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IDEAL

ANSWERS

CA IPCC

Business & Corporate Laws

November, 2010 Exam Paper

**100% questions from concepts
taught in NPA classroom**

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(Disclaimer: Questions asked in the exam may have wrong/inadequate information and/or ambiguous language. In that case the answers provided by institute may differ from this Ideal Answers. Every step has been taken to make accurate these answers, still if you find some clerical errors, please bring it to our notice through email.)

Question 1(b)(I)

State with reasons whether the following statement is correct or incorrect.

- (i) A promissory note duly executed in favor of minor is void.

(1 Mark)

Answer 1(b)(I)

Incorrect. A minor can take the benefit but cannot be made responsible. In Negotiable Instruments minor cannot originate title but he can be a holder as well as he can transfer the title. Therefore promissory note executed in favor of minor is valid.

Question 1(c)

RSP Limited allotted 500 fully paid-up shares of ` 100 each to Z, a minor, in response to his application without knowing that he was a minor and entered his name in the Register of members. Later on, the company came to know of this fact. The company cancelled the allotment and struck-off his name from the Register of members and also forfeited his entire share money. He filed a suit against the action of the company. Decide whether Z would be given any relief by the court the provisions of the Companies Act, 1956. **(5 Marks)**

Answer 1(c)

A minor is not competent to enter into a valid contract and all the contract with a minor are absolutely void. Therefore a minor cannot become member of the company.

However, if a company wants it can allot shares to a minor, if he applies for the shares through his guardian, i.e., the share application is signed by the guardian on behalf of the minor. In this case his name will be entered in the register of members but he will not incur any liability on the shares. Thus it is in the interest of the companies to allot only fully paid shares to the minor because otherwise he will not be for the unpaid amount on shares.

Once the name of minor is entered in the register of members, the company cannot delete it on its own motion.

But on attaining majority and becoming aware of the presence of his name in the register of members, the minor may repudiate allotment of shares within a reasonable period of time.

if a company does not know the fact of minority of an applicant and allots shares and enters his name in the register of members, then later when company comes to know the fact of minority it can cancel the allotment and remove name of minor from register of members. But in this case company should refund the amount received on allotment. [Re Anglo International Bank Ltd. (1943)]

In the present case RSP Ltd. does not know that Z is a minor therefore on knowing the fact it has the right to cancel the allotment and struck off his name. But it does not have the right to forfeit his money. Therefore the court will order to refund the money to Z.

Question 1(d)(I)

State with reasons whether the following statements are correct or incorrect.

- (i) A company should file its annual return within six months of the closing of the financial year.

- (ii) If a company does not receive the minimum subscription, it should refund money received from applicants within 120 days of issue of prospectus. **(2x1 mark)**

Answer 1(d)(I)

- (i) **Incorrect.** According to section 159 of the Companies Act, 1956 a company having a share capital should file annual return within 60 days from the date of its Annual General Meeting.
- (ii) **Correct.** According to section 69(5) if a company does not receive minimum subscription within 120 days from the date of issue of prospectus it should refund money to the public within 10 days.

Question 1(d)(II)

Choose the correct answer from the following and give reasons:

- (i) An index of members must be maintained by a company if its membership exceeds:
- 20
 - 50
 - 70
 - 80.
- (ii) Unless the Articles provide for a large number, the quorum for a general meeting for a public limited company is:
- 1/3rd of the members
 - 5 members personally present
 - 2 members
 - 7 members.
- (iii) Sources of funds for buy back of shares are:
- Free reserves or securities premium account
 - The proceeds of any shares or other specified securities
 - (a) and (b) both
 - None of the above. **(3x1 mark)**

Answer 1(d)(II)

- (i) (b) 50. According to section 151 of the Companies Act, 1956 every company having **more than 50 members** shall keep an index of the names of the members and update it within 14 days from any change in register of members.
- (ii) (b) Five members personally present. According to section 174(1) **Five** members personally present in the case of public company and **two** members personally present in the case of a private company, or the larger number if any provided by the articles, shall be the quorum for a meeting of the company.
- (iii) (c) a and b both. According to section 77A(1) of the Companies Act, 1956 A company may purchase its own shares (or other specified securities) out of-
- its **free reserves** (including security premium account); or
 - the **proceeds** of any shares (or other specified securities).

