(2 marks)**

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink's contention is not valid. **(2 marks)**

Question 6

- a. Managing ethics and preventing whistle-blowing:**
(1/2 mark each point)

The focus on core values and sound ethics, the hallmark of ethical management, is being recognized as an important way to ensure the long term effectiveness of governance structures and procedures, and avoid the need for whistle-blowing.

Employers who understand the importance of workplace ethics, provide their workforce with an effective framework and guiding principle to identify and address ethical issues as they arise. These

guidelines for managing ethics and to avoid the need for whistle-blowing in the work place may be summarized as follows :

1. **Code of Conduct and Ethics:** A code of ethics specifies the ethical rules of operation in an organization. Codes of conduct specify actions in the workplace and codes of ethics are general guides to decisions about those actions. Examples of topics typically addressed by codes of conduct include: preferred style of dress, avoiding illegal drugs, following instructions of superiors, being reliable and prompt, maintaining confidentiality, not accepting personal gifts and so on.
2. **Establish Open Communication:** Instead of just creating and distributing an ethics policy, it is important that take the time to explain the reasons for the policy and review the guidelines and conduct formal or informal training to further sensitise employees to potential ethical issues. Many of the ethical problems arising in a business are not clear-cut, but involve “grey areas”, where the proper course of action may be ambiguous and uncertain.
3. **Ethical Decisions:** Make ethical decisions in groups, and make these decisions public. This usually produces better quality decisions by including diverse interests and perspective and increases the credibility of the decision process and outcome by reducing suspicion of unfair bias.
4. **Integrate Ethics Management with other Management Practices:** When developing the values statement during strategic planning , include ethical values preferred in the workplace.
5. **Use of Cross-Functional Teams:** When developing and implementing ethics management program use cross-functional teams. It’s vital that the organization’s employees feel a sense of participation and ownership in the program if they are to adhere its ethical values.
6. **Appointing an Ombudsperson:** The ombudsperson is responsible to help coordinate development of the policies and procedures to institutionalize moral value in the workplace. This establishes a point of contact where employees can go to ask questions in confidence about the work situations they confront and seek advice.
7. **Atmosphere of Trust:** Creating an atmosphere of trust is also critical in encouraging employees to report ethical violations they observe. The function might best be provided by an outside consultant, e.g., lawyer, clergyperson, counselor etc. Or, provide a “tip” box in which personnel can report suspected unethical activities, and do so safely on an anonymous basis.
8. **Updating Policies and Procedure:** Regularly update policies and procedure to produce behaviours preferred from the code of conduct, job descriptions, performance appraisal forms, management-by-objectives expectations, standard forms, checklists, budget report formats, and other relevant control instruments to ensure conformance to the code of conduct.
9. **Inclusion of Grievance Policy:** Include a grievance policy for employees to use to resolve disagreements with supervisors and staff.
10. **Set an Example from the Top:** Executives and managers not only need to endorse strict standards of conduct, but should also ensure that they follow it themselves. They must stress to employees that dishonest or unethical conduct will not be tolerated.

- b. In accordance with the provisions of Section 2(13) of the Payment of Bonus Act, 1965 any person other than an apprentice employed on a salary or wage not exceeding ` 21,000 per month in any industry to do any skilled or unskilled, manual, supervisory, managerial, administrative, technical or clerical work for hire or reward whether the terms of employment be express or implied is eligible for bonus.

Further, in accordance with the provisions of Section 8 of the Payment of Bonus Act, 1965 every employee of an establishment covered under the Act 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. **(1 mark)**

The problem as asked is based on the above provisions of the Act and the answer may be given as follows: **(3 marks)**

- (a) **As regards the employees who resigned:** The employees who have resigned are not entitled to bonus because they worked only for 28 days in an accounting year although they are drawing salary less than ` 21,000 per month.
- (b) **As regards full time remaining employees:** These employees are entitled to get the bonus as they fulfil both the requirements as stated under Sections 2 (13) and 8 of the Act. Although the employees in this case have been reduced to 10, once the Act is applicable, it continues to apply even if number of employees fall below 20.
- (c) **As regards part time employees:** Even a part time employee is entitled to bonus on the basis of total number of days worked by him in an accounting year. The definition of an employee under the Act does not exclude part time employees from the definition of employee. Therefore, if such employees work for over 30 days in the accounting year and have drawn salary of less than ` 21,000 per month, they shall be entitled to receive bonus for that accounting year. The Payment of Bonus Act, 1965 does not prohibit such employees as long as they fulfill all the requirements stated above [*Automobile Karmachari Sangh vs. Industrial Tribunal (1971)*].
- c. A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority. **(4 marks)**

