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GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

Syllabus 2017

Padhai Kar Befikar

DECEMBER 2024

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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These answers have been written by competent persons and the Institute hope that the GUIDELINE ANSWERS will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

Padhai Kar Befikar

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be updated with the applicable amendments which are as follows:	
CS Examinations	Applicability of Amendments to Laws
December Session	upto 31 May of that Calender year
June Session	upto 30 November of previous Calender Year

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JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

MODULE 1 PAPER 1

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

Question 1

- (a) According to Salmond "law is the body of principles, which are recognized and applied by the State in the administration of justice. The purpose of law is the deliverance of justice to the people." Discuss.

(5 marks)

- (b) Suraj owned a mining company and had a lease of 99 years for exploiting coal from the coal blocks of the State B. His lease was cancelled by the revenue minister under the provisions of one of the applicable Laws of the State. Suraj had a past record of rivalry with the minister, as he had fought elections against him few years back. The minister too had filed a case against him of defamation in the past. Discuss the rule, which attracts this situation, and whether the cancellation order can become vitiated in law.

(5 marks)

- (c) In light of the "Satender Kumar Antil vs Central Bureau of Investigation and Ors", enumerate the directions issued by the Supreme Court of India for investigating agencies and also for the courts.

(5 marks)

- (d) A owes B a sum of ₹ 10,000. A sells a property to B, the consideration being ₹ 5,000 and the release of the previous debt of ₹ 10,000. What amount of stamp duty to be paid under the Indian Stamp Act, 1899 ? Answer with reasons.

(5 marks)

Answer 1(a)

According to Salmond, law is the body of principles which are recognized and applied by the state in the administration of justice. His other definition said that law consists of a set of rules recognized and acted on in courts of justice. 'Law' in this definition is used in its abstract sense. The constituent elements of which the law is made up are not laws but rules of law or legal principles.

Since law was defined by a reference to the administration of justice, it needs to be understood as well. Salmond says that human experience has made it clear that some form of compulsion is required to maintain justice. It is in the nature of things to have conflict, partly real, partly apparent, between the interests of man and man, and between those of individuals and those of society at large; and men cannot be left to do what they believe is right in their own eyes. Therefore, if a just society is to be maintained, it is necessary to add compulsion so as to complement to walk on the desired path. Hence, there exists various regulative or coercive systems, the purpose of which is the upholding and enforcement of right and justice by some instrument of external constraint. One of the most important of such systems is the administration of justice by the state. The administration of justice may therefore be defined as the maintenance of right within a political community by means of physical force of the state. Another is the control exercised over men by the opinion of

the society in which they live. Censure, ridicule, contempt are the sanctions by which society (as opposed to the state) enforces the rules of morality.

Salmond argued that the administration of justice was the primary task of a state and the laws were made to achieve that objective. Administration of justice was thus antecedent to the laws. Laws thus are secondary, accidental, unessential. Law consists of the pre-established and authoritative rules which judges apply in the administration of justice, to the exclusion of their own free will and discretion. Salmond further said that the administration of justice is perfectly possible without laws though such a system is not desirable. A court with an unfettered discretion in the absence of laws is capable of delivering justice if guided by equity and good conscience.

Salmond says that development and maturity of a legal system consists in the progressive substitution of rigid pre-established principles for individual judgment, and to a very large extent these principles grow up spontaneously within the courts themselves. That great aggregate of rules which constitutes a developed legal system, is not a condition precedent of the administration of justice but a product of fit. Gradually from various sources- precedent, custom, statute—there is a collected body of fixed principles which the courts apply to the exclusion of their private judgment. Justice becomes increasingly justice according to law, and courts of justice become increasingly courts of law.

Answer 1(b)

This situation attracts the rule against bias (*nemo judex in causa sua*). According to this rule no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. It is a presumption that a person cannot take an objective decision in a case in which he has an interest. The rule against bias has two main aspects- one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

- (a) **Pecuniary bias:** The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, howsoever small, would vitiate the adjudication. Thus a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.
- (b) **Personal bias:** There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge.
- (c) **Subject matter bias:** A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute.

The facts of the given situation are similar to the case *Mineral Development Ltd. v. State of Bihar*, AIR 1960 SC 468. In this case, the petitioner company was a lessee for 99 years of 3026 villages, situated in Bihar, for purposes of exploiting mica from them. The minister of revenue acting under Bihar Mica Act cancelled his license. The owner of the company had opposed the minister in general election of 1952 and the minister had filed a criminal case under section 500, Indian Penal Code, against him. The act of cancellation by the Minister was held to be a quasi-judicial act. Since the personal rivalry between the owner of the petitioner's company and the minister concerned was established, the cancellation order became vitiated in law.

In view of the above discussion, it can be said that the cancellation order can become vitiated in law.

Answer 1(c)

In the case of *Satender Kumar Antil vs. Central Bureau of Investigation and Ors.*, taking note of the continuous supply of cases seeking bail after filing of the final report on a wrong interpretation of Section 170 of the Code of Criminal Procedure ("the Code"), an endeavour was made by Supreme Court to categorize the types of offenses to be used as guidelines for the future.

The Supreme Court *inter alia* said that "The principle that bail is the Rule and jail is the exception" has been well recognised through the repetitive pronouncements of this Court. This again is on the touchstone of Article 21 of the Constitution of India."

Further, in this case, the Supreme Court issued certain directions, however they may be subject to State Amendments. These directions are meant for the investigating agencies and also for the courts. The directions are as under:

- a) The Government of India may consider the introduction of a separate enactment in the nature of a Bail Act so as to streamline the grant of bails.
- b) The investigating agencies and their officers are duty-bound to comply with the mandate of Section 41 and 41A of the Code and the directions issued by this Court in case of Arnesh Kumar. Any dereliction on their part has to be brought to the notice of the higher authorities by the court followed by appropriate action.
- c) The courts will have to satisfy themselves on the compliance of Section 41 and 41A of the Code. Any non-compliance would entitle the Accused for grant of bail.
- d) All the State Governments and the Union Territories are directed to facilitate standing orders for the procedure to be followed Under Section 41 and 41A of the Code while taking note of the order of the High Court of Delhi dated 07.02.2018 in Writ Petition (C) No. 7608 of 2018 and the standing order issued by the Delhi Police i.e. Standing Order No. 109 of 2020, to comply with the mandate of Section 41A of the Code.
- e) There need not be any insistence of a bail application while considering the application Under Section 88, 170, 204 and 209 of the Code.
- f) There needs to be a strict compliance of the mandate laid down in the judgment of this Court in the case Siddharth.
- g) The State and Central Governments will have to comply with the directions issued by this Court from time to time with respect to constitution of special courts. The High Court in consultation with the State Governments will have to undertake an exercise on the need for the special courts.

The vacancies in the position of Presiding Officers of the special courts will have to be filled up expeditiously.
- h) The High Courts are directed to undertake the exercise of finding out the under-trial prisoners who are not able to comply with the bail conditions. After doing so, appropriate action will have to be taken in light of Section 440 of the Code, facilitating the release.
- i) While insisting upon sureties the mandate of Section 440 of the Code has to be kept in mind.
- j) An exercise will have to be done in a similar manner to comply with the mandate of Section 436A of the Code both at the district judiciary level and the High Court as earlier directed by this Court in the case Bhim Singh, followed by appropriate orders.

- k) Bail applications ought to be disposed of within a period of two weeks except if the provisions mandate otherwise, with the exception being an intervening application. Applications for anticipatory bail are expected to be disposed of within a period of six weeks with the exception of any intervening application.
- l) All State Governments, Union Territories and High Courts are directed to file affidavits/status reports within a period of four months.

Answer 1(d)

According to Section 24 of Indian Stamp Act, 1899, where any property is transferred to any person in consideration (wholly or in part) of any debt due to him, or subject either certainly or contingently to the payment or transfer of any money or stock, (whether being or constituting a charge or incumbrance upon the property or not), such debt, money or stock is to be deemed the whole or part, (as the case may be), of the consideration in respect whereof the transfer is chargeable with ad valorem duty.

The object of this section is that, upon every purchase ad valorem duty has to be paid on the entire consideration which either directly or indirectly represents the value of the free and unencumbered corpus of the subject matter of the sale (*Collector of Ahmedabad v. Deepak Textile Industries*, AIR 1966 Guj. 227).

What Section 24 means is that where property is sold subject to the payment by the purchaser, discharging a debt charged on the property, then the purchaser is really paying a consideration which includes the amount of that debt also (*Somayya Organics Ltd. v. Board of Revenue*, AIR 1986 SC 403). Proviso to Section 24 operates for the benefit of assignee of the mortgage.

Explanation to Section 24 provides that in the case of sale of property subject to mortgage or other encumbrances, any unpaid mortgage money or money charged together with the interest, if any, due on the same shall be deemed to be part of the consideration for the sale provided that where property subject to a mortgage is transferred to the mortgagee he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

In the given situation, A has a financial obligation to B amounting to Rs. 10,000. A subsequently sells a property to B for a total consideration of Rs. 5,000, which encompasses the release of the prior debt of Rs. 10,000. Consequently, the applicable stamp duty will be calculated on a total sum of Rs. 15,000. This is due to the fact that the consideration for the transaction includes both, the amount of the present transaction i.e. Rs. 5,000 and the release of the outstanding debt of Rs. 10,000 owed by A to B.

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

- (a) 'All documents relating to the matters in issue in the possession or power of any adversary can be inspected by means of discovery by documents.' Discuss under the Code of Civil Procedure, 1908. When can a party refuse to produce the documents for inspection ?
- (b) If provisions to any offense, is punishable under two or more enactments, then in what manner offender will be prosecuted and punished by the court ? Explain under the General Clauses Act, 1897.
- (c) R was standing outside his house. Suddenly Victor came and pointed a loaded gun at him. Discuss the kind of wrong committed by Victor. What would be your answer, if Victor had struck him from behind ?

- (d) State the provisions related to the use of armed forces, to disperse unlawful assembly under the Criminal Procedure Code, 1973.

(4 marks each)

Answer 2(a)

All documents relating to the matters in issue in the possession or power of any adversary can be inspected by means of discovery by documents. Any party may apply to the Court for an order directing any other party to the suit to make discovery on oath the documents which are or which have been in his possession or powers relating to any matter in question. The Court may on hearing the application either refuse or adjourn it, if it is satisfied that such discovery is not necessary at all or not necessary at the stage. Or if it thinks fit in its discretion, it may make order for discovery limited to certain classes of documents.

Every party to a suit may give notice to the other party at or before the settlement of issues to produce for his inspection any document referred to in the pleadings or affidavits of the other party. If the other party refuses to comply with this order he shall not be allowed to put any such document in evidence (Order 11, Rule 15 of Civil Procedure Code, 1908), unless he satisfies the Court that such document relates only to his own title, he being a defendant to the suit or any other ground accepted by the Court. Documents not referred to in the pleadings or affidavits may be inspected by a party if the Court allows (Order 11, Rule 18 of Civil Procedure Code, 1908).

A party may refuse to produce the document for inspection on the following grounds:

- (i) where it discloses a party's evidence;
- (ii) when it enjoys a legal professional privilege;
- (iii) when it is injurious to public interest;
- (iv) denial of possession of document.

Answer 2(b)

According to section 26 of General Clauses Act, 1897, where an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either or any of those enactments, but shall not be liable to be punished twice for the same offence.

According to the Hon'ble Supreme Court in *Baliah v. Rangachari*, AIR 1969 SC 701, a plain reading of section 26 shows that there is no bar to the trial or conviction of an offender under two enactments, but there is only a bar to the punishment of the offender twice for the same offence. In other words, the section provides that where an act or omission constitutes an offence under two enactments, the offender may be prosecuted and punished under either or both the enactments but shall not be liable to be punished twice for the same offence.

Answer 2(c)

Assault is any act of one person which directly causes the other person immediately to apprehend a contact with his person. Thus, when one person by his act creates an apprehension in the mind of the other person that he is going to commit battery against him, the tort of assault is committed. The law of assault is substantially the same as that of battery except that apprehension of contact, not the contact itself has to be established. Usually when there is a battery, there will also be assault.

To point a loaded gun at the plaintiff, or to shake fist under his nose, or to curse him in a threatening manner, or to aim a blow at him which is intercepted, or to surround him with a display of force

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is to assault him clearly. If the defendant by his act intends to commit a battery and the plaintiff apprehends it, is an assault.

Thus, in the first situation, Victor is pointing his loaded gun at R and the apprehension by R that Victor intends to commit a battery is an assault. Hence it can be said that Victor has committed assault in the first case.

The second situation attract the tort/offence of battery. Battery means any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery. To constitute tort/ offence of battery, therefore, two things are necessary:

- (i) use of force, however, trivial it may be without the plaintiff's consent, and
- (ii) without any lawful justification.

Even though the force used is very trivial and does not cause any harm, the wrong is committed. Thus, even to touch a person in anger or without any lawful justification is battery.

Answer 2(d)

Section 130 of the Criminal Procedure Code, 1973 provides the provisions relating to Use of armed forces to disperse unlawful assembly. According to this section, if any such assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the Executive Magistrate of the highest rank who is present may cause it to be dispersed by the armed forces. Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law. Every such officer of the armed forces shall obey such requisition in such manner as he thinks fit, but in so doing he shall use as little force, and do as little injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

In addition to this, under the Criminal Procedure Code 1973, Sections 131 and 132 are consequential, addressing the armed forces' power to act in such situations when an Executive Magistrate is unreachable and providing protection against prosecution for acts done in good faith under these provisions. Complementing section 130, Sections 131 and 132 of the Criminal Procedure Code, 1973 expand on these provisions. Section 131 allows commissioned or gazetted officers of the armed forces to act independently to disperse such assemblies when an Executive Magistrate is unavailable, ensuring immediate action to safeguard public security. Section 132 provides protection against prosecution for acts performed in good faith under Sections 129, 130, and 131, requiring prior sanction from the Central or State Government, depending on the individual's role, thereby balancing accountability with operational autonomy.

Alternate Answer

Section 149 of the Bharatiya Nagarik Suraksha Sanhita 2023, provides the provisions relating to Use of armed forces to disperse unlawful assembly. According to this section, if any assembly cannot be otherwise dispersed, and if it is necessary for the public security that it should be dispersed, the District Magistrate or any other Executive Magistrate authorised by him may cause it to be dispersed by the armed forces. Such Magistrate may require any officer in command of any group of persons belonging to the armed forces to disperse the assembly with the help of the armed forces under his command, and to arrest and confine such persons forming part of it as the Magistrate may direct, or as it may be necessary to arrest and confine in order to disperse the assembly or to have them punished according to law. Every such officer of the armed forces shall obey such requisition in such a manner as he thinks fit, but in so doing he shall use as little force, and do as little

injury to person and property, as may be consistent with dispersing the assembly and arresting and detaining such persons.

In addition to this, under the Bharatiya Nagarik Suraksha Sanhita 2023, Sections 150 and 151 are consequential, addressing the armed forces' power to act in such situations when an Executive Magistrate is unreachable and providing protection against prosecution for acts done in good faith under these provisions. Complementing section 149, Sections 150 and 151 of the Bharatiya Nagarik Suraksha Sanhita, 2023 expand on these provisions. Section 150 allows commissioned or gazetted officers of the armed forces to act independently to disperse such assemblies when an Executive Magistrate is unavailable, ensuring immediate action to safeguard public security. Section 151 provides protection against prosecution for acts performed in good faith under Sections 148, 149, and 150, requiring prior sanction from the Central or State Government, depending on the individual's role, thereby balancing accountability with operational autonomy.

OR (Alternate question to Q. No. 2A)

Question 2A

- (i) Discuss the conditions, that must co-exist for exclusion of time in suits or applications that are filed in a Court without jurisdiction, and whose period of limitation is over, under the Limitation Act, 1963.

(4 marks)

- (ii) Enumerate the principle of Estoppel, under the Indian Evidence Act, 1872.

(4 marks)

- (iii) Briefly explain the provisions related to the appeal from orders of National Company Law Tribunal under Section 421 of the Companies Act, 2013.

(4 marks)

- (iv) What do you mean by digital signature and electronic signature under The Information Technology Act, 2000 ?

(4 marks)

Answer 2A(i)

Section 14 of the Limitation Act, 1963 (the Act) provides the provisions relating to Exclusion of time of proceeding bona fide in court without jurisdiction. The relief to a person is given by Section 14 of the Act when the period of limitation is over, because another civil proceedings relating to the matter in issue had been initiated in a court which is unable to entertain it, by lack of jurisdiction or by any other like cause. The following conditions must co-exist for the applicability of this Section:

- (a) that the plaintiff or the applicant was prosecuting another civil proceedings against the defendant with due diligence in the above said court;
- (b) that the previous suit or application related to the same matter in issue;
- (c) that the plaintiff or the applicant prosecuted in good-faith in that court; and
- (d) that the court was unable to entertain a suit or application on account of defect of jurisdiction or other like cause.

Answer 2A(ii)

Section 115 of the Indian Evidence Act, 1872 provides a general rule of estoppel. When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe

a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only. Other relevant are Sections 116 which is relating to Estoppel of tenants and of licensee of person in possession and 117 which is relating to Estoppel of acceptor of bill of exchange, bailee or licensee.

Principle of Estoppel

Estoppel is based on the maxim '*alleganscontratia non estaudiendus*' i.e. a person alleging contrary facts should not be heard. The principles of estoppel covers one kind of facts. It says that man cannot approbate and reprobate, or that a man cannot blow hot and cold, or that a man shall not say one thing at one time and later on say a different thing.

The doctrine of estoppel is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it (*Sorat Chunder v. Gopal Chunder*).

Estoppel is a rule of evidence and does not give rise to a cause of action. Estoppel by record results from the judgement of a competent Court. It was laid down by the Privy Council in *Mohori Bibee v. Dharmodas Ghosh*, (1930) 30 Cal. 530 PC, that the rule of estoppel does not apply where the statement is made to a person who knows the real facts represented and is not accordingly misled by it. The principle is that in such a case the conduct of the person seeking to invoke rule of estoppel is in no sense the effect of the representation made to him. The main determining element is not the effect of his representation or conduct as having induced another to act on the faith of such representation or conduct.

In *Biju Patnaik University of Tech. Orissa v. Sairam College*, AIR 2010 (NOC) 691 (Orissa), one private university permitted to conduct special examination of students prosecuting studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared. However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from taking decision withholding degree certificate after declaration of results.

Alternate Answer

Section 121 of the Bharatiya Sakshya Adhiniyam, 2023 provides a general rule of estoppel. When one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. However, there is no estoppel against the Statute. Where the Statute prescribes a particular way of doing something, it has to be done in that manner only. Other relevant are Sections 122 which is relating to Estoppel of tenants and of licensee of person in possession and 123 which is relating to Estoppel of acceptor of bill of exchange, bailee or licensee.

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Answer 2A(iii)

Section 421 of the Companies Act, 2013 provides the provisions relating to Appeal from Orders of National Company Law Tribunal (Tribunal). It states:

- (1) Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal.
- (2) No appeal shall lie to the Appellate Tribunal from an order made by the Tribunal with the consent of parties.
- (3) Every appeal under section 421 (1) shall be filed within a period of forty-five days from the date on which a copy of the order of the Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- (4) On the receipt of an appeal under sub-section (1), the Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The Appellate Tribunal shall send a copy of every order made by it to the Tribunal and the parties to appeal.

Answer 2A(iv)

“Digital signature” means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3 of the Information Technology Act 2000 (Act). [Section 2(1) (p)]

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“Electronic signature” means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature. [Section 2(1) (ta)]

According to section 3 of Information Technology Act, 2000, Digital signature (i.e. authentication of an electronic record by a subscriber, by electronic means) is recognised as a valid method of authentication. The authentication is to be effected by the use of “asymmetric crypto system and hash function”, which envelop and transform electronic record into another electronic record.

Verification of the electronic record is done by the use of a public key of the subscriber. The private key and the public key are unique to the subscriber and constitute a functioning “key pair”.

Section 3A of the Act deals with electronic signature. Section 3A(1) provides that notwithstanding anything contained in section 3, but subject to the provisions of section 3A(2), a subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which—

- (a) is considered reliable; and
- (b) may be specified in the Second Schedule.

For the purposes of above any electronic signature or electronic authentication technique shall be considered reliable if –

- (a) the signature creation data or the authentication data are, within the context in which they are used, linked to the signatory or, as the case may be, the authenticator and to no other person;
- (b) the signature creation data or the authentication data were, at the time of signing, under the control of the signatory or, as the case may be, the authenticator and of no other person;
- (c) any alteration to the electronic signature made after affixing such signature is detectable;
- (d) any alteration to the information made after its authentication by electronic signature is detectable; and
- (e) it fulfils such other conditions which may be prescribed.

Central Government may prescribe the procedure for the purpose of ascertaining whether electronic signature is that of the person by whom it is purported to have been affixed or authenticated.

Question 3

- (a) Z was manufacturing articles locally and putting counterfeit mark on them of a celebrated manufacturer, X. He sold those articles to A, making him believe that the articles were made by X. Explain with the help of relevant provisions about the offence committed by Z, under the Indian Penal Code, 1860.

(4 marks)

- (b) Discuss the time limit, if any, for registration under the Registration Act, 1908, in the following :

- (a) A document executed in India.
- (b) A document executed outside India.
- (c) A document executed by several persons at different times.
- (d) A lease of a very high value but is neither from year to year, nor for any term exceeding one year, nor reserving a yearly rent.

(4 marks)

- (c) 'Section 20 of the Right to Information Act, 2005, imposes stringent penalty on a Public Information Officer (PIO), for failing to provide information'. Elaborate.

(4 marks)

- (d) Enumerate the documents or transactions, to which the Information Technology Act, 2000, will not apply.

(4 marks)

Answer 3(a)

Section 415 of Indian Penal Code, 1860 provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation appended to this section states that a dishonest concealment of facts is a deception within the meaning of this section.

The main ingredients of cheating are:

1. Deception: A person deceive other person.
2. Fraudulent or Dishonest: The deception should be dishonest or Fraudulent.
3. Inducement: There should be inducement of the any person so deceived to deliver any property to person; or
4. Consent for retainment: There should be deception to obtain consent that any person shall retain any property; or
5. Induced omission or commission: There should be Intentional inducement of the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived.
6. Actual Harm: And, that act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

That person is said to cheat other person.

In the given situation, Z was manufacturing articles locally and putting counterfeit mark on them of a celebrated manufacturer X and selling those articles to A making him believe that the articles were made by X. Here Z intentionally deceives A into a belief that this article was made by X and thereby dishonestly inducing Z to buy and pay for the article. This is deception and an offence of cheating committed by Z under Section 415 of the Indian Penal Code, 1860.

Alternate Answer

Section 318 of Bharatiya Nyaya Sanhita, 2023, provides that whoever, by deceiving any person, fraudulently or dishonestly induces the person so deceived to deliver any property to any person, or to consent that any person shall retain any property, or intentionally induces the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived, and which act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property, is said to "cheat".

Explanation appended to this section states that a dishonest concealment of facts is a deception within the meaning of this section.

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The main ingredients of cheating are:

1. Deception: A person deceive other person.
2. Fraudulent or Dishonest: The deception should be dishonest or Fraudulent.
3. Inducement: There should be inducement of the any person so deceived to deliver any property to person; or
4. Consent for retainment: There should be deception to obtain consent that any person shall retain any property; or
5. Induced omission or commission: There should be Intentional inducement of the person so deceived to do or omit to do anything which he would not do or omit if he were not so deceived.
6. Actual Harm: And, that act or omission causes or is likely to cause damage or harm to that person in body, mind, reputation or property.

That person is said to cheat other person.

In the given situation, Z was manufacturing articles locally and putting counterfeit mark on them of a celebrated manufacturer X and selling those articles to A making him believe that the articles were made by X. Here Z intentionally deceives A into a belief that this article was made by X and thereby dishonestly inducing Z to buy and pay for the article. This is deception and an offence of cheating committed by Z under Section 318 of the Bharatiya Nyaya Sanhita, 2023.

