



J.K. SHAH[®]
TEST SERIES
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SUGGESTED SOLUTION

IPCC NOVEMBER 2016 EXAM

LAW, ETHICS & COMMUNICATION

Test Code - I N J1 1 3 3

BRANCH - (MULTIPLE)(Date : 28.09.2016)

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Answer-1 (a) :

To conclude a contract between the parties, the acceptance must be communicated in some perceptible form. Any conditional acceptance or acceptance with varying or too deviant conditions is no acceptance. Such conditional acceptance is a counter proposal and has to be accepted by the proposer, if the original proposal has to materialize into a contract. Further when a proposal is accepted, the offeree must have the knowledge of the offer made to him. If he does not have the knowledge, there can be no acceptance. The acceptance must relate specifically to the offer made. Then only it can materialize into a contract. With the above rules in mind, we may note that the following is the solution to the given problems:

(1 Mark)

(i) It is not a valid acceptance and no contract can come into being. In fact this problem is similar to the facts of *Neale vs. Merret* [1930] W.N 189, where M offered to sell his land to N for Rs.28,000/-. N replied purporting to accept the offer but enclosed a cheque for Rs. 8,000/- only. He promised to pay the balance of Rs. 20,000 by monthly installments of Rs. 5,000. It was held that N could not enforce his acceptance because it was not an unqualified one.

(2 Marks)

(ii) This problem is similar to the facts of *Union of India v. Bahulal* (AIR 1968 Bombay 294) case, wherein A offered to sell his house to B for Rs. 10,000/-, to which B replied that, "I can pay Rs. 8,000 for it". Consequently, the offer of 'A' is rejected by 'B' as the acceptance is not unqualified. But when B later changes his mind and is prepared to pay Rs.10,000/-, it becomes a counter offer and it is up to A whether to accept it or not.

(2 Marks)**Answer-1 (b) :**

The distinction between a share and a debenture is as under:

- (i) Shares are a part of the capital of a company whereas debentures constitute a loan.
- (ii) The shareholders are the owners of the company whereas debenture holders are creditors.
- (iii) Shareholders generally enjoy voting right whereas debenture holders do not have any voting right.
- (iv) Interest on debentures is payable even if there are no profits. Dividend can be paid to shareholders only out of the profits of the company.
- (v) Debentures have generally a charge on the assets of the company but shares do not carry any such charge.
- (vi) The rate of interest is fixed in the case of debentures whereas on equity shares the dividend may vary from year to year.
- (vii) Debentures get priority over shares in the matter of repayment in the event of liquidation of the company.

Issue of Debentures with voting rights: Under section 71 (2) of the companies Act, 2013 no company can issue any debentures carrying voting rights.

(5 Marks)**Answer-1 (c) :**

Socially Responsible Corporate Performance: The benefits arising out of socially responsible corporate performance include the following:

1. Enhanced brand image and reputation.
2. Reduced Government regulations and controls.
3. Helps to minimize ecological damage.
4. Improved financial performance.
5. Reduced operating costs.
6. Increased sales and customer loyalty.
7. Increased productivity and quality of work life.
8. Increased ability to attract and retain employees.
9. Achievement of certain other objectives like easier access to capital including international capital.

(5 Marks)**Answer-1 (d) :**

The grapevine becomes active when the following factors are present:

- (a) Feeling of uncertainty or lack of sense of direction when the organisation is passing through a difficult period.
- (b) Feeling of inadequacy or lack of self confidence on the part of the employee, leading to the formation of groups.

- (c) Formation of a coterie or favoured group by the manager, giving other employees a feeling of insecurity or isolation. People operating in such circumstances will be filled with all sorts of ideas and will share them with like minded companions, at whatever level they may be. Mostly they find them at their own level, but other levels are not barred. This type of communication is being seriously studied by psychologists and management experts.

(5 Marks)

Answer-2 (a) :

Who is entitled to Bonus: 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 and draws a salary of less than Rs. 21,000/- per month. [Section 2(13) read with Section 8].

If an employee is prevented from working and subsequently reinstated in service, employee's statutory right for bonus cannot be said to have been lost. Nor can the employer refuse to pay such bonus. [ONGC(V) Sham Kumar Sahegal (1995) ILLJ].

