

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

(New Syllabus)

DECEMBER 2021

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:

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

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EXECUTIVE PROGRAMME EXAMINATION

DECEMBER 2021

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

- (a) Briefly describe the Fundamental Rights against exploitation under Constitution of India.
 - (b) Define the concept of Kelson's 'Pure Theory of Law' under Analytical School.
 - (c) Describe the role of 'interpretation or definition clause' in statutes.
 - (d) Explain the liability of master for the act of his servant under the law of torts.
- (5 marks each)

Answer 1(a)

Fundamental Rights against exploitation under the Constitution of India are provided in Article 23 and 24. They are described as under:

(a) Prohibition of traffic in human beings and forced labour

Article 23 imposes a ban on traffic in human beings, begar and other similar forms of forced labour. The contravention of these provisions is declared punishable by law. Thus, the traditional system of beggary particularly in villages, becomes unconstitutional and a person who is asked to do any labour without payment or even a labourer with payment against his desire can complain against the violation of his fundamental right under Article 23. 'Traffic' in human beings means to deal in men and women like goods, such as to sell or let or otherwise dispose them of. 'Begar' means involuntary work without payment. The State can impose compulsory service for public purposes such as conscription for defence or social service etc. While imposing such compulsory service the State cannot make any discrimination on grounds only of religion, race, caste or class or any of them. (Clause 2 of Article 23).

Traffic in human beings i.e. women, children, etc. and forced labour militate against human dignity. Under the old Zamindari system, the tenants were sometimes forced to render free service to their landlords. This was called begar. Indian citizens are now free to take up any job for which they are found suitable and workers cannot be paid less than minimum wages fixed by the Government. Children of the prostitutes have a right to equality of opportunity, dignity, care, protection and rehabilitation so as to be part of the mainstream of social life. This is declared in the case of *Gaurav Jain & Union of India A.I.R 1997 S.C. 3021*.

(b) Prohibition of employment of children

Article 24 prohibits the employment of children below the age of fourteen in any factory or mine. The Factories Act, 1948; The Mines Act, 1952; The Apprentices'

Act, 1961; and the Child & Adolescent Labour (Prohibition and Regulation) Act, 1986 are some of the important enactments in the statute book to protect the children from exploitation by unscrupulous employers. The Supreme Court has issued detailed guidelines as to child labour in *M.C. Mehta v. State of T.N.*, AIR 1993 S.C. 699.

Answer 1(b)

Hans Kelson is known for his 'Pure Theory of Law'. Kelson believed that the contemporary study and theories of law were impure as they were drawn upon from various other fields like religion and morality to explain legal concepts. Kelson, like Austin was a positivist, in that he focused his attention on what the law was and divested moral, ideal or ethical elements from law. He discarded the notion of justice as an essential element of law because many laws, though not just, may still continue as law.

Kelson described law as a 'normative science' as distinguished from natural sciences which are based on cause and effect, such as law of gravitation. The laws of natural science are capable of being accurately described, determined and discovered whereas the science of law is knowledge of what law ought to be. Kelson considered sanction as an essential element of law but he preferred to call it 'norm'. According to Kelson, 'law is a primary norm which stipulates sanction'.

According to Kelson, 'norm (sanction) is rules forbidding or prescribing certain behaviour'. He saw legal order as the hierarchy of norms having sanction, and jurisprudence was the study of these norms which comprised legal order. Kelson distinguished moral norm with legal norm and said that though moral norms are 'ought propositions, a violation of it does not have any penal fallout. The 'ought' in the legal norm refers to the sanction to be applied for violation of law.

According to Kelson, legal-normative meaning is assigned to certain actions and not to others depending on whether that event is accorded any legal-normative by any other legal norm. This second norm gains its validity from some other norm that is placed above it. The successive authorizations come to an end at the highest possible norm which was termed by Kelson as 'Grundnorm'. Thus, Kelson's pure theory of law is based on pyramidal structure of hierarchy of norms which derive their validity from the basic norm. Grundnorm or basic norm determines the content and gives validity to other norms derived from it. In his view the basic norm is the result of social, economic, political and other conditions and it is supposed to be valid by itself.

Answer 1(c)

It is common to find in statutes "definitions" of certain words and expressions used elsewhere in the body of the statute. The object of such a definition is to avoid the necessity of frequent repetitions in describing all the subject-matter to which the word or expression so defined is intended to apply. A definition section may borrow definitions from an earlier Act and definitions so borrowed need not be found in the definition section but in some provisions of the earlier Act.

When a word has been defined in the interpretation clause, prima facie that definition governs whenever that word is used in the body of the statute.

The definition of a word in the definition section may either be restrictive of its

ordinary meaning or it may be extensive of the same. When a word is defined to 'mean' such and such, the definition is prima facie restrictive and exhaustive, whereas where the word defined is declared to 'include' such and such, the definition is prima facie extensive. Further, a definition may be in the form of 'means and includes', where again the definition is exhaustive. On the other hand, if a word is defined 'to apply to and include', the definition is understood as extensive. (*Balkrishan v. M. Bhai AIR 1999 MP 86*)

A definition section may also be worded in the form 'so deemed to include' which again is an inclusive or extensive definition and such a form is used to bring in by a legal fiction something within the word defined which according to ordinary meaning is not included within it.

When a word has been defined in the interpretation clause, prima facie that definition governs whenever that word is used in the body of the statute.

Answer 1(d)

A master is liable for the tort committed by his servant while acting in the course of his employment. The servant, of course, is also liable; their liability is joint and several.

In such cases -

- (1) liability of a person is independent of his own wrongful intention or negligence
- (2) liability is joint as well as several
- (3) In case of vicarious liability, the liability arises because of the relationship between the principal and the wrongdoer but in case of absolute or strict liability, the liability arises out of the wrong itself.

A master is liable not only for the acts which have been committed by the servant, but also for acts done by him which are not specifically authorized, in the course of his employment. The basis of the rule has been variously stated: on the maxim *Respondeat Superior* (Let the principal be liable) or on the maxim *Qui facit per alium facit per se* (he who does an act through another is deemed to do it himself). The master is liable even though the servant acted against the express instructions, for the benefit of his master, so long as the servant acted in the course of employment.

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

Question 2

- (a) *Discuss the provision of Civil Procedure Code, 1908 which prevents multiplicity of suits in respect of same cause of action.*
- (b) *The Parliament passed many laws in the interest of public safety and social welfare. It imposes absolute liability in Criminal Law. Elaborate.*
- (c) *Define the rule against bias under Administrative Law and also discuss its kinds.*
- (d) *Explain the procedure given in Criminal Procedure Code, 1973 for publication of proclamation regarding absconding persons.*

(4 marks each)

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

- (i) Explain the Latin maxims 'damnum sine injuria' and 'injuria sine damnum'.
- (ii) Define criminal conspiracy and state the punishment for it under the Indian Penal Code, 1860.
- (iii) Describe the concept of False Imprisonment under Law of Torts. Cite case law in support of your answer.
- (iv) Explain the provision as to offences punishable under two or more enactments under Section 26 of the General Clauses Act, 1897. (4 marks each)

Answer 2(a)

Section 11 of the Code of Civil Procedure 1908, deals with the doctrine of Res Judicata that is, bar or restraint on repetition of litigation of the same issues. It is a pragmatic principle accepted and provided in law that there must be a limit or end to litigation on the same issues. The doctrine underlines the general principle that no one shall be twice vexed for the same cause. For the applicability of the principle of res judicata embodied in Section 11, the following requirements are necessary:

1. The matter directly and substantially in issue in former suit shall also be directly and substantially in issue in latter suit.
2. The issue or the suit itself is heard and finally decided, then it operates as res judicata.
3. Such former suit and the latter are between the same parties or litigation under the same title or persons claiming under parties above.

Answer 2(b)

The Latin word *mens rea* is concerned with criminal liability and it means guilty mind i.e. the intention or knowledge of wrongdoing that constitutes part of a crime. The basic principle of criminal liability is embodied in the legal maxim 'actus non facit reum, nisi mens sit rea'. It means that the act alone does not amount to guilt; the act must be accompanied by a guilty mind. The intention and the act must both concur to constitute the crime. There are many exceptional cases where mens rea is not required in criminal law. Many laws passed in the interest of public safety and social welfare imposes absolute liability. This is so in matters concerning public health, food, drugs, etc.

There is absolute liability (*mens rea* is not essential) in the licensing of shops, hotels, restaurants and chemists establishments. The same is true of cases under the Motor Vehicles Act and the Arms Act, offences against the State like waging of war, sedition etc. In the interest of public safety, strict liability is imposed and whether a person causes public nuisance with a guilty mind or without guilty mind, he is punished. If a person violates a law even without the knowledge of the existence of the law, it can still be said that he has committed an act which is prohibited by law.

Answer 2(c)

According to the rule against bias, no person should be made a judge in his own

cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. It is a presumption that a person cannot take an objective decision in a case in which he has an interest. The rule against bias has following two main aspects:

- (i) that the judge must not have any direct personal stake in the matter at hand.
- (ii) there must not be any real likelihood of bias.

Bias can be of the following three types:

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

Answer 2(d)

According to section 82 of the Criminal Procedure Code, 1973, if a Court has reason to believe that any person against whom a warrant has been issued by it has absconded or is concealing himself so that such warrant cannot be executed, the Court may publish a written proclamation requiring him to appear at a specified place and at a specified time not less than 30 days from the date of publishing such proclamation. While issuing proclamation, the Magistrate must record to his satisfaction that the accused has absconded or is concealing himself.

The proclamation should be published as follows:

- (i) (a) it shall be publicly read in some conspicuous place of the town or village in which such person ordinarily resides;
- (b) it shall be affixed to some conspicuous part of the house or homestead in which such person ordinarily resides or to some conspicuous place of such town or village;
- (c) a copy thereof shall be affixed to some conspicuous part of the Court-house;
- (ii) the Court may also, if it thinks fit, direct a copy of the proclamation to be published in a daily newspaper circulating in the place in which such person ordinarily resides.

Answer 2A(i)***Damnum Sine Injuria***

Damnum means harm, loss or damage in respect of money, comfort, health, etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff. Common examples are, where the damage results from an act done in the exercise of legal rights.

Injuria Sine Damnum

It means injury without damage, i.e., where there is no damage resulted yet it is an injury or wrong in tort, i.e. where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort. Some rights or interests are so important that their violation is an actionable tort without proof of damage. Thus when there is an invasion of an “absolute” private right of an individual, there is an *injuria* and the plaintiff’s action will succeed even if there is no damages.

Answer 2A(ii)**Definition of criminal conspiracy as per section 120A of the Indian Penal Code, 1860**

When two or more persons agree to do, or cause to be done,

- (1) an illegal act, or
- (2) an act which is not illegal by illegal means, such an agreement is designated a criminal conspiracy:

Provided that no agreement except an agreement to commit an offence shall amount to a criminal conspiracy unless some act besides the agreement is done by one or more parties to such agreement in pursuance thereof.

Explanation. It is immaterial whether the illegal act is the ultimate object of such agreement, or is merely incidental to that object.

Punishment of criminal conspiracy as per section 120B of the Indian Penal Code, 1860

- (1) Whoever is a party to a criminal conspiracy to commit an offence punishable with death, imprisonment for life or rigorous imprisonment for a term of two years or upwards, shall, where no express provision is made in Indian Penal Code for the punishment of such a conspiracy, be punished in the same manner as if he had abetted such offence.
- (2) Whoever is a party to a criminal conspiracy other than a criminal conspiracy to commit an offence punishable as aforesaid shall be punished with imprisonment of either description for a term not exceeding six months, or with fine or with both.

The punishment for conspiracy is the same as if the conspirator had abetted the offence. The punishment for criminal conspiracy is more severe if the agreement is one to commit a serious offence and less severe otherwise.

Answer 2A(iii)

False imprisonment consists in the imposition of a total restraint for some period, however short, upon the liberty of another, without sufficient lawful justification. It means unauthorized restraint on a person's body. What happens in false imprisonment is that a person is confined within certain limits so that he cannot move about and so his personal liberty is infringed. It is a serious violation of a person's right and liberty whether being confined within the four walls or by being prevented from leaving place where he is. If a man is restrained, by a threat of force from leaving his own house or an open field there is false imprisonment.

In *Sunil Batra v. Delhi Administration AIR 1980 SC 1579*, the Supreme Court while interpreting section 56 of the Prisons Act, 1894, observed that there is an implied duty on the jail superintendent to give reasons for putting bar fetters on a prisoner to avoid invalidity of that provision under Article 21 of the Constitution. Thus the Supreme Court laid the foundation of a sound administrative process requiring the adjudicatory authorities to substantiate their order with reasons.

Answer 2A(iv)

Section 26 of the General Clauses Act 1897, deals with offences punishable under two or more enactments. According to this section, 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.

The Supreme Court observed in the case of *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.

Question 3

- (a) *It is well settled law that for grant of temporary injunction, three factors have to be satisfied, which are prima facie case, balance of convenience and irreparable loss. Discuss.*
- (b) *'A' is accused of the murder of 'B' by beating him. Discuss the rule of relevancy of fact of the statement said or done by 'A' or, 'B' or the bystanders at the beating, or so shortly before or after it.*
- (c) *What is maximum and minimum period of limitation prescribed by Limitation Act, 1963 and also state that in which kind of suits it is provided ?*
- (d) *"Alternative Dispute Resolution is not an alternative to the court system but only meant to supplement the same aiming on less lawyering". Comment.*
(4 marks each)

Answer 3(a)

The Court may grant temporary injunction for the purpose of staying and preventing

the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit; where it is proved by affidavit or otherwise:

- (a) that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- (b) that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, or
- (c) that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

It would be necessary for the plaintiff to satisfy the Court that he has a *prima facie* case in the sense that even a superficial look at the facts of the case will show that the plaintiff's case has some merit. Further, the balance of convenience should also lie in favour of the plaintiff. For example, in a suit for eviction of a tenant from a rented premises, the balance of convenience would lie in favour of the tenant who is occupying the property. Moreover, the plaintiff will also have to satisfy the Court that substantial and irreparable harm or injury would be suffered by him if such temporary injunction (till the disposal of the suit) is not granted and that such loss or damage or harm cannot be compensated by damages.

Answer 3(b)

Section 6 of Indian Evidence Act, 1872 embodies the rule of admission of evidence relating to what is commonly known as Res gestae. Acts or declarations accompanying the transaction or the facts in issue are treated as part of the Res gestae and admitted as evidence. The obvious ground for admission of such evidence is the spontaneity and immediacy of the act or declaration in question. They are the acts talking for themselves. These facts become relevant due to their association with main transaction which itself is a relevant fact in the nature of fact in issue. Circumstantial facts are admitted as forming a part of Res gestae i.e. it being a part of original proof of what has taken place. Therefore, whatever was said or done by A or B or the by-standers at the beating, or so shortly before or after it as to form part of the transaction, is a relevant fact.

Answer 3(c)

Maximum period of limitation - The maximum period of limitation prescribed by the Limitation Act, 1963 is 30 years. They are as follows:

- 1 Suits by mortgagors for the redemption or recovery of possession of immovable property mortgaged;
- 2 Suits by mortgagee for foreclosure;
- 3 Suits by or on behalf of the Central Government or any State Government including the State of Jammu and Kashmir.
- 4 Suits by or on behalf of any local authority for possession of any public street or road or any part thereof from which it has been dispossessed or of which it has discontinued the possession.

