

# GUIDELINE ANSWERS

## EXECUTIVE PROGRAMME

JUNE 2022

MODULE 1



**THE INSTITUTE OF  
Company Secretaries of India**

**भारतीय कम्पनी सचिव संस्थान**

**IN PURSUIT OF PROFESSIONAL EXCELLENCE**

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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:

<b>CS Examinations</b>	<b>Applicability of Amendments to Laws</b>
December Session	upto 31 May of that Calender year
June Session	upto 30 November of previous Calender Year

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## EXECUTIVE PROGRAMME EXAMINATION

JUNE 2022

### JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** Answer ALL Questions.

#### Question 1

- (a) *The sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good. Critically examine this statement of Bentham.*
- (b) *Examine how far the essentials of federal polity is incorporated in Indian Constitution.*
- (c) *'A' a state in the Union of India made provisions for district-wise distribution of seats in state medical colleges on the basis of population of a district to the population of the state. Decide the validity of this classification with the help of relevant case law.*
- (d) *Discuss in brief the power of the court to try offences under Indian Penal Code and any other law as laid down in Criminal Procedure Code, 1973.*

(5 marks each)

#### Answer 1(a)

According to Bentham 'a law' may be defined as an assemblage of signs, declarative of volition, conceived or adopted by a sovereign in a state, concerning the conduct to be observed in a certain case by a certain person or a class of persons, who in the case in question are or are supposed to be subject to his power. Bentham claimed that nature has placed man under the command of two sovereigns - pain and pleasure. 'Pleasure' in Bentham's theory has a somewhat large signification, including altruistic and obligatory conduct, the 'principle of benevolence'; while his idea of 'interest' was anything promoting pleasure. The function of laws should be to bring about the maximum happiness of each individual for the happiness of each will result in the happiness of all. The justification for having laws is that they are an important means of ensuring happiness of the members of community generally. Hence, the sovereign power of making laws should be wielded, not to guarantee the selfish desires of individuals, but consciously to secure the common good.

#### Answer 1(b)

The essential features of a Federal Polity or System are – dual Government, distribution of powers, supremacy of the Constitution, independence of Judiciary, written Constitution, and a rigid procedure for the amendment of the Constitution.

The political system introduced by our Constitution contain all the above essentials of a federal polity such as:

- (a) In India, there are Governments at different levels, like Union and States.

- (b) Powers to make laws have been suitably distributed among them by way of various lists as per the Seventh Schedule.
- (c) Both Union and States have to follow the Constitutional provisions when they make laws.
- (d) The Judiciary is independent with regard to judicial matters and judiciary can test the validity of independently. The Supreme Court decides the disputes between the Union and the States, or the States *inter se*.
- (e) The Constitution is supreme and if it is to be amended, it is possible only by following the procedure provided in Article 368 of the Constitution itself.

From the above, it is clear that the Indian Constitution basically has federal features.

### **Answer 1(c)**

In the case of P. Rajandran, Supreme Court held that for a valid classification, there has to be a rational nexus between the classification made by the law and the object sought to be achieved. A provision for district - wise distribution of seats to the State Medical Colleges on the basis of population of a district to the population of the state was held to be void.

### **Answer 1(d)**

Chapter III of the Criminal Procedure Code, 1973 deals with Power of Courts. One of such power is to try offences. Offences are divided into two categories:

- (a) those under the Indian Penal Code, 1860; and
- (b) those under any other law.

According to Section 26 of the Criminal Procedure, 1973, any offence under the Indian Penal Code, 1860 may be tried by the High Court or the Court of Session or any other Court by which such offence is shown in the First Schedule to be triable, whereas any offence under any other law shall be tried by the Court mentioned in that law and if not mentioned, it may be tried by the High Court or any other Court by which such offence is shown in the First Schedule to be triable. This section is a general section and is subject to the other provisions of the Criminal Procedure Code.

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

### **Question 2**

- (a) *Explain the exceptions to the rule of strict liability under Law of Torts.*
- (b) *Explain Heydon's rule of Interpretation of Statute.*
- (c) *How ratio decidendi differs from obiter dicta ?*
- (d) *Discuss the provision as to offences punishable under two or more enactments as stated under Section 26 of the General Clauses Act, 1897.*

*(4 marks each)*

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

- (i) *Explain the importance of 'time requisite for obtaining a copy' under Limitation Act, 1963 with the help of case law.*
- (ii) *What are the duties of a police officer while making an arrest under Section 41B and the right of an arrested person under Section 41D of Criminal Procedure Code, 1973 ?*
- (iii) *Discuss the remedies available to the defendant when an ex-parte decree is passed against him.*
- (iv) *Briefly discuss the intra-territorial and extra-territorial application of Indian Penal Code, 1860 with exceptions (4 marks each)*

**Answer 2(a)**

The exceptions to the rule of strict liability under Law of Torts are as under:

**(i) Damage due to Natural Use of the Land**

Things not essentially dangerous which is not unusual for a person to have on his own land, such as water pipe installations in buildings, the working of mines and minerals on land, the lighting of fire in a fire-place of a house, and necessary wiring for supplying electric light, fall under the category of "natural use" of land.

**(ii) Consent of the plaintiff**

Where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule of Strict Liability in Ryland v. Fletcher does not arise. Such a consent is implied where the source of danger is for the 'common benefit' of both.

**(iii) Act of Third Party**

If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable.

**(iv) Statutory Authority**

Sometimes, public bodies storing water, gas, electricity and the like are by statute, exempted from liability so long as they have taken reasonable care.

**(v) Act of God**

If an escape is caused, through natural causes and without human intervention circumstances which no human foresight can provide against and of which human prudence is not bound to recognize the possibility, there is then said to exist the defence of Act of God.

**(vi) Escape due to plaintiff's own Default**

Damage by escape due to the plaintiff's own default was considered to be good

defence of rule of strict liability in *Rylands v. Fletcher* itself. Also, if the plaintiff suffers damage by his own intrusion into the defendant's property, he cannot complain for the damage so caused.

### **Answer 2(b)**

#### **Heydon's rule of Interpretation of Statutes**

In Heydon's Case, in [1584] [76 ER 637 360 REP 7a], it was resolved by the Barons of the Exchequer that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered:

- (1) What was the Common Law before the making of the Act;
- (2) What was the mischief and defect for which the Common Law did not provide;
- (3) What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth; and
- (4) The true reason of the remedy.

Although judges are unlikely to propound formally in their judgments the four questions in Heydon's Case, consideration of the "mischief" or "object" of the enactment is common and will often provide the solution to a problem of interpretation. Therefore, when the material words are capable of bearing two or more constructions, the most firmly established rule for construction of such words is the rule laid down in Heydon's case which has "now attained the status of a classic". The rule directs that the Courts must adopt that construction which "shall suppress the mischief and advance the remedy". But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur.

### **Answer 2(c)**

The underlying principle of a judicial decision, which is only authoritative, is termed as *ratio decidendi*. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between the parties to it. The abstract *ratio decidendi* alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its *ratio decidendi*.

Where an issue requires to be answered on principles, the principles which are deduced by way of abstraction of the material facts of the case eliminating the immaterial elements is known as ratio decidendi and such principle is not only applicable to that case but to other cases also which are of similar nature.

#### *Obiter Dicta*

The literal meaning of *Obiter Dicta* Latin expression is "said by the way". The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of a

particular case and have the force of persuasive precedents only. Judges are not bound to follow them although they can take advantage of them.

**Answer 2(d)**

As per 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 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 2A(i)**

The term “time requisite for obtaining a copy” means the time which is reasonably required for obtaining such a copy. On the explanation to Section 12 of the Limitation Act, 1963, the Supreme Court in the case of *Udayan China Bhai v. R.C. Bali*, AIR 1977 SC 2319, held that by reading Section 12(2) of the Limitation Act, 1963 with explanation it is not possible to accept the submission that in computing the time requisite for obtaining copy of a decree by an application made after preparation of the decree, the time that elapsed between the pronouncement of the judgement and the signing of the decree should be excluded.

However, the time taken by the Court to prepare the decree or order before an application for a copy is made shall not be excluded in computing the time for obtaining a copy of a decree or an order.

**Answer 2A(ii)**

**Duties of the police officer while making arrest under Section 41B of the Code of Criminal Procedure, 1973**

According to section 41B of the Code of Criminal Procedure, 1973, every police officer while making an arrest shall:

- (a) bear an accurate, visible and clear identification of his name which will facilitate easy identification;
- (b) prepare a memorandum of arrest which shall be—
  - (i) attested by at least one witness, who is a member of the family of the person arrested or a respectable member of the locality where the arrest is made;
  - (ii) countersigned by the person arrested; and
- (c) inform the person arrested, unless the memorandum is attested by a member of his family, that he has a right to have a relative or a friend named by him to be informed of his arrest.

**Right of an arrested person under section 41D of the Code of Criminal Procedure, 1973**

According to Section 41D of the Code of Criminal Procedure, 1973, when any person is arrested and interrogated by the police, he shall be entitled to meet an advocate of his choice during interrogation, though not throughout interrogation.

**Answer 2A(iii)**

A defendant has four remedies available if an ex-parte decree is passed against him. These are as follows:

- (i) He may file an appeal against the ex-parte decree under Section 96 of the Code of Civil Procedure, 1908
- (ii) He may file an application for review of the judgement. (Order. 47, Rule.1)
- (iii) He may apply for setting aside the ex-parte decree.
- (iv) A suit can also be filed to set aside an ex-parte decree obtained by fraud but no suit shall lie for nonservice of summons.

**Answer 2A(iv)****Intra–territorial jurisdiction**

Where a crime/offence under any provision of the Indian Penal Code, 1860 (IPC) is committed within the territory of India the IPC applies and the courts can try and punish irrespective of the fact that the person who had committed the crime is an Indian national or foreigner. This is called 'intra-territorial jurisdiction' because the submission to the jurisdiction of the court is by virtue of the crime being committed within the Indian Territory. Section 2 of IPC deals with intra-territorial jurisdiction of the courts. This section declares the jurisdictional scope of operation of the IPC to offences committed within India. The emphasis on 'every person' makes it very clear that in terms of considering the guilt for any act or omission, the law shall be applied equally without any discrimination on the ground of caste, creed, nationality, rank, status etc.

**Exemption from intra-territorial jurisdiction of IPC:**

1. Article 361(2) of the Constitution of India protects criminal proceedings against the President or Governor of a state in any court, during the time they hold office.
2. In accordance with well-recognized principles of international law, foreign sovereigns are exempt from criminal proceedings in India.
3. This immunity is also enjoyed by the ambassadors and diplomats of foreign countries who have official status in India. This protection is extended to all secretaries and political and military attaches, who are formally part of the missions.

**Extra–territorial jurisdiction**

Section 3 and section 4 of the IPC provide for extra-territorial jurisdiction. Where a crime is committed outside the territory of India by an Indian national, such a person



may be tried and punished by the courts of India. According to section 3, if anyone commits any offence beyond India which is punishable in our country under any Indian law, he is liable to be convicted and punished in the same manner as if the crime was committed in India. Section 4 expands on section 3, while at the same time clarifying that the provisions of IPC shall apply to first, in case of Indians, for any offence committed outside and beyond India; and second, in case of any person in any place without and beyond India for targeting computer resource located in India. Section 4 also talks about the applicability of IPC to any offence committed by any person on any ship or aircraft registered in India wherever it may be.

### Question 3

- (a) *Define and distinguish between declaratory and persuasive precedents.*
- (b) *Explain any four powers of National Company Law Tribunal (NCLT) with regard to inspection, inquiry and investigation.*
- (c) *Explain the conditional order for removal of nuisance issued by executive magistrate under Section 133 of Criminal Procedure Code, 1973.*
- (d) *Discuss the liability of network service providers in Information Technology Act, 2000. (4 marks each)*

### Answer 3(a)

#### Declaratory Precedents

According to Salmond, a declaratory precedent is one which is merely the application of an already existing rule of law. In the case of a declaratory precedent, the rule is applied because it is already a law. In the case of advanced countries, declaratory precedents are more numerous. A declaratory precedent is as good a source of law as an original precedent.

#### Persuasive Precedents

A persuasive precedent is one which the judges are not obliged to follow but which they will take into consideration and to which they will attach great weight as it seems to them to deserve. A persuasive precedent, therefore, is not a legal source of law in India, the decisions of one High Court are only persuasive precedents in the other High Courts. The rulings of the English and American Courts are persuasive precedents only.

### Answer 3(b)

Under section 210(2) of the Companies Act, 2013, National Company Law Tribunal (NCLT) has power to order investigation of the affairs of the Company.

Under Section 213 of the Companies Act, 2013, NCLT may ask the Central Government to investigate into the affairs of the Company in other cases on application where the business of the Company is being conducted with intention to defraud creditors, persons concerned in the formation of the company or a management of its affairs have been guilty of fraud, misfeasance or other misconduct and members have not been given all the information with respect to the affairs of the Company.

Under section 216 (2) of the Companies Act, 2013, NCLT has power to order investigation of ownership of Company.

Under section 218 (1) of the Companies Act, 2013, NCLT may pass suitable orders for the protection of the employees in respect of investigation under section 210, 212, 213 and 219.

Under section 221 (1) of the Companies Act, 2013, NCLT can order freezing of assets of company on inquiry and investigation in case of complaint made by its members, for a period of 3 years.

Under Section 222 (1) of the Companies Act, 2013, NCLT can impose restrictions in connection with securities.

Under Section 224 (2) of the Companies Act, 2013, NCLT can entertain petition for Winding up of a company or Body Corporate in pursuance of Inspector's report.

Under Section 224 (3) of the Companies Act, 2013, NCLT can hear petition for winding up of a Company presented by Central Government.

Under Section 224 (5) of the Companies Act, 2013, NCLT may, on application of Central Government, pass order for disgorgement of assets and other matters.

Under 1st Proviso to Section 226 of the Companies Act, 2013, NCLT can pass orders after inspector's intimation of pendency in investigation proceedings before him.

### **Answer 3(c)**

According to section 133 of the Criminal Procedure Code, 1973, whenever a District Magistrate or a Sub-divisional Magistrate or any other Executive Magistrate specially empowered in this behalf by the State Government, on receiving the report of a police officer or other information and on taking such evidence (if any) as he thinks fit, considers:

- (1) that the unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
- (2) that carrying on any trade or occupation, or keeping of any goods or merchandise, injurious to the health of the community; or
- (3) that the construction of any building or the disposal of any substance, as is likely to cause conflagration or explosion, should be prevented or stopped; etc.
- (4) that the building, tent or structure or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood.
- (5) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public
- (6) that the dangerous animal requiring destroying, confining or disposal.

such Magistrate may make a conditional order requiring the person causing such obstruction or nuisance, or carrying on such trade or occupation or keeping any such goods or merchandise, or owning, possessing or controlling such building, tent, structure, substance, tank, well or excavation, or owning or possessing such animal or tree, within a time to be fixed in the order—

- (i) to remove such obstruction or nuisance; or

- (ii) to desist from carrying on, or to remove or regulate in such manner as may be directed, such trade or occupation, or to remove such goods or merchandise; or
- (iii) to prevent or stop the construction of such building; or
- (iv) to remove, repair or support such building, tent or structure; or
- (v) to fence such tank, well or excavation; or
- (vi) to destroy, confine or dispose of such dangerous animal in the manner provided in the said order;

or, if he objects so to do, to appear before himself or some other Executive Magistrate subordinate to him at a time and place to be fixed by the order, and show cause, in the manner hereinafter provided, why the order should not be made absolute.

For initiating prevention under this Section the Magistrate should keep in mind that he is acting purely in the public interest.

### **Answer 3(d)**

Section 2(1)(w) of the Information Technology Act, 2000(the Act) provides the definition of Intermediary. The Internet system depends, for its working, on network service providers- i.e. intermediaries. An “intermediary”, with respect to any particular electronic records, means any person who on behalf of another person receives, stores or transmits that record or provides any service with respect to that record and includes telecom service providers, network service providers, internet service providers, web-hosting service providers, search engines, online payment sites, online-auction sites, online-market places and cyber cafes.

In his capacity as an intermediary, a network service provider may have to handle matter which may contravene the Information Technology Act, 2000. To avoid such a consequence, the Act declares that no network service provider shall be liable "under Information Technology Act, 2000, rule or regulation made thereunder", for any third party information or data made available by him, if he proves that the offence or contravention was committed without his knowledge or that he had exercised all due diligence to prevent the commission of such offence or contravention. (Section 79).

According to section 79(1) of the Information Technology Act, 2000, an intermediary shall not be liable for any third party information, data, or communication link made available or hosted by him.

According to section 79(2) of the Information Technology Act, 2000, the provisions of section 79(1) shall apply if-

- (a) the function of the intermediary is limited to providing access to a communication system over which information made available by third parties is transmitted or temporarily stored or hosted; or
- (b) the intermediary does not-
  - (i) initiate the transmission,
  - (ii) select the receiver of the transmission, and

- (iii) select or modify the information contained in the transmission;
- (c) the intermediary observes due diligence while discharging his duties under the Act and also observes such other guidelines as the Central Government may prescribe in this behalf.

According to section 79(3) of the Information Technology Act, 2000, the provisions of section 79(1) of the Act shall not apply if-

- (a) the intermediary has conspired or abetted or aided or induced, whether by threats or promise or otherwise in the commission of the unlawful act;
- (b) upon receiving actual knowledge, or on being notified by the appropriate Government or its agency that any information, data or communication link residing in or connected to a computer resource controlled by the intermediary is being used to commit the unlawful act, the intermediary fails to expeditiously remove or disable access to that material on that resource without vitiating the evidence in any manner.

#### Question 4

- (a) *State the acts for which Public Information Officer may be punished under Section 20 of Right to Information Act, 2005. (4 marks)*
- (b) *It is the substance of the transaction as contained in the instrument that determines the stamp duty. Elucidate. (4 marks)*
- (c) *When lease of immovable property is compulsorily registrable? (4 marks)*
- (d) *State the types of information, other than those exempted information in Section 8, a public authority is not under an obligation to furnish to an applicant under Right to Information Act, 2005. (4 marks)*

#### Answer 4(a)

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

Every PIO will be liable for fine of Rs.250 per day, up to a maximum of Rs.25,000/-, for:

- (i) Not accepting an application;
- (ii) Delaying information release without reasonable cause;
- (iii) Malafidely denying information;
- (iv) Knowingly giving incomplete, incorrect, misleading information;
- (v) Destroying information that has been requested; and
- (vi) Obstructing furnishing of information in any manner.

The Central Information Commission and State Information Commission will have the power to impose this penalty. They shall also recommend disciplinary action for violation of the law against the PIO for persistently failing to do abovementioned acts without any reasonable cause within the specified period.

**Answer 4(b)**

Courts have held the principle of substance of the transaction, over the form, in the matter of deciding the nature of the instrument. The substance of the transaction contained in the document may not necessarily embody the description given at the head thereof.

It is the substance of the transaction as contained in the instrument and not the form of the instrument, that determines the stamp duty, though the duty is leviable on the instrument and not on the transaction. In determining whether a document comes within the description of a document upon which a stamp is required by the Indian Stamp Act, 1899 one has to look at the entire document to find out whether it falls within the description. Where a single instrument contains several purposes, the instrument as a whole should be read to find out its dominant purpose. To determine whether a document is sufficiently stamped the Court must look at the document itself, as it stands.

**Answer 4(c)**

A comparison of Section 107 of Transfer of Property Act, 1882 and Section 17 (1) (d) Registration Act, 1908 show that a lease of immovable property is compulsory registrable in below mentioned situations:

- (a) if it is from year to year; or
- (b) if it is for a term exceeding one year; or
- (c) if it reserves a yearly rent.