Where two proxy instruments by the same shareholder are lodged in respect of the same votes before the expiry of the time for lodging, there the proxy, the second in time will be counted and where one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted. Thus, in case of Member X, the proxy Z (and not Proxy Y) will be permitted to vote on his behalf. However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting. **(4 marks)**

Question 7

a. **Paralanguage:** The term “Paralanguage” is used to describe a wide range of vocal characteristics like tone, pitch and speed etc. - vocal cues that accompany spoken language which help to express and reflect the speaker’s attitude. Paralanguage describes a wide range of vocal characteristics, which help to express and reflect the speaker’s attitude. On careful observation, we find that a speaker use a vast range of vocal cues like :

1. **Pitch Variation:** Most of us introduce wide variations in pitch while speaking. These variations are necessary to catch the listener’s attention and to keep him interested in us.
2. **Speaking Speed:** One should not always speak at a high speed. Speaking fast or at a high speed is not fluency. We speak at different speeds on different occasions and while conveying different parts of a message.
3. **Pause:** The speaking speed is also accompanied by pauses, at the right moments. Incorrect use of pauses can create problems. A pause can be highly effective in emphasizing the upcoming subject and in gaining the listener’s attention. Too frequent pauses will, however, spoil the speech.
4. **Volume Variation:** Our speech should be loud enough to be audible to the audience, not too loud to put them off. The larger the audience, the higher the volume. But depending upon the different parts of the message we should monitor the volume of our speech so as to bring about a sense of contrast to generate interest of the audience.
5. **Non-Fluencies:** Utterances like ‘oh’, ‘ah’, ‘um’, ‘you know’, ‘ok’, etc. are known as non-fluencies. Frequent non-fluencies irritate the listener.
6. **Word Stress:** Proper word stress is of crucial importance in communication. By putting stress or emphasis on a word here or a word there in the same sentence we can change the meaning. **(4 marks)**

b. **Differences between a Wagering Agreement and Contingent Contract (Section 30 and 31 of the Indian Contract Act, 1872):**

1. A wagering agreement is a promise to give money or money’s worth, depending on future uncertain event whereas a contingent contract is to do or not to do something if some event does or does not happen. **(1 mark)**
2. In a wager, the future event is the only event. It is the sole determining factor of agreement in wager whereas in contingent contract, the future uncertain event is collateral to the contract. In a wagering agreement, parties have no pecuniary or financial interest in subject matter except

the winning or losing amount of wager whereas in contingent contract, the party has pecuniary or financial interest in the event. **(1 mark)**

3. Wagering agreement is a game of chance whereas a contingent event is uncertain but not a game of chance. **(1/2 mark)**
4. Wagering agreement consists of reciprocal promises. It is a set of mutual promises, each of them conditional on the happening or not happening of a future uncertain event whereas a contingent contract may or may not contain reciprocal promises. **(1/2 mark)**
5. In a wager, the uncertain event is beyond the power of both parties whereas in contingent contract, the event may be within the power of one of the parties. **(1/2 mark)**
6. A wagering agreement is void whereas a contingent contract is valid **(1/2 mark)**

c. False statement in the Prospectus: Liability (Section 35 of the Companies Act, 2013):

- i. Yes, X is liable to pay the unpaid amount on the shares. As X has purchased partly paid shares, so he is liable for the remaining value of the shares. At the time of winding up he is liable to contribute as a contributory. The related case law in this subject matter is Peak v. Gurney. **(2 marks)**
- ii. No, X cannot sue the directors to recover damages for the misstatement in the prospectus. The shareholder must have relied on the statement in the prospectus in applying for shares offered by it to hold the responsible person liable. If a person purchases shares in the open market, the prospectus is non operative as far as he is concerned. In the present case, Mr. X purchased shares on the stock exchange even if he did so in good faith he had not relied on the statement in the prospectus. **(2 marks)**

In view of the above, he cannot sue the directors of the company to recover damages.

d. (4 marks)

- (i)** The given statement is **Incorrect.**
- (ii)** The given statement is **Incorrect.**
- (iii)** The given statement is **Incorrect.**
- (iv)** The given statement is **Incorrect.**

- e. (i) Person to be called as a holder:** As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto. **(2 marks)**

On applying the above provision in the given cases-

1. 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.
2. No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name. **(2 marks)**