Question 2(a)

X was an employee of Universal Limited. He retired from the company on 31st March, 2010 and died after few months. Y, the heir of X, applied within the prescribed time to the company for payment of due bonus of X. The company refused to pay the bonus. Examine the validity of the company's refusal and also state the procedure to recover the bonus under the provisions of the payment of Bonus Act, 1956. **(8 Marks)**

Answer 2(a)

Where any money is due to an employee by way of bonus from his employer, the employee himself or any other person authorised by him in writing in this behalf, or in the case of the death of the employee, his assignee or heirs may, without prejudice to any other mode of recovery, make an application to the appropriate Government or such authority as the appropriate Government may specify in this behalf is satisfied that any money is so due, it shall issue a certificate for that amount to the Collector who shall proceed to recover the same in the same manner **as an arrears of land revenue**.

Provided that every such application shall be made within one year from the date on which the money became due to the employee from the employer.

Provided further that any such application may be entertained after the expiry of the said period of one year, if the appropriate Government is satisfied that the applicant had sufficient cause for not making the application within the said period.

In the present case Y is the heir of X and has applied within prescribed time to the company therefore Universal limited cannot refuse to make payment. And in case of refusal, Y can apply to appropriate government. Then the govt. will issue certificate to the collector for recovery of bonus.

Question 3(a)

K is an employee of RST Limited, a software company which works five days in a week. K was not in continuous service during the financial year 2009-10. However, she worked only for 150 days because she was on maternity leave with full pay for 50 days. Referring to the provisions of the Payment of Gratuity Act, 1972 decide whether K is entitled to gratuity payable under the Act. Would your answer remain the same in case RST Limited works six days in a week? **(8 Marks)**

Answer 3(a)

According to section 2A(2) of the Payment of Gratuity Act, 1972, where an employee (not being an employee employed in a seasonal establishment) is not in continuous service, he shall be deemed to be in continuous service under the employer if he has actually worked under the employer for not less than-

- (i) **190 days**, in the case of an employee employed below the ground in a **mine** or in an establishment which works for **less than six days in a week** and
- (ii) **240 days**, in any other case;

For the purposes of above provisions, the number of days on which an employee has actually worked under an employer shall **include the days** on which-

- (i) he has been **laid-off under an agreement** or
- (ii) he has been on **leave with full wages**, earned in the **previous year**;
- (iii) he has been absent due to **temporary disablement** caused by accident arising out of and in the course of his employment; and
- (iv) in the case of a female, she has been on **maternity leave**; so, however, that the total period of such maternity leave does not exceed twelve weeks.

In the present case K works in an company with works five days a week, therefore she will be deemed to be in continuous service if she works for 190 days in the year.

K has worked only for 150 days. But she was on maternity leave for 50 days with full pay, which is less than twelve weeks therefore on these days also she will be deemed to be on work. Therefore her total working days $150+50=200$.

Here we can conclude that K was in continuous service for the year 2009-10 also hence eligible for gratuity.

In the present question if K's company works 6 days a week then she need to work for at-least 240 days to be in continuous service, while she has worked only for 200 days. Therefore K is not in continuous service and not eligible for gratuity.

Question 4(a)

Unique Builders Limited decides to pay 2.5 percent of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act, 1956. **(8 Marks)**

Answer 4(a)

According to section 76 of the Companies Act, 1956 a company may pay (underwriting) commission if the following conditions are fulfilled:

- (i) the payment of the commission is **authorised by the articles**;
- (ii) the commission paid or agreed to be paid does not exceed:
 - in the case of **shares**, 5% of the price at which the shares are issued or the amount or rate authorised by the articles, whichever is less, and
 - in the case of **debentures**, 2.5% of the price at which the debentures are issued or the amount or rate authorized by the articles, whichever is less;
- (iii) the amount of the **commission** agreed to be paid is **disclosed** in the prospectus or statement in lieu of prospectus;
- (iv) the **number** of shares or debentures underwritten are also **disclosed** in the prospectus or statement in lieu or prospectus;
- (v) a **copy of the contract** for the payment of the commission is delivered to the Registrar at the time of delivery of the prospectus or the statement in lieu of prospectus for registration.

In the present case articles of the company authorizes only 2% commission therefore the company cannot pay commission more than 2%.

Companies Act is silent regarding mode of payment. Therefore if the article allows commission can be paid in kind, i.e., in the form of flats.