Minimum period of limitation - The minimum period of limitation of 10 days is

prescribed for application for leave to appear and defend a suit under summary procedure from the date of service of the summons.

Answer 3(d)

The Alternative Dispute Resolution (ADR) processes provide procedural flexibility, save valuable time and money and avoid the stress of a conventional trial. ADR can help in reducing the workload of regular Courts and in long run can pave way in solving the problem of judicial arrears before the Courts of law. ADR is not meant to supplant the court system because the conclusions arrived through these mechanisms are recognised by the Courts and there are provisions in law that allow for appeal against the ADR outcome in regular courts. Arbitration, mediation and conciliation are three of the most popular means of ADR. Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (or more persons) but without recourse to a Court of Law. The parties repose confidence in the judgement of the arbitrator and show their willingness to abide by his decision.

Question 4

- (a) *What is the object of registration of documents under Registration Act, 1908 ?*
- (b) *Briefly discuss the Constitution of National Company Law Tribunal.*
- (c) *What is the liability of network service provider for contravention of Information Technology Act, 2000 ?*
- (d) *Discuss the instruments which are Chargeable with duty under section 3 of the Indian Stamp Act, 1899. (4 marks each)*

Answer 4(a)

Registration is the process of recording a document with an assigned officer and to keep it as public record. Following are the objectives of registration of documents under the Registration Act, 1908:

1. Registration of a document ensures proper preservation and record of such document. It is particularly important in the case of immovable properties because the history of rights need to be established.
2. Documents which are required to be registered act as valid evidence in a court of law. Documents which need to be compulsorily registered are not admissible in court if they are not registered.
3. Registered documents assist in the prevention of fraud.
4. Registration gives people information regarding legal rights and obligations arising or affecting a particular property.

Answer 4(b)

As per section 408 of the Companies Act, 2013, the Central Government shall, by notification, constitute, a Tribunal to be known as the National Company Law Tribunal consisting of a President and such number of Judicial and Technical members, as the Central Government may deem necessary, to be appointed by it by notification, to

exercise and discharge such powers and functions as are, or may be, conferred on it by or under the Companies Act, 2013 or any other law for the time being in force. With the constitution of the NCLT, the Company Law Board (CLB) constituted under the Companies Act, 1956 stands dissolved. The President shall be a person who is or has been a Judge of a High Court for five years. The President of the NCLT will be appointed after consultation with the Chief Justice of India. There are a number of NCLT benches in India and the main bench sits in Delhi.

Answer 4(c)

Section 2(1)(w) of the Information Technology Act, 2000 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).

Answer 4(d)

Section 3 of the Indian Stamp Act, 1899 deal with instrument chargeable with duty. According to Section 3, subject to the provisions of this Act and the exemptions contained in Schedule I, the following instruments shall be chargeable with duty of the amount indicated in that Schedule as the proper duty therefore respectively,

- (a) Every instrument mentioned in that Schedule which, not having been previously executed by any person, is executed in India on or after the first day of July, 1899;
- (b) Every bill of exchange payable otherwise than on demand or promissory note drawn or made out of India on or after that day and accepted or paid, or presented for acceptance or payment, or endorsed, transferred or otherwise negotiated, in India; and
- (c) Every instrument (other than a bill of exchange, or promissory note) mentioned in that Schedule, which, not having been previously executed by any person, is executed out of India on or after that day, relates to any property situate, or to any matter or thing done or to be done, in India and is received in India.

Question 5

- (a) *Discuss the term of office and conditions of service of Chief Information Commissioner and Information Commissioner under the Right to Information Act, 2005.*

- (b) *“All customs cannot be accepted as sources of law, nor can all customs be recognized and enforced by the courts.” Discuss the essential tests for customs to be recognized as valid sources of law.*

(8 marks each)

Answer 5(a)

Section 13 of the Right to Information Act, 2005 deals with term of office and conditions of service of Chief Information Commissioner and Information Commissioner as follows:

- (1) The Chief Information Commissioner shall hold office for such term as may be prescribed by the Central Government and shall not be eligible for reappointment.

Provided that no Chief Information Commissioner shall hold office as such after he has attained the age of sixty-five years.

- (2) Every Information Commissioner shall hold office for such term as may be prescribed by the Central Government or till he attains the age of sixty-five years, whichever is earlier, and shall not be eligible for reappointment as such Information Commissioner.

Provided that every Information Commissioner shall, on vacating his office under this sub-section be eligible for appointment as the Chief Information Commissioner in the manner specified in section 12(3).

Provided further that where the Information Commissioner is appointed as the Chief Information Commissioner, his term of office shall not be more than five years in aggregate as the Information Commissioner and the Chief Information Commissioner.

- (3) The Chief Information Commissioner or an Information Commissioner shall before he enters upon his office make and subscribe before the President or some other person appointed by him in that behalf, an oath or affirmation according to the form set out for the purpose in the First Schedule.

- (4) The Chief Information Commissioner or an Information Commissioner may, at any time, by writing under his hand addressed to the President, resign from his office:

Provided that the Chief Information Commissioner or an Information Commissioner may be removed in the manner specified under section 14.

- (5) The salaries and allowances payable to and other terms and conditions of service of the Chief Information Commissioner and the Information Commissioners shall be such as may be prescribed by the Central Government.

- (6) The Central Government shall provide the Chief Information Commissioner and the Information Commissioners with such officers and employees as may be necessary for the efficient performance of their functions under this Act, and the salaries and allowances payable to and the terms and conditions of service of the officers and other employees appointed for the purpose of this Act shall be such as may be prescribed.

Answer 5(b)

A custom will be valid as a law and will have a binding force only if it fulfills the following essential conditions, namely:

1. **Immemorial (Antiquity)** : A custom to be valid must be proved to be immemorial; it must be ancient. According to Blackstone, "A custom, in order that it may be legal and binding must have been used so long that the memory of man runs not to the contrary, so that, if anyone can show the beginning of it, it is no good custom". All that is required to be proved is that the alleged custom is ancient.
2. **Certainty** : The custom must be certain and definite, and must not be vague and ambiguous.
3. **Reasonableness** : A custom must be reasonable. It must be useful and convenient to the society. A custom is unreasonable if it is opposed to the principles of justice, equity and good conscience.
4. **Compulsory Observance** : A custom to be valid must have been continuously observed without any interruption from times immemorial and it must have been regarded by those affected by it as an obligatory or binding rule of conduct.
5. **Conformity with Law and Public Morality** : A custom must not be opposed to morality or public policy nor must it conflict with statute law. If a custom is expressly forbidden by legislation and abrogated by a statute, it is inapplicable.
6. **Unanimity of Opinion** : The custom must be general or universal. If practice is left to individual choice, it cannot be termed as custom.
7. **Peaceable Enjoyment** : The custom must have been enjoyed peaceably without any dispute in a law court or otherwise.
8. **Consistency** : There must be consistency among the customs. Custom must not come into conflict with the other established customs.

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

Question 6

- (a) "Article 16 of the Indian Constitution guarantees equal opportunity to all citizens of India in matters related to public employment. However, there are certain exceptions of the Article 16". Explain the reservation policy in India.
- (b) 'A' is a warehouse-keeper. 'Z' going on a journey, entrusts his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. A dishonestly sells the goods. Discuss, when offence, if any, committed by A ?
- (c) Discuss the Rule of Harmonious Construction for the interpretation of statutes.
- (d) Describe Austin's "Command Theory of Law" under analytical school.

(4 marks each)

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

- (i) *What are 'External Aids' in the interpretation of statutes ? Briefly describe any two external aids in the interpretation of statutes.*
- (ii) *What is Professional Communications ? In a case Ramesh, a client, says to Ashwin, his Advocate, "I stole a bike and I wish you to defend me" Ashwin refused to plead his case. Later on Ashwin gives evidence against Ramesh about this communication. Is this communication protected from disclosure under the Indian Evidence Act, 1872 ? Explain.*
- (iii) *Discuss the power under section 144 of the Code of Criminal Procedure, 1973 to issue order in urgent cases of nuisance or apprehended danger.*
- (iv) *Discuss the provisions relating to place of suing under section 16 of the Code of Civil Procedure, 1908. (4 marks each)*

Answer 6(a)

Article 16(1) and (2) of the Constitution of India lay down provisions for equal opportunity of employment in the public sector. However, there are certain exceptions provided in Article 16(3), 16(4), 16(4A), 16(4B), 16(5) & 16(6). These are as under:

1. Parliament can make a law that in regard to a class or classes of employment or appointment to an office under the Government of a State or a Union Territory, under any local or other authority within the State or Union Territory, residence within that State or Union Territory prior to such employment or appointment shall be an essential qualification. [Article 16(3)].
2. A provision can be made for the reservation of appointments or posts in favour of any backward class of citizens which in the opinion of the State is not adequately represented in the services under the State. [Article 16(4)].
3. Parliament can make law for reservation in matters of promotion, with consequential seniority, to any class or classes of posts in the services under the State in favour of the Scheduled Castes and the Scheduled Tribes which, in the opinion of the State, are not adequately represented in the services under the State. [Article 16(4A)].
4. The State can consider any unfilled vacancies of a year which are reserved for being filled up in that year in accordance with any provision for reservation made under clause (4) or clause (4A) as a separate class of vacancies to be filled up in any succeeding year or years and such class of vacancies shall not be considered together with the vacancies of the year in which they are being filled up for determining the ceiling of fifty per cent. reservation on total number of vacancies of that year. [Article 16(4B)].
5. A law shall not be invalid if it provides that the incumbent of an office in connection with the affair of any religious or denominational institution or any member of the governing body thereof shall be a person professing a particular religion or belonging to a particular denomination. (Article 16(5)].

6. Parliament can make law for the reservation of appointments or posts in favour of any economically weaker sections of citizens other than the classes mentioned in clause (4), in addition to the existing reservation and subject to a maximum of ten per cent. of the posts in each category. [Article 16(6)].

Using the exceptions, the government, both at the central and state levels, have reserved government jobs for STs, SCs, OBCs, women and economically weaker section of the unreserved castes. These reservations are part of 'affirmative action' policies of the government.

Answer 6(b)

A has committed criminal breach of trust. Four requirements are essential to be fulfilled under section 405 of Indian Penal Code, 1860, which are as under:

1. The person handing over the property must have confidence in the person taking the property so as to create a fiduciary relationship between them or to put him in position of trustee.
2. The accused must be in such a position where he could exercise his control over the property i.e. dominion over the property.
3. The term property includes both movable as well as immovable property within its ambit.
4. It has to be established that the accused has dishonestly put the property to his own use or to some unauthorized use. Dishonest intention to misappropriate is a crucial fact to be proved to bring home the charge of criminal breach of trust.

Answer 6(c)

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construct provisions which appear to conflict so that they harmonise" (*Raj Krishna v. Pinod Kanungo, A.I.R. 1954 S.C. 202 at 203*). Where in an enactment, there are two provisions which cannot be reconciled with each other, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the "rule of harmonious construction."

Answer 6(d)

According to Austin, law is the command of sovereign that is backed by sanction. Austin has propagated that law is a command which imposes a duty and the failure to fulfill the duty is met with sanctions (punishment). Thus, law has three main features: First is the Command; second, that it is given by a sovereign authority and third, failure to follow the law is met with punishment. Command is an expression of wish or desire of an intelligent person, directing another person to do or to forbear from doing some act, and the violation of this wish will be followed by evil consequences on the person so directed. In Austin's theory, sovereign is politically superior. He has defined sovereign as an authority that receives habitual obedience from the people but itself does not obey

some other authority habitually. According to Austin, the sovereign is the source of all laws. Sanction should not also be confused with a reward that might be on offer if a given conduct is followed or refrained from. Reward confers a positive right whereas a sanction is a negative consequence.

Answer 6A(i)

Apart from the intrinsic aids, such as preamble and purview of the Act, the Court can consider resources outside the Act, called the extrinsic aids, in interpreting and finding out the purposes of the Act. Where the words of an Act are clear and unambiguous, no resource to extrinsic matter, even if it consists of the sources of the codification, is permissible. But where it is not so, the Court can consider, apart from the intrinsic aids, such as preamble and the purview of the Act, both the prior events leading up to the introduction of the Bill, out of the which the Act has emerged, and subsequent events from the time of its introduction until its final enactment like the legislation, history of the Bill, Select Committee reports. The Supreme Court, enunciated the rule of exclusion of Parliamentary history in the way it is enunciated by English Courts, but on many occasions, the Court used this aid in resolving questions of construction. The report of a Select Committee or other Committee on whose report an enactment is based, can be looked into "so as to see the background against which the legislation was enacted. When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance. Use of foreign decisions of countries following the same system of jurisprudence as ours and rendered on statutes in *pari materia* has been permitted by practice in Indian Courts.

Few external aids in the interpretation of statutes are:

1. Parliamentary History

The Supreme Court, enunciated the rule of exclusion of Parliamentary history in the way it is enunciated by English Courts, but on many occasions, the Court used this aid in resolving questions of construction.

2. Reference to Reports of Committees

The report of a Select Committee or other Committee on whose report an enactment is based, can be looked into "so as to see the background against which the legislation was enacted.

3. Reference to other Statutes

It has already been stated that a statute must be read as a whole as words are to be understood in their context. Extension of this rule of context, permits reference to other statutes in *pari materia*, i.e. statutes dealing with the same subject matter or forming part of the same system.

4. Dictionaries

When a word is not defined in the Act itself, it is permissible to refer to dictionaries to find out the general sense in which that word is understood in common parlance.

5. Use of Foreign Decisions

Use of foreign decisions of countries following the same system of jurisprudence as ours and rendered on statutes in *pari materia* has been permitted by practice in Indian Courts.

Answer 6A(ii)

There are some facts of which evidence cannot be given though they are relevant, such as facts coming under Sections 122, 123, 126 and 127 of the Indian Evidence Act, 1872. These Communications between parties are known as Privileged Communication.

Section 126 to 129 of the Indian Evidence Act, 1872 deals with the professional communications between a legal adviser and a client, which are protected from disclosure. A client cannot be compelled and a legal adviser cannot be allowed without the express consent of his client to disclose oral or documentary communications passing between them in professional confidence. The rule is founded on the impossibility of conducting legal business without professional assistance and securing full and unreserved communication between the two.

Under Sections 126 and 127 neither a legal adviser i.e. a barrister, attorney, pleader or vakil nor his interpreter, clerk or servant can be permitted to disclose any communication made to him in the course and for the purpose of professional employment of such legal adviser or to state the contents or condition of any document with which any such person has become acquainted in the course and for the purpose of such employment.

In the present case, the communication made by Ramesh is protected from disclosure. Evidence given by Ashwin regarding this communication shall not be admissible in the court.