There are, however, certain disqualifications of an employee to claim bonus in an accounting year. An employee who has been dismissed from service for (a) fraud; or (b) riotous or violent behaviour while on the premises of the establishment; or (c) Theft, misappropriation or sabotage of any property of the establishment is not entitled for bonus. [Section 9].

(2 Marks)

An employee, under the Payment of Bonus Act, 1965 in the following cases is not entitled to bonus:

1. An apprentice is not entitled to bonus as he is not included in the definition of an employee under the Act as decided in the case [Wheel & RIM Co. v. Govt. of TN. (1971)].
2. An employee who is dismissed from service on the ground of misconduct as mentioned in Section 9, is disqualified for bonus of the accounting year in which he is dismissed (Pandian Roadways Corporation Ltd. v. Presiding Officer (1996) 2 CLR 1175 (Mad).
[Note: As per the Payment of Bonus (Amendment) Act, 2015, the eligibility limit for payment of bonus to an employee under section 2(13) has been enhanced from Rs. 10, 000 to Rs. 21,000 per mensem]

(2 Marks)

Answer-2 (b) :

Periods for which Gratuity Payable:

Yes, the periods for which gratuity is payable to an employee includes those periods during which he does not actually work in the organization which are the following:

1. Lay off under the Industrial Disputes Act, 1947.
2. Leave with full wages.
3. Maternity leave for female employees.
4. Absence due to temporary disablement caused during employment.

Manner in which gratuity is calculated: Quantum of gratuity payable is 15 days' wages on the last drawn wages for every completed year of service or part thereof in excess of six months subject to a maximum of Rs. 10 Lakhs.

(4 Marks)

Answer-2 (c) :

The objectives of the Central Consumer Protection Council in India are to promote and protect the rights of the consumers such as:-

- (i) the right to be protected against the marketing of goods and services which are hazardous to life and property;
- (ii) the right to be informed about the quality, quantity, potency, purity, standard and price of goods/services so as to protect the consumer against unfair trade practices;
- (iii) the right to be assured, whichever possible, access to a variety of goods and services at competitive prices;
- (iv) the right to be heard and to be assured that consumers interest will receive due consideration at appropriate terms;
- (v) the right to seek redressal against unfair trade practices;
- (vi) the right to consumer education.

Answer-2 (d) :

Socio-psychological barriers- The attitudes and opinions, place in society and status consciousness arising from one's position in the hierarchical structure of the organization, one's relations with peers, seniors, juniors and family background – all these deeply affect one's ability to communicate both as a sender and receiver. Status consciousness is widely known to be a serious communication barrier in organizations. It leads to psychological distancing which further leads to breakdown of communication or miscommunication. Often it is seen that a man high up in an organization builds up a wall around himself. This restricts participation of the less powerful in decision making. In the same way one's family background formulates one's attitude and communication skills.

(3 Marks)

Frame of reference is another barrier to clear communication. Every individual has a unique frame of reference formed by a combination of his experiences, education, culture, attitude and many other elements, resulting in biases and different experiences in a communication situation.

(1 Mark)

Answer-3 (a) :

Revocation of continuing guarantee: The problem as asked in the question is based on the provisions of the Indian Contract Act 1872, as contained in Section 130 relating to the revocation of a continuing guarantee as to future transactions which can be done mainly in the following two ways:

1. By Notice: A continuing guarantee may at any time be revoked by the surety as to future transactions, by notice to the creditor.
2. By death of surety: The death of the surety operates, in the absence of any contract to the contrary, as a revocation of a continuing guarantee, so far as regards future transactions. (Section 131). So far as the transactions before revocation are concerned, the liability of the surety for previous transactions (i.e. before revocation) remains.
 - (i) Thus applying the above provisions in the given case, Amit is discharged from all the liabilities to Chander for any subsequent loan.
 - (ii) Answer in the second case would differ i.e. Amit is liable to Chander for Rs.10,000 on default of Bikram since the loan was taken before the notice of revocation was given to Chander.

(1 Mark)

(3 Marks)

Answer-3 (b) :

Problem on Agency: Problem as asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (i.e. wife is considered as an implied agent, of her husband). If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessities.