Answer 3(b)

- (a) Under Section 23 of the Registration Act, 1908 (the Act) a document executed in India other than a will, must be presented within four months of its execution. In case of urgent necessity, etc. the period is eight months, but higher fee has to be paid.
- (b) As per Section 26 of the Act, a document executed outside India, should be presented within four months after its arrival in India on payment of proper registration fee.
- (c) According to section 24 of the Act, where there are several persons executing a document at different times, such document may be presented for registration and re-registration within four months from the date of each execution.
- (d) A lease of a very high value which is neither from year to year nor for any term exceeding one year nor reserving a yearly rent does not require registration under Section 17(1)(d). Hence no time limit for them.

Answer 3(c)

According to section 20 of the Right to Information Act, 2005, where the Central Information Commission or the State Information Commission, as the case may be, at the time of deciding any complaint or appeal is of the opinion that the Central Public Information Officer or the State Public Information Officer, as the case may be, has, without any reasonable cause, refused to receive an application for information or has not furnished information within the time specified under section 7(1) or malafidely denied the request for information or knowingly given incorrect, incomplete or misleading information or destroyed information which was the subject of the request or obstructed in any manner in furnishing the information, it shall impose a penalty of two hundred and fifty rupees each day till application is received or information is furnished, so however, the total amount of such penalty shall not exceed twenty-five thousand rupees.

Further, the Central Public Information Officer or the State Public Information Officer, as the case

may be, shall be given a reasonable opportunity of being heard before any penalty is imposed on him.

The burden of proving that he acted reasonably and diligently shall be on the Central Public Information Officer or the State Public Information Officer, as the case may be.

The provision for recommending the disciplinary action against the Central Public Information Officer or the State Public Information Officer is also provided under section 20.

Answer 3(d)

Nothing in Information Technology Act, 2000, shall apply to documents or transactions specified in the First Schedule. The documents or transactions mentioned in first schedule are as under:

1. A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881.
2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.
3. A trust as defined in Section 3 of the Indian Trust Act, 1882.
4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
5. Any contract for the sale or conveyance of immovable property or any interest in such property.

Alternate Answer

Nothing in Information Technology Act, 2000(the Act), shall apply to documents or transactions specified in the First Schedule. Documents or Transactions to which the Act will not apply are as follows:

1. A negotiable instrument (other than a cheque, a Demand Promissory Note or a Bill of Exchange issued in favour of or endorsed by an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority) as defined in Section 13 of the Negotiable Instrument Act, 1881.
2. A power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882 but excluding those power-of-attorney that empower an entity regulated by the Reserve Bank of India, National Housing Bank, Securities and Exchange Board of India, Insurance Regulatory and Development Authority of India and Pension Fund Regulatory and Development Authority to act for, on behalf of, and in the name of the person executing them.
3. A trust as defined in section 3 of the Indian Trust Act, 1882.
4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.

Question 4

- (a) Discuss the constitutional provisions related to State monopoly.
- (b) Discuss, as to when the opinion of any other person is also relevant, in addition to the opinion of experts, under the Indian Evidence Act, 1872.
- (c) Discuss the inherent powers of the High Court under the Criminal Procedure Code, 1973. What are the principles laid down by Supreme Court in the case of Madhu Limaye v. State of Maharashtra 1978 AIR 47, to govern the exercise of inherent jurisdiction of the High Court ?

- (d) Whether the High Court can entertain a petition under Article 226 of the Constitution of India, if an effective alternative remedy is available to the aggrieved person ? Explain.

(4 marks each)

Answer 4(a)

Creation of monopoly rights in favour of a person or body of persons to carry on any business *prima facie* affects the freedom of trade. But in certain circumstances it can be justified.

After the Constitution (Amendment) Act, 1951, the State creates a monopoly in favour of itself, without being called upon to justify its action in the Court as being reasonable.

Sub-clause (ii) of clause (6) of Article 19 of the Constitution of India makes it clear that the freedom of profession, trade or business will not be understood to mean to prevent the state from undertaking either directly or through a corporation owned or controlled by it, any trade, business, industry or service, whether to the exclusion, complete or partial, citizens or otherwise.

If a law is passed creating a State monopoly the Court should enquire as to what are the provisions of the said law which are basically and essentially necessary for creating the state monopoly. Sub-clause (ii) of clause (6) protects only the essential and basic provisions. If there are other provisions which are subsidiary or incidental to the operation of the monopoly they do not fall under Article 19(6)(ii). It was held by Shah, J. in *R.C. Cooper v. Union of India*, (1970) 1 SCC 248, that the impugned law which prohibited the named banks from carrying the banking business was a necessary incident of the business assumed by the Union and hence was not liable to be challenged under Article 19(6)(ii) in so far as it affected the right of a citizen to carry on business.

Answer 4(b)

In addition to the opinions of experts, opinion of any other person is also relevant in the following situations under the Indian Evidence Act, 1872:

- (i) Facts which support or are inconsistent with the opinions of experts are also made relevant. The Facts which are not otherwise relevant becomes relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. (Section 46)
- (ii) Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question; (Section 47)
- (iii) Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate; (Section 47A)
- (iv) Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom; (Section 48)
- (v) Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 49)
- (vi) Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 50)

Alternate Answer

In addition to the opinions of experts, opinion of any other person is also relevant in the following situations under the Bharatiya Sakshya Adhiniyam, 2023:

- (i) Facts which support or are inconsistent with the opinions of experts are also made relevant. The Facts which are not otherwise relevant becomes relevant if they support or are inconsistent with the opinions of experts, when such opinions are relevant. (Section 40)

- (ii) Opinion as to the handwriting and signature of a person if the person giving the opinion is acquainted with the handwriting of the person in question; (Section 41(1))
- (iii) Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Digital Signature Certificate; (Section 41(2))
- (iv) Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom; (Section 42)
- (v) Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject; (Section 43)
- (vi) Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 44)

Answer 4(c)

Inherent Powers of High Court

Section 482 of the Criminal Procedure Code, 1973 (Cr.P.C. or Code) is one of the most important sections of the Code. It says that nothing in this Code shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Code, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

The powers of the High Court under section 482 Cr.P.C are partly administrative and partly judicial. Inherent powers under section 482 of Cr.P.C. include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under section 482 of Cr.P.C. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

The Supreme Court in *Madhu Limaye v. State of Maharashtra*, 1978 AIR 47, has held that the following principles would govern the exercise of inherent jurisdiction of the High Court:

1. Power is not to be resorted to, if there is a specific provision in the Code for redress of grievances of aggrieved party.
2. It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.
3. It should not be exercised as against the express bar of the law engrafted in any other provision of the code.

It is well settled that the inherent powers under section 482 can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy.

Alternate Answer

Inherent Powers of High Court

Section 528 of the Bharatiya Nagarik Suraksha Sanhita, 2023 (Sanhita) is one of the most important sections of the Sanhita. It says that Nothing in this Sanhita shall be deemed to limit or affect the inherent powers of the High Court to make such orders as may be necessary to give effect to any order under this Sanhita, or to prevent abuse of the process of any Court or otherwise to secure the ends of justice.

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The powers of the High Court under section 528 of Sanhita are partly administrative and partly judicial. Inherent powers under section 528 of Sanhita include powers to quash FIR, investigation or any criminal proceedings pending before the High Court or any Courts subordinate to it and are of wide magnitude and ramification. Court can always take note of any miscarriage of justice and prevent the same by exercising its powers under section 528 of Sanhita. These powers are neither limited nor curtailed by any other provisions of the Code. However, such inherent powers are to be exercised sparingly and with caution.

The Supreme Court in *Madhu Limaye v. State of Maharashtra*, 1978 AIR 47, has held that the following principles would govern the exercise of inherent jurisdiction of the High Court:

1. Power is not to be resorted to, if there is a specific provision in the Code for redress of grievances of aggrieved party.
2. It should be exercised very sparingly to prevent abuse of process of any Court or otherwise to secure ends of justice.
3. It should not be exercised as against the express bar of the law engrafted in any other provision of the code.

It is well settled that the inherent powers can be exercised only when no other remedy is available to the litigant and not where a specific remedy is provided by the statute. If an effective alternative remedy is available, the High Court will not exercise its powers under this section, especially when the applicant may not have availed of that remedy.

Answer 4(d)

According to the decision of Hon'ble Supreme Court in the case of *PHR Invent Educational Society v. UCO Bank and Others* decided on 12.04.2024, High Court cannot entertain a petition under Article 226 of the Constitution if an effective alternative remedy is available to the aggrieved person. However, it is subject to certain exceptions.

This case can be referred to for understanding and give more clarity of the law relating to entertaining writ petition by the High Courts under Article 226 of the Constitution of India.

In the instant case the Hon'ble Supreme Court has that it could thus clearly be seen that the Court has carved out certain exceptions when a petition under Article 226 of the Constitution could be entertained in spite of availability of an alternative remedy. Some of them are thus:

- (i) where the statutory authority has not acted in accordance with the provisions of the enactment in question;
- (ii) it has acted in defiance of the fundamental principles of judicial procedure;
- (iii) it has resorted to invoke the provisions which are repealed; and
- (iv) when an order has been passed in total violation of the principles of natural justice

In view of the above it can be said that while the High Court generally expects on the exhaustion of alternative remedies, it retains the discretion to entertain a petition under Article 226 in exceptional cases such as where alternative remedies are inadequate, ineffective, or unavailable, or where there is a clear case of injustice or a violation of fundamental rights.

Question 5

- (a) What is Arbitration Council of India ? What are the duties and functions of the Arbitration Council ?

(8 marks)

- (b) Enumerate in detail various significant stages of crime.

(8 marks)

Answer 5(a)

Part IA of the Arbitration and Conciliation Act, 1996 (the Act) as inserted by the Amendment Act, 2019 deals with Arbitration Council of India. Section 43B empowers the Central Government to establish the Arbitration Council of India to perform the duties and discharge the functions under the Act. The Council shall be a body corporate by the name aforesaid, having perpetual succession and a common seal, with power, subject to the provisions of this Act, to acquire, hold and dispose of property, both movable and immovable, and to enter into contract, and shall, by the said name, sue or be sued. The head office of the Council shall be at Delhi. The Council may, with the prior approval of the Central Government, establish offices at other places in India.

Section 43D provides that it shall be the duty of the Council to take all such measures as may be necessary to promote and encourage arbitration, mediation, conciliation or other alternative dispute resolution mechanism and for that purpose to frame policy and guidelines for the establishment, operation and maintenance of uniform professional standards in respect of all matters relating to arbitration.

For the purposes of performing the duties and discharging the functions under this Act, the Council may—

- (a) frame policies governing the grading of arbitral institutions;
- (b) recognise professional institutes providing accreditation of arbitrators;
- (c) review the grading of arbitral institutions and arbitrators;
- (d) hold training, workshops and courses in the area of arbitration in collaboration of law firms, law universities and arbitral institutes;
- (e) frame, review and update norms to ensure satisfactory level of arbitration and conciliation;
- (f) act as a forum for exchange of views and techniques to be adopted for creating a platform to make India a robust centre for domestic and international arbitration and conciliation;
- (g) make recommendations to the Central Government on various measures to be adopted to make provision for easy resolution of commercial disputes;
- (h) promote institutional arbitration by strengthening arbitral institutions;
- (i) conduct examination and training on various subjects relating to arbitration and conciliation and award certificates thereof;
- (j) establish and maintain depository of arbitral awards made in India;
- (k) make recommendations regarding personnel, training and infrastructure of arbitral institutions; and
- (l) Such other functions as may be decided by the Central Government.

Answer 5(b)

The commission of a crime consists of some significant stages. If a person commits a crime voluntarily, it involves four important stages, viz.

1. Criminal Intention

Criminal intention is the first stage in the commission of offence. Intention is the conscious

exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose. Law does not as a rule punish individuals for their evil thoughts or criminal intentions. The criminal court does not punish a man for mere guilty intention because it is very difficult for the prosecution to prove the guilty intention of a man.

Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. In the Indian Penal Code, 1860 (IPC), all these varied expressions find place in the various sections of the Code. Intention can also be imputed under the law. For example, if a man drives in a rash and reckless manner resulting in an accident causing death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road. So, by virtue of definition of the word 'voluntarily' in the Code, a reckless driver who causes death of a person can be presumed or deemed to have intended to cause the death of the person.

2. Preparation

Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. But in certain exceptional cases mere preparation is also punishable.

Under the IPC, mere preparation to commit few offences is punishable as they are considered to be grave offences. Some of them are as follows:

- (i) Preparation to wage war against the Government
- (ii) Preparation for counterfeiting of coins or Government Stamps
- (iii) Possessing counterfeit coins, false weights or measurements and forged documents
- (iv) Making preparation to commit dacoity

3. Attempt

Attempt, which is the third stage in the commission of a crime, is punishable. Attempt has been called as a preliminary crime. Section 511 of the IPC does not give any definition of 'attempt' but simply provides for punishment for attempting to commit an offence. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt. It should be noted that whether an act amounts to an attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it. The act constituting attempt must be proximate to the intended result.

4. Commission of Crime or Accomplishment

The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the IPC.

Alternate Answer

The commission of a crime consists of some significant stages. If a person commits a crime voluntarily, it involves four important stages, viz.

1. Criminal Intention

Criminal intention is the first stage in the commission of offence. Intention is the conscious exercise of mental faculties of a person to do an act for the purpose of accomplishing or satisfying a purpose. Law does not as a rule punish individuals for their evil thoughts or criminal intentions. The criminal court does not punish a man for mere guilty intention because it is very difficult for the prosecution to prove the guilty intention of a man.

Intention means doing any act with one's will, desire, voluntariness, malafides and for some purpose. In the Bharatiya Nyaya Sanhita, 2023 (BNS), all these varied expressions find place in the various sections of BNS. Intention can also be imputed under the law. For example, if a man drives in a rash and reckless manner resulting in an accident causing death of a person, the reckless driver cannot plead innocence by stating that he never intended to cause the death of the person. It may be true in the strict sense of the term. But a reckless driver should know that reckless driving is likely to result in harm and can even cause death of the persons on the road. So, by virtue of definition of the word 'voluntarily' in BNS, a reckless driver who causes death of a person can be presumed or deemed to have intended to cause the death of the person.

2. Preparation

Preparation means to arrange necessary measures for commission of intended criminal act. Preparation itself is not punishable as it is difficult to prove that necessary preparations were made for commission of the offence. But in certain exceptional cases mere preparation is also punishable.

Under the BNS, mere preparation to commit a few offences is punishable as they are considered to be grave offences. Some of them are as follows:

- (i) Preparation to wage war against the Government
- (ii) Preparation for counterfeiting of coins or Government Stamps
- (iii) Possessing counterfeit coins, false weights or measurements and forged documents
- (iv) Making preparation to commit dacoity

3. Attempt

Attempt, which is the third stage in the commission of a crime, is punishable. Attempt has been called as a preliminary crime. Though, section 62 of the BNS does not give any definition of 'attempt' but simply provides for punishment for attempting to commit an offence. Attempt means the direct movement towards commission of a crime after necessary preparations have been made. When a person wants to commit a crime, he firstly forms an intention, then makes some preparation and finally does something for achieving the object; if he succeeds in his object he is guilty of completed offence otherwise only for making an attempt. It should be noted that whether an act amounts to an attempt to commit a particular offence is a question of fact depending on the nature of crime and steps necessary to take in order to commit it. The act constituting the attempt must be proximate to the intended result.

4. Commission of Crime or Accomplishment

The last stage in the commission of crime is its accomplishment. If the accused succeeds in his attempt, the result is the commission of crime and he will be guilty of the offence. If his attempt is unsuccessful, he will be guilty for an attempt only. If the offence is complete, the offender will be tried and punished under the specific provisions of the BNS.

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Attempt all parts of either Q. No. 6 or Q. No. 6A**Question 6**

- (a) Discuss the procedure, after registration of documents, relating to land under The Registration Act, 1908.
- (b) Discuss the provisions related to revision under the Code of Civil Procedure 1908.
- (c) Discuss the rules for apportionment of the consideration under Section 28 of The Indian Stamp Act 1899.
- (d) Ravi was having a printing press and was taking orders to print books or pamphlets or likewise. In an order for printing, he published a defamatory material in Kannada language. He was unaware of the matter in it, as the language was not known to him. He was charged with defamation. Analyse the case, with the help of relevant provisions, and decide whether Ravi is guilty of defamation, under the Indian Penal Code, 1860 ?

(4 marks each)

Answer 6(a)

Section 66 of the Registration Act, 1908 provides the provisions relating to Procedure after registration of documents relating to land. The procedure is as follows:

- (1) On registering any non-testamentary document relating to immovable property, the Registrar shall forward a memorandum of such document to each Sub-Registrar subordinate to himself in whose sub-district any part of the property is situate.
- (2) The Registrar shall also forward a copy of such document, together with a copy of the map or plan (if any) mentioned in section 21, to every other Registrar in whose district any part of such property is situate.
- (3) Such Registrar on receiving any such copy shall file it in his Book No. 1, and shall also send a memorandum of the copy to each of the Sub-Registrars subordinate to him within whose sub-district any part of the property is situate.
- (4) Every Sub-Registrar receiving any memorandum under this section shall file it in his Book No. 1.

Answer 6(b)

Section 115 of the Code of Civil Procedure, 1908 (the Code) deals with revision. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears –

- (i) to have exercised a jurisdiction not vested in it by law, or
- (ii) to have failed to exercise a jurisdiction so vested, or
- (iii) to have acted in the exercise of its jurisdiction illegally or with material irregularity,

The High Court may make such order as it thinks fit.

Provided that the High Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or proceeding except where the order, if it had been made in favour of the party applying for revision would have finally disposed off the suit or other proceedings.

The High Court shall not vary or reverse any decree or order against which an appeal lies either to the High Court or any Court subordinate thereto.

A revision shall not operate as a stay of suit or other proceeding before the Court except where such suit or proceeding is stayed by the High Court.

Answer 6(c)

Section 28 of the Indian Stamp Act, 1899 prescribes certain rules for apportionment of the consideration, in cases of certain conveyances arising out of a property being contracted to be sold and thereafter conveyed in parts etc.

Under Section 28(1) where a person contracts the sale of property as a whole and thereafter conveys to the purchaser the property in separate parts, the consideration shall be apportioned in such manner as the parties think fit, provided that a distinct consideration is set-forth for each separate part in the conveyance and thereafter the conveyances shall be chargeable with ad valorem in respect of such distinct consideration.

Under Section 28(2), where the contract is for the sale of a property as a whole to two or more purchasers jointly or by any person for himself and others, and the property is conveyed to them in parts by separate conveyance, then each distinct part of the consideration shall be chargeable with ad valorem duty in respect of the distinct part of the consideration so specified.

Section 28(3) covers cases where a person, after contracting to purchase a property from another and before the property has been duly conveyed to him, enters into a contract to sell the property to a third person, and the contract is given effect to only by one conveyance from the owner of the property to the sub-purchaser directly. The stamp duty payable is on the consideration paid by the sub-purchaser. This provision avoids double payment that would otherwise arise.

Section 28(4) provides that where a person contracts for the sale of property and before obtaining a conveyance in his favour, enters into a contract to sell the property in parts to other persons, the conveyances which may be executed directly by the owner to each sub-purchaser would be liable to be charged with duty in respect of the consideration paid by the sub-purchaser, original price for the whole and the aggregate price paid by the sub-purchasers, subject to a minimum duty of Re. 1/-

Section 28(5) provides that when a person contracts to sell a property to another person and again contracts to sell the same property to a third person and such third person obtains a conveyance first from the seller with whom he had contracted and later gets another conveyance of the same property from original seller, the duty is to be charged on the consideration received by the original seller subject to a maximum of Rs. 5/-.

Answer 6(d)

Section 499 of Indian Penal Code, 1860 (IPC) provides that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Section 501 of IPC provides that whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

A person printing or engraving defamatory matter abets the offence of defamation and is guilty under section 501. However, printing or engraving of defamatory material is not sufficient and the court is required to be satisfied that the accused knew or had good reasons to believe that such a matter was defamatory before holding a person guilty under section 501.

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In the case of *Sankaran v. Ramkrishna Pillai*, AIR 1960 Ker 141, the defamatory matter was printed in Malayalam and the accused did not know the language, his *mens rea* was absent and he was held as not guilty.

In view of the above said provisions, it can be said that Ravi is not guilty of defamation under the Indian Penal Code, 1860.

Alternate Answer

Section 356 (1) of Bharatiya Nyaya Sanhita 2023 (BNS) provides that whoever, by words either spoken or intended to be read, or by signs or by visible representations, makes or publishes any imputation concerning any person intending to harm, or knowing or having reason to believe that such imputation will harm, the reputation of such person, is said, except in the cases hereinafter excepted, to defame that person.

Section 356(3) of BNS provides that whoever prints or engraves any matter, knowing or having good reason to believe that such matter is defamatory of any person, shall be punished with simple imprisonment for a term which may extend to two years, or with fine, or with both.

A person printing or engraving defamatory matter abets the offence of defamation and is guilty under section 356(3). However, printing or engraving of defamatory material is not sufficient and the court is required to be satisfied that the accused knew or had good reasons to believe that such a matter was defamatory before holding a person guilty under section 356 (3).

In the case of *Sankaran v. Ramkrishna Pillai*, AIR 1960 Ker 141, the defamatory matter was printed in Malayalam and the accused did not know the language, his *mens rea* was absent and he was held as not guilty.

In view of the above said provisions, it can be said that Ravi is not guilty of defamation under the Bharatiya Nyaya Sanhita.

OR (Alternate Question to Q. No. 6)

Question 6A

- (i) 'The rule of *ejusdem generis* must be applied with great caution'. Discuss. What are the conditions that should exist before applying this rule of interpretation ?
(4 marks)
- (ii) What do you mean by order under the Code of Civil Procedure, 1908 ? What are the orders under this Code, from which appeal lies ?
(4 marks)
- (iii) What do you understand by the Rule of Law ? Enumerate three major principles of the rule of law propounded by Dicey.
(4 marks)
- (iv) Elucidate the categories of information, that have been exempted from disclosure, under the Right to Information Act, 2005.
(4 marks)

Answer 6A(i)

The rule of *ejusdem generis* must be applied with great caution because, it implies a departure from the natural meaning of words, in order to give them a meaning or supposed intention of the legislature. The rule must be controlled by the fundamental rule that statutes must be construed so

as to carry out the object sought to be accomplished. The rule requires that specific words are all of one genus, in which case, the general words may be presumed to be restricted to that genus.

Whether the rule of *ejusdem generis* should be applied or not to a particular provision depends upon the purpose and object of the provision which is intended to be achieved.

To apply the rule the following conditions must exist:

- (1) The statute contains an enumeration by specific words,
- (2) The members of the enumeration constitute a class,
- (3) The class is not exhausted by the enumeration,
- (4) A general term follows the enumeration,
- (5) There is a distinct genus which comprises more than one species, and
- (6) There is no clearly manifested intent that the general term be given a broader meaning than the doctrine requires.

Answer 6A(ii)

According to section 2(14) of the Code of Civil Procedure, 1908 (Code) "order" means the formal expression of any decision of a Civil Court which is not a decree.

According to Section 104 of the Code, no appeal lies against orders other than what is expressly provided in the Code or any other law for the time being in force. Under the Code appealable orders are:

- (i) an order under Section 35A, i.e., for compensatory costs in respect of false or vexatious claims within pecuniary jurisdiction of the Court, but only for the limited ground that no order should have been made, or that such order should have been made for a lesser amount.
- (ii) an order under Section 91 or Section 92 refusing leave to institute a suit under Section 91 (Public nuisances and other wrongful acts affecting the public) or Section 92 (alleged breach of trust created for public purposes of a charitable or religious nature).
- (iii) an order under Section 95, i.e., compensation for obtaining arrest attachment or injunction on insufficient grounds.
- (iv) an order under any of the provisions of the Code imposing a fine or directing the arrest or detention in the civil prison of any person except where such arrest or detention is in execution of a decree.
- (v) any order made under rules from which an appeal is expressly allowed by the rules.

No appeal lies from any order passed in appeal under this section.

Answer 6A(iii)

Rule of Law was developed by British Jurist A.V. Dicey. He derived this term from French Principle '*La principe de legalite*' which means the principle of legality. It states that the government should be governed by Rule of Law instead of Rule of Individual. Any dictator, monarch or one particular person should not govern the functioning of any nation. Each country should follow legality of law.

Dicey was highly influenced by the French concept of administrative law' (*droit administratif*) or the 'administrative tribunals' (*tribunaux administratifs*). According to this, a citizen's lawsuit against a public servant for a wrongdoing done in that capacity will be handled by a special court rather than a regular court of law. *Droit administratif* contains a regulation that was created by the judges of the administrative court rather than laws and rules created by the French parliament.