Answer 6A(iii)

As per Section 144 of the Code of Criminal Procedure, 1973, where in the opinion of a District Magistrate, a Sub-divisional Magistrate or any other Executive Magistrate specially empowered by the State Government in this behalf, there is sufficient ground for proceeding under the aforesaid section and immediate prevention or speedy remedy is desirable, in such cases the Magistrate may by a written order stating the material facts of the case and served in the manner provided by Section 134, direct any person to abstain from a certain act or to take certain order with respect to certain property in his possession or under his management, if such Magistrate considers that such direction is likely to prevent or tends to prevent, obstruction, annoyance of injury to any person lawfully employed, or danger to human life, health or safety or a disturbance of the public tranquility, or a riot, or an affray.

An order under this Section may be passed ex-parte in cases of emergency or in cases where the circumstances do not admit of the serving of notice in due time upon the person against whom the order is directed. An order under this Section can remain in force for two months, and may be extended further for a period not exceeding six months by the State Government if it considers necessary.

Answer 6A(iv)

According to section 16 of the Code of Civil Procedure, 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, sale or redemption in the case of a mortgage of 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 under distraint or attachment.

Further, It has 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.

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) A private limited company incorporated under the Companies Act, 2013 may issue debentures to any number of persons and can accept deposits from the public.*
- (b) The privilege of Limited Liability for Business Debts is one of the principal advantage of doing business under the corporate form of organization with some exceptions.*
- (c) National Financial Reporting Authority (NFRA) has wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards.*
- (d) Signing of the Board's Report can be done by any one of the directors and be filed within 60 days of AGM. (5 marks each)*

Answer 1(a)

According to the definition of private company under Section 2(68) of the Companies Act, 2013, a private limited company is prohibited to make an invitation to the public to subscribe for any securities of the company.

'Securities' has been defined under section 2(81) of the Companies Act, 2013 to mean the securities as defined in Section 2(h) of the Securities Contracts (Regulation) Act, 1956. As per Section 2(h) of the Securities Contracts (Regulation) Act, 1956, "Securities" include debentures, debenture stock or other marketable securities of a like nature.

However, under Section 42 of the Companies Act, 2013, a Private Company may issue such securities on private placement basis only to a selected group of persons who have been identified by the Board, and whose number shall not exceed 200 in the aggregate in a financial year excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option subject to prescribed conditions.

Further, as per Section 73 and 76 of the Companies Act, 2013, only the following may invite, accept or renew public deposits from the public:

- a banking company,

- non-banking financial company as defined in the Reserve Bank of India Act, 1934,
- to such other company as the Central Government may, after consultation with the Reserve Bank of India, specify in this behalf,
- Public company (Eligible Company) having Net worth not less than Rs. 100 Crores or Turnover not less than Rs. 500 Crores and which has obtained the prior consent of the company in general meeting by means of a resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Thus, a Private Company cannot accept deposits from Public.

Answer 1(b)

The company, being a separate person, is the owner of its assets and bound by its liabilities. The liabilities of a member as shareholder, extends to the contribution to the capital of the company up to the nominal value of the shares held and not paid by him. Members, even as a whole, are neither owners of the company's undertaking, nor liable for its debts. In other words, a shareholder is liable to pay the balance, if any, due on the shares held by him, when called upon to pay and nothing more, even if the liabilities of the company far exceed its assets. This means that the liability of a member is limited. If a person holds fully-paid shares, he has no further liability to pay even if the company is declared insolvent. In case of a company limited by guarantee, the liability of members is limited to a specified amount of the guarantee mentioned in the memorandum.

The exceptions to the principle of limited liability are –

- a. As per section 3A of the Companies Act, 2013 (the Act), if at any time the number of members of a company is reduced, in the case of a public company, below seven, in the case of a private company, below two, and the company carries on the business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.
- b. When the company is incorporated as an unlimited company under section 3(2)(c) of the Act.
- c. As per section 7(7)(b) of the Act, where a company has been got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants, direct that liability of the members of such company shall be unlimited.
- d. Under section 339(1) of the Act, wherein the course of winding up it appears that any business of the company has been carried on with an intent to defraud creditors of the company or any other persons or for any fraudulent purpose, the

Tribunal may declare the persons who were knowingly parties to the carrying on of the business in the manner aforesaid as personally liable, without limitation of liability, for all or any of the debts/liabilities of the company.

- e. Under section 35(3) of the Act, where it is proved that a prospectus has been issued with intent to defraud the applicants for the securities of a company or any other person or for any fraudulent purpose, every person who was a director at the time of issue of the prospectus or has been named as a director in the prospectus or every person who has authorised the issue of prospectus or every promoter or a person referred to as an expert in the prospectus shall be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by any person who subscribed to the securities on the basis of such prospectus.
- f. As per section 75(1) of the Act, where a company fails to repay the deposit or part thereof or any interest thereon referred to in section 74 within the time specified or such further time as may be allowed by the Tribunal and it is proved that the deposits had been accepted with intent to defraud the depositors or for any fraudulent purpose, every officer of the company who was responsible for the acceptance of such deposit shall, without prejudice to other liabilities, also be personally responsible, without any limitation of liability, for all or any of the losses or damages that may have been incurred by the depositors.
- g. As per section 224(5) of the Act, where the report made by an inspector states that fraud has taken place in a company and due to such fraud any director, key managerial personnel, other officer of the company or any other person or entity has taken undue advantage or benefit, whether in the form of any asset, property or cash or in any other manner, the Central Government may file an application before the Tribunal for appropriate order disgorgement of such asset, property, or cash, and also for holding such director, key managerial personnel, officer or other person liable personally without any limitation of liability.

Answer 1(c)

The Central Government has introduced a new regulatory authority named as National Authority for Financial Reporting known as National Financial Reporting Authority (NFRA) with wide powers to recommend, enforce and monitor the compliance of accounting and auditing standards. The Companies Act, 1956 empowered the Central Government to form a Committee for recommendations on Accounting Standards which is National Advisory Committee on Accounting Standards (NACAS). This is now being renamed with enhanced independent oversight powers and authority as National Financial Reporting Authority (NFRA). The National Financial Reporting Authority shall perform its functions through such divisions as may be prescribed.

NFRA shall be responsible for monitoring and enforcing compliance of auditing and accounting standards and for that purpose, oversee the quality of professions associated with ensuring such compliances. The Authority has power to investigate professional and other misconducts which may be committed by Chartered Accountancy members and firms. There is also a provision for appellate authority.

The National Financial Reporting Authority is a quasi – judicial body to regulate matters related to accounting and auditing. With increasing demand of non-financial

reporting, it may be referred to as a National level business Reporting Authority to regulate standards of all kind of reporting, financial as well as non – financial, by the companies in future.

National Financial Reporting Authority gives its recommendations on accounting standards and auditing standards. It can only recommend and it is the Central Government who prescribes such standards.

The objectives of National Financial Reporting Authority are as follows:

- (1) Make recommendations on formulation of accounting and auditing policies and standards for adoption by companies, class of companies or their auditors;
- (2) Monitor and enforce the compliance with accounting standards and auditing standards;
- (3) Oversee the quality of service of professionals associated with ensuring compliance with such standards and suggest measures required for improvement in quality of service; and
- (4) Perform such other functions as may be prescribed in relation to aforementioned objectives.

Answer 1(d)

As per Section 134(6) of the Companies Act, 2013, the Board's report and any annexures thereto, shall be signed by the Chairperson of the company if he is authorised by the Board and where he is not so authorised, shall be signed by at least two directors, one of whom shall be a managing director, or by the director where there is one director.

Section 137(1) of the Companies Act, 2013 provides that a copy of financial statements, including consolidated financial statement, if any, along with all documents required to be attached to such financial statements under the Companies Act, 2013 duly adopted at the annual general meeting or adjourned annual general meeting of the company shall be filed with the Registrar of Companies within 30 days of annual general meeting or adjourned annual general meeting along with the prescribed fees. The Board's Report has to be attached to the financial statements.

However, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting.

In case of a One Person Company a copy of the financial statements duly adopted by its member, along with all the documents which are required to be attached to such financial statements, shall be filed within one hundred eighty days from the closure of the financial year.

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

Question 2

- (a) *The Board of Directors of Aakash Ltd., a listed company, in its meeting held on 1st April, 2021 announced a proposal for issue of bonus shares to all equity*

shareholders of the company in the ratio of 1 : 1. On 1st May, 2021, the directors at another meeting passed a resolution to reverse the proposal of bonus issue announced on 1st April, 2021. Discuss the validity of the resolutions.

(3 marks)

(b) XYZ Limited has an office building in London. The Company has been granted a term loan of ₹15 crore from a Bank. The Company wants to mortgage office building of London. Examining the provisions of the Companies Act, 2013, answer the following :

(i) Whether the company can mortgage the above office building ?

(ii) Whether a charge can be created for property situated outside India ?

(3 marks)

(c) X applied for 400 shares in XYZ Ltd and paid ₹ 2.50 on the face value of ₹10 but no allotment was made to him. Subsequently 400 shares were allotted and issued to him without his request and his name was entered in the register of members. X knew it but took no steps for rectification of the register of members. The company went into liquidation and X was held liable as a contributory. X claims that he is not liable as contributory. Whether his claim is tenable ?

(3 marks)

(d) XYZ Ltd is an investment company whose principal business is acquisition of shares and debentures of other companies. The following figures were derived from the books of XYZ Ltd. :

Assets :

Investment in shares and debenture	₹95 Lakh
Other Assets	₹105 Lakh
Total	<u>₹200 Lakh</u>

Income :

Income from investment business	₹12 Lakh
Other Income	₹18 Lakh
Total	<u>₹30 Lakh</u>

Whether the company is an investment company as per section 186 and eligible to claim exemption given thereunder ?

(3 marks)

(e) XYZ Ltd. is carrying out a project under its CSR initiatives. Some of its employees are working in this project. The company want to monetize and account it under the head of 'CSR expenditure' ? Advice the company.

(3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) Santosh Kumar, an employee of a listed company purchased certain shares of his company through a member of a stock exchange and lodged with the company for transfer of shares in his (employee's) name. The company refused to execute the transfer on the suspicion that the employee, if admitted as a member of the

company, will create nuisance in general meetings and seek access to the records of the company. Decide giving reasons :

- (a) Whether the company's contention shall be tenable; and
- (b) What is the remedy available to the employee in the given case ?
(3 marks)
- (ii) The Board of Directors of XYZ Ltd is considering the proposal for making the investment in ABC Ltd. The company has 5 directors on board and in the board meeting 4 directors were present, three of them given consent to the proposal and one director abstained from voting. Comment on the same. (3 marks)
- (iii) Examine the validity of the following :
- (a) XYZ Ltd wants to declare the dividend out of the current year profit without adjusting the previous year's carry forwarded losses and depreciation.
- (b) Board of Directors of XYZ Ltd wants to declare interim dividend after the end of financial year. (3 marks)
- (iv) ABC Ltd. has not satisfied any conditions specified as per section 137 of the Companies Act for current financial year. The company has filed financial statement as per XBRL Taxonomy for the previous financial year. Is ABC Ltd. still required to file financial statements as per XBRL Taxonomy for the current financial year ? (3 marks)
- (v) Govt. of West Bengal filed an application for winding up of KTC Ltd in the Tribunal citing sec. 271 of the Companies Act, 2013 in the interest of sovereignty and integrity of India which was opposed by the company stating that state government cannot file a petition for winding up. Is the claim of the company sustainable and why ? (3 marks)

Answer 2(a)

A listed company is required to comply with the requirements of the Companies Act, 2013, rules made thereunder and SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 for issue of bonus shares.

In terms of section 63(2) of the Companies Act, 2013, no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares, unless it has, on the recommendation of the Board, been authorised in the general meeting of the company.

Further, as per Rule 14 of the Companies (Share Capital and Debentures) Rules, 2014, a company which has once announced the decision of its Board recommending a bonus issue, shall not subsequently withdraw the same.

Also, the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2018 provides that a bonus issue, once announced, shall not be withdrawn.

In view of the above provisions, the Board of Directors of Aakash Limited once announced the issue of bonus share on 1st April 2021 to all equity shareholders of the company in the ratio of 1:1 cannot subsequently reverse the proposal of such issue in

another board meeting. Hence, the first board resolution proposing the bonus share is valid but second board resolution for reversal is not valid.

Answer 2(b)

In accordance with the provisions of the Companies Act, 2013 as contained in Section 77(1) read with Rule 3 of the Companies (Registration of Charges) Rules, 2014, it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating or modifying such charge in Form No. CHG-1 (for other than Debenture) or Form No. CHG-9 (For Debentures) as the case may be, and is required to be filed with the Registrar of Companies within a period of 30 days of the date of creation or modification of charge along with the specified fees.

- (i) In light of the above mentioned provisions, XYZ Limited can mortgage the office building situated in London (UK).
- (ii) In light of the above mentioned provisions, a charge can be created for property situated outside India. The e-form prescribed for the purpose of Registration of the charge is Form No. CHG-1 and it will be filled within the prescribed period.

Answer 2(c)

Section 95 of the Companies Act, 2013 provides that the register, their indices and copies of annual returns maintained under section 88 and 94 shall be prima facie evidence of any matter directed or authorised to be inserted therein by or under this Act.

A register of members is prima facie evidence of the truth of its contents. Accordingly, if a person's name, to his knowledge, is there in the register of members of a company, he shall be deemed to be a member and onus lies on him to prove that he is not a member. He must promptly appeal to the Tribunal for rectification of the register under section 59 of the Companies Act, 2013 to take his name off the register, failing which the doctrine of holding out will apply.

In *Re. M.F.R.D. Cruz, A.I.R. 1939 Madras 803*, the court held "when a person knows that his name is included in the register of shareholders and he stands by and allow his name to remain, he is holding out to the public that he is a shareholder and thereby he loses his right to have his name removed".

Answer 2(d)

As per the explanation given under section 186 of the Companies Act, 2013, investment company means a company whose principal business is the acquisition of shares, debentures or other securities and a company will be deemed to be principally engaged in the business of acquisition of shares, debentures or other securities, if its assets in the form of investment in shares, debentures or other securities constitute not less than fifty per cent of its total assets, or if its income derived from investment business constitutes not less than fifty per cent as a proportion of its gross income.

In light of the above explanation, the assets of XYZ Ltd. in form of investment in shares or debentures is less than fifty percent of the total assets of the company and

also the income derived from the investment business is less than fifty percent of the total income of the company. Hence, either of the two conditions need to be satisfied to make an investment company and, in this case, neither of this condition is satisfied. So, XYZ Ltd. cannot be an investment company for the purpose of Section 186.

Answer 2(e)

As per the Ministry of Corporate Affairs General Circular No. 01/2016 dated 12th January, 2016, the contribution and involvement of employees in CSR activities of the company will no doubt generate interest/pride in CSR work and promote transformation from Corporate Social Responsibility (CSR) as an obligation, to Socially Responsible Corporate (SRC) in all aspects of their functioning. Companies therefore, should be encouraged to involve their employees in CSR activities. However monetization of such services of employees would not be counted towards CSR expenditure.

Answer 2A(i)

The securities or other interest of any member in a public company are freely transferable. Refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason.

(Appeal to the CLB No. 27, of 1975 dated 17th August, 1976, *Shri Nirmal Kumar v. Jaipur Metal and Electrical Limited.*)

Accordingly, as per Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, can appeal to the Tribunal.