But the legal presumption can be rebutted in the following cases:

- (i) Where the goods purchased on credit are not necessities.
- (ii) Where the wife is given sufficient money for purchasing necessities.
- (iii) Where the wife is forbidden from purchasing anything on credit or contracting debts.
- (iv) Where the trader has been expressly warned not to give credit to his wife.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessities. This legal presumption can be rebutted only in cases (iii) and (iv).

Applying the above conditions in the given case 'Q' will succeed. He can recover the said amount from 'P' if sarees purchased by 'R' are necessities for her.

(4 Marks)

Answer-3 (c) :

Ethics: The term 'Ethics' has a variety of meanings. One of the meanings is 'Ethics' are the principles of conduct governing an individual or a group. Another definition describes ethics as relating to what is good or bad and having to do with moral duty and obligation.

(1 Marks)

Business Ethics: In a broad sense, ethics in business refers to the application of day-to-day moral and ethical norms to business. Business ethics are the principles and standards that determine acceptable conduct in business organisation.

(1 Mark)

Requirements: Being ethical in business requires acting with an awareness of -(a) The need for complying with rules (e.g) (i) laws of the land, (ii) customs and expectation of the community (iii) principles of morality (iv) policies of the organization and (v) general concerns such as the needs of others and fairness.(b) How the products, services and actions of a business enterprise, can affect its stakeholders (i.e. employees, customers, suppliers, shareholders and community society as a whole) either positively or negatively. **(2 Marks)**

Answer-3 (d) :

Types of Groups in Organization:

1. Self directed teams – autonomous and self regulated groups of employees empowered to make decisions. **(1 Mark)**
2. Quality Circles – Quality Circle has been defined “as a group of workers from the same area who usually meet for an hour each week to discuss their quality problems, investigate causes, recommend solutions and take corrective actions when authority is in their purview. In other words, Quality Circle is a small group to perform voluntarily quality control activities within their work area. **(1 Mark)**
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. **(1 Mark)**
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. **(1 Mark)**

Answer-4 (a) :

The Companies Act, 2013 vide sections 34 and 35 lay down the criminal and civil liabilities of the guilty parties in case of mis statements and misleading inclusions and omissions in prospectus. Further, section 36 lays down the punishment for fraudulently inducing persons to invest moneys.

However, the present case before us is not in respect of liability for a possible mis statement but on the right of the allottee to avoid the contract of purchasing the shares from the company. In order to decide this, key factor is to determine if any material mis representation or concealment of a material fact has taken place and if such misrepresentation is fraudulent.

(2 Marks)

The non disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made.

The question here is a direct issue arising from the consequence of misrepresentation on the contract and is governed by the Indian Contract Act, 1872. Section 19 of the Indian Contract Act, 1872 states that when consent to an agreement is caused by coercion, fraud or misrepresentation, the agreement is a contract voidable at the option of the party whose consent was so caused.

Hence, in the given case the allottee can avoid the contract of allotment of shares. (Rex V. Lord Kylsant).

(2 Marks)

Answer-4 (b) :

The legal issues in the presented problem in the question is covered under Section 62 (1) of the Companies Act, 2013 and pertains to the case Gas Meter Co. Ltd. Vs Diaphragm & General leather co. Ltd.

Section 62 (1) (a) of the Companies Act, 2013 provides that if, at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and must offer the shares to the existing equity shareholders in proportion to their holdings.

(2 Marks)

Further in case of Gas Meter Ltd. Vs Diaphragm, & General; leather Co. Ltd where the facts of the case were similar to those given in the present case, the articles of Diaphragm Co. provided that the new shares should

first be offered to the existing share holders. However, the company offered new shares to all shareholders excepting Gas Co., which held its controlling shares. It was held that Diaphragm company had no legal authority under the Companies Act to do so.

Therefore, in the given case, SV Ltd.'s decision not to offer any further shares to VRS Co. Ltd on the ground that VRS Co. Ltd already held a high percentage of shareholding in SV Co. Ltd. is not valid for the reason that it is violative of the provisions of Section 62 (1) (a) as also substantiated by the ruling in the above referred case.

