

The Institute of Chartered Accountants of Nepal  
Suggested Answer of CAP-II, Corporate and Other Laws – June 2013

Attempt all questions.

Part "A"

- 1.
- a) Mr. F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three private companies and agreed with each to hold a block of investment as an agent for them. The dividend and interest income received by the companies was handed back to Mr. F as a pretended loan. This way, Mr. F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose the three companies were established? Whether the legal personality of all the three companies may be disregarded? 5
  - b) Mr. B, a member of XYZ Co. Ltd, holding some shares in his own name on which final call money has not been paid, is denied voting right by the company at its general meeting on the ground that the Articles of Association do not permit a member to vote if he has not paid the calls on the shares held by him. Examine the validity of company's arguments with reference to the provisions of the Companies Act, 1956. 5
  - c) Explain the doctrine of 'Indoor Management' in brief.  
The Secretary of a Company issued a share certificate to 'A' under the Company's seal with his own signature and the signature of a Director forged by him. 'A' borrowed money from 'B' on the strength of this certificate. 'B' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'B' will succeed in getting the share registered in his name? 5
  - d) What do you mean by 'ambiguous instruments' and 'inchoate stamped instruments' under Negotiable Instruments Act, 1881? 5
  - e) How does a director resign from the board of a private limited company if the board fails to accept his resignation? Furnish your answer highlighting the provision of the Companies Act, 1956. 5

**Answer:**

- a) The House of Lords of England in *Salomon Vs Salomon & Co. Ltd.* laid down that a company is a person distinct and separate from its members, and therefore, has an independent separate legal existence from its members who have constituted the company. But under certain circumstances the corporate veil may be lifted by the courts. It means looking behind the corporate façade and disregarding the corporate entity. Where a company is incorporated and formed by certain persons only for the purpose of evading taxes, by taking shelter of the corporate nature, the courts have discretion to disregard the corporate entity in the matter of tax evasion.  
(1) The problem asked in the question is based upon the aforesaid principle. The three companies were formed by the assessee purely and simply as a means of avoiding tax and the companies were nothing more than the assessee himself. Therefore the whole idea of Mr. F was simply to split his income into three parts with a view to evade tax.  
(2) The legal personality of the three private companies may be disregarded because the companies were formed only to avoid tax liability and the company was nothing more than the assessee himself. It did no business, but was created simply as a legal entity to ostensibly receive the dividend and interest and to handover those over to the assessee as pretended loans. The same was upheld in *Re Sir Dinshaw Maneckji Petit* AIR 1927 Bom.371 and *Juggilal vs. Commissioner of Income Tax* AIR (1969) SC (932)
- b) Section 87 of the Companies Act, 1956 governs the voting rights of the members. Every holder of an equity share has the right to vote, by virtue of his shares in the capital, on every resolution placed before the company. And his voting right on a poll shall be in proportion to his share of the paid up equity capital of the company. Member's right to vote may be exercised by him personally or through a proxy.  
  
A company may, by making provision in its articles, restrain a shareholder from exercising his voting rights in respect of any shares registered in his name on which any call or other amount due has not been paid or on which the company has a lien or exercised a lien. In the given case since Mr. B, a member of XYZ Co. Ltd. has not paid the final call money and furthermore it has been explicitly mentioned in the articles, therefore the company's argument is valid in the light of the provision of the Companies Act, 1956.
- c) The doctrine of Indoor Management is discussed in the *Royal British Bank vs. Turquand* (1956) 6E&B 327. In this case the directors of Royal British Bank also gave a bond to Turquand. The Article empowered the directors to issue such

bonds under the authority of a proper resolution. In fact no such resolution was passed. Notwithstanding that, it was held that Turquand could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority. But this doctrine is not applicable where the person dealing with the company has notice of irregularity or where the person dealing with the company is put upon on inquiry or when an instrument purporting to be enacted on behalf of the company is a forgery.

In the instant problem the doctrine of Indoor Management can apply only in case of irregularities which might otherwise affect the transaction, but it cannot apply to forgery which must be regarded as nullity. Hence 'B' will not succeed in getting the share registered in his name as this is decided by House of Lord of England in *Ruben v Great Fingall Consolidated* [1906] AC 439.

- d) Section 17 of Negotiable Instruments Act, 1881, defines the term ambiguous instrumentsto those instruments which read as 'where an instrument may be construed either as a promissory note or bill of exchange, the holder may at his election treat it as either and the instrument shall be thenceforward treated accordingly.'