Hence taking into account the above-

- (a) The refusal by the company to register the transfer shares in the name of the employee is not tenable.
- (b) Employee in this case can go for appeal to the Tribunal against the company's refusal.

Answer 2A(ii)

As per section 186(5) of the Companies Act, 2013, no investment shall be made or loan or guarantee or security given by the company, unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all the directors present at the meeting and the prior approval of the public financial institution concerned where any term loan is subsisting is obtained.

So, in this case the Board of Directors of XYZ Ltd. while considering the proposal for making the investment in ABC Ltd. has not complied with the provision of section 186(5) of the Companies Act, 2013, where the consent of all the directors present at the meeting is required. The resolution of the board of directors therefore is not valid and has no legal effect.

Answer 2A(iii)(a)

Section 123(1) of the Companies Act, 2013 provides that the dividend shall be declared or paid by a company for any financial year out of the profits of the company for that year arrived at after providing for depreciation or out of the profits of the company for any previous financial year or years arrived at after providing for depreciation and remaining undistributed, or out of both.

Proviso to this section provides that a company shall not declare dividend unless carried over previous losses and depreciation not provided in previous year or years are set off against profits of the company for the current year.

Therefore, XYZ Ltd has to set off the previous year's carry forward loss and depreciation from current year profit before declaration of dividend.

Answer 2A(iii)(b)

As per section 123(3), the board of directors of a company may declare interim dividend during any financial year or at any time during the period from closure of financial year till holding of the annual general meeting out of surplus in the profit and loss account or out of profits of the financial year for which such interim dividend is sought to be declared or out of profits generated in the financial year till quarter preceding the date of declaration of the interim dividend.

Answer 2A(iv)

As per Rule 3 of the Companies (Filing of Documents and Forms in XBRL) Rules, 2015, the companies which have filed their financial statements as per XBRL taxonomy for the previous financial year under Rule 3(1) of the said Rules shall continue to file their financial statements and other documents in XBRL taxonomy though they may not fall under the class of companies specified therein in succeeding years.

Hence, as per the above provisions ABC Ltd. though has not satisfied any conditions specified as per Section 137 of the Companies Act, 2013 for current financial year, yet the company is required to file financial statements as per XBRL Taxonomy for the current financial year as it has filed the financial statements as per XBRL Taxonomy for the previous financial year.

Answer 2A(v)

Section 271(b) of the Companies Act, 2013 provides that a company may, on a petition under section 272, be wound up by the Tribunal if the company has acted against the interests of the sovereignty and integrity of India, the security of the State, friendly relations with foreign States, public order, decency or morality.

Section 272(1) of the Companies Act, 2013 provides that subject to the provisions of this section, a petition to the Tribunal for the winding up of a company shall be presented by—

- (a) the company;
- (b) any contributory or contributories;
- (c) all or any of the persons specified in clauses (a) and (b);

- (d) the Registrar;
- (e) any person authorised by the Central Government in that behalf; or
- (f) in a case falling under clause (b) of sub-section (1) of section 271, by the Central Government or a State government.

In view of the above provisions, the claim of the company is not sustainable.

Question 3

- (a) *Mention the requirements in relation to maintenance of minutes, as prescribed by the Secretarial Standards Board.*
- (b) *Highlight the aspects of corporate governance in USA as per SOX Act.*
- (c) *Answer the following with regard to appointment of auditor :*
 - (i) *X, a practising chartered accountant holds shares in ABC Ltd. The nominal value of shares is ₹50,000. Whether ABC Ltd can appoint him as auditor ?*
 - (ii) *A, a practising chartered accountant has business relationship with XYZ Hotels Ltd. The hotel used to provide services to A frequently on the same price as charged from other customers. Whether XYZ Hotels Ltd appoint A as its auditor ?*
 - (iii) *X, a chartered accountant is working as a General Manager Accounts with ABC Ltd. Could X be appointed as auditor in ABC Ltd ? (5 marks each)*

Answer 3(a)

The requirements in relation to maintenance of Minutes, as prescribed by the Secretarial Standard Board are given below.

Minutes of Board Meeting

1. Minutes shall be recorded in books maintained for that purpose.
2. A distinct Minutes Book shall be maintained for meetings of the Board and each of its Committee.
3. A company may maintain its Minutes in physical or in electronic form.

Minutes may be maintained in electronic form in such manner as prescribed under the Companies Act, 2013 and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall however follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

4. The pages of the Minutes Book shall be consecutively numbered.

This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.

In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.

5. Minutes shall not be pasted or attached to the Minutes Book or tampered with in any manner.
6. Minutes Book, if maintained in loose-leaf form, shall be bound periodically depending on the size and volume and coinciding with one or more financial years of the company. There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
7. Minutes Books shall be kept at the Registered Office of the Company or at such other place as may be approved by the Board.

Minutes of General Meeting

1. Minutes shall be recorded in books maintained for that purpose.
2. A distinct Minutes Book shall be maintained for Meetings of the Members of the company, creditors and others as may be required under the Act. Resolutions passed by postal ballot shall be recorded in the Minutes book of General Meetings.
3. A company may maintain its Minutes in physical or in electronic form. Minutes may be maintained in electronic form in such manner as prescribed under the Act and as may be decided by the Board. Minutes in electronic form shall be maintained with Timestamp.

A company shall, however, follow a uniform and consistent form of maintaining the Minutes. Any deviation in such form of maintenance shall be authorised by the Board.

4. The pages of the Minutes Books shall be consecutively numbered.
This shall be followed irrespective of a break in the Book arising out of periodical binding in case the Minutes are maintained in physical form. This shall be equally applicable for maintenance of Minutes Book in electronic form with Timestamp.
In the event any page or part thereof in the Minutes Book is left blank, it shall be scored out and initialled by the Chairman who signs the Minutes.
5. Minutes shall not be pasted or attached to the Minutes Book, or tampered with in any manner.
6. Minutes of Meetings, if maintained in loose-leaf form, shall be bound periodically at least once in every three years. There shall be a proper locking device to ensure security and proper control to prevent removal or manipulation of the loose leaves.
7. Minutes Books shall be kept at the Registered Office of the company.

Answer 3(b)

The Sarbanes-Oxley Act (SOX) is the primary federal law governing corporate governance and accountability across multiple aspects of corporate business practice.

The primary objectives of SOX are to promote:

Fairness to Shareholders – SOX requires or promotes governance provisions that

protect shareholder rights and allow shareholders to exercise those rights through governance procedures, such as shareholder meetings.

Fairness to Stakeholders – SOX requires or promotes governance provisions that take into consideration the interests of employees, suppliers, buyers, and the local community.

Heightened Director and Board Responsibilities – SOX places specific requirements on the composition of boards of Directors, including skill and independence requirements. Notably, in an effort to promote Director Independence in decision making, SOX requires corporations to employ committees for special purposes.

Director and Officer Ethics – SOX imposes additional obligations on corporations to establish and maintain ethical standards for officer and Director conduct and decision-making.

Disclosure and Accountability – SOX places requirements on boards to increase transparency in corporate governance practices. This includes implementing procedures for ensuring accurate accounting practices and public disclosure mechanisms.

Accounting and Disclosure Procedures – SOX imposed a number of reforms on the accounting and financial reporting requirements of public companies. The primary requirements are as follows:

- *The Public Company Accounting Oversight Board (PCAOB)* - SOX established the PCAOB to regulate auditors charged with reviewing the accounting procedures and disclosure statements of public companies.
- *External Auditing Firms* – SOX now requires that a firm in charge of auditing the corporation refrain from serving as independent consultants to that same firm. This includes refraining from book keeping, system designs and implementation, appraisals and valuations, actuarial services, human resources functions, and investment banking services for the audited company. Further, the corporation must change auditing firms at least every 5 years. There are also restrictions on the ability of company executives to have worked for the auditing firm within the prior year.

Securities Regulations – Much of the regulatory process prescribed by SOX is carried out by the Securities and Exchange Commission (SEC). SOX include provisions that strengthen the ability of the SEC to oversee corporate governance matters and enforce violations.

Answer 3(c)

- (i) Section 141(3) of the Companies Act, 2013 provides that a person shall not be eligible for appointment as an auditor of a company when he himself or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company.
In this case Mr. X, a practicing Chartered Accountant holding shares in ABC Ltd cannot be appointed as Auditor of that company.
- (ii) Section 141(3) of the Companies Act, 2013 read with Rule 10 of the Companies

(Audit and Auditors) Rules, 2014 provides that a person shall not be eligible for appointment as an auditor of a company when he has business relationship with the company, or its subsidiary, or its holding or associate company or subsidiary of such holding company or associate company.

The term business relationship shall be construed as any transaction entered into for a commercial purpose except –

- commercial transactions which are in the nature of professional services permitted to be rendered by an auditor or audit firm under the Act and the Chartered Accountant Act, 1949 and the rules or the regulations made under those Act;
- commercial transactions which are in the ordinary course of business of the company at arm's length price – like sale of products or services to the auditors, as customer, in the ordinary course of business, by companies engaged in the business of telecommunications, airlines, hospitals, hotels and such other similar businesses.

Since the transaction is at the arm length price so Mr. A can be appointed as an auditor of XYZ Hotels Ltd.

- (iii) As per section 141(3) of the Companies Act, 2013 provides that an officer or employee of the company is not eligible for appointment as an auditor of a company.

In this case Mr. X, is working as a General Manager Accounts with ABC Ltd. so he cannot be appointed as Auditor of that company.

PART II

Question 4

- (a) The following figures were extracted from the books of X Ltd (audited).

Paid up share capital	₹100 Lakh
Reserve & Surplus	
General Reserve	₹50 Lakh
Security Premium Account	₹25 Lakh
Re-valuation Reserve	₹25 Lakh
Total	₹200 Lakh
Long Term Borrowings	₹125 Lakh
Short Term Borrowings (Cash Credit Loan)	₹50 Lakh
Temporary Loan for construction of Building	₹25 Lakh
Total	₹200 Lakh

The Board of Directors further want to borrow a sum of ₹ 50 Lakh as Long Term Loan without obtaining the consent of the members in general meeting by special resolution. Advice the Board about the validity of this proposal. What will be your answer if it is a Private Limited company ? (5 marks)

- (b) X, proposes his candidature as a director of X Ltd. along with the deposit of ₹1 Lakh. Later X failed to be appointed as director but received 39% of the total votes. X, claimed X Ltd. to refund the deposit but the company denied to pay as he failed to be elected having obtained only 39% of votes cast. Is the decision of the company valid ? Explain when the requirement of deposit of amount is not applicable ? (5 marks)
- (c) X has been appointed as the Managing Director of XYZ Limited. The company does not have any other whole time directors. The terms and conditions of his appointment are as under :
- (i) Remuneration amounting to 5% of the net profits of the company.
 - (ii) A fees of ₹1,00,000 per annum towards actuarial services, even though X does not hold any professional qualification in actuarial science.
 - (iii) Sitting fees of ₹50,000 for every meeting of the Board or the Committee thereof attended by X.
- The Company had defaulted in the repayment of interest and principal on term loans borrowed from banks, which default is still subsisting.
- Suggest, whether the above remuneration is in line with the provisions of the Companies Act, if not also explain the remedial action required from the Company. (5 marks)
- (d) R is a newly qualified CS and seeks your advice on passing of Resolution by Circulation. Advise him suitably as to the procedure to be followed in this regard. (5 marks)

Answer 4(a)

As per section 180(1)(c), the board of directors of a company with the consent of the company by a special resolution shall borrow money, where the money to be borrowed, together with the money already borrowed by the company will exceed aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company's bankers in the ordinary course of business.

Temporary loans means loans repayable on demand or within six months from the date of the loan such as short-term, cash credit arrangements, the discounting of bills and the issue of other short-term loans of a seasonal character, but does not include loans raised for the purpose of financial expenditure of a capital nature.

In view of the above provision the eligible amount which can be borrowed by the Board is given below:

Paid up share capital	Rs. 100 Lakh
Reserve & Surplus	
General Reserve	Rs. 50 Lakh
Security Premium Account	Rs. 25 Lakh
Total	<u>Rs. 175 Lakh</u>

Re-valuation Reserve is not treated as free reserve as per Section 2(43).

The total borrowing of the company for the purpose of this sub section is -

Long Term Borrowings	Rs. 125 Lakh
Temporary Loan for construction of Building	Rs. 25 Lakh
Total	Rs. 150 Lakh

Short Term Borrowings (Cash Credit Loan) of Rs. 50 Lakhs is considered as temporary loan and loan for construction of building in not consider as temporary loan as per the explanation for temporary loan mentioned above.

Therefore, the company can borrow a further sum upto Rs. 25 Lakh without seeking the approval from the members. So, the board cannot borrow a sum of Rs. 50 Lakhs as Long Term Loan without obtaining the consent of the members in general meeting by special resolution.

In case of private company the provision of section 180 does not apply vide exemption notification dated 05th June, 2015, hence the board can borrow without approval.

Answer 4(b)

As per section 160 of the Companies Act, 2013, a person who is not a retiring director shall be eligible for appointment to the office of a director at any general meeting, if he, or some member intending to propose him as a director, has, not less than fourteen days before the meeting, left at the registered office of the company, a notice in writing under his hand signifying his candidature as a director or as the case may be, the intention of such member to propose him as a candidate for that office. Such notice must come along with the deposit of one lakh rupees or such higher amount as may be prescribed which shall be refunded to such person or, as the case may be, to the member, if the person proposed gets elected as a director or gets more than twenty five percent of total valid votes cast either on show of hands or on poll on such resolution.

In the given case, Mr. X. has deposited a sum of Rs. 1 lakh with the company, but he failed to get appointed as a director. However, Mr. X secured 39% of total valid votes i.e. condition of securing more than 25% of total valid votes cast, has been satisfied. Hence the decision of the company not to refund Rs. 1 Lakh to Mr. X is not valid.

As per the proviso to section 160(1) of the Companies Act, 2013, the requirements of deposit of amount shall not apply in case of appointment of an independent director or a director recommended by the Nomination and Remuneration Committee, if any, constituted under sub-section (1) of section 178 or a director recommended by the Board of Directors of the company, in the case of a company not required to constitute Nomination and Remuneration Committee.

Answer 4(c)

The overall limit of managerial remuneration as indicated under section 197 of the Companies Act, 2013 read with Schedule V of the Act inter alia includes the following conditions:

- Except with the approval of the Company in general meeting by a special resolution, the remuneration payable to any one managing director shall not exceed five percent of the net profit of the Company.

- The remuneration shall not include any fee for the services rendered by such director in other capacity if the services are of professional nature and in the opinion of the Nomination and Remuneration committee or the Board of Directors, as the case may be, the director possesses the requisite qualification for the practice of the profession.
- A director may receive remuneration by way of fee for attending meetings of the Board or Committee thereof or for any other purpose whatsoever as may be decided by the Board.

As per Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, a Company may pay a sitting fee to a director which shall not exceed one lakh rupees per meeting of the Board or Committee thereof.

Section 197(2) of the Companies Act, 2013 provides that the percentages aforesaid shall be exclusive of sitting fees payable to Directors. Therefore, the sitting fees of Rs. 50,000 for every meeting of the board or Committee thereof, is not included in the overall remuneration.

