

NATIONAL LAW UNIVERSITY, DELHI

B.A.LLB.(Hons.): IV-YEAR, VII-SEMESTER

End-Semester Examinations, December-2015

Paper 7.1: Corporate Law-I

Time: 3.00 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper except your Roll No.

Answer ALL the questions.

- Q.1) Gregory opened a diner called *Mc Chains* in New Delhi to pursue his love for cooking after studying Law from National Law University, Delhi. He ran the enterprise as a partnership concern with his brother. He was very good friends with Barty, who came to his diner quite often. Barty was the founding director of a company called Asia Foods Ltd. As he came to the diner quite often, he sat with Gregory for hours and discussed business and the current market situation for packaged food. During the course of their conversations, Barty often asked legal questions which Gregory used to answer. Even though Gregory tendered legal advice by answering questions, he was never formally compensated for the same. Subsequently, in order to expand the scope of the business, Asia Packaged Foods Ltd. was incorporated as a wholly owned subsidiary of Asia Foods Ltd. Gregory was appointed as one of the independent director of the company. As a part of an innovative sales strategy, the company entered into a pre-incorporation agreement with *Mc Chains* to become the sole distributor of packaged food in New Delhi. The prospectus also contained information regarding the certificate for Health clearance for packaged foods obtained from the FDA. The fact that Gregory was the owner of *Mc Chains* was not disclosed to the shareholders in the first meeting. Later, it was also discovered that Asia Packaged Foods Ltd. had not received the approval certificate but was in the process of doing so. A large number of shareholders of the company were not happy with Gregory as the independent director of the company as he never turned up for meetings and board resolutions. These shareholders holding 35% of the paid up capital have filed a petition for removal of Gregory as an independent director. They also seek to hold him liable for lack of disclosure of interest in *Mc Chains* and the misrepresentation in the prospectus. Discuss the case and throw light on the validity of Gregory's appointment as an independent director under the Companies Act 2013 and whether he can be removed by the shareholders? **(5 Marks)**
- Q2) M/s NLU Pvt Ltd. was incorporated in the year 2014 under the Companies Act 2013 by three friends namely A, B and C. All the three were promoters-directors named in the Articles of the company. They subscribed for 100 shares each in the company through Memorandum of Association. Thereafter, from time to time, further shares were allotted in proportion of one-third to each of them and in due course the company started earning substantial profits. Due to the greed of money, the two friends namely, A and B joined hands together and assumed complete control of the company leaving their friend C in lurch. Both the friends got further shares allotted to themselves, thereby their joint shareholding increased from 66% to 90%, while the shareholding of C got reduced from the erstwhile 33% to 10%. No notice of any board meeting was sent to C, who was sidelined and was also removed as a Director. Aggrieved by the decision taken by his two friends at his back, C seeks your advice for taking out appropriate proceedings before the Court or judicial authority of competent jurisdiction. Also suggest the nature of relief he may claim while filing his case. **(5 Marks)**
- Q3) Answer the following:
- i) The agenda for the meeting of the Board of Directors of M/s NLU Enterprises Ltd. held on 20-3-2014 for adopting the annual accounts for the year which ended on 31.12.2013 included an item relating to the payment of dividend. At the meeting it became apparent that the profits made during the year 2013 were inadequate to declare the dividend. The Board was keen to maintain the rate of 20% dividend on the equity shares as declared in the previous year so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to how it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. **(3 Marks)**
 - ii) DEF Limited proposes to enter into a contract with ABC Pvt Ltd. D is a director in DEF Limited. D's relatives are holding all the shares in ABC Pvt Ltd, but none of them is a director of DEF Limited. None of the directors of the ABC Pvt Ltd holds any share in DEF Ltd. Explain the legal position relating to disclosure of interest by D in the proposed contract to be entered into by DEF Limited with ABC Pvt Ltd. **(3 Marks)**

