

PRIME ACADAMY

Answer to MODEL QUESTION PAPER FOR P E II

1.(a)Gopal sends an offer to Suresh to sell his second car for Rs.1,00,000 with a condition that if Suresh does not reply within a week, Gopal shall treat the offer as accepted. Is Gopal correct in his proposition? What should be the position if Suresh communicates his acceptance after one week?

**Answer:** Acceptance cannot be implied merely from the silence of offeree, even if it is expressly stated in the offer itself. When there is mere silence on the part of the offeree, there is no acceptance. When Suresh remains silent it does not amount to Acceptance. Hence Gopal is not correct in his proposition.

If Suresh communicates his acceptance after one week there will not be any valid acceptance. Acceptance of offer after the time prescribed by the Offerer has elapsed will not operate to turn the offer into a contract.

(b) For the purpose of making uniform for the employees, Ramakrishna brought dark blue coloured cloth from Venkatesh, but did not disclose the sellers the purpose of the purchase. When uniform were prepared and used by the employees, the cloth was found unfit. However, there was evidence that the cloth was fit for caps and carriage lining. Advise Ramakrishna whether he is entitled to have any remedy.

**Answer:** An implied condition in a contract of sale that an article is fit for a particular purpose only arises when the purpose for which the goods are supplied is known to the seller, the buyer relied on the seller's skills or judgement and seller deals in the goods in his usual course of business.

In the problem given, the cloth supplied by Venkatesh is capable of being applied to a variety of purposes, the Buyer should have told the seller the specific purpose for which he required the goods, but he did not do so. Hence, the implied condition as to the fitness for the purpose does not apply.

Hence, the Ramakrishna will not succeed in getting any remedy from Venkatesh under the Sale of Goods Act. (Jones V. Padgett)

(c) What is meant by "Payment in due Course "in respect of a negotiable instrument? When does such payment operate as a discharge of a negotiable instrument?

**Answer:** Under section 10 of the Negotiable Instrument act, 1881, "payment in due course", means payment in accordance with the apparent tenor of the instruments in good faith and without negligence to any person in possession thereof under circumstances which do not afford a reasonable ground for believing that he is not entitled to receive payment of the amount therein mentioned. In order that such payment may operate as discharge of a negotiable instrument, it must fulfill the following conditions.

(i)the payment should be in accordance with the apparent tenor of the instrument.

- (ii) that the person to whom payment is made should be in possession of the instrument.
- (iii) the payment should be made in good faith, without negligence, and under circumstances, which do not afford a reasonable ground for believing that the person to whom it is made is not entitled to receive the amount.

(d) Explain the rights of an outgoing partner.

Where any partner has died or ceased to be a partner, and the surviving or continuing partners carry on the business of the firm with the property of the firm without any final settlement of accounts as between them and the outgoing partner or his estate, the outgoing partner has or his or his representative's opinion, the right to such share of profit made since he ceased to be a partner as may be attributable to the use of his share of the property of the firm or to interest @6% per annum on the amount of his share in the property of the firm.

(e) State the provisions relating to payment of minimum and maximum bonus under the Payment of Bonus Act?

**Payment of Minimum bonus (Section 10) :** Every employer shall be bound to pay to every employee in respect of every accounting year, minimum bonus which shall be 8.33% of the salary or wages earned by the employee during the accounting year or rs.100, whichever is higher, whether or not the employer has any allocable surplus in the accounting year. But if the employee has not completed 15 years of age at the beginning of the accounting year he will be entitled to a minimum bonus which shall be 8.33% of the salary or wages during the accounting year or Rs. 60 whichever is higher.

**Payment of Maximum Bonus ( Section 11) :** Where in any accounting year the allocable surplus exceeds the amount of minimum bonus payable to the employees the employer shall in lieu of minimum bonus, be bound to pay to every employee in respect of such accounting year subject to a maximum of 20% of such salary or wages.

(f) Explain the concept of "Basic Wages" under the provisions of the Employees Provident Funds and Miscellaneous Provisions Act, 1952.