Further, considering the above provisions, the fee payable for actuarial services is to be added to Mr. X remuneration as he does not hold any professional qualification to practice actuarial science.

In this case, the overall remuneration exceeds the limit of 5% of net profits as provided in the section. Therefore, the company has to get the approval of the shareholders by way of a special resolution in terms of Section 197 of the Act.

As the company has defaulted in payment of interest and principal on term loans to the banks, the company should also take a prior approval of the banks for paying the above remuneration to Mr. X before passing the special resolution by shareholders.

Answer 4(d)

A company may pass the resolutions through circulation. As per Section 175 of the Companies Act, 2013, no resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft form together with the necessary papers to all the directors or members of committee at their addresses registered with the company in India by hand delivery or by post or by courier or through electronic means which may include E-mail or fax.

The said resolution must be approved by majority of directors or members who are entitled to vote. However, where not less than one-third of the total number of Directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the chairperson shall put the resolution to be decided at a meeting of the Board. The resolution passed through circulation be noted at a subsequent meeting of the Board or the committee and made part of the minutes of such meeting.

As per Secretarial Standard – 1, the decision of the Directors shall be sought for each Resolution separately. Not more than seven days from the date of circulation of the draft of the Resolution shall be given to the Directors to respond and the last date shall be computed accordingly. An additional two days shall be added for the service of the draft Resolution, in case the same has been sent by the company by speed post or

by registered post or by courier. Passing of Resolution by circulation shall be considered valid as if it had been passed at a duly convened meeting of the Board. This shall not dispense with the requirement for the Board to meet at the specified frequency.

The Resolution is passed when it is approved by a majority of the Directors entitled to vote on the Resolution, unless not less than one-third of the total number of Directors for the time being require the Resolution under circulation to be decided at a Meeting.

The Resolution, if passed, shall be deemed to have been passed on the earlier of:

- (a) the last date specified for signifying assent or dissent by the Directors, or
- (b) the date on which assent has been received from the required majority, provided that on that date the number of Directors, who have not yet responded on the resolution under circulation, along with the Directors who have expressed their desire that the resolution under circulation be decided at a Meeting of the Board, shall not be one third or more of the total number of Directors; and

shall be effective from that date, if no other effective date is specified in such Resolution.

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

Question 5

- (a) *Indicate steps to file an application for seeking extension for calling Annual General Meeting and mention the form in which such application needs to be filed with the Registrar of Companies. (4 marks)*
- (b) *A has been appointed as a Company Secretary in the Company by a circular resolution. In addition, he has also been advised to act as a Group Company Secretary and head of the parent Company and its subsidiary. Examine with reference to the provisions of the Act. (4 marks)*
- (c) *XYZ Ltd wants to pay sitting fees to its women directors, less than the sitting fees payable to other directors of the Company. And want to appoint X as its Managing Director of the company for a term exceeding five years at a time. Advise the company on the above proposals. (4 marks)*
- (d) *X is a company secretary of XYZ Ltd. He is of the opinion that the notice, agenda and notes on agenda of the board meeting should be send only to the alternate director and not to the original director of the company. Advice in this matter. (4 marks)*
- (e) *X Ltd. is a listed company having 565 shareholders as on 31st December, 2019. The Board of Directors ask you about the formation of Stakeholders Relationship Committee. Is it necessary to constitute Stakeholders Relationship Committee ? Will your answer be same if X Ltd is an unlisted company ? What should be the composition of this committee ? (4 marks)*

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *X, a finance expert having experience of 30 years. XYZ Ltd wants to appoint*

him as a Chief Financial Officer at a salary which is more than that of director of the company. State whether the limits on managerial remuneration under section 197 of the Companies Act, 2013 and Schedule-V apply to X. (4 marks)

- (ii) XYZ Ltd. issued a notice on 1st August, 2019 to hold its Annual General Meeting on 24th August, 2019. The company had given the notice through email to all the members as per the record of the company with read receipt. The same is received by all the members of the company. Check the validity of the notice. (4 marks)
- (iii) The directors of your company is of the opinion that every public company having more than ₹100 crore share capital have to provide for remote e-voting. Does the Companies Act 2013, make it compulsory or optional for such situations? Offer your comments. (4 marks)
- (iv) X is being appointed as a proxy for an annual general meeting of XYZ Ltd. The said meeting is being adjourned due to some reason. Now, Y is being appointed as a proxy to attend the adjourned meeting. Who will be a valid proxy for adjourned meeting ? And in case the general meeting of XYZ Ltd is scheduled on 22nd September, 2019 and the company has received 4 proxies for the same holdings of a member dated with 5th, 10th, 12th, and 19th September, 2019. Which proxy is valid ? (4 marks)
- (v) X has applied to the Indian Institute of Corporate Affairs (IICA) for inclusion of his name in the data bank of independent directors. He is working as a director of X Ltd and Y Ltd, both are unlisted public companies having the paid-up share capital of ₹10 crores since last 7 years. X says that he is not required to pass the online proficiency self-assessment test as he is director of two unlisted companies with paid-up share capital of ₹10 crores since last 7 years. Explain whether the contention of X is correct. (4 marks)

Answer 5(a)

Section 96 of the Companies Act, 2013 provides that every company other than a One Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting within a period of six months, from the date of closing of the financial year.

However, the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

The steps to file an application for seeking extension for convening Annual General Meeting (AGM) are given below:

- The company shall call for a meeting of Board of Director for which a notice must be sent at least 7 days before holding of Meeting of Board.
- Call a meeting of Board of Directors for considering the proposal of extension of date of AGM.
- Pass a resolution for extension of time limit for holding annual general meeting specifying the due reason for extension of AGM. File application in prescribed Form GNL- 1 with ROC concerned.

- Detailed application should contain the following details:
 - o Reasons of extension
 - o Period for which extension is required (Note: It should not exceed three months)
- The certified copy of the Board resolution passed be attached to such application. Other document, if any, justifying the application be attached also.
- The ROC shall scrutinize the form and documents and then consider granting the extension not exceeding 3 months.
- The Company shall conduct the AGM before completion of the extended time.

Answer 5(b)

Section 179(3) read with Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that the Board of Directors of a company shall appoint or remove key managerial personnel (KMP) by means of resolutions passed at meetings of the Board.

Therefore, appointment of A as a Company Secretary in the company cannot be done by circular resolution.

As per Section 203(3) of the Companies Act, 2013, a whole time key managerial personnel shall not hold office in more than one Company except in its subsidiary company at the same time.

In the given situation A has is also advised to act as a Group Company Secretary consisting of a group of a parent company in which he has been appointed and its subsidiary. Therefore, he can act as a Group Company Secretary to look after the parent company and its subsidiary.

Alternate Answer 5(b)

Section 179(3) read with Rule 8 of Companies (Meetings of Board and its Powers) Rules, 2014, provides that the Board of Directors of a company shall appoint or remove key managerial personnel (KMP) by means of resolutions passed at meetings of the Board.

Therefore, appointment of A as a Company Secretary in the company cannot be done by circular resolution.

In the given situation, A has been appointed as a Company Secretary in the company by a circular resolution which is not valid hence he cannot be advised to act as a Group Company Secretary and head of the parent Company and its subsidiary.

Answer 5(c)

As per Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 a company may pay a sitting fees to a director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of directors thereof which shall not exceed one lakh rupees per meeting of the Board or committee thereof.

However, for Independent Directors and Women Directors, the sitting fees shall not be less than the sitting fee payable to other directors.

So, XYZ Ltd. cannot pay sitting fees to its women directors less than the sitting fees payable to other directors of the company.

As per Section 196 of the Companies Act, 2013 a company shall not appoint or re-appoint any person as its managing director for a term exceeding five years at a time. So, Mr. X cannot be appointed as Managing Director of the company for a term exceeding five years at a time.

Answer 5(d)

As per Section 173, the notice of Board meeting is to be sent in writing to every director at his address registered with the company.

SS-1 provides that the Notice, Agenda and Notes on Agenda shall be sent to the Original Director also at the address registered with the company, even if these have been sent to the Alternate Director. However, the mode of sending Notice, Agenda and Notes on Agenda to the original director shall be decided by the company.

Hence it is advisable to send the Notice, Agenda and Notes on Agenda both to original and alternate director of the company.

Answer 5(e)

As per section 178(5) of the Companies Act, 2013, the Board of Directors of a company which consists of more than one thousand shareholders, debenture-holders, deposit-holders and any other security holders at any time during a financial year shall constitute a Stakeholder Relationship Committee consisting of a chairperson who shall be a non-executive director and such other members as may be decided by the Board.

Further, as per Regulation 20 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 every listed entity shall constitute a Stakeholders Relationship Committee to specifically look into various aspects of interest of shareholders, debenture holders and other security holders. The chairperson of this committee shall be a non-executive director.

In view of the above provisions, a listed company even if having less than 1000 shareholders is required to constitute a Stakeholder Relationship Committee. In case X Ltd. is an unlisted company, it is not required to constitute a Stakeholder Relationship Committee under Companies Act, 2013.

As per SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, at least three directors, with at least one being an independent director, shall be members of the Committee and in case of a listed entity having outstanding SR equity shares, at least two thirds of the Stakeholders Relationship Committee shall comprise of independent directors.

Answer 5A(i)

Section 197 of the Companies Act, 2013 contains certain limits with respect to remuneration of Directors including managing director and whole time director and manager. However, these limits do not apply to other key managerial personnel i.e. the Chief Executive Officer, the Chief Financial Officer and the Company Secretary.

Similarly, Schedule V contains certain limits with respect to remuneration of managing director, whole time director and manager. However, these limits also do not apply to other key managerial personnel, i.e. the Chief Executive Officer, the Chief Financial Officer and the Company Secretary.

Thus, the limits on managerial remuneration as contained in section 197 of the Companies Act, 2013 and schedule V shall not apply to Mr. X.

Answer 5A(ii)

As per section 101 of the Companies Act, 2013, a general meeting of a company may be called by giving not less than 21 clear days' notice either in writing or through electronic mode. Notice in electronic mode shall be given in such manner as may be prescribed.

'Clear days' means days exclusive of the day of the notice of service and of the day on which the meeting is held.

In this case the date of holding the Annual General Meeting is 24th August, 2019 and the date of issue of notice is 01st August, 2019. Days to be excluded is day of holding the Annual General Meeting i.e. 24th August, 2019 and day of issue of notice i.e. 01st August, 2019. Therefore, notice of 22 days is given in this case.

Number of days' notice required under section 101 of the Act is 21 days. Therefore, it is a valid notice.

Answer 5A(iii)

Section 108 of the Companies Act, 2013 provides for Voting through electronic means. The Central Government may prescribe the class or classes of companies and manner in which a member may exercise his right to vote by the electronic means.

"Voting by electronic means" includes "remote e-voting" and voting at the general meeting through an electronic voting system which may be the same as used for remote e-voting. "Remote e-voting" means the facility of casting votes by a member using an electronic voting system from a place other than venue of a general meeting.

Section 108 read with Rule 20 of the Companies (Management and Administration) Rules, 2014, provides that, every company which has listed its equity shares on a recognised stock exchange and every company having not less than one thousand members shall provide to its members, facility to exercise their right to vote on resolutions proposed to be considered at a general meeting by electronic means.

However, a Nidhi, or an enterprise or institutional investor referred to in chapter XB or chapter XC of the SEBI (Issue of Capital and Disclosure Requirements) Regulations, 2009 is not required to provide the facility to vote by electronic means.

Thus, companies fulfilling abovementioned criteria have to mandatory opt for e-Voting.

Assuming that the company with Rs. 100 crore share capital may be having more than 1000 members, the company should provide for e-voting. If there are less than 1000 members, e-voting is not compulsory.

Answer 5A(iv)

As per the Secretarial Standard on General Meeting (SS-2) an instrument of Proxy duly filled, stamped and signed, is valid only for the Meeting to which it relates including any adjournment thereof. However, if a proxy has been appointed for the original meeting and such meeting is adjourned, any proxy given for the adjourned meeting revokes the proxy given for the original meeting. A Proxy later in date revokes any Proxy/Proxies dated prior to such Proxy. Hence Mr. Y will be a valid proxy for adjourned meeting.

As per the Secretarial Standard on General Meeting (SS-2) if a company receives multiple proxies for the same holdings of a member, the proxy which is dated last shall be considered valid. So, the proxy dated last i.e. 19th September, 2019 shall be considered as valid.

Answer 5A(v)

As per Rule 6(4) of the Companies (Appointment and Qualification of Directors) Rules, 2014. every individual whose name is included in the data bank of independent directors of IICA shall pass an online proficiency self-assessment test conducted by the IICA within a period of two years from the date of inclusion of his name in the data bank, failing which, his name shall stand removed from the data bank of the institute.

Proviso to this sub rule provides that the individual who has served for a period of not less than three years as on the date of inclusion of his name in the data bank as director or key managerial personnel in a listed public company or in an unlisted public company having a paid-up share capital of Rs. 10 crores or more shall not be required to pass the online proficiency self-assessment test.

It is further provided that for the purpose of calculation of the period of three years referred to in the first proviso, any period during which an individual was acting as a director or as a key managerial personnel in two or more companies or bodies corporate or statutory corporations at the same time shall be counted only once.

In view of this proviso, the contention of director is valid as the experience of director is 7 years.

PART III**Question 6**

- (a) *Can a company secretary advertise himself as per the guidelines of the ICSI 2020 ? Mention few of the restrictions in this regard. (5 marks)*
- (b) *It is essential to device "performance, contribution and efficiency based" revenue sharing model in MDFs. Explain. (5 marks)*

Answer 6(a)

As per the ICSI 2020 guidelines, the following activities are permitted for a company Secretary in Practice as means to advertise:

- i) Display the scope of work on his/her own website.
- ii) Creating a visual identity in compliance with the Guidelines for use of individual Logo issued by the Council of ICSI.

- iii) Display of Location and decor of the workplace, meeting rooms, etc.
- iv) Display of Firm name, Logo or any other identity on Uniform, Office/s, office stationary& equipment/ material and providing Training to Staff.
- v) Professional Updates and Write ups in any mode.
- vi) Appearing on local radio or television.
- vii) Giving speeches/lectures at any platform including Seminars, Conferences, training programmes, Workshops, Conventions, etc. so organised by any forum.
- viii) Holding professional seminars, conferences and workshops.
- ix) Sponsoring any event (cultural, professional or otherwise) or helping with community programmes or doing voluntary work as a professional for charitable organizations.
- x) Use of social media like Facebook, Instagram, LinkedIn, Twitter, Youtube, WeChat, Telegram and Whatsapp or and other media of similar nature.

The restrictions are given below :

The Advertisement shall:

- (i) not be in violation of provisions of Company Secretaries Act, 1980;
- (ii) not be false or misleading;
- (iii) not claim superiority over any or all other Company Secretaries;
- (iv) not be indecent, sensational or otherwise of such nature which may bring disrepute to the profession or the Institute (ICSI);
- (v) not contain fabricated or false testimonials or endorsements concerning the Company Secretary;
- (vi) not refer the Company Secretaries in the terms such as "specialists" or "experts";
- (vii) not represent that the quality of the professional services to be performed is greater than the quality of professional services performed by other professionals. Statements comparing one professional's services to that of another are not allowed;
- (viii) not constitute a guarantee, warranty, or prediction regarding the outcome of any professional assignment;
- (ix) in no way indicate that the charging of a fee is contingent on outcome, or that no fee will be charged in the absence of the desired outcome;
- (x) not contain any reference to past successes or results which indicates a guarantee, warranty or prediction of result of future professional assignments. eg. We made M/s. Xxx win the case, Meet the masters;
- (xi) not be designed for "pleasing customers," which might mislead or eventually harm customers or third parties;
- (xii) not contain any humorous slogans. E.g. Save Rs. Xxxx Come to us, we will tell you how.