Similarly, section 20 mentions about inchoate stamped instruments that means 'where one person signs and delivers to another a paper stamped in accordance with the law relating to negotiable instruments then in force inIndia, 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 stamp. 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; provided that no person other than a holder in due course shall recover from the person delivering the instrument anything in excess of the amount intended by him to be paid thereunder.

- e) There are no provisions in the Companies Act, 1956, relating to the resignation of his office by a director of a company. If there is any provision in the articles of the company giving the right to a direction to resign at any time, the resignation will take affect without any need for its acceptance by the Board. Where a director is elected or has contracted to act for a fix period, his resignation before the expiration of the period may make him liable for damages, unless the articles permit such resignation. In the absence of a provision in respect of resignation under the Act or under the articles of the company, the resignation tendered by a director unequivocally in writing shall take effect from the time when such resignation is tendered. It is advisable that the resignation should be in writing and also indicate the time when it is to take effect. The Directors cannot refuse the resignation of a co-director unless such a provision is there in the Articles of Association of Company.

### Part "B"

2.

- a) M & N concluded a contract to supply and purchase 50,000 Lt. petrol as provided in the contract. M is compelled to be a signatory party and reluctantly make a sign to the agreement. They are bound to perform respective contractual liability, however, M is intended to quit from liability because of strike and market price. Advise him how he can quit or discharge from the contractual liability? Elucidate your answer. 8
- b) Mr.X , a Nepalese citizens, possessing one year experience of operator, applied for a job of "Press machine operator" in a press company. However, company denied him to provide job as per his application, alleging he has lack of efficiency. He knew that Non-Nepalese citizen recruited at that post. His pleading is that the recruitment is against the legal provisions enshrined in the Labour Act, 2048. Draw your solution on following questions on the basis of mentioned circumstances and provisions of the Act. 7
- i) Whether Non-Nepalese citizen is prohibited to be engaged at works or not?
- ii) If it is yes, then, how the recruitment of Non-Nepalese citizen on the job of press machine operator is possible?
- iii) Whether the Act intended for an engagement to Non-Nepalese citizen on that post for long term. 7

**Answer:**a) Solution:

Contract is an agreement concluded between and among parties thereto. They have right to perform or not to perform the contract if they are upon the consent. Mr. M has following options to quit from the contract. Section 73, of the Contract Act 2056 has prescribed following circumstances in which contracts need not be performed:

- a. In case one party to the contract absolves the other party from fulfilling the obligations according to the contract;
- b. In case a voidable contract is made void by the party concerned;
- c. In case one cannot execute the contract due to its violation by the other party;
- d. In case it becomes unnecessary to perform the work mentioned in the contract under any provision of this Act;
- e. In case it becomes unnecessary to comply with the contract under Section 79

Section 79, sub-sections 1 prescribed that in case it becomes impossible to execute a contract as a result of fundamental change in the situation prevailing at the time of signing of the contract, the work under the contract need not be performed. Sub-section 2 stated that without prejudice to the generality of Sub-section (1), fundamental change shall be deemed to have come in the situation prevailing at the time of signing of the contract in any of the following circumstances:

- a. In case the contract becomes illegal and it cannot be executed;
- b. In case it becomes impossible to execute the contract due to emergence of such situations as war, floods, landslides, fire, earthquakes, and volcanic eruptions, which are beyond the control of human beings;
- c. In case anything essential for executing the contract is destroyed or damaged, or no longer exists, or cannot be obtained;
- d. In case the contract has been signed with a provision to provide services on the basis of efficiency, skill or talent, and the person providing such service dies or loses his/her sense or becomes incapable of performing the contract because of physical or mental disability.

However, sub-section 3 prescribed that notwithstanding anything contained in Sub-section (2) fundamental changes shall not be deemed to have come in the situation prevailing at the time of signing the contract in any of the following circumstances:

- a. In case it becomes difficult to perform the contract;
- b. In case profit margin is low or loss is expected;
- c. In case any party to a contract is dependent upon any third party who is not a party to the contract for performing the contract, if the third party commits a mistake or becomes unfit;
- d. In the event of strikes and lockouts;
- e. In case it becomes necessary to pay additional tax, fee or other revenue;
- f. In case the contract has been signed with several objectives and only some of them cannot be fulfilled.

Hence A cannot quite the contract because of strike and market price. Nevertheless, following are the possibilities to him:

Relief or exemption from the liability: Sec 73 (A)

Contractual liability should perform by the parties. If one party wishes to quit from the liability he should have taken the consent of other party. Here, if N gives relief or exemption from the liability of the contract, M need not perform the contract as they agreed upon.