Q.4) Aptech Ltd is a company registered under the Companies Act, 1956 having its registered office in Delhi. Its core business is manufacturing and marketing asbestos. Delton Cables Ltd is a 100 % subsidiary of Aptech, set up for producing electrical wires and insulation materials. On 10.02.2013, Delton entered into a contract with OGM Pvt Ltd, a marketing company for promoting its new range of electric switches in the market for a period of 5 months during 01.03.2013 to 31.08.2013. As per the contractual terms, a sum of Rs. 1,25,000/- was paid to the marketing company leaving an alleged balance of Rs. 2, 75,000/- OGM issued a legal notice dated 15.12.2013, demanding payment of balance amount with interest at the rate of 25% within 21 days. In reply thereto Delton requested OGM to return the materials supplied by the company for the purpose of promotion. Request for return of the new products were refused claiming lien for non-payment. Both the parties agreed to settle the dispute through a mediation process scheduled on 08.02.2014. After the mediation it was agreed that Delton Ltd would pay OGM after return of the electric switches. OGM Pvt Ltd returned the material on 20.02.2014; but the amount was not paid. Managing Director of OGM then contacted the Senior Vice President (Marketing) of the holding company, i.e, Aptech Ltd. After a round of negotiation between them, the Senior Vice President of Aptech agreed to pay the principal amount as per the books of accounts of the subsidiary company. On 01.05.2014 OGM Ltd. addressed a letter to the Delton Ltd requesting to release the principal amount as per their books of account. There was no expected response. Now, the marketing company filed a winding up petition against the holding company and a civil suit against the senior Vice President on the ground of inability to pay debt. Discuss the case in accordance with the relevant provisions under the Company Law. **(5 Marks)**

Q5) Mrs. Geeta Sen promoted Attitude Cosmetics Pvt. Ltd. (Company), which was incorporated in May, 2009. At the time of incorporation, Geeta, who was also named the managing director of the Company, was allotted 20% fully paid up shares of the Company for her hard work and she did not pay any consideration for the same. Over the years, Geeta became less involved in the management and ceased to be the director of the Company in June, 2013. On October 18, 2013, a letter was dispatched by the Company's office at Mumbai to Geeta's residence in Delhi, which stated that by November 8, 2013 an amount of Rs. 25 lacs must be paid as the amount is pending on the shares allotted to Geeta. On October 20, 2013, Geeta passed away due to an accident. The letter reached on October 21, 2013. On November 9, 2013, the company forfeited the shares on the ground that there was no payment and that due notice had been served. After a declaration of the forfeiture, the shares forfeited were re-issued. Mr. Gaurav, the husband and only successor of Geeta, in May, 2014, unaware of the forfeiture, transferred the shares to Mr. Paras Jain for consideration. When the transfer deeds were presented by Paras to the Company he was informed about the forfeiture. Gaurav and Paras approached the appropriate forum on the grounds that the forfeiture was not timely and was illegal.

Discuss the case in the light of Companies Act.

(5 Marks)

Q6) BBT Ltd, having its registered office in, New Delhi was a subsidiary company of Chuck & Lorre Ltd., incorporated in the United States. BBT Ltd. had a total of seven directors out of which two were appointed as nominee directors by Chuck & Lorre Ltd. The remaining five directors were a part of the India Group of the Company and held the remaining 49% shares in the company.

In order to enhance their control over the company, the directors convened a board meeting to go for a Further Public Offer. This meeting was not attended by the nominee directors appointed by Chuck & Lorre Ltd. on their own volition. It was decided, that a rights issue offer will be made to the existing shareholders. The offer was to expire in a period of one week. The letters for the offers were sent and the FPO subsequently took place on 03.02.2013. The letter for rights issue to Chuck & Lorre Ltd. reached after the expiry of the period of one week. This made it impossible for Chuck & Lorre Ltd. to subscribe to the shares as the offer automatically expired after the one week window period provided for acceptance.

As a result of the FPO, the shareholding of the India Group increased to 75% and the American Company only held 25% of the shares in the company. Chuck & Lorre Ltd. has filed a suit for oppression and mismanagement.

Discuss the case in the light of relevant provisions of the Company's Act.