Answer 6(b)

In the long term success of the MDF the revenue sharing model has to be designed to suit the given situation. Partners may adopt simple revenue sharing model to share profits and losses equally. In this model it is assumed that each one is bringing equal business and generating equal revenue. However, in reality if it doesn't happen it may give rise to sense of discomfort against the person who is continuously showing less contribution but at the same time getting equal share of profits.

Therefore, it is essential to device "performance, contribution and efficiency based" revenue sharing model. Assume a situation where A,B,C,D and E are the partners expert in different disciplines. The revenue sharing model could be the following:

1. Partner bringing new client shall be given referral or induction share, say, @ 15% of the fees settled and received; it can be for the first year or for given number of years;
2. Certain percentage of fees, say 15% shall be retained in business in common pool for meeting expenses;
3. 70% of the fees shall be given to the partner of partners who actually work on the assignment (assignment share). When more than one partners are involved in an assignment their share can be determined based on respective role;
4. At the year end after meeting expenses resultant profit shall be shared in proportion of contribution of individual in the gross earnings/net profit of the firm;
5. Internally, different verticals can be created and surplus generated by each one can be assessed as an independent cost centre.

This model motivates each partner to bring more and more business into the firm and also to work for maximization of his share and wealth of the firm.

There could be more tailor made revenue sharing models, however, the model based on performance, contribution and efficiency is likely to work better.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

- (a) *The Articles of Association of BC Ltd. empowered the directors to borrow money within the limit of ₹50 lakh. The Articles further provided that the directors can also exceed the borrowing limit of ₹50 lakh with the consent of the Company in general meeting. The directors of BC Ltd. took the loan of ₹75 lakh from R being one of the directors of BC Ltd. without obtaining the consent of the Company in general meeting. The Company, BC Ltd. refused to repay the loan amount to R.*

In the light of decided case law, state whether R will be able to get his money back from the Company. (5 marks)

- (b) (i) *Luv Ltd. has entered into a contract with Kush Ltd. by which Kush Ltd. will control 22% of the sale and disposal of the output of Luv Ltd. Enumerate the nature of relationship between both Companies.*
- (ii) *If Surya Pvt. Ltd. having paid up share capital of ₹45 Lakhs and annual Turnover of ₹185 Lacs is a wholly owned subsidiary of Hima Ltd. a listed Company. Can Surya Pvt. Ltd. be called a Small Company ? Explain.* (3+2 marks)

- (c) *Dinesh is running small handicraft unit with 3 workers. He is planning for expansion and it may require addition of 10-15 employees. He is planning to register his business under Employees State Insurance (ESI) and extend the benefit to all his employees.*

He is keen in knowing from you the benefits available to him as an employer in extending the ESI facilities to his employees. Advise Dinesh.

(5 marks)

- (d) *QP Ltd. wants to increase its Authorised Share Capital from ₹50,00,000 divided into 5,00,000 Equity Shares of ₹10 each to ₹75,00,000 divided into 7,50,000 Equity Shares of ₹10 each by creation of additional 2,50,000 Equity Shares of ₹10 each ranking pari passu in all respect with the existing Equity Shares of the Company. Draft specimen of Board and General Body Resolutions for increasing the Authorised Share Capital and for alteration of Capital Clause in the Memorandum of Association of the Company.* (5 marks)

Answer 1(a)

The present case relates to the exceptions to the Doctrine of Indoor Management. The relief on the ground of 'Indoor Management cannot be claimed by an outsider dealing with the company where the outsider had knowledge of irregularity. The rule does not protect any person who has actual or even an implied notice of the lack of authority of the person acting on behalf of the company. Thus, a person knowing fully well that the directors do not have the authority to make the transaction but still enters into it, cannot seek protection under the rule of indoor management.

In *Howard v. Patent Ivory Co. (38 Ch. D 156)*, the articles of a company empowered the directors to borrow upto one thousand pounds only. They could, however, exceed the limit of one thousand pounds with the consent of the company in general meeting. Without such consent having been obtained, they borrowed 3,500 pounds from one of the directors who took debentures. The company refused to pay the amount. Held that, the debentures were good to the extent of one thousand pounds only because the director had notice or was deemed to have the notice of the internal irregularity.

Considering the above, R will be able to get only Rs. 50 lakh from BC Ltd. He will not be able to get the remaining amount of Rs. 25 lakh as he being the director of BC Ltd. is deemed to have knowledge of the authority of Board of Directors of the Company to borrow money as per the provisions of Articles of Association of the Company.

Answer 1(b)

- (i) As per Section 2(6) of the Companies Act, 2013, "associate company", in relation to another company, means a company in which that other company has a significant influence, but which is not a subsidiary company of the company having such influence and includes a joint venture company.

"Significant Influence" means control of at least twenty per cent of total voting power, or control of or participation in business decisions under an agreement.

In the given case, Kush Ltd. controls more than 20% of the sale and disposal of the output of Luv Ltd. Thus Luv Ltd. is the associate of Kush Ltd. But Luv Ltd. neither influences the business decision of Kush Ltd. in any manner nor does it control 20% of the total share capital of Kush Ltd. Hence Kush Ltd. cannot be called an associate of Luv Ltd.

- (ii) As per Section 2(85) of the Companies Act 2013 read with Rule 2(1)(t) of the Companies (Specification of definitions Details) Rules, 2014, "Small Company" means a company, other than a public company, having—
- (i) paid-up share capital of which does not exceed two crores rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
 - (ii) turnover of which as per profit and loss account for the immediately preceding financial year does not exceed twenty crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees:

Provided that nothing in this clause shall apply to—

- (A) a holding company or a subsidiary company;

- (B) a company registered under section 8; or
- (C) a company or body corporate governed by any special Act;

In the given case, Surya Pvt. Ltd. satisfies the turnover and paid up share capital criteria to be small company, but being a subsidiary of Hima Ltd. It falls under the exclusions to the definition and hence is not a small Company.

Answer 1(c)

Following are the benefit available to employer in extending the ESI facilities to his employees:

- Employers are absolved of all their liabilities of providing medical benefits to their employees and their family members or dependents in kind or in the form of fixed cash allowance, reimbursement or actual expenses, lump sum grant or opting for any other medical insurance policy of limited scope, unless it is a contractual obligation of the employer.
- Employers are granted exemption pertaining to the applicability of Maternity Benefit Act, 1961, Employee Compensation Act, 1923.etc. in respect of employees covered under the ESIC Scheme. This results in employers possessing a productive and well secured workforce, at their disposal which is an essential ingredient for better productivity of an organisation.
- Employers are absolved of any responsibility in times of physical distress of their employees or workers such as employment injury, sickness or physical disablement thereby resulting in loss of wages since the responsibility of paying cash benefits shifts from employer to the ESIC in respect of insured employee.
- Any amount or sum paid by way of contribution under the Employees' state Insurance Act, 1948 is deducted in computing "Income" under the Income Tax Act, 1961.

Answer 1(d)

Specimen of the Board Resolutions for increasing the Authorised Share Capital and for alteration of Capital Clause in Memorandum of Association of the Company are as follows:

A. Increase in Authorised Share Capital

"RESOLVED THAT pursuant to the provisions of Section 61 and 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed there under, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, to increase the Authorized Share Capital of the Company from existing Rs. 50,00,000 (Rupees Fifty Lakh) divided into 5,00,000 (Five Lakh) Equity Shares of Rs. 10/- each to Rs. 75,00,000 (Rupees Seventy Five Lakh) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs. 10/- each by creation of additional 2,50,000 (Two Lakh Fifty Thousand) Equity Shares of Rs. 10/- each ranking *pari passu* in all respect with the existing Equity Shares of the Company."

B. Alteration in the Capital Clause of Memorandum of Association of the company

“**RESOLVED THAT** pursuant to the provisions of Section 13, 61 and 64 and other applicable provisions of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed thereunder, the consent of the Board of Directors of the Company be and is hereby accorded, subject to the approvals of shareholders in the General meeting, for substituting Clause V of the Memorandum of Association of the Company with the following clause.

“V. The Authorised Share Capital of the Company is Rs. 75,00,000/- (Rupees Seventy Five Lakh Only) divided into 7,50,000 (Seven Lakh Fifty Thousand) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each.

Shareholder’s Resolution to Be Passed in the General Meeting

- a. Increase in Authorised Share Capital

Special Business

1. To consider, and if thought fit, to pass with or without modification(s), the following resolution as an Ordinary Resolution:

“**RESOLVED THAT** pursuant to the provisions of Section 61 read with Section 64 and other applicable provisions, if any, of the Companies Act, 2013 (including any amendment thereto or re-enactment thereof) and the rules framed there under, the consent of the members of the Company be and is hereby accorded to increase the Authorized Share Capital of the Company from existing Rs. 50,00,000/- (Rupees Fifty Lacs Only) divided into 5,00,000 (Five Lacs) Equity Shares of Rs. 10/- each to Rs. 75,00,000/- (Rupees Seventy Five Lacs Only) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of Rs. 10/- (Rupees Ten Only) each by creation of additional 2,50,000 (Two Lacs Fifty Thousand) Equity Shares of Rs. 10/- each ranking pari passu in all respect with the existing Equity Shares of the Company.

RESOLVED FURTHER THAT the Memorandum of Association of the Company be altered in the following manner i.e. existing Clause V of the Memorandum of Association of the company be deleted and the same be substituted with the following new clause as Clause V:

‘V. The Authorised Share Capital of the Company is Rs. 75,00,000/- (Rupees Seventy Five Lacs) divided into 7,50,000 (Seven Lacs Fifty Thousand) Equity Shares of face value of Rs. 10/- (Rupees Ten Only) each.’

RESOLVED FURTHER THAT the Board of Directors of the Company (hereinafter referred to as “Board” which term shall include a Committee thereof authorized for the purpose) be and is hereby authorised to take all such steps and actions and give such directions as may be necessary for the purpose of giving effect to this resolution.”

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

Question 2

- (a) XYZ Trading LLP registered under LLP Act, 2008 wants to change its name to PQR Solutions LLP. Explain the procedure to be followed by XYZ Trading LLP for changing its name under the provisions of LLP Act, 2008. (4 marks)

- (b) *Designated Partners of Sara LLP wants to convert LLP into Private Limited Company for further growth of their organization. They have already got the name approved and have secured the DSC and DIN. Now they seek your advice for further processes of conversion of their LLP into Private Limited Company. Advise.* (4 marks)
- (c) *The memorandum and articles must be read together in the event of any ambiguity. Explain the given statement referring a suitable case law.* (4 marks)
- (d) *Mahesh Nidhi Limited was incorporated on 30th September, 2020. The Board of Directors seek your advice about the compliances need to be done in respect of each of the following :*
- (i) *Compliances which are required to be done upto the end of first financial year of the Company.*
- (ii) *Opening of branches of Mahesh Nidhi Limited.* (4 marks)
- (e) *Explain the unconventional modes of financing options for Start Ups which are becoming popular in India.* (4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Raman wants to start the business of fruits and vegetables vendor. He seeks your advice on the criteria, business categories with the maximum amount of loan allowed and eligibility for obtaining loan under the scheme of Pradhan Mantri Mudra Yojana. Advise Raman.* (4 marks)
- (ii) *OP Ltd. wants to create a trust for the benefit of employees of the Company and their spouses and children. Decide with reasons whether this trust will be Public Trust or Private Trust. Also state the differences between Public Trust and Private Trust.* (4 marks)
- (iii) *Anish along with his six friends desires to incorporate a Section 8 Company under the Companies Act, 2013. He is seeking your advice in the following matters :*
- (a) *What is the minimum paid-up capital requirement in case of a Section 8 Company ?*
- (b) *Whether a firm can be member of the Section 8 Company ?*
- (c) *Whether the Section 8 Company can pay dividend to its members ?*
- (d) *Whether a Section 8 Company is required to appoint a Company Secretary to ensure compliance with the provisions of Companies Act, 2013 ?*
- As a Company Secretary, advise Anish with reference to the provisions of Companies Act, 2013.* (4 marks)

- (iv) *M N Ltd., a Company registered in Japan has established a place of business in India. Advise MN Ltd. on the documents required to be filed by the Company with the concerned Registrar of Companies under the provisions of the Companies Act, 2013. (4 marks)*
- (v) *The Articles of Association of DF Ltd. were amended on 1st January 2020 to insert a new Article providing that the service of the employee of the Company shall be terminated if he takes part in active politics. Ravi being one of the employees of DF Ltd. had filed his nomination papers for contesting elections in September, 2019 but the nomination papers were however rejected. Due to taking part in active politics in September, 2019, the services of Ravi were terminated by the Company effective from 1st February 2020. In the light of decided case law, state whether the decision of the Company is legally tenable ? (4 marks)*

Answer 2(a)

The procedure to be followed by XYZ Trading LLP for changing its name to PQR Solutions LLP is as follows:

- Check for name change provision in LLP agreement, if there is no provision, obtain consent of all partners.
- Check Name availability on MCA Website. File Form RUN LLP with prescribed fees. Once the name is approved by the ROC, it shall be available for adoption for a period of 3 months from the date of intimation by the Registrar.

Attachments:

- Certified true Copy of Resolution of LLP
- Consent of all the partners of the firm
- NOC from owner of trademark, if applicable
- After the suggested name gets approved, LLP has to file Form LLP-5, giving notice of the change in the name to the Registrar of Company. The ROC, after taking into consideration the application, will approve/deny the name change.
- The Registrar on being satisfied that the changed name is the one as reserved by him shall issue a fresh certificate of incorporation in the new name and the changed name shall be effective from the date of such 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.
- File Form 3 accompanying the supplementary agreement within 30 days with the prescribed fees. The same will be approved from the Registrar of Companies.

Answer 2(b)

As LLP has already got the name approved and have secured the DIN and DSC requirement now LLP needs to file Form URC 1 for Conversion of LLP into Private Limited Company.

Filing Form no. URC -1

As per Rule 3 of the Companies (Authorised to Registered) Rules, 2014, for the purposes of section 366(2) of the Companies Act, 2013, the provision of Chapter II of the Act relating to incorporation of company and matters incidental thereto shall be applicable mutatis mutandis for such registration:

Provided that there shall be two or more members for the purposes of registration of a company under this sub-rule.