In case of Voidable Contract: Sec 14, 73(B)

Voidable contract either be made void through the court furnishing evidence that it is coercion, undue influence, misrepresentation and fraud, or perform with acceptance thereto. So, it gives an option to think about the contract. Here, it is said that M is compelled to be a signatory party of the contract. In other word, he is compelled to sign in the contract by means of coercion. If he actually wishes to quit from the contract he has to file a case to the court submitting evidence of coercion. If it is proved that N has made coercion to M making him a party to the contract then he need not perform the contractual liability.

b) Solution

i.

Section 3 of Labor Act, 2048 has directed to Proprietors to classify the job of the workers and employees of the Enterprise according to the nature of production process, service or functions of the Enterprise. Yes. Non-Nepalese citizen is prohibited to be engaged at work in any of the posts classified pursuant to Section 3 of this Act. It assures the right of labour of Nepalese citizen.

ii.

However, an enterprise may engage Non-Nepalese citizens mentioned on the following:

## a) Submission of an application:

An enterprise should make advertisement for the skilled technical post in national level public newspapers and journal. The manager should submit an application to the Department of Labour along with evidence of such fact if Nepalese citizen would not be available for that post.

## b) Approval from Department of Labour:

If Department, making an inquiry on an application, found such fact that Nepalese citizen would not be available for that post, on the recommendation of the Labour Office, may grant approval to engage Non-Nepalese citizen at work years for a maximum period of upto five years not exceeding two years at a time and, in the specialized kind of skilled technical post, for a period upto seven years.

## c) Arrangements of Nepalese citizen to be made skilled and Non-Nepalese citizen to be replaced.

iii.

This Act has intended not to engage the Non-Nepalese citizen as long term other than maximum of 7 years. Therefore, The Manager should make arrangements for making Nepalese citizens skilled and for replacing the Non-Nepalese citizens gradually by them.

3.

(2×5=10)

a) Z company is incorporated under Companies Act, 2063. It has transacted duly and with compliance of concerned law, rules and regulation. It has ability to pay its debts also. However, appointment of CEO of the company drew attention and conflicts among directors. Finally, they concluded to liquidate the company. At this situation, Board of Directors has consulted you about how and at what circumstances the company may be liquidated and what is the status of company's directors, authorities and employees?

b) Enumerate the circumstances on which a chairperson and a member of the Securities Board may be removed from office under the Securities Act, 2063.

**Answer:**a) Solution:

Simply, the term 'liquidation' is a process of ending the existence of a company. It brings about an end to the life of company. It is process or affair or act including the closing a company down and collecting its assets, distribution of its liabilities etc. So, it is an act of liquidator that he/she takes control of the company, collects its assets, pays its debts and finally distributes any surplus among the members in accordance with their rights.

Z Company is able to pay its debts and not mentioned about the situation of insolvency. Hence section 126 prescribed provision where the directors must consider the following before taking to liquidation:

- Directors need to be sure if there exists no pending of insolvency application or no situation of insolvency proceeding under the prevailing law on insolvency;
- If the directors of the company, have, after due inquiry, made a declaration in writing that the company is able to pay its debts and other liabilities in full and that the debts and liabilities to be paid on behalf of such company can be paid up or can be fully settled in any other process within one year from the date of the adoption of the resolution to liquidate the company;
- If the written declaration of mentioned above made by the directors pursuant was made at the time of discussions on that matter in the general meeting.

Company may liquidate either by adopting a special resolution in the general meeting or subject to the provisions of mentioned in the memorandum of association, articles of association or consensus agreement. It is the duty of the

company to submit adopted special resolution and written statement of Directors within 7 days of resolution adoption. Company may appoint a liquidator to a licensed practitioner after adopting such special resolution to conduct liquidation proceedings of company. Further, office should be given information no later than seven days after the date of such appointment. After the appointment of such liquidator the directors and officers of the company shall be relieved of their office and the liquidator shall exercise all such powers with respect to the operation and management of company as may be exercisable by the directors and officers of the company. The service of employees of a company shall, ipso facto, be terminated after the liquidator commences the operation and management of the company. However, the liquidator may retain or appoint necessary employees for his/her support and assistance.