(5 Marks)

Q.7) Write short notes on the following:

- i) Does Board of Directors become functus officio when a company is ordered to be wound up? **(3 Marks)**
- ii) Can non payment of salary to an employee of the Company be regarded as non payment of debt? **(3 Marks)**
- iii) Difference between dissolution and winding up of the company. **(3 Marks)**

Q8) Answer the following:

(5 Marks)

- i) Company A has two Directors Mr. X and Mr. Y. Both holds 50% share each of Company. Company A wish to give loan to following and have asked for your views on same.
 - A) Loan to Director X.
 - B) Loan to a relative of Director Y.
 - C) Director of company D which is the holding company of A.
 - D) A partner of Director of Holding Company.
 - E) To a firm in which Mr. X is a partner.
- ii) XYZ Automobiles Ltd is a company engaged in the manufacture of cars. The company's investment in the shares of other bodies corporate and the loans made to other bodies corporate exceed 60 percent of its paid up share capital, free reserves and securities premium amount and also 100 percent of its free reserves and securities premium amount. The company has obtained a term loan from the Industrial Credit and Investment Corporation of India Limited. The company proposes to increase its investment in the equity shares of XYZ Forgings Ltd. from 60 percent to 70 percent of the equity share capital of XYZ Forgings Ltd by purchase of shares from the Forgings collaborator. State the legal requirements to be complied with by XYZ Automobiles Limited under the Companies Act to give effect to the above proposal. Will your answer be different if the company has defaulted in repayment of matured deposits accepted from the public. **(5 Marks)**

NATIONAL LAW UNIVERSITY, DELHI
B.A.LLB.(Hons.): IV-YEAR, VII-SEMESTER
End-Semester Examinations, December-2015
Paper 7.2: Environmental Law

Time: 3.00 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer. No clarification shall be sought on the question paper.
 2. Do not write anything on the question paper except your Roll No.
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Mention relevant case law and statutory provisions wherever required

- Q.1 An industry is attempted to be located in the periphery of an eco-sensitive zone where people were mostly engaged in agricultural operations.

The Public Consultation was conducted in a single sitting and local NGOs could not sufficiently voice their concerns.

The Project Proponent commenced with operationalizing the industry upon a deemed consent in view of absence of communication without the mandatory specified period of time from the State Environmental Appraisal Committee.

Advise the NGOs for filing a petition/appeal against the location of the project in the light of the imperatives of EIA.
(10 Marks)

- Q.2 Write a critical note on the Bhopal Gas Disaster highlighting the main legal developments upto recently.

OR

Write a note on Coastal Zone Regulation highlighting the important changes incorporated in the Notification of 2011 on the subject matter.
(10 Marks)

- Q.3 The import from country A, a developed country to India of a consignment of heavy industrial parts instead revealed a cargo of toxic, hazardous waste, eventually to be dumped on the Indian soil.

Prepare a legal opinion keeping in view the law in India in this regard. Also outline the international developments in the field of transboundary movement of hazardous waste.
(10 Marks)

- Q.4 The Nations of the World met at a Conference of Parties (COP) on Climate Change. Many developed nations expressed their reluctance to observe binding emission targets if the legal regime was not extended to the upcoming developing nations too as accelerated global warming required emergent, concerted efforts by all the nations. For the same reason, the developed nations were also not keen to participate in the Green Climate Fund-an initiative to facilitate financial and technology transfer to developing and under developed countries enabling them to adapt and mitigate Climate Change.

The upcoming developing countries continued to harden their stance against being subject to legal regulation of emissions.

What in your opinion may be a possible solution to the emerging global environmental crisis in this regard. Also outline the debate on Climate Change especially the journey since the Kyoto Protocol and later developments.
(10 Marks)

- Q.5 A unilateral Act of a State in India proclaimed certain private forest land to be acquired and re-distributed amongst landless peasants under its policy of providing secured livelihoods.

A petition was filed in the High Court on the ground that precious forest resources, wildlife and tribal life would be severely affected by this measure.

Discuss the possible outcome of this petition.

In doing so elaborate the key provisions in various relevant Forest, Wildlife and Tribal protection laws to protect forest resources, wildlife and tribal life in India.

