

CAP-II, Corporate & Other Laws, June 2012
Suggested Answer

Roll No.....

Maximum Marks - 100

Total No. of Questions - 7

Total No. of Printed Pages -2

Time Allowed - 3 Hours

Marks

Attempt all questions.

Part "A"

1.

- a) Who is chairperson of a general meeting? A General meeting was called for changing the company's memorandum for facilitating an amalgamation. A fairly large number of members wanted to oppose the move. The meeting became overcrowded. The venue proved too small. The members were seated in the adjoining rooms and a sound system was installed to enable them to hear and to participate. That system failed. Then there was a bewildering confusion and in that state of things the chairperson arranged for an alternative venue and resolved to adjourn the meeting to meet again in the evening at the new venue. There was opposition to this move. The meeting in the evening at the new venue was held. Decide the validity of the meeting with reference to the provisions of Companies Act, 1956 and legality of adjournment of meeting referring to relevant case law.

8

b)

- i) Mr. Mohamad, a shareholder of Company H, holds 5% of shares. Company calls 40% of par value of shares. Mr. Mohamad is leaving India for 10 years and wants to pay uncalled 60% of the par value of shares. Can it be paid to Company H? Explain with reference to the provisions of Companies Act, 1956.

3

- ii) Write down the mode of winding up of a company referring the relevant section of Companies Act, 1956.

3

- c) 'A' signs, as maker, a blank stamped paper and gives it to 'B', and authorises him to fill it as a note for Rs. 500, to secure an advance which 'C' is to make to 'B'. 'B' fraudulently fills it up as a note for Rs.2,000, payable to 'C', who has in good faith advanced Rs. 2,000. Decide, with reasons referring the provisions of Negotiable Instrument Act, 1881, whether 'C' is entitled to recover the amount, and if so, up to what extent?

6

- d) What is the doctrine of lifting of "Corporate Veil"? What are the causes of lifting corporate veil? Illustrate your answer with court cases.

5

Answer

- a) "Chairperson" is the person who has been designated or elected to preside over and conduct the proceedings of a meeting. He is usually a member of the body over which he is to preside. For the proper conduct of business at a meeting, a chairperson is necessary. His/her appointment is usually regulated by the articles of association. But if there is nothing in the articles the members personally present at the meeting shall elect one of themselves to be the chairman.

(2)

Section 175(1) of the Companies Act, 1956 provides that, unless the articles of the company otherwise provide, the members personally present at the meeting shall elect one of themselves to be the chairman thereof on a show of hands.

Section 175(2) of the Companies Act, 1956 provides that, if a poll is demanded on the election of the chairman, it shall be taken forthwith in accordance with the provisions of this Act, the chairman elected on a show of hands exercising all the powers of the chairman under the said provisions. If some other person is elected chairman as a result of the poll, he shall be chairman for the rest of the meeting.

The above fact of the case is similar to a British case - *Bying Vs. Rondan Life Assn Limited* (1989) where the meeting in the evening at the new venue was held to be invalid and the chairman's adjournment of the morning meeting without taking a sense of the meeting was held to be not lawful. The court recognized that it is not necessary that all the members should be present in one room but that if the members are seated in different rooms there should be an audio visual link between all the rooms. In this case the system having failed, the gathering could not be constituted into a valid meeting except for rudimentary purpose of adjourning itself. Under the articles of the company the chairperson could adjourn a meeting only with the consent of the meeting. But even so the court was of the view that a residuary power of adjournment would survive because circumstances may develop as they did in this case, where it is impossible to ascertain the view of the majority. Finally the court came to the conclusion that the chairman's power of adjournment was not fairly exercised. He failed to take in to account the relevant factors such as member attempts adjournment their objections to the temporary adjournment and that there was no such urgency. The court said that for testing the reasonableness of the conduct of a chairman, the same test is applicable which is generally applied in all cases of judicial review namely whether the chairman reached a conclusion which no reasonable chairman could have reached having regard to the purpose of his power to adjourn.

b) (i) According to Sec. 92 of the Companies Act, 1956 uncalled share amount can be paid to the company in the following conditions:

(1) A company may, if so authorised by its articles accept from any member the whole or part of the amount remaining unpaid on any shares held by him, although no part of that amount has been called up.