- b) Section 12 of Securities Act, 2063 mentions different circumstances where Nepal Government may remove chairperson and a member. These circumstances are as follows:
- a. If one is disqualified to be a Chairperson and a member, as the case may be, pursuant to Section 11,
  - b. If one commits any act contrary to the interest of investors in securities or any act that may cause loss or damage to the development of capital market,
  - c. If one suffers from lack of competence to implement, or cause to be implemented, such functions required to be performed by the Board to attain the objectives of the Board pursuant to this Act or the Rules framed under this Act,
  - d. If one has been held disqualified to carry on any occupation or business by the reason of misconduct and his or her certificate has been revoked or he or she has thus been restricted to carry on a business,
  - e. If one remains absent from three consecutive meetings of the Board without giving a notice

4.

- a) Investment Ltd., incorporated under prevailing company and security law, having objectives to act as a Sales Manager as well as operating Collective Investment Scheme mentioned in the Memorandum of Association (MOA), has not fulfilled any other official or legal formalities to operate collective investment scheme. Advise the company about following question.
- i) What are the pre-conditions and procedure to operate Collective Investment Scheme?
  - ii) Who and how such scheme is operated?
  - iii) How the Collective Investment Scheme may be revoked?

5

- b) What are the conditions stated in Bonus Act 2030 to receive and restriction to receive the Bonus.

5

**Answer:**

a) Solution:

i. Pre-conditions and procedure to operate collective investment scheme:

a. Statutory Requirement of obtaining permission: Sec. 71

It should be obtained from the Board constituted in accordance with the Securities Act, 2063 to operate a collective investment scheme.

b. Approval of Board:

A scheme manager should submit an application to the Board with details and fees as may be prescribed in order to register such scheme with the Board and obtain permission to operate the same. After an inquiry on the application if it is considered appropriate to grant permission, Board shall give permission to operate it within 90 days from the date of receipt of such an application. Board may demand of notice, description, information or documents from concerned scheme manager while it appears necessary. Board may specify necessary terms and conditions in relation to the operation of the collective investment scheme and the issue of the certificate on participation.

ii. Scheme Operation:

The scheme manager may operate the collective investment scheme of one or several types and by one or several names as prescribed with a view to operate a collective investment scheme. The scheme manager shall, prior to operating any scheme make an agreement with the depository as prescribed.

The Securities Board may revoke the permission in accordance with the Section 74 of the Securities Act, 2063 on following circumstances:

- a) Failure to fulfill the necessary terms and conditions of operation in a satisfactory manner,
- b) It is not appropriate to continue such a scheme upon considering the interest of participants,
- c) Violation of this Act or the Rules or Bye-laws framed under this Act or provision of any false details to the Board in respect of a scheme by the scheme manager and the depository.

b) Section 6 of Bonus Act 2030 has made following provision regarding the eligibility of receive for Bonus:

- (1) An employee who has worked for the half period to be worked in a fiscal year, shall be entitled to obtain bonus under to this Act. Provided that, no employee shall be entitled to obtain Bonus who has worked casually or in a shift basis.
- (2) For the purpose of Sub-section (1), the following periods shall also be computed as a period where an employee has worked.
  - (a) A period kept on reserve under any contract or under Section 11 of the Labour Act, 2048 (1991).
  - (b) A period under which an employee is on any leave with salary.
  - (c) A period of disablement caused by accident arising in course of business of the enterprise.

However under section 8 of the Act has made restriction to obtain Bonus as under :

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:

- (a) theft of the property of the enterprise or any damage to such property.
- (b) Illegal strike or abetment to other for such strike,
- (c) Riots or breaching of discipline.

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.

5. (2×5=10)

- a) How adispute between foreign investors and concerned industry can be solved under Foreign Investment and Technology Transfer Act, 2049?
- b) What are the functions of Nepal Rastra Bank?

**Answer:**

- a) Section 7 of Foreign Investment and Technology Transfer Act,1992 has stated the way of solving disputes between foreign investors and a concerned industry. According to it if any dispute arises between a foreign investor or the concerned industry, the concerned parties shall be required to settle the dispute by mutual consultations in the presence of Department of Industry. If the dispute could not be settled through mutual consultation , it shall be settled by an arbitration in accordance with the prevailing Arbitration Rules of the UNCITRAL. Moreover, the place of arbitration shall be held in Kathmandu and the Nepalese laws shall be applicable in the arbitration.
- b) To achieve the objectives referred to in Section 4 of Nepal Rastra Bank Act 2058, Section 5 of the Nepal RastraBank Act, 2058has prescribed the functions, duties and powers of Nepal Rastra Bank as follows:
  - i) To issue bank notes and coins;
  - ii) To formulate necessary monetary policies in order to maintain price stability and to implement or cause to implement them;
  - iii) To formulate foreign exchange policies and to implement or cause to implement them;
  - iv) To determine the system of foreign exchange rate;
  - v) To manage and operate foreign exchange reserve;
  - vi) To issue license to commercial banks and financial institutions to carry on banking and financial business and to regulate, inspect, supervise and monitor such transactions;
  - vii) To act as a banker, advisor and financial agent of Government of Nepal;