If a lease is of a very high value but is neither from year to year, nor for any term exceeding one year, nor reserving a yearly rent, it does not require registration under Section 17(1)(d).

- (d) Non-testamentary instruments transferring or assigning any decree or order of a Court or any award in order to create interests as mentioned in Clause (b).
- (e) It may be pointed out that the documents containing contracts to transfer for consideration, any immovable property for the purpose of Section 53A (Part performance) of the Transfer of Property Act, 1882 shall be registered if they have been executed on or after the commencement of the Registration and other Related Laws (Amendment) Act, 2001 and if such documents are not registered on or after such commencement, then they shall have no effect for the purposes of the said Section 53A.

**Answer 4(d)**

The Right to Information Act, 2005(the Act) provides access to all information that is available and existing. This is clear from a combined reading of section 3 and the definitions of 'information' and 'right to information' under clauses (f) and (j) of Section 2 of the Act. If a public authority has any information in the form of data or analysed data, or abstracts, or statistics, an applicant may access such information, subject to the exemptions in section 8 of the Right to Information Act, 2005.

But where the information sought is not a part of the record of a public authority, and where such information is not required to be maintained under any law or the rules or regulations of the public authority, the Right to Information Act, 2005 does not cast an

obligation upon the public authority, to collect or collate such non-available information and then furnish it to an applicant. A public authority is also not required to furnish information which require drawing of inferences and/or making of assumptions. It is also not required to provide 'advice' or 'opinion' to an applicant, nor required to obtain and furnish any 'opinion' or 'advice' to an applicant.

### Question 5

- (a) *Critically examine the applicability of liability rule in the tort applied in cases of enterprises engaged in a hazardous industry in India.*
- (b) *Discuss the fundamental duties as enumerated in Article 51A of the Constitution of India. Can it be enforced through writs ? Give reasons. (8 marks each)*

### Answer 5(a)

The Supreme Court has discussed the applicability of the rule of *Rylands v. Fletcher* [UKHL 1, (18b8) LR 3HL 330] in the case of *M.C. Mehta v. Union of India and Others (1987) 1. Comp. L.J. p. 99 S.C.* while determining the principles on which the liability of an enterprise engaged in a hazardous or inherently dangerous industry depended if an accident occurred in such industry.

“We have to evolve new principle and lay down new norms which would adequately deal with the new problems which arise in a highly industrialized economy. We cannot allow our judicial thinking to be constricted by reference to the law as it prevails in England or for the matter of that, in any other foreign country”.

On the question of the nature of liability for a hazardous enterprise the court while noting that the above rule as developed in England recognizes certain limitations and responsibilities recorded it's final view as follows:

“We are of the view that an enterprise which is engaged in a hazardous or inherently dangerous industry which poses a potential threat to the health and safety of the persons working in the factory and residing in the surrounding areas, owes an absolute and non-delegable duty to the community to ensure that no harm results to anyone on account of hazardous or inherently dangerous nature of the activity which it has undertaken. The enterprise must be held to be under an obligation to provide that the hazardous or inherently dangerous activity in which it is engaged, must be conducted with the highest standards of safety; and if any harm results on account of such activity, the enterprise must be absolutely liable to compensate for such harm; and it should be no answer to the enterprise to say that it had taken all reasonable care and that the harm occurred without negligence on its part.”

Thus, while imposing absolute liability for manufacture of hazardous substances, the Supreme Court intended that the requirement of non-natural use or the aspect of escape of a dangerous substance, commonly regarded as essential for liability under *Rylands v. Fletcher*, need not be proved in India.

### Answer 5(b)

Article 51A of the Constitution of India imposing the fundamental duties on every citizen of India was inserted by the Constitution (42nd Amendment) Act, 1976.

The objective in introducing these duties is not laid down in the Bill except that since the duties of the citizens are not specified in the Constitution, so it was thought necessary to introduce them.

These Fundamental Duties are:

- (a) To abide by the constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) To cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) To uphold and protect the sovereignty, unity and integrity of India;
- (d) To defend the country and render national service when called upon to do so;
- (e) To promote harmony and the spirit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) To value and preserve the rich heritage of our composite culture;
- (g) To protect and improve the natural environment including forests, lakes, rivers and wild life, and to have compassion for living creatures;
- (h) To develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) To safeguard public property and to abjure violence;
- (j) To strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavor and achievement;
- (k) Who is a parent or guardian to provide opportunities for education to his child or, as the case may be, ward between the age of six and fourteen years.

Since the duties are imposed upon the citizens and not upon the States, legislation is necessary for their implementation. Fundamental duties can't be enforced by writs (*Surya Narain v. Union of India, AIR 1982 Raj 1*). Supreme Court in *AIIMS Students' Union v. AIIMS (2002) SCC 428* has reiterated that though the fundamental duties are not enforceable by the courts, they provide a valuable guide and aid to the interpretation of Constitutional and legal issues.

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

**Question 6**

- (a) *The rule of Eiusdem generis must be applied with great caution. Critically examine the merits and demerits of this rule.*
- (b) *Examine the necessity of administrative discretion.*
- (c) *Companies can no longer claim immunity from criminal liability on the ground that they are incapable of possessing the necessary mens rea for commission of offences. Critically examine.*
- (d) *'A' under a bonafide belief that certain property belongs to him and purchaser*

also under the same belief purchased the property from A. Subsequently real owner 'C' filed a complaint of cheating against 'A' for having executed a false sale deed. Whether A is liable for punishment under Indian Penal Code, 1860 ? Discuss.

(4 marks each)

**OR (Alternate question to Q. No. 6)**

**Question 6A**

- (i) How far confession differs from admission as defined in Indian Evidence Act, 1872 ?
- (ii) State the form and contents of Arbitral award.
- (iii) Which are the cases relating to property that can be instituted under Section 16 of Civil Procedure Code, 1908 ? State the limitations, if any.
- (iv) State the physical and psychological fact with suitable examples as enumerated in Indian Evidence Act, 1872. (4 marks each)

**Answer 6(a)**

Ejusdem Generis, literally means “of the same kind or species”.

*Ejusdem generis* rule is that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose. It is merely a rule of construction to aid the Courts to find out the true intention of the Legislature (*Jage Ram v. State of Haryana, A.I.R. 1971 S.C. 1033*). 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. (See *Thakura Singh v. Revenue Minister, AIR 1965 J & K 102*)

In short, 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.

**Answer 6(b)**

The government cannot function without the exercise of some discretion by its officials. It is necessary because it is humanly impossible to lay down a rule for every conceivable eventuality that may arise in day-to-day affairs of the government. It is,



however, equally true that discretion is prone to abuse. The exercise of discretion should not be arbitrary, vague and fanciful, but legal and regular. Therefore there needs to be a system in place to ensure that administrative discretion is exercised in the right manner.

Administration has become a highly complicated job needing a good deal of flexibility apart from technical knowledge, expertise and know-how. Freedom to choose from various alternatives allows the administration to fashion its best response to various situations. If a certain rule is found to be unsuitable in practice, the administration can change, amend or abrogate it without much delay.

### **Answer 6(c)**

With the proliferation in juristic persons and a growth in their activities which increasingly touch upon the daily lives of ordinary people, criminal law has evolved to bring such persons within its ambit. For example, according to section 11 of the Indian penal Code, 1860 (IPC), the word 'person' includes any Company or Association, or body of persons, whether incorporated or not. Thus companies are covered under the provisions of the IPC. Virtually in all jurisdictions across the world governed by the rule of law, companies can no longer claim immunity from criminal prosecution on the ground that they are incapable of possessing the necessary mens rea for the commission of criminal offences. The criminal intent of the 'alter ego' of the company/ body corporate, i.e., the person or group of persons that guide the business of the company, is imputed to the company.

In *State of Maharashtra v. M/s Syndicate Transport, AIR 1964 Bom 195*, it was held that the question whether a corporate body should or should not be liable for criminal action resulting from the acts of some individual must depend on the nature of offence disclosed by the allegations in the complaint or in the charge sheet, the relative position of the officer or agent *vis-à-vis* the corporate body and other relevant facts and circumstances which could show that the corporate body, as such, meant or intended to commit that act.

### **Answer 6(d)**

As per section 420 of the Indian Penal Code, 1860, whoever cheats and thereby dishonestly induces the person deceived to deliver any property to any person, or to make, alter or destroy the whole or any part of a valuable security, or anything which is signed or sealed, and which is capable of being converted into a valuable security, shall be punished.

In *Mohd. Ibrahim and others v. State of Bihar and another, (2009) 3 SCC (Cri) 929*, the accused was alleged to have executed false sale deeds and a complaint was filed by real owner of property. The accused had a bonafide belief that the property belonged to him and purchaser also believed that suit property belongs to the accused. It was held that accused was not guilty of cheating as ingredients of cheating were not present.

In the given case accused had a bonafide belief that the property belonged to him. Hence, accused was not guilty of cheating as ingredients of cheating were not present.

### **Answer 6A(i)**

A confession, is received in evidence for the same reason as an admission, and like an admission it must be considered as a whole. Further, there can be an admission

either in a civil or a criminal proceedings, whereas there can be a confession only in criminal proceedings. An admission need not be voluntary to be relevant, though it may affect its weight; but a confession to be relevant, must be voluntary. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 30 in special circumstances.

Confessions are classified as:

- (a) judicial, and
- (b) extra-judicial.

Judicial confessions are those made before a Court or recorded by a Magistrate under Section 164 of the Criminal Procedure Code, 1973 after following the prescribed procedure such as warning the accused that he need not to make the confession and that if he made it, it would be used against him. Extra-judicial confessions are those which are made either to the police or to any person other than Judges and Magistrates as such.

An extra-judicial confession, if voluntary, can be relied upon by the Court along with other evidence. It will have to be proved just like any other fact. The value of the evidence depends upon the truthfulness of the witness to whom it is made.

#### **Answer 6A(ii)**

As per section 31(1) the Arbitration and Conciliation Act, 1996(the Act), an arbitral award shall be made in writing and shall be signed by the members of the arbitral tribunal.

Section 31(2) of the Act states that for the purposes of sub-section (1), in arbitral proceedings with more than one arbitrator, the signatures of the majority of all the members of the arbitral tribunal shall be sufficient so long as the reason for any omitted signature is stated.

Under Section 31 (3) of the Act, the arbitral award shall state the reasons upon which it is based, unless:

- (a) the parties have agreed that no reasons are to be given, or
- (b) the award is an arbitral award on agreed terms under section 30.

Section 31(4) of the Act, provides that the arbitral award shall state its date and the place of arbitration as determined in accordance with section 20 and the award shall be deemed to have been made at that place.

Section 31(5) of the Act says that after the arbitral award is made, a signed copy shall be delivered to each party.

Under Section 31(6) of the Act, the arbitral tribunal may, at any time during the arbitral proceedings, make an interim arbitral award on any matter with respect to which it may make a final arbitral award.

**Answer 6A(iii)**

According to Section 16 of the Civil Procedure Code, 1908 subject to the pecuniary or other limitations prescribed by any law, the following suits (relating to property) shall be instituted in the Court within the local limits of whose jurisdiction the property is situated:

- (a) for recovery of immovable property with or without rent or profits;
- (b) for partition of immovable property;
- (c) for foreclosure of sale or redemption in the case of a mortgage or charge upon immovable property;
- (d) for the determination of any other right to or interest in immovable property;
- (e) for compensation for wrong to immovable property;
- (f) for the recovery of movable property actually distraint or attachment.

It has also been provided by a proviso that where relief could be obtained through personal obedience of the defendant such suit to obtain relief for compensation or respecting immovable property can be instituted either in a local Court within whose local limits of jurisdiction the property is situated or in the Court within whose local limits of jurisdiction the defendant voluntarily resides or carries on business or personally works for gain. According to the Explanation, “property” means property situated in India.

**Answer 6A(iv)**

According to Section 3 of the Indian Evidence Act, 1872, “fact” means and includes:

- (a) anything, state of things, or relation of things capable of being perceived by the senses;
- (b) any mental condition of which any person is conscious.

Thus facts are classified into physical and psychological facts.

*Examples:*

- (a) That there are certain objects arranged in a certain order in a certain place, is a fact.
- (b) That a man heard or saw something, is a fact.
- (c) That a man said certain words, is a fact.
- (d) That a man holds a certain opinion, has a certain intention, acts in good faith or fraudulently, or uses a particular word in a particular sense, or is or was at the specified time conscious of a particular sensation, is a fact.
- (e) That a man has a certain reputation, is a fact.

Example (a), (b) and (c), are the examples of physical facts whereas the illustrations (d) and (e) are the examples of psychological bids

## COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** 1. Answer **ALL** Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

### PART I

#### Question 1

Comment on the following :

- (a) Articles of Association of a company limited by guarantee provides that entire income of company shall be applied towards promotion of the objects of the company.
- (b) Write any five differences between debenture and loan.
- (c) Ajit, a minority shareholder in PQR Ltd., filed a suit against the Directors on the ground that they sold a property of the Company for ₹24,50,000 whereas its real value was over ₹41,00,000. Is the action of Ajit justified ?
- (d) Strike in the postal department could be a valid reason for delay in dispatch of dividend warrants. (5 marks each)

#### Answer 1(a)

A company limited by guarantee is primarily used for non-profit purposes and the profits are reinvested and used for promoting its non-profit activities. Although the Companies Act, 2013, does not specifically prohibit distribution of dividend in such companies; however, the Articles of Association of such companies usually provides that all the income of the company shall be applied solely towards the promotion of the objects of the company and that no portion shall be paid or transferred directly or indirectly by way of dividend or bonus or by way of profit to its members.

Therefore, the statement is correct. Articles of Association of the company limited by guarantee may provide that all the income of company shall be applied towards promotion of the objects of company.

#### Answer 1(b)

<i>Debenture</i>	<i>Loan</i>
Debenture means a document which creates or acknowledges a debt.	A loan, creates a right in the creditor to demand repayment.
Company can issue debenture as per the provisions of the Companies Act, 2013.	Loan can be given to anyone.

Debenture can be classified as secured or unsecured; convertible or non-convertible; redeemable or perpetual.	Loan can be classified as secured or unsecured.
Debenture trust deed is executed at the time of issue of debenture.	No trust deed is executed at the time of granting loan. Loan agreement is executed between borrower and creditor.
Debenture trustee is appointed.	No requirement to appoint trustee in case of loan.

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### Answer 1(c)

The general principle of company law is that every member holds equal rights with other members of the company in the same class. The scale of rights of members of the same class must be held evenly for smooth functioning of the company. In case of difference(s) amongst the members the issue is decided by a vote of the majority.

Since the majority of the members are in an advantageous position to run the company according to their command, the minority of shareholders are often oppressed. The company law provides for adequate protection for the minority shareholders when their rights are trampled by the majority. But the protection of the minority is not generally available when the majority does anything in the exercise of the powers for internal administration of a company.

In *Pavrides v. Jensen (1956) Ch. 565*, a minority shareholder brought an action for damages against three directors and against the company itself on the ground that they have been negligent in selling a mine owned by the company for £ 82,000, whereas its real value was about £ 10,00,000. It was held that the action was not maintainable. The judge observed, it was open to the company, on the resolution of a majority of the shareholders to sell the mine at a price decided by the company in that manner, and it was open to the company by a vote of majority to decide that if the directors by their negligence or error of judgement has sold the company's mine at an undervalue, proceedings should not be taken against the directors".

Accordingly, the action of Ajit is not justified.

### Answer 1(d)

Section 127 of the Companies Act, 2013 provides that dividend shall be paid or dividend warrant shall be posted within period of thirty days from date of declaration of dividend; otherwise the company and the defaulting directors will be liable for default.

However, proviso to section 127 of the Act further provides a list of situations where no offence under this section shall be deemed to have been committed:-

- (a) where the dividend could not be paid by reason of the operation of any law;
- (b) where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has been communicated to him;
- (c) where there is a dispute regarding the right to receive the dividend;

- (d) where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder;
- (e) where, for any other reason, the failure to pay the dividend or to post the warrant within the period under this section was not due to any default on the part of the company.

In this case, delay has taken place due to strike in the postal department and it can be attributed as "for any other reason" and without any default on the part of company. Hence, the Statement is correct.

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

**Question 2**

- (a) Which of the following companies is eligible to issue shares with Differential Voting Rights (DVRs) during the financial year 2022-23 ?

<b>Type of company</b>	<b>Nature of default</b>	<b>Whether Articles of Association of the company authorised to issue shares with DVR ?</b>
A Ltd. – Unlisted company	Company has made default in filing annual return for the financial years 2018-19 & 2019-20. Default was made good during the financial year 2020-2021.	Yes
B Pvt. Ltd.	.....	No

- (b) Explain in brief : A company though a legal person is not a citizen. (3 marks)
- (c) The Articles of Association of Regular Ltd. provides that documents may be served upon the company only through registered post. Ram dispatches a document to the company by courier service. The company does not accept it on the ground that it is in violation of the Articles of Association. Examine with reference to the provisions of the Companies Act, 2013 whether refusal of receipt of document by the company is valid ? (3 marks)
- (d) While sanctioning working capital limits, the rate of interest has been fixed at a specified percentage above the bank rate as notified by the Reserve Bank of India (RBI). But later on, there was a change in the interest rate due to RBI notification. The lending bank insisted on filing necessary documents and forms for modification of charge under section 79 of the Companies Act, 2013. Decide if the claim of the lending bank is tenable. (3 marks)
- (e) Local Ltd. is planning to issue its equity shares to persons residing outside India. In this context, Chairman of the company wants to know on the following matters :
- What are the provisions relating to maintaining the foreign register of members?

- Can company discontinue maintaining foreign register of members ? If so, when ? Give your inputs to the Chairman of Local Ltd. (3 marks)

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

**Question 2A**

- (i) Shyam was appointed as the statutory auditor of Ram Ltd. a non-government company at the Annual General Meeting held on 30th September, 2021. He has resigned after 2 months as he wanted to discontinue the practice and surrendered his Certificate of Practice and joined a Multinational Company. Explain how the new auditor will be appointed by Ram Ltd. and the conditions to be complied with in this regard. (3 marks)
- (ii) Examine with reference to the provisions of the Companies Act, 2013 whether any of the following persons can become member of the company engaged in the business of producing steel products ?
- (1) Pawnee
  - (2) Partnership firm
  - (3) Unregistered trade union. (3 marks)
- (iii) Sita Ltd. intends to issue sweat equity shares to its employees for a non-cash consideration. Managing Director believes that the sweat equity shares can only be issued for consideration received in cash. Do you agree ? (3 marks)
- (iv) What would be the status of AV Pvt. Ltd. under the Companies Act, 2013, if TV Ltd. has appointed six (6) out of ten (10) directors on the Board of AV Pvt. Ltd. by exercising some powers at its discretion ? (3 marks)
- (v) Company Secretary of Pumpkin Ltd. has made following entries into Register of members, debenture holders and other security holders on happening of certain events :

Event	Date of event	Date on which entry was made
Allotment of debentures	11th November, 2021	20th November, 2021
Forfeiture of shares	15th November, 2021	20th November, 2021
Issue of duplicate share certificates	10th November, 2021	24th November, 2021

Decide on the validity of the entries made by the Company Secretary in light of the provisions of the Companies Act, 2013. (3 marks)

**Answer 2(a)**

Section 43 of the Companies Act, 2013 read with Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 provides that company can issue shares with Differential Voting Rights (DVRs) if company's Articles authorise it to issue differential voting right shares. Shares with DVRs can be issued by company limited by shares only.

Company cannot issue shares with DVRs if company has defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares. The provisions of section 43 of the Companies Act, 2013 are applicable to public as well as private company.