(2) The member shall not however be entitled, where the company is one limited shares, to any voting rights in respect of the moneys so paid by him until the same would, but for such payment, become presently payable.

Based upon the above provisions, Mr. Mohamad, a shareholder of Company H, can pay the uncalled amount.

(ii) According to Sec. 425 of the Companies Act, 1956 a Company can be wound up in the following three modes:

- By the court
- Voluntarily and
- Subject to supervision of the court

(3)

- c) Section 20 of the Negotiable Instruments Act, 1881 provides that when one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instrument then in force in India and either wholly blank or having written thereon an incomplete negotiable instrument, he thereby gives prima facie authority to the holder thereof to make or complete, as the case may be, upon it a negotiable instrument, for any amount specified therein and not exceeding the amount covered by the stamps. The person so signing shall be liable upon such instrument, in the capacity in which he signed the same to any holder in due course for such amount. A person other than holder in due course is not authorised to recover anything in excess of the amount intended by him to be paid thereunder.

The doctrine contained in section 20 is that a person who gives another possession of his signature on blank stamped paper prima facie authorises the latter as his agent to fill it up and give to the world the instrument as accepted by him. The doctrine is one of estoppel. In the given problem 'A' is estopped from setting up B's fraud, and 'C' is entitled to recover Rs. 2,000/- from 'A' because 'C' has obtained it as a holder in due course. This liability does not stand of a person other than the holder in due course. 'C' as a holder in due course is entitled to enforce payment of the full amount even though the authority has been exceeded but it is necessary that the sum ought not to exceed the amount covered by the stamp. [Lloyds Bank vs. Cooke (1907) KB 794]

- d) Company is a structure comprised by its machinery like Board of Director, promoter, executive personnel and so on. When it is incorporated it bears with its independent or corporate personality. What this means is that the company has life of its own, can own property, can sue and be sued in its own name, has perpetual life and existence to name a few of the benefits of incorporation. This rule was laid down by the House of Lords in *Salomon v. Salomon & Co*, in 1897, in which it was held that even if one individual held almost all the shares and debentures in a company, and if the remaining shares were held on trust for him, the company is not to be regarded as a mere shadow of that individual.

This doctrine is recognized by the law court when it is incorporated, operated and used to attain legal objectives. However, court are not recognized being the independent existence and personality when company is incorporated or operated and used to attain illegal objectives, to defraud promoters or to do against national or social interest. At this connection, in the sense of justice, company's corporate veil is lifted to find out reality of the company and to render justice for the aggrieved parties. Who are in the company? What are their functions and duties? Who has indulged in misconduct, illegal activities, corruption and in doing against the interest of investors, shareholders are examined having set aside the independent personality of the company. Persons indulge in said activity is made personally liable. Such rule or doctrine is said to be the doctrine of lifting the corporate veil.

The rule in *Salomon* lies at the heart of corporate personality. However, there are situations in which the courts look beyond that personality to the members or directors of the company: in doing so they are said to lift or pierce the corporate veil. There is no single basis on which the veil may be lifted, rather the cases fall into several loose categories, which are examined below.

i) Fraud:

The courts have been more than prepared to pierce the corporate veil when it feels that fraud is or could be perpetrated behind the veil. The courts will not allow the Solomon principal to be used as an engine of fraud. The two classic cases of the fraud exception are *Gilford Motor Company Ltd v. Horne* and *Jones v. Lipman*. In order to defeat this he incorporated a limited company in his wife's name and solicited the customers of the company. In this case it was clear that the main purpose of incorporating the new company was to perpetrate fraud. Thus the court of appeal regarded it as a mere sham to cloak his wrongdoings.