- viii) To act as the banker of commercial banks and financial institutions and to function as the lender of the last resort;
- ix) To establish and promote the system of payment, clearing and settlement and to regulate these activities; and
- x) To implement or cause to implement any other necessary functions which the Bank has to carry out in order to achieve the objectives of the Bank under this Act;

While exercising the powers conferred by this Act or any other prevailing law, the Bank shall have power to carry out other functions and take actions, which are incidental thereto. No one shall violate powers conferred on the Bank under this Act.

6. (3×5=15)
- a) Mr Rajesh Sharma FCA has charged a fee for representing his client M/S Annapurna Fabrics Pvt.Ltd in Tax settlement commission on the expected relief to his client as a result of the settlement commission. Is this arrangement is in accordance with the Nepal Chartered Accountant Act,2053?
  - b) As per the Negotiable Instruments Act, 2034, what is negotiation? Justify the liability of a bank on the following;
    - i) Where cheque of doubtful validity?
    - ii) Where customer has died?
    - iii) Where customer has become insolvent?
    - iv) Where customer has become an unsound mind?
  - c) Who is an executive director? What are the functions, duties & powers of an executive director mentioned in the ICAN Act?

**Answer:**

- a) In the given question, Mr Rajesh Sharma FCA has entered in to an agreement with M/S Annapurna Fabrics Pvt Ltd representing him in Tax settlement commission with charging fee on the basis of expected relief to the client as a result of the settlement commission. Section 34 of the Chartered Accountant Act 2052 has prescribed the provision regarding conduct to be observed by the member. Member having obtained professional certificate shall fully observe this Act or the Rules framed under this Act.

As per subsection 10 of section 34 of the Act, no member having obtained the professional certificate shall base the remuneration to which he or she is entitled for his or her work on a percentage of profits or on any other uncertain result and, or any other.

Hence, the arrangement made by Mr. Rajesh Sharma FCA is not in accordance with the Nepal chartered Accountant Act 1997. Mr Sharma shall be liable for the professional misconduct.

- b) The transfer of an instrument by one party to another so as to constitute the transferee a holder is called "negotiation". Section 2d of the Negotiable Instruments Act, 2034 has defined that an instrument payable to bearer can be negotiated by simple delivery. Negotiation is done by delivery (Sec 28) and by indorsement. Every party of the Negotiable Instrument can indorse or negotiate such instrument except it is restricted by the Act.

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.

**Liability Where Cheque of doubtful validity:**

The validity of a cheque may be in doubt where it is not properly drawn. It may, for example, not be dated, or the amount in words and figures is different, or its indorsements are not proper or regular or there is some other confusion about the cheque. The mandate in the cheque is not clear. However, bank should not make payments on such doubtful cheque.

**Liability where customer has died:**

The authority of a banker to pay cheques is terminated when he receives notice of the customer's death. Payments made before the banker has notice of death are justified. Bank should not pay or justify his/her death for the payment of cheque.

**Liability if customer becomes insolvent:**

The banker's authority is also terminated when he has received notice of the customer's insolvency or of presentation of an insolvency petition against him.

**Liability where customer has become an unsound mind:**

A person of unsound mind is not competent to contract. A cheque, being a contract of payment, is suspended during the period of the customer's insanity provided that the banker has notice of the fact.

- c) An executive Director is an authority appointed (in accordance with the section 38 of ICAN Act) for the operation of the administrative business of the Institute for a period of four years and if it desire for reappoint. He/She must have experience in accounting profession as the Executive Director. In the absence of the Executive Director, council may designate any officer level employee of the Institute to act as the Executive Director. He has to act as chief executive of the institute and should be accountable to the Council. He/She has to discharge respective duties under the control and supervision of the Council.

This Act has provided the Functions, Duties and powers of the Executive Director in its respective section 39 as follows:

- a) To act as chief executive of the Institute being accountable to the Council,
- b) To carry out day-to-day administrative business of the Institute;
- c) To submit annual budget of the Institute to the Council;
- d) To maintain and cause to be maintained the books of accounts of the Institute,
- e) To keep in custody of the Members' Register and Register of the Members holding Certificate of Practice and keep it up-to-date.