(10 Marks)

NATIONAL LAW UNIVERSITY, DELHI
B.A.LLB.(Hons.): IV-YEAR, VII-SEMESTER
End-Semester Examinations, December-2015
Paper 7.3: Intellectual Property Rights Law

Time: 3.00 Hours (+10 Minutes for Reading)

Total Marks: 50

Instructions:

1. Read the questions carefully and answer. No clarification shall be sought on the question paper.
2. Do not write anything on the question paper except your Roll No.
3. Please do not mark on the Bare Acts. Bare Acts must be returned after the exams

Q.1 GENENTECH is an innovative drug company headquartered in WESTLAND. It has invented a wonder bio-drug called ðCHILL-PILLð for a rare genetic disorder called ðpersecution-complex syndromeð, which has psychotic implications on human beings. This genetic disorder is attributed to a specific but uncommon self-replicating gene called the ðOFF geneð present only in the human brain that causes persecutory delusions. The genetic sequencing of the OFF-gene has been in public domain since the mapping of the Human Genome. As per the *Diagnostic and Statistical Manual of Mental Disorders* (DSM-IV-TR) persecutory delusions are the most common form of delusions in paranoid schizophrenia, which although not fatalistic, slowly reduces the size of the human brain between the ages of puberty and forty. There is scientific evidence by way of gene mapping that reduced brain size owing to the OFF gene makes people delusional and provokes them to form a strong opinion and worldview about a sense of persecution and rising intolerance of other people, often based on imagined realities.

The Global Human Genome Project by way of several gene-mapping studies has found that persecution-complex syndrome is likely affecting around 100,000 people in the SKANDIA- a country of 1.25 billion which has 60% of the population below poverty line. However, since May 2014, studies have also shown that persecution complex syndrome is widely growing at the rate of 5% per annum among the Skandian people. Chill-Pill has been patented in Skandia, Westland and in 45 other countries since 2008. Chill-pill has been marketed in Skandia since 2010 after due regulatory approvals. The invention in the Bio-drug Chill-Pill contains a genetically modified cell where a chemical compound called RELAX (active ingredient which is well-known in art) when added to code the OFF genes, terminates the self-replicating nature of the OFF-gene. The methods involving genetic modification of genes are well-known in prior-art. The Chill-Pill bio-drug releases itself in the body and targets the cells containing OFF genes to replace them with the cells containing such modified genes. As a bio-drug, Chill-pill itself continues to self-replicate and stop constant growth of new OFF-genes. Chill-pill is thus automatically produced in human body in required quantities at any given point of time to fight the constant growth of such self-replicating genes. Hence a single dose (1 chill-pill) treatment is undertaken only once during the entire lifetime of the patient. Chill-pill is priced at INR 5, 00,000 per pill. However, Genentech provides free treatment to all patients having a BPL card (i.e. any patient falling in the 60% of the BPL population) as per its patient assistance programme (PAP).

Scientific studies have proved that Chill-Pill is very ðefficaciousð since only one pill is required to stop the Off-genes from self replicating, when compared to an earlier known off-patented chemical drug Relax. Relax is widely available as tablets but is not a bio-drug and hence does not stop the self replicating nature of the OFF gene. Relax is hence required to be administered during the entire life-time of patients suffering from the persecution-complex syndrome.

ZIPLA is a Skandian company involved in making and selling Relax for the last 40 years. Since Zipla has now started working on bio-drugs in their life-science division, they launched a competing (copycat) version of Chill-pill called ðCOOL-PILLð in January 2015 in the Skandian market. Ms. Intelligent who was previously heading life-sciences division of Genentech was hired as the head of Zipla's life-science division in 2013. She was single-handedly responsible for reverse-engineering Chill-pill to produce Cool-pill during her current employment at ZIPLA. Since there were professional differences between Genentech and Ms. Intelligent on the issue of pricing of Chill-Pill and the fact that Genentech does not manufacture Chill-pill in Skandia, she moved to ZIPLA to produce a competing drug out of altruistic concerns. While Ms. Intelligent was generally aware of the invention in Chill-Pill invented at Genentech through published public documents like patent on Chill-pill, she was working on another project involving gene therapies at Genentech. Genetech sues Ms. Intelligent and Zipla for breach of confidence. Interestingly, Zipla discovered during clinical tests that its Cool-Pill has a secondary use. Zipla identified that Cool-pill also worked on certain people who suffer from a similar genetic disorder, which again had psychotic implications. Cool-pill's secondary use was effective on people suffering from siege anxiety. Such people often speak in terms of attack on their ðcultureð and ðway of lifeð by relying on historical examples notwithstanding the fact that a post-modern society offers a lot of choice to such people to practice their inherent beliefs in peaceful ways. People suffering from siege anxiety often engage in violence and terror. Zipla has applied for patents on such secondary use in March 2015. Since April 2015 Zipla starts marketing Cool-pill for the secondary indication after due approvals from the Skandian drug regulator. Cool-pill is being sold in the Skandian market for Rs. 50000 for both indications.