ii) Group Enterprise:

Sometimes in the case of a group of enterprises, the Solomon principal may not be adhered to and the court may lift the veil in order to look at the economic realities of the group itself. In the case of *D.H.N. Food Products Ltd. v. Tower Hamlets* it has been said that the courts may disregard Solomon's case whenever it is just and equitable to do so. In the above-mentioned case the court of appeal thought that the present case where it was one suitable for lifting the corporate veil. Here the three subsidiary companies were treated as a part of the same economic entity or group and were entitled to compensation.

iii) Agency:

A company having power to act as an agent may do so as an agent for its parent company or indeed for all or any of the individual members if it or they authorize it to do so. In cases where the agency agreement holds good and the parties concerned have expressly agreed to such an agreement then the corporate veil shall be lifted and the principal shall be liable for an act of the agent.

iv) Trust:

The courts may pierce the corporate veil to look at the characteristics of the shareholders. In the case of *Abbey and Planning* the court lifted the corporate veil. In this case a school was run like a company but the shares were held by trustees on educational charitable trusts. They pierced the veil in order to look into the terms on which the trustee held the shares.

v) Tort:

Usually the English courts have not lifted the veil on the ground of tort. It is a phenomenon not witnessed in most common law jurisdictions apart from Canada.

vi) Enemy character:

In times of war the court is prepared to lift the corporate veil and determine the nature of shareholding as it did in the *Daimler Co. Ltd v. Continental Tyres and Rubber Co.* case where German shareholders held the shares of an English company during the time of World War I.

vii) Tax:

Corporate Veil is lifted or pierced when a company is incorporated, operated or used to evade tax or defraud. In **Income Tax Commissioner V. Sri Meenakshi Mills** case it has hold that: The income tax authorities are entitled to pierce the veil of corporate entity and to look at the reality of the transactions. It is true that from the juristic point of view the company is a legal personality entirely distinct from its members and the company is capable of enjoying right and being subjected to duties, which are not the same as those enjoyed or borne by its members. But in exceptional cases the court is entitled to lift the veil of corporate entity and to pay regard to the economic realities behind the legal facade.

Part "B"

2.

- a) Mrs. Merritt has sold one Ropani land to Mr John in the price of Rs.8 Lakh that is less in two times than market price. Mr. John had threatened to injure body and reputation of Mrs. Merritt before such transaction. What kind of such contract is? Whether this contract is valid or not? What are the remedies available to Mrs. Merritt provided in the Contract Act, 2056? Explain briefly. 8
- b) A loan of Rs. 15,00,000 has been sanctioned by Laxmi Bank Ltd. to Loktrantra Resort Pvt. Ltd. having authorized capital of Rs. 1,00,00,000, and paid up capital of Rs. 10,00,000. The board of directors of Loktrantra Resort Pvt. Ltd. resolved to obtain loan from the Bank. The chairperson of Loktrantra Resort Pvt. Ltd. before obtaining the sanctioned loan wants to know with you that whether the loan which the company is going to borrow as stated above is as per Companies Act, 2063. Advise the chairperson as per the provision of Companies Act, 2063 about its legality or formality or consequences if any. 7

Answer

- a) According to the above question Mrs Merritt has no will or consent to sell own property as proposed by the Mr John. However, She has sold and transferred the property in the price she is offered. It means the transaction is made through against the consent and free will of Mrs Merritt.

In connection with the above facts in issue, it should be mention the provision of section 14. It provides about voidable contract and sub-section 1 state as the following contracts may be made void by the aggrieved party if it is concluded through coercion. Coercion has defined in its explanation as a person shall be deemed to have indulged in coercion if he/she, with the objective of compelling any person, to accept any contract against his/her will, withholds or threatens to withhold property belonging to him/her, or threatens to defame him/her, or takes or threatens to take any other action in contravention of prevailing law.