**Answer:** Basic wages;

All emoluments, which are earned by an employee while –

On duty or on leave or holidays with wages

-in either case, in accordance with the terms of the contract or employment and which are paid or payable in cash to him, but does not include:

- (a) The cash value of any food concessions,
- (b) Any dearness allowance ie. All cash payments, by whatever name called, paid to an employee on account of rise in the cost of living.
- (c) House rent allowance
- (d) Overtime allowance
- (e) Bonus
- (f) Commission
- (g) any other similar allowance payable to the employee in respect of employment, and
- (h) Any presents made by the employer.

(g) State the restrictions imposed on a registered society under the Co-operative Societies Act, 1912 regarding investment or deposit of its surplus funds.

Answer: Investment of funds (section 32): A registered society may invest or deposit its funds in the following manner:

(i) in the Government Savings Bank: or

(ii) in any of the securities specified in section 20 of the Indian Trusts act, 1882: or

(iii) in the shares or on the security of any other registered society: or

(iv) with any bank or person carrying on the business of banking, approved for this purpose by the registrar: or

(v) in any other mode permitted by the rules.

(h) Who is the Central Registrar under the Multi-State Co-operative Societies Act, 2002? Who appoints him and state his powers.

Answer: Appointment: The Central government is empowered to appoint a person as the Central Registrar of Co-operative Societies, and also it can appoint such persons to help the Central Registrar in discharging duties and exercising his powers. There shall be only one person appointed as Central Registrar, as such, however, other persons appointed by the government to assist Central Registrar may be designated as Deputy/Assistant, Additional or Joint Central Registrars (Section 4).

Powers: Section 4(2) lays down that the Central Government may, by notification, direct that any power exercisable by the Central Registrar under the Act shall in relation to such society, and such matters as may be specified in the notification be exercisable also by any other officer of the Central Government or of a State Government as may be authorized by the Central Government subject to such conditions as may be specified therein. However, no officer of a state Government shall be empowered to exercise such power in relation to a National Co-operative Society.

From the above it can be deduced that the Central Registrar has powers of (i) Registration (ii) Control (iii) Supervision (iv) Inspection (v) Inquiry (vi) Winding up of a Multi-State Co-operative Society.

2 (a) Discuss briefly the position of a minor with regard to the contract entered into by him.

Answer:

#### MINOR'S CONTRACTS

The Position of minor's contracts is summed up as follows;

1. A contract with or by a minor is void and a minor, therefore, cannot, bind himself by a contract. A minor is not competent to contract.

2 A minor can be a promisee or a beneficiary. Due to his minority, a minor cannot bind himself by a contract, but there is nothing in the Contract Act which prevents him from making the other party to the contract to be bound to the minor. Thus, a minor is incapable of making a mortgage, or a promissory note, but he is not incapable of becoming a mortgagee a payee or endorsee. He can derive benefit under the contract.

3. A minor's agreement cannot be ratified by the minor on his attaining Majority. A minor cannot ratify the agreement on attaining the age of a majority as the original agreement is void ab initio and, therefore, validity cannot be given to it later on.

4. If a minor has received any benefit under a void contract, he cannot be asked to refund the same.

5 A minor is always allowed to plead minority. And is not estopped to do so even where he had procured a loan or entered into some other contract by falsely representing that he was of full age. Thus, a minor who has deceived the other party to the agreement by representing himself as of full age is not prevented from later asserting that he was a minor at the time he entered into agreement.

6 A minor cannot be a partner in a partnership firm. However, a minor may, with the consent of all the partners for the time being, be admitted to the benefits of partnership (Section 30, the Indian Partnership Act, 1932).

7. A minor's estate is liable to a person who supplies necessaries of life to a minor. Or to one whom the minor is legally bound to support, according to his station in life not on the basis of any contract but on the basis of an obligation resembling a contract (Section 68).

8. Minor's Parents/ Guardians are not liable to a minor's creditor for the breach of contract by the minor. Whether the contract is for necessaries or not. However, the parents are liable where the minor is acting as an agent of the parents or the guardian.