(2 Marks)

Answer-4 (c) :

When two or more persons meet together and talk/ discuss on any business or non business matter, it is known as negotiation. When same persons discuss specific proposals in order to come to a mutually accepted solutions; whether it is with an employer, family member or business partner. It can be said that negotiation is a common way of settling things in business.

(2 Marks)

Steps in the negotiation process

1. Preparing
2. Arguing
3. Signaling
4. Packaging
5. Bargaining
6. Closing and arguing

(2 Marks)

Answer-4 (d) :

Guidelines for Active Listening

- Look at the person and suspend other things you are doing in order to understand the other person's concerns, intentions.
- Be interested in what the other person is saying. If you just can't make yourself interested, you will lose important information, so try taking notes. Doing so will keep your body and mind active.
- Listen to the tone of voice and inflection; look at gestures and body language these may carry an unspoken message.
- Restate what the person said. Restating their meaning is a way for you to make sure you understand the person clearly.
- Ask questions once in a while to clarify the meaning. Doing so will keep you alert and let the other person know that you have been listening and are interested in getting all the facts and ramifications.
- Be aware of your own feelings and opinions.

(4 Marks)

Answer-5 (a) :

Dishonour by non-acceptance (Section 91, the Negotiable Instruments Act, 1881): A bill may be dishonoured either by non-acceptance or by non-payment. A dishonour by non-acceptance may take place in any one of the following circumstances:

- (i) when the drawee either does not accept the bill within forty-eight hours of presentment or refuse to accept it;
- (ii) when one of several drawees, not being partners, makes default in acceptance;
- (iii) when the drawee gives a qualified acceptance;
- (iv) when presentment for acceptance is excused and the bill remains unaccepted; and
- (v) when the drawee is incompetent to contract.

An instrument is dishonoured by non-payment when the party primarily liable e.g., the acceptor of a bill, the maker of a note or the drawee of a cheque, make default in payment. An instrument is also dishonoured for non-payment when presentment for payment excused and the instrument, when overdue, remains unpaid, under section 76 of the Act.

Dishonour of cheque for insufficiency, etc. of funds in the account: Where any cheque drawn by a person on an account maintained by him with a banker for payment is dishonoured due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to one year or with fine which may extend to twice the amount of the cheque or with both [Section 138 of the Negotiable Instruments Act, 1881].

(5 Marks)

Provided that nothing in this section shall apply unless:

- (i) such cheque should have been presented to the bank within a period of 3 months of the date of drawn or within the period of its validity, whichever is earlier.
- (ii) The payee or holder in due course of such cheque had made a demand in writing for the payment of the said amount of money from the drawer 30 days of the receipt of information by him from the bank regarding the return of the cheque unpaid; and
- (iii) The drawer of the cheque had failed to pay the money to the payee or holder in due course of the cheque within 15 days for the written demand for payment.

(3 Marks)

Answer-5 (b) :

Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

- (i) The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
- (ii) The notice required under the Companies Act must have been duly given of the general meeting;
- (iii) The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

(3 Marks)

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

Accordingly, in the given problem, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

(1 Mark)

Answer-5 (c) :

Correct. Economic growth has to be environmentally sustainable. There is no economic growth without ecological costs. Industrialization and rapid development have affected the environment. Everybody should realize that such development is related to environmental damage and resource depletion.

(1 Marks)

Therefore, an element of resource regeneration and positive approach to environment has to be incorporated in development programs. Sustainable development refers to maintaining development over time. Sustainable development is development that meets the needs of the present without comprising the ability of future generations to meet their own needs. A nation or society should satisfy its social, economic and other requirements without jeopardizing the interest of future generations.

(2 Marks)

High economic growth means high rate of extraction, transformation and utilization of nonrenewable resources. Therefore it is suggested that economic growth has to be environmentally sustainable because it is sure that there is no economic growth without ecological cost.

(1 Mark)

Answer-6 (a) :

- (i) **Under Section 62 (4)** of the Companies Act, 2013 where any debentures have been issued or loans have been obtained from the Government by a company, the Central Government may, if in its opinion it is necessary in public interest so to do, by order direct that such debentures or loans or any part thereof shall be converted into shares in the company on such terms and conditions as appear to that Government to be reasonable in the circumstances of the case, even if the terms of issue of such debentures or the terms of such loans do not include a term for providing for an option for such conversion.