In light of the above provisions:

- A Ltd. can issue shares with DVRs. Company would be ineligible to issue shares with s if it has defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year which it is proposed to be issued. A Ltd. has made default during financial year 2018-19 & 2019- 20 only in respect of filing annual return, which was made good during the financial year 2020-2021. Articles of Association of A Ltd. also authorise the company to issue shares with DVRs.
- B Pvt. Ltd. cannot issue shares with DVRs unless it alter its Articles of Association in such a manner so as to authorise it to issue shares with DVRs.

### **Answer 2(b)**

The Statement is correct.

A company though a legal person, is not a citizen under the:

- Constitution of India; or
- Citizenship Act, 1955

However, company has "nationality", domicile and "residence".

In the matter of State Trading Corporation of India Ltd. vs. C.T.O., the Supreme Court has held that State Trading Corporation though a legal person, was not a citizen and can act only through natural persons. Nevertheless, it is to be noted that certain fundamental rights enshrined in the Constitution for protection of "person", e.g., right to equality (Article 14) etc. are also available to company. Section 2(f) of Citizenship Act, 1955 expressly excludes a company or association or body of individuals from citizenship.

### **Answer 2(c)**

A document can be served on company or its officer thereof by sending it to the company or the officer at its registered office by registered post or by speed post or by courier service or by delivering at his office or address, or by such electronic or other mode as may be prescribed - section 20 of the Companies Act, 2013. Here, "courier" means a document sent through a courier which provides proof of delivery - Rule 35 of the Companies (Incorporation) Rules, 2014.

Further, communication to company and officer can be made by electronic transmission. Electronic transmission means communication delivered by fax, email or by other means of electronic communication.

Considering the above provisions, service of document by Ram by way of courier service to company is valid service of document within the meaning of the Companies Act, 2013. Contention of the company is not valid. Articles of association cannot supersede provisions of the Companies Act, 2013.



**Answer 2(d)**

The term "modification of charge" includes variation of any of the terms of the agreement entered into between lender and borrower. It includes change (i.e., increase or decrease) in amount of borrowing, change in security, extension of time for repayment. It also includes variation in rate of interest taken place due to mutual agreement or by operation of law. Even if the rights of a charge holder are assigned to a third party, it will be regarded as modification. The provisions applicable to the registration of a charge under section 77 shall apply to the modification of a charge.

However, change in interest rate fixed by Reserve Bank India does not amount to modification of charge in terms of the conditions of the charge under section 79 of the Companies Act, 2013. Hence, claim of the lending bank to file documents for modification of charge is not tenable.

**Answer 2(e)**

Section 88(4) of the Companies Act, 2013 empowers a company to keep foreign registers of members or debenture-holders, other security holders or beneficial owners residing outside India. Company may maintain such register if it is authorised by its Articles of Association. It shall contain the names and particulars of the members, debenture-holders, other security holders or beneficial owners residing outside India. A foreign register is deemed to be a part of the company's principal register and it should be kept in the same manner as the principal register and be likewise open to inspection.

The company shall, within thirty days from the date of the opening of any foreign register, file with the Registrar notice of the situation of the office in Form No.MGT.3 along with the fee where such register is kept; and in the event of any change in the situation of such office or of its discontinuance, shall, within thirty days from the date of such change or discontinuance, as the case may be, file notice in Form No.MGT.3 with the Registrar of such change or discontinuance.

A duplicate of such register should be maintained at the registered office in India and all entries made in the foreign register should be made in the duplicate register at the registered office as soon as possible. The company may discontinue the keeping of any foreign register; and thereupon all entries in that register shall be transferred to some other foreign register kept by the company outside India or to the principal register.

If a company does not maintain foreign register of members or fails to maintain them in accordance as per the provisions of the Companies Act, 2013, the company and every officer of the company who is in default shall be punishable with fine. Based on the above provisions, advice may be given to chairman of Local Ltd.

**Answer 2A(i)**

Any vacancy arising in the office of auditor due to any reason except on account of expiry of his term is known as casual vacancy. As per section 139(8) of the Companies Act, 2013, Board of directors has power to fill casual vacancy in office of auditor within thirty (30) days.

In case casual vacancy is occurred due to resignation of auditor, such appointment shall be approved by the General Meeting convened within 3 months of the

recommendation of the Board. Appointment of auditors to fill casual vacancy shall be made after taking into account the recommendation of audit committee, if any. The new auditor shall hold the office till the conclusion of the next annual general meeting. Written and signed consent and certificate shall be obtained from the auditor stating the appointment shall be in accordance with the conditions as may be prescribed under Rule 4 of the Companies (Audit and Auditors) Rules, 2014 and satisfies the criteria provided in section 141. Company shall inform the auditor concerned of his or its appointment.

Resigning auditor shall file Form ADT-3 with the company and the Registrar of Companies along with valid reasons within the 30 days of the date of resignation. The company shall file a notice of appointment (Form ADT-1) with the Registrar within fifteen days of the meeting in which the auditor is appointed.

### **Answer 2A(ii)**

Subject to the provisions contained in the Memorandum of Association and Articles of Association of the company, any person who is capable to contract can become a member of company.

1. Pawnee - A Pawnee cannot be treated as holder of shares pledged in his favour, and the pawner continues to be member and exercise the rights of member. Pawnee has no right to foreclosure since he never had the absolute ownership at law and his equitable title cannot exceed what is specifically granted by law.
2. A partnership firm is not a legal person and as such it cannot, in its own name, become a member of a company.
3. A trade union registered under the Trade Union Act, can be registered as member and can hold shares but unregistered trade union cannot become member of company.

### **Answer 2A(iii)**

According to Section 2(88) of Companies Act, 2013 Sweat equity shares means such equity shares as are issued by a company to its Directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called.

Section 54 of the Companies Act, 2013 permits issue of sweat equity shares to employees or directors of company in recognition for providing know-how etc. Company may issue sweat equity shares at a discount or for consideration other than cash for providing know-how or making available any Intellectual Property Rights or value additions. Company should get consent of its member at General Meeting.

Further, as per Rule 8(9) of the Companies (Share Capital and Debentures) Rules, 2014, company can issue sweat equity shares for non-cash consideration on the basis of valuation report in respect thereof obtained from a registered valuer. Based on above provisions, we can conclude that the view of the Managing Director is not correct.

### **Answer 2A(iv)**

As per section 2(87) of the Companies Act, 2013, "subsidiary company" in relation

to any other company (that is to say the holding company), means a company in which the holding company:

- controls the composition of the Board of directors; or
- exercise or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiaries.

The composition of company's Board of directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of director.

In the given case AV Pvt. Ltd is deemed to be subsidiary company of TV Ltd. as it controls the composition of board of directors of AV Pvt. Ltd. Further, subsidiary of a public company is deemed to be considered as a public company. Therefore, AV Pvt. Ltd is considered as a public company.

### **Answer 2A(v)**

Following are the relevant provisions regarding entries in the register of members, debenture holders and other security holders as contained in Rule 5 of the Companies (Management and Administration) Rules, 2014:

- The entries in register of members shall be made within seven (7) days of approval of allotment or transfer of shares, debenture or other securities.
- Entry shall be made within seven (7) days in case of forfeiture or issue of duplicate or new share certificates after the approval of board or committee.

Applying the above rules, it can be said that entries related to allotment of debentures, issue of duplicate share certificates and forfeiture of shares shall be made within period of seven (7) days.

In the present case, the entries for allotment of debentures and issue of duplicate shares are made beyond the period of seven (7) days and hence not in order. Whereas the entry related to forfeiture of shares is made within seven (7) days and the same is in order.

### **Question 3**

- (a) Which parameters shall be included in the Dividend Distribution Policy by the top 500 listed entities as per the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 ? (5 marks)
- (b) Mind-Game Ltd., is a subsidiary company of Mind-Guru Ltd. Mind-Game attracts the provisions of section 135 of the Companies Act, 2013 and it has minimum average obligation to spend Corporate Social Responsibility (CSR) amount of ₹15 crore during each of the preceding 5 years. In this connection, Board of directors need your expert views on the following matters :
- (i) What is the meaning of "impact assessment" ?
  - (ii) Whether impact assessment is required to be undertaken by all the companies ?
  - (iii) Who can conduct impact assessment ? (5 marks)

- (c) *Hi-Fi Ltd. has defaulted in repaying security deposits received from its dealers. Such security deposits were accepted from the dealers for proper and timely performance of the contracts by them. Hi-Fi Ltd. wants to invest ₹ 5 crore in equity shares of Wi-Fi Ltd. Is there any restriction under Section 186 of the Companies Act, 2013 when a company is in default with respect to the repayment of security deposits ?*  
(5 marks)

**Answer 3(a)**

As per the Regulation 43(A) of SEBI (Listing Obligation and Disclosure Requirements) Regulations, 2015, the Dividend Distribution Policy shall include following parameters:

- a) The circumstances under which the shareholders of the listed entities may or may not expect dividend;
- b) The financial parameters that shall be considered while declaring dividend;
- c) Internal and external factors that shall be considered for declaration of dividend;
- d) Policy as to how the retained earnings shall be utilized; and
- e) Parameters that shall be adopted with regard to various classes of shares.

**Answer 3(b)**

- (i) The impact assessment is exercise to assess the social impact of a particular project. Impact assessment intends to evaluate "social return on investment". Impact assessment is the exercise of taking a retroactive view on the Corporate Social Responsibility (CSR) activities completed by the entity.

Impact assessment is seemingly another step to encourage companies to take considered decisions before deploying CSR amounts and assess the impacts of their investments to capture the impact being generated by them. This shall not only serve as feedback for companies to plan and better allocate resources, but shall also deepen the impact of CSR.

- (ii) Since impact assessment is cost-intensive and time consuming, the idea is to obligate only certain classes of companies which have large amounts of spending and have completed their large CSR projects. Accordingly, Rule 8(3) of the Companies (Corporate Social Responsibilities Policy), 2014 requires following class of companies to conduct impact assessment:
- companies with minimum average CSR obligation of Rs. 10 crore or more in the immediately preceding three (3) financial years; and
  - having CSR projects of outlays of minimum Rs. 1 crore and which have been completed not less than 1 year before undertaking impact assessment.
- (iii) The impact assessment shall be conducted by an independent agency.

**Answer 3(c)**

As per section 186(8) of the Companies Act, 2013, a company which is in default in repayment of public deposits and/or interest thereon is not permitted to make or give any loan or investment or to provide any guarantee or security till the default is subsisting.

But it is to be noted that in the given question, company has defaulted in repaying security deposit received from its dealers which were received for performance of contract of supply of goods or provisions of services. Such security deposits accepted for performance of contracts for supply of goods or provision of services are not considered as deposits within meaning of Rule 2(1)(c) of the Companies (Acceptance of Deposits) Rules, 2014. Therefore, the provisions of section 186(8) are not attracted.

Hi-Fi Ltd. can make investment into equity shares of Wi-Fi Ltd. subject to fulfillment of other provisions of the Companies Act, 2013.

## PART II

### Question 4

- (a) *Decide whether the length of the notice is proper in the following cases with reference to the provisions of the Companies Act, 2013 ?*

<b>Particulars</b>	<b>Case I – Sky Ltd.</b>	<b>Case II – Moon Ltd.</b>
<i>Date of Annual General Meeting</i>	<i>30th September, 2021</i>	<i>30th September, 2021</i>
<i>Date of sending notice by post</i>	<i>5th September, 2021</i>	<i>7th September, 2021</i>

*What would be your stand in case if Sky Ltd. and Moon Ltd. are section 8 companies ? (5 marks)*

- (b) *In compliance to the Companies Act, 2013, at least one-woman director shall be on the Board of such class or classes of companies as may be prescribed. Riya is keen to hold the office of woman director in a company. She has selected some companies in which there is a vacancy for a woman director.*

<b>Name of the company</b>	<b>Listing status</b>	<b>Paid up share capital (in ₹) as per the latest audited financial statements</b>	<b>Turnover (in ₹) as per the latest audited financial statements</b>
<i>Maya Ltd.</i>	<i>Unlisted</i>	<i>50 Crore</i>	<i>100 crore</i>
<i>Manna Ltd.</i>	<i>Listed</i>	<i>100 crore</i>	<i>150 crore</i>
<i>Mopin Ltd.</i>	<i>Unlisted</i>	<i>150 crore</i>	<i>350 crore</i>

*Guide Riya in selecting the companies which are mandatorily required to appoint a woman director as per the Companies Act, 2013. Also explain as to when a company is required to appoint independent woman director ? (5 marks)*

- (c) *The Board of directors intend to understand the benefits of the buyback of shares. You have been requested by the Board of directors to list out a few benefits of buyback of shares. (5 marks)*
- (d) *'The Company Secretary and Chairperson shall take due and reasonable care while handling virtual meeting.' Evaluate the statement. (5 marks)*

**Answer 4(a)**

As per section 101 of the Companies Act, 2013, a General Meeting of company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Clear days' means exclusive of the day of the notice of service and of the day on which the meeting is held. When a notice of General Meeting is sent by post, it shall be deemed to be served at the expiration of 48 hours after the letter containing the same is posted - Rule 35 of the Companies (Incorporation) Rules, 2014.

Each of 21 days must be full or complete days. The day on which the notice is deemed to be served on the member and the day of the general meeting have to be in addition to the 21 days.

	<i>Case-I - Sky Ltd.</i>	<i>Case -11- Moon Ltd.</i>
No. of days from the date of sending notice by post to the date of meeting	26 days	24 days
Less: Day of meeting	1 day	1 day
Less: Day of sending notice by post	1 day	1 day
Less: 2 days (equivalent to 48 hours) after date of posting	2 days	2 days
Number of clear days	22 days	20 days
Length of notice	Proper	Shorter

In case of section 8 company, a General Meeting of company may be called by giving 14 clear days' notice instead of 21 clear days. Hence, if Sky Ltd., and Moon Ltd. Are section 8 companies, notice issued for General Meeting is proper.

**Answer 4(b)**

As per section 149(1) read with Rule 3 of Companies (Appointment and Qualification of Directors) Rules, 2014 following class of companies must have at least one woman director:

- All listed companies
- Public company-
  - with paid up capital of Rs. 100 crore or more; or
  - with turnover of Rs. 300 crore or more.

Applying the above provision, it can be suggested that:

- Maya ltd. is not compulsorily required to appoint woman director as its paid-up capital is less than Rs. 100 crore and turnover is less than Rs. 300 crore.
- Manna ltd. is compulsorily required to appoint at least one woman director as it is a listed company.

- Mopin Ltd. is compulsorily required to appoint at least one woman director as its paid-up capital is more than Rs. 100 crore and turnover is more than Rs. 300 crore.

Based on above discussion, it can be advised to Riya that Manna Ltd. and Mopin Ltd. are mandatorily required to appoint at least one woman director.

According to Regulation 17 of SEBI (LODR) Regulations, 2015-Board of directors of top 500 listed companies shall have at least one independent woman director by 1st April, 2019 and Board of directors of the top 1000 listed companies shall have at least one independent woman director by 1st April, 2020. The top 500 and 1000 listed companies shall be counted on the basis of market capitalization, as at the end of the immediate previous financial year.

#### **Answer 4(c)**

A few advantages of buyback of shares are as under:

1. It is an alternate mode of reduction in capital without requiring approval of the court/NCLT.
2. To improve the earnings per share.
3. To improve return on capital, return on net worth and to enhance the long-term shareholders value.
4. To provide an additional exit route to shareholders when shares are undervalued or thinly traded.
5. To enhance consolidation of stake in the company.
6. To prevent unwelcome takeover bids.
7. To return surplus cash to shareholders.
8. To achieve optimum capital structure.
9. To support share price during periods of sluggish market condition.
10. To serve the equity more efficiently.

#### **Answer 4(d)**

The Chairperson of the meeting and the Company Secretary while handling virtual meeting shall take due and reasonable care with respect to the following:

- (a) to safeguard the integrity of the meeting by ensuring sufficient security and identification procedures to record proceedings;
- (b) to ensure availability of proper video conferencing or other audio visual equipment or facilities for providing transmission of the communications for effective participation of the directors and other authorised participants at the Board meeting;
- (c) to record proceedings and prepare the minutes of the meeting;
- (d) to store for safekeeping and marking the tape recording(s) or other electronic

recording mechanism as part of the records of the company at least before the time of completion of audit of that particular year;

- (e) to ensure that no person other than the concerned director are attending or have access to the proceedings of the meeting through video conferencing mode or other audio visual means; and
- (f) to ensure that participants attending the meeting through audio visual means are able to hear and see the other participants clearly during the course of the meeting.

The directors, who are differently abled, may be facilitated by the Board to allow a person to accompany him provided such Director requests the Board to allow a person to accompany him and ensures that such person maintains confidentiality of the matters discussed at the meeting.

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

**Question 5**

- (a) *Happy Mobile Ltd. is engaged in the manufacturing of mobiles and accessories related to mobile. The Board of the company consists of nine directors i.e. Rakesh (Director), Shyam (Director), Mehul (Director), Jigisha (Director), Komal (Director), Kavita (Director), Ashish (Independent Director), Gagandeep (Independent Director) and Anil (Small Shareholder's Director). Articles of Association of the company does not provide for retirement of all directors at every Annual General Meeting. Calculate the number of directors liable to retire at the Annual General Meeting to be held on 15th September, 2022.*  
(4 marks)
- (b) *Naman is Managing Director, Manan is Whole-time Director and Ojas is Director of the Apollo Ltd. Naman has resigned from his position with effect from 31st March, 2022 due to his ill health. Doctor has advised him to take complete bed rest. Manan and Ojas also tendered resignation with effect from 1st April, 2022 pursuant to a slump sale of one of the undertakings of Apollo Ltd. to Nimbo Ltd. (a group company of Apollo Ltd.). Consequently, Manan and Ojas were appointed as Whole-time Director and Director respectively in Nimbo Ltd. w.e.f. 1 June, 2022. Manan and Ojas individually made an application to the Board of Apollo Ltd. for compensation for loss of office. When, Naman came to know about the said applications by Manan and Ojas demanding compensation, he also asked for the compensation. Who will be eligible for such compensation as per the provisions of the Companies Act, 2013 ?*  
(4 marks)
- (c) *Rajdeep, a director of the company, intimated his willingness to participate in the Board meeting scheduled to be held in August, 2021 through video conferencing. He declared his intention for participation in the scheduled Board meeting through video conferencing mode to company in July, 2021. The Chairman of the company has informed Rajdeep that he has to inform at least 3 months in advance to participate in the Board meeting through video conferencing. Considering the applicable provisions of the Companies Act, 2013, decide whether the action of the Chairman is valid ? Can Rajdeep attend the Board meeting scheduled to be held in August, 2021 through video conferencing ?*  
(4 marks)



- (d) A director while leaving India for medical treatment abroad informed the Board of directors that he would not be available for the next six months. During his absence, three Board meetings were held and notices were not sent to him. Is there any default under the Companies Act, 2013 ? What would be the consequences ? (4 marks)
- (e) Advise the Board of directors of Clean Ltd. regarding appointment in the following scenarios :
- (i) Can Ram who is already director of Clean Ltd. be appointed as Chief Executive Officer (CEO) or Chief Financial Officer (CFO) of the same company ?
- (ii) Is it possible to appoint Ram as Managing director of Clean Ltd. when Shyam is already a Manager of the same company ? (4 marks)

**OR (Alternate question to Q. No. 5)**

**Question 5A**

- (i) Extra Power Ltd. desires to appoint an additional director on its Board of directors. The Articles of Association of the company confer upon the Board to exercise the power to appoint such a director. As such Mohan is appointed as an additional director on 12th December, 2020. The 5th Annual General Meeting of the company was scheduled to be held on 17th September, 2021; however, the meeting was adjourned to and held on 30th September, 2021. Decide the date up to which Mohan can continue as an additional director in Extra Power Ltd. ? (4 marks)
- (ii) The Board of directors of Well Ltd., wants to contribute ₹60,000 to a charitable trust during the financial year 2022-2023. During the financial year 2021-2022, the company suffered losses; however, during the financial years 2019-20 and 2020-21 the net profits were ₹12,00,000 and ₹5,00,000 respectively. The directors are contemplating to contribute the said amount in spite of the losses. In this connection, state whether the directors can do so ? Whether contribution towards Gratuity Fund for employees of the company can be considered as contribution to charitable trust under the Companies Act, 2013 ? (4 marks)
- Suitable assumptions can be made.
- (iii) Indra Kumar, head of the legal and secretarial department of a conglomerate wants to understand from you that which of the following resolutions shall only be passed by the postal ballot. Assist him with your answers as per the provisions of the Companies Act, 2013 based on the information available from the following table :

Nature of Company	Number of Members	Subject matter for which resolution is proposed
One Person company	1	Alteration of Articles of Association
Unlisted Company	190	Buy-back of shares
Listed Company	12,340	Election of small shareholders' Director

(4 marks)

- (iv) With the scenarios described below, examine whether any of the following companies is required to constitute Audit Committee as per provisions of the Companies Act, 2013 ?