Section 89 (2) (b) of the Act provides **Limitations** in the case of a voidable contract, as defined in the section 14(1)(a), within a year from the date when the

(6)

party that can have the contract declared void learns about the reason for having the contract declared to be void.

In case a contract is made void under the law, the cash or goods received by one party should be refund after adjusting the accounts until the term of the contract expires from the amount paid in cash or in kind. In case any service or benefit other than cash or goods has been provided, the beneficiary must pay a reasonable amount to the other party in consideration thereof.

In the connection with the above matters, it is clear that threatening to injure body and reputation is the terms and element of the coercion. Mr. John has compelled to Mrs. Merritt to accept the selling transaction. Any contract involving coercion is called voidable contract and may be made void by the aggrieved party Mrs. Merritt on the reference of above provision. Mrs. Merritt has to file a case against such transaction within a year she learns as coercion involved. If the activity of Mr. John is proved as coercion then the contract is void. Mrs. Merritt may regain the property and she has to refund the amount if she has already received from Mr. John.

- b) Under section 105(1)(b) of the Companies Act, the board of directors of a public company, or of a private company receiving loans from any bank or financial institution, shall not, except with a special resolution being adopted by the general meeting of shareholders, do or cause to be done the following act:

borrowing moneys, where the moneys to be borrowed will exceed the aggregate of the paid up capital of the company and its free reserves, apart from any loans and faculties with a term of less than six months obtained by it from a bank or financial institution in the ordinary course of business transaction;

As per above provision the loan to be borrowed exceeds the paid up capital. The question is silent about the free reserves. If the money to be borrowed exceeds special resolution in the general meeting should be passed. Thus the loan which is going to be borrowed by the Loktrantra Resort Pvt. Ltd is not void in the sense that it has not passed special resolution.

Consequences

Under section 180 of the Act where any act or action required to be done or taken under this Act has not been done or taken or any act or action prohibited has been done or taken by any company or in respect of such company, such act or action shall be void.

Under section 160(y) of the Act director or officer who acts contrary to Section 105 shall be punished with a fine from twenty thousand rupees to fifty thousand rupees or with imprisonment for a term not exceeding two years or with both punishments.

3.

(2×5=10)

- a) A' borrows moneys from 'B' on behalf of the company pursuant to the contract made between A and B prior to incorporation of the company. At this situation,

(7)

what is the status of such contract? Whether such contract is mandatory to the company or not? Who is responsible to that transaction and borrowing? How does 'A' release from personal liability? Discuss briefly referring the provisions of Companies Act, 2063.

- b) Explain the power of the court under the Securities Act, 2063 to impose punishment on an offence relating to securities.

Answer

- a) This questions' concern is pre-incorporation contract. It should be assessed whether pre-incorporation contract is mandatory to the company or not with the reference of the Companies Act, 2063. Section 17 of the Companies Act, 2063, has made provision on pre-incorporation contract as follows:
- i) A contract made prior to the incorporation of a company shall be a proposed contract only.
 - ii) such contract shall not be binding on the company.
 - iii) Any person, prior to the incorporation of the company, carries on any transaction or borrows money on behalf of the company, such person shall be personally liable for any contract related with the transaction so carried on.
 - iv) If, within the time mentioned in any transactions or within the reasonable time after the incorporation of a company, the company, through its act, action or conduct, accepts any act, action or conduct, to borrowing done or made prior to the date of authorization to commence its transactions or endorses such act or action, that transaction shall be binding on the company and the other contracting party.
 - v) The person carrying out such act or action shall be released from the personal liability to be borne pursuant to the above provision.
 - vi) For the private company the consensus agreement of a private company shall govern any contracts made prior to the incorporation of such company.