9. A minor can act as an agent and bind his principal by his acts without incurring any personal liability.

(b) State the conditions implied in the contract of sale of goods.

Answer:

1. Condition as to title: An implied condition that the seller has the right to sell the goods in the case of sale and will have the right of sale in the case of an agreement to sell them at a time when the property is to pass.

2. Sale by description: In a sale by description there is an implied condition that the goods shall correspond with the description and if the sale is by sample as well as description, the goods must not only correspond with the sample but also with description.

3. Condition as to quality of business:

1. An implied condition or warranty as regards quality or fitness for a particular purpose may be annexed by trade usage.

2. Where the seller makes representation and the buyer relies thereon the buyer is entitled to the goods in accordance with the representation.

3. When the seller did actively conceal a defect in the goods so much so that, on a reasonable examination, the same could not be discovered, the buyer could avoid the agreement and claim damages.

4. Conditions implied in case of sale by sample:

i) the bulk shall correspond with the sample as regards quality.

ii) that the goods shall be free from any defect which shall render them unmerchantable and which would not be apparent on reasonable example of sample.

(3(a) Is Registration of Partnership firm is compulsory? What is the consequence of non-registering a partnership with the registrar of Firms.

Answer:

Registration of partnership is not compulsory.

Section 69 lays down the consequences of non-registration of a firm as follows:

1. A partner of an unregistered firm cannot file a suit against the firm or any Partner, so as to enforce a right (a) arising from contract, or (b) conferred by the Partnership Act. Thus, if a Partner of an unregistered firm is not paid his share of profits, he cannot claim it through a suit in the court of law.

2.No suit can be filed on behalf of an unregistered firm against any third party for the purpose of enforcing a right arising from a contract.

3. An unregistered firm cannot claim a set –off in a suit.

Non-registration of firm, however, does not affect:

a. The right of a firm to enforce rights arising otherwise than from contracts.

b. The enforcement of any right to sue for the dissolution of a firm or for account of a dissolved form, or any right or power to realize the property of a dissolved firm. Or

c The powers of an Official Assignee/ Receiver or Court under the Presidency towns insolvency Act, or the Provincial Insolvency Act to realize the property of an insolvent partner.

d. Firms which have no place of business in the territories to which the Act extends.

e. Any suit or claim set-off not exceeding Rs.100 in value provided the suit is of such a nature that it has to be filed in the small causes court. Proceedings incidental to such suits, e.g., execution of decrees are also allowed.

(b) Distinguish between contract of indemnity and guarantee

Answer:

1. There are two parties to the contract viz. indemnifier (promisor) and the indemnified (promisee). There are three parties to the contract viz., creditor, principal debtor and the surety.

2. Liability of the indemnifier to the indemnified is primary and the independent. Liability of the surety to the creditor is collateral or secondary, the primary liability being that of the principal debtor.

3. There is only one contract in case of a contract of indemnity, i.e. between the indemnifier and the indemnified. In a contract of guarantee there are three contracts: between principal debtor and the creditor, between creditor and the surety and principal debtor.

4. It is not necessary for the indemnifier to act at the request of the indemnified. It is necessary that surety should give the guarantee at the request of the debtor.

5. The liability of the indemnifier arises only on the happening of a contingency. There is usually an existing debt or duty, the performance of which is guaranteed by the surety.

6. An indemnifier cannot sue a third party for loss in his own name, because there is no privity of contract. He can do so only if there is an assignment in his favour. A surety, on discharging the debt due by the principal debtor, steps into the shoes of the creditor. He can proceed against the principal debtor in his own right.

4 (a) Define Cheque under Negotiable Instrument Act. State its essential features.

Answer:

“ A cheque is a bill of exchange drawn on a specific banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form.”

A cheque in the electronic form means ‘ cheque which contains the exact mirror of a proper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature and systematic crypto system. A truncated cheque means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

Essential features of cheque :

- 1.Cheque is a bill of exchange drawn on a specified banker.
- 2.A cheque can be drawn to bearer and made payable on demand.
- 3.The drawee is always banker.
- 4.A cheque may be crossed.
- 5.Cheque is not necessary to present it for acceptance.