Name of Company	Paid up capital (Rs. in crore)	Turnover (Rs. in crore)	Aggregate outstanding loan, debenture and deposits (Rs. in crore)
A Ltd. (Unlisted)	8	75	55
B Ltd. (Listed)	10	75	11
C Pvt. Ltd.	8	110	11
D Ltd. (Unlisted)	10	51	5

(4 marks)

- (v) Explain the following terms with reference to a virtual meeting :

- Electronic mode
- Roll call.

(4 marks)

#### Answer 5(a)

Section 152(6) of the Companies Act, 2013-states that unless it is provided by the articles of the company, 2/3rd directors are liable to retire by rotation and 1/3rd are liable to retire at every general meeting after the meeting at which first directors are appointed.

Directors who are liable to retire by rotation are known as rotational directors. Any fraction while calculating 2/3rd shall be rounded off to the one. Alternatively, it can be said that only 1/3rd of the total number of directors can be non- rotational directors. Here, total directors mean directors appointed by the company. 1/3rd of rotational directors shall retire at every General Meeting. The directors who have been longest in office since their last appointment are liable to retire by rotation at every Annual General Meeting. Small Shareholders' Director and Independent Directors are non-rotational directors.

Applying above provisions, Ashish (Independent Director), Gagandeep (Independent Director) and Anil (Small Shareholders' Director) are non-rotational directors.

Remaining six directors are liable to retire by rotation. 1/3rd of rotational directors are liable to retire at the forthcoming Annual General Meeting (i.e. 1/3rd of 6 = 2).

Therefore, any two directors from Rakesh, Shyam, Mehul, Jigisha, Komal and Kavita will retire by rotation.

#### Answer 5(b)

Section 202 of the Companies Act, 2013 provides that company may make payment of compensation for any loss of office. Such compensation is payable to Managing Director (MD) or Whole-time Director (WTD) or Manager of company. However, no compensation shall be payable to any other director for loss of office.

As per section 202(2), compensation is not payable in following circumstances:

- Where Managing Director or Whole time Director or Manager resigns his office in view of reconstruction of the company or amalgamation with other company and he is appointed as Managing Director or Whole time Director or Manager of the reconstituted company or body corporate resulting from such amalgamation. In the present case, since Manan has taken up directorship in Nimbo Ltd. Pursuant to a reconstruction within the group companies (in the form of slump sale of one of the undertakings to another group company), he cannot ask for the compensation for loss of office.
- Ojas is not eligible for compensation at all as per the provisions of section 202 of the Companies Act, 2013.
- When a director (MD/WTD) resigns from his office at his / her will (i.e., otherwise than because of the reconstruction or amalgamation) he cannot claim compensation for the loss of office. Accordingly, Naman also cannot claim any compensation for the loss of his office as he has resigned voluntarily.

#### **Answer 5(c)**

The provisions for conducting Board meeting through video conferencing has been specified in Rule 3 of the Companies (Meetings of Board and its Powers) Rules, 2014.

Director can attend Board meeting electronically. At the beginning of calendar year, director may intimate his intention to participate in Board meeting through video conferencing. Such declaration shall be valid for one year. If he does not intimate, it shall be presumed that the director shall attend the Board meeting in person.

Para 1.3.4 of Secretarial Standard on Board Meeting states that, the notice of the Board meeting shall inform the directors regarding the option available to them to participate through video conferencing mode or other audio-visual means, and shall provide all the necessary information to enable the directors to participate through video conferencing mode or other audio-visual means.

A director intending to participate through video conferencing or audio-visual means shall communicate his intention to the Chairperson or the Company Secretary of the company. If the director intends to participate through video conferencing or other audio-visual means, he shall give prior intimation to that effect sufficiently in advance so that company is able to make suitable arrangements in this behalf.

It was held in case of *Rupak Gupta vs. UP Hotels Ltd.*, Sub Rule 3(3)(e) of Companies (Meeting of Board and its Powers) Rules, 2014 does not intend to say that if an intimation to participate in a meeting through electronic mode is not given at the beginning of the year, the directors are not entitled to participate in any meeting through electronic mode. Therefore, the director does not give intimation at beginning of the calendar year, he can attend through video conference and preventing him from appearing through video conferencing is improper.

Accordingly, one can say that the action of the Chairman is not valid. Rajdeep can participate in the Board meeting through video conferencing.

**Answer 5(d)**

Section 173(3) of the Companies Act, 2013 requires that not less than seven days' notice in writing shall be given to every director at the registered address (whether in India or outside India) as available with the company and such notice shall be sent by hand delivery or by post or by electronic means.

Further, notice of Board meeting shall be given even when meetings are held on pre-determined dates or at pre-determined intervals. In *Re Portuguese Consolidated Copper Mines* (1889), it was held that notice to director is necessary even if he has informed that he will not be able to attend the Board meeting. If the notice of meeting is not given to one of its directors, meeting of Board of directors is invalid and resolution passed at such meeting are inoperative (*Parmeshwari Prasad Gupta v. Union of India* [1974] 44 *Comp Cas* 1 [SC])

Therefore, notice of Board Meeting was required to be given despite the fact that while going abroad, the director had already informed his non-availability during next six months.

**Consequences of not giving notice**

- If the notice is not given there is violation of section 173. Every officer of company whose duty is to give notice under this section and who fails to do so shall be liable to penalty of Rs. 25,000/-
- Failure to send notice would render the resolutions passed at the meeting null and void.

**Answer 5(e)**

- (i) "Chief Executive Officer" means an officer of company, who has been designated as such by company - section 2(18) of the Companies Act, 2013. "Chief Financial Officer" means a person appointed as the Chief Financial Officer of company - section 2(19) of the Companies Act, 2013. The Companies Act, 2013 does not prohibit appointment of director as CEO or CFO of same company but company has to comply with other provisions of Act (i.e. disclosure of interest, office of profit or place etc.).

Further as per Regulation 77 of Table F, a director can be appointed as Chief Executive Officer, Manager, Company Secretary or Chief Financial Officer of same company. Accordingly, Ram who is the director of Clean Ltd. can be appointed as CEO or CFO in the same company.

- (ii) As per section 196(1) of the Companies Act, 2013 a company can appoint either Managing Director or Manager, but not both at the same time. Accordingly, Ram cannot be appointed as Managing Director of Clean Ltd. in case where Shyam is already appointed as a Manager of Clean Ltd. in view of section 196(1) of the Companies Act, 2013.

**Answer 5A(i)**

Section 161(1) of the Companies Act, 2013, provides that the Articles of Association of a company may confer on its Board of directors the power to appoint any person,

other than a person who fails to get appointed as a director in a General Meeting, as an additional director at any time.

Person who is appointed as an additional director shall hold office up to the date of the next Annual General Meeting or the last date on which the Annual General Meeting should have been held, whichever is earlier. In case of default in holding Annual General Meeting, the additional director shall vacate his office on the last day on which the Annual General Meeting ought to be held.

Further, as per section 96, the company is required to hold an Annual General Meeting (other than First AGM) within a period of 6 months of closure of the relevant financial year. As per section 2(41), "financial year" in relation to any company means period ending on 31st March every year.

In the given case, since the Annual General Meeting was adjourned to and held on 30th September, 2021, Mohan can continue up to 30th September, 2021.

#### **Answer 5A(ii)**

As per section 181 of the Companies Act, 2013, company can contribute to bona-fide charitable funds or other funds which are not directly connected to business of company upto 5% of its average net profits during the preceding three financial years.

If the contribution is proposed for more than this limit, prior approval in General Meeting is required.

In present case, we assume Well Ltd. has incurred Loss of Rs. 2,00,000 during the financial year 2021-22

<i>Year</i>	<i>Average Profits/Loss</i>
2019-20	12,00,000
2020-21	5,00,000
2021-22	-2,00,000

Average net profits =  $12,00,000 + 5,00,000 - 2,00,000 / 3 = \text{Rs. } 5,00,000$

5% of Average Net Profits =  $5\% \text{ of } 5,00,000 = \text{Rs. } 25,000$

Pursuant to Section 181, if contribution to charitable trust is more than 5% of average net profits for three financial years, it requires prior approval in General Meeting.

Hence, in the above case, where Well Ltd. wants to contribute more than Rs. 25000 i.e. Rs. 60,000 (in the present case) to charitable fund, the directors have to ensure that:

- a) Prior approval by ordinary resolution in the general meeting is obtained to make contribution to charitable fund.
- b) The trust is bonafide.

Contribution towards Gratuity Fund for employees of company cannot be considered as contribution towards charitable fund or trust. Gratuity Fund is directly related to business of company or welfare of employees.

**Answer 5A(iii)**

Company shall transact such items of business as the Central Government may, by notification, declare to be transacted only by means of postal ballot. Provided that any item of business required to be transacted by means of postal ballot under section 110(1)(a) of the Companies Act, 2013, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.

As per Rule 22 of the Companies (Management and Administration) Rules, 2014 in relation to alteration of Articles of Association of the company, resolution relating to buy-back of shares and resolution relating to election of small shareholders' director shall be transacted through postal ballot. However, One Person Company and Companies having members up to 200 are not required to transact any business through postal ballot.

Accordingly, Indra Kumar can be informed that:

- One Person Company and Unlisted Company are not required to pass resolution through postal ballot.

Listed Company is required to transact the business of election of small shareholders' director through postal ballot since the number of members are in excess of 200.

**Answer 5A(iv)**

Section 177 of the Companies Act, 2013 read with Rule 6 of the Companies (Meetings of the Board and its Powers) Rules, 2014 provides that the Board of directors of following companies are required to constitute an Audit Committee of the Board:

- Every listed company;
- All public companies with paid up capital of Rs. 10 crore or more; or
- All public companies having turnover of Rs. 100 crore or more; or
- All public companies, having in aggregate outstanding loans, debentures and deposits exceeding Rs. 50 crore or more

In view of the above provisions, it can be suggested that:

- A Ltd. is required to constitute Audit Committee as it has aggregate outstanding loans, deposit and debenture of Rs. 55 crore (in excess of Rs. 50 crore).
- B Ltd. is required to constitute Audit Committee as it is a listed company.
- C Pvt. Ltd. is not required to constitute Audit Committee as it is a private company.
- D Ltd. is required to constitute Audit Committee as it has a paid up capital of Rs. 10 crore.

**Answer 5A(v)**

- Secretarial Standard -1 (SS-1) defines "Electronic Mode" means Meetings through video conferencing or other audio-visual means. "Video conferencing" or "other

audio visual means” means audio-visual electronic communication facility employed which enables all the persons participating in a Meeting to communicate concurrently with each other without an intermediary and to participate effectively in the Meeting.

- The requirement for roll call is in line with the requirement under Rule 3(4) and Rule 3(5) of the Companies (Meetings of Board and its Powers) Rules, 2014. During the roll call, every Director participating through Electronic Mode should state, for the record, the following namely: (a) name; (b) the location from where he is participating; (c) that he has received the Agenda and all the relevant material for the Meeting; and (d) that no one other than the concerned Director is attending or having access to the proceedings of the Meeting at the location mentioned in (b) above.

A roll call is nothing but identifying and confirming the attendance of the director participating through Electronic Mode.

### PART III

#### Question 6

- (a) *Kirti, who is a Practicing Company Secretary is specialized in the areas of Secretarial Audit. On account of receiving many assignments and unable to handle the work alone, she permits Mohan, her friend who is a Company Secretary but not in practice and who is also a lawyer but not a member of any Bar Council, to conduct the Secretarial Audit and give reports on her behalf. There is no written agreement between Kirti and Mohan to this effect; however, the oral understanding between both of them is that the fees received from the assignments shall be passed on to Mohan and Kirti in equal proportion. Examine the validity of this arrangement in light of the relevant provisions related to misconduct under the Company Secretaries Act, 1980. (5 marks)*
- (b) *Company Secretary of Black Ltd. has suggested following style of assigning serial number to its Board meeting :*
- Serially numbering on Calendar Year basis as follows : "1/2015", "2/2015", "3/2015" and so on..... In the next year, numbering would be "1/2016", "2/2016", "3/2016" and so on.*
  - Serially numbering on financial year basis as follows : "1/2015-16", "2/2015-16", "3/2015-16" and so on .....or 1/15-16, 2/15-16, 3/15-16 and so on.*
  - Continuous serially numbering across years : 11th Meeting, 12th Meeting and so on.*

*Board of directors of Black Ltd. would like to know that which of the above style of assigning serial number to Board meeting is valid as per Secretarial Standard (SS-1) ? How serial number to the Adjourned Board meeting should be given to comply with SS-1 ? (5 marks)*

#### Answer 6(a)

Part I of the First Schedule to the Companies Secretaries Act, 1980 deals with professional misconduct in relation to Company Secretaries in practice.

Clause 1 of Part I of the First Schedule provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he allows any person to practice in his name as a Company Secretary unless such person is also a Company Secretary in Practice and is in partnership with or employed by him.

This clause read with clause 11 allow another person to practice in the name of a Company Secretary in Practice provided such other person is also a Company Secretary in Practice and is in partnership with or is employed by the Company Secretary in Practice in whose name the work is to be carried out. Two persons are said to be in Partnership when they work together on mutual faith and agency. Sharing of remuneration does not make them partners. Thus, an associate who is not a part of decision making process does not become a partner.

In the given case, Practicing Company Secretary has engaged Mohan who is not a practicing Company Secretary to carry Secretarial Audit in her name. It is a misconduct on her part. Moreover, she has agreed to share 50% fees of assignment with Mohan.

Clause 2 of Part I of the First Schedule does not prohibit a Company Secretary in Practice from sharing fees, commission or brokerage in the fees or profits of his professional business, with any other member of the Institute or a partner or a retired partner or the legal representative of a deceased partner. Accordingly, sharing of the fees with Mohan shall be seen as a professional misconduct on the part of Kirti.

However, permitting Mohan to conduct the Secretarial Audit and give reports on her behalf will be seen as a professional misconduct under the provisions of the Company Secretaries Act, 1980.

#### **Answer 6(b)**

As per para 1.2.1 of Secretarial Standard-I (SS-1), every Meeting of the Board should be serially numbered for ease of reference. While numbering serially, the company may choose to follow its existing system of numbering, if any, or any new system of numbering, which should be distinct and enable ease of reference and/or cross reference. Here, a company may choose to either count and give continuous numbering from its incorporation or give continuous numbering from Meetings held on or after 1st July, 2015, this being the date from which SS-1 became effective. In any case, the company should follow a uniform and consistent system.

Accordingly, all styles {i.e. (i) to (iii)} presented for assigning serial number to the Board meeting by the Company Secretary are valid and complying SS-1. It is advisable that the Board be informed about the system of numbering of the Meeting and/or any change in the system of numbering; and the same be recorded in the Minutes.

Serial number of the original meeting and the adjourned meeting should be the same.

For e.g.: In case the serial number of the original meeting is 12th Meeting, the serial number of the adjourned meeting should be 12th Meeting (Adjourned).



## SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

**NOTE :** Answer ALL Questions.

### PART A

#### Question 1

- (a) ABC Ltd., involved in manufacturing or trading activities, established its branch office outside India includes a firm or association of persons. The permission in this regard has to be obtained from the RBI under the FEMA Act 1999. Highlight the permitted activities by RBI in the light of RBI Master Circular of 2016.

(5 marks)

- (b) A group of individuals intended to form a club namely 'Jet Pilots Flying Club' as limited liability company to impart classroom teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of 10 years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act, 2013.

Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013.

(5 marks)

- (c) The promoters of SBP Ltd. and CJP Ltd. met for developing the Supply Chain Management System for Cultural and Traditional items of specific geographical area(s). SBP Ltd. is in logistic and marketing, however, CJP Ltd. is a software developer. Both the promoters concluded that a separate Company be formed for running of the business through e-commerce. Social Media influencer shall be hired for promotion of the business. The legal advisors have advised for setting up a Contractual Joint Venture for a period of 25 years.

Explain the key characteristics of Contractual Joint Venture.

(5 marks)

- (d) Adam formed a One Person Company (OPC) on 16th April, 2021 for manufacturing electric cars. The nephew of Adam was nominee, duly nominated by him. Due to an accident, Adam expired and his nephew Manu took over the charge of the Company. Earlier he was working as Doctor in Private Hospital. The turnover of the OPC for the financial year ended 31st March, 2022 was about ₹2.25 crore. There being no other Shareholder, Manu decided to sale the business, however, a corporate advisor advised to convert it voluntary into a private limited company to induct his wife, who shall hold 51% equity and shall be whole time managerial person.

Can it be done ? Examine the legal provisions of the Companies Act, 2013.

(5 marks)

**Answer 1(a)**

As per the Reserve Bank of India Master Direction 2016– ‘Direct Investment by Residents in Joint Venture (JV) / Wholly Owned Subsidiary (WOS) Abroad’, the permitted activities are given as under:

1. Establishment of Special Purpose Vehicle (SPV) are permitted under the Automatic Route.
2. Establishment of step down subsidiary.
3. Establishment of unincorporated/ incorporated entities in oil sector under the Automatic Route.
4. Construction and maintenance of submarine cable systems under the Automatic Route.
5. Natural resources sector.

Further, Master Direction 2016 provides that Indian Party should not be on the Reserve Bank’s Exporters’ caution list / list of defaulters to the banking system circulated by the Reserve Bank / Credit Information Bureau (India) Ltd. (CIBIL) / or any other credit information company as approved by the Reserve Bank or under investigation by any investigation / enforcement agency or regulatory body or is under investigation by the Directorate of Enforcement or included in the list of defaulters to the banking system circulated by the Reserve Bank/any other Credit Information company as approved by the Reserve Bank.

Indian Party are not permitted in an overseas entity located in the countries identified by the Financial Action Task Force (FATF) as “non co-operative countries and territories” as per list available on FATF website [www.fatf-gafi.org](http://www.fatf-gafi.org) or as notified by the Reserve Bank of India from time to time.

**Answer 1(b)**

According to Section 8 (1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company -

- (a) has in its object the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members;

The Central Government may, by issue of license, allow that person or association of persons to be registered as a limited liability company.

According to Section 8 (9) of the Companies Act, 2013, if on the winding up or dissolution of a company registered under this section, there remains, after the satisfaction of its debts and liabilities, any asset, they may be transferred to another company registered under this section and having similar objects, subject to such conditions as the Tribunal may impose, or may be sold and proceeds thereof credited to Insolvency and Bankruptcy Fund formed under section 224 of the Insolvency and Bankruptcy Code, 2016.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of 10 years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good since there is a restriction as pointed out in (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

### **Answer 1(c)**

The key characteristics of contractual Joint Venture are:

- Two or more parties have a common intention- of running a business venture.
- Each party will bring some inputs in the form of money, technology or materials.
- Each party exercises a certain degree of control on the venture.
- The relationship is not a transaction to transaction relationship but has a character of relatively longer time duration.