A contract made prior to the incorporation of a company is called pre - incorporation contract. According to above provision of the Act such contract is remain only proposed contract. Company could not bear responsibility only because the contract is concluded for and on behalf of company. For this, A is personally liable. However, company is liable when it, within the time mentioned in the contract and within the reasonable time with the act, actions or conduct accepts such transactions or borrowing. A can escape or get rid from the liability of B.

In the context of private company, the consensus agreement of a private company shall govern any contracts made prior to the incorporation of such company pursuant to Sub-section (4) of section 17 of this Act.

- b) Under section 101 Securities Act (1) A person who commits an insider trading as referred to in Section 91 shall, upon being convicted of the offense of insider trading, be liable to the punishment with a fine equal to the amount in controversy

(8)

or with imprisonment for a term not exceeding one year or with both punishments.

(2) A person who commits any act referred to in Sections 94(False trading), 95 (Fluctuation in price) and 96 (To affect stock exchange) shall be liable to the punishment with a fine of fifty thousand rupees to one hundred thousand rupees or with imprisonment for a term not exceeding one year or with both punishments, and where anyone has suffered any loss or damage from such an act, such loss or damage has also to be recovered.

(3) A person who commits any act referred to in Sections 97 (To supply misleading statements:, 98 (Fraudulent transaction), 99 (Prohibition on transaction of securities by fraud or misrepresentation) and 100 (Destroy or concealment of documents, statements or records) shall be liable to the punishment with a fine of one hundred thousand rupees to three hundred thousand rupees or with imprisonment for a term not exceeding two years or with both punishments, and where anyone has suffered any loss or damage from such transactions, such loss or damage shall also be recovered.

Securities Act empowers the court to impose punishment on above offense. However the word court has not been mentioned on the above section but it has been mentioned the power of securities board in some other offenses. It should be deemed the power of the court to impose punishment other than the matters expressly mentioned as the power of securities board.

4.

a) Kathmandu Bank Ltd. had come in breakeven point in last Fiscal Year and going to earn profit more than Rs. 20 Crore this Year 2068/069. This Bank is bringing a proposal of distributing bonus in cash and share for the coming AGM. Mr. Sushil K.C got such unpublished information through one of the director of the Bank and purchased securities of such Bank on the basis of insider information or notice that are unpublished. Answer the following questions on the basis of Securities Act, 2063.

(2+1+2=5)

- i) What kind of offense of the director and Mr. Sushil K.C committed and why? Explain.
- ii) Do you think that the purchasing securities by Mr Sushil KC deemed to be affected at all or not merely by the reason that they have committed an insider trading?
- iii) Who are the persons likely to be involved in insider trading?

b) State the procedure for changing the Company name as per Companies Act, 2063.

5

Answer

a)

- i. According to Section 91of the Securities Act, 2063 if any person deals in securities or causes any other person to deal in securities on the basis of any insider information or notice that are unpublished or communicates any information or notice known to such a person in the course of the discharge of his

(9)

or her duties in manner likely to affect the price of securities such a person shall be deemed to have been committed an insider trading in securities. On the above case, it is same to the provision provided in the section 91. So, the director and Sushil KC have committed the offence of insider trading.

- ii. Yes, actually, director and Mr. Sushil KC have committed offence of insider trading. However, pursuant to section 91(2), the purchasing of securities shall not be deemed to be affected at all merely by the reason an insider trading has been committed.
- iii. The following persons shall be deemed to be those who have access to the insider information or notice not published by any body corporate:
 - a. A director, employee or a person, who can obtain any information or a notice in the capacity of a shareholder of that body corporate,
 - b. A person who can obtain any information or a notice in the capacity of a professional service provider to that body corporate,
 - c. A person who can obtain any information or a notice having a direct or indirect contact with the person or source as specified in Clauses (a) and (b).
- b) According to Sec. 21(3) of Company Act, 2063, if any existing company wants to change its name, the new name to be passed from its shareholders' meeting under special resolution mechanism. Company need to apply to the Registrar of the Companies for the new purposed name with fee prescribed for the time being. If ROC approves the purposed name, new name shall be allowed for. Until the ROC approves the new name, company shall operate its business under old name.