Three major principles given by Dicey in his book "Rule of Law" are –

1. **Supremacy of law:** It means that ordinary or regular laws shall remain supreme. Supremacy here means absolute and pre-dominance of regular laws as against arbitrary or wide discretionary powers.
2. **Equality before the law:** According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. He states that there should be equality between people. According to Dicey, all classes must be equally subject to the ordinary law of the land as administered by the ordinary law courts. It provides that all are equal before law and everyone will be subjected to the same law.
3. **The predominance of a legal spirit:** Legal Spirit refers to the judicial precedents upon any dispute raised by any individual. The judgment given in any case will be the legal spirit of that particular case. It basically refers to the law as set by the precedents that have evolved over time.

Answer 6A(iv)

Section 8 of the Right to Information Act, 2005(Act) provides the provisions relating to Exemption from disclosure of information. The following are the category of informations that have been exempted from disclosure under the Act:

- (a) information, disclosure of which would prejudicially affect the sovereignty and integrity of India, the security, strategic, scientific or economic interests of the State, relation with foreign State or lead to incitement of an offence;
- (b) information which has been expressly forbidden to be published by any court of law or tribunal or the disclosure of which may constitute contempt of court;
- (c) information, the disclosure of which would cause a breach of privilege of Parliament or the State Legislature;
- (d) information including commercial confidence, trade secrets or intellectual property, the disclosure of which would harm the competitive position of a third party, unless the competent authority is satisfied that larger public interest warrants the disclosure of such information;
- (e) information available to a person in his fiduciary relationship, unless the competent authority is satisfied that the larger public interest warrants the disclosure of such information;
- (f) information received in confidence from foreign Government;
- (g) information, the disclosure of which would endanger the life or physical safety of any person or identify the source of information or assistance given in confidence for law enforcement or security purposes;
- (h) information which would impede the process of investigation or apprehension or prosecution of offenders;
- (i) cabinet papers including records of deliberations of the Council of Ministers, Secretaries and other officers. However the decisions of Council of Ministers, the reasons thereof, and the material on the basis of which the decisions were taken shall be made public after the decision has been taken, and the matter is complete, or over. Also, those matters which come under the exemptions specified in this section shall not be disclosed;
- (j) information which relates to personal information the disclosure of which has no relationship to any public activity or interest, or which would cause unwarranted invasion of the privacy of the individual unless the Central Public Information Officer or the State Public Information

Officer or the appellate authority, as the case may be, is satisfied that the larger public interest justifies the disclosure of such information. However, the information which cannot be denied to the Parliament or a State Legislature shall not be denied to any person.

Padhai Kar Befikar

COMPANY LAW

MODULE 1 PAPER 2

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-I

Question 1

(a) Comment on the following with reference to the provisions of the Companies Act, 2013 :

- (i) Any listed company can accept deposits from the public up to its net worth.
- (ii) An eligible company can accept only secured deposits from the public.
- (iii) A private company which is a start-up can accept deposits from its members without any limit on the quantum of the deposits.

(2+2+1=5 marks)

(b) XYZ Ltd is a listed company with issued 10,000 equity shares of Rs. 100 each at a premium of ₹ 20 per share. The company has accumulated Rs. 2,00,000 in its Securities Premium Account. One of the directors suggested in the board meeting that the amount under the securities premium account may be utilized to write off the preliminary expenses of Rs. 50,000 and the balance amount for distribution of dividend to the shareholders. Assess the validity of the suggestion with reference to the provisions of the Companies Act, 2013.

(5 marks)

(c) Speciality Nuts and Bolts Limited, a profit-making listed company has given the following information for the FY ending 31st March, 2024 :

Item	Amount (Rs. in crores)
Paid-up Equity share capital	24
Preference share capital	8
General Reserve	80
Security Premium A/c	48
Long term loans from Financial Institutions	130
Short term credit from banks	20

A meeting of the Board of Directors of the company was convened on 31st May, 2024 to consider and approve giving a loan of Rs. 50 crore to Lamps and Shades Limited, a loss-making listed company for its operational needs.

Of the seven directors present at the meeting, all the directors, except one independent

director, approved the proposal of granting of loan to Lamps and Shades Limited and the chairman declared the resolution as passed with the requisite majority and the company proceeded to disburse the loan. Referring to the provisions of the Companies Act, 2013 decide, whether the making of proposed amount of loan falls within the powers of the Board. Additionally, assess, the validity of granting such a loan with the approval of the members in the general meeting.

(5 marks)

(d) Board of Directors of XYZ Limited proposed the dividend at 12% on equity shares for the financial year 2023-24. The same was approved in the annual general meeting of the company held on 10th September, 2024. The Managing Director seeks your opinion on the following under the provisions of the Companies Act, 2013 :

- (i) Akar, holding equity shares of face value of 10 lakhs, has not paid an amount of Rs. 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him ?
- (ii) Akruti was the holder of 1,000 equity shares on 31st March, 2024, but she transferred the shares to Raka, whose name has been registered on 20th May, 2024. Who will be entitled to the above dividend ?

(5 marks)

Answer 1(a)

- (i) According to Section 76(1) of Companies Act, 2013 read with Rule 3(4) the Companies (Acceptance of Deposits) Rules, 2014, an eligible company, as defined, can accept deposits only up to 10% of its paid-up share capital, free reserves and securities premium account from its members and up to 25% of its paid-up share capital, free reserves and securities premium account from the public. As the section has not made any separate provision for listed companies the prescribed limit is applicable to the listed companies if it is an eligible company. Hence, the statement that any listed company can accept deposit from the public up to its net worth is not correct.
- (ii) According to proviso to section 73(2)(f) of the Companies Act, 2013, a company does not secure the deposits or secures such deposit partially, then, the deposits shall be termed as "unsecured deposits" and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. In such case, the circular inviting deposits in Form DPT-1 shall state that the deposits being accepted are unsecured deposits and that no charge will be created on the assets of the company. Hence, the statement that an eligible company can accept only secured deposits from the public is not correct.
- (iii) According to section 73 read with rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, a private Company can accept deposits from its member's up-to 100% of aggregate of the paid-up share capital, free reserves and securities premium account. However, this limit is not applicable to a private company which is a start-up, for 10 years from the date of its incorporation. Hence, the statement is correct as this exemption is applicable to a private company which is a start-up, for ten years from the date of its incorporation.

Answer 1(b)

In accordance with the provisions of Section 52(2) of the Companies Act, 2013, the securities premium can be utilized only for:

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- a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- b) in writing off the preliminary expenses of the company;
- c) writing off commission paid, or discount allowed, or the expenses incurred on issue of shares or debentures of the company.
- d) for providing for the premium payable on redemption of any redeemable preference shares or debentures of the company; or
- e) for the purchase of its own shares or other securities under section 68.

Section 52(3) further states that the securities premium account may, notwithstanding anything contained in sub-sections (1) and (2), be applied by such class of companies, as may be prescribed and whose financial statement complies with the accounting standards prescribed for such class of companies under section 133-

- a) in paying up unissued equity shares of the company to be issued to members of the company as fully paid bonus shares; or
- b) in writing off the expenses of or the commission paid or discount allowed on any issue of equity shares of the company; or
- c) for the purchase of its own shares or other securities under section 68.

Firstly, the premium cannot be treated as profit and as such the amount of premium is not available for distribution as dividend. Secondly, the amount of premium whether received in cash or in kind must be kept in a separate account, known as the "Securities Premium Account". Thirdly, the amount of premium is to be maintained with the same sanctity as the share capital.

Accordingly, the suggestion of a director is partly correct. His suggestion to utilise the securities premium account for writing off the preliminary expenses is valid. However, the suggestion to utilise the same for distribution of dividend is not valid.

Answer 1(c)

According to section 186(2)(a) and (3) of the Companies Act, 2013 read with Rule 13 of the Companies (Meeting of Board and its Powers) Rules, 2014, no company shall directly or indirectly, give any loan to any person or other body corporate exceeding 60% of its (paid-up share capital + free reserves + security premium account) or 100% of its (free reserves+ security premium account) whichever is more, without the approval of the members by passing a special resolution.

In this case, 60% of net worth of the company is $\{0.6 * (24+8+80+48 = 160 \text{ crore})\} = \text{Rupees } 96 \text{ crore}$. The total of free reserve and security premium is $(80+48) = \text{Rupees } 128 \text{ crore}$. Hence, the company can, theoretically, give loan upto the higher of the two amounts which is Rupees. 128 crore.

As the Board of Directors are considering granting of only Rupees. 50 crore to Lamps and Shades Limited, the loan is, *prima facie*, within the prescribed limits of the Board itself. No special resolution by members is necessary in this case.

However, Section 186(5) states that no investment shall be made or loan or guarantee or security by the company unless the resolution sanctioning the loan is passed at the meeting of the Board with the consent of all the directors present at the meeting.

In this case, as the board resolution has not been passed unanimously, the resolution is not valid.

The company cannot grant the loan to Lamps and Shades Limited even if members' approval by special resolution is obtained as required u/s 186(3) as the unanimous board approval was not obtained in the first place.

Answer 1(d)

- (i) The given problem is based on the exception provided in section 127 (d) of the Companies Act, 2013. As per the law, where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder. As per the facts given in the question, Akar is holding equity shares of face value of Rupees 10 Lakhs and has not paid an amount of Rupees 1 lakh towards call money on shares. Referring to the above provision, Akar is eligible to get Rupees 1.20 lakh towards dividend, out of which an amount of Rupees 1 lakh can be adjusted towards call money due on his shares. Rupees 20,000 can be paid to him in cash or by cheque or by any electronic mode. According to the above-mentioned provision, the company can adjust the sum of Rupees 1 lakh due towards calls in arrears on shares against the dividend amount payable to him.
- (ii) According to section 123(5) of the Companies Act, 2013, the dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Akruti the holder of equity shares, transferred the shares to Raka whose name has been registered on 20th May 2024. Since he became the registered shareholder before the declaration of the dividend in the Annual General Meeting of the company held on 10th September 2024, Raka, being the registered holder and not Akruti shall be entitled to the dividend and not Akruti.

Attempt all parts of either Q. No. 2 or Q. No. 2A**Question 2**

- (a) XYZ Pvt. Ltd. is having complex shareholding structure. Its shares are held by a multitude of entities, including individuals, trusts, partnerships, and other companies. Ambar holds 8% of equity shares of XYZ Pvt. Ltd. directly. He also holds 60% of equity shares of PQR Ltd. which holds 2% of equity shares of XYZ Pvt. Ltd. Based on this information and referring to the provisions of the Companies Act, 2013, explain the meaning of significant beneficial owner and determine, whether Ambar is a significant beneficial owner of XYZ Pvt. Ltd. (3 marks)
- (b) Explain the concept of 'Treasury shares' with reference to the provisions of the Singapore Companies Act, 1967 (as amended). Additionally, explain on whether this concept is prevalent in the Indian context under the Companies Act, 2013. (3 marks)
- (c) Explain the provision for creation of debenture redemption reserve account under the Companies Act, 2013. Also, assess the validity of the Board's proposed action to utilise this reserve account for payment of interim dividend and conversion of partly paid equity shares into fully paid equity shares. (3 marks)
- (d) Iceberg Cement (India) Limited, a top 1000 listed public company (the company), is a subsidiary of a global conglomerate of Iceberg Cement Plc. The group has a common policy of not declaring any dividend on its equity shares. The CFO of the company says that, as the global conglomerate has a zero-dividend policy, its Indian subsidiary also need not disclose its dividend distribution policy in its annual report or on its website. Assess the validity of the contention of CFO under the provisions of SEBI (Listing Obligations and Disclosure

Requirements) Regulations, 2015. Also, state, whether the company is required to comply with the disclosure requirement, if it is a company other than top 1000 listed company.

(3 marks)

- (e) Discuss the primary objectives of the National Financial Reporting Authority (NFRA) as enshrined under the Companies Act, 2013.

(3 marks)

Answer 2(a)

As per Section 90 read with Rule 2(1)(h) the Companies (Significant Beneficial Owners) Rules, 2018 "significant beneficial owner" in relation to a reporting company means an individual referred to in sub-section (1) of section 90, who acting alone or together, or through one or more persons or trust, possesses one or more of the following rights or entitlements in such reporting company, namely:

- (i) holds indirectly, or together with any direct holdings, not less than ten percent of the shares;
- (ii) holds indirectly, or together with any direct holdings, not less than ten percent of the voting rights in the shares;
- (iii) has right to receive or participate in not less than ten percent of the total distributable dividend, or any other distribution, in a financial year through indirect holding alone, or together with any direct holdings;
- (iv) has right to exercise, or actually exercises, significant influence or control, in any manner other than through direct holdings alone.

Ambar is holding 8% of equity shares of XYZ Pvt. Ltd. directly and holds majority stake in PQR Ltd, hence he holds rights indirectly also in XYZ Ltd i.e. 2% equity shares indirectly. As he holds not less than 10% of the equity shares of XYZ Pvt. Ltd. he is a significant beneficial owner of that company.

Answer 2(b)

According to Section 76H of the Singapore Companies Act, 1967 (as amended), where ordinary shares or stock are purchased or otherwise acquired by a Singapore company in accordance with the provisions of Singapore Companies Act, 1967, the company may hold such shares and deal with them at any time in accordance with section 76K. Such shares are called as treasury shares. However, as per section 76(l) such treasury shares held as investment by the company cannot exceed 10% of total number of shares of the same class at that time. Where ordinary shares are held u/s 76(H) of Singapore Companies Act, 1967 by the company, the name of the company itself will be entered as a member holding such treasury shares in the Register of members (u/s 190 of Singapore Companies Act).

In Indian context the concept of treasury shares is not prevalent in Companies Act, 2013.

Answer 2(c)

Section 71(4) of the Companies Act, 2013 read with Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014, provides that when debentures are issued by a company, the company shall create a debenture redemption reserve account (DRR) out of the profits of the company available for payment of dividend. The amount credited to such account shall not be utilized by the company except for the redemption of debentures.

In view of these provisions, the proposed action of the Board to utilize the DRR account for payment of interim dividend and conversion of partly paid equity shares into fully paid equity shares shall not be valid.

Answer 2(d)

With effect from 08/07/2016, according to Regulation 43A of SEBI (Listing Obligations and Disclosure Requirements) (Second Amendment) Regulations, 2015 (LODR), top 1000 listed companies shall formulate a dividend distribution policy which shall be disclosed on the website of the listed company and also a web-link shall be provided in its annual reports. The company has to disclose both on its website and in its annual reports its dividend distribution policy. Non-payment of dividend on equity shares as a matter of policy is also a dividend distribution policy. Thus, the contention of CFO is incorrect.

The listed entities other than top 1000 listed entities based on market capitalization may disclose their dividend distribution policies on a voluntary basis on their websites and provide a web-link in their annual reports. Thus, in this case it is a voluntary disclosure requirement for the company.

Answer 2(e)

As per Section 132 of the Companies Act, 2013 read with the National Financial Reporting Authority Rules 2018, the Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.

The objectives of National Financial Reporting Authority *inter alia* shall be as follows:

- (1) make recommendations to the Central Government on the formulation and laying down of accounting and auditing policies and standards for adoption by companies or class of companies or their auditors, as the case may be;
- (2) monitor and enforce the compliance with accounting standards and auditing standards in such manner as may be prescribed;
- (3) oversee the quality of service of the professions associated with ensuring compliance with such standards, and suggest measures required for improvement in quality of service and such other related matters as may be prescribed; and a
- (4) perform such other functions as may be prescribed in relation to aforementioned objectives.

OR (Alternate question to Q. No. 2)**Question 2A**

- (i) Explain the concept of statutory books and the statutory registers and records under the provisions of the Companies Act, 2013. Who will authenticate the statutory registers in the absence of Company Secretary in the employment of a company ?

(3 marks)

- (ii) "Green Initiative" is a Section 8 company, which has been operating successfully for the past 10 years, primarily engaged in environmental conservation and social welfare activities. Many big public limited companies funded the company toward CSR activities. Due to this, over the years, the company has accumulated substantial reserves and surplus funds. The company is now planning to declare dividend in the annual general meeting to be held with respect to the financial year ended 31st March, 2024. Can the company utilise the surplus/ reserves so accumulated for declaration of dividend in accordance with the provisions of the Companies Act, 2013 ? (3 marks)

- (iii) ABC Ltd. is engaged in the manufacturing of automobiles. It has a Board of Directors comprising of 5 members, including a Managing Director, a Whole-Time Director in charge of finance, and a Chief Financial Officer.

During a recent audit, it was discovered that the company's books of accounts were not maintained properly. There were discrepancies in inventory valuation, and certain transactions were not recorded accurately. The auditors pointed out that the financial statements prepared were not disclosing a true and fair view of the company's financial position.

Identify the persons who could be held responsible for the irregularities in the maintenance of books of accounts in ABC Ltd. and the penalty for which they may be liable as per the provisions of the Companies Act, 2013.

(3 marks)

- (iv) Explain about the Directors' Responsibility Statement covering the aspect of its authentication under the provisions of the Companies Act, 2013 ?

(3 marks)

- (v) Explain in brief the justification and advantages laid down in the Rule in Foss v Harbottle case law under the provisions of the Companies Act, 2013.

(3 marks)

Answer 2A(i)

The Companies Act, 2013, stipulates that every company must maintain and keep books, registers and copies of Returns, documents at its Registered Office. These books are known as Statutory Books.

Statutory books are official records kept by a company pertaining to all legal and statutory matters. They are also known as statutory registers and records. A few examples of Statutory Registers are Register of Members, Register of Deposits, Register of Charges, Register of Significant Beneficial Owners etc. Requirement to maintain the Statutory Registers and records arises due to the various applicable provisions of the Companies Act, 2013 & rules framed there under. Non-compliance of these sections and rules attracts huge penalties on the companies and on officers in default.

The statutory registers are maintained at the registered office of the company or at such other place as the Board may decide. Entries in the registers shall be authenticated by the company secretary of the company, if any or by any other person authorized by the Board for this purpose.

Answer 2A(ii)

Dividend can be declared by all types of companies except section 8 companies (i.e companies with charitable objects etc.) which prohibit the payment of any dividend to its members. According to Section 8(1)(c) of the Companies Act, 2013, the company having license under Section 8 (Formation of Companies with Charitable Objects etc.) are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the Company.

In the above case Green Initiatives., a section 8 company was planning to declare dividend. As per the provisions of section 8 a company registered under this section is prohibited from declaring dividend. Hence, Green Initiatives, which is planning to declare dividend, cannot do so according to the provisions of the Companies Act, 2013.

Answer 2A(iii)

According to section 128(6) of the Companies Act, 2013, the following persons are responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc.

- i. Managing Director,
- ii. Whole-Time Director, in charge of finance
- iii. Chief Financial Officer; or
- iv. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Penalty

In case the aforementioned persons referred to in Section 128(6) of the Act contravene such provisions, they shall in respect of each offence, be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees

Answer 2A(iv)

According to Sec 134(5) of the Companies Act, 2013, the Directors' Responsibility Statement shall, state that-

- a) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- b) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- c) the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
- d) the directors had prepared the annual accounts on a going concern basis; and
- e) the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.
- f) the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

The Directors' Responsibility Statement is an integral part of Board Report u/s 134 of the Act. The Board Report is approved by the Board of directors of the company and signed by the chairman of the company if so, authorized by the Board or by two directors one of whom shall be the Managing Director. Thus, after the Board's report is approved and signed, the Directors Responsibility Statement stands authenticated by the Board and no separate authentication thereof is required.

Answer 2A(v)

Justification: The justification for the rule laid down in *Foss v Harbottle* 67 E.R 189; (1843) 2 Hare 461 can be summarized as follows- the will of the majority prevails.

The Rule preserves the right of the majority to run the company as per the wish of the majority.

Generally, if any wrong is done to the company, the company being a juristic person capable of suing and being sued, it is the company itself that can seek redressal from the appropriate legal forum and not an individual shareholder.

Advantages: The main advantage of the principles enunciated in the Foss v Harbottle case law are:

- a) Recognition of the separate personality of the company
- b) Need to preserve the right of majority to decide how the affairs of the company shall be conducted
- c) Avoiding multiple suits by minority shareholders for petty grievances - real or imaginary
- d) Futile litigation by minority if the irregularity complained of can be subsequently ratified by the majority shareholders.

Question 3

- (a) Amorphous Chemicals Limited, an unlisted public company, incorporated on 1st April, 2022, has given the following information :

Rs. In Crores		
Item	FY 2022-2023	FY 2023-24
Paid-up Equity Share Capital	300	300
Paid-up preference share capital	200	200
Security Premium	150	150
General Reserve	300	350
Revaluation Reserve	300	300
Profit and Loss Account (Credit Balance)	150	200
Profit after Tax	200	250
Turnover	1500	1600
Tax Rate	25%	25%
Dividend from Investments in companies in India	5	
Profit from investment made in foreign subsidiaries		10

With reference to provisions of the Companies Act, 2013, decide the applicability of CSR provisions and calculate the amount, if any, that needs to be spent on CSR during the FY 2024-25. Draw suitable assumptions and show working. (5 Marks)

- (b) MNO Ltd. is a listed company. A group of minority shareholders alleges that the company's Board of Directors has engaged in fraudulent transactions, misappropriated company funds, and manipulated financial statements to inflate the company's share price. The alleged actions have resulted in significant losses to the shareholders.

A group of 50 shareholders, representing 3% of the total issued share capital, has decided to file a class action suit against the company and its directors under Section 245 of the Companies Act, 2013, seeking damages and other reliefs. Based on the given facts explain, what is a class action suit.

Additionally, assess the admissibility of the class action suit before the Tribunal under the provisions of the Companies Act, 2013. (5 marks)

- (c) Explain the consequences of forged transfer under the Companies Act, 2013. What is the normal practice the company follows to avoid the consequences of forged transfer ? (5 marks)

Answer 3(a)

According to Section 135(1) of Companies Act, 2013 read with the Companies (CSR Rules), 2014, Every company having net worth of rupees five hundred crore or more, or turnover of rupees one thousand crore or more or a net profit of rupees five crore or more during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

As per section 135(5) the Board of every company referred to in sub-section (1), shall ensure that the company spends, in every financial year, at least two per cent. of the average net profits of the company made during the three immediately preceding financial years or where the company has not completed the period of three financial years since its incorporation, during such immediately preceding financial years, in pursuance of its Corporate Social Responsibility Policy.

The unlisted public company was incorporated in the year 2022-23. It satisfies all the conditions on net worth (minimum Rs. 500 crore), turnover (minimum Rs. 1000 crore) or net profit (minimum Rs. 5 crore) in a year. Hence, the company needs to spend at least 2% of its adjusted net profit calculated as per Section 198 of the Companies Act, 2013 from the year 2023-24.

According to Companies (CSR Policy) amendment Act, 2021 dated 22/01/2021, expenditure incurred on specific activities that are carried out in India only will qualify as CSR expenditure.

According to Rule 2(1) of CSR Rules, in computation of net profit, dividend income received from investments in another Indian company or profit made by the company from its overseas branches will be excluded.

According to Section 198(5) of the Act, in computing adjusted net profit, inter alia, income tax and supertax payable by the company under Income Tax Act, 1961 shall not be deducted from the net profits. That means the profits before tax should be a starting point for calculation of adjusted net profits.

As other information required u/s 198 of the Act for computing adjusted net profit is not given, the adjusted net profit before tax and after deducting dividend received from Indian companies and profit from overseas branches is given below:

Rupees in crore

Item	FY 2022-23	FY 2023-24
Net profit after tax	200	250
Add back tax already paid @25% on gross profit (or @33 1/3 % on net profit)	67	83

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Profit before tax	267	333
Less: dividend from investments and profit from foreign branches	-5	-10
Adjusted net profit (ANP)	262	323
Amount to be spent on CSR @2% on average ANP during FY 2024-25		5.85

Answer 3(b)

A class action suit is a lawsuit where a group of people representing a common interest may approach the Tribunal to sue or be sued. It is a procedural instrument that enables one or more plaintiffs to file and prosecute litigation on behalf of a larger group or class having common rights and grievances.