P.T.O.

In May 2015 Genentech sues Zipla for wilful infringement of its patent on Chill-pill. Zipla counterclaims invalidity on grounds of Section 3(b), 3(c), 3(d) and on lack of novelty and lack of inventive step. The single bench of the Delhi High Court grants an interim injunction against Zipla from marketing Cool-pill for both indications since it involves infringement of Chill-pill. Zipla approaches the division bench for vacating the injunction on the above grounds and based on the four-factor injunction test. Zipla alleges that it is inherently immoral to patent such inventions because the commercial exploitation of Chill-pill leads to harming -dissentø as it prevents people from holding strong worldviews and opinions. Zipla argues that Chill-pill is a discovery and not an invention since genetic information pertaining to OFF-gene and methods of genetic modification was in prior art. Zipla also argues that Chill-pill is not efficacious when compared to Relax and that it was not novel and inventive when compared to all existing prior art. Zipla argues the four-factor equity test must be applied to vacate the injunction.

Since Zipla cannot manufacture the Cool-pill in India soon after the injunction, it imports Chill-Pills from TANGO-a country where Chill-pill is not patented. However, Chill-pill is marketed in Tango by Genentech only. Zipla imports Genentech's Chill-pill from a retailer in Tango at INR 3,00,000/- and sells it in Skandia. Genentech files a motion for injunction. Since September 2015 the number of people suffering from both persecution-complex syndrome and siege anxiety disorder has reached epidemic proportions. Hence Zipla files for a compulsory licence on all grounds available under Section 84. Since these genetic disorders have reached epidemic proportions, the Ministry of Health Government of Skandia is planning to run a mass campaign to freely distribute Chill-pill for both indications from January 2016.

Based on the above, provide legal options and arguments available to:

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|----|--|-----------|
| a) | Ms. Intelligent and Zipla for breach of confidence. | (3Marks) |
| b) | Patent office to Reject Zipla's patent of secondary use involving Cool-pill | (3 Marks) |
| c) | Genentech to oppose Zipla at the division bench on several grounds involving invalidity and for vacating injunction. | (8 Marks) |
| d) | Zipla for opposing the injunction for importing the drug into Skandia from Tango | (3 Marks) |
| e) | Genentech to oppose Zipla's compulsory licensing application | (5 Marks) |
| f) | Ministry of Health for free distribution of Chill-pill for both indications | (3 Marks) |

The laws of Skandia are in pari materia to the Indian Patents Act, 1970. **Please note that there is a total 2000 word limit for answering all above questions.**

Note: Elaborate your answers with relevant cases.

- Q.2 Gillian is an eminent person who writes so well. Due to the monetary requirements, he has started writing for Nicholas. On the direction of Nicholas, Gillian drafts a literature on the topics which are already exhausted by the previous writers which may lead to the dilution of good name of Gillian. Out of huge work which has been created under the direction of Nicholas, Gillian has compiled a work titled "Gillian's Experiences" which was written down previously by him and published it by its own name in year of 2000. Gillian claims to exercise all the rights over such work. Nicholas denies to recognize the economic rights of Gillian on the basis of pre requisite of copyright. Despite of all these facts, Gillian assigns the publishing right to specific publisher for four years but before the completion of tenure of existing right, publisher gives the publishing right to another person for another five years.

