

CA PE - II :: Business and Corporate Laws : November 2006

Roll No.....

Total No. of Questions— 10]

Time Allowed : 3 Hours

[Total No. of Printed Pages—4

Maximum Marks : 100

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Answers to questions are to be given only in English except in the cases of candidates who have opted for Hindi medium. If a candidate who has not opted for Hindi medium, answers in Hindi, his answers in Hindi will not be valued.

Questions 1 and 7 are compulsory.

Candidates are required to attempt **three** questions out of questions 2, 3, 4, 5 and 6 and **two** questions out of questions 8, 9 and 10

Marks

1. Answer any four of the following:
 - (a) X, a minor was studying in M.Com. in a college. On 1st July, 2005 he took a loan of Rs. 10,000 from B for payment of his college fees and to purchase books and agreed to repay by 31st December, 2005. X possesses assets worth Rs. 2 lakhs. On due date X fails to pay back the loan to B. B now wants to recover the loan from X out of his (X's) assets. Referring to the provisions of Indian Contract Act, 1872 decide whether B would succeed. 5
 - (b) A contracts to sell B, by showing sample, certain quantity of rape-seed oil described as 'foreign refined rape-seed-oil'. The oil when delivered matches with the sample, but is not foreign refined rape-seed oil. Referring to the provisions of Sale of Goods Act, 1930 advise the remedy, if any, available to B. 5
 - (c) Referring the provisions of the Payment of Bonus Act, 1965, state whether the following persons are entitled to bonus under the Act: 5
 - (i) An apprentice;
 - (ii) An employee dismissed on the ground of misconduct;
 - (iii) A temporary workman;
 - (iv) A piece-rated worker.
 - (d) A, B and C are partners in a firm. A introduces D to X as a partner in business. D, infact, was not a partner in the firm's business. D did not deny this statement. X advanced a loan of Rs. 20 lakhs to the firm. On firm's failure to repay the loan X wants to hold D responsible for the repayment of the above loan. Referring to the provisions of the Indian Partnership Act, 1932 decide whether X would succeed in recovering the loan from D. 5
 - (e) J. a shareholder of a Company purchased for his personal use certain goods 5

from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company's account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company's Bank. J, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether J has committed an offence under Section 138 of the Act and decide whether he (J) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store).

- (f) Explain the provisions of the Employees Provident Fund and Miscellaneous Provisions Act, 1952 relating to the liability of an employer in case of transfer of the establishment to another person. 5

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2. (a) "The relationship of principal and agent (i.e. Agency) may be constituted by subsequent ratification by the principal." Examine the validity of the statement and state the requisites of a valid ratification in the light of the provisions of the Indian Contract Act, 1872 5
- (b) A society; registered under the Multi-state Cooperative Societies Act, 2002 intends to issue non-convertible debentures to the general public. Referring to the provisions of the Multi-state Cooperative Societies Act, 2002 state whether a society registered under the Act is empowered to do so. 5
3. (a) Explaining the provisions of the Indian Contract Act, 1872, answer the following: 5
- (i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability ?
- (ii) C, the holder of an over due bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability ?
- (b) "Sharing of profits is only a prima facie, not a conclusive evidence of the existence of partnership." Examine the validity of the statement in the light of the provisions of the Indian Partnership Act, 1932 and state as to how would you determine whether a group of persons does or does not constitute partnership. 5
4. (a) Distinguish between a 'Condition' and a 'Warranty' in a contract of sale. When shall a 'breach of condition' be treated as 'breach of warranty' under the provisions of the Sale of Goods Act, 1930 ? Explain. 5
- (b) Explain the provisions of the Employees Provident fund and Miscellaneous 5

Provisions Act, 1952 relating to the following and state:

- (i) Whether the balance to the credit of Provident Fund Account of an employee is attachable by the decree of a Court ?
 - (ii) Whether the payment of contribution to provident fund of an employee, to be made by his employer, who has become insolvent, a preferential payment ?
5. (a) B obtains A's acceptance to a bill of exchange by fraud. B endorses it to C who is a holder in due course. C endorses the bill to D who knows of the fraud. Referring to the provisions of the Negotiable Instruments Act, 1882, decide whether D can recover the money from A in the given case. 5
- (b) Explain the powers of the Board of Directors of a multi-state Cooperative Society, as conferred upon the Board under Multi-state Cooperative Societies Act, 2002. 5

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6. (a) Explain the provisions of the Payment of Bonus Act, 1965 relating to 'Minimum' and 'Maximum' amount of bonus payment to an employee, for an accounting year. 5
- (b) In what ways does the Cooperative Societies Act, 1912 restricts the powers of a society registered under the Act, to make loans to its members and to borrow money the reform? can such borrowings be made by a Society from non-members also ? 5
7. Answer any **four** of the following
- (a) The principal business of XYZ Company Ltd. was the acquisition of vacant plots of land and to erect the houses. In the course of transacting the business, the Chairman of the Company acquired the knowledge of arranging finance for the development of land. The XYZ Company introduced a financier to another company ABC Ltd. and received an agreed fee of Rs. 2 lakhs for arranging the finance. The Memorandum of Association of the company authorises the company to carry on any other trade or business which can in the opinion of the board of directors, be advantageously carried on by the company in connection with the company's general business. Referring to the provisions of the Companies Act, 1956 examine the validity of the contract carried out by XYZ Company Ltd. with ABC Ltd. 5
- (b) Explain the Provisions of Companies Act, 1956 relating to the establishment of Investor Education and Protection Fund. 5
- (c) XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (State of Maharashtra). What formalities the 5

company has to comply with under the provisions of the Companies Act, 1956 for shifting its registered office as stated above ? Explain.

- (d) With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 1956 examine whether X's claim for damages is justified. 5
- (e) Explain the provisions of the Companies Act, 1956 relating to 'Resolutions requiring Special Notice'. State the resolutions that require 'Special Notice' under the Act. 5

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8. (a) Distinguish between 'Reduction of Share Capital' and Diminution of Share Capital'. 5
- (b) X had applied for the allotment of 1,000 shares in a company. No allotment of shares was made to him by the company. Later on, without any further application from X, the company transferred 1,000 partly-paid shares to him and placed his name in the Register of Members. X, knowing that his name was placed in the Register of Members, took no steps to get his name removed from the Register of members. The company later on made final call. X refuses to pay for this call. Referring to the provisions of the Companies Act, 1956, examine whether his (X's) refusal to pay for the call is tenable and whether he can escape himself from the liability as a member of the company. 5
9. (a) DJA Company Ltd. has only 50 preference shareholders. A meeting of the preference shareholders was called by the company for amending the terms of these shares. Mr. A, was the only preference shareholder who attended the meeting. He, however, held proxies from all other shareholders. He took the Chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Referring to the provisions of the Companies Act, 1956, examine the validity of the meeting and the resolution passed thereat. 5
- (b) Who are entitled to get notice for the general meeting called by a Public Limited Company registered under the Companies Act, 1956 ? Does the non-receipt of a notice of the meeting by any one entitled to such notice invalidate the meeting and the resolution passed thereat ? What would be 5

your answer in case the omission to give notice to a member is only accidental omission ?

10. (a) When is an expert not liable for untrue statements in the prospectus issued by a company ? 5
- (b) Referring to the provisions of the Companies Act, 1956 state the matters relating to 'Ordinary Business' which may be transacted at the Annual General Meeting of a Company. What kinds of resolutions need to be passed to transact the 'ordinary Business' and the 'Special Business' at the Annual General Meeting of the Company ? Explain. 5

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