(b) Explain set on and set off of allocable surplus under the Payment of Bonus Act, 1965.

Answer:

Set-on and Set-off of allocable surplus

1. Allocable Surplus > Bonus Payable [ Se. 15 (1) ]:

In any accounting year, if Allocable Surplus > Maximum Bonus.

(a) Carry forward; Excess, subject to a limit of 20% of Total Salary or Wages of the employee ( in that accounting year) be carried forward for being set on in succeeding accounting year and so on up to and inclusive of the Fourth Accounting Year.

(b) Utilisation and Manner of Set Off : The carried forward amount shall be utilized only for the purposes of paying Bonus in the manner specified in the Fourth Schedule.

2. No Allocable Surplus, or Allocable Surplus<Bonus Payable [Sec.15(2)];

(i)In any accounting year, if there is no Allocable Surplus; or Allocable Surplus< Minimum Bonus.

(a) Carry Forward; The minimum Bonus or the amount of deficiency in Bonus shall be carried forward for being set on in succeeding accounting year and so on upto and inclusive of the Fourth Accounting Year.

(ii) There is no balance or no sufficient balance in the amount carried forward for set on u/s15 (1).

(b) Manner of set off; The set off shall be done in the manner specified in the Fourth Schedule.

3. Fourth Schedule to apply to all cases [Sec.15(3)]; The principle of set on and set off as illustrated in the Fourth Schedule shall apply to all other cases not covered by Sec. 15(1) and 15(2) for the purpose of payment of bonus.

4. FIFO basis; Where in any accounting year, any amount has been carried forward for set on or set off, then in calculating Bonus for the succeeding years, the amount of set off from the earliest accounting year shall be first taken into account.

5(a) Point out the classes of those establishments upon which the provisions of Employees provident Fund and Miscellaneous Provisions Act, 1952, does not apply.

Answer:

The Act does not apply to the following classes of establishments, viz:

1. an establishment under the Co-operative Societies Act, 1912 or under any other law relating to co-operative societies in any state, employing less than 50 persons and working without the aid of power: or

2. any other establishment belonging to or under the control of the Central or a State government and whose employees are entitled to the benefit of contributory provident fund or old age pension in accordance with any scheme or rule framed by the Central Government or the State Government governing such benefits; or

3. to any other establishment set up under any Central, Provincial or State Act and whose employees are entitled to the benefits of contributory provident fund or old age pension in accordance with any scheme or rule framed under the Act governing pension in accordance with any scheme or rule framed under the Act governing such benefits; or

4. Section 16(2) further empowers the Central government to exempt whether prospectively or retrospectively any class of establishments (not an individual establishment unless it constitutes a class within itself) from the operation of the Act, if the government thinks necessary or expedient after taking into consideration the financial position of the establishment or other circumstances of the case. This exemption can be granted only through notification in the Official Gazette.

(b) State the procedure for amendment of bye-laws of a Multistate Co-operative Society.

Answer:

The amendment of bye-laws is valid only on registration with the central registrar which he may register within a period of 3 months on being satisfied that the amendment-

(a) is not contrary to the provisions of the Act or rules:

(b) does not conflict with co-operative principles : and

will promote the economic interests of the members of the Multi-state Co-operative Society, he register the amendment within a period of three months from the date of receipt thereof by him.

#### .Steps for Amendment

- (a) Resolution at the meeting of the executive committee, of the draft amendment to be made in the bye-laws.
- (b) Issue 15 clear days notice of amendment to the members of the Society for a proposed annual or special meeting to consider the proposed amendment of bye-laws.
- (c) Approval of members by 2/3<sup>rd</sup> majority of the members present and voting.
- (d) Application to the central registrar for registration of the amendment within 60 days from the date of general meeting at which amendment was passed. Such an application should be accompanied with the following documents-
  - (i) copy of the resolution.
  - (ii) Particulars of the date of general meeting, the number of days notice which the date of meeting, number of members forming the quorum, number of members present at the meeting, number of members exercising the right of voting, and number of members voting for the amendment.
  - (iii) Copy of the existing bye-laws with amendment proposed to be made together with reasons justifying such amendment.
  - (iv) Copy of the notice given to members for convening the general meeting.
  - (v) Four copies of the text of bye-laws as they will stand after the amendment signed by the officers duly authorized by the board of the Society.
  - (vi) Certificate signed by the presiding authority of the general meeting stating that the 2/3<sup>rd</sup> majority passed the resolution and that valid notice was given for convening the meeting to consider the amendment.