The contractual Joint Venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some element of control in the joint venture.

The contractual Joint Venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited team or where the laws of the host country do not permit the ownership of property by foreign citizens.

For the purposes of contractual joint venture, the relationship between parties is set forth in the contract or agreement concluded between them.

The way joint venture company would carry out its operations is always based on the negotiations between the parties, the results of which reflect in the joint venture agreement entered into between the parties.

The licensing agreement, know-how agreement, technical services or technical assistance agreement, franchise agreement and agreement covering all other commercial matters might even form annexes to the main joint venture agreement. These can be signed once the joint venture company is established.

An example of a contractual joint venture is a franchisee relationship.

### **Answer 1(d)**

The procedure of conversion of a One Person Company (OPC) into Private Limited Company as per Section 18 of the Companies Act, 2013 (the Act) and Rule 6 of Companies (Incorporation) Rules of 2014 is given as follow:

The One Person company shall alter its memorandum and articles by passing a resolution in accordance with sub-section (3) of section 122 of the Act to give effect to the conversion and to make necessary changes incidental thereto.

A One Person company may be converted into a Private or Public Company, other than a company registered under section 8 of the Act, after increasing the minimum number of members and directors to two or seven members and two or three directors, as the case may be, and maintaining the minimum paid-up capital as per the requirements of the Act for such class of company and by making due compliance of section 18 of the Act for conversion.

The company shall file an application in e-Form No.INC-6 for its conversion into Private or Public Company, other than under section 8 of the Act, along with fees as provided in the Companies (Registration offices and fees) Rules, 2014 by attaching documents, namely:-

- (a) Altered Memorandum of Association (MOA) and Articles of Association (AOA);
- (b) copy of resolution;
- (c) the list of proposed members and its directors along with consent;
- (d) list of creditors; and
- (e) the latest audited balance sheet and profit and loss account.

On being satisfied that the requirements stated herein have been complied with, the Registrar shall approve the form and issue the Certificate.

Hence, by complying with above mentioned provisions, OPC can be converted into Private Limited Company.

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

**Question 2**

- (a) *Mohan has completed MBA in dairy farming and is keen in uniting farmers in Rajasthan by forming a Multi State Co-operative Society. Brief Mohan on the documentary requirements for formation of Multi State Co-operative Society and the Authority with whom the application needs to be filed. (4 marks)*
- (b) *Examine the validity of the following statements in respect of Annual General Meeting (AGM) as per the provisions of the Companies Act, 2013:*
  - (i) *The first AGM of a company shall be held within a period of six months from the date of closing of the first financial year.*
  - (ii) *The Registrar may, for any special reason, extend the time limit within which first AGM shall be held.*
  - (iii) *Subsequent AGM should be held within 6 months from closing of the financial year.*
  - (iv) *The AGM can be held on Saturday, however, the Company runs business for 5 days in a week i.e. Monday to Friday. (4 marks)*
- (c) *Explain the procedure for changing the name of Limited Liability Partnership (LLP) under the Limited Liability Partnership Act, 2008. (4 marks)*
- (d) *“Start-ups India” initiative is used to promote growth and to help Indian economy by the Government of India. Explain the benefits which are being given to entrepreneurs establishing start-ups. (4 marks)*

- (e) *ABC Producer Company Ltd. was incorporated on 11th July, 2013 as a producer company with objective of production of wheat and related products. The CAGR since inception is around 12%, better as comparative to other sector(s). However, during Covid 19 pandemic, there was tremendous upsurge in operating income, up by 110% as compared to previous year. There is huge Surplus Fund in the Company, hence, the Director (Finance) opined that fund may be invested in Stock Market related instruments including Equity, Bonds and Mutual Funds. He also suggested for doing F&O related transactions out of the Surplus Fund. However, the Company Secretary of the Company objected that the Fund can be invested in certain categories only. Examine.* (4 marks)

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

**Question 2A**

- (i) *Vinod formed a single person economic activity in the form of One Person Company with his brother Kishor as its nominee. On 10th May 2022, Kishor withdrew his consent as Nominee of the One Person Company. Can he do so? Examine whether the following individuals are eligible for being nominated as Nominee of the One Person Company as on 10th May, 2022 under the provisions of the Companies Act, 2013.*
- (I) *Shyam is son of Vinod, who is 15 years old as on 10th May, 2022.*
- (II) *Ashok, an Indian Citizen residing in India who is presently a member of a One Person Company.*
- (ii) *Degree of the Control plays the vital role in selection of a suitable form of the business organization. Explain.*
- (iii) *The Articles of Association of X Private Limited contains provisions for entrenchment under Section 5 of the Companies Act, 2013. What does entrenchment provisions mean in this context? Also state the relevant provisions of the said Act dealing with entrenchment provisions.*
- (iv) *ARCs can maximize recovery value with minimum cost. Explain the benefits of incorporating an Asset Reconstruction Company (ARC).*
- (v) *Define the term 'MUDRA Banks'.* (4 marks each)

**Answer 2(a)**

An application in Form -1 (under sub-rule (1) of rule 3 of the Multi State Cooperative Societies Rules, 2002) should be filed with the Central Registrar of Cooperative Societies, New Delhi along with the following enclosures:

1. A certificate from the bank stating credit balance there in favour of the proposed multi-state co-operative society.
2. A scheme explaining how the proposed multi state co-operative society has reasonable prospects of becoming a viable unit.
3. Proposed bye-laws of the multi-state cooperative society, duly signed by each of the persons who sign the application for registration.
4. Proposed area of operation for registration shall initially be permitted for two contiguous states only.

5. The list of persons who have contributed to the share capital, together with the amount contributed by each of them and admission fee paid by them along with their ID address proof duly attested by the Chief Promoter.
6. Certified copies of the resolutions passed by the proposed society along with the certified copy of the resolution of the promoters which shall specify the name and address of one of the applicant(s) to whom the Central Registrar may address correspondence under the rules before registration and dispatch or hand over registration documents.
7. Contact number and e-mail address of the Chief Promoter or Society on cover page.

For societies having objects related to thrift and credit and for multi-purpose societies following additional documents are required to be submitted along with documents mentioned above:

1. No Objection Certificate from the Registrar of Cooperative Societies of the States/ U.T. where the area of operation of the society is proposed to be confined.
2. A certificate to the effect that the credentials of the Chief Promoter/Promoters have been verified by the Registrar of Co-operative Societies of the state where the head office is proposed to be located.

All documents to be submitted in original with the signatures of the Chief Promoter/ Promoters on each page.

**Answer 2(b)**

- (i) According to the proviso to Section 96(1) of the Companies Act, 2013, the first annual general meeting of the company shall be held within a period of 9 months from the closing of the first financial year. So, the statement is incorrect.
- (ii) According to the proviso to Section 96(1), the registrar may, for any special reason, extend the time within which any annual general meeting, other than first annual general meeting, shall be held, by a period not exceeding three months. So, the statement is incorrect.
- (iii) According to the proviso to Section 96(1), subsequent AGM of the company shall be held within a period of 6 months from the closing of the financial year. So, the statement is correct.
- (iv) As per Section 96(2), the Annual General Meeting shall be called during the business hours between 9 a.m. and 6 p.m. on any day is not a National Holiday. So the Annual General Meeting of the Company can be held on Saturday.

**Answer 2(c)**

The procedure for change of name is governed by provisions of Section 19 of the Limited Liability Partnership Act, 2008 (LLP Act). According to Rule 20 of LLP Rules, 2009, the limited liability partnership may change its name by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide such procedure, consent of all partners shall be required for changing the name of the limited liability partnership.

The procedure for change of name is governed by provisions of Section 19 of the Limited Liability Partnership Act, 2008 (LLP Act). An application for changing the name of the LLP should be, first, submitted to the ROC, LLP.

Along with the name change application, the partners need to submit the following documents.

1. Certified copy of consent of all partners involved for the name change;
2. Copy of the existing legal agreement;
3. Trademark copy or copy of the registration certificate.

After the suggested name get approved, one has to file Form LLP-5, giving notice of the change in the Name. The form has to be submitted to the Registrar within 30 days.

The ROC, after taking into consideration the application, will approve/deny the name change.

If the name is approved, the ROC will issue a certificate and the new name will be effective from the date mentioned in the certificate.

Once the partners get the new certificate of registration, a supplementary agreement needs to be laid out mentioning the changes in the LLP agreement as a result of the name change.

#### **Answer 2(d)**

To promote growth and help Indian economy, many benefits are being given to entrepreneurs establishing start-ups are as under:

1. *Simple Process* - Government of India has launched a mobile app and a website for easy registration for startups. Anyone interested in setting up a startup can fill a simple form on the website and upload certain documents. The entire process is completely online.
2. *Reduction in Cost* - The government also provides lists of facilitators of patents and trademark. They will provide high quality Intellectual Property Rights Services including fast examination of patents at lower fees. The government will bear all facilitator fees and the startups will bear only the statutory fees. They will enjoy 80% reduction in cost of filing patents.
3. *Easy access to Funds* - a 10,000 crore rupees fund is set up by the government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital.
4. *Tax holiday* - Startups will be exempted from income tax for certain period provided they get a certification from Inter-Ministerial Board.
5. *Apply for Tenders* - Startups can apply for government tenders. They are exempted from the prior experience/turnover criteria applicable for normal companies answering to government tenders.
6. *R & D facilities* - Seven new research parks will be set up to provide facilities to startups in R&D sector.

7. *No time - consuming compliances* - various compliances have been simplified to startups to save time and money. Startups shall be allowed to self- certify compliance (through the startup mobile app) with 9 labour and 3 environment laws.
8. *Tax saving for Investors* - People investing their capital gains in the venture funds set up by government will get exemption from capital gains. This will help startups to attract more investors.
9. *Choose your investor* - The startups will have an option to choose between the VCs, giving them the liberty to choose their investors.
10. *Easy Exit* - In case of exit, a startup can close its business within 90 days from the date of application of winding up.
11. *Meet other entrepreneurs* - Government has proposed to hold 2 startup fests annually both nationally and internationally to enable the various stakeholders of a startup to meet. This will provide huge networking opportunities.

**Answer 2(e)**

As per the Producer Companies Rules, 2021, a Producer Company shall make investments from and out of its general reserves in anyone or in combination of the following, namely:

- a) In approved securities, fixed deposits, units and bonds issued by the Central Government or State Governments or Co-operative societies or schedule bank; or
- b) In a co-operative bank, State co-operative bank, co-operative land development bank or Central co-operative bank; or
- c) With any other scheduled bank; or
- d) In any of the securities specified in section 20 of the Indian Trusts Act, 1882; or
- e) In the shares or securities of any other inter-State co-operative society or any co-operative society; or
- f) In the shares, securities or assets of public financial institutions specified under clause (72) of section 2 of the Companies Act, 2013.

The objection of company secretary is valid, the producer company can invest its surplus funds as mentioned above only.

**Answer 2A(i)**

As per the proviso to Section 3 of the Companies Act, 2013, the memorandum of One Person Company (OPC) shall indicate the name of the other person (nominee), who shall, in the event of the subscriber's death or his incapacity to contract, become the member of company. The other person (nominee) whose name is given in the memorandum shall give his written prior consent in prescribed form and shall be filed with Registrar of Companies at the time of incorporation of the One Person Company along with its memorandum of Association and Articles of Association. Such other person (nominee) may withdraw his consent by giving a notice in writing to such sole member and to the One Person Company.



Therefore, in terms of the above mentioned provisions, Kishor, the nominee, whose name was given in the memorandum, can withdraw his consent as a nominee of the OPC by giving a notice in writing to the sole member and to the One Person Company.

Following are the answers to the second part of the question as regards the eligibility for being nominated as nominee:

- (i) As per Rule 3(4) of the Companies (Incorporation) Rules, 2014, no minor shall become member or nominee of the OPC. Therefore, Shyam, being a minor is not eligible for being nominated as Nominee of the OPC.
- (ii) As per Rule 3(2) of the Companies (Incorporation) Rules, 2014, a natural person shall not be a member of more than a OPC at any point of time and the said person shall not be a nominee of more than a OPC. Therefore, Ashok, an Indian Citizen residing in India who is a member of OPC (not a nominee in any OPC) can be nominated as nominee.

#### **Answer 2A(ii)**

The degree of control and management that an entrepreneur desires to have over business affects the choice of form of organisation.

In sole proprietorship and OPC: ownership, management, and control are completely fused, and therefore, an entrepreneur has complete control over his business.

In partnership: management and control of business is jointly shared by the partners and their specific rights, duties and responsibilities would be documented through incorporating various clauses in this regard in the partnership deed. They have equal voice in the management of partnership business except where they agree to divide among themselves the business responsibilities in a different manner. Even then, they are legally accountable to each other.

In a company: however, there is divergence between ownership and management, the management and control of the company business is entrusted to the Board, who are generally the elected representatives of shareholders.

Thus, a person wishing to have complete and direct control of business prefers proprietary organisation rather than partnership or company. If he is prepared to share it with others, he will choose partnership. But, if the activities are large, professional managers are required to handle the day-to-day affairs and there is need for corporate structure and management, he will prefer the company form of organisation.

#### **Answer 2A(iii)**

The Companies Act 2013, recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Act (such as obtaining 100% consent). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

According to Section 5(3) of the Companies Act, 2013, the articles may contain

provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

The provisions for entrenchment referred to in section 5(3) shall be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Where the articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

#### **Answer 2A(iv)**

##### **Benefits of incorporating an Asset Reconstruction Company (ARC)**

1. As the cash realisation 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.
2. The transfer should keep restore depositor and investor confidence by ensuring the lender's financial health. The bank uses it as a method to hive off bad loans from their balance sheet. ARCs can maximize recovery value while minimum cost.
3. ARCs also helps building industry expertise in loan resolution and restructuring management, besides serving as a catalyst for important legal reforms in bankruptcy proceeding and loan collection.
4. ARCs play an important role in developing capital markets through secondary asset instruments.

#### **Answer 2A(v)**

Micro Units Development and Refinance Agency Bank (or MUDRA Bank) is a public sector financial institution in India. It provides loans at low rates to micro-finance institutions and non-banking finance institutions which then provide credit to MSMEs.

It will provide its services to small entrepreneurs outside the service area of regular banks, by using agents. About 5.77 crore (57.6 million) small business have been identified as target clients using the NSSO survey of 2013. Only 4% of these businesses get finance from regular banks. The Bank will also ensure that its clients do not fall into indebtedness and will lend responsibly.

The bank will classify its clients into three categories and the maximum allowed loan sums will be based on the category:

- Shishu: Allowed loans up to Rs. 50,000 (US\$780)
- Kishore: Allowed loans up to Rs. 5 lakh (US\$7,800)
- Tarun: Allowed loans up to Rs. 10 lakh (US\$16,000)

Those eligible to borrow from MUDRA Bank are:

- Small manufacturing unit
- Shopkeepers
- Fruits and Vegetables vendors
- Artisans

The basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available only for commercial and business purposes and not for personal purposes. At the most, borrower can buy vehicle from mudra loan, given that it is used for commercial purposes. Lastly, this loan is for new business and is only applicable for small business owners.

## PART B

### Question 3

- (a) *Reshma is working as computer operator in M Ltd. on contractual basis. As per manpower agreement, all contractual employees are provided through outsourcing by H Ltd. only. One day she was working long after office hour due to extra work load. David, General Manager (Finance), M Ltd. made unfair touch with her. She wants to file written complaint against him under Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013. Advise her to file the Complaint and what is the Complaint Procedure ?*
- (b) *Sarita is housewife and looking after her 2 children below age of 5 years. After death of her husband, she is doing part time job for survival. She is living in remote area, where lot of factories are violating pollution control norms and infecting the human life. She as an aggrieved person wants to file a suit in the National Green Tribunal (NGT). Elucidate the Procedure for filing a suit in NGT.*
- (c) *Sunita has taken some books from library and she wants to reproduce 'Verbatim' and she wants to use the same for her LL.M. thesis. She would like to know from you whether she will be violating any Copyright protection in doing so. Also brief her about the exceptions and protection available to protect the interest of the users under Copyright law.*
- (d) *Discuss the applicability of Motor Transport Workers Act, 1961.*

(5 marks each)

### Answer 3(a)

As per the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "Employee" means a person employed at a workplace for any

work on regular, temporary, ad hoc or daily wage basis, either directly or through an agent, including a contractor, with or, without the knowledge of the principal employer, whether for remuneration or not, or working on a voluntary basis or otherwise, whether the terms of employment are express or implied and includes a co-worker, a contract worker, probationer, trainee, apprentice or called by any other such name.

Further, the Act stipulates that aggrieved woman can make written complaint of sexual harassment at workplace to the Internal Complaints Committee (ICC) or to the Local Complaints Committee (LCC), in case a complaint is against the employer, within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident.

Provided that where such complaint cannot be made in writing, the Presiding Officer or any Member of the Internal Committee or the Chairperson or any Member of the Local Committee, as the case may be, shall render all reasonable assistance to the woman for making the complaint in writing.

Provided further that the Internal Committee or, as the case may be, the Local Committee may, for the reasons to be recorded in writing, extend the time limit not exceeding three months, if it is satisfied that the circumstances were such which prevented the woman from filing a complaint within the said period.

Where the aggrieved woman is unable to make a complaint on account of her physical or mental incapacity or death or otherwise, her legal heir or such other person as may be prescribed may make a complaint under this section.

In view of the above mentioned provisions, Reshma, working as computer operator in M Ltd. on contractual basis, can make written complaint of sexual harassment by General Manager of M Ltd. at workplace to the Internal Complaints Committee (ICC) or to the Local Complaints Committee (LCC) within a period of three months from the date of incident and in case of a series of incidents, within a period of three months from the date of last incident in writing.

### **Answer 3(b)**

1. Any person who has sustained the injury can file a suit in the National Green Tribunal (NGT).
2. The suit can also be filed by a person who is the owner of the property to which the loss is caused. In case there is a death as a consequence of damage then the legal representative of such a person can file a case.
3. The government or the government agencies related to environment can file a suit in place of that person like the central or the state government or the central pollution control board or state pollution control board.
4. According to the NGT (Practices and Procedure) Rules, 2011, an Application shall be made to the Tribunal in Form I. If the Application is for relief and compensation, it shall be made in Form II with annexures and other requirements as prescribed.
5. The period for filing a suit with NGT is up to 5 years from the date on which the cause for compensation arose. However if the tribunal has sufficient grounds for

believing that the person has reasonable cause that prevented him from filing a suit in NGT than it can extend the period for a maximum of sixty days.

6. A person can argue his own matter before the tribunal and he does not need to be an advocate to do so.
7. If a person is not satisfied with the orders of the tribunal he can seek the review of the decision of NGT under Rule 22 of the NGT Rule.
8. If a person is not satisfied with the decision of the tribunal he can file an appeal to the Supreme Court of India. But the appeal has to be filed within ninety days of the orders passed by NGT.

### **Answer 3(c)**

Verbatim reproduction of pages of the book for the LL. M thesis is not protected under the fair use doctrine of the Copyright Act, 1957. The case of Fateh Singh Mehta v OP Singhal decided by the Rajasthan High Court deals with similar set of facts whereby research thesis submitted by the respondent was copied verbatim to large extent by the appellant for preparing his Ph.D. thesis. It was held to be infringement on part of the appellant.