Answer the following Questions:

- | | | |
|----|---|-----------|
| a. | Who shall be the owner and Author of the Work which has been created under the direction of Nicholas? Elaborate with reference to section 17 of Copyright Act & established case laws. Discuss the position of joint authorship in the context of this case. | (5 Marks) |
| b. | Is there any loss to the name of Gillian, if Gillian writes on the topics which are already exhausted by the previous writers? Discuss the copyright ability of work with help of relevant case law. | (5 Marks) |
| c. | What would be the rights of the Gillian over the work titled "Gillian's Experiences"? Discuss in detail. | (5 Marks) |
| d. | What are those pre requisite of copyright and other justifications on the basis of which Nicholas may refuse to recognize the rights of Gillian over the work titled "Gillian's Experiences"? Discuss in detail with relevant cases. | (5 Marks) |
| e. | Discuss the legality of assignment of publishing right in this case. How assignment is different from license. What are those grounds on which basis any one may get compulsory license? Refer cases. What would be the copyright protection tenure over "Gillian's Experiences", if Gillian dies after the sixty years of publication? | (5 Marks) |

NATIONAL LAW UNIVERSITY, DELHI

B.A.LLB.(Hons.): IV-YEAR, VII SEMESTER

End-Semester Examinations, December-2015

Paper 7.4: Banking Law & Negotiable Instruments

Time: 3.00 Hours

Total Marks: 50

Instructions:

1. Read the questions carefully and answer.
2. No clarification shall be sought on the question paper.
3. Do not write anything on the question paper except your Roll No. and Name.

Q1. Determine the legality of the security in the following cases:

- a) XY Bank Ltd. lends to A and in security A pledges his share holding in AB Ltd. in which he holds 51% of shares.
- b) XY Bank Ltd. creates a charge on the receivables due to it on its existing and future vehicle loan portfolio.

(2X4 =8 Marks)

Q.2 Determine whether a security interest is created in the following cases:

- a) A housing finance company giving to the bank, in lieu of money, a right to receive from it the money received by it towards repayments of the existing home mortgages.
- b) An importer of raw precious stones, supplying the stones to a jeweler, with a clause reserving the title in the stones, thereafter in the stones after they have been cut and polished as well as the studded jewellery produced with the stones.
- c) A contract to sell a cold storage with a right to get it transferred back after twenty years for no consideration by the prior seller.

(3X4 =12 Marks)

Q.3 Discuss the rights and liabilities of A in the following cases:

- a) A gives an order to the Bank to pay into the account of B Rs.10000/-. The Bank does not do so and after a week goes into liquidation.
- b) A has mere Rs.2000/- in account with the Bank, but the Bank has granted him overdraft facility. A for goods received from B, gives him a cheque for Rs.20000/-. Due to negligence on part of B's managers, the cheque is not presented for payment for two months. By the time, it is presented for payment, RBI has imposed a moratorium on payments by the Bank.

(2X4 =8 Marks)

Q.4 As between A and B, who shall have priority over the concerned assets.

- a) The goods have been mortgaged to A. A allows the mortgagor to retain possession over the goods with there being no mark to indicate that they have been mortgaged. The mortgagor subsequently sells the goods to B.
- b) A has fixed charge over the company's machinery and B has fixed charge over the company's receivables. The company sells the machinery without the knowledge of A and pays it into the account of receivables.

(2X4=8 Marks)

Q.5 Decide in the following cases the rights and liabilities of A:

- a) A draws a cheque upon XY Bank for Rs.5000/-. The holder does not present the cheque for two months. In the meantime the bank adjusts the balance in A's account for an overdue debt of which A was the guarantor. The cheque bounces and holder starts prosecution of A under Section 138 of NI Act after he does not pay (Assume that procedural requirements for prosecution have been complied with).
- b) XY Bank has been assigned certain loans by SBI. XY Bank discovers that one of the loans is from A. But unfortunately, by the time it discovers this, the loan has become time-barred. XY Bank decides to exercise lien over the bills of exchange given by A to XY Bank for the purpose of collection.

(2X4 =8 Marks)

Q.6 Distinguish between:

- a) Cash reserve ratio and statutory liquidity ratio.
- b) Liquidity risk and Interest Rate risk.
- c) Pledge and Lien.
- d) Bank draft and cheque.

(4X1½=6 Marks)