The requisite number of members provided in sub-section (1) of Section 245, shall be as under:

- A. In case, application by Members:
 - (a) In the case of a company having a share capital -
 - (i) not less than one hundred members of the company, or
 - (ii) not less than such percentage of the total number of its members as may be prescribed,Whichever is less; or
 - (iii) any member or members holding not less than such percentage of the issued share capital of the company as may be prescribed, subject to the condition that the applicant or applicants has or have paid all calls and other sums due on his or their shares;
- B. In the case of a company not having a share capital -
 - (i) not less than one-fifth of the total number of its members.As per Rule 84 of the National Company Law Tribunal Rules, 2016, in case of a company having a share capital, the requisite prescribed number of member or members to file an application shall be:
 - (a) At least 5 % of total number of members of the company or
 - (b) 100 members of the company, whichever is less, or
- (i) (a) member or members holding not less than 5% of the issued share capital of the company in case of an unlisted company, or
- (b) member or members holding not less than 2% of the issued share capital of the company in case of a listed company.

MNO Ltd. is a listed company. A class suit action is moved by such number of shareholders holding 3% of issued share capital which is more than the required shareholding of 2%. Hence, the class suit action is admissible.

Answer 3(c)

When the instrument of transfer (also known as transfer deed) in Form SH-4 contains the forged signature of the transferor and is presented to the company by the transferee along with the share certificates, it is called a forged transfer deed. Further Section 57 of the Companies Act, 2013 states that if any person deceitfully personates as an owner of any security or interest in a company, or of any share warrant or coupon issued in pursuance of this Act, and thereby obtains or attempts to obtain any such security or interest or any such share warrant or coupon, or receives or attempts to receive any money due to any such owner, he shall be punishable with imprisonment for a term which shall not be less than one year but which may extend to three years and with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees.

The consequences of forged transfer are detailed as below:

- (i) A forged transfer is a nullity and the original owner of shares remains the shareholder and the member of the company. A forged transfer deed has no legal effect.

The company is bound to restore the name of the transferor on the register of members (maintained in Form MGT-1 u/s 88 of the Act) as decided in a case law *Peoples Insurance Company v Wood, 1961*.

- (ii) A company does not incur any liability in case of a forged transfer if the name of the transferor is restored on the register of members.

- (iii) However, if a company (without obtaining an indemnity bond from the transferee) issues new share certificates to the transferee who made the share transfer application using a forged transfer deed and subsequently, on receipt of new share certificates from the company, the illegal transferee sells the shares to an innocent buyer, then the company is liable to compensate the innocent buyer if it refuses to register him as a member or if the name of the innocent buyer has been removed, on the application of the true owner of the shares.

Normally, companies write to the transferor about the lodgement of the transfer deed to avoid the consequences of a forged transfer. If a company incurs any loss due to a forged transfer, it may recover the losses independently from the person who lodged the forged transfer.

PART-II**Question 4**

- (a) Akshay for going abroad for 6 months, appointed Raghav as a director in his place during his absence from India. The Board, rejecting the appointment of Raghav, appointed Madhuri as an alternate director to Akshay. Explaining the relevant provisions assess the validity of appointment of Raghav and Madhuri under the provisions of the Companies Act, 2013. Also, state the tenure for which the alternate director is appointed.

(5 marks)

- (b) Varahi Granite Manufacturing Limited has decided to appoint Rahul as its Managing Director for a period of 5 years with effect from 1st May, 2024. Rahul is an MBA graduate from IIM Mumbai having a Valid DIN and fulfils all the conditions as specified under Schedule V to the Companies Act, 2013.

The terms of appointment are as under :

- (i) Salary : Rs. 2 lakhs per month.

- (ii) Commission, as may be decided by the Board of Directors of the company from time to time.
- (iii) Perquisites :
 - (1) Free housing accommodation
 - (2) Medical reimbursement up to 15,000 per month,
 - (3) Personal Accident Insurance : Rs.5 lakh.
- (iv) Gratuity, and Provident Fund as per Company's policy.

You are requested to draft a board resolution for the appointment of Rahul as a Managing Director considering the above terms and conditions under the provisions of the Companies Act, 2013.

(5 marks)

- (c) The following information is given :

Rs. In Crores			
Item	BVM International Ltd	ABC Private Limited	Super Grip Tyres Limited
Equity Share Capital	8	12	16
Preference Share Capital	5	0	0
Security Premium	24	12	32
Long term Loans from Banks	40	25	50
Short term loans from Banks	30	10	20
Profit and Loss Account	118	42	25
Total Revenue for FY 2023-24	75	24	65
Status	Listed	Private	Unlisted

Based on the above information and referring to the provisions of the Companies Act, 2013 determine, which companies are mandatorily required to appoint a wholetime company secretary and file the return with the Registrar of Companies under the provisions of the Companies Act, 2013. Also, state the appointing authority of the company secretary. Additionally specify, whether the company secretary of Super Grip Tyres Limited can simultaneously act as a company secretary of BVM International Limited, if it is an associate company and not the holding or subsidiary company of Super Grip Tyres Limited.

(5 marks)

- (d) Deep Sea Trawlers Limited, a public listed company has given the following information for the FY ended 31st March, 2024 :

Particulars	Rs. In crores
Paid-up Equity share capital	12
Preference share capital	4

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General Reserve	40
Security Premium A/c	24
Long term loans from Financial Institutions	65
Short term temporary credit from banks	10

A meeting of the Board of Directors (BOD) was convened on 31st May, 2024 to consider and approve availing a further term loan of Rs 25 crore from the Financial Institutions. Advise the Board of Directors about obtaining a further loan of Rs. 25 crore under the approval of the appropriate competent authority with reference to the provisions of the Companies Act, 2013.

(5 marks)

Answer 4(a)

Section 161(2) of the Companies Act, 2013(Act), empowers the Board, if so, authorized by its articles or by a resolution passed by the company in general meeting, to appoint a person, not being a person holding any alternate directorship for any other director in the company or holding directorship in the same company, to act as an alternate director for a director during his absence for a period of not less than three months from India. Section 161 (2) of the Act applies to all companies, whether public or private.

Conditions for appointment of an alternate director:

- The Board of Directors of a company must be authorised by its articles or by a resolution passed by the company in general meeting for appointment of the alternate director.
- The person in whose place the Alternate Director is being appointed should be absent for a period of not less than 3 months from India.
- The person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company or holding directorship in the same company.
- If it is proposed to appoint an Alternate Director to an Independent Director, it must be ensured that he is qualified to be appointed as an independent director under the provisions of this Act

Power to appoint:

The Board may appoint an alternate director only if it is authorized by the articles or by an ordinary resolution passed at a general meeting. The right to appoint an alternate director vest in the Board. The original director has no right to appoint an alternate director. The members have no right to appoint an alternate director, the members can only empower the Board to appoint alternate director as and when board thinks fit.

Method of appointment:

There is no condition that an alternate director shall be appointed only by passing a resolution at a Board meeting. Therefore, an alternate director can be appointed by passing a resolution by circulation.

Term of office of an alternate director:

- An alternate director shall not hold office for a period longer than that permissible to the

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director in whose place he has been appointed. If the original director ceases to be a director by reason of death or vacation of office under section 167 the alternate director shall immediately cease to hold his office

- (b) The alternate director shall vacate his office when the original director in whose place he has been appointed returns to India.

In light of the above provisions, Akshay cannot appoint Raghav as an alternate director and his appointment is invalid. The board can appoint an alternate director and hence the appointment of Madhuri is valid assuming that the articles of the company authorise the Board for such appointment. Madhuri will vacate the office in accordance with the provisions of the Act, as explained above.

Answer 4(b)

Draft Board Resolution for appointment of Managing Director:

"RESOLVED THAT pursuant to Section 196 read with read with Schedule V and other applicable provisions of Companies Act, 2013, consent of Board of Directors of the Company be and is hereby accorded to the appoint Mr. Rahul, a MBA graduate from IIM Mumbai having valid DIN ____, as the Managing Director of the company for a period of 5 years effective from 1st May, 2024 subject to approval by a resolution of shareholders in a general meeting.

RESOLVED FURTHER THAT Mr. Rahul shall be paid remuneration as follows:

- (i) Salary of Rupees 2 Lakh per month.
- (ii) Commission, as may be decided by the Board of Directors of the company from time to time.
- (iii) Perquisites: Free Housing Accommodation facility, Medical reimbursement up to 15,000 per month, Personal Accident Insurance of 5 Lakh
- (iv) Gratuity, Provident Fund etc. as per the policy of the company.

RESOLVED FURTHER THAT in the event of loss or inadequacy of profits, the salary payable to him shall be subject to the limits specified in Schedule V.

RESOLVED FURTHER THAT the Company Secretary of the company be and is hereby authorized to file necessary forms and returns with the Registrar of Companies in respect of the above appointment."

Answer 4(c)

According to Companies Act, 2013 read with Rule 8 and Rule 8A of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, every listed company and every other company with a paid-up capital of Rupees ten crore or more shall appoint a company secretary in the whole-time employment of the company.

All the companies are required to file a return on appointment of company secretary who is a Key Managerial Person under section 2(51) of the Act with the Registrar of Companies (ROC) in Form DIR-12. Public companies are also required to file Form MGT-14 with the ROC.

Hence, BVM International Limited, being the listed company, ABC (Private) Limited and Super Grip Tyres Limited, the unlisted public company whose paid up share capital is more than 10 crore rupees are mandatorily required to appoint a whole-time company secretary and file Form-DIR 12. Additionally, all companies except ABC (Private) Limited, are required to file Form MGT-14 with the RoC.

The appointing authority for company secretary is the Board of directors.

Under Section 203(3) of the Companies Act, 2013, a company secretary shall not hold office in

more than one company except the subsidiary company. In the given case, it is proposed to appoint the company secretary of Super Grip Tyres Limited as a company secretary of its associate company- BVM International Limited, simultaneously. Such appointment is not allowed under the Act as the company secretary cannot be appointed as a whole-time company secretary in more than one company except the subsidiary company.

Answer 4(d)

According to the provisions of Section 180(1)(c) of the Companies Act, 2013, pertaining to restrictions on powers of the Board of Directors (BOD), the BOD shall exercise only with the consent of the company by a special resolution, *inter alia*, the power to borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and security premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

In the given scenario the aggregate of paid up share capital Rs. 16 crore (12+4), GR i.e. FR Rs. 40 crore and Securities Premium A/c Rs. 24 crore that comes to Rs. 80 crore. The outstanding term loans of the company, excluding temporary short-term loan, is Rs. 65 crores. Hence, the company can borrow further loan up to Rs. 15 crore under the exclusive authority of the Board of directors. However, the proposed further loan is Rs. 25 crore which is beyond the authority of the Board and hence the approval of the shareholders in a general meeting by way of a special resolution would be required.

Accordingly, in this case the proposed further loan can be obtained under the authority of a special resolution to be passed in the general meeting of the shareholders.

Attempt all parts of either Q. No. 5 or Q. No. 5A**Question 5**

(a) A managing director of Askot Sugar Mills Limited, a listed company with 6000 members, wants to convene the next annual general meeting (AGM) through video conferencing. Apprise him on the following issues in this respect with reference to the provisions of the Companies Act, 2013 :

- (i) Whether venue should be mentioned in the Notice ?
- (ii) How to keep the statutory registers, now kept in hard copies, open for inspection by members at the virtual AGM ?
- (iii) Do the shareholders have a right to demand recording of proceedings of the virtual AGM ?
- (iv) Can a member, unable to attend the AGM in person, appoint a proxy to attend and vote at the virtual AGM ?

(4 marks)

(b) Pankaj is a director in many companies since long. His DIN is active and has been used many times for filing of the documents and forms with the Registrar of Companies. After attaining the age of 70 he has decided to retire from the directorship of all companies surrendering the DIN. With reference to the provisions of the Companies Act, 2013 explain the provisions relating to cancellation/surrender or deactivation of DIN. Also specify, whether Pankaj would succeed in surrendering the DIN.

(4 marks)

- (c) Happy Health Care Services Private Limited is one of the best in the field of medical and health services across the country. The company has been under scrutiny for its remuneration policies for Key Managerial Personnel (KMPs). The company has witnessed significant growth in the past five years and a profit-making entity, accompanied by substantial increases in the remuneration packages of its KMPs over the recent years.

Shareholders have raised concerns about the appropriateness of these remuneration packages, questioning their alignment with company performance, shareholder value creation, and regulatory compliance.

As a corporate governance expert, advise the shareholders in light of the provisions of the Companies Act, 2013, and relevant regulations regarding the statutory limits imposed on the remuneration of KMPs and the requirement of shareholders and creditors' approval thereto.

(4 marks)

- (d) Kidszone Private Limited running the garments business, manufacturing readymade clothes for kids was incorporated on 8th August, 2018 consisting of 20 members and 4 directors namely-Anju, Ankith, Bindu, and Bhuvan. The company is running a successful business with 200 employees. Company's paid-up share capital is rs. 10 lakhs and turnover Rs. 2 crores as per the latest audited financial statements. Due to operational challenges the Company fails to hold an annual general meeting (AGM) for two consecutive years. Two members of the Company approached the NCLT seeking necessary relief. Assess the validity of the application and advise the Board of the legal consequences for not conducting the AGM with reference to the provisions of the Companies Act, 2013.

(4 marks)

- (e) Draft a specimen format of minutes of the board meeting and include therein a specimen resolution passed for declaration of interim dividend in the light of the provisions of the Companies Act, 2013.

(4 marks)

Answer 5(a)

- (i) Yes, place of the meeting shall be provided in the Notice. In case of virtual meetings deemed venue is to be given.
- (ii) If the statutory registers are not kept in electronic form as soft copies, then the physical registers and documents need to be scanned and uploaded in the virtual data room for access by the members.
- (iii) Recording of the General Meetings held through VC or OAVM is not mandatory as per law and only the recorded transcript has to be maintained. Therefore, a shareholder/director cannot ask for the recording of meeting conducted through VC or OAVM. Even if the company records the meeting it's only for their internal purpose.
- (iv) In case of VC meetings there is no question of proxy attendance. A shareholder can himself attend the meeting from wherever he is located. Same applies to the case with e-voting. In case of e-voting also there is no proxy to vote on behalf of the shareholder. The concept of proxy is relevant only in case of a physical meeting.

Answer 5(b)

As per rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the Central Government or Regional Director (Northern Region), Noida or any officer authorised by

the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received along with fee as specified in Companies (Registration Offices and Fees) Rules, 2014 from any person, cancel or deactivate the DIN in case -

- (a) the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number;
- (b) the DIN was obtained in a wrongful manner or by fraudulent means;
- (c) of the death of the concerned individual;
- (d) the concerned individual has been declared as a person of unsound mind by a competent Court;
- (e) if the concerned individual has been adjudicated an insolvent.

Provided that before cancellation or deactivation of DIN pursuant to clause (b), an opportunity of being heard shall be given to the concerned individual;

- (f) on an application made in Form DIR -5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed director in any company and the said DIN has never been used for filing any document with any authority the Central Government may deactivate such DIN. Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records.

Once a person is appointed as a director in any company as per the Companies Act 2013, he cannot relinquish his DIN in the future. Even if he/she doesn't remain a director anymore in that company or in any other company, his/ her DIN will exist as it is.

In the light of the above provisions Pankaj cannot apply for surrender of DIN as he has already worked as a director and used his DIN in filing of returns or documents.

Answer 5(c)

Section 197 of the Companies Act, 2013, imposes certain restrictions on the remuneration payable to managerial personnel of a public company. The primary objective of this provision is to prevent excessive remuneration at the cost of shareholders' interests.

The total managerial remuneration payable by a public company to its directors (including managing director and whole-time director) and its manager in respect of any financial year shall not exceed eleven percent of the net profits of the company for that financial year.

Fees payable to directors under Section 197(5) are excluded from this limit.

Net Profits Calculation: The method for calculating net profits is prescribed under Section 198 of the Act.

Restrictions within the overall ceiling: Within the overall ceiling of 11% of net profits the internal ceiling on the remuneration of the Manager, MD and WTD have been prescribed as below:

- (1) In case of one MD, WTD or manager - 5% of the net profits of the company.
- (2) More than one Managing Director/ Whole time Director/Manager-10% of the net profits of the company together.
- (3) Directors who are neither MD/WTD or Manager-1% of the net profits of the company, if there is a MD/WTD or Manager and 3% if there is no MD/WTD or Manager.

Shareholder Approval: If a company wishes to pay remuneration exceeding the 11 % limit, or the internal limits so specified as above it requires the approval of its shareholders through a special

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resolution. Where the company has defaulted in payment of dues to any bank or public financial institution or non-convertible debenture holders or any other secured creditor, the prior approval of the bank or public financial institution concerned or the non-convertible debenture holders or other secured creditor, as the case may be, shall be obtained by the company before obtaining the approval in the general meeting.

Limit on remuneration: If there is no profit or inadequate profit the remuneration to MD/WTD or Manager shall be paid in accordance with the provisions of schedule V of the Companies Act, 2013.

Section 197 of the Companies Act, 2013, imposes certain restrictions on the remuneration payable to managerial personnel of a public company. However, these restrictions applies to a public company only. Private companies are free to appoint any person as managerial personnel and pay any amount of remuneration, subject to any restrictions in its Articles of Association.

Further, neither the provisions of Section 203 of the Act read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 relating to appointment of Key Managerial Personnel applies to a private company. Thus, unless otherwise specified in the Articles of Association of the private company, there is no requirement of approvals from shareholders or from creditors for payment of remuneration to Key Managerial Personnel.

Answer 5(d)

Section 97 of the Companies Act, 2013, provides that if any default is made in holding the annual general meeting of a company, any member of the company may make an application to the Tribunal to call or direct the calling of, an annual general meeting of the company and give such ancillary or consequential directions as the Tribunal thinks expedient. Such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

Section 99 of the Companies Act, 2013, provides that if any default is made in complying or holding a meeting of the company, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in case of continuing default, with a further fine which may extend to five thousand rupees for each day during which such default continues.

In light of the above provisions, it may be said that 2 members are entitled to file an application before the NCLT for direction to hold the AGM and the Board will be advised about the penal provisions for default in holding the AGM as explained above.

Answer 5(e)

Specimen Minutes of Board Meeting of-----Ltd.

Minutes of the -- meeting of the Board of Directors of-----Ltd held on --- (Day),
(Date, Month and Year) at ----- (Venue) from (Time of commencement)

Present

A.B Chairman

C.D Director

E.F Director

G.H Managing Director

In attendance

X Company Secretary

Item No.-----: Interim Dividend

1. Chairman for the Meeting

Mr/Ms.....was elected as the Chairman for the Meeting.

2. Leave of absence

Leave of absence from attending the Meeting was granted to Mr. M.N. and Mr. O.P. who expressed their inability to attend the Meeting owing to their preoccupation.

3. Quorum

The business before the Meeting was taken up after having established that the requisite quorum was present.

4. Minutes of the previous Board Meeting

The Minutes of the Meeting of the Board of Directors of the company held on, as circulated, were noted by the Board and signed by the Chairman.

5. Register of Contracts

The Register of Contracts in which Directors are interested under Section 189 of the Companies Act, 2013 and the Rules thereunder was signed by all the Directors present.

6. Approval and payment of Interim Dividend

The payment of interim dividend for the year ending ----- was considered on the basis of unaudited Financial Statements of the company for the FY----- as annexed to the Note under reference. The Directors are of the view that the company has earned adequate profits for the year to consider payment of interim dividend.

The Board, after discussion, passed the following resolution unanimously:

“RESOLVED THAT an Interim Dividend of Rs. _____ (at the rate of ... percent) on each fully paid-up equity share of Rs. _____ of the Company amounting to Rs..... be paid out of the profits of the Company for the half year ended 20.. to those Members of the Company whose names would appear on the Register of Members of the Company on the day of, 20...being the Record date for payment of Interim Dividend.

RESOLVED FURTHER THAT a separate bank account be opened in the name of the Company with Bank at its Branch at and a sum of Rs....., being the total Interim Dividend amount, be deposited in the said account within five days from the date of declaration.

RESOLVED FURTHER THAT Mr....., Director and Mr....., Company Secretary be and are hereby jointly authorised to open the bank account by signing the account opening form and by furnishing to the said bank the required papers, documents and information and completing all other required formalities for the purpose of opening the bank account and to make arrangements with the said bank for the payment at par, of the Interim Dividend within thirty days from the date of declaration.

RESOLVED FURTHER THAT Mr., Director and Mr....., Company Secretary of the company, be and are hereby authorised to jointly sign the Dividend warrants to be issued on the said bank and the said bank be and is hereby

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authorised to honour the Interim Dividend warrants jointly signed by the said authorised signatories, as and when presented for encashment."

7. Summary of proceedings

The Chairman summarized the proceedings of each item of business transacted at the meeting for the benefit of the members.

8. Vote of thanks

As there was no other business to transact, the meeting concluded with a vote of thanks to the Chair. The meeting concluded at (time).

Signed by

Chairman

Dated:

Place:

OR (Alternate question to Q.No. 5)

Question 5A

- (i) Spa and Resorts Ltd, is a listed company with a paid-up equity share capital of ₹ 6 crore. The Board of Directors of the company has a total strength of 9 directors, none of them is the independent director. The company has also not appointed a company secretary on the contention that its paid up share capital is less than ₹ 10 crore. On 1st July, 2024 the company received a show cause notice from Bombay Stock Exchange (BSE) for imposition of a fine of ₹ 20 lakh for non-appointment of a company secretary and the independent directors. As the secretarial advisor to the company, assess the validity of the show-cause notice with reference to the provisions of the Companies Act, 2013 and relevant SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015.

(4 marks)

- (ii) As a senior company secretary suggest the Board-the terms and conditions for the appointment, tenure and vacation of office of small shareholders director with reference to the provisions of the Companies Act, 2013.

(4 marks)

- (iii) Referring to the provisions of Companies Act, 2013 explain the further procedure to be followed in case the appointment of whole-time director was not made in the general meeting in accordance with the provisions of Schedule V of the Companies Act, 2013.

(4 marks)

- (iv) Referring to the provisions of Companies Act, 2013, explain the mode of sending the notice of the general meeting including the notice of Extraordinary General Meeting (EGM) called by the requisitionists themselves on failure of the Board to call a requisitioned EGM. Can the company issue such notice by ordinary post ?

(4 marks)

- (v) Explain the concept of Annual Report and the Report on Annual General Meeting with reference to the provisions of the Companies Act, 2013. Do you think that these two terms are synonymous ?

(4 marks)

Answer 5A(i)

According to Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), every listed company is required to appoint a qualified Company Secretary in its employment as the Compliance Officer.

Even though the paid-up share capital of Spa and Resorts Ltd. is of 6 crores which is less than ten crores, as the company is a listed company, it is required to appoint a qualified company secretary in its employment to appoint him as the compliance officer.

According to Section 149 of the Companies Act, 2013, read with Regulation 24 of SEBI (LODR) Regulations, every listed company is required to appoint at least 1/3 of its total strength of BOD as independent director. In this case the listed company has not complied with the requirements of both the Act and the SEBI (LODR) Regulations. Hence on this count also, the company is liable.

In a similar case of *Advance Lifestyles Ltd v BSE dated 24th December 2019*, the Securities Appellate Tribunal (SAT) has dismissed the appeal filed by the company for non-appointment of compliance officer and independent directors and upheld the fine of Rs. 20.40 lakhs imposed by BSE.

In the light of the above provisions and the case law the company has failed to appoint the company secretary and the independent directors as required. The contention of the company that it is not required to appoint company secretary under the Companies Act, 2013 is not tenable as it is required to do so under the SEBI (LODR) Regulations. Hence, the show-cause notice is valid.

Answer 5A(ii)**Terms & Conditions for Small Shareholders' Director**

Rule 7 of the Companies (Appointment and Qualification of Directors) Rules, 2014 laid down the following terms and conditions for appointment of small shareholders director, which are as under:

Election of small shareholders director:

A listed company, may upon notice of not less than:

- (a) One thousand small shareholders; or
- (b) one-tenth of the total number of such shareholders,

whichever is lower; have a small shareholder director elected by the small shareholders.

A Small Shareholders Director may be elected voluntarily by any listed company. Thus, a listed company, may on its own, act to appoint a Small Shareholder's Director. In such a case, no notice from small shareholder(s) is required.