#### Registration of amendment:

The Central Registrar on registration of the amendment, shall within a month thereof forward a copy of the registered amendment together with a Certificate, which shall be conclusive evidence of such amendment(s).

6(a) under what circumstances can a member is expelled from his membership under the Co-operative Societies Act, 1912.

Answer:

In the following situations, the member can be expelled, in accordance with the bye-laws-

1. Failure to fulfill obligations in the matter of setting his dues to the Society (or) is to be proceeded against for recovery of debts.
2. Insolvency or insanity of the member by a Criminal court for an offense.
3. Conviction of the members in such activities as are prejudicial to Society's as well as members' interests.
4. Involvement of the member in such activities as are prejudicial to Society's as well as members' interests.
5. Guilty of an act, which the Managing committee considers as dishonourable.
7. Failure to withdraw from membership voluntarily and his continuing as a member are considered harmful to interests of the Society.

(b) "A" obtains B's acceptance to a Bill by fraud, B endorses it to C, who takes it as a holder in due course. C endorses the bill to X, who knows of the fraud. Decide giving reasons whether X gets good title to the bill.

Answer:

As per Sec.53, a holder of a negotiable instrument, who derives title from a Holder in due course, has the rights thereon of that Holder in due course. Any defect in the title of the transferor will not affect the rights of a Holder in due course even if he had knowledge of the prior defect provided he himself is not a party to the fraud.

X derived title from C, who is a holder in due course. Hence, X can recover the amount from A.

Also, X is not a party to fraud. Once, the title has been purged of the defect, ( by passing through the hands of C, the Holder in due course ) notwithstanding notice or knowledge of the fraud, X gets a good title.

7. (a) "The doctrine of lifting the veil of corporate personality is an accepted legal principle." Explain the statement.

Answer:

From the juristic point of view a company is a legal person distinct from its members (salmon v. Saloman & Co. Ltd). This principle may be referred to as the veil of incorporation. The effect of this principle is that there is a fictional veil and not a wall between the company and its members. "Lifting the veil" means looking behind the company as a legal person, i.e. disregarding the corporate entity and paying regard instead to the realities behind the legal façade. Where the courts ignore the company and concern themselves directly with the members or managers, the corporate veil may be said to have been lifted only in corporate circumstances the courts are willing to lift the corporate veil and that too, when questions of control are involved rather than merely question of ownership.

The following are the cases where modern company law disregards the principle of corporate personality or the principle that the company is a legal entity distinct and separate from its shareholders or members.

- (i) In the law relating trading with the enemy where the test of control is adopted.
- (ii) In certain matters concerning the law of taxes, death duties and stamps particularly where question of the controlling interest is in issue.
- (iii) where companies form other companies as their subsidiaries to act as their agent. The application of the doctrine may operate in favour of such companies depending upon the acts of a particular case.
- (iv) Where the benefit of limited liability of shareholders is destroyed and each shareholder's liability has become unlimited. This happens under section 45 when the number of members of a public company or private company falls below 7 or 2 respectively, and business is carried on for more than six months. In such a situation, every person who is a member and is cognizant of the fact shall be severally liable for the payment of the whole debts of the company incurred during that time.

(v) Under the law relating to exchange control.

(vi) Where the device of incorporation is adopted for some illegal or improper purpose, e.g., to defeat or circumvent law, to defraud creditors or to avoid legal obligations.

(b) X Ltd has its registered office in Tamilnadu. For better administrative control the company plans to shift its register office from Tamilnadu to Delhi. Explain the procedure to be followed. Would it make a difference, if the registered office is transferred from Chennai to Coimbatore both the places are within the state of Tamilnadu.