5.

(3×5=15)

- a) What are the conditions to declare any commercial bank or financial institution problematic under the Nepal Rastra Bank Act, 2058? State briefly.
- b) What is Cottage Industry? What industries are covered by Cottage Industry? Discuss referring the Industrial Enterprises Act, 2049.
- c) What are the conditions regarding eligibility of bonus and restrictions to obtain thereof enshrined in the Bonus Act, 2030?

Answer

- a) The following conditions are prevailing in any commercial bank or financial institution Bank shall declare problematic as per the section of 86.b of Nepal Rastra Bank Act, 2058.
 - (a) Any action which is against the interest of the depositors, shareholders, creditors, or general public,

(10)

- (b) Not fulfillment of any financial liabilities or not having probability to do that or not payment of due amount,
 - (c) In case of insolvency or going to fall under insolvency or facing material financial difficulties,
 - (d) In case of discredit or breach of this Act, prevailing law related to bank and financial institution, other prevailing law, terms of license or regulation, directives or order of bank,
 - (e) In case the license obtained on the basis of submitting false, fraudulent, wrong document or data,
 - (f) Unable to maintain the capital fund as per the NRB Act, prevailing law related to bank and financial institution and directives issued by the bank at time to time,
 - (g) Initiation of the process of liquidation or insolvency of any commercial bank or financial institution under the prevailing law,
 - (h) In case of undue delay in the process of voluntary liquidation,
 - (i) While foreign commercial bank or financial institution is in insolvent or liquidator is appointed for the liquidation or the license of such commercial bank or financial institution is terminated under the provision of the law of respective country or transaction is banned either full or partial or in case of operation of banking transaction being involved with such commercial bank or financial institution, or
 - (j) If the bank is convinced that commercial bank or financial institution is unable to pay its due or can make negative effect in its liability or duties, which it has to perform.
- b) Under section 4 Industrial Enterprises Act 2049, the traditional industries utilizing specific skill or local raw materials and resources, and labour intensive and related with national tradition, art and culture as mentioned in Annex I shall be named as cottage industries.

Annex-1
(Relating to Section 4)

COTTAGE INDUSTRIES

With the exception of cigarette, *bidi*, cigar, chewing tobacco, *khaini* industries and industries producing other goods of a similar nature utilizing tobacco as the basic raw material, alcohol and beer producing industries,* Handloom, Pedalloom, Semiautomatic loom, Warping, Dyeing and printing, Tailoring (Other than Readymade Garments), Knitting, Handknitted Woolen Mat and Blanket (Radi, Pakhi), Woolen Carpet, Pashmina, Wollen Garments, Carpentry, Wooden Artistic product, Cane and Bamboo Works, Natural Fiber Products, Hand Made paper and Goods made up thereof, Gold, Philigree Products including Silver, Brass, Copper Precious and Semi-Precious Stones, Ornaments, Sculptures and Pottery, Honey, chyuri, Cardamom Processing, Clay or Ceramic Pottery, Leather Cutting and Tanning, Rural Tanning and Leather Goods producing Works, Jute, Sabai Grass, Babio, Choya, Cotton Thread Products, Artistic Products made up of Bones and Horns, Stone Carving, Ceramic Fine Arts, Pauwa, Boutique, Incense Stick (Dhup), Dolls and Toys industries and cottage industries with the fixed asset of up to two hundred thousand rupees.

Notes:-

(11)

1. Unless otherwise mentioned specifically, machines of the above mentioned industries should not employ through electric motors of diesel or petrol or crude oil engine more than a total of five kilowatt. Power looms shall not be included under Cottage Industries.
 2. Permission shall be required for the establishment of mechanized woolen spinning and mechanized woolen carpet manufacturing.
- c) Bonus Act, 2030 has mentioned in its section 6 and 8 about the suggestion of above question.