In order to protect the interests of users, some exemptions have been prescribed in respect of specific uses of works enjoying copyright. It includes:

- (i) for the purpose of research or private study,
- (ii) for criticism or review,
- (iii) for reporting current events,
- (iv) in connection with judicial proceeding.
- (v) for the purpose of education and religious ceremonies

Section 52 of the Copyright Act, 1957 provides for various other purposes which will constitute fair use of copyrighted material.

### **Answer 3(d)**

The Motor Transport Workers Act, 1961, was enacted to provide for the welfare of motor transport workers and to regulate the conditions of their work. It applies to every motor transport undertaking employing five or more motor transport workers. The State Government may, after giving notification in the Official Gazette, apply all or any of the provisions of this Act to any motor transport undertaking employing less than five motor transport workers. According to the Act, 'motor transport undertaking' means "an undertaking engaged in carrying passengers or goods or both by road for hire or reward and includes a private carrier"

Every employer of a motor transport undertaking to which this Act applies shall have the undertaking registered under this Act. No adult motor transport worker shall be required or allowed to work for more than eight hours in any day and forty-eight hours in any week. Also, no adolescent shall be employed or required to work as a motor transport worker in any motor transport undertaking for more than six hours a day including rest interval of half-an-hour; and between the hours of 10 P.M. and 6 A.M.

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

- (a) Rama Limited fails to maintain Statutory Registers under the provisions of the Companies Act, 2013, due to Lockdown. What kind of penalties are levied against it for failure to maintain Statutory Registers ?  
(3 marks)
- (b) Namit has completed his diploma in pharmacy from a premier institute and wants to start wholesale Drug business. He seeks to get registered himself as wholesale drug dealer in State Drugs Standard Control Organization. Explain him the minimum requirements before applying wholesale drug license.  
(3 marks)
- (c) What is the difference between strike and lockout under Industrial Dispute Act, 1947 ?  
(3 marks)
- (d) Which industries come under the purview of compulsory licensing as per New Industrial Policy, 2015 ?  
(3 marks)
- (e) Discuss the applicability of the Plantation Labour Act, 1951. (3 marks)

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

- (i) Ranjan is going to start a cloth dyeing factory and seeks your advice in knowing various responsibilities to be complied with under Water (Prevention and Control of Pollution) Act, 1974. Guide him.
- (ii) Ambika is a young entrepreneur in Bikaner dealing in precious stones across all major cities in India. She has explored some opportunities abroad and wants to start business abroad. She approached you to advise whether she would be required to get herself registered with Director General of Foreign Trade (DGFT) for export, if yes, what are all documents required for such registration ? Advise her.
- (iii) Karan wants to open garment shop in a shopping mall. Is he required to get his shop registered under Shops and Establishment Act, 1948 ? If so, advise him the procedure.
- (iv) Highlight the Cash Benefits, which are provided to women under the Maternity Benefit (Amendment) Act, 2017 ?
- (v) Aman and Kaushal have written a book jointly and seek to get the book registered in the Copyright Act, 1957 as joint owners. Can they do so ?  
(3 marks each)

**Answer 4(a)**

Under the various provisions contained in the Companies Act, 2013, every company governed under Companies Act, 2013 is required to maintain statutory registers at its registered office until the dissolution of the company.

The following are the important statutory registers which are required to be maintained under the Companies Act, 2013:

<i>Form</i>	<i>Name of Register</i>	<i>Relevant Section of Companies Act 2013</i>	<i>Penalty</i>
MGT-1	Register of Members	Section 88 and Rule 3(1) of the Companies (Management and Administration) Rules, 2014.	The company shall be liable to a penalty of three lakh rupees and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.
MBP-2	Register of Loans, Guarantee, Security and Acquisition made by Company	Section 186 and Rule 12 of the Companies (Meeting of Board and its Powers) Rules, 2014	The company shall be punishable with fine which shall not be less than twenty - five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to two years and with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.
SH-10	Register of Shares / Other Securities Bought Back	Section 68 and Rule 17(12) of the Companies (Share Capital and Debentures) Rules, 2014	The company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to three lakh rupees.

So, Rama Limited fails to maintain Statutory Registers under the provisions of the Companies Act, 2013, will be liable for the above mentioned penalties.

**Answer 4(b)**

To start a pharmacy business, a drug license is required. The Central Drugs Standard Control Organization and State Drugs Standard Control Organization control the issue of drug license in India. Drug license for setting up a pharmacy business is usually under the purview of the State Drugs Standard Control Organization and the list of State Drugs Standard Control Organization.

Normally, The Drug Control Organization issues two types of licenses for operating a pharmacy business. One the Retail Drug License (RDL) issued to run a general chemist shop. The other is the Wholesale Drug License (WDL) issued to persons or agencies engaged in drugs and medicines.

In most states, a retail drug license is only issued to persons who possess a degree or diploma in pharmacy from a recognized institute or university after depositing the requisite fee. But this condition is relaxed in case of procuring a Wholesale Drug license (WDL).

The following are minimum requirements for obtaining drug license or starting a pharmacy in India:

*Area* : The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required

*Storage Facility* : The store must have refrigerator & air conditioner in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.

**Technical Staff**

- (a) *Wholesale* : The sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed Secondary School Leaving Certificate with 4 years' experience in dealing in drugs, specially approved by the department of drug control for the purpose.
- (b) *Retail* : The sale of drug by retail must be made in the presence of registered pharmacist approved by the department, registered pharmacist is required throughout the working hours.

**Answer 4(c)****Strikes and Lockouts**

As per Industrial Disputes Act, 1947-

"Strike" means a cessation of work by a body of persons employed in any industry acting in combination or a concerted refusal under a common understanding of any number of persons who are or have been so employed, to continue to work or to accept employment". Mere stoppage of work does not come within the meaning of strike unless it can be shown that such stoppage of work was a concerted action for the enforcement of an industrial demand.



“Lockout” means the temporary closing of a place of employment, or the suspension of work, or the refusal by an employer to continue to employ any number of persons employed by him.

Lockout is the antithesis of strike.

- It is a weapon of the employer while strike is that of the workers.
- Just as a strike is a weapon in the hands of the workers for enforcing their industrial demands, lockout is a weapon available to the employer to force the employees to see his point of view and to accept his demands.

#### **Answer 4(d)**

The industries which comes under the purview of compulsory licensing are as follow:

1. Distillation and brewing of alcoholic drinks.
2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes.
3. Electronic Aerospace and defence equipment: all types.
4. Industrial explosives including detonating fuses, safety fuses, gun powder, nitrocellulose and matches.
5. Specified Hazardous chemicals i.e. (i) Hydrocyanic acid and its derivatives, (ii) Phosgene and its derivatives and (iii) Isocyanates & diisocyanates of hydrocarbon, not elsewhere specified (example Methyl isocyanate)

#### **Answer 4(e)**

The Plantation Labour Act, 1951, is enacted to provide for the welfare of plantation labour and regulates the conditions of work in plantations. According to the Act, the term ‘plantation’ means “any plantation to which this Act, whether wholly or in part, applies and includes offices, hospitals, dispensaries, schools, and any other premises used for any purpose connected with such plantation, but does not include any factory on the premises to which the provisions of the Factories Act, 1948 apply”.

The Plantation Labour Act, 1951 applies to the following plantations, that is to say,—

- (a) to any land used or intended to be used for growing tea, coffee, rubber, cinchona or cardamom which admeasures hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months;
- (b) to any land used or intended to be used for growing any other plant, which admeasures hectares or more and in which fifteen or more persons are employed or were employed on any day of the preceding twelve months, if, after obtaining the approval of the Central Government, the State Government, by notification in the Official Gazette, so directs.

#### **Answer 4A(i)**

The Water (Prevention and Control of Pollution) Act, 1974 provides that without the previous consent of the State Pollution Control Board (SPCB), a person shall not-

- a) establish or take any steps to establish any industry, operation or process, or

any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land;

- (b) bring into use any new or altered outlet for the discharge of sewage;
- (c) begin to make any new discharge of sewage.

To start a cloth dyeing factory, Ranjan is required to comply with the Water (Prevention and Control of Pollution) Act, 1974. The Act, prohibits the discharge of pollutants into water bodies beyond a given standard, and lays down penalties for non-compliance.

Ranjan, therefore required to:

- Make an application for consent of the SPCB in such form, contain such particulars and shall be accompanied by such fees as may be prescribed.
- Furnish required information to SPCB and other agencies.
- Allow entry to the SPCB to ascertain that the provisions of the Act are being complied with

Responsibilities.

- Obtain consent from SPCB to establish and to operate a cloth dyeing factory.

#### **Answer 4A(ii)**

**Importer Exporter Code (IEC)** registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT). All businesses which are engaged in Import and Export of goods require registering for Import Export Code. IE code has lifetime validity. Importers are not allowed to proceed without this code and exporters cannot take benefit of exports from DGFT, customs, Export Promotion Council, if they do not have this code.

Documents Required for Import Export Code (IEC) Registration are:

- (i) Proof of establishment/incorporation/registration as Partnership/Registered Society/Trust/ HUF / Others.
- (ii) Proof of Address can be any one of the following documents:
  - i. Sale Deed, Rent agreement, lease deed, electricity bill, telephone land line bill, mobile, postpaid bill, MoU, Partnership deed.
  - ii. Other acceptable documents (for proprietorship only):Aadhar card, passport, voter id.
  - iii. In case the address proof is not in the name of the applicant firm, a no objection certificate (NOC) by the firm premises owner in favor of the firm along with the address proof is to be submitted as a single PDF document.
- (iii) Proof of Firm's Bank Account such as Cancelled Cheque or Bank Certificate.
- (iv) User should have an active DSC or Aadhaar of the firm's member for submission.
- (v) Active Firm's Bank account for entering its details in the Application and to make online payment of the application fee.

So, Ambika is required to submit all these documents to DGFT before starting export.

**Answer 4A(iii)**

Any shop or commercial establishment that commences operation must apply to the Chief Inspector for a Shop and Establishment Act License within the prescribed time. The application for license in the prescribed form must contain the name of the employer, address of the establishment, name of the establishment, category of the establishment, number of employees and other relevant details as requested.

On submission of the application and review by the Chief Inspector, the shop or commercial establishment will be registered and a registration certificate will be issued to the occupier. The registration certificate must be prominently displayed at the shop or commercial establishment and renewed periodically, as per the act.

The application is to be submitted along with the prescribed fees and should contain the following information:

- a. Name of the employer and the name of a manager, if any;
- b. The postal address of establishment;
- c. The name of establishment;
- d. Such other particulars as may be prescribed.

Upon receiving the application for registration and the fees, the Inspector shall verify the accuracy and correctness of the application. Once suitably satisfied, he shall enter the details in the Register of Establishments and issue a registration certificate for the establishment. This certificate will be valid for 5 years and has to be renewed thereafter. It is important that the registration certificate has to be prominently displayed at the establishment.

**Answer 4A(iv)**

Cash Benefits provided to Women under Maternity Benefit Act are as under:

- 26 Weeks of paid maternity leave
- For more than two children and for adopting/commissioning mothers not less than 12 weeks of paid maternity leave.
- One month maternity leave to a woman worker suffering from illness arising out of pregnancy, delivery, premature birth of child (miscarriage, medical termination of pregnancy or tubectomy operation).
- Medical Bonus of Rs.3500/- if no prenatal confinement and post-natal care is provided by the employer free of charge.
- No deduction of wages of woman entitled for maternity benefit.

**Answer 4A(v)**

Yes. Copyrights can be owned jointly. The Copyright Act, 1957, provides that “work of joint authorship” means a work produced by the collaboration of two or more authors in which the contribution of one author is not distinct from the contribution of the other author or authors.

If two or more people create a work with the intent that their individual contributions merge into the final product, they will be joint owners of the copyright. The determination of joint ownership is a question of the intent of the participants.

Each joint owner can deal with a joint work as if he or she owns the property independently of the other unless otherwise agreed.

### PART C

#### Question 5

- (a) *You are appointed as Interim Resolution Professional in XYZ Ltd. under the Insolvency and Bankruptcy Code, 2016. State the time limit to make Public Announcement? Also state the protocol for issuance of public notice. Who shall bear the expenses of public announcement?*
  - (b) *The Registrar has suo moto struck off the name of Mithali Sports LLP. Being aggrieved by the order of Registrar, the LLP wants to file an appeal before National Company Law Tribunal (NCLT) for restoration of the name of LLP in the Register of Partnership maintained by the registrar. Referring to the provisions of the Limited Liability Partnership Act, 2008, advise the LLP on the procedure for the restoration of struck off LLP.*
  - (c) *Cute Garments Ltd., not carrying out any business activity, wants to apply to ROC to change its status from Active Company to Dormant Company. Board of directors seeks your advice about the procedure to obtain the status of Dormant Company.*
  - (d) *Alpha Ltd. has initiated proceedings against Tara Ltd., for recovery of debt of ₹4.32 crore. Alpha intends to appoint Deepak Garg, one of the employees of its statutory auditors, M/s Shyam and Associates (Chartered Accountants), as its Resolution Professional. In the light of the statutory provisions, examine whether Deepak Garg can be appointed as a resolution professional.*
  - (e) *Discuss in brief when a company is declared as a vanishing company.*
- (3 marks each)

#### Answer 5(a)

##### Time limit for making public announcement

As per Section 13 of the Insolvency and Bankruptcy Code, 2016, the public announcement shall be made immediately after the appointment of the interim resolution professional. As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the expression immediately means not later than 3 days from the date of appointment of the interim resolution professional.

##### Protocol for issuance of public notice

According to as Section 15 of the Insolvency and Bankruptcy Code, 2016, the public announcement shall contain the following information:

- (a) Name and address of the corporate debtor under the corporate insolvency resolution process;

- (b) Name of the authority with which the corporate debtor is incorporated or registered;
- (c) The last date for submission of claims;
- (d) Details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
- (e) Penalties for false or misleading claims;
- (f) The date on which the corporate insolvency resolution process shall close, which shall be the 180th day from the date of the admission of the application under Sections 7, 9 or Section 10, as the case may be.

The public notice shall be published in following:

- One English newspaper
- One vernacular newspaper
- Website of the Corporate Debtor
- Website designated by the Board for the purpose

As per Regulation 6 of the Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, the expenses of public announcement shall be borne by the applicant, and such expenses may be reimbursed by the Committee of Creditors, to the extent it ratifies them.

#### **Answer 5(b)**

The ROC can suo moto after issuing the notice under section 75 of the Limited Liability Partnership Act, 2008, 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 a 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.

Unlike procedure for revival of a company enumerated in section 252 (1) and (3) of the Companies Act, 2013, there is no corresponding provision for the revival of LLP's in the Limited Liability Partnership Act, 2008. Therefore, in the case of strike-off of LLP's the ultimate remedy for revival is to file the Writ Petition before the High Court of appropriate jurisdiction.

However, in the matter of Lawns Hospitality LLP, the NCLT Chennai Bench has allowed revival of the struck off LLP on the same parallel lines as that of companies under section 252(3) of the Companies Act, 2013.

The procedure that may be followed before NCLT for restoring the name of the LLP is as follows:

- (i) An application is to be filed before the bench of NCLT where the registered office

of the LLP is situated in form NCLT 9, such an application should be accompanied by various documents proving that the LLP is active LLP and that the name of the LLP should be restored in the register.

- (ii) A copy of application or appeal is required to be send to the Registrar concerned.
- (iii) Registrar may send his report to NCLT as to his comments and views on the restoration of the name of the LLP.

**Answer 5(c)**

The following procedure to be followed by a company for obtaining status as a dormant company-

- 1 The company shall call a board meeting to fix day, date, time and venue for the General Meeting of the members of the company to pass special resolution for making application to the ROC to obtain status of a dormant company.
- 2 The Company shall obtain Statement of affairs from the Auditor of the company. The statement of affairs shall give the financial position at the time of passing said resolution in the shareholders meeting.
- 3 The company shall hold the General Meeting at the appointed time, place and date as per the notice calling the said meeting. The notice shall propose the resolution as a special resolution.
- 4 The company shall pass a special resolution for obtaining the status of a dormant company authorize the director(s) to make application to ROC 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). After casting the special resolution, the company shall file Form MGT-14 with ROC for filing special resolution with 30 days from passing of the said special resolution.
- 5 After filing of Form MGT-14, the company shall file Form MSC-1 with the ROC along with the copy of the special resolution, copy of statement of affairs, declarations by the directors and other necessary documents.
- 6 On being satisfied with the merits of the application, the ROC shall issue a certificate in Form MSC-2 for confirming the application and allowing the status of a dormant company to the applicant.

**Answer 5(d)**

Pursuant to Regulation 3 of Insolvency and Bankruptcy Board of India (Insolvency Resolution Process for Corporate Persons) Regulations, 2016, an insolvency professional shall be eligible to be appointed as an interim resolution professional or a resolution professional, as the case may be, for a corporate insolvency resolution process of a corporate debtor if he, and all partners and directors of the insolvency professional entity of which he is a partner or director, are independent of the corporate debtor.

Further, it is provided that a person shall be considered independent of the corporate debtor, if, in the last three financial years, he is not an employee or proprietor or a partner:

- (i) of a firm of auditors or secretarial auditors in practice or cost auditors of the corporate debtor; or

- (ii) of a legal or a consulting firm, that has or had any transaction with the corporate debtor amounting to five per cent or more of the gross turnover of such firm,

In view of the above mentioned provisions, Deepak Garg being one of the employees of statutory auditors of the debtor company is not independent of the debtor and as such his appointment as Resolution Professional is not valid.

#### **Answer 5(e)**

A vanishing company is a company, registered under the Companies Act, 2013 or previous company law or any other law for the time being in force and listed with the Stock Exchange which has failed to file its return with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

#### **Question 6**

- (a) *Anantha Pvt. Ltd. is an MSME under Section 7 (1) of Micro, Small and Medium Enterprises Development Act, 2006 has committed a default of ₹12 lakh. One of its director wants to file application for Pre-Packaged Insolvency Resolution Process (PPIRP) as a corporate debtor. Advise him the eligibility criteria for PPIRP.*
- (b) *X Ltd. was intending to initiate voluntarily liquidation proceedings. A declaration was made on affidavit by one of the directors of the X Ltd. verifying full inquiry of the affairs of the company. However, declaration of solvency was not given on affidavit in case of voluntary liquidation. Analyze the given situation and comment whether X Ltd can initiate voluntary liquidation proceeding in compliance with the conditions given in the Insolvency and Bankruptcy Code, 2016. What are the required documents to be accompanied with the declaration ?*

*(5 marks each)*

#### **Answer 6(a)**

Pre-Packaged Insolvency Resolution Process (PPIRP) is introduced in Insolvency & Bankruptcy Code, 2016 by way of Chapter III-A consisting of sections 54A to 54 P.

*Eligibility* : When a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, commits minimum default of Rs 10 lakhs, it can opt for PPIRP.

Following MSME cannot opt for PPIRP:

- (a) MSME which has completed PPIRP or completed Corporate Insolvency Resolution Process (CIRP), as the case may be, during the period of three years preceding the initiation date;
- (b) MSME which is undergoing a CIRP;
- (c) MSME which is undergoing a liquidation u/s 33; and
- (d) MSME not eligible to submit a resolution plan under section 29A.

To evidence that the CD is an MSME, the application shall attach either a copy of the

latest and updated Udyam Registration Certificate or proof of investment in plant and machinery or equipment and turnover as per Notification No. 2119(E) dated 26th June, 2020 of the Ministry of MSMEs.

**Answer 6(b)**

Section 59 of the Insolvency & Bankruptcy Code, 2016 empowers a corporate person intending to liquidate itself voluntarily if it has not committed any default, to initiate voluntary liquidation proceedings under the provisions of this Code.