7. Write short notes on the followings:

(3×5=15)

- a) Fundamental principles of insurance
- b) Sick Industries
- c) Voluntary liquidation of companies

**Answer:****a) Solution:****i) Principle of Uberrimaefidei (Utmost Good Faith):**

Principle of *Uberrimaefidei* (a Latin phrase), or in simple English words, the Principle of **Utmost Good Faith**, is a very basic and first primary principle of insurance. According to this principle, the insurance contract must be signed by both parties (i.e. insurer and insured) in an absolute good faith or belief or trust. The principle of *Uberrimaefidei* applies to all types of insurance contracts.

**ii) Principle of Insurable Interest:**

The principle of insurable interest states that the person getting insured must have insurable interest in the object of insurance. A person has an insurable interest when the physical existence of the insured object gives him some gain but its non-existence will give him a loss. In simple words, the insured person must suffer some financial loss by the damage of the insured object.

**iii) Principle of Indemnity:**

Indemnity means security, protection and compensation given against damage, loss or injury. According to the principle of indemnity, an insurance contract is signed only for getting protection against unpredicted financial losses arising due to future uncertainties. Insurance contract is not made for making profit else its sole purpose is to give compensation in case of any damage or loss.

iv) **Principle of Contribution:**

Principle of Contribution is a corollary of the principle of indemnity. It applies to all contracts of indemnity, if the insured has taken out more than one policy on the same subject matter. According to this principle, the insured can claim the compensation only to the extent of actual loss either from all insurers or from any one insurer. If one insurer pays full compensation then that insurer can claim proportionate claim from the other insurers.

v) **Principle of Subrogation:**

Subrogation means substituting one creditor for another. Principle of Subrogation is an extension and another corollary of the principle of indemnity. It also applies to all contracts of indemnity. According to the principle of subrogation, when the insured is compensated for the losses due to damage to his insured property, then the ownership right of such property shifts to the insurer.

vi) **Principle of Loss Minimization:**

According to the Principle of Loss Minimization, insured must always try his level best to minimize the loss of his insured property, in case of uncertain events like a fire outbreak or blast, etc. The insured must take all possible measures and necessary steps to control and reduce the losses in such a scenario. The insured must not neglect and behave irresponsibly during such events just because the property is insured. Hence it is a responsibility of the insured to protect his insured property and avoid further losses.

vii) **Principle of Causa Proxima (Nearest Cause).**

Principle of *Causa Proxima* (a Latin phrase), or in simple English words, the Principle of Proximate (i.e. Nearest) Cause, means when a loss is caused by more than one causes, the proximate or the nearest or the closest cause should be taken into consideration to decide the liability of the insurer.

The principle states that to find out whether the insurer is liable for the loss or not, the proximate (closest) and not the remote (farthest) must be looked into.

## b) Section 25A of Industrial Enterprises Act, 2049 states the provision related to sick industry as follows:

1. If any industry is being operated in loss for a consecutive period of five years and its production level is twenty percent or less than twenty percent of the total production capacity, Government of Nepal may, if it deems necessary, declare it a sick industry by notification published in the Nepal Gazette.
2. No duty, fee and tax of any kind shall be levied on the machinery imported by any industry as referred to in Sub-section (1) for the extension and diversification of such industry.

## c) As per section 126 of the Companies Act 2063 voluntary liquidation of the company may be under the following circumstance:

1. If the company is able to pay its debts or other liabilities in Full.
2. If there exists no situation where an application for the review of insolvency of the company is pending under the prevailing law on insolvency or where the company would be in any manner subject to an insolvency proceeding under the prevailing law on insolvency.
3. If the directors of the company, have, after due inquiry, made a declaration in writing that the company is able to pay its debts and other liabilities in full and that the debts and liabilities to be paid on behalf of such company can be paid up or can be fully settled in any other process within one year from the date of the adoption of the resolution to liquidate the company.
4. If the written declaration made by the directors above was presented in the general meeting called to discuss the matter of liquidation of the company or such declaration was made at the time of discussions on that matter in the general meeting.

Except in case where a company has become insolvent in accordance with the prevailing law on insolvency, the shareholders of the company may liquidate the company either by adopting a special resolution in the general meeting or memorandum of association, articles of association or consensus agreement. A copy of the special resolution adopted with respect to the liquidation of a company under the section 126 and a written declaration of directors shall be submitted to the Office in later than seven days after the date adoption of the resolution.