As per the Section 6 of the Bonus Act, 2030, an employee who has worked for a half period to be worked in a fiscal year, shall be entitled to obtain bonus under to this Act. However, no employee shall be entitled to obtain Bonus who has worked casually or in a shift basis.

The working period of an employee is also play vital role to determine whether he/she obtain bonus or not. The following periods shall also be computed as a period where an employee has worked.

- i) A period kept on reserve under any contract or under Section 11 of the Labour Act, 2048 (1991).
- ii) A period under which an employee is on any leave with salary.
- iii) A period of disablement caused by accident arising in course of business of the enterprise.

Restrictions to obtain bonus as per the Bonus Act, 2030 is as follows:

Section 8 of this Act has state restrictions to obtain bonus. 8. Notwithstanding anything contained in Section 6, an employee shall not be entitled to obtain bonus under this Act, if he/she is punished or dismissed from service for committing any act as follows:

Provided that, this Section shall not be deemed to be prejudiced to obtain in the case of the bonus for a period before committing such a punishable act.

- i) Theft of the property of the enterprise or any damage to such property.
- ii) Illegal strike or abetment to other for such strike,
- iii) Riots or breaching of discipline.

6.

(2×5=10)

- a) Who are the parties of the Negotiable Instrument? What liability is given to such party as mentioned in the Negotiable Instrument Act, 2034?
- b) What are the circumstances wherein the Councilor's office remains vacant? What is the procedure for fulfillment of vacancy as provided in the Nepal Chartered Accountants Act, 2053?

Answer

Parties of the Negotiable Instrument are as follows:

- i) Agent

FOZ

P.T.O.

- ii) Heir
- iii) Drawer
- iv) Bank
- v) Maker of promissory note and Acceptor of bill of exchange
- vi) Endorser
- vii) Parties to holder in due course
- viii) Maker or drawer of Negotiable Instrument
- ix) Prior party
- x) Surety

Liability of the parties of the Negotiable Instrument as mentioned above is stated as follows:

- i) **Liability of an Agent:** If an agent who signs his/her name to a Negotiable Instrument without indicating thereon that he/she signs as an agent, or he does not intend thereby to incur personal responsibility, is liable personally to such Negotiable Instrument.
- ii) **Liability of an Heir:** If a person who signs his/her name to a Negotiable Instrument as an heir of a deceased person is fully liable personally thereon unless he/she expressly limits his liability to the extent of the assets received by him as such.
- iii) **Liability of Drawer:** In case the Drawer has been provided due notice of dishonour of the bill of exchange by the acceptor or Drawee, it shall be the duty of the Drawer to Compensate the Holder.
- iv) **Liability of the Bank Giving Payment of the Cheque:** The Bank having sufficient funds of the Drawer in the account, properly applicable to the payment of the Cheque must pay the Cheque, and, in default of such payment must compensate the Drawer or Holder in due Course for any loss or damage caused by such default pursuant to this Act.
- v) **Liability of Maker of Promissory Note and Acceptor of bill of exchange:** The maker of a Promissory Note or the acceptor of bill of exchange is bound to pay the amount thereof at Maturity when the Negotiable Instrument is duly presented for the payment. In default of such payment, the maker of the Promissory Note or the acceptor of the bill of exchange is bound to compensate any party payable for any loss or damage sustained by him and caused by such default.
- vi) **Liability of Endorser:** Any person who indorses and delivers a Negotiable Instrument expressly limiting or excluding his/her own liability, shall be responsible to every subsequent Holder except otherwise a contract is made thereto.
- vii) **Liability of the Parties to Holder in Due Course:** Every prior party to a Negotiable Instrument is liable thereon to a Holder in due Course until the instrument is duly satisfied.]
- viii) **Liability of maker or drawer to be Equivalent to Principal Debtor:** The maker or Drawer of the Negotiable Instrument until acceptance, and the acceptor are in the absence of a contract to the contrary respectively liable thereon as principal debtors, and the other parties thereto are liable thereon as sureties for the maker, Drawer or acceptor, as the case may be.