Any corporate person registered as a company shall meet the following conditions to initiate a voluntary liquidation process:

- (a) 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.
- (b) The declaration shall be accompanied with the following documents, namely:
  - i. 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
  - ii. A report of the valuation of the assets of the company, if any, prepared by a registered valuer.
- (c) 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 insolvency professional to act as the liquidator may be appointed.
  - 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 (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 one of the directors of the X Ltd. verifying full inquiry of the affairs of the company which is in contravention of the provisions of the Insolvency & Bankruptcy Code, 2016.

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## TAX LAWS

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of Questions : 100*

*Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2022-23, unless stated otherwise.*

### PART I

1. An employer provided free refreshment to his employee for which he incurred an amount of ₹80 per such refreshment. State the amount which is treated as a perquisite for the employee and its taxable value as per sec 15BAC of the Income Tax Act, 1961 for the Assessment Year 2022-2023:
  - (A) ₹50
  - (B) Exempt
  - (C) ₹80
  - (D) Nil
  
2. Lalit presents you following details related to his tax liability for Assessment Year 2022-23:

Tax liability as per section 115JC	₹18 lakhs
Tax liability as per regular provision of Income tax Act	₹23 lakhs
AMT credit brought forward from Assessment Year 2021-22	₹8 lakhs

What shall be the tax liability of Lalit for Assessment Year 2022-23? (Assessee has not opted for section 115BAC)
  - (A) ₹23 lakhs
  - (B) ₹18 lakhs
  - (C) ₹15 lakhs
  - (D) ₹10 lakhs
  
3. Ram, aged 45 years received 12 instalments of amount of ₹42,000 on the basis of reverse mortgage scheme during the financial year 2021-22. Compute the amount of tax in the hands of Ram as per section 115BAC of the Income Tax Act, 1961 for the Assessment Year 2022-23:
  - (A) ₹13416
  - (B) ₹13832
  - (C) ₹12900
  - (D) Nil

4. As per section 2(1B) of the Income Tax Act, 1961, which out of the following is not a requirement for amalgamation of two companies:
- (A) All the assets are transferred from amalgamating company to amalgamated company
  - (B) More than 50% of the directors of the amalgamating company become directors of the amalgamated company
  - (C) All liabilities including contingent liabilities are transferred from amalgamating company to amalgamated company
  - (D) Shareholders having 3/4th in value of shares of the amalgamating company become shareholders of the amalgamated company
5. The benefit of payment of advance tax in one instalment on or before 15th March is available to assessee computing profits on presumptive basis :
- (A) Only under Section 44AD
  - (B) Under section 44AD and 44ADA
  - (C) Under section 44AD and 44AE
  - (D) Under section 44AD, 44ADA and 44AE
6. Satish aged 45 years is having a house property at Hyderabad. The municipal valuation is ₹12,50,000 and fair rent of the property is 11,00,000. The standard rent is ₹11,50,000. He let out the property for a rent of ₹1,05,000 per month during the financial year 2021-22. Rent of March could not be realised despite all efforts, as the tenant have vacated the property. All the conditions for unrealised rent were satisfied. He had paid the municipal taxes of 2,30,000. He has paid an interest of 2,50,000 during the year for the amount borrowed for construction of the property. Compute the income from house property for Assessment Year 2022-23 ? (Assessee has not opted for section 115BAC) :
- (A) ₹3,97,500
  - (B) ₹4,47,500
  - (C) ₹5,21,000
  - (D) ₹4,71,000
7. State which out of the following perquisite is exempt as per section 115BAC of the Income Tax Act, 1961 for the Assessment Year 2022-23:
- (A) Helper facility at the residence of employee
  - (B) Laptop given to employee for the official use ownership retained with the employer
  - (C) Children education allowance given by the employer
  - (D) Uniform allowance provided to the employee

8. Sarad is a Karta of HUF doing business at Delhi. Sarad is residing in USA for past 6 years and he visited India for 30 days every year for filing income tax return of HUF. His 3 sons and wife take care of the affairs of business in India. What will be the residential status of HUF?
- (A) RNOR  
(B) NR  
(C) ROR  
(D) RNOR and NR both
9. A HUF is having total income of ₹22,50,000 for the previous year ended 31st March, 2022. Compute the net tax liability of HUF if it opts for section 115BAC for the Assessment Year 2022-23?
- (A) ₹4,87,500  
(B) ₹4,12,500  
(C) ₹5,07,000  
(D) ₹4,29,000
10. Kavi got the following incomes for the Financial Year 2021-22:
- (i) Income derived from saplings grown in the nursery amounting to ₹5 lakh  
(ii) Income derived from removing the hay from the basic grains ₹2 lakh  
(iii) Received rent for agriculture land of ₹3 lakhs which is given of seedlings to Aryan
- Compute the total income that is chargeable to tax in the hands of Kavi for the Assessment Year 2022-23 ?
- (A) ₹5,00,000  
(B) ₹2,00,000  
(C) ₹3,00,000  
(D) Nil
11. As per section 12A of Income Tax Act, 1961, trust or institution has been granted registration under section 12AA, and, subsequently, it has adopted or undertaken modifications of the objects which do not conform to the conditions of registration, then it shall be required to make an application, in the prescribed form and manner, within a period of ..... from the date of said adoption or modification, to the Principal Commissioner or Commissioner and thereupon obtain fresh registration.
- (A) 30 days  
(B) 60 days  
(C) 90 days  
(D) Six months

12. Section 2(22)(e) of Income Tax Act, 1961, which deems certain payments as dividend, is applicable only to the shareholders of .....
- (A) A Private company
  - (B) A widely held company
  - (C) A closely held company
  - (D) Nidhi company
13. Srithan grows tomatoes and he uses them for the purpose of manufacturing tomato ketchup in his factory. 60% of tomatoes produced is sold for ₹5,00,000 and cost of cultivation is ₹3,50,000. 40% of tomatoes produced is procured to manufacturing ketchup the Market Value of the tomatoes is ₹3,00,000 and cost of cultivation was ₹1,80,000. He incurred ₹1,00,000 for processing and ketchup was sold for ₹6,00,000 in the Financial Year 2021-22. Compute the Agriculture and Business Income for the Assessment Year 2022-23.
- (A) ₹1,50,000, ₹2,00,000
  - (B) ₹3,50,000, Nil
  - (C) Nil, ₹ 3,00,000
  - (D) ₹2,70,000, ₹2,00,000
14. The Total Income tax including education cess payable in case of resident individual aged 49 years, where computed total income is ₹3,80,000 for the Assessment Year 2022-23 shall be ..... (Assessee has not opted for section 115BAC).
- (A) ₹6,760
  - (B) ₹4,260
  - (C) Nil
  - (D) ₹3,380
15. ABC charitable trust would like to accumulate the income for the purpose of construction of school building in coming three years and therefore set apart ₹20 Lacs out of current year's income. In order to exclude ₹20 lacs from taxable income, the charitable trust is required to inform the purpose and the period for which accumulation is made to the assessing officer in a prescribed form. Out of the following, which is the prescribed form to be used by the trust:
- (A) Form No. 9
  - (B) Form No. 8
  - (C) Form No. 10 A
  - (D) Form No. 10

16. The time limit for issue of notice u/s 148, when income in relation to any asset worth ₹80 lacs located outside India, chargeable to tax has escaped assessment is from the end of the relevant assessment year :
- (A) Upto 3 years
  - (B) Upto 4 years
  - (C) Beyond 3 years but upto 10 years
  - (D) Beyond 4 years but upto 16 years
17. The due date specified u/s 139(1) for filing the return of income in case of companies engaged in international transactions and who have to furnish a report u/s 92 E is :
- (A) 31st July
  - (B) 31st August
  - (C) 30th September
  - (D) 30th November
18. As per section 2(22A) of the Income Tax Act, 1961, Domestic Company means:
- (i) An Indian Company or
  - (ii) any other Company
  - (iii) which makes the prescribed arrangements for the declaration and payment of dividends in India on which tax is deductible under Section 194 of the Income Tax Act, 1961.
- (A) (i) & (iii)
  - (B) (ii) & (iii)
  - (C) (i) & (ii)
  - (D) (i), (ii) & (iii)
19. As per section 13B of the Income Tax Act, 1961, the voluntary contributions received by an electoral trust during the year is not included in its income:
- (A) When 85% of contribution is distributed in the year
  - (B) To the extent of 10 lakhs
  - (C) When 95% of contribution is distributed in the year
  - (D) To the extent of 50% of contribution of ₹100 lakhs whichever is less
20. Following are the income of Sudha for the Previous Year 2021-22 :
- (i) Dividend from foreign company received in Tokyo ₹96,000
  - (ii) Profit earned from business in Indonesia which is controlled in India, ₹6 lakhs, 3/4th of the profit is received in India

- (iii) Fees from technical services received in India for technical services provided to run a business outside India of ₹9 lakhs
- (iv) Profit not taxed previously brought into India ₹2 lakhs

What is the gross total income of Sudha, if she is an ordinary resident and not ordinary Resident for the Assessment Year 2022-23 ?

	OR	NOR
(A)	15,96,000	15,96,000
(B)	17,96,000	15,00,000
(C)	15,96,000	15,00,000
(D)	15,96,000	13,50,000

21. As per section 115JB inserted vide Finance Act, 2016, where the assessee is a unit located in an International Financial Services Centre and derives its income solely in convertible foreign exchange, the rate of MAT shall be ..... instead of .....
- (A) 9%, 18.5% of Taxable Profits  
 (B) 9%, 18.5% of Book Profits  
 (C) 18.5%, 9% of Taxable Profits  
 (D) 18.5%, 9% of Book Profits
22. The Assessing Officer while scrutinizing the return of an assessee find under reporting of income for the reason of misreporting of facts of such income and thus levied penalty on such under reported income resulting from misreporting of income. The penalty to be imposed by the A.O. shall be at the rate of tax payable on such misreported income.
- (A) 50%  
 (B) 100%  
 (C) 200%  
 (D) 300%
23. Sri transferred his residential property to his wife by way of a gift settlement. During the financial year 2021-22, his wife got a rental income of ₹25,000 p.m. She made a fixed deposit in the bank from the rental income and she has earned an interest income of ₹32,000. State the income taxable in the hand of Sri and his wife for the Assessment Year 2022-23?
- (A) ₹3,32,000, Nil  
 (B) Nil, ₹3,32,000  
 (C) ₹32,000, ₹3,00,000  
 (D) ₹3,00,000, ₹32,000

24. A non-professional firm ABC and Co. has book profit of ₹12,38,000 in previous year 2021-22. The admissible remuneration to working partner for income tax purpose shall be ..... for the Assessment Year 2022-23.
- (A) ₹2,70,000  
(B) ₹8,62,800  
(C) ₹8,32,800  
(D) ₹11,14,200
25. Rajesh pays a rent of ₹8,000 p.m. His total income is ₹6,00,000 for the financial year 2021-22 (i.e., Gross total income is reduced by deduction under chapter VIA except section 80GG). He is also in receipt of HRA. He would be eligible for a deduction under section 80GG of an amount of ..... for the Assessment Year 2022-23 ? (Assessee has not opted for section 115BAC).
- (A) ₹96,000  
(B) ₹60,000  
(C) ₹80,000  
(D) Nil
26. Raman holds 30% of shares in RS Limited. His Spouse is a software engineer. Now Mrs. Raman is drawing a remuneration of ₹50,000 per month (1st April, 2021 to 31st March, 22) from RS Limited. The salary of spouse of Raman will be taxable in the hands of.....
- (A) Raman  
(B) Spouse of Raman  
(C) Whosever income is higher  
(D) As per discretion of Assessing Officer
27. Personal earning including income from selfacquired property of a member of the HUF is included in the income of :
- (A) HUF  
(B) Members of HUF  
(C) Individual  
(D) None of the above
28. The liability to pay interest u/s 234B would arise when the advance tax plus TDS/TCS to the credit of the assessee is less than :
- (A) 75% of the assessed tax  
(B) 90% of the assessed tax  
(C) 60% of the assessed tax  
(D) 100% of the assessed tax

29. As per section 271G of the Income Tax Act, 1961, when an assessee fails to furnish any information relating to a specified domestic transaction; the quantum of penalty as a percentage of value of the transaction would be :
- (A) 2%
  - (B) 1%
  - (C) 5%
  - (D) 3%
30. Which out of the following incomes is exempt u/s 10(6) of the Income Tax Act, 1961 in the hands of an individual who is not a citizen of India :
- (i) Salary received by a Non-Resident non-citizen of India as a crew member of foreign ship
  - (ii) Remuneration received by foreign government employee from foreign government for specified training in India
  - (iii) Remuneration of foreign diplomats and employee of a foreign enterprise for services rendered in India
- (A) (i) & (ii)
  - (B) (i) & (iii)
  - (C) (ii) & (iii)
  - (D) (i), (ii) & (iii)
31. The family of deceased employee is receiving a pension of ₹12,000 p.m. from the employer in financial year 2021-22. Compute the income to be chargeable in the hands of family member and also state under which head the income is taxable for the Assessment Year 2022-23 ? (Assessee has not opted for section 115BAC).
- (A) ₹1,44,000, Income from salary
  - (B) ₹1,29,000, Income from other sources
  - (C) ₹96,000, Income from other sources
  - (D) ₹94,000, Income from salary
32. DG & Co. of USA is maintaining and operating a branch in India for sale of its textile products. The adjusted total income of the branch for the previous year 2021-22 prior to charge of H.O. expenses of ₹45 lakh is of ₹250 lakh. Indian branch intends to know the maximum amount of H.O. expenses as allowable during the year under the Act. Specify the amount :
- (A) ₹45 lakh
  - (B) Nil as HO is non-resident
  - (C) ₹12.5 lakh
  - (D) 8% of adjusted total income



33. Which of the following returns can be revised under section 139(5) of Income Tax Act, 1961 ?
- (i) A return of income filed u/s 139(1)
  - (ii) A belated return of income filed u/s 139(4)
  - (iii) A return of loss filed u/s 139(3)
- Choose the correct answer :
- (A) Only (i)
  - (B) Only (i) and (ii)
  - (C) Only (i) and (iii)
  - (D) (i), (ii) and (iii)
34. A tax payer (an assessee) wants to prefer an appeal against the order of the Assessing Officer. He received the order dated 28th August, 2021 on 8th September, 2021. He must file an appeal before the CIT (Appeals) under section 246A of the Income-tax Act, 1961, as an e-appeal within:
- (A) 30 days from the date of the order
  - (B) 30 days from the date of receipt of the order of AO
  - (C) 45 days from the date of order
  - (D) 40 days from the date of receipt of order of AO
35. Urvish is engaged in the business of growing the coffee in India. He derived an income from sale of coffee grown, cured, roasted and grounded. Determine to what extent his income will be taxable in India. (Assessee has not opted for section 115 BAC).
- (A) 40% of such income
  - (B) 25% of such income
  - (C) 60% of such income
  - (D) 75% of such income
36. Sanghvi purchased her first house at Vijayawada for occupation on 10th June, 2020 for ₹80 Lakhs (stamp duty value being the same) with bank loan sanctioned on 1st June, 2020 she paid on interest of ₹4.5 Lakhs during the Previous Year 2021-22. What is the tax treatment of interest paid by her for the Assessment Year 2022-23? (Assessee has not opted for section 115BAC).
- (A) Interest of 2 lakhs allowable u/s 24
  - (B) Interest of 1.5 lakhs u/s 24 and 1.5 lakhs allowable u/s 80EEA
  - (C) Interest of 2 lakhs allowable u/s 24 and 50,000 allowable u/s 80EEA
  - (D) Interest of 2 lakhs allowable u/s 24 and 1.5 lakhs allowable u/s 80EEA

37. Bhuvana transferred the rental income of ₹1,20,000 p.m. to Sneha during the previous year 2021-22 but she did not transfer the property in the name of Sneha. As per provision of the Income Tax Act, 1961, the rental income will be taxed in the hands of ..... for the Assessment Year 2022-23.
- (A) Sneha  
(B) Bhuvana  
(C) Sneha or Bhuvana, whoever is having higher income during the previous year  
(D) As per discretion of Assessing Officer
38. The requirement of granting the assessee a reasonable opportunity of being heard u/s 127(1) of the Income Tax Act, 1961 is in ..... nature.
- (A) Recommendatory  
(B) Mandatory  
(C) Discretionary  
(D) Optional
39. The rate of depreciation for fluidized bed type heat treatment furnaces is:
- (A) 15%  
(B) 20%  
(C) 40%  
(D) 30%
40. Ganesh incurred short term capital loss of ₹80,000 on sale of shares during the previous year 2021-22 through the national stock exchange. Such loss can be:
- (A) Set off against short term capital gain  
(B) Set off against short term and long term capital gain  
(C) Not be allowed to set off  
(D) Set off against long term capital gains
41. Gyaan charitable trust owns a capital asset of ₹5,00,000 and 3/4th of the income from such asset is utilized for charitable purpose. The asset was sold for ₹12 lakhs and from the sale proceeds, the trust brought another asset for ₹10 lakhs during the previous year 2021-22. The amount of capital gain deemed to have been applied for charitable purpose is ..... for the Assessment Year 2022-23.
- (A) ₹3,75,000  
(B) ₹5,00,000  
(C) ₹7,00,000  
(D) ₹10,00,000

42. Priya, (Non-Government Employee) an employee of S Ltd. have received the amount of retrenchment compensation as she is going out of the company due to the retrenchment process. The total years she worked in the company is 17 years. The average pay equals to 15 days is ₹30,500. You are required to compute the income which is chargeable under the head salaries in the hands of Priya. (Assessee has not opted for section 115BAC).
- (A) ₹5,18,500  
(B) ₹2,13,500  
(C) ₹18,500  
(D) Nil
43. PQR, an eligible assessee, following mercantile system of accounting, carrying on eligible business under sec 44AD provides the following details. Total turnover for the financial year 2021-22 is ₹180 lakhs out of the above:
- (i) 30 lakhs received by cash during the financial year  
(ii) 80 lakhs not received till due date of filing of the return  
(iii) 70 lakhs received by account payee draft before the date of filing of return
- What will be the amount of deemed profit of PQR under section 44AD(1) of Income Tax Act, 1961 for Assessment Year 2022-23 :
- (A) ₹14.4 lakhs  
(B) ₹10.8 lakhs  
(C) ₹12.4 lakhs  
(D) ₹13 lakhs
44. Sudha has to pay ₹1,20,000 to the co-operative society annually against the house allotted to her by society. She initially paid a sum of ₹3,00,000 to become a member of the housing co-operative society during the previous year 2021-22. The term of the payment was for 15 years. The amount allowed to be deducted u/s 80C for the previous year 2021-22 will be :
- (A) ₹1,20,000  
(B) ₹4,20,000  
(C) ₹1,40,000  
(D) ₹1,50,000
45. Deduction u/s 80C in respect of life insurance premium is restricted to ..... of capital sum assured in respect of policies issued on before 31st March, 2012 and ..... of capital sum assured in value of policies taken on or after 1st April, 2012.
- (A) 10%, 15%

- (B) 20%, 15%
- (C) 20%, 10%
- (D) 10%, 5%
46. B (Non-Government Employee) stays at Delhi received a basic of ₹60,000 p.m. and dearness allowance ₹3,000 p.m. (forming part of salary) and he is also given a rentfree furnished home. The fair rent of the house is ₹1,20,000 p.a. and rent of furniture is ₹24,000 p.a. Compute the tax liability for the A.Y. 2022-23. (Assessee has not opted for section 115BAC).
- (A) ₹85,800
- (B) ₹84,427
- (C) ₹82,500
- (D) ₹81,180
47. Santhi sold a vacant land for ₹2 crores on 18th June, 2021. The cost of acquisition of land was ₹25 lakhs in the year 2009-10. She deposited 90 lakhs in RECL bonds in October 2021. The amount of capital gain liable to tax after deduction under sec 54EC is ..... (Assessee has not opted for section 115BAC).
- Indexation F.Y. 2021-22=317,
- F.Y. 2009-10 = 148
- (A) ₹56,45,270
- (B) ₹86,45,270
- (C) ₹1,46,45,270
- (D) ₹96,45,270
48. Sirish's father is dependent on him and suffering with 90% disability. Sirish has incurred an amount of ₹98,000 during the financial year 2021-22 in maintaining and on medical treatment of his father. The deduction he can claim in his income tax return for Assessment Year 2022-23 if opted for section 115 BAC is :
- (A) ₹98,000
- (B) Nil
- (C) ₹75,000
- (D) ₹1,25,000
49. Santa, aged 50 years, provides the following details for P.Y. 2021-22.
- |                           |           |
|---------------------------|-----------|
| Fabric business income    | ₹36 lakhs |
| Speculative business loss | ₹9 lakhs  |
| Fabric business loss      | ₹12 lakhs |

Income of his son clubbed	₹4 lakhs
(After deduction of 1500)	
Deductions under chapter VI-A	₹3.5 lakhs
TDS	₹2 lakhs
Advance tax paid	₹3.6 lakhs

What shall be the net tax payable (refundable) as per regular provisions of Income Tax Act, 1961 for the Assessment Year 2022-23 for Santa ? (Assessee has not opted for section 115BAC).