Therefore, the Central Government is fully empowered to convert the debentures of loans given by it to a company into shares even if the terms of issue of such debentures or loans do not include a term for providing for an option for such conversion.

(4 Marks)

- (ii) **In terms of section 62 (5)** in determining the terms and conditions of such conversion, the Central Government shall have due regard to the following matters / circumstances:
- (i) The financial position of the company;
 - (ii) The terms of issue of the debentures or such loans, as the case may be;
 - (iii) The rate of interest payable on such debentures or the loans;
 - (iv) Public interest and
 - (v) Such other matters as may be considered necessary.

(2 Marks)

- (iii) **Remedies open to the company:** If the terms and conditions of such conversion are not acceptable to the company, the company may, within 60 days from the date of communication of such order appeal to the Tribunal which shall after hearing the company and the Government pass such orders as it may deem fit.

(2 Marks)

Answer-6 (b) :

Situations when Oral face-to-face communication shall be used:

1. Receiver is not particularly interested in getting the message. Oral provides more opportunities for getting and keeping interest and attention.
2. It is important to get feedback. It is easier to get feedback by observing facial expressions and asking questions.
3. Emotions are high. Oral provides more opportunity for both sender and receiver to let off steam, cool down, and create a suitable climate for understanding.
4. Receiver is too busy or preoccupied to read, oral provides a better opportunity to get attention.
5. If criticism of receiver is involved, oral provides more opportunity to accomplish this without arousing resentment. Also, oral is less threatening because it has not been formalized in writing. Even though it might be marked personal and confidential.
6. Sender wants to persuade or convince. Oral provides more flexibility, opportunity for emphasis, chance to listen and opportunity to remove resistance, and change attitudes.
7. Oral is more natural. For example, in most cases it is more natural to give instructions orally rather than writing them out.
8. Discussion is needed. A complicated subject frequently requires discussion to be sure of understanding.
9. Receiver cannot read language of the sender. Some people can understand a spoken language but cannot read it.

(5 Marks)

Use written communication when:

1. Sender wants a record for future references.
2. Receiver will be referring to it later.
3. Message is complex and requires study by receiver.
4. Message includes a step-by-step procedure.
5. A copy of the message should go to another person.

Thus, the main role of the change manager is to work towards reducing the resistance towards change, and increasing the enthusiasm and level of commitment for the change.

(3 Marks)

Answer-7 (a) :

According to 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 high 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.

(4 Marks)

Answer-7 (b) :

Sexual harassment is a situation in which an employee is coerced into giving into another employee's sexual demands by the threat of losing some significant job benefit, such as a promotion, raise, or even the job. This kind of degrading coercion exerted on employees who are vulnerable and defenseless inflicts great psychological harm on the employee, violates the employee's most basic right to freedom and dignity and is an unjust misuse of the unequal power that an employer can exercise over the employee. Sexual harassment is prohibited, and an employer is held responsible for all sexual harassment engaged in by employees.

(4 Marks)

Answer-7 (c) :

Types of Groups in Organization:

1. Self directed teams – autonomous and self regulated groups of employees empowered to make decisions. (1 Mark)
2. Quality Circles – Quality Circle has been defined “as a group of workers from the same area who usually meet for an hour each week to discuss their quality problems, investigate causes, recommend solutions and take corrective actions when authority is in their purview. In other words, Quality Circle is a small group to perform voluntarily quality control activities within their work area. (1 Mark)
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. (1 Mark)
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. (1 Mark)

Answer-7 (d) :

Notice: Meeting of Board of Directors:

Notice is hereby given that meeting of the Board of Directors of the company will be held at the registered office on.....at.....a.m./p.m. to transact the following:

Agenda

1. Confirmation of the minutes of the previous Board Meeting held on.....to.....
2. Discussion of the progress in business.
3. Co-option of Mr. X as an Additional Director of the company.
4. Buy back of 10% of the equity shares of the company.
5. Any other matter with the permission of the chair.

Place:.....

By Order of the Board of Directors

Date:.....

(4 Marks)