Provided further that a company with less than seven members shall register as a private company. A company shall attach and provide the required documents and information to the Registrar along with Form No. URC. 1 in the following manner, namely:-

- (i) a list showing the names, addresses, and occupations of all persons named therein as partners with details of shares held by them respectively, showing separately shares allotted for consideration in cash and for consideration other than cash along-with the source of consideration and distinguishing, in cases where the shares are numbered, each share by its number, who on a day, not being more than six clear days before the day of seeking registration, were partners of the Limited Liability Partnership or firm as the case may be;
- (ii) a list showing the particulars of persons proposed as the first directors of the company, alongwith Director Identification Number (DIN), passport number, if any, with expiry date, residential addresses and their interests in other firm or body corporate along with their consent to act as directors of the company;
- (iii) in case of a firm, deed of partnership, bye-laws or other instrument constituting or regulating the firm and in case the deed of partnership was revised at any time in the past, copies of the principal and all subsequent deeds including the latest deed, along with the certificate of the registration issued by the Registrar of Firms, in case the firm is registered;
- (iv) written consent or No Objection Certificate from all the secured creditors of the applicant;
- (v) written consent, from the majority of members whether present in person or by proxy at a general meeting, agreeing for such registration;
- (vi) an undertaking that the proposed directors shall comply with the requirements of the Indian Stamp Act, 1899 (2 of 1899) as applicable;
- (vii) a copy of the latest income tax return of the Limited Liability Partnership or firm, as the case may be.

Answer 2(c)

The memorandum and articles must be read together in the event of any ambiguity. In *Angostura Bitters & Co. Ltd. v. Kerr*, (1933) AC 550: (1934) 4 Com Cases 1; the Privy Council held, "Except in respect of such matters as must be statutorily provided for by the conjunction with the articles, the two documents must be read together at all events so far as may be necessary to explain any ambiguity appearing in the terms of the memorandum or to supplement it upon any matter as to which it is silent"-quoted with

approval by the Supreme Court in *A. Lakshmanaswami Mudaliar v. LIC of India Ltd. (1963) SC 1185*.

Answer 2(d)

- (i) As per Rule 5(1) of the Nidhi Rules, 2014 deals with requirements for minimum number of members, net owned fund etc. It provides that every Nidhi shall, within a period of one year from the date of its incorporation, ensure that it has:
- Not less than two hundred members
 - Net Owned Funds of ten lakh rupees or more
 - Unencumbered term deposits of not less than ten per cent of the outstanding deposits
 - Ratio of Net Owned Funds to deposits of not more than 1:20.

Thus Mahesh Nidhi Ltd. needs to ensure above requirement upto end of the first financial year of the Company.

- (ii) Rule 10 of the Nidhi Rules, 2014 lays down conditions for opening branches by a Nidhi Company as follows:
- A Nidhi may open branches, only if it has earned net profits after tax continuously during the preceding three financial years. A Nidhi may open up to three branches within the district.
 - If a Nidhi proposes to open more than three branches within the district or any branch outside the district, it shall obtain the prior permission of the Regional Director and an intimation is to be given to the Registrar about opening of every branch within thirty days of such opening.
 - Nidhi shall not open branches or collection centres or offices or deposit centres, or by whatever name called outside the State where its registered office is situated.
 - Nidhi shall not open branches or collection centres or offices or deposit centres, or by whatever name called unless financial statement and annual return (up to date) are filed with the Registrar.

Answer 2(e)

The following are the unconventional modes of financing options for Start-ups which are becoming popular in India:

Crowd Funding

This is recent phenomena being practiced for getting seed funding through small amounts collected from a large number of people (crowd), usually through the Internet. Now we have companies existing in India which are specializing in "Crowd Funding". The entrepreneur can get money for his venture by showcasing his idea before a large group of people and trying to convince people of its utility and success. The entrepreneur needs to put up on a portal his profile and presentation, which should include the business idea, its impact, and the rewards and returns for investors. It should be supported by suitable images and videos of the project.

Incubators

These set-ups precede the seed funding stage and help the entrepreneur develop a business idea or make a prototype by providing resources and services in exchange for an equity stake ranging from 2-10%. Incubators offer office space, administrative support, legal compliances, management training, mentoring and access to industry experts as well as to funding through angel investors or VCs. These are usually government-supported institutes like the IIMs or IITs, technical institutes or private business incubators run by industry veterans or companies. The incubation period can be 2-3 years and admission is rigorous. Some of the top options in India include IIM-Bangalore NSRCEL, Microsoft Accelerator and IIT, Kanpur, SIIC and the Sriram College of Commerce (SRCC).

Answer 2A(i)

Eligibility Criteria for Mudra Loan

For obtaining loan under Pradhan Mantri Mudra Yojana, the basic criteria of age should be 18 years old. Loan under the scheme of the Pradhan Mantri Mudra Bank Loan will be available if and only if it is for commercial and business purposes and not for personal purposes. The loan can be availed in any of the following business categories:

Business Categories with maximum allowed loan sum are as under:

Shishu : Allowed loans up to Rs. 50,000

Kishore : Allowed loans up to Rs. 5 lakh

Tarun : Allowed loans upto Rs. 10 lakh

Those eligible to borrow from MUDRA bank are:

- Small manufacturing unit
- Shopkeepers
- Fruit and vegetable
- Vendors
- Artisans

Accordingly, Raman can avail the MUDRA Loan for carrying on the business of fruits and vegetable vendor.

Answer 2A(ii)

A trust for the benefit of employees of a company however numerous would not be considered as public trust because who the beneficiaries are known. Therefore, the trust to be created by OP Ltd. for the benefit of employees of the Company and their spouses and children will be a Private Trust.

The differences between Public Trust and Private Trust are as follows:

- (a) Identification of the beneficiaries of the Trust is a simple way to differentiate between a public and a private trust. If the beneficiaries make up a large or substantial body of public, then the trust in question is public. A public trust

exists "for the purpose of its objects, the members of an uncertain and fluctuating body," and is managed by a Board of Trustees. If, however, the beneficiaries are a narrow and specific group such as the employees of a company, then the Trust is private.

- (b) In a Public Trust, the interest is vested in an uncertain and fluctuating body. They are the general public or class thereof. In a Private Trust, beneficiaries are definite and ascertained individuals. (*Supreme Court in Deoki Nandan v. Murlidhar 1957 AIR 133 1956 SCR 756*)
- (c) Their domains are different; public trusts have larger and wider domain whereas private trusts have limited and narrow domain.

Answer 2A(iii)

- (a) In line with the relaxation announced for Section 8 Companies under the Companies Act, 2013, Section 8 companies are not required to maintain a minimum share capital.
- (b) Yes, under the Section 8(3) of the Companies Act, 2013 a firm can be member of the Section 8 Company.
- (c) No, according to Section 8(1) (c) of the Companies Act, 2013 Company cannot pay dividend to its members as it prohibits the payment of dividends to its members.
- (d) No, Section 8 companies are not required to appoint a company secretary to ensure compliance with the provisions of the Companies Act 2013 vide MCA Notification dated June 05, 2015.

Answer 2A(iv)

The following documents are required to be filed by MN Ltd., a foreign company with the concerned Registrar of Companies within 30 days of establishment of place of business in India under the provisions of the Section 380 of the Companies Act, 2013:

- Certified copy of the charter, statutes or memorandum and articles, of the company or other instrument constituting or defining the constitution of the company and, if the instrument is not in the English language, a certified translation thereof in the English language;
- Full address of the registered or principal office of the company;
- List of the directors and secretary of the company containing such particulars as prescribed;
- Name and address or the names and addresses of one or more persons resident in India authorised to accept on behalf of the company service of process and any notices or other documents required to be served on the company;
- Full address of the office of the company in India which is deemed to be its principal place of business in India;
- Particulars of opening and closing of a place of business in India on earlier occasion or occasions;

- Declaration that none of the directors of the company or the authorised representative in India has ever been convicted or debarred from formation of companies and management in India or abroad; and
- Any other information as may be prescribed.

Answer 2A(v)

The decision of the Company is not legally tenable as the Articles of Association cannot be altered so as to have retrospective effects. Since at the time when Ravi has filed the nomination papers for contesting elections in September, 2019, there was no provision in the Articles of Association of DF Ltd. to terminate the services of the employee of the Company on taking part in active politics.

In the case of *Pyare Lal Sharma v. Managing Director, J.K. Industries Ltd. (1989) 3 Comp LJ (SL)* it was held that the articles only operate from the date of the amendment. The amended articles of association cannot operate retrospectively, but only from the date of amendment.

Thus the Company's decision is not legally tenable.

PART B

Question 3

- (a) *M/s Ariyakudi Private Limited, an appellant Company fails to deposit the PF contribution, upon financial crises going on in the business and Assistant Provident Commissioner levied damages for delay in contribution. Now M/s Ariyakudi Private Limited has challenged the said matter with the higher jurisdiction. Whether the levy of damages is tenable ? Discuss.*
- (b) *UV Pvt. Ltd. wants to apply for Udyog Aadhar. The Company seeks your advice on the criteria for making application for Udyog Aadhar under the Micro, Small & Medium Enterprises Development (MSMED) Act, 2006. Advise UV Pvt. Ltd.*
- (c) *Mudit has invented a tool which may reduce the human efforts significantly. He wants to file the patent application for the tool. Advise Mudit the procedure to be followed by him for filing patent application.*
- (d) *'A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work'. Elucidate.*
(5 marks each)

Answer 3(a)

The Employees' Provident Funds and Miscellaneous Provisions Act, 1952 is a welfare legislation which aims at providing social security and timely monetary assistance to Industrial employees and their families when they are in distress and/or unable to meet family and social obligations and to protect them in old age, disablement, early death of the bread winner and in some other contingencies. EPF or Employee Provident Fund is a retirement benefit under which both employer and employee contribute equally in the EPF account.

The Act imposes a statutory obligation on employer covered under the Act to pay his own contribution along with employee's contribution within fifteen days of the close of

every month to the Fund by separate Bank drafts or cheques on account of contributions and administrative charge.

Section 14-B of the Act vests the Central Provident Fund Commissioner with the power to recover damages, where an employer makes default in the payment of any contribution to the Fund not exceeding the amount of arrears and after giving a reasonable opportunity of being heard to employer.

The issue in the given question is “Whether financial crisis could be a tenable ground to be considered justifiable for failure to deposit PF contribution by employer and consequently challenge levy of damages for delay in contribution?”

In *M/S Hindustan Times Limited vs. Union of India & Others* on 7 January, 1998, Supreme Court held that the following principles can be summarised w.r.t. of the Employees Provident Fund & Miscellaneous Provisions Act, 1952:

The Authority under Section 14-B has to apply his mind to the facts of the case and the reply to the show cause notice and pass a reasoned order after following principles of natural justice and giving a reasonable opportunity of being heard; the Regional Provident Fund Commissioner usually takes into consideration the number of defaults, the period of delay, the frequency of default and the amounts involved; default on the part of the employer based on pleas of power cut, financial problems relating to other indebtedness or the delay in realisations of amounts paid by the cheques or drafts, cannot be justifiable grounds for the employer to escape liability.

Therefore, going by above judgement of Supreme Court, the levy of damages in case of M/s Ariyakudi Private Limited, for failure to deposit PF contribution, will be upheld and financial crisis as justification for delay in depositing the same cannot be accepted.

Answer 3(b)

Government of India notified certain criteria for classifying the enterprises as micro, small and medium enterprises and specifies the form and procedure for filing the memorandum (hereafter in this notification to be known as “Udyam Registration”, with effect from the 1st day of July, 2020, namely:--

An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely: --

- (i) a micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;
- (ii) a small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
- (iii) a medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupees.

Any person who intends to establish a micro, small or medium enterprise may file Udyam Registration online in the Udyam Registration portal, based on self-declaration with no requirement to upload documents, papers, certificates or proof.

On registration, an enterprise (referred to as “Udyam” in the Udyam Registration portal) will be assigned a permanent identity number to be known as “Udyam Registration Number”.

An e-certificate, namely, “Udyam Registration Certificate” shall be issued on completion of the registration process.

Accordingly, UV Ltd. is advised the aforesaid criteria for making application for Udyam Registration Certificate under MSMED Act, 2006.

Answer 3(c)

Mudit should follow the following procedure for filing patent application for the tool:

Before filing a patent application in India, one should perform a detailed patentability search to determine whether a patent for it will be available or not. Application for grant of patent may be filed either physically at patent office or electronically.

While filing a patent application, provisional specifications or complete specifications can be filed by the applicant. The following is a list containing all documents that must be filed for obtaining patent registration:

- Patent application in the specified Form.
- Proof of right to file application from the inventor. The proof of right can either be an endorsement at the end of the application or a separate agreement attached with the patent application.
- Provisional specifications, if complete specifications are not available.
- Complete specification in specified Form within 12 months of filing of provisional specification.
- Statement and undertaking under Section 8 in Form- 3, if applicable. Form 3 can be filed along with the application or within 6 months from the date of application.
- Declaration as to inventorship in Form 5 for applications with complete specification or a convention application or a PCT application designating India. Form-5 or Declaration as to inventorship can be filed within one month from the date of filing of application, if a request is made to the Controller in Form-4.
- Power of authority in Form-26, if patent application is being filed by a Patent Agent. In case a general power of authority, then a self-attested copy of the same can be filed by the Patent Agent or Patent Attorney.
- Priority document must be filed in the following cases:
 - (i) Convention Application (under Paris Convention).
 - (ii) PCT National Phase Application wherein requirements of Rule 17 of has not been fulfilled.
 - (iii) *Note* : Priority document must be filed along with the application or before the expiry of eighteen months from the date of priority, to enable early publication of the application.

- If the Application pertains to a biological material obtained from India, the applicant is required to submit the permission from the National Biodiversity Authority any time before the grant of the patent. However, it is sufficient if the permission from the National Biodiversity Authority is submitted before the grant of the patent.
- The Application form should also indicate clearly the source of geographical origin of any biological material used in the specification,
- All patent applications must bear the signature of the applicant or authorized person or Patent Attorney along with name and date.
- Provisional or complete specification must be signed by the agent/applicant with date on the last page of the specification. The drawing sheets attached should also contain the signature of an applicant or his agent in the right hand bottom corner.

Answer 3(d)

Contracts lie at the crux of running any business. A contract is required to ensure the smooth functioning of work and is a great mechanism to ensure recourse in case of non-fulfilment of work. Having basic knowledge about various aspects of contract management can prove to be useful for entrepreneurs. As per the Indian Contract Act, 1872, all agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration with a lawful object, and are not expressly declared to be void.

Employee contracts are one of the most crucial aspects to be looked into while starting a venture. Founders many a time collaborate with their own trusted circle of friends in the beginning and while this ensures a certain ease and efficiency to business operations, outlining and formalizing employee contracts with details about salary, scope of work and stock options (if any) with even your first few employees is always recommended. Having this clarity from the very beginning helps the new businesses to reduce risks at a later point in time. In the early stage of operations and post operation too, there are various contacts that a company has to abode, therefore, the adherence to contract law is one of the most important requirement for the company per se.