ix) Prior party to be Equivalent to Principal Debtor in Respect of each Subsequent Party: As between the parties so liable as sureties, each prior party is, in the absence of a contract to the contrary, liable thereon as a principal debtor in respect of each subsequent party.

x) Liability of Surety: Notwithstanding anything contained in the prevailing laws, the surety of Bill of Exchange cannot take stand that only in case the realization could not be possible from the property of the principal debtor, shall be realized from his/her property, it can be directly realized from the person being a surety

b) In the following circumstances, the Councilor's office shall be deemed to remain vacant if

- i. he ceased to be member of the Institute provided that this provision shall not be applicable to the nominated council member,
- ii. the council accepts his resignation,
- iii. he, without giving a notice with reason, absconds himself from three consecutive meetings of the council,
- iv. his term of office expires,
- v. his non-compliance with the code of conduct referred to in section 34 is provided,
- vi. he dies

Procedure for fulfillment of vacancy

The council shall, if any seat of any council member elected amongst Chartered Accountant members or Registered Auditors members turns vacant due to death or resignation or disqualification to continue as a member of the institute pursuant to the other provisions of this Act, designate any member as council member for the remaining term of office, provided the remaining period of such vacated office is of less than a year; and if such term is more than a year, the vacancy shall be filled through election.

A seat, falling vacant owing to death or resignation of any council member nominated by government upon the recommendation of Auditor General, shall be fulfilled, for the remaining term of office, as per the procedure in set forth in the section 7 of the Nepal Chartered Accountants Act 2053.

7 Write short notes on the followings:

(3×5=15)

- a) Impact of liquidation of an insurance company on the insureds
- b) Bill in Sets
- c) Validity of agreement between shareholders

Answer

- a) According to Sec. 16 of Insurance Act, 2052 regarding Payment of Insurance Claims After the Cancellation of the Insurer, the Insurer, dissolved by the cause of the cancellation of its registration pursuant to Section 13, shall refund the amount received by it for Insurance to the person, organization or the Board, within the period and method specified by the Board. It shall refund the principal amount along with bonus as specified by the Board in the case of Life Insurance and it shall refund the principal amount as specified by the Board on a proportional basis in the case of Non-Life Insurance.

(14)

- b) Generally foreign bills are drawn in a set of two, three or four in order to avoid delay which may be caused if a single bill sent for acceptance is lost or miscarried in transit. A bill is therefore drawn in parts. Each part is called a 'via' and is sent by a separate mail so that at least one part of them safely reaches the drawee for his acceptance. When the latter receives any of these parts and accepts it, the remaining ones are treated as cancelled. All the parts together constitute one set and the whole set constitutes one bill; each part bears reference to the other parts.

Under Section 98 of Negotiable Instruments Act 2034 Bills of Exchange may be drawn in parts, each part being numbered and containing a provision that it shall continue only so long as the others remain unpaid. All the parts together make a set; but the whole set constitutes only one bill, and is extinguished when one of the parts, if a separate bill, would be extinguished.

- c) A company is an organized body comprising promoter, shareholder, Board of Director, personnel and so on. They should maintain management, operation of the company and the use of voting right conferred to them. Regarding such functions they may enter into an agreement.

Like this, shareholders may conclude an agreement in respect of the management, operation of the company and the use of voting right conferred to them. Such agreement shall be binding on them pursuant to section 187 of Companies Act, 2063. However, if any provision of such agreement is prejudicial to the interest of the company or its minority shareholders, such provision shall *ipso facto* be invalid to that extent.

The agreement entered between shareholders should submit two copies to the company within 15 days after the agreement entered into. And such agreement should submit one copy in the company registrar office.