Answer:

Shifting of registered office from one State to another state:

In order to shift the registered office from the state of Tamilnadu to the State of Delhi, X Ltd has to take the following steps.

1. To pass a special resolution and thereafter file the same with the Registrar of companies.
2. To file a petition before the Company Law Board under Section 17 of the Companies Act, 1956.
3. To give an advertisement in two newspapers one in English language and the other in local language indicating the change and any member/creditor having objection can write to the Company Law Board.
4. To give notice to the State of Tamilnadu.
5. To submit all the required documents along with the fee to the Company Law board.

The Company Law Board after hearing the petition passes an order confirming the alteration in the memorandum of association of the company regarding the shifting of registered office. The Company Law Board's order should be filed by X Ltd. With both the Registrar of Companies Tamilnadu and Delhi. After registration of said order the Registrar of companies Tamilnadu will issue a certificate which is the conclusive proof that all the formalities have been complied with.

#### CHANGE OF REGISTERED OFFICE FROM THE JURISDICTION OF ONE REGISTRAR TO THE OTHER REGISTRAR WITHIN THE SAME STATE:

The procedure to change the Registered Office from the jurisdiction of one Registrar to the other Registrar within the same State is as follows:

1. Company can do so only if the Regional Director permits to it.
2. Application for permission has to be made on a prescribed form.
3. The Regional Directors are required to confirm the company's application and inform it accordingly within a period of 4 weeks.
4. After getting the confirmation of the Regional Director, the company must file a copy of the same with the Registrar of companies within two months from the date of the confirmation together with a copy of the altered memorandum.
5. The Registrar is required to register the same and inform the company within one month from the date of filing.
6. The Registrar's certificate is a conclusive evidence of the fact of alteration and of compliance with the requirements.

(c) Happy company Limited was incorporated on 1-4-2005 and commencement of business was on 15-4-2005. The first allotment of shares was made on 30-3-2006. On 1-4-2007 Happy Company Ltd wants issue shares to the relatives of the Directors. Advise Happy Company Limited about the steps to be taken for the issue of shares.

Answer:

The shareholders of the company have the right to issue of shares. In the following circumstances the company need not offer further issue of shares to the existing shareholders, in case issue and allotment of shares within 2 years from the Company's formation or within 1 year from the first allotment whichever occurs earlier. In the problem given one year from the first allotment expired on 29-3-2007. Hence further shares should be offered to the existing shareholders only. However, the shares can be offered to the outsiders i.e. the relatives of the Directors if special resolution is passed by the shareholders under section 81 (1A) of the Companies Act, 1956 or by ordinary resolution where the Central Government approval is obtained.

(d) Distinguish transfer of shares and transmission of shares

Answer:

1. Transfer of shares is voluntary by the act of the parties. Transmission of shares is by operation of law >
2. Both the transferor and the transferee should sign the transfer deed. Legal heirs will get the shares transmitted in their name.
3. Share transfer form has time validity . No such time limit is prescribed for transmission of shares.
4. Shares have to be transferred within prescribed time from the lodgment of transfer. No such prescribed time limit for transmission of shares.
5. Stamp duty on transfer deed is required to be affixed in case of physical share transfer. No stamp duty is involved in case of transmission of shares.
6. Succession certificate or will not required for transfer of shares. Succession certificate or will or probate is required for transmission of shares.

(e) What is meant by "Abridged prospectus"? Under what circumstances a company issuing abridged prospectus need not accompany the prescribed details along with the application for issue of shares.

Answer:

As per S. 2(1) of the Companies (Amendment) act, 2000 'abridged prospectus means a memorandum containing such salient features of a prospectus as may be prescribed'. By the amendment Act of 1988 the company was permitted to furnish an abridged form of prospectus along with the application for shares or debentures instead of the full prospectus.

The government has revised the format of abridged prospectus to provide for greater disclosure of information to prospective investors so as to enable them to take an informed decision regarding investment in shares and debentures.