Notice of intention to propose a candidate:

The small shareholders intending to propose a person as a candidate for the post of small shareholder director shall leave a signed notice of their intention with the company at least 14 days before the meeting under their signatures specifying their details and proposed director's details. The details include name, address, shares held and folio number etc. If the proposer does not hold any shares in the company, the details of shares held, and folio number need not be specified in the notice.

Statement by the proposed small shareholders director:

The notice shall be accompanied by a statement signed by the proposed director for the post of small shareholder director stating:

- (a) his Director Identification Number.
- (b) that he is not disqualified to become a director under the Act; and
- (c) his consent to act as a director of the company

Tenure of office and no retirement by rotation:

The tenure of small shareholders' director shall not exceed a period of 3 consecutive years, and he shall not be liable to retire by rotation. Further he shall not be eligible for re-appointment after the expiry of his tenure.

Grounds of vacation of office:

A Small shareholders' director shall vacate the office if -

- (a) he incurs any of the disqualifications specified in section 164.
- (b) the office of the director becomes vacant in pursuance of section 167.
- (c) he ceases to meet the criteria of independence as provided section 149 (6).

Answer 5A(iii)

1. According to Section 196(4) of the Companies Act, 2013, in case the provisions of Part I of Schedule V of Companies Act, 2013, are not fulfilled while appointing a whole-time director, an application seeking approval of Central Government for the appointment of whole-time director (WTD) shall be made in Form MR-2 along with the necessary fees payable under the Companies (Registration Offices and fees) Rules, 2014.
2. As per Section 201(2) of the Act, before an application is made by a company to the Central Government u/s 196 of the Act, there shall be issued by or on behalf of the company a General Notice to the members indicating the nature of application proposed to be made.
3. The company shall attach a copy of the Notice with the application together with certificate by the company as to due publication thereof.
4. The application shall be made within 90 days from the date of such appointment with regard to compliance of Section 196 of the Act.
5. A return of appointment of WTD is required to be filed with the ROC within 60 days of the appointment in form MR-1.

Answer 5A(iv)

According to Para 1.2.2 of Secretarial Standards on General Meetings (Secretarial Standard-2), Notice of the General Meeting can be sent, *inter alia*, by ordinary post also.

According to Para 1.2.2 supra, Notice of the General Meeting shall be sent to members by registered post or speed post or courier or e-mail and NOT by ordinary post in the following cases-

- a) If the company provides the facility of e-voting u/s 108
- b) If the item of business is being transacted through postal ballot u/s 110

In terms of Rule 17(8) of the Companies (Management and Administration Rules), 2014, Notice of the Extraordinary General Meeting (EGM) shall be sent to the members by registered post or speed post or e-mail if the meeting is called by the requisitionists themselves where the Board of Directors (BOD) has not proceeded to call the EGM within the stipulated period of three months from the date of requisition.

As per Section 118(10) of the Act, every company shall observe Secretarial Standards with respect to General Meetings as specified by ICSI and as approved by the Central Government. Hence, the above provisions are mandatory for every company as per Secretarial Standard-2.

Answer 5A(v)

Every listed company is mandated to prepare a Report on each Annual General Meeting (AGM)

confirming, inter alia, that the AGM was convened, held and conducted as per the provisions of Companies Act, 2013.

Annual report generally contains the Notice of the AGM and attachments sent to the members for calling the AGM, the Directors' Report, Auditor's Report, Annual Financial Statements etc.

Annual report generally contains the Notice of the AGM, the Directors' Report, Auditor's Report, Annual Financial Statements etc.

The Annual Report is sent to the members at least 21 clear days before the AGM.

Report on AGM is prepared as per the requirements of Section 121 of the Companies Act, 2013 read with Rule 31 of Companies (Management and Administration) Rules, 2014.

The report on AGM is filed with the ROC in form MGT-15 within 30 days of the conclusion of the AGM.

The Report on AGM is prepared by listed companies. The report contains, inter alia, the date and venue of the AGM, chairman appointment, presence of quorum, business transacted at the AGM etc.

The Report on AGM shall be signed by the Chairman of the AGM or by two directors including the Managing Director and also the company secretary of the public listed company.

Hence, these two terms are not synonymous. They are different in their object, scope and contents.

PART-III

Question 6

- (a) Mohan, a practicing Chartered Accountant (PCA), Soham, a practicing Company Secretary (PCS), Rakhi, a Cost and Management Accountant (CMA) and Sandiya, an Advocate are friends. They want to incorporate a LLP in the name of Easy Professional Solutions LLP having registered office in Hyderabad. Soham, a PCS expressed his doubt about the validity of forming such multi-disciplinary LLP. With reference to the Company Secretaries Regulations, 1982, you are requested to assess the validity of forming and functioning of multi-disciplinary LLP of the CA, CS and CMA along with the Advocate and explain the pre-requisites therefor.
- (b) AKDR Associates LLP, is an LLP of Practicing Company Secretaries (PCS). Anand, a PCS and a partner of the LLP is said to have committed the following mistakes :
- He has issued a certificate on Annual Return of a listed company certifying false transfer of shares of the company.
 - He has falsely certified that the two Directors holding British Passports have attended the Board Meeting in India in person.
 - He has certified the annual return of the listed company in Form MGT-7 that two of the directors were Indian nationals who were, however, holding British passports.

Anand received a show-cause notice from the Disciplinary Council of ICSI as to why disciplinary action should not be initiated against him for the commitment of above mistakes. Assess, whether the above mistakes constitute professional misconduct under the Company Secretaries Act, 1980.

(5 marks each)

Answer 6(a)

Validity: According to Regulation 165A of the Company Secretaries Regulations, 1982 inserted by the Company Secretaries (Amendment) Regulations, 2020 a member in practice of ICSI may

form multi-disciplinary firm with the member/s of other professional bodies as prescribed under regulations 168A and 168B of the Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm. Advocate can be the members of MDF. He is on par with other practicing professionals like CA, CS and CMA as the member of Bar Council has been recognized as an eligible professional by the ICSI. Hence, Shyam will be advised that the MDF comprising PCA, PCS, CMA and Advocate can be validly formed and function.

Pre-requisites: MDF is a joint or collaborative venture amongst independent individuals. Therefore, everyone wishing to join hands should understand that:

1. All minds should work together and in unison.
2. Say goes to ego.
3. Mutual faith and respect lay strong foundation.
4. Unanimity shall be the rule on important policy decisions.
5. Financial discipline is a must.
6. Founder partners shall be given equal status.
7. Income of the firm shall be distributed at short regular intervals.
8. One shall not put undue influence on the others or show that he is king pin of the association. Even the small crack in the above stated prerequisites ruin the things.

Answer 6(b)

Clause 7 of Part I of Second Schedule of Companies Secretaries 1980, provides that a company secretary in practice shall be deemed to be guilty of professional misconduct if he does not exercise due diligence or is grossly negligent in the conduct of his professional duties.

Clause (I) of Part II of Second Schedule of Companies Secretaries 1980, provides that a member of the Institute shall be guilty of professional misconduct if he contravenes any of the provisions of this Act or the regulations made thereunder or any guidelines issued by the Council.

Based on the above clauses the mistakes may be assessed whether they constitute professional misconduct.

- (i) Anand, a Company Secretary in Practice has certified Form MGT-8, (the certificate by PCS on Annual Return in Form MGT-7 u/s 92 of the Companies Act, 2013) showing that there was no transfer of shares during the year. Hence, this amounts to professional misconduct.
- (ii) The respondent PCS has shown physical presence of two foreign nationals in the Board meeting of the company conducted in India which was factually incorrect as the foreign nationals were not present in India during that period. Thus, by falsely certifying that the two Directors holding British Passports have attended the Board Meeting in India in person constitute the professional misconduct.
- (iii) In the instant case, as the Company Secretary in Practice has certified the Annual Return in Form MGT-7 in which he has not shown any director under the foreign/NRI category which is factually incorrect as two of the directors of the company were actually British citizens holding British passports. A person holding British passport obviously is not an Indian Citizen. This amounts to gross negligence in performance of professional duties and hence a misconduct.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

MODULE 1 PAPER 3

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART-A

Question 1

- (a) MEDCO Ltd. was incorporated on 20th March, 2023, as a public limited company with the main objective to provide the consultancy services to businesses in Medical Sector, including supply of medical professional through outsourcing. The Board of Directors in its meeting held on 16th June, 2024 approved the proposal to change the main object to start medical service with nominal charges by setting up hospitals, health centres and medical institutions for charitable purposes in interest of general public. The members of the Company also approved the proposal and accordingly application for conversion of the company into section 8 company is prepared. However, legal consultant opined that company must be running the business at least for 3 years prior to such application.

Comment on following :

- (1) Whether the view of legal consultant is correct as per the provisions of the Companies Act ?
- (2) What additional matters to be considered by Registrar of the Companies, in case of conversion of the existing company into section 8 Company, as per MCA Notification no. G.S.R. 42(E) dated January 19, 2023.

(5 marks)

- (b) Micro India Ltd. is in Mobile Manufacturing business, incorporated under the Companies Act. The Company has agreement with Chinese Company for technology support as well as supply of major parts of mobile which are assembled in India. Under this treaty, there is a clause, where the Indian Company needs to setup a business in Hong Kong, China to setup production unit of Mobile Chipset as well as manufacturing of Display Panel.

Describe the procedure for incorporation of Company in Hong Kong (China).

(5 marks)

- (c) ABC Motor Ltd. is the largest company in India for manufacturing of 4 wheelers' vehicles in automobile sector. The turnover of the Company for the Financial Year 2023-24 was ₹ 68,000 Crore, whereas the net profit margin (after tax) was 9.3%. The Management has decided to setup more plants in European Pacific. Accordingly, Director (Projects) proposed for foreign Joint Venture in Germany.

During the critical analysis of the proposal, you being company secretary of the Company, was asked to prepare a note on disadvantage of foreign Joint Venture.

(5 marks)

- (d) Lueara is a brand under Natural Pink Cosmetic Ltd., an Indian startup for production of

beauty items including lipstick, makeup kits, bridle makeup essentials etc. The Company was incorporated on 12th September, 2022. There is huge demand of the brand in India, as well as, in International Market. For expansion of the business various methods of the financing are being considered, including Equity Financing and Debt Financing.

Highlight the difference between the both of financing options.

Answer 1(a)

- (1) Section 8(5) of the Companies Act, 2013 provides that where it is proved to the satisfaction of the Central Government that a limited company registered under this Act or under any previous company law has been formed with any of the objects specified in clause (a) of sub-section (1) i.e has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object and with the restrictions and prohibitions as mentioned respectively in clauses (b) and (c) of that sub-section, it may, by licence, allow the company to be registered under this section subject to such conditions as the Central Government deems fit and to change its name by omitting the word "Limited", or as the case may be, the words "Private Limited" from its name and thereupon the Registrar shall, on application, in the prescribed form, register such company under this section and all the provisions of this section shall apply to that company.

Thus, the existing company can be converted into section 8 company even than functioning for less than three financial years or for one financial year only.

Hence, the view of the legal consultant is not correct.

- (2) The Ministry of Corporate Affairs vide notification no. G.S.R. 42(E) dated January 19, 2023 has amended the Rule 20(5) of the Companies (Incorporation) Rules, 2014. As per the notification, the Registrar of the Company shall after consideration two years financial statements immediately preceding the date of the application or when the company has functioned only for one financial year, for such year including Board's Reports and Audit Reports, relating to the existing companies and after considering objections if any received by it within thirty days from the date of the publication of notice, and after consulting any authority, regulatory body, Department or Ministry of Central Government or the State Government(s), as it may, in its discretion, decide whether the license should or should not be granted.

Answer 1(b)

A company name (which may be in English, traditional Chinese both) can be searched online free of charge at the Companies Registry (www.icris.cr.gov.hk) or at the mobile website (www.mobile-cr.gov.hk). When an application is delivered online at the e-Registry, the applicant will be informed of the acceptability of the company name before he /she proceeds with the payment process.

If there is no existing Company registered with the name chosen by the applicant, a certification of incorporation and a business registration certificate will be issued upon the filing of an incorporation form signed by the founder member(s) (for companies limited by shares this is a Form NNC 1), a copy of the articles of association and a Notice to Business Registration Office (IRBR 1). The incorporation form contains comprehensive information on the address of the registered office and particulars of the first secretary and first directors of a company. Paper submissions for incorporation normally require approximately four working days for the certificates to be issued (excluding the day of submission of form NNC1).

With the implementation of the "e-Registry" in 2011, applicants can ' now complete the incorporation and business registration process by submitting e1ectronic applications online to the

Companies Registry (www.eregistry.gov.hk) or using the mobile application “CR e-Filing”. In straight forward cases, this enables registered users to complete the relevant procedures and download the electronic Certificate of Incorporation and Business Registration Certificate in less than a day. According to the performance pledge of the Companies Registry (at www.cr.gov.hk/en/about/performance.htm), the service standard for applications for registration of local companies which are submitted electronically is one hour.

At the moment of incorporation, the company will also be automatically registered with the Inland Revenue Department for registration for tax purposes.

Answer 1(c)

Disadvantages of forming Joint Venture (JV) are as follows:

- (i) Restricted flexibility where full concentration is required for JV Project: Flexibility is however important some projects require full concentration and thus the simultaneous work may become impossible. In times like such the participants need to focus on the product of the joint venture and the individual businesses suffer in the process. For example, company A requires technological assets thus in joint venture company B avails the facility. In the same time, if the company B requires those technical assets then he has to postpone the individual project for the time being.
- (ii) Lack of equal involvement: An equal involvement from all the Joint Venture partners may not be possible. It is extremely unlikely for all the companies working together to share the same involvement and responsibilities.
- (iii) Cultural Differences: Different cultures and management styles may result in poor co operation and integration. People with different beliefs, tastes, and preferences can create hurdles.
- (iv) Extensive Research and planning required: Joint venture can result in a frustrating experience and ultimately a failure if it lacks adequate planning and research.
- (v) Lack of clear communication.: A joint venture involves different companies from different horizons with different goals, there is often a severe lack of Communication between partners.
- (vi) Unreliable partners: Because of the separate nature of a joint venture, it is possible that the partner do not devote 100% of their attention to the project and become unreliable.
- (vii) Creation of competitor: Another potential disadvantage of a JV is the possibility of the creation of a competitor or a potential competitor in the form of one’s own joint venture partner

Answer 1(d)

Analysis of the different Financing options are as under:		
Characteristics	Equity Financing	Debt Financing
Nature	There is no component of repayment of the invested funds.	Invested Funds to be repaid within a stipulated time frame with interest.
Risk	Risk factor for the investor is higher as he has no guarantee against his investment	Risk Factor for the investor is lower as he generally has collateral against his investment

Pressure for Repayment	Less pressure for startups to adhere to a repayment timeline but added pressure from investors to achieve growth targets	More pressure for startups to adhere to repayment timeline and as a result more pressure to generate cash flows to meet interest repayments
Return to Investor	Capital growth for investors	Interest payments
Involvement in Decisions	Equity Fund Investors usually prefer to involve themselves in decision making process	Debt fund have very less involvement in decision making
Sources	Angel Investors, Self-financing, Family and friends, Venture Capitalists, Crowdfunding, Incubators/ Accelerators	Banks, Non-Banking Financial Institutions, Government Loan Schemes (CGTMSE, Mudra Loan, Standup India)

Attempt all parts of either Q. No. 2 or Q. No. 2A

Question 2

- (a) After failure of the India's largest Housing Finance Company in private sector, with the directions of RBI, an Asset Reconstruction Company (ARC) was incorporated, as an NBFC, to take over the assets and NPAs of the Housing Finance Company. What are the benefits of incorporating an ARC ?
(4 marks)
- (b) "Rule 39 of the Companies (Incorporation) Rules, 2014, stipulates the detailed provision for conversion of Company Limited by Guarantee into a Company Limited by Shares." In view of the above statement, highlight the procedure for such conversion.
(4 marks)
- (c) "Managerial Ability and Managerial Needs, are two different but most important factors to decide a suitable form of organization." Comment.
(4 marks)
- (d) ABC was incorporated as Nidhi Company in year 2001. Since inception of the Company, it operates only through its single head office situated in Hyderabad. In the Meeting of the Members, few members residing in Mumbai, proposed that branch office of the Company be opened in territory of Maharashtra. However, there are no objection from other members as the majority of them had already relocated in different part of the nation.
In view of such situation, whether proposal of opening of branch office can be implemented. Answer with the applicable provisions of the law.
(4 marks)
- (e) To minimize the legal compliances, Companies, which are not operating any business activity, are applying for status of Dormant.
What are the important points to be kept in mind while applying for getting status of Dormant.
(4 marks)

Answer 2(a)

Benefits of incorporating an Asset Reconstruction Company (ARC) are as follows:

- As the cash realization activity from defaulting borrowers is a lengthy and cumbersome procedure, relieving banks of the burden of NPAs will allow them to focus better on managing the core business including providing new business opportunities for the ARC.
- The transfer should help restore depositor and investor confidence by ensuring the lender's financial health.
- The banks use it as a method to hive off the bad loans from their balance sheet. ARCs can maximize recovery value while minimizing costs.
- ARCs also help building industry expertise in loan resolution and restructuring management, besides serving as a catalyst for important legal reforms in bankruptcy procedures and loan collection.
- ARCs play an important role in developing capital markets through secondary asset instruments.

Answer 2(b)

As per Rule 39 of the Companies (Incorporation) Rules, 2014-

- (1) A company other than a company registered under section 25 of the Companies Act, 1956 or section 8 of the Companies Act, 2013 may convert itself into a company limited by shares.
- (2) The company seeking conversion shall have a share capital equivalent to the guarantee amount.
- (3) A special resolution is passed by its members authorizing such a conversion omitting the guarantee clause in its Memorandum of Association and altering the Articles of Association to provide for the articles as are applicable for a company limited by shares.
- (4) A copy of the special resolution shall be filed with the Registrar of Companies in Form no. MGT- 14 within thirty days from the date of passing of the same along with fee as prescribed in the Companies (Registration Offices and Fees) Rules, 2014.
- (5) An application in form No. INC-27 shall be filed with the Registrar of Companies within thirty days from date of the passing of the special resolution enclosing the altered Memorandum of Association and altered Articles of Association and a list of members with the number of shares held aggregating to a minimum paid up capital which is equivalent to the amount of guarantee hither to provided by its members.
- (6) The Registrar of companies shall take a decision on the application filed under these rules within thirty days from the date of receipt of application complete in all respects and upon approval of Form No. INC-27, the company shall be issued with a certificate of incorporation in Form No. INC- 11B.

Answer 2(c)**Managerial Ability**

It is difficult for a sole proprietor to have expertise in all functional areas of business. Further, the size of the business may not permit engagement of professional management.

In other forms of organizations like partnership and company, there is division of work arriving the partners which allows the partners to specialize in specific areas, leading to better outputs and

decision making. However, this may sometimes lead to conflicts due to differences of opinion. Company form of organization is a better alternative if the operations are far flung, complex in nature and require professional management at various levels.

Managerial Needs

Managerial and administrative requirements also affect the decision about the form of organization. When the concern is small and it caters to local needs only then one person will be enough to manage the business. Sole— proprietorship form of organization will be suitable for such a business. If business caters to more areas, then more persons will be needed to look after various business functions in various areas. When a business is run on a large — scale basis, it will require the services of specialists to manage various departments. The company form of organization will be suitable for such concerns.

Answer 2(d)

Branches of Nidhi (Rule 10 of the Nidhi Rules, 2014)

- (1) A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years. A Nidhi may open up to three branches within the district.
- (2) If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about ripening of every branch within thirty days of such opening.
- (3) Nidhi shall not open branches or collection centers or offices or deposit centers, or by whatever name called outside the State where its registered office is situated.
- (4) Nidhi shall not open branches or collection centers or offices or deposit centers, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.
- (5) A Nidhi shall not close any branch unless it —
 - (a) publishes an advertisement in a newspaper in vernacular language in the place where it carries on business at least thirty days prior to such closure, informing the public about such closure;
 - (b) fixes a copy of such advertisement or a notice informing such closure of the branch on the notice board of Nidhi for a period of at least thirty days from the date on which advertisement was published under clause (a) ; and
 - (c) gives an intimation to the Registrar within thirty days of such closure.

Therefore, going by rule 3, ABC company being a Nidhi Company, cannot open a branch office in Maharashtra i.e. outside the State i.e. Telangana (Hyderabad) where its registered office is situated.

Answer 2(e)

The following points relating to dormant companies may be noted:

- A dormant company shall have a minimum number of three directors in case of a public company, two directors in case of a private company and one director in case of a One Person Company.
- The provisions of the Companies Act, 2013 in relation to the rotation of auditors shall not apply on dormant companies.
- The financial statement, with respect to dormant company, may not include the cash flow statement.
- A Dormant Company may hold one meeting of the Board of Directors in each half of a

calendar year and the gap between the two meetings is not less than ninety days, which will be treated as compliance of section 173 of the Companies Act, 2013.

- If a company has not obtained the status of a dormant company under section 455 or has not made any application for it and has not been carrying on any business or operation for a period of two immediately preceding financial years, the Registrar may remove the name of the company from the Register of Companies under Section 248 of the Act. [Section 248(1)]
- Dormant companies cannot undertake any significant financial transactions, except for payment of fees to the ROC and other normal compliances.
- Even as a dormant company, it must file Form MSC-3 annually, disclosing its financial position and confirming its dormant status.
- The company must not have any ongoing investigations, legal disputes, or outstanding dues to regulators and all financial statements and annual returns must have been filed up to date before making the application.
- The company should not have any outstanding liabilities, including tax dues.
- The company must obtain written consent from its creditors before applying for dormant status.

OR (Alternative question to Q. No. 2)

Question 2A

- (i) FGR Ltd. was incorporated on 3rd March 1959, with Authorised Capital of ₹ 15 Lakh (divided into 1 lakh equity share of ₹ 15 each). Since the inception, authorised capital was increased from time to time and as on date the Authorised Capital of the Company is ₹ 90 Crore (6 Crore equity share of ₹ 15 each). The paid-up capital of the Company is ₹ 60 Crore (divided into 4 Crore equity share of ₹ 15 each)

The Company is planning for an IPO. As advised by the legal consultant, the Company needs to alter its capital clause.

Prepare a note on types of alteration of capital clause in Memorandum and Articles of Association.

- (ii) M and R are good friends since childhood. After completion of graduation in engineering, both have completed their MBA from renowned business institution. M advised that they may start their own business of instant coffee chain shops. Per stall will have a capital investment of ₹ 5,000 only, whereas the price of milk-made coffee may be fixed at ₹ 10 per cup only, to attract the customers at large. However, there will be net margin of ₹ 1.5 per cup.

During the consideration of business form of LLP, R wants to get information about rights of partners. Prepare a note on rights of Partners in LLP.

(4 marks)

- (iii) Karorimal is renowned businessman for making the Khakhra—ready to eat. The business was started in 1962 and same is being run by family members only, since last many decades. At present, Karorimal has 5 sons and all are married. Each son has two kids who are also young and participating in business activities.

Being family business, Karorimal approach the Practicing Company Secretary for getting information about the Hindu Undivided Family (HUF).

State the key highlights of HUF.

(4 marks)

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EP – SBEC – DECEMBER 2024

(iv) What are the exemptions available to a Trust under section 12 of the Income Tax Act, 1961 ?
(4 marks)

(v) Define the term "Start Up". What are the provisions in the Companies Act, with respect to issue of sweat equity shares by Start Up Companies ?
(4 marks)

Answer 2A(i)

Types of alteration of the capital clause in the general meeting of a company limited by shares as per section 61 (1) of the Companies Act, 2013 can be enumerated as below:

- (a) increase its authorized share capital by such amount as it thinks expedient
- (b) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares:
Provided that no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner;
- (c) convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination;
- (d) sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the memorandum, so, however, that in the sub-division the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was in the case of the share from which the reduced share is derived;
- (e) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Answer 2A(ii)

According to section 23 of the LLP Act, 2008 the mutual rights and duties of the partners and the mutual rights and duties of the limited liability partnership and its partners shall be determined, subject to the terms of any limited liability partnership agreement or in the absence of any such agreement on any matter, by the provisions in First Schedule.