Question 5(a)

P draws a bill on Q for ` 10,000. Q accepts the bill. On maturity the bill was dishonored by non-payment. P files a suit against Q for payment of ` 10,000. Q proved that the bill was accepted for value of ` 7,000 and as an accommodation to the plaintiff for the balance amount i.e. ` 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill. **(8 Marks)**

Answer 5(a)

According to section 44 of the Negotiable Instruments Act, 1881, when a person signed a Negotiable Instrument for partial consideration, the holder which stands in immediate relation with such signer is entitled to receive only partial amount.

Explanation- The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee.

ILLUSTRATION given with section 44 are as follows:

A draws a bill on B for Rs.500 payable to the order of A. B accepts the bill, but subsequently dishonored it by non-payment. A sues B on the bill, B proves that it was accepted for value as to Rs.400, and as an accommodation to the plaintiff as to the residue. A can only recover Rs.400.

Facts of the given case are exactly same as illustration given with section 44. In the present case Q has received a consideration of Rs.7000 only, therefore he can recover the amount of Rs.7000 only not Rs.10,000.

Question 6(a)

In a General Meeting of PQR Limited the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings thereat. Decide whether the contention of M is maintainable under the provisions of the Companies Act, 1956. **(8 Marks)**

Answer 6(a)

According to section 193, subsection 2 of the Companies Act, 1956 the minutes of each meeting shall contain a fair and correct **summary** of the proceedings thereat.

Also as per subsection 5, minutes shall **not include** any matter, which in the opinion of the chairman of the meeting-

- (a) is **defamatory** of any person;
- (b) is **irrelevant** or immaterial; or
- (c) is **detrimental** to the interests of the company.

Explanation.- The chairman shall exercise an **absolute discretion** in regard to the inclusion or non-inclusion of any matter in the minutes on the grounds specified in this sub-section.

In the present case contention of M that “minutes of the meeting must contain fair and correct summary of the proceedings thereat.” Is correct but at the same time as per section 193(5) chairman has an absolute discretion non-inclusion of a matter if it is detrimental to the interest of company. Therefore M cannot insist to include those matter in minutes, which chairman has excluded.

Question 7(b)

RSP Limited is a public limited company with a limited liability of its members by guarantee of ` 10 Lac to each member. The company increase the liability of the members from ` 10 to 15 lacs by an alteration made in the liability clause of the Memorandum of Association. Referring to the provisions of the Companies Act, 1956 decide whether the member of the company are liable for the increased liability. **(4 Marks)**

OR

The Board of Directors of XYZ Private Limited, a subsidiary of SRN Limited, decides to grant a loan of ` 2.00 Lac to P, the Finance Manager of the Company getting salary of ` 30,000 per month, to buy 400 partly paid-up equity share of ` 1,000 each of XYZ Limited. Examine the validity of Board's decision with reference to the provisions of the Companies Act, 1956.

(4 Marks)

Answer 7(b)

According to section 38 of the Companies Act, 1956 a member of the company shall not be bound by an alteration made in the memorandum or articles after the date on which he became a member, if and so far as the alteration requires him 1) to subscribe for more shares or 2) in any way increases his liability.

Provided that this section shall **not apply**–

- (a) in any case where the member **agrees in writing** to be bound by the alteration; or
- (b) in any case where the company is a **club** or other association and the alteration requires the member to pay periodical charges at a higher rate.

Looking at the above provisions, in the present case members of RSP Ltd. are not bound to the alteration. But the members will be liable for increased liability, if the company has obtained their written consent for this alteration.

OR

According to section 3(1)(iv) of the companies act, 1956 subsidiary of a public company is also a public company.

Also according to section 77(2), a public company shall not give: 1) a loan, 2) guarantee or 3) security for the purpose of purchase made by any person of any shares in the company or in its holding company. Provided that this section shall not apply to-

- (a) the lending of money by a **banking** company in the ordinary course of its business; or
- (b) the purchase of fully paid shares by **trustees** for the benefit of employees of the company; or

- (c) the making of loans to **employees** with a view to enabling those persons to purchase fully paid shares in the themselves. (amount of loan should not be more than six month's salary)

In the present case XYZ Private Ltd. is the subsidiary of SRN Ltd. Therefore XYZ is also a public company and provision of section 77(2) are applicable to it. Though the company has decided to give loan to the employee, still the decision of Board of XYZ is not valid due to following reasons:

- 1) Loan cannot be given to buy partly paid shares;
 - 2) Amount of loan should not be more than six months salary. Salary is Rs.30,000 p.m. hence loan amount cannot be more than Rs.1,80,000 but company has decided to give Rs. 2,00,000.
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