The abridged prospectus (in form 2A) and the share application form should bear the same printed number. The investor may detach the share application form along the perforated line after he has had an opportunity to study the contents of the abridged prospectus, before submitting the same to the company or its designated bankers.

Circumstances where details not required in the abridged prospectus.

1. Where the offer is made in connection with a bonafide invitation to a person to enter into an agreement with respect to the shares or debentures.
2. Where the shares or debentures are not offered to the public.
3. Where the offer is made only to the existing members or debenture holders of the company.
4. Where the shares or debentures offered are in all respects uniform with shares or debentures already issued and quoted on a recognized stock exchange.
5. Where a prospectus is issued as a newspaper advertisement, it is not necessary to specify the contents of the memorandum, or the names etc., of the signatories to the memorandum or the number of shares subscribed for by them.

8(a) Lotus InfoTech Ltd was incorporated on 30<sup>th</sup> June 2005. Advise the company when it should hold its Annual general Meeting? Is any extension for holding first annual general meeting will be available from Registrar of Companies?

Answer:

The first annual general meeting of the company should be held 9 months from the close of the financial year or 18 months from the date of the incorporation which ever is earlier.

18 months from the date of incorporation – 31<sup>st</sup> December 2006

9 month from the date of financial year

Assuming the financial year ending is 30<sup>th</sup> Sep 05 - 30<sup>th</sup> June 2006

Assuming the financial year ending is 31<sup>st</sup> March 06 - 31<sup>st</sup> December 2006

Hence the First annual general meeting will be held either on 30<sup>th</sup> June 2006 or 31<sup>st</sup> December 2006 depending upon its financial year.

The first annual general meeting will not be extended by ROC beyond 18 months.

(b) Whether a company can buy back its own shares. Explain in brief the provisions of the Companies Act, 1956 relating to the sources of funds and conditions for buy-back its own shares by the company.

The Companies (Amendment ) Act, 1999, provides for a company to purchase its own shares or other specified securities subject to certain conditions and regulations.

**(1) Sources of funds for Buy-Back :** Notwithstanding anything contained in this Act, but subject to the provisions of sub-section (2) of this section and section 77B, a company may purchase its own shares or other specified securities out of -

- (i) its free reserves
- (ii) the securities premium account: or
- (iii) the proceeds of any shares or other specified securities:

Provided that no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

“Specified securities” includes employees’ stock option or other securities as may be notified by the central Government from time to time.

**(2) Conditions for Buy-back :** No company shall purchase its own shares or other specified securities under sub-section (1) unless:

- (a) The buy-back is authorized by the company’s articles ;
- (b) A special resolution has been passed in general meeting of the company authorizing the buy-back ;
- (c) The buy-back does not exceed 25% of the total paid-up capital and free reserves of the company. But the buy-back of equity shares in any financial year shall not exceed 25% of the company’s total paid-up capital in the financial year ;
- (d) The ratio of the debt owned by the company is not more than twice the capital and its free reserves after such buy-back ;
- (e) The ratio of the debt owned by the company is not more than twice the capital and its free reserves after such buy-back ;
- (f) All the shares or other specified securities are fully paid-up ;
- (g) The buy back of shares or other specified securities listed on any stock exchange is in accordance with the regulations made by the Securities and Exchange Board of India in this behalf ;

(3) Procedure before buy-back : The notice of the meeting at which special resolution is proposed to be passed shall be accompanied by an explanatory statement stating-

- a) A full and complete disclosure of all material facts;
- b) The necessity for the buy-back ;
- c) The class of security intended to be purchased under the buy-back ;
- d) The amount to be invested under the buy-back ; and

(4) **Time limit for completion of buy-back ;** Every buy shall be completed within twelve months from the date of passing the special resolution under clause (b) of sub-section (2).

(5) **Buy Back from whom :**

The buy back may be from :

- a) from the existing security holders on a proportionate basis; or
- b) from the open market ; or

c) from the odd lots, that is say where the lot of securities of public company whose shares are listed on a recognized stock exchange is smaller than such marketable lot, as may be specified by the stock exchanger; or

d) by purchasing the securities issued to employees of the company pursuant to a scheme of stock option or sweat equity.