Rights of Partner in LLP subject to LLP agreement are enumerated as follows:

1. All the partners hereto shall have the rights, title and interest in all the assets and properties in the firm in the proportion of their Contribution.
2. Every partner has a right to have access to and to inspect the books of accounts of the LLP.
3. Each of the parties hereto shall be entitled to carry on their own, separate and independent business as hitherto they might be doing or they may hereafter do as they deem fit and proper and other partners and the LLP shall have no objection thereto provided that the said partner has intimated the said fact to the LLP before the start of the independent business. Provided the business is not in competition to the existing business being carried on by the LLP.
4. On retirement of a partner, the retiring partner shall be entitled to full payment in respect of all his rights, title and interest in the partner as herein provided.
5. Upon the death of any of the partners herein any one of his or her heirs will be admitted as a partner of the LLP in place of such deceased partner.

6. On the death of any partner, if his or her heir legal heirs opt not to become the partner, the surviving partners shall have the option to purchase the contribution of the deceased partner in the firm.
7. All the partners of a limited liability partnership are entitled to share equally in the capital, profits and losses of the limited liability partnership.
8. Every partner may take part in the management of the limited liability partnership.
9. No person may be introduced as a partner without the consent of all the existing partners.
10. Any matter or issue relating to the limited liability partnership shall be decided by a resolution passed by a majority in number of the partners, and for this purpose, each partner shall have one vote. However, no change may be made in the nature of business of the limited liability partnership without the consent of all the partners.
11. Each partner shall render true accounts and full information of all things affecting the limited liability partnership to any partner or his legal representatives.
12. No majority of the partners can expel any partner unless a power to do so has been conferred by express agreement between the partners.

Answer 2A(iii)

Following are the key highlights of Hindu undivided Family (HUF)-

- Under the Income Tax Act, an HUF is a separate entity for the purpose of income tax return.
- The same tax slabs are applicable to HUF as to individual assesseees.
- One cannot transfer your own assets/money into HUF.
- If one has ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to exemption limit applicable to individual.
- One can transfer the money received on sale of ancestral property assets into your HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc. and will be assessed under HUF.
- The Existence of property or multiple members is not a prerequisite to create HUF. A family which does not own any property may still have the character of Hindu Undivided Family. This jointness is understood in terms of faith and food. This is because a Hindu is born as a member of the joint family.

Karta: The senior-most male member is the Karta, responsible for managing the HUF.

Coparceners: Include male and female members who can demand partition. Female members became eligible as coparceners after the 2005 amendment to the Hindu Succession Act.

Members: Other family members who are not coparceners but have rights to maintenance and a share in HUF property

- Any gifts received by the members of HUF (birthday, marriage, etc.) can be treated as assets of HUF.
- The HUF is taxable as a separate person under income tax hence one can save tax from basic exemption of Rs. 2.5 lakh. HUF will also gain from the tax slab structure of computing income tax.
- Apart from the basic exemption of Rs. 2.50 lakh, section 80C deduction up to Rs. 1.50 lakh is also available.

Answer 2A(iv)

Tax exemption available to Trust under Section 12 of the Income Tax Act, 1961 are as follows:

1. The incomes that are excluded from the computation of taxable income of trust or society are as follows: -
2. Income which is derived from the property that is held under the authority of trust with the purposes which are wholly charitable or religious in nature.
3. Income that is kept aside to the extent that does not exceed 25% of the total income received in lieu of the property.
4. In cases of charitable trusts, specifically those formed before the 1st of April, 1961, income which is acquired from the property which is held partially for religious or charitable purposes within India
5. In furtherance of the above case, the income which is set apart to a certain extent and which does not exceed twenty-five percent of the total income.
6. In cases of income that is obtained from a trust created before 1st April, 1952 for charitable purposes and spent outside India.
7. Income made by way of voluntary contributions towards the corpus of the trust.
8. Charitable trusts created for the benefit of any of the socially and economically backward castes such as Scheduled Castes, Scheduled Tribes or women or children.
9. Trusts are allowed to set apart or accumulate some of the funds received from voluntary contributions for certain specific purposes. The resultant benefit obtained by the trust is that amount so deducted is not considered as forming part of income of the previous year and therefore not taxed.

Answer 2A(v)

The term Startup is being defined by DPIIT vide Notification No. G.S.R. 127 (E), dated 19th February 2019

An entity shall be considered as a Startup:

- i. Upto a period of ten years from the date of incorporation/ registration, if it is incorporated as a private limited company (as defined in the Companies Act, 2013) or registered as a partnership firm (registered under section 59 of the Partnership Act, 1932) or a limited liability partnership (under the Limited Liability Partnership Act, 2008) in India.
- ii. Turnover of the entity for any of the financial years since incorporation/ registration has not exceeded One hundred crore rupees.
- iii. Entity is working towards innovation, development or improvement of products or processes or services, or if it is a scalable business model with a high potential of employment generation or wealth creation.

Provided that an entity formed by splitting up or reconstruction of an existing business shall not be considered a 'Startup'.

Issue of Sweat Equity Shares by Startup Companies

As per the amendment in the Companies (Share Capital and Debentures) Amendment Rules, 2020, dated 5th June, 2020, a startup company as defined in notification number G.S.R. 127(E), dated the 19th February, 2019 issued by the Department for Promotion of Industry and Internal

Trade, Ministry of Commerce and Industry, Government of India, may issue sweat equity shares not exceeding 50% of its paid-up share capital upto 10 (ten) years from the date of its incorporation or registration.

PART-B

Question 3

- (a) FamousX India Pvt. Ltd. is seeking protection for its trademark "FAMOUSX" and a declaration that this mark, along with its variations such as "FAMOUSX BHUJIAWALA," qualifies as a "well-known" mark under Section 2(1)(zg) of the Trade Marks Act, 1999 (Act). The company is also pursuing a permanent injunction to prevent the FamousX Restro Pvt. Ltd., from using the marks "FAMOUSX" or "FAMOUSX BHUJIAWALA," or any other marks that are deceptively similar to the "FAMOUSX" mark. The FamousX India Pvt. Ltd highlights that the core elements of their labels, including the registered "FAMOUSX" mark and the "FX" logo within a red oval, are prominently featured on their packaging and trade dress. Additionally, the FamousX India Pvt. Ltd. contends that the color schemes themselves function as distinct trade dresses.

Explain the legal grounds for FamousX India Pvt. Ltd.'s claim for protection and the criteria for a mark to be recognized as "well-known" under the Act ? What defences may be available to FamousX Restro Pvt. Ltd. Explain.

(5 marks)

- (b) X, who works for a civil construction company, was injured due to his own negligence while operating a lift to move construction materials to second floor. Does this incident qualify as an "employment injury" under the ESI Act, 1948.

(5 marks)

- (c) What are the various compliances under Public Liability Insurance Act, 1991 ?

- (d) "Dinesh Chhole Bhatoore wala" is a famous shop for selling tasty Chhole Bhatoore. Daily cash collection of the shop is more than ₹ 20,000. Dinesh runs the brand under a Company with name of DCB Pvt Ltd. To comply with various laws, management of the company appoints you as compliance officer. Being Compliance Officer, how will you take care of following records :

- (i) Income Records
- (ii) Cash Records.

(5 marks)

Answer 3(a)

Legal Grounds for FamousX India Pvt. Ltd.'s Claim-

1. Trademark Protection: FamousX India Pvt. Ltd. can seek protection under the Trade Marks Act, 1999, which provides for the registration and protection of trademarks. The Act allows the owner of a registered trademark to prevent others from using identical or deceptively similar marks that could cause confusion among consumers.
2. Well-Known Mark: Under Section 2(1)(zg) of the Trade Marks Act, 1999, a "well-known" trademark is one that has become widely recognized among a substantial segment of the public which uses such goods or receives such services that the use of such mark in relation to other goods or services would be likely to be taken as indicating a connection in the

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course of trade or rendering of services between those goods or services and a person using the mark in relation to the first-mentioned goods or services.

Section 11(6) of the Trade Marks Act, 1999 lays down the criteria for a mark to be recognized as “well-known” under the Act and states as follows:

The Registrar shall, while determining whether a trade mark is a well-known trade mark, take into account any fact which he considers relevant for determining a trade mark as a well-known trade mark including—

- (i) the knowledge or recognition of that trade mark in the relevant section of the public including knowledge in India obtained as a result of promotion of the trade mark;
- (ii) the duration, extent and geographical area of any use of that trade mark;
- (iii) the duration, extent and geographical area of any promotion of the trade mark, including advertising or publicity and presentation, at fairs or exhibition of the goods or services to which the trade mark applies;
- (iv) the duration and geographical area of any registration of or any application for registration of that trade mark under this Act to the extent that they reflect the use or recognition of the trade mark;
- (v) the record of successful enforcement of the rights in that trade mark, in particular the extent to which the trade mark has been recognised as a well-known trade mark by any court or Registrar under that record.

The Registrar shall, while determining as to whether a trade mark is known or recognised in a relevant section of the public for the purposes of sub-section (6), take into account—

- (i) the number of actual or potential consumers of the goods or services;
- (ii) the number of persons involved in the channels of distribution of the goods or services;
- (iii) the business circles dealing with the goods or services

Defenses by FamousX Restro Pvt. Ltd.-

1. Fair Use: FamousX Restro Pvt. Ltd. might argue that their use of the mark is descriptive or nominative, which is allowed under the fair use doctrine. This defense is valid if the mark is used in good faith for descriptive purposes and not to mislead consumers.
2. Prior Use: If FamousX Restro Pvt. Ltd. can prove that they were using the mark before FamousX India Pvt. Ltd. registered it, they might have a valid defense. Prior use can establish rights over a trademark even if it is not registered.
3. No Likelihood of Confusion: They could argue that there is no likelihood of confusion between the two marks due to differences in the goods or services offered, the market segments targeted, or the overall presentation of the marks.

Section 11(10): While considering an application for registration of a trade mark and opposition filed in respect thereof, the Registrar shall—

- (i) protect a well-known trade mark against the identical or similar trade marks;
- (ii) take into consideration the bad faith involved either of the applicant or the opponent affecting the right relating to the trade mark.

Answer 3(b)

Section 2(8) of the Employees' State Insurance (ESI) Act, 1948, defines “employment injury” as a personal injury to an employee caused by accident or an occupational disease arising out of and

in the course of his employment, being an insurable employment, whether the accident occurs or the occupational disease is contracted within or outside the territorial limits of India.

The key consideration is whether the injury occurred while the employee was performing duties related to their employment.

In the case of *Jayanthilal Dhanji Co. vs Employees' State Insurance Corporation*, the court emphasized that the injury caused due to the negligence of employee amounts to an employment injury.

Therefore, in Mr. X's case, since the injury occurred while he was operating a lift to move construction materials, a task related to his employment—it would qualify as an "employment injury" under the ESI Act, 1948, despite his negligence.

Answer 3(c)

The salient features of compliance under the Public Liability Insurance Act 1991 are as follow:

- Owner to provide relief in case of death or injury or damage to property from an accident on the principle of no fault.
- Owner to draw insurance policies more than the paid-up capital but less than Rs. 50 Crores.
- Paid-up Capital' is the market value of all assets and stocks on the date of insurance.
- Owner to pay additional amounts as contribution to the 'Environmental Relief Fund'.
- Owner to provide any information required for ascertaining compliance with the provisions of the Act.
- Owner to allow entry and inspection to ascertain compliance with the provisions of the Act.
- Owner to pay the amount of an award as specified by the Collector
- Comply with the directions issued in writing by the Central Government, directions may include;
 - i. Prohibition or regulations of handling of any hazardous substances,
 - Or
 - ii. Stoppage or regulation of the supply of electricity, water or any other service

Answer 3(d)

(i) Income Records

To be able to accurately state income is important due to several reasons. Not only is it important to be able to assess the viability and strength of the business but it is also important that financial records neither overstate nor understate the incomes earned by the business.

Overstating revenues subjects the business to additional tax costs whilst understatement of income can attract penalties on account of tax evasion.

Ordinarily invoices must contain the following information heads:

- Name of issuing business
- Address of business
- Date of issue
- Serial No

- CIN (Company Identification No) if business is being run by a company
- Service tax, GSTIN, (if applicable)
- Description of goods, services as well as prices
- Details of taxes levied, if any
- Total invoice Value

(ii) Cash Records

Despite all advances in banking technology and facilities, businesses must still undertake a large number of transactions in cash. Due to the very sensitive nature of cash holdings and transactions, it is important from a business as well as reporting perspective to have a tight handle on the cash in circulation within the enterprise.

To be able to actively ascertain the exact amount of cash available, a business must maintain two principal documents:

- Cash collection register, to record and reconcile all collections made by the business in cash, and;
- Day books / Cash book to map the inward and outward movement of cash from the business.

Attempt all parts of either Q. No. 4 or Q. No. 4A

Question 4

(a) Answer the following :

- Person liable for Compulsory Registration under GST
 - Persons not liable to register under GST.
- (b) Whether a shopkeeper, having very small business, also needs to get registration for its shop ? What provisions of the law are applicable ?
- (c) Describe various schemes with respect to Social Security, Health, Rehabilitation and Recreation for a person with disability.
- (d) A tyre factory was setup near residential area by violating various environmental laws. The villagers are facing health issues due to such factory. The hot melt rubber was spread over in a farm and a young boy was injured. The Villager wanted to file the suit in NGT. Can a person himself file the suit with NGT against any injury due to hazardous substances ?
- (e) No adolescent shall be employed or permitted to work in any of the hazardous occupations or processes. What are such occupations or processes ?

(3 marks each)

Answer 4(a)

Section 24 of Central Goods & Services Tax Act, 2017 provides compulsory registration in certain cases, irrespective of the aggregate turnover:

- Persons making any inter-state taxable supply.
- Casual taxable persons making taxable supply.
- Persons who are required to pay tax under reverse charge.

- (iv) Specified categories of service tax on intra-state supplies.
- (v) Persons making taxable supply of goods or services or both on behalf of other taxable person(s).
- (vi) Input Service Distributor, whether or not separately registered under GST Law.
- (vii) Persons supplying goods or services or both through such electronics commerce operators who is required to collect tax at source under section 52 of GST Law.
- (viii) Every electronic commerce operator.
- (ix) Every person supplying online information from outside India to an unregistered person in India.
- (x) Persons or class of persons notified by the Government on the recommendation of GST Council.

The following people are not liable to register under the Central Goods & Services Tax Act, 2017:

- (i) Persons dealing exclusively in supply of goods or services which are not liable to tax or wholly exempted from tax under SGST or IGST Law.
- (ii) Agriculturalist, to the extent of supply of produce out of cultivation of land.
- (iii) Category of person specified by the Government.

Answer 4(b)

- The Shops and Establishments Act, 1953 was enacted to provide statutory obligations and rights to employees and employers in the unorganised sector of employment, i.e., shops and establishments.
- It is applicable to all persons employed in an establishment with or without wages, except the members of the employer's family. It is a State legislation and each State has framed its own rules for the Act.
- The State Government can exempt, either permanently or for a specified period, any establishments from all or any provisions of this Act.
- The Act provides for compulsory registration of shop/ establishment within thirty days of commencement of work and all communications of closure of an establishment within 15 days from its closing.
- It also lays down the hours of work per day and week as well as the guidelines for spread-over, rest interval, opening and closing hours, closed days, national and religious holidays, overtime work, etc.

Answer 4 (c)

Section 24 of Rights of Persons with Disabilities Act, 2016 states that within limits of economic capacity, the government shall formulate schemes and programmes to ensure adequate standard of living for people with disability. Section 24 (3) enumerates the variety of schemes in this regard such as:

- (a) community centres with good living conditions in terms of safety, sanitation, health care and counselling;
- (b) facilities for persons including children with disabilities who have no family or have been abandoned, or are without shelter or livelihood;
- (c) support during natural or man-made disasters and in areas of conflict;

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- (d) support to women with disability for livelihood and for upbringing of their children;
- (e) access to safe drinking water and appropriate and accessible sanitation facilities especially in urban slums and rural areas;
- (f) provisions of aids and appliances, medicine and diagnostic services and corrective surgery free of cost to persons with disabilities with such income ceiling as may be notified;
- (g) disability pension to persons with disabilities subject to such income ceiling as may be notified;
- (h) unemployment allowance to persons with disabilities registered with Special Employment Exchange for more than two years and who could not be placed in any gainful occupation;
- (i) care-giver allowance to persons with disabilities with high support needs;
- (j) comprehensive insurance scheme for persons with disability, not covered under the Employees State Insurance Schemes, or any other statutory or Government-sponsored insurance schemes;
- (k) any other matter which the appropriate Government may think fit.

Answer 4(d)

Section 18(2) of the National Green Tribunal, Act, 2010 provides for Application or appeal to Tribunal Without prejudice to the provisions contained in section 16, an application for grant of relief or compensation or settlement of dispute may be made to the Tribunal by—

- (a) the person, who has sustained the injury; or
- (b) the owner of the property to which the damage has been caused; or
- (c) where death has resulted from the environmental damage, by all or any of the legal representatives of the deceased; or
- (d) any agent duly authorised by such person or owner of such property or all or any of the legal representatives of the deceased, as the case may be; or
- (e) any person aggrieved, including any representative body or organisation; or
- (f) the Central Government or a State Government or a Union territory Administration or the Central Pollution Control Board or a State Pollution Control Board or a Pollution Control Committee or a local authority, or any environmental authority constituted or established under the Environment (Protection) Act, 1986 or any other law for the time being in force;

Thus, as per Section 18(2) (a), the villager himself can file a suit with National Green Tribunal (NGT) against any injury due to hazardous substances.

Answer 4(e)

Section 3A of Child and Adolescent Labour (Prohibition & Regulation) Act, 1986 provides that no adolescent shall be employed or permitted to work in any of the hazardous occupations or processes set forth in the Schedule. The hazardous occupations or processes set forth in the Schedule are as under:

- (1) Mines.
- (2) Inflammable substances or explosives.
- (3) Hazardous process

It is provided that the Central Government may, by notification, specify the nature of the non-hazardous work to which an adolescent may be permitted to work under this Act.

OR (Alternative question to Q. No. 4)**Question 4A**

- (i) What are the protections available to an author under the Copyright Act, 1957 ?
- (ii) Divya-Jyoti Sansthan is a registered Company under section 8 of the Companies Act, 2013, to operate eye hospital in various places of India for charitable purpose. The Sansthan received an offer of huge grant/donation from Madela Foundation, USA, for techno-oriented medical services in India with better quality.

What are the conditions under FCRA, 2010, with respect to acceptance of foreign grant/donation ?

- (iii) In the Financial Year 2023-24, Z Systems Ltd., a company governed by the Payment of Bonus Act, 1965, incurred significant losses and reported a negative net profit in its financial statements. The Board of Directors decided not to pay any bonus to its employees. The employees then took the matter to court seeking relief. Considering this situation, will the employees succeed in their claim for bonus.
- (iv) Under what circumstances, registration of a Trade Union may be cancelled ?
- (v) Every factory shall provide measures for health, safety and welfare of workers under the provision of Factories Act, 1948, which inter-alia includes Spittoons, Latrines and urinals. Explain.

(3 marks each)

Answer 4A(i)

Section 13 of the Indian Copyright Act, 1957 deals with Protection to Authors.

The author of a work has the right to claim authorship of the work and to restrain or claim damages in respect of any distortion, mutilation, modification or other acts in relation to the said work which is done before the expiration of the term of copyright if such distortion, mutilation, modification or other act would be prejudicial to his honour or reputation. Moral rights are available to the authors even after the economic rights are assigned.

Copyright protects the rights of authors, i.e., creators of intellectual property in the form of literary, musical, dramatic and artistic works and cinematograph films and sound recordings. The following rights are protected:

- reproduce the work.
- issue copies of the work to the public.
- perform the work in public.
- communicate the work to the public.
- make cinematograph film or sound recording in respect of the work.
- make any translation of the work.
- make any adaptation of the work (conversion of dramatic work into non dramatic work, literary work into dramatic work, re-arrangement of literary or dramatic work, depiction in comic form or through pictures of a literary or dramatic work, transcription of musical work or any act involving rearrangement or alteration of an existing work and the making of a cinematograph film of literary or dramatic or musical work).

In addition to all the rights applicable to a literary work, the owner of the copyright in a computer

programme enjoys the rights to sell or give on hire or offer for sale or hire, regardless of whether such a copy has been sold or given on hire on earlier occasion.

Answer 4A(ii)

Charitable Trusts, Societies, Section 8 Company that receive foreign contribution or donation from foreign sources are required to obtain registration under Section 6(1) of Foreign Contribution Regulation Act, 2010. Such registration under the Foreign Contribution Regulation Act, 2010 is called a FCRA registration.

Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may obtain FCRA registration or receive foreign contribution through "prior permission" route. Prior permission is granted for receipt of a specific amount from specific donor/donors for carrying out specific activities/projects.

FCRA Prior Permission shall be granted to the Indian recipient organizations subject to its satisfying the following:

- i) The Chief Functionary of the recipient Indian organization should not be a part of the donor organization.
- ii) At least 75% of the office-bearers/ members of the Governing body of the Indian recipient organization should not be members/employees of the foreign donor organization.
- iii) In case of foreign donor organization being a single person/individual that person should not be the Chief Functionary or office bearer of the recipient Indian organization.
- iv) In case of a single foreign donor, at least 75% office bearers/members of the governing body of the recipient organization should not be the family members and close relatives of the donor.

Answer 4A(iii)

The Payment of Bonus Act, 1965 provides for the payment of bonus to persons employed in a factory or certain establishments, employing 20 or more persons, on any day during an accounting year, on the basis of profits or on the basis of production or productivity and for matters connected therewith.

Section 10 of the Payment of Bonus Act, 1965 provides that:

Subject to the other provisions of this Act, every employer shall be bound to pay to every employee in respect of the accounting year commencing on any day in the year 1979 and in respect of every subsequent accounting year, a minimum bonus which shall be 8.33 per cent. of the salary of wage earned by the employee during the accounting year or one hundred rupees, whichever is higher, whether or not the employer has any allocable surplus in the accounting year:

Provided that where an employee has not completed fifteen years of age at the beginning of the accounting year, the provisions of this section shall have effect in relation to such employees as if for the words "one hundred rupees", the words "sixty rupees" were substituted.

Thus, even if the employer suffers losses during the accounting year, it is bound to pay minimum bonus as prescribed under section 10.

Accordingly, employees will succeed.

Answer 4A(iv)

Section 10 of the Trade Unions Act, 1926 states that:

A certificate of registration of a Trade Union may be withdrawn or cancelled by the Registrar-

- (a) on the application of the Trade Union to be verified in such manner as may be prescribed, or
- (b) if the Registrar is satisfied that the certificate has been obtained by fraud or mistake, or that the Trade Union has ceased to exist or has wilfully and after notice from the Registrar contravened any provision of this Act or allowed any rule to continue in force which is inconsistent with any such provision, or has rescinded any rule providing for any matter provision for which is required by section 6:

Provided that not less than two months' previous notice in writing specifying the ground on which it is proposed to withdraw or cancel the certificate shall be given by the Registrar to the Trade Union before the certificate is withdrawn or cancelled otherwise than on the application of the Trade Union.

Answer 4A(v)

Section 20 of the Factories Act, 1948 provides measures for Spittoons:

- (1) In every factory there shall be provided a sufficient number of spittoons in convenient places and they shall be maintained in a clean and hygienic condition.
- (2) The State Government may make rules prescribing the type and the number of spittoons to be provided and their location in any factory and provide for such further matters relating to their maintenance in a clean and hygienic condition.
- (3) No person shall spit within the premises of a factory except in the spittoons provided for the purpose and a notice containing this provision and the penalty for its violation shall be prominently displayed at suitable places in the premises.
- (4) Whoever spits in contravention of sub-section (3) shall be punishable with fine not exceeding five rupees.

Every factory shall make suitable arrangement for the provision of latrines and urinals for the workers. These points as stated below, are subject to the provisions of Section 19 of Factories Act, 1948 and the rules laid down by the State Government in this behalf.

- (1) every factory shall make provision for sufficient number of latrines and urinals of prescribed standard. These should be conveniently situated and accessible to all workers during working hours
- (2) separate arrangement shall be made for male and female workers;
- (3) all these places shall have suitable provisions for lighting and ventilation;
- (4) no latrine or urinal shall communicate with any work-room unless in between them there is provision of open space or ventilated passage;
- (5) all latrines and urinals shall be kept in a clean and sanitary conditions at all times;
- (6) a sweeper shall be employed whose exclusive job will be to keep clean all latrines and urinals.

