

Drafting, Appearances and Pleadings

372

Roll No.....

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 8

Total number of printed pages : 4

NOTE : Answer SIX questions including Question No.1 which is compulsory.

1. (a) The Board meeting agenda item No.5 of the Caeltex Petroleum Co. Ltd., reads as under :

"To consider and approve the draft of dealership allotment letter to ten petroleum dealers of Andhra Pradesh; and to treat it as modified dealership contract between the company and dealers."

In the meeting, Rohit, Director (Marketing) explained that finalising the dealership contracts as per standard format is detrimental to expansion of company's business in Andhra Pradesh. A simple letter of dealership allotment will boost marketing prospects for the company in this area which has been stung by fierce competition from rival companies. But, Pranav, Director (Legal) opposed this move on the ground that it may involve legal complications at a later stage. After some discussion, the Chairman-cum-Managing Director (CMD) decided to call for legal expert's advice in this matter.

As the legal consultant, draft a note highlighting :

- (i) Basic precautions involved in drafting such deeds; and
- (ii) Ways and means to balance the approaches of Director (Marketing) and Director (Legal) as to dealership contracts.

(10 marks)

(b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :

- (i) Recitals carry _____ importance in a deed. It is an evidence against the parties to the _____ and those claiming under it.
- (ii) The term '*force majeure*' relates to excuses for _____ .
- (iii) Draftsmen should avoid the use of words 'less than' or 'more than'; instead they should use _____ .
- (iv) Section 129 of the Indian Contract Act, 1872 lays down that a guarantee which extends to a series of _____ is called a _____ guarantee.
- (v) The term 'deed' normally refers to all the instruments by which two or more persons agree to effect any _____ or _____ .

(2 marks each)

2. (a) Explain the following :

- (i) Consent orders.
- (ii) Provisions relating to appeal to the Securities Appellate Tribunal under the Securities and Exchange Board of India Act, 1992.

(4 marks each)

(b) State the provisions under the Foreign Exchange Management Act, 1999 relating to compounding of offences committed under the Act.

(8 marks)

3. (a) Draft a specimen of underwriting contract.

(6 marks)

(b) With reference to section 76 of the Companies Act, 1956 distinguish between 'underwriting agreement' and 'underwriting contract'.

(2 marks)

(c) State, with reasons in brief, whether the following statements are true or false :

- (i) Since Wakfs are trusts, the Indian Trusts Act, 1882 applies to Wakfs floated under the Muslim Law.
- (ii) The fundamental rules of pleadings as provided in the Code of Civil Procedure, 1908 are applicable in cases of petitions/applications under other statutes.
- (iii) The absence of prayer for relief in an appeal does not appear to be fatal to the case.
- (iv) 'Drafting' and 'conveyancing' are inter-changeable terms.

(2 marks each)

4. Write notes on **any four** of the following :

- (i) Affidavits
- (ii) Surrender of lease
- (iii) Arbitration agreements
- (iv) Principles governing the construction of a power of attorney
- (v) Court craft.

(4 marks each)

: 3 :

5. (a) Draft a specimen of memorandum of mortgage by deposit of title deeds.

(8 marks)

- (b) Match the following :

- | | |
|--|-----------------------------------|
| (i) To have the body | (a) <i>Force majeure</i> |
| (ii) Command | (b) <i>Testatum</i> |
| (iii) Witnessing clause | (c) <i>Deed pool</i> |
| (iv) Extra remuneration to an agent | (d) <i>Cyrographum</i> |
| (v) Excuses for non performance | (e) <i>Habeas corpus</i> |
| (vi) Deed having two or more parties | (f) <i>Mandamus</i> |
| (vii) Written between two or more copies | (g) <i>Del credere commission</i> |
| (viii) For the benefit of | (h) <i>Cestui que trust.</i> |

(1 mark each)

6. (a) What is meant by 'pre-incorporation contracts' ? Can a company ratify a contract entered into by the promoters on its behalf before its incorporation ? Explain with reasons.

(10 marks)

- (b) Select the odd term out and briefly justify your answer :

- (i) prohibition, mandatory injunction, *habeas corpus*, special civil application.
- (ii) ratio, obiter, decree holder, issues.
- (iii) dilatory pleas, memorandum of appeal, grounds of appeal, reliefs sought for.

(2 marks each)

7. (a) What are the advocacy tips to be borne in mind by a Practising Company Secretary while appearing before a tribunal ?

(10 marks)

- (b) Distinguish between the following :

- (i) 'Registration of partnership firm under the Income-tax Act, 1961' and 'registration of partnership firm under the Indian Partnership Act, 1932'.
- (ii) 'Public trust' and 'private trust'.

(3 marks each)

8. (a) A partnership dissolution deed may be written on a plain paper. Its registration is not compulsory. No format is prescribed for it. Illustrate through a 'specimen deed of dissolution' of a partnership firm.

(10 marks)

- (b) ABC Ltd. wishes to draw a note on duties for its newly appointed Company Secretary with respect to court, client and opponent while representing the company in a case before the Competition Commission of India, New Delhi. Draw out a draft note of Company Secretary's duties along these lines for consideration of the Chairman and Managing Director.

(6 marks)