9(a) In the annual general meeting of a public limited company 2 proxies representing 1/10<sup>th</sup> of the share capital were demanding poll. This was objected to by the 3 members holding 3/4<sup>th</sup> of the share capital stating that the proxy cannot speak in the meeting but they can only vote. Advise the Chairman of the meeting.

Answer:

In case of public limited company members or proxies holding 1/10<sup>th</sup> of the share capital can demand poll. Though proxy cannot speak and only vote at the meeting, for the purpose of demanding poll proxy can speak. Hence the objection raised by the three members will not hold good and the Chairman has to order for poll.

(b) What amounts to misstatement in the prospectus? Ms Mala subscribed shares issued by BEST Co Ltd. The prospectus of Best Co Limited included a statement which was misleading in the form and content. On the faith of the prospectus believing it to be true, Mala subscribed for shares and sustained loss. Can Mala sue for compensation of loss? If so who will be sued for such loss.

Answer:

Misstatement in the prospectus: According to Section 65, an untrue statement or misstatement is one which is misleading information and context in which it has been included in the prospectus. Where a certain matter which is material enough has been omitted from the prospectus and the omission is calculated to mislead those who act in good faith of the prospectus, the prospectus shall be deemed, in respect of such omission, to be a prospectus in which an untrue statement is included. The prospectus in these circumstances may also be described as a “misleading prospectus”.

In the problem given, Mala can sue for damages. When there is a mis-statement of material information in prospectus and if it has induced any shareholder to purchase shares he can rescind the contract and claim damages from the company whether a statement is fraudulent or innocent one.

In case of mis-statement in the prospectus the following shall be liable to be sued.

Director,

Promoter,

Expert

Other person who authorized the prospectus and company.

10(a) What is meant by “Subsidiary company”? What documents of the subsidiary company are required to be attached with the balance sheet of holding company?

Answer:

According to section 4 of the Companies Act, a company shall be deemed to be a subsidiary of another, if and only if-

- (a) that other company controls the composition of its board of directors: or
- (b) the other company holds more than half in nominal value of its equity share capital.
- (c) it is a subsidiary of a third company which itself is a subsidiary of the controlling company.

The following documents of the subsidiary company are required to be attached with the balance sheet of holding company:

1. a copy of Balance sheet of the subsidiary
2. a copy of the profit and loss account
3. a copy of Directors Report
4. a copy of Auditors Report
5. a statement of the holding company's interest in the subsidiary company.

(b) The Board of Directors of Prosperity Company Ltd proposes to pay interim dividend of Rs.0.50 per equity share of Rs.10 each. Advise the Board regarding the steps to be taken for payment of interim dividend.

Answer:

Procedure for payment of interim dividend:

1. Ascertain whether profits for the part of the financial year upto the time of proposed declaration are sufficient to justify payment of interim dividend.
2. If the company is a listed company, intimate the stock exchanges about the board Meeting to consider the payment of interim dividend.
3. Resolution of the Board of Directors should state the rate of dividend, deposit of interim dividend in a separate bank account within 5 days from the date of its declaration, the date in reference to which shareholders registered in the Register of Members are to receive interim dividend, record date or the period of closure of the Register of members and transfer of books, date of posting of dividend warrants etc.,
4. If the Company is listed inform the Stock exchanges of the date of closure of register of members.
5. At least 7 days before the closure of the Register of Members or the record date fixed, publish a notice in this regard in a newspaper circulating in the district in which the registered office of the company is situated.
5. Open a separate "Interim Dividend Account" with a Bank and issue necessary instructions to the bank.
6. Post Dividend warrants within 30 days from the declaration of interim dividend.
7. Dividend warrants to non-resident shareholders should be posted after securing necessary permission of the Reserve Bank as per the provisions of FEMA, 1999. However, if dividend balancing rule is applicable to the company paying dividend, no foreign exchange will be released.
8. Deposit the amount of tax on dividend within the prescribed time.

\* \* \* \* \*