PART-C

Question 5

- (a) EVG Ltd. was incorporated on 5th October, 2019, with main objective to manufacture the Lithium Power Batteries. The securities of Company are listed on Bombay Stock Exchange under SME Category. Due to restriction on the import of raw material, there is no business activity since previous 2 financial years. The Company is debt free Company and facing no

pending inquiries. Also, there is no statutory dues pending for payment. The Management seeks to apply for dormant company status under the provisions of the Companies Act, 2013. Given these circumstances, highlight the relevant legal provisions to apply for dormant status.

(3 marks)

- (b) 'Strike off provisions gives a choice or an option to non-working companies to remove its name from the Register of Companies. There are many companies which are registered with ROC but due to various reasons they are not operative. The strike off provisions gives an option to such companies to apply to ROC for removal of their name from the Register of Companies.'

In light of above statement and applicable provisions of the Law, which types of the Companies cannot be removed under section 248(1) and (2) of the Companies Act, 2013 ?

(3 marks)

- (c) Explain the grounds for winding up of a company by the National Company Law Tribunal (NCLT).

(3 marks)

- (d) RC & TC LLP was incorporated on 8th May, 2022, with 5 partners. All partners are qualified professionals and have identified profit sharing in the partnership. One of the partners, by forged signature, applied for striking off the name of LLP, without informing any other partner. He was an active partner and looking after all compliances with statutory authorities.

RoC inadvertently removed the name of the LLP. One of the partners was informed by his friend about such action by RoC.

The other partners now want to restore the name of RC & TC LLP with jurisdictional RoC. What are the steps to be taken ?

(3 marks)

- (e) Prepare a brief note on Companies (Winding up) Rules, 2020, notified by MCA.

(3 marks)

Answer 5(a)

As per Rule 3 of the Companies (Miscellaneous) Rules, 2014, for the purposes of sub-section (1) of section 455, a company may make an application in Form MSC-1 along with such fee as provided in the Companies (Registration Offices and Fees) Rules, 2014 to the Registrar for obtaining the status of a Dormant Company in accordance with the provisions of section 455 after passing a special resolution to this effect in the general meeting of the company or after issuing a notice to all the shareholders of the company for this purpose and obtaining consent of at least 3/4th shareholders (in value):

A company shall be eligible to apply for dormant status only, if-

- i. no inspection, inquiry or investigation has been ordered or taken up or carried out against the company;
- ii. no prosecution has been initiated and pending against the company under any law;
- iii. the company is neither having any public deposits which are outstanding nor the company is in default in payment thereof or interest thereon;

- iv. the company is not having any outstanding loan, whether secured or unsecured, however if there is any outstanding unsecured loan, the company may apply after obtaining concurrence of the lender and enclosing the same with Form MSC1;
- v. there is no dispute in the management or ownership of the company and a certificate in this regard is enclosed with Form MSC-1;
- vi. the company does not have any outstanding statutory taxes, dues, duties etc. payable to the Central Government or any State Government or local authorities etc.;
- vii. the company has not defaulted in the payment of workmen's dues;
- viii. the securities of the company are not listed on any stock exchange within or outside India.

In the instant case, the securities of EVG Ltd are listed on Bombay Stock Exchange under SME Category Company and does not satisfy the condition of clause (viii) of Rule 3 of the Companies (Miscellaneous) Rules, 2014.

Hence, it cannot apply to the registrar of Companies for obtaining Dormant Status under the Companies Act, 2013.

Answer 5(b)

Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016 vests in the Registrar of Companies power to remove the name of a company from the register of companies in terms of sub-section (1) of section 248 of the Act.

Following categories of companies shall not be removed from the register of companies under this rule and rule 4, namely:

- i. Listed Companies;
- ii. Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- iii. Vanishing companies;
- iv. companies where inspection or investigation is ordered and being carried out or actions on such order are yet to be taken up or were completed but prosecutions arising out of such inspection or investigation are pending in the Court;
- v. companies where notices under section 234 of the Companies Act, 1956 (1 of 1956) or section 206 or section 207 of the Act have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 has not yet been submitted or follow up of instructions on report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the Court;
- vi. companies against which any prosecution for an offence is pending in any court;
- vii. companies whose application for compounding is pending before the competent authority for compounding the offences committed by the company or any of its officers in default;
- viii. companies, which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- ix. companies having charges which are pending for satisfaction; and
- x. companies registered under section 25 of the Companies Act, 1956 or section 8 of the Act.

Answer 5(c)

Section 271 of the Companies Act 2013 provides grounds for winding up of the company by NCLT. According to section 271, a company may be wound up by NCLT on a petition in following cases:

- a) If the company has, by special resolution, resolved that the company be wound up by the Tribunal;
- b) If the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality;
- c) If on an application made by the Registrar or any other person authorized by the Central Government by notification under this Act, the Tribunal is of the opinion that the affairs of the company have been conducted in a fraudulent manner or the company was formed for fraudulent and unlawful purpose or the persons concerned in the formation or management of its affairs have been guilty of fraud, misfeasance or misconduct in connection therewith and that it is proper that the company be wound up;
- d) If the company has made a default in filing with the Registrar its financial statements or annual returns for immediately preceding five consecutive financial years; or
- e) If the Tribunal is of the opinion that it is just and equitable that the company should be wound up.

Answer 5(d)

The ROC can suo moto after issuing the notice under section 75, strike off the name of the LLP. In such a case, it may happen that the name of the LLP may be struck off even though the LLP is active, but the ROC removed the name of the LLP from the Register, either inadvertently or due to incorrect information furnished by the LLP or its partners. In such a case, there is no relief provided in the Limited Liability Partnership Act, 2008 or in the Limited Liability Partnership Rules, 2009 to restore the name of the LLP in the Register, hence, the partners of such LLP have to approach the jurisdictional High Court by filing writ petition under Article 226 of the Constitution of India for restoration of the name of the LLP in the Register of LLP.

Answer 5(e)

With a view to systemize the procedure of winding up of a Company under the Act, the Ministry of Corporate Affairs ('MCA') vide notification dated 24th January 2020, had notified the Companies (Winding Up) Rules, 2020 ('The Rules'). The Rules are applicable to companies going into "winding up for the circumstances mentioned u/s 271" as well as "Summary procedure for liquidation u/s 361" of the Companies Act, 2013. The Rules comprise of 191 rules and 95 forms and shall become applicable from 1st April 2020.

Important highlights:

- It allows the following companies (on the basis of latest audited balance sheet) to wind up their business by making an application to Central Government without approaching NCLT

Companies accepting deposit and having total outstanding deposits	Upto INR 25 Lacs
Companies having total outstanding loan including secured loan	Upto INR 50 Lacs
Companies having total turnover	Upto INR 50 Crores
Companies with Paid up share capital	Upto INR 1 Crore

Above companies are allowed to approach Central Government for summary liquidation only if they have book value of assets upto Rs. 1 crore. The provisions of the rules relating to filing and audit of the Company Liquidator's accounts and its procedure as well as disposing of assets shall be applicable to above class of companies with the Central Government instead of NCLT

- It lays down the process for meeting of creditors and contributories of the Company, and specifies the scenarios in which creditors can and cannot vote;
- It makes it necessary for all the money lying in the bank account of Company Liquidator, which is not immediately required for the purposes of winding up, to be invested in government securities or in interest bearing deposits in any scheduled bank;
- It lay down the procedure for maintenance of registers and books of accounts by the Company Liquidator; and
- It also outlines the procedure for creditors to prove their debts and claims against the company and if the proof of such debt gets rejected by the Company Liquidator, there is also a provision and process for creditor to make an appeal to Tribunal.

Thus, the winding up rules has reduced the burden of winding up on NCLT by shifting the power to Central Government in specified cases, which will help in shortening the winding up timelines drastically.

Question 6

- (a) InnoTrans Ltd. is seeking to commence a voluntary liquidation process. A declaration on affidavit was provided by one of the company's directors, confirming that a thorough review of the company's financial affairs has been completed. However, the affidavit does not include a declaration of solvency. Evaluate whether InnoTrans Ltd. can proceed with voluntary liquidation under the Insolvency and Bankruptcy Code, 2016, in this scenario. Additionally, list the required documents that must accompany the declaration for initiating voluntary liquidation.

(5 marks)

- (b) XYZ Industries Ltd. is undergoing a corporate insolvency resolution process (CIRP).

The Resolution Professional (RP) needs to comply with the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017. What are the key steps and timelines that the RP must adhere to under these regulations to ensure compliance with the CIRP ?

(5 marks)

Answer 6(a)

Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily, to initiate voluntary liquidation proceedings under the provisions of this Code, if it has not committed any default. Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:

A declaration from majority of the directors of the company verified by an affidavit stating that:

- i. they have made a full inquiry into the affairs of the company and have formed an opinion that either the company has no debts or that it will be able to pay its debts in full from the proceeds of assets to be sold in the voluntary liquidation; and

- ii. the company is not being liquidated to defraud any person.
- iii. *The declaration shall be accompanied with the following documents, namely:*
 - a. Audited financial statements and a record of business operations of the company for the previous two years or for the period since its incorporation, whichever is later
 - b. A report of the valuation of the assets of the company, if any, prepared by a registered valuer

After making the declaration the corporate debtor shall within four weeks:

- i. pass a special resolution at a general meeting requiring that the company should be liquidated voluntarily and appointing insolvency professional to act as the liquidator
- ii. pass a resolution at a general meeting requiring that the company be liquidated voluntarily as a result of expiry of the period of its duration, if any (fixed by its articles or on the occurrence of any event in respect of which the articles provide that the company shall be dissolved, if any) and appointing an insolvency professional to act as the liquidator.

In view of the above-mentioned provisions, a declaration was made on affidavit by only one of the directors of the InnoTrans Ltd., not majority of the directors, which is in contravention of the provisions of the Insolvency & Bankruptcy Code, 2016 as well as affidavit does not include a declaration of solvency.

Answer 6(b)

The Resolution Professional (RP) overseeing the corporate insolvency resolution process (CIRP) of XYZ Industries Ltd. must adhere to several key steps and timelines as per the Insolvency and Bankruptcy Board of India (Fast Track Insolvency Resolution Process for Corporate Persons) Regulations, 2017:

- (a) **Public announcement:** An insolvency professional shall make a public announcement immediately on his appointment as an interim resolution professional. An insolvency professional shall make a public announcement within three days of his appointment as an interim resolution professional.
- (b) **Verification of claims:** The interim resolution professional or the resolution professional, as the case may be, shall verify every claim, as on the fast track commencement date, within seven days from the last date of the receipt of the claims, and thereupon maintain a list of creditors containing names of creditors along with the amount claimed by them, the amount of their claims admitted and the security interest, if any, in respect of such claims, and update it. (Rule 13)
- (c) **Committee with only operational creditors:** Where the corporate debtor has no financial debt or where all financial creditors are related parties of the corporate debtor, the committee formed shall consist of (a) eighteen largest operational creditors by value: (b) one representative elected by all workmen and (c) one representative elected by all employees.
- (d) **Based on records of the corporate debtor and claims,** if the interim resolution professional is of the opinion that the fast track process is not applicable to the corporate debtor as per notifications under section 55(2), he shall file an application to the Adjudicating Authority along with the report in sub-regulation (1), to pass an order converting the fast track process to corporate insolvency resolution process under Chapter II of Part II of the Code. If the Adjudicating Authority passes an order converting fast track to corporate insolvency resolution process on an application under sub-regulation (2), the process shall be carried on in accordance with the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016.

- (e) Filings by the interim resolution professional: The interim resolution professional shall file a report certifying the constitution of the committee to the Adjudicating Authority on or before the expiry of twenty-one days from the date of his appointment. The interim resolution professional shall convene the first meeting of the committee within seven days of filing the report(s) under this Regulation.
- (f) Meetings of the committee: A resolution professional may convene a meeting of the committee as and when he considers necessary, and shall convene a meeting if a request to that effect is made by members of the committee representing thirty-three per cent of the voting rights.
- (g) Appointment of registered valuer: The resolution professional shall within seven days of his appointment, appoint one registered valuer to determine the fair value and the liquidation value of the corporate debtor.
- (h) Sale of assets outside the ordinary course of business: With the approval of CoC, the resolution professional may sell unencumbered asset(s) of the corporate debtor, other than in the ordinary course of business, if he is of the opinion that such a sale is necessary for a better realisation of value under the facts and circumstances of the case. Provided that the book value of all assets sold during fast-track process period in aggregate under this sub-regulation shall not exceed ten percent of the total claims admitted by the interim resolution professional.
- (i) Information memorandum: The resolution professional shall submit the information memorandum in electronic form to:-(a) each member of the committee within two weeks of his appointment as resolution professional (b) each prospective resolution applicant latest by the date of invitation of resolution plan under clause (h) of sub-section (2) of section 25 of the Code.
- (j) Invitation of Resolution Plans: The resolution professional shall issue an invitation, including evaluation matrix, to the prospective resolution applicants, to submit resolution plans at least fifteen days before the last date of submission of resolution plans.
- (k) Resolution plan: A resolution plan shall provide for the measures, as may be necessary for insolvency resolution of the corporate debtor for maximization of value of its assets.
- (l) Approval of resolution plan: The resolution professional shall submit the resolution plan approved by the committee to the Adjudicating Authority, at least fifteen days before the expiry of the maximum period permitted under section 56 for the completion of the fast track corporate insolvency resolution process, with the certification that- (a) the contents of the resolution plan meet all the requirements of the Code and the Regulations; and (b) the resolution plan has been approved by the committee.

The resolution professional shall forthwith send a copy of the order of the Adjudicating Authority approving or rejecting a resolution plan to the participants and the resolution applicant.

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TAX LAWS

MODULE 1 PAPER 4

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer All Questions.

PART- I

Question 1

The definition of person given in section 2(31) of the Income Tax Act, 1961 does include all of these except :

- (A) AOP/BOI
- (B) LOCAL AUTHORITY
- (C) FIRMS
- (D) ASSOCIATIONS OF FIRMS

Question 2

Income earned and received outside India but later on remitted to India (whether tax incidence arises at the time of remittance) is taxable in case of :

- (A) ROR
- (B) RNOR
- (C) NR
- (D) None of the above

Question 3

Which of the following receipts/payments are capital in nature ?

- (A) Advance receipt of Royalty for 3 years
- (B) Lump sum payment received by a director of the company against his resignation from Directorship
- (C) Foreign tour expenses of a company manager to study the new techniques of production for enhancing the profit
- (D) Compensation received for loss of Capital Assets

Question 4

Mr. Tinto has been provided with an accommodation by the company for which the company was paying a rent of ₹ 5,000 per month with effect from 01.09.2023. His basic salary is ₹ 11,000 per month. Calculate the value of Rent Free Accommodation in this case.

- (A) ₹ 11,000
- (B) ₹ 77,000

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(C) ₹ 35,000

(D) ₹ 7,700

Question 5

Mr. Hiyakash employed in a company at Kolkata furnishes the following information. Basic Salary ₹ 45,000 up to 31st August, 2023 and thereafter an increment of ₹ 5,000 up to 31st March, 2024. DA is 50% of basic salary. Motor car engine with more than 1.6 litres capacity was given by the employer self driven by Hiyakash and is used both for Official and personal purposes Running expenses met by the Employer was ₹ 60,000. Profession Tax on Employment ₹ 7,000 paid by Mr. Hiyakash. Gross Total Income in this case is :

(A) 8,34,300

(B) 8,41,300

(C) 8,12,500

(D) 8,05,500

Question 6

The Gross Annual Value of any House Property cannot exceed :

(A) Municipal Valuation

(B) Expected Rent

(C) Standard Rent

(D) Fair Value

Question 7

Calculate the total Depreciation that can be claimed under the Income Tax in the following case :

(1) Asset 1 purchased on 01.04.2023 for ₹ 4,00,000 and put to use instantly

(2) Asset 2 purchased on 01.08.2023 for ₹ 3,00,000 and put to use on 10th March 2024

(3) Asset 3 purchased on 01.11.2023 for ₹ 3,00,000 and put to use on 01.05.2024

(Rate of Depreciation in all cases is 10%)

(A) ₹ 50,000

(B) ₹ 55,000

(C) ₹ 70,000

(D) ₹ 1,00,000

Question 8

Loss arising on account of illegal business :

(A) Cannot be set off

(B) Can be set off against the profits of legal business

(C) Will be treated under as unexplained expenditure

(D) None of the above

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Question 9

The provision of Presumptive taxation under Section 44AD shall be applicable where the total turnover of Gross Receipts does not exceed :

- (A) ₹ 1,00,00,000
- (B) ₹ 2,00,00,000
- (C) ₹ 3,00,00,000
- (D) ₹ 5,00,00,000

Question 10

Mr. Micklu having business Income of ₹ 2,11,850. Long Term Capital Gain from sale of Land is ₹ 86,678 and Income from other sources from Bank Interest is ₹ 2,172 for the Financial Year ended 31.03.2024. What will be the tax payable by him if he is opting under section 115 BAC ?

- (A) NIL
- (B) ₹ 177
- (C) ₹ 8,688
- (D) None of the above

Question 11

Cost of improvement shall be indexed if :

- (A) It is expended before the acquisition of Capital Assets
- (B) If it is done before 36 months before the date of transfer
- (C) If it is done before 12 months before the date of transfer
- (D) If it is a LTCA

Question 12

Mr. A entered into an agreement with Mr. B for Sale of Building for ₹ 35 Lakhs in June 2023 and received advance of ₹ 3 Lakhs. As a condition of this agreement if the agreement has been cancelled advance money would have been forfeited. The agreement has been cancelled in August 2023 and that advance have been forfeited. This advance money is :

- (A) Taxable as Capital Gain
- (B) To be reduced from the cost of acquisition
- (C) Taxable as Income under Income from other sources
- (D) Not Taxable at all

Question 13

Mr. P acquired a building from his friend on 08.11.2023 for ₹ 30 Lakhs. The stamp duty value of the building on the date of purchase was ₹ 33.50 Lakhs. What will be the income that is chargeable in the hands of Mr. P ?

- (A) NIL
- (B) ₹ 50,000

- (C) ₹ 17,500
- (D) ₹ 3,50,000

Question 14

Mr. P has two daughters and two sons all of which are minor. The Annual Income of two sons are ₹ 6,000 and ₹ 3,000 respectively. The annual income of two daughters are ₹ 8,000 and ₹ 6,000 respectively. The daughters whose income is ₹ 6,000 is from singing competition. How much amount of income will be clubbed in the hands of Mr. P. The assessee opt 115BAC (1A) of the Income Tax Act, 1961 :

- (A) ₹ 14,000
- (B) ₹ 20,000
- (C) ₹ 17,000
- (D) ₹ 12,500

Question 15

The assessee fails to pay the advance tax in 4th instalments in due time. The interest to be calculated in this case for months.

- (A) 1
- (B) 2
- (C) 3
- (D) 4

Question 16

A person won a third prize in lottery for ₹ 10,000 during the Financial Year 2024-25. How much amount of TDS will be deducted in this case ?

- (A) ₹ 3,120
- (B) ₹ 520
- (C) ₹ 1,040
- (D) NIL

Question 17

A person has business income of ₹ 3,20,000. His Long Term Capital Gain is ₹ 45,000 and Short term Capital loss is (₹ 25,000). What will be his total income in this case ?

- (A) ₹ 3,20,000
- (B) ₹ 3,40,000
- (C) ₹ 2,95,000
- (D) ₹ 3,65,000

Question 18

Maximum permissible deduction under section 80G which is subject to qualifying limit is restricted to :

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- (A) 5% of Total Income
- (B) 5% of Adjusted Gross Total Income
- (C) 10% of Gross Total Income
- (D) 10% of Adjusted Gross Total Income

Question 19

Section 80 requires mandatory filing of Return of loss under section 139(3) on or before the due date for carry forward of following losses except :

- (A) Profit and gains from business and profession
- (B) Loss from maintenance of race horses
- (C) Loss from Income from House Property
- (D) Loss under the head Capital Gains

Question 20

PQR Pvt Ltd earned ₹ 15,00,000 for the year ended 31.03.2024 from sale of Coffee from growing and curing in India. How much income will be chargeable to tax as Agricultural Income in this case ?

- (A) ₹ 6,00,000
- (B) ₹ 11,25,000
- (C) ₹ 9,00,000
- (D) ₹ 3,75,000

Question 21

A person is deducting TDS under Section 194C for an Individual whose PAN is not linked with AADHAR. The TDS rate will be :

- (A) 1%
- (B) 2%
- (C) 10%
- (D) 20%

Question 22

Deduction u/s 80JJAA in respect of employment of a new workman can be claimed by company for an amount equals to :

- (A) 15% of additional wages
- (B) 20% of additional wages
- (C) 30% of additional wages
- (D) 40% of additional wages

Question 23

A Ltd. paid ₹ 40,000 by cash to Mr. Q a supplier on 5/9/2023 on which the Nationalised bank was on strike. The amount of expenditure liable for disallowance u/s 40A(3) is :

- (A) ₹ 12,000
- (B) ₹ 40,000
- (C) ₹ 30,000
- (D) NIL

Question 24

Dr. Chow Mow is a medical practitioner, has gross receipt of ₹ 51,50,000 for the F.Y. 2023-24, his total receipts consists 75% cash receipts and balance through the bank. His presumptive income u/s 44ADA would be :

- (A) 25,25,000
- (B) 25,75,000
- (C) 4,12,000
- (D) None of the above

Question 25

Mr. S, an Indian citizen, currently resides in Dubai. He came to India on a visit and his total stay in India during the F.Y. 2023-24 was 135 days. He is not liable to pay any tax in Dubai. Following are his details of stay in India in the preceding previous years :

Financial Year	Days of Stay in India
2022-23	100
2021-22	125
2020-21	106
2019-20	83
2018-19	78
2017-18	37
2016-17	40

What shall be his residential status for the P.Y. 2023-24 if his total income (other than income from foreign sources) is ₹ 10 lakhs ?

- (A) Resident but not ordinary resident
- (B) Resident and ordinary resident
- (C) Non-resident
- (D) Deemed resident but not ordinarily resident

Question 26

Mr. K completed his MBA in April 2023 and joined XYZ Ltd from 01.05.2023. His basic salary is ₹ 2,25,000 p.m. He is paid 12% of basic salary as D.A forming part of retirement benefits. He contributed 11% of his pay and D. A towards recognized provident fund and the company contributes the same amount. Accumulated interest on provident fund as on 31.3.2024 is ₹ 49,325. What would be the

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income chargeable to tax under the head "Salaries" of Mr. K for the A. Y. 2024-25, if he does not opt for section 115BAC ?

- (A) ₹ 27,26,442
- (B) ₹ 27,30,884
- (C) ₹ 27,22,000
- (D) ₹ 27,71,325

Question 27

Mr. R has three houses for self-occupation. What would be the tax treatment for A.Y. 2024-25 in respect of income from house property ?

- (A) One house, at the option of Mr. R, would be treated as self-occupied . The other two houses would be deemed to be let out
- (B) Two houses, at the option of Mr. R, would be treated as self-occupied. The other house would be deemed to be let out
- (C) One house, at the option of Assessing Officer, would be treated as self- occupied. The other two houses would be deemed to be let out
- (D) Two houses, at the option of Assessing Officer, would be treated as self- occupied. The other house would be deemed to be let out

Question 28

If the converted property is subsequently partitioned among the members of the family, the income derived from such converted property as is received by the spouse of the transferor will be taxable :

- (A) as the income of the karta of the HUF
- (B) as the income of the spouse of the transferor
- (C) as the income of the HUF
- (D) as the income of the transferor-member

Question 29

Mr. A gifted a house property to his wife, Mrs. M and a flat to his daughter-in-law. Mrs. S. Both the properties were let out. Which of the following statements is correct ?

- (A) Income from both properties is to be included in the hands of Mr. A by virtue of section 64
- (B) Income from property gifted to wife alone is to be included in Mr. A's hands by virtue of section 64
- (C) Mr. A is the deemed owner of house property gifted to Mrs. M and Mrs. S.
- (D) Mr. A is the deemed owner of property gifted to Mrs. M. Income from property gifted to Mrs. S would be included in his hands by virtue of section 64

Question 30

During the A.Y. 2023-24, Mr. K has a loss of ₹ 6 lakhs under the head "Income from house property", loss of ₹ 5 lakhs from business of profession and income of ₹ 3 lakhs from long term capital gains. He filed his return of income for the A.Y. 2023-24 on 31.12.2023. Determine the total income of Mr. K for A.Y. 2023-24 and the amount of loss which can be carried forward in a manner most beneficial

to him ?