- (A) ₹9,400  
 (B) ₹2,71,400  
 (C) ₹2,09,400  
 (D) ₹3,83,800
50. Where it is not clear as to whom amongst the two persons has received the income, the Assessing Officer can commence proceedings against both the assesseees to determine the question as to who is responsible for paying tax ? This assessment is called as :
- (A) Summary assessment  
 (B) Scrutiny assessment  
 (C) Protective assessment  
 (D) Re-assessment

## PART II

51. Can the taxable person under Composition Scheme claim input tax credit?
- (A) Yes  
 (B) No  
 (C) Only in some specific cases  
 (D) After the approval of GST Council
52. When can a registration be liable to cancellation :
- (i) If the person does not conduct business from the declared place of business  
 (ii) Violates the provision of Rule 86 B  
 (iii) Non-filing of returns for a continuous period of six months or for three consecutive tax period in case of composite dealer
- (A) (i) & (ii)

- (B) (i) & (iii)
  - (C) Only (i)
  - (D) (i), (ii) & (iii)
53. As per section 16 of IGST Act, “Zero Rated Supply” includes :
- (i) Export of goods or services or both
  - (ii) Supply of goods or services or both to SEZ developer
  - (iii) Supply of goods or services or both to Special Economic Zone unit
- (A) (i) & (ii)
  - (B) (i) & (iii)
  - (C) (ii) & (iii)
  - (D) (i), (ii) & (iii)
54. .... and ..... are the two Union Territories at which UTGST Act, 2017 is not applicable ?
- (A) Delhi & Puducherry
  - (B) Delhi & Chandigarh
  - (C) Puducherry & Chandigarh
  - (D) Andaman and Nicobar & Ladakh
55. As per Rule 50 of CGST Rules, 2017, the receipt voucher must contain:
- (A) Description of goods or services
  - (B) Invoice reference
  - (C) Full value of supply
  - (D) None of the above
56. Bharath Ltd is engaged in making Sweets. The Company on Diwali, distributed the same sweets to its employees. Can the company claim ITC in respect to the inputs used in making such gifts to its employees?
- (A) Yes
  - (B) No
  - (C) Yes, after approval from GST Commissioner
  - (D) Yes, to the extent of 50% of Inputs
57. Unless and until notified by the Central Government on the recommendation of the Council, CGST or IGST or UTGST shall not be levied on the following supplies :
- (i) Petroleum Crude and High Speed Diesel
  - (ii) Motor Spirit

- (iii) Natural Gas and Aviation Turbine Fuel
- (A) (i) only
- (B) (i) & (iii)
- (C) (ii) & (iii)
- (D) (i), (ii) and (iii)
58. As per Section 17 of CGST Act, 2017, for banking companies using inputs and input services partly for taxable supplies and partly for exempt supplies, which of the following statement is true?
- (A) ITC shall be compulsorily restricted to credit attributable to taxable supplies including zero rated supplies
- (B) 50% of eligible ITC on inputs, Capital goods and input service shall be mandatorily taken in a month and rest shall lapse
- (C) Either (a) or (b) at the option of banking company
- (D) None of the above
59. A is an Air Travel agent. He collected ₹50,000 (Basic fare domestic booking) and ₹1,00,000 (Basic fare for International Booking). As per Rule 32 of CGST Rules, 2017, the value of supply under this case will be:
- (A) ₹2,500
- (B) ₹7,500
- (C) ₹12,500
- (D) ₹15,000
60. The First Country to implement Goods & Services Tax was ..... in early as .....
- (A) France; 1954
- (B) France; 1955
- (C) Argentina; 1954
- (D) Argentina; 1955
61. What is the time of supply of goods, in case of supplier opting for composition levy under section 10 of the CGST Act, 2017?
- (A) Date of issue of invoice
- (B) Date of receipt of consideration by the supplier
- (C) Latter of (A) & (B)
- (D) Earlier of (A) & (B)

62. What should be the treatment of tax element in a capital asset under CGST Act, 2017?
- (A) Capitalize the same and claim depreciation thereon
  - (B) Claim the ITC at first instance
  - (C) Either (A) or (B)
  - (D) Both (A) and (B)
63. The IGST (Integrated Goods and Services) Act, 2017 deals with:
- (i) Inter-State Supplies
  - (ii) Import into India
  - (iii) Supplies made outside India
- (A) (i) & (ii)
  - (B) (i) & (iii)
  - (C) Only (i)
  - (D) (i), (ii) & (iii)
64. As per section 25 of CGST Act, 2017, when employer gifts goods or services to his employees, it will not be considered as taxable supply for the purpose of GST; if the value of supply to an employee does not exceed:
- (A) ₹5,000
  - (B) ₹20,000
  - (C) ₹50,000
  - (D) ₹1,00,000
65. Srikar of Hyderabad, purchased goods for ₹12,00,000 from Arnav of Mumbai and hold the goods at the location of supplier at Delhi. Which shall be the place of supply in such a case :
- (A) Hyderabad
  - (B) Mumbai
  - (C) Delhi
  - (D) Mumbai and Delhi both
66. The ISD Mechanism is based on the concept of .....
- (A) Distributing the credit on common invoices pertaining to Input Services
  - (B) Distribution of goods (inputs or capital goods) among the branches
  - (C) Both (A) and (B)
  - (D) Neither (A) nor (B)



67. Balance in electronic credit ledger under IGST can be used against which liability:
- (A) IGST Liability only
  - (B) IGST and CGST liability only
  - (C) IGST, CGST and SGST liability
  - (D) None of the above
68. In case of exports and supplies to SEZs, no tax is payable. In these cases on the inputs used :
- (A) ITC is allowed
  - (B) ITC is not allowed
  - (C) ITC is allowed provided the export results into inflow of foreign currency
  - (D) ITC @ 50% is allowed up to inflow of foreign currency and amount from SEZs
69. Which of the following is not considered as deemed supply under CGST Act, 2017 ?
- (A) Permanent transfer or disposal of business assets where ITC has been availed on such assets
  - (B) Import of services by a person from a related person or from any of his other establishments outside India
  - (C) Supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal
  - (D) Supply of goods by an unincorporated association or body of persons to a member thereof for cash, deferred payment or other valuable consideration
70. Center Provide Compensation to the states for loss of revenue arising on account of implementation of the goods and service tax for a period of .....
- (A) 5 years
  - (B) 10 years
  - (C) As decided by council in the meeting from time to time
  - (D) For such number of years until deficit is fully covered
71. In which out of the following states/UTs, the threshold limit is ₹20 lakhs instead of ₹10 Lakhs (Supplies of Goods and Services), as per section 22(1) of CGST Act, 2017 :
- (A) Manipur
  - (B) Meghalaya
  - (C) Mizoram
  - (D) Nagaland

72. As per section 5 of IGST Act, 2017, the payment of tax by electronic commerce operator (ECO) who does not have physical presence in taxable territory in India be made by .....
- (A) ECO himself
  - (B) His appointed representative in India
  - (C) The person who receives supply
  - (D) Either (A) or (B)
73. IGST paid is available as credit as in order to set off against the payment of ..... on output supplies.
- (A) IGST
  - (B) IGST and CGST
  - (C) CGST and SGST
  - (D) IGST, CGST and SGST
74. A goods and service tax practitioner can undertake the following activities, if authorized by the taxable person :
- (i) Furnish details of inward and outward supplies
  - (ii) Furnish monthly/quarterly returns
  - (iii) Furnish Annual and Final returns
- (A) (i) & (ii)
  - (B) (i) & (iii)
  - (C) (ii) & (iii)
  - (D) (i), (ii) & (iii)
75. The ITC as self-assessed in the return of a registered person shall be credited to :
- (A) Electronic Liability Ledger
  - (B) Electronic Cash Ledger
  - (C) Electronic Credit Ledger
  - (D) Electronic Available Ledger
76. As per Rule 31A of CGST Rules, 2017, what shall be the value of supply in case of lottery run by the state government:
- (A) 100/112 of the face value of ticket
  - (B) Price as notified in the official gazette by the organising state
  - (C) 100/114 of the face value of ticket
  - (D) 100/112 of the face value of ticket or price as notified in the official gazette by the organising state, whichever is higher

77. Which out of following state passed first State GST bill in India :
- (A) Maharashtra
  - (B) Gujarat
  - (C) Telangana
  - (D) Tamil Nadu
78. Which out of the following statements is TRUE regarding Composition Scheme in CGST Act, 2017 :
- (A) Composition scheme is compulsory
  - (B) The taxable person under composition scheme can collect tax from recipients at nominal rate
  - (C) Composition dealer may effect interstate supplies
  - (D) Composition dealer issues Bill of Supply rather than Tax Invoice
79. Assessable Value (A. V.) = ₹6 lakh
- (i) BCD – 10%
  - (ii) IGST – 12%
  - (iii) Social Welfare Surcharge @ 10% Calculate the total amount of duties and taxes :
- (A) ₹1,38,000
  - (B) ₹1,45,920
  - (C) ₹1,45,200
  - (D) ₹1,53,120
80. As per Schedule I of the CGST Act, 2017 any kind of disposal or transfer of business assets made by an entity on permanent basis qualifies as supply, even though it is without consideration. This provision would apply only if :
- (A) ITC has been availed on such assets
  - (B) ITC has not been availed on such assets
  - (C) ITC has been availed on other assets
  - (D) No such condition
81. Tanishqa of Delhi provides repair and maintenance services of machinery to Harika in Goa. Harika was registered in Orissa. What shall be the place of supply in respect of repair and maintenance services :
- (A) Delhi
  - (B) Orissa
  - (C) Goa
  - (D) Goa and Orissa both

82. As per section 16 of CGST Act, 2017, whether credit on inputs can be availed based on receipt of documents and or on receipt of goods :
- (A) Receipt of goods
  - (B) Receipt of documents
  - (C) After receipt of goods and documents
  - (D) Either receipt of documents or Receipt of goods
83. Which of the following is not covered under section 24 of CGST Act, 2017, for compulsory registration :
- (A) Casual Taxable Person
  - (B) Non-Resident Taxable Person
  - (C) Input Service Distributor
  - (D) Persons making any Intra-State taxable supply
84. What is the objective behind the levy of Cess through GST (Compensation to States) Act, 2017 :
- (A) To generate surplus resources to cater the welfare needs of Nation
  - (B) To discourage the use of Sin and Luxury Goods and Services
  - (C) To provide compensation to the state for loss of revenue arising due to GST
  - (D) To provide compensation to the centre for loss of revenue arising due to GST
85. DSR Ltd. is a manufacturer of food products supplied in a package consisting of chocolates (GST Rate 12%), cakes (GST rate 18%) and sweets (GST Rate 28%). The price per package is ₹1,250 (exclusive of taxes). In a month, 1,200 of such packages were supplied by the company. What is the nature of supply and the amount of GST ?
- (A) Composite; ₹4,20,000
  - (B) Composite; ₹1,80,000
  - (C) Mixed; ₹1,80,000
  - (D) Mixed; ₹4,20,000
86. In case of compulsory registration under CGST Act, 2017, input tax credit can be availed on :
- (A) Stocks held on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, provided application for registration is filed within 30 days from the due date
  - (B) Stocks held on the day immediately preceding the date of grant of registration under the provisions of this Act

- (C) Stocks held on the day immediately preceding the date of application of registration under the provisions of this Act
- (D) Stocks held on the day immediately preceding the date from which he becomes liable to pay tax under the provisions of this Act, provided application for registration is filed within 60 days from the due date
87. Under section 15 of UTGST Act, 2017, who is empowered to constitute Authority for Advance Ruling :
- (A) Central Government
- (B) State Government
- (C) Union Territory Government
- (D) GST Council
88. In respect of which item mentioned below, the provisions of CGST Act, 2017 are NOT applicable as the related provisions are given in UTGST Act, 2017 itself?
- (A) Scope of supply
- (B) Levy and Collection of UTGST
- (C) Registration
- (D) Returns
89. Rule 30 of the CGST Rules, 2017, inter alia provides value of supply of goods or services or both based on cost shall be ..... % of cost of production or manufacture or the cost of acquisition of such goods or the cost of provision of such services.
- (A) 100
- (B) 10
- (C) 110
- (D) 120
90. Sathvik has received the goods in 5 lots in respect of a single invoice. Which of the following is in accordance with the first proviso to section 16(2) of CGST Act, 2017:
- (A) 100% ITC can be taken on receipt of 1st lot
- (B) 50% ITC can be taken on receipt of each lot
- (C) 100% ITC can be availed upon receipt of last instalment of the lot
- (D) None of the above

91. Maximum validity period of certificate of registration issued to a Casual Taxable person and Non-Resident Taxable person as per section 27 of the CGST Act, 2017 is:
- (A) 90 days from the effective day of registration
  - (B) 180 days from the effective date of registration
  - (C) 365 days from the effective date of registration
  - (D) 60 days from the effective day of registration
92. The Integrated Tax, collected by the Central Government is:
- (A) Retained by Central Government
  - (B) Given to State Government
  - (C) Apportioned between the Union and State Government equally
  - (D) Apportioned between the Union and State Government in the ratio 60: 40
93. The liability to pay GST would depend on the mechanism the transaction aligns to the supplier who is registered with GST, issues a tax invoice, collects the GST and pays it to the Government. This mechanism under GST is known as:
- (A) Forward charge mechanism
  - (B) Reverse charge mechanism
  - (C) Composition levy mechanism
  - (D) Taxable supply mechanism
94. Shakthi limited purchases an aircraft for the purpose of transportation of goods manufactured by it. ITC shall be ..... for the GST paid on the aircraft.
- (A) allowed
  - (B) blocked under Section 17(5)
  - (C) allowed to the extent of 50%
  - (D) blocked under section 17(5) to the extent of 50%
95. Principal entitled for input tax credit on capital goods sent for job work in CGST Act, 2017:
- (A) If goods sent are returned within one year
  - (B) If goods sent are returned within three years
  - (C) If goods sent are returned within six months
  - (D) If goods sent are returned within nine months

96. For refund of import duty paid, the refund application must be filed:
- (A) Within 2 years from the date of payment of duty
  - (B) Within 6 months from the date of import
  - (C) Within 1 year from the date of payment of duty
  - (D) Within 1 year from the date of import
97. Which amongst the following is not true about private bonded warehouse:
- (A) Owned and managed by private entities
  - (B) Availability of space certificate from warehouse keeper would be required
  - (C) Only dutiable goods can be warehoused
  - (D) Not generally allowed where the public bonded warehouses are available
98. Determine the rate of drawback, if period between date of clearance for home consumption and the date when the goods are placed under Customer Control for export more than 6 months but not more than 9 months:
- (A) 95%
  - (B) 85%
  - (C) 75%
  - (D) 65%
99. The application by exporter to customs officer for clearance of goods for exportation is known as:
- (A) Shipping Bill
  - (B) Bill of Export
  - (C) Bill of Lading
  - (D) Either (A) or (B) above
100. When the goods consist of more than one material or substance, then the heading which provides the most specific description shall be preferred to headings providing a mere general description. It is the application of rule:
- (A) Essential Character Principle
  - (B) Specific over General
  - (C) Akin rule
  - (D) Latter the better

**ANSWER KEY**  
**TAX LAWS - SELECT SERIES**

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Q.No.	Ans	Q.No.	Ans	Q.No.	Ans
<b>PART I</b>		34	B	67	C
1	C	35	A	68	A
2	B	36	A	69	D
3	D	37	B	70	A
4	B	38	B	71	B
5	B	39	C	72	B
6	A	40	B	73	D
7	B	41	A	74	D
8	A/B	42	*	75	C
9	D	43	D	76	*
10	B/D	44	A	77	C
11	A	45	C	78	D
12	A/C	46	B	79	B
13	D	47	D	80	A
14	C	48	B	81	C
15	D	49	A	82	C
16	C	50	C	83	D
17	D	<b>PART II</b>		84	C
18	D	51	B	85	D
19	C	52	D	86	A
20	C	53	D	87	A
21	B	54	A	88	B
22	C	55	A	89	C
23	D	56	B	90	C
24	C	57	D	91	A
25	D	58	C	92	C
26	B	59	C	93	A
27	B/C	60	A	94	A
28	B	61	D	95	B
29	A	62	C	96	B/C*
30	D	63	D	97	B
31	B	64	C	98	C
32	C	65	B	99	D
33	D	66	A	100	B

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*Notes :*

- Q. No. 8 As per section 6(2) of the Income tax Act, 1961, HUF is said to be resident in India if the control and management of its affairs is situated wholly or partly in India. The question mentioned only the affairs of the business (which can be considered as day-to-day affairs) and is salient about the defacto control and management. Therefore, if it is assumed that the control and management is wholly or partly in India, then HUF is RNOR (option A). If control and management is wholly outside India, then HUF is NR (option B).
- Q. No. 10 Option B is correct if Mr. Kavi derived income from removing the hay from the basic grain without engaged in basic operations of growing crops. Option D is correct if Mr. Kavi derived income from removing the hay from the basic grain with engaged in basic operations of growing crops.
- Q. No. 12 Section 2(22)(e) of the Income tax Act, 1961 is applicable for company in which public is not substantially interested. Section 2(18) defines the company in which public are substantially interested. Other than not covered in section 2(18) may be called closely held company which also includes private company. Therefore, the provisions are applicable to both private and closely held company. i.e. option A & C
- Q. No. 27 The personal income of the member of the HUF is included in the income of respective member of HUF or so-called individual i.e. option C. Option B i.e. the members of HUF may be interpreted as respective members of HUF and therefore option B may also be considered as correct.
- Q. No. 42 All options are incorrect as the actual amount of retrenchment compensation paid to Ms. Priya is not mentioned and therefore computation could not be made.
- Q. No. 76 The value of supply of lottery shall be deemed to be 100/128 of the face value of ticket or of the prices as notified in the Official Gazette by the Organising State, whichever is higher.
- Q. No. 96 Both the Option B and C are correct. For Option B: As per section 26A (Refund of import duty in certain cases) of Customs Act, 1962, the refund application must be filed before the expiry of six months from the relevant date. For Option C: AS per Section 27 (claim for refund of duty) of Customs Act, 1962, the refund application must be filed before the expiry of one year, from the date of payment of such duty or interest.

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