- (A) Total income Nil; loss of ₹ 4,00,000 from house property and loss of ₹ 4,00,000 from business or profession
- (B) Total income ₹ 1,00,000; loss of ₹ 4,00,000 from house property
- (C) Total income Nil; No loss is allowed to be carried forward
- (D) Total income Nil; loss of ₹ 6,00,000 from house property

Question 31

Mr. J, an employee of X Ltd, attained 60 years of age on 15.05.2023. He is resident in India during F.Y. 2023-24 and earned salary income of ₹ 5 lakhs (computed). During the year, he earned ₹ 7 lakhs from winning of lotteries. What shall be his advance tax liability for A.Y. 2024-25, if all tax deductible at source has been duly deducted and remitted to the credit of Central Government on time ? Assume that he does not opt to pay tax under section 115BAC.

- (A) ₹ 2,20,000 + Cess ₹ 8,800 = ₹ 2,28,800, being the tax payable on total income of ₹ 12 lakhs
- (B) ₹ 2,10,000 + Cess ₹ 8,400 = ₹ 2,18,400, being the tax payable on lottery income of ₹ 7 lakhs
- (C) ₹ 10,000 + Cess ₹ 8,800 = ₹ 18,800, being the net tax payable on salary income, since tax would have been deducted at source from lottery income
- (D) NIL

Question 32

In which of the following transactions, quoting of PAN is mandatory by the person entering into the said transaction ?

- (i) Opening a basic savings bank deposit account with a bank
- (ii) Applying to a bank for issue of a credit card
- (iii) Payment of ₹ 40,000 to mutual fund for purchase of its units
- (iv) Cash deposit with a post office of ₹ 1,00,000 during a day
- (v) Sale of shares of an unlisted company for an amount of ₹ 60,000

Choose the correct answer :

- (A) (ii), (iv)
- (B) (ii), (iii), (iv)
- (C) (i), (ii), (iii), (v)
- (D) (ii), (iv), (v)

Question 33

The TDS Certificate issued by an employer to his employees in case of salary income is :

- (A) Form 16
- (B) Form 16A
- (C) Form 27Q
- (D) Form 26A

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Question 34

For making TAN application online, a person shall file his application in Form No :

- (A) 49A
- (B) 49B
- (C) 49C
- (D) 49D

Question 35

The appeal against the order of Appellate Tribunal can be filed to High Court :

- (A) Only if any substantial question of law is involved
- (B) Order is not favourable
- (C) If question of fact involved
- (D) None of the above

Question 36

Dividend received from domestic companies will be included in the total income of the shareholder and taxable at :

- (A) 18.5%
- (B) 5%
- (C) Exempt
- (D) Normal slab rate as applicable to assessee

Question 37

Share of profit is taxable in the hands of partner under the head :

- (A) Business and Profession
- (B) Capital Gain
- (C) Other Sources
- (D) Exempt from Tax

Question 38

Deduction for dividend u/s 80M is allowable to :

- (A) All type of tax payer assesses
- (B) An Individual and HUF who is resident of India
- (C) Domestic Company
- (D) Only Individuals

Question 39

Deduction under section 80E can be claimed for interest on loan for :

- (A) Any course of study after passing the Senior Secondary Examination or its equivalent from

any recognized school, board or university

- (B) For any course of higher education
- (C) Any course Recognized by State Government
- (D) Any course Recognized by Central Government

Question 40

Transfer of Income without transfer of assets would be taxable in the hands of :

- (A) Transferor only
- (B) Transferee only
- (C) Both (A) and (B)
- (D) None of the above

Question 41

Loss from speculative business may be carry forward up to :

- (A) 8 years
- (B) 4 years
- (C) 7 years
- (D) None of the above

Question 42

A registered trade union earned income by way of interest on fixed deposit held with State Bank of India of ₹ 6,00,000. The interest income chargeable to tax in the hands of trade union would be :

- (A) ₹ 6,00,000
- (B) ₹ 3,00,000
- (C) ₹ 4,00,000
- (D) Nil

Question 43

Which of the following income is agricultural income ?

- (A) Rent received from agricultural land
- (B) Income from dairy farm
- (C) Income from poultry farm
- (D) Dividend from a company engaged in agriculture

Question 44

The definition of Salary for the purposes of computing income under the head 'Salaries' is Basic + Dearness Allowance + Commission as a % of Turnover ?

- (A) Always
- (B) In some cases

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- (C) The definition is irrelevant
- (D) None of the above

Question 45

Unabsorbed depreciation which could not be set off in the assessment year in which it arose, can be carried forward for :

- (A) 8 years
- (B) Indefinite period
- (C) 4 years
- (D) 12 years

Question 46

In terms of Section 2(42A), listed securities are treated as long-term capital asset, if they are held for a period of more than :

- (A) 12 months
- (B) 36 months
- (C) 24 months
- (D) 48 months

Question 47

Income of a minor child from a Fixed Deposit with a bank, made out of income earned from scholarship, is to be :

- (A) Assessed in the hands of the minor child
- (B) Clubbed with the income of the parent whose total income before such clubbing is higher
- (C) Exempted from tax
- (D) Clubbed with father's income

Question 48

Loss from the activity of owning and maintaining race horses can be set off against of the same assessment year.

- (A) Speculation profits
- (B) Specified business profits
- (C) Any business profits
- (D) Income from owning and maintaining race horses

Question 49

Capital asset excludes all except

- (A) Stock-in-trade
- (B) Personal effects
- (C) Jewellery

- (D) Agricultural land in India

Question 50

Rajat purchased a car for his personal use for ₹ 5,00,000 in April, 2020 and sold the same for ₹ 5,50,000 in July, 2023. The taxable capital gains is

- (A) Nil
(B) ₹ 5,50,000
(C) ₹ 50,000
(D) ₹ 4,00,000

PART-II**Question 51**

The highest CGST rate legally permitted for intrastate supplies is

- (A) 18%
(B) 28%
(C) 40%
(D) 20%

Question 52

What duties are taxes on intra-State supplies in case of Union Territories ?

- (A) UTCGST and UTSGST
(B) CGST and UTGST
(C) CGST and SGST
(D) GST and UTGST

Question 53

Time limit for issue of Debit Note or Credit Note in GST is :

- (A) 30 days
(B) 90 days
(C) 180 days
(D) No time limits

Question 54

The 13th digit of GST Number indicates :

- (A) The number of registrations in a state for the same PAN (Alphanumeric)
(B) The number of products deals in
(C) The number chosen by the Owner
(D) None of the above

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Question 55

A person shall be entitled to the credit of any input tax in respect of supply of any goods or services or both to him unless :

- (A) He has received the goods or services or both
- (B) He has furnished the return under section 39
- (C) He is in possession of a tax invoice
- (D) All of the above

Question 56

Annual Return under GST is not required to be filed by :

- (A) Casual Taxable Person
- (B) Non-Resident Tax Payer
- (C) Input Service Distributor
- (D) All of the above

Question 57

Final Return under GST is required to be filed :

- (A) 28th/29th February of every year
- (B) 20th of the month succeeding the quarter
- (C) Every six month of the Financial Year
- (D) Within 3 months of the date of cancellation or the date of order of cancellation whichever is later

Question 58

Penalty for not mentioning or wrongly mentioning HSN/SAC code on Invoice or GSTR-1 is :

- (A) CGST ₹ 15,000 Plus SGST ₹ 15,000
- (B) CGST ₹ 25,000 Plus SGST ₹ 25,000
- (C) CGST ₹ 10,000 Plus SGST ₹ 10,000
- (D) CGST ₹ 5,000 Plus SGST ₹ 5,000

Question 59

The value of supply under GST shall be :

- (A) Retail Sale Price
- (B) Transaction Value
- (C) Wholesale Price
- (D) All of the above

Question 60

Mr. X sells good to Mr. Y for ₹ 70,000 on 01.08.2024 with a term that payment will be done on 15.08.2024. The condition was imposed that if Mr. Y did not able to pay by 15.08.2024 he will be

liable to pay a penalty of ₹ 15 per day basis. Mr. Y made the payment on 28.08.2024 which was accepted by Mr. X. What will be the value of this transaction under GST ?

- (A) ₹ 70,000
- (B) ₹ 70,195
- (C) ₹ 70,240
- (D) All of the above

Question 61

Section 23 of the CGST Act, 2017 deals with :

- (A) Person liable for Registration
- (B) Person not liable for Registration
- (C) Compulsory Registration in certain cases
- (D) Registration for Casual Taxable Person

Question 62

The invoice in case of a taxable supply of services shall be issued within a period of 45 days from the date of supply of services by :

- (A) Banking Company
- (B) Financial Institution
- (C) NBFC
- (D) All of the above

Question 63

In case of continuous supply of service where the payment is linked to the completion of the event, the invoice must be issued :

- (A) On or before due date of payment which is ascertainable
- (B) On or before the receipt of such payment by the supplier
- (C) On or before the completion of the Event
- (D) All of the above

Question 64

E-Way bill is mandatory in case of movements of goods of consignment value exceeding ₹ 50,000. The movement should be :

- (A) In relation to a supply
- (B) For reasons other than supply
- (C) Due to inward supply from an unregistered person
- (D) All of the above

Question 65

A Registered person is supplying taxable as well as exempted goods to an unregistered person. He

may issue :

- (A) Only Invoice
- (B) Only bill of supply
- (C) Invoice cum bill of supply
- (D) None of the above

Question 66

Goods may be transported without issue of invoice in case of :

- (A) Supply of liquid gas where the quantity at the time of removal from the place of business of the supplier is not known
- (B) Transportation of goods for job work
- (C) Transportation of goods for reasons other than by way of supply
- (D) All of the above

Question 67

Certain goods have been supplied by a manufacturing company under free warranty. Which one of following statements is true ?

- (A) Supply is not in the course of business
- (B) No GST is charged on replacements
- (C) Supplier is required to reverse the ITC on the replacement part
- (D) All of the above

Question 68

Mini Hotels offers 6 days 5 nights package along with the dinner and Breakfast along with the Room Accommodation for a certain ₹ 10,000 for attracting guests. This type of supply is considered as :

- (A) Composite Supply
- (B) Mixed Supply
- (C) Both Composite and Mixed Supply
- (D) None of the above

Question 69

A claim for ITC under Reverse Charge can be claimed :

- (A) After issue of Invoice
- (B) After Payment of Tax Liability
- (C) Earlier of (A) and (B)
- (D) Later of (A) or (B)

Question 70

Date of Actual Provision of Service 10.12.2023, Date of Invoice 30.12.2023, Date on which the payment was received 15.12.2023. The time of supply under section 13(2) of CGST will be :

- (A) 15.12.2023
- (B) 10.12.2023
- (C) 30.12.2023
- (D) 10.01.2024

Question 71

Mr. X sells a product to Mr. Y for ₹ 25,000. Mr. Y provided free consultancy to Mr. X for ₹ 4,000. The normal value of the product is not available. The value of supply in this case will be :

- (A) ₹ 25,000
- (B) ₹ 21,000
- (C) ₹ 29,000
- (D) ₹ 4,000

Question 72

Aggregate Turnover of a Registered Person is ₹ 15,00,000 out of which ₹ 6,00,000 is exempted turnover and ₹ 9,00,000 is taxable turnover. The common input on which GST is paid is ₹ 2,16,000. The eligible ITC on Common input as per section 17(2) is :

- (A) ₹ 2,16,000
- (B) ₹ 86,400
- (C) ₹ 1,08,000
- (D) ₹ 1,29,600

Question 73

Which one of the following is the case of Blocked Credit ?

- (A) Goods lost due to theft
- (B) Goods destroyed due to fire
- (C) Goods destroyed due to national calamities
- (D) All of the above

Question 74

A registered person (hereafter in this section referred to as the "principal") may under intimation and subject to such conditions as may be prescribed, send any inputs or capital goods, to a job worker for job work.

- (A) With Payment of Tax (25%)
- (B) With Payment of Tax (50%)
- (C) With Payment of Tax (75%)
- (D) Without Payment of Tax

Question 75

If a person who has registered voluntarily does not commence business within from the date of registration, their GST registration may be cancelled by proper officer under section 29(2).

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- (A) 3 months
- (B) 6 months
- (C) 9 months
- (D) 12 months

Question 76

Which of the following supply of services are exempt under GST ?

- (i) Testing of agricultural produce
 - (ii) Supply of farm labour
 - (iii) Warehousing of agricultural produce
- (A) (i)
 - (B) (i) and (ii)
 - (C) (ii) and (iii)
 - (D) (i), (ii) and (iii)

Question 77

Mr. N, a casual taxable person, is not involved in making taxable supplies of notified handicraft goods or predominantly hand-made notified products. Which of the following statements is true for Mr. X - a casual taxable person ?

- (A) Mr. N is not required to take registration under GST under any circumstances
- (B) Mr. N is required to get registration under GST if the aggregate turnover in a financial year exceeds ₹ 20 lakhs
- (C) Mr. N is required to get registration under GST if the aggregate turnover in a financial year exceeds ₹ 40 lakhs
- (D) Mr. N has to compulsorily get registered under GST irrespective of the threshold limit

Question 78

Balance in electronic credit ledger can be utilized against payment of :

- (A) Output tax
- (B) Interest
- (C) Penalty
- (D) Late fees

Question 79

LMN & Associates made an application for cancellation of GST registration in the month of March due to closure of its business. Its application for cancellation of GST registration was approved w.e.f. 4th September by the proper officer by passing an order for the same on 14th September. In the given case, LMN & Associates is :

- (A) Required to file Final Return on or before 4th December
- (B) Not required to file Final Return

- (C) Required to file Final Return on or before 30th September
- (D) Required to file Final Return on or before 14th December

Question 80

ABC & Co. has three branches, in Jalandhar, Amritsar and Ludhiana, in the State of Punjab. Amritsar and Ludhiana branches are engaged in supply of garments and Jalandhar branch engaged in supply of shoes. Which of the following options is/are legally available for registration to ABC & Co.?

- (i) ABC & Co. can obtain single registration for Punjab State declaring any one of the branches as principal place of business and other two branches as additional place of business
 - (ii) ABC & Co. can obtain separate GST registration for each of the three branches—Amritsar, Jalandhar and Ludhiana
 - (iii) ABC & Co. can obtain one GST registration for shoe business (Jalandhar branch) and another GST registration which is common for garments business (Amritsar and Ludhiana).
- (A) (ii)
(B) Either (i), (ii) or (iii)
(C) Either (i) or (ii)
(D) Either (ii) or (iii)

Question 81

Discount given after the supply has been effected, is deducted from the value of taxable supply, if :

- (i) Such discount is given as per the agreement entered into at/or before the time of such supply
 - (ii) Such discount is linked to the relevant invoices
 - (iii) Proportionate input tax credit is reversed by the recipient of supply
- (A) (i)
(B) (i) and (ii)
(C) (ii) and (iii)
(D) (i), (ii) and (iii)

Question 82

Which of the following statements are correct ?

- (i) Revocation of cancellation of registration under SGST/UTGST Act shall be deemed to be a revocation of cancellation of registration under CGST Act
 - (ii) Cancellation of registration under SGST/UTGST Act shall be deemed to be a cancellation of registration under CGST Act
 - (iii) Revocation of cancellation of registration under SGST/UTGST Act shall not be deemed to be a revocation of cancellation of registration under CGST Act
 - (iv) Cancellation of registration under SGST/UTGST Act shall not be deemed to be a cancellation of registration under CGST Act
- (A) (i) and (ii)

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- (B) (i) and (iv)
- (C) (ii) and (iii)
- (D) (iii) and (iv)

Question 83

Which of the following persons engaged in making intra-state supplies from Uttar Pradesh, as prescribed below, is not eligible for composition levy under sub-sections (1) and (2) of the CGST Act, 2017 even though their aggregate turnover does not exceed 1.5 crore in preceding FY ?

- (A) A person supplying restaurant services
- (B) A person supplying restaurant services and earning bank interest
- (C) A person trading in ice cream
- (D) A person supplying service of repairing of electronic items

Question 84

Which of the following services does not fall under reverse charge provisions as contained under section 9(3) of the CGST Act ?

- (A) Services supplied by arbitral tribunal to business entity located in Ladakh
- (B) Sponsorship services provided to a partnership firm located in Jammu and Kashmir
- (C) Sponsorship services provided to a body corporate located in Kerala
- (D) Service of renting of motor vehicle for passengers provided to a recipient other than body corporate

Question 85

Which of the following services are exempt from GST ?

- (A) Admission to a circus where entry ticket costs 550 per person
- (B) Interest charged on outstanding credit card balances
- (C) Services by an organizer to any person in respect of a business exhibition held in India
- (D) Services by a foreign diplomatic mission located in India

Question 86

Where the goods being sent or taken on approval for sale or return are removed before the supply takes place, the invoice shall be issued :

- (A) Before/at the time of supply
- (B) 6 months from the date of removal
- (C) Earlier of (A) or (B)
- (D) Later of (A) or (B)

Question 87

Invoice shall be prepared in in case of taxable supply of goods and in in case of taxable supply of services.

- (A) Triplicate, Duplicate

- (B) Duplicate, Triplicate
- (C) Duplicate, Duplicate
- (D) Triplicate, Triplicate

Question 88

Input tax credit shall not be available in respect of :

- (i) Goods used for personal consumption
 - (ii) Membership of a club provided by the employer to its employees as per company's internal policy
 - (iii) Travel benefits extended to employees on vacation such as leave or home travel concession as per company's internal policy
- (A) (i)
 - (B) (i) and (ii)
 - (C) (ii) and (iii)
 - (D) (i), (ii) and (iii)

Question 89

Assuming that all the activities given below are undertaken for a consideration, state which of the following is not a supply of service ?

- (A) Renting of commercial office complex
- (B) An employee agreeing to not work for the competitor organization after leaving the current employment
- (C) Repairing of mobile phone
- (D) Provision of services by an employee to the employer in the course of employment

Question 90

IGM stands for :

- (A) Internal General Memo
- (B) International General Memo
- (C) Import General Manifesto
- (D) None of the above

Question 91

Which financial year is taken as base year for the purpose of calculating compensation amount payable to the states under GST (Compensation to States) Act, 2017 ?

- (A) Financial Year 2014-15
- (B) Financial Year 2016-17
- (C) Financial Year 2015-16
- (D) None of the above

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Question 92

Advance Ruling can be sought for :

- (A) Classification of any goods or services or both
- (B) Determination of time and value of supply of goods or services or both
- (C) Admissibility of input tax credit of tax paid or deemed to have been paid
- (D) All of the above

Question 93

Aggregate Turnover under CGST Act includes :

- (A) All taxable supplies
- (B) Exempt supplies
- (C) Zero-rated supplies
- (D) All of the above

Question 94

The biggest benefit of ITC is :

- (A) Eliminating the cascading effect of taxes
- (B) Reducing the cost of goods and services
- (C) Paradigm shift from individuals paying more taxes to more individuals paying taxes
- (D) All of the above

Question 95

A shirt manufacturing company sends semi- finished shirts (without collars and pockets) to job workers who will complete the remaining work. In such a situation, the would be allowed to take the credit of the tax paid on purchases of the goods sent for job work.

- (A) Job Workers
- (B) Principal Manufacturer
- (C) Both of the above
- (D) None of the above

Question 96

ABC Consultants, registered at Delhi provides GST training to employees of Sanjay & Co. at Mathura, Uttar Pradesh. Sanjay & Co. is unregistered under GST Act. In this case, which is the place of supply?

- (A) Uttar Pradesh
- (B) Delhi
- (C) Any of the above
- (D) None of the above

Question 97

What will be the value of goods, if consideration paid is not wholly in money and open market

value of such goods are also known ?

- (A) Actual value paid in money
- (B) Open market value of such goods
- (C) 90% of open market value of such goods
- (D) None of the above

Question 98

The supply will be charged at the rate applicable to the supply that attracts the highest rate of tax from within the consolidated package.

- (A) Mixed
- (B) Composite
- (C) Principal
- (D) None of the above

Question 99

Section 10 of the CGST Act, 2017 contains provisions related to

- (A) Procedure for registration
- (B) Composition Scheme
- (C) Meaning and Scope of Supply
- (D) None of the above

Question 100

GST on these goods will be applicable, when recommended by the GST Council.

- (A) Petroleum Crude
- (B) High Speed Diesel
- (C) Motor Spirit
- (D) All of the above

Set A	
Question	Answer
Part I	
Q1	D
Q2	A/D
Q3	D
Q4	D
Q5	A/B
Q6	*
Q7	B
Q8	A/B
Q9	B/C
Q10	A
Q11	D
Q12	C
Q13	D
Q14	C
Q15	A
Q16	D
Q17	B
Q18	D
Q19	C
Q20	B
Q21	D
Q22	C
Q23	B
Q24	D
Q25	C
Q26	*
Q27	B
Q28	D
Q29	D
Q30	D
Q31	D
Q32	A
Q33	A

Q34	B
Q35	A
Q36	D
Q37	D
Q38	C
Q39	A/B
Q40	A
Q41	B
Q42	D
Q43	A
Q44	B
Q45	B
Q46	A
Q47	B
Q48	D
Q49	C
Q50	A
Part II	
Q51	D
Q52	B
Q53	*
Q54	A
Q55	*
Q56	D
Q57	D
Q58	B
Q59	B
Q60	B
Q61	B
Q62	D
Q63	C
Q64	D
Q65	C
Q66	D
Q67	B
Q68	A

Q69	D
Q70	A
Q71	C
Q72	D
Q73	D
Q74	D
Q75	B
Q76	D
Q77	D
Q78	A
Q79	D
Q80	B
Q81	D
Q82	A
Q83	D
Q84	D
Q85	D
Q86	C
Q87	A
Q88	D
Q89	D
Q90	C/D
Q91	C
Q92	D
Q93	D
Q94	*
Q95	B
Q96	A
Q97	B
Q98	A
Q99	B
Q100	D

(SET A)	
Q. 2	Option D is correct. However, Option A may also be considered as correct in case Income earned and received in current previous year and remitted to India also in current previous year.
Q. 5	Option A is correct assuming assessee has opted out of section 115BAC. Option B is correct assuming assessee is paying tax u/s 115BAC of the Income tax Act, 1961.
Q. 6	The GAV is higher of Expected Rent or Actual Rent. No options are correct.
Q. 8	There is no specific provisions in the Income tax Act, 1961 or the Rules 1962, allowing / disallowing set off of loss of illegal business from profits of legal business. Further, According to the judgment passed by the Supreme Court, loss of illegal business can be set off and carried forward against the profit of legal business, if so claimed by assessee. [T.A. QUERESHI vs. COMMISSIONER OF INCOME TAX - SC]. Therefore both option A or B can be considered as correct.
Q. 9	Option B is correct. Further, Option C may also be considered as correct if the receipts in cash is not exceeding 5% of the Gross receipt. Then in such case the limit for the applicability of section 44AD is Rs. 3 crore (total turnover / gross receipt.).
Q. 26	No option are correct. Rate of PF Interest is not specifically mentioned in the question to compute the taxable portion and therefore the final answer would not be computed.
Q. 39	Option A / B both are correct. Section 80E Deduction in respect of interest on loan taken for higher education. Further "higher education" means any course of study pursued after passing the Senior Secondary Examination or its equivalent from any school, board or university recognised by the Central Government or State Government or local authority or by any other authority authorised by the Central Government or State Government or local authority to do so;
Q. 53	No options are correct, As per section 34(2) of CGST Act, 2017, Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than the thirtieth day of November following the end of the financial year in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier, and the tax liability shall be adjusted in such manner as may be prescribed.
Q. 55	No option are correct. The correct framing of the question should be as under: "A person shall not be entitled to the credit of any input tax in respect to supply of any goods or services or both to him unless". The word "shall not" be used instead of "shall".
Q. 90	IGM stands for Import General Manifest. There is a typo error in the option C due to which depicts different meaning. Therefore Both option C/D may be considered as correct.
Q. 94	All the options given are benefit of ITC. However, very difficult to judging the "biggest" benefit of ITC . Therefore, all options are correct.

NOTES

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