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

Question 4

- (a) *Kumar is a proprietor of a small scale unit manufacturing cotton clothes. He wants to know the benefits of registration with National Small Industries Corporation (NSIC). Advise Kumar. (3 marks)*
- (b) *Rajan, a toy manufacturer wants to export toys to Thailand. He seeks your advice on the requirement of Import Export Code (IEC) for exporting toys to Thailand. Advise Rajan along with the documents required for obtaining IEC. (3 marks)*
- (c) *With reference to National Green Tribunal Act, 2010, answer the following:*
 - (i) *Can National Green Tribunal (NGT) admit a suit for cutting of trees in a forest?*

- (ii) *Can a person argue his own matter before NGT?*
- (iii) *To whom the appeal against the decision of NGT should be filed?*
(3 marks)
- (d) *Ram is working in a factory employing 30 persons. The gross salary of Ram is ₹20,000 per month. He has worked for 60 days in the year 2019-20. In the light of provisions of Payment of Bonus Act, 1965, examine whether Ram is eligible for payment of bonus for the year 2019-20.*
(3 marks)
- (e) *Explain the duties of Conciliation Officers under the Industrial Disputes Act, 1947.*
(3 marks)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) *Explain the deductions that can be made from the wages of an employee under Payment of Wages Act, 1936.*
(3 marks)
- (ii) *Ramesh is running a fast food shop in Chandni Chowk, Delhi. He seeks your advice on the requirement of obtaining FSSAI Registration. Advise Ramesh.*
(3 marks)
- (iii) *PQ Finvest Ltd. is a Non-Banking Finance Company (NBFC) registered with the Reserve Bank of India. The total assets of the Company are exceeding ₹ 500 crores. The Company has committed the default in making payment to Karan, who is an operational creditor. In the light of the provisions of Insolvency and Bankruptcy Code, 2016, examine whether Karan can initiate Corporate Insolvency Resolution Process against PQ Finvest Ltd.*
(3 marks)
- (iv) *Explain the duties of Interim Resolution Professional (IRP) under Insolvency and Bankruptcy Code, 2016.*
(3 marks)
- (v) *Payments banks is a new model of banks conceptualized by the Reserve Bank of India. Describe the key issues which require compliance by an applicant Company.*
(3 marks)

Answer 4(a)

The units registered under Single Point Registration Scheme of NSIC are eligible to get the following benefits under “Public Procurement Policy for Micro & Small Enterprises (MSES) Order” as notified by the Government of India, Ministry of Micro, Small & Medium Enterprises:

- Issue of the Tender Sets free of cost;
- Exemption from payment of Earnest Money Deposit (EMD),
- In tender participating MSEs quoting price within price band of L1+15% shall also be allowed to supply a portion upto 25% of requirement by bringing down their price to L1 Price where L1 is non-MSEs.
- Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 25% of the total annual purchases of the products or services produced or rendered by MSEs.

- In addition to the above, 358 items are also reserved for exclusive purchase from SSI Sector.

Answer 4(b)

Import Export 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 Import Export Code. Import Export Code has lifetime validity. Importers are not allowed to proceed without this code and exporters can't take benefit of exports from DGFT, customs, Export Promotion Council, if they don't have this code. The Import Export Code must be quoted by importers while clearing customs. Also, banks require the importers IE Code while sending money abroad. For exporters, Import Export Code must be quoted while sending shipments and banks require the exporters IE Code while receiving money from abroad.

Thus, Rajan needs to apply for IEC for exporting toys to Thailand.

The following documents are required for obtaining IEC:

- Personal or Company or Firm Pan Card Copy.
- Personal Aadhar card or Voter ID or Passport copy.
- Personal or company or firm current bank account cancel cheque copy.
- Electricity Bill Copy or Rent Agreement or Sale deed of the premise copy.

Answer 4(c)

- (i) No, National Green Tribunal (NGT) cannot admit a suit for cutting of trees in a forest. NGT cannot admit a suit for cutting of trees in a forest even though it is related to environment. This is because the protection of forest act is not within the jurisdiction of NGT.
- (ii) Yes, a person can argue his own matter before National Green Tribunal and he does not need to be an Advocate/Professional to do so.
- (iii) The appeal against the decision of NGT should be filed before Supreme Court of India under Section 22 of the National Green Tribunal Act, 2010.

Answer 4(d)

Payment of Bonus Act, 1965 is applicable to the establishment in which 20 or more persons are employed on any day during an accounting year. (Appropriate Government may specify lesser no. of employees).

Every employee shall be entitled to be paid by his employer in an accounting year, bonus, in accordance with the provisions of this Act, provided he has worked in the establishment for not less than thirty working days in that year.

According to Section 2(13) of the Act, "employee" means any person (other than an apprentice) employed on a salary or wage not exceeding twenty-one thousand rupees per mensem in any industry to do any skilled or unskilled manual, supervisory, managerial, administrative, technical or clerical work for hire or reward, whether the terms of employment be express or implied.

In view of the above Ram is eligible for payment of bonus for the year 2019-20 under the provisions of Payment of Bonus Act, 1965.

Answer 4(e)

Duties of Conciliation Officers under the Industrial Disputes Act, 1947 are as follows:

- Hold conciliation proceedings relating to Strikes and lockouts procedural matters of public utility services.
- Investigate the matters of the disputes.
- Conciliation officers shall induce the parties to come to a fair and amicable settlement of the dispute.
- Duty to send the report of settlement of dispute and memorandum of the settlement signed by the parties to the dispute to the government or his superior.
- In case of failure of settlement of dispute in between parties, duty to send them to the government or his superior, report of facts and circumstances relating to the disputes and in his opinion, a settlement could not be arrived at,
- Duty to send the report to the government or his superior within 14 days from the commencement of the proceeding or within such shorter period as may be fixed by the appropriate Government.

Answer 4A(i)

The following deductions can be made from the wages of an employee under Section 7 of the Payment of Wages Act, 1936:

(i) fines; (ii) absence from duty; (iii) damage to or loss of goods expressly entrusted to the employee; (iv) housing accommodation and amenities provided by the employer; (v) recovery of advances or adjustment of overpayments of wages; (vi) recovery of loans made from any fund constituted for the welfare of labour in accordance with the rules approved by the State Government, and the interest due in respect thereof; (vii) subscriptions to and for repayment of advances from any provident fund; (viii) income-tax; (ix) payments to co-operative societies approved by appropriate Government or any officer specified by it in this behalf or to a scheme of insurance maintained by the Indian Post Office; (x) deductions made with the written authorisation of the employee for payment of any premium on his life insurance policy or purchase of securities.

Answer 4A(ii)

FSSAI registration is required for all petty food business operators. Petty food business operator is any person or entity who:

- a. Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- b. Distributes foods including in any religious or social gathering except a caterer; or
- c. Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs. 12 lakhs and whose:

Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or Procurement or handling and collection of milk is up to 500 litres of milk per day or Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

Petty food business operators are required to obtain a FSSAI registration by submitting an application for registration in Form A. On submission of a FSSAI registration application, the registration should be provided or application rejected in writing within 7 days of receipt of an application by authority.

FSSAI registration certificate contains the details of registration and a photo of the applicant.

The certificate must be prominently displayed at the place of food business, at all times while carrying on the food business. In view of the above, Ramesh is advised to obtain FSSAI registration for running a fast food shop in Chandni Chowk, Delhi.

Answer 4A(iii)

The Ministry of Corporate Affairs ("MCA") vide its Notification dated 15th November 2019 had notified the Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 ("Rules"). The Rules provide a framework for the insolvency and liquidation proceedings of systematically important Financial Service Providers ("FSPs") excluding banks. Section 227 of the Insolvency and Bankruptcy Code, 2016 ("Code") enables the Central Government to notify, in consultation with the financial sector regulators, FSPs or categories of FSPs for the purpose of insolvency and liquidation proceedings, in such manner as may be prescribed. The Rules, therefore, will apply to such FSPs or categories of FSPs as will be notified under Section 227 of the Code.

Insolvency and Bankruptcy (Insolvency and Liquidation Proceedings of Financial Service Providers and Application to Adjudicating Authority) Rules, 2019 applicable to Non-banking Finance Companies (including housing finance companies) ("NBFCs") as a class of FSPs, having asset size of Rupees Five Hundred Crore or more, as per last audited balance sheet. The aforesaid Rules has designated the Reserve Bank of India ("RBI") as the appropriate regulator in this regard. An insolvency process i.e. CIRP can initiated against NBFCs only on an application by the Reserve Bank of India (RBI) before the NCLT.

In the light of the aforesaid provisions, Karan can't initiate Corporate Insolvency Resolution Process against PQ Finvest Ltd., a Non-Banking Finance Company whose asset size is exceeding the threshold limit of 500 crores.

Answer 4A(iv)

As per Section 18 of the Insolvency and Bankruptcy Code, 2016 the Interim Resolution Professional shall perform the following duties, namely:—

- (a) collect all information relating to the assets, finances and operations of the corporate debtor for determining the financial position of the corporate debtor, including information relating to business operations for the previous two years; financial and operational payments for the previous two years etc.

- (b) receive and collate all the claims submitted by creditors to him, pursuant to the public announcement;
- (c) constitute a committee of creditors;
- (d) monitor the assets of the corporate debtor and manage its operations until a resolution professional is appointed by the committee of creditors;
- (e) file information collected with the information utility, if necessary;
- (f) take control and custody of any asset over which the corporate debtor has ownership rights as recorded in the balance sheet of the corporate debtor, or with information utility or the depository of securities or any other registry that records the ownership of assets
- (g) to perform such other duties as may be specified by the Board.

Answer 4A(v)

The main objective of payments bank is to widen the spread of payment and financial services to small business, low-income households, migrant labour workforce in secured technology-driven environment.

Key issues which requires compliance by an applicant company are summarised below:

- The banks will be registered as public limited company under the Companies Act, 2013
- The bank must use the term "payments bank" in its name to differentiate it from other types of bank.
- The banks will be licensed as payments banks under Section 22 of the Banking Regulation Act, 1949.
- The minimum capital requirement is Rupees 100 crore. For the first five years, the stake of the promoter should remain at least 40%.
- Foreign shareholding will be allowed in these banks as per the rules for FDI in private banks in India.
- The voting rights will be regulated by the Banking Regulation Act, 1949. The voting right of any shareholder is capped at 10%, which can be raised to 26% by Reserve Bank of India. Any acquisition of more than 5% will require approval of the RBI.
- The majority of the bank's board of directors should consist of independent directors, appointed according to RBI guidelines.
- Initially, the deposits will be capped at Rs. 100,000 per customer, but it may be raised by the RBI based on the performance of the bank.
- The bank cannot undertake lending activities. 25% of its branches must be in the unbanked rural area.

PART C**Question 5**

- (a) *Krishna Private Ltd., having 3 directors has obtained status of Dormant Company in year 2019. The Board of Directors seeks your advice about the compliances needs to be done in respect of each of the following:*
- (i) *One of the Director who is also shareholder holding 15 percent shares in Company wants to retire from post of directorship of the Company and also wants to transfer his entire shares.*
 - (ii) *Minimum number of Directors*
 - (iii) *Rotation of Auditors* (3 marks)
- (b) *The Companies (Winding Up) Rules, 2020 has reduced the burden of winding up on NCLT by shifting the power to Central Government in specified cases. Examine.* (3 marks)
- (c) *CD Ltd. has not filed financial statements and annual returns during the last two financial years. The Company wants to get the status of a Dormant Company. The Company has approached you seeking your advice on the benefits/ exemptions provided to a Dormant Company. Advise CD Ltd.* (3 marks)
- (d) *The Registrar of Companies has removed the name of ST Pvt. Ltd. from the Register of Companies under provisions of Section 248 of the Companies Act, 2013. The directors of ST Pvt. Ltd. have approached you seeking your advice to whom and when they should file an appeal for restoration of name of the Company. As a practicing Company Secretary, advise them with reference to the provisions of Companies Act, 2013.* (3 marks)
- (e) *Explain the situations in which a Company cannot apply for Striking off its name from the Register of Companies.* (3 marks)

Answer 5(a)

As per provisions of Section 455 of Companies Act, 2013 read with Rule 3 to 8 of Companies (Miscellaneous) Rules 2014 the Directors of Krishna Private Ltd. are required to carry out following compliances in respect of:

- (i) Company shall continue to file the return or returns of allotment and change in directors in the manner and within time specified in the Act, whenever the Company allots any security to any person or there is any change in the directors of the Company. Further, in case a director wishes to transfer his shares, he may do so subject to compliance with the provisions in the Articles and the Companies Act, 2013.
- (ii) A Dormant Company shall have such minimum number of Directors as required depending on the type of Company. Since Krishna Private Ltd. is a Private Ltd. Company, it needs to have at least 2 Directors.

- (iii) The provision of rotation of auditors is not applicable in case of the dormant company.

Answer 5(b)

The Companies (Winding Up) Rules, 2020 allows the following companies to wind up their business by making an application to Central Government without approaching NCLT.

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

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

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

Answer 5(c)

Benefits/Exemptions provided to a Dormant Company are as follows:

- Dormant Company may hold only two board meetings in a year with a gap of 90 days in between the two meetings.
- Dormant Company is not required to include the statement of cash flow in its financial statement.
- The provision of rotation of auditors is not applicable in case of the dormant company.
- Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to dormant company as compared to active company.
- Dormant status is an advantage to promoters who want to hold an intellectual property or an asset under the corporate shield for its usage at a later stage.
- Companies can enjoy the status of dormant company for a period of 5 consecutive years.

Answer 5(d)

The directors of ST Ltd. have to approach National Company Law Tribunal (NCLT) by making an appeal for the restoration of the name of the company in the Register of companies maintained by the Registrar of Companies. Legal provisions related to

restoration of name of the struck off companies are given in Section 252 of the Companies Act, 2013 read with Rule 87A of the NCLT (Amendment) Rules, 2017 and the Companies (Removal of Name of Companies from the Register of Companies) Rules, 2016.

Any person aggrieved by the order of the ROC may file an appeal before the Tribunal within 3 years of the order passed by ROC and if the Tribunal is of the opinion that the removal of name of company is not justified in view of the absence of any of the grounds on which the order was passed by the ROC, it may pass an order for restoration of the name of the company in the register of companies after giving a reasonable opportunity of making representations and of being heard to the ROC, the company and all the persons concerned.

Answer 5(e)

The Company shall not make any application for the strike off of the Company if any time in the previous 3 months the company has done any of the below mentioned things:

- has changed its name or
- has shifted its registered office from one State to another;
- has made a disposal for value of property or rights held by it, immediately before cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- has made an application to the Tribunal for the sanctioning of a Compromise Or Arrangement and the matter has not been finally concluded;
- is being wound up under Chapter XX of this Act or under the Insolvency and Bankruptcy Code, 2016.

Question 6

- (a) *PR Ltd. has defaulted in making payment to YK Bank for the amount of 50,00,000. YK Bank intends to file an application for initiating corporate insolvency resolution process against PR Ltd. Advise YK Bank the procedure to be followed by it for initiating corporate insolvency resolution process against PR Ltd.*
- (b) *As per The Insolvency and Bankruptcy Code (Second Amendment) Act, 2020 explain the suspension of initiation of corporate insolvency resolution process of a corporate debtor. (5 marks each)*

Answer 6(a)

YK Bank is advised to follow the following procedure for initiating corporate insolvency resolution process against PR Ltd.:

1. A financial creditor either by itself or jointly with other financial creditors or any other person on behalf of the financial creditor, as may be notified by Central

Government may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

2. The financial creditor shall, along with the application furnish –
 - (a) record of the default recorded with the information utility or such other record or evidence of default as may be specified;
 - (b) the name of the resolution professional proposed to act as an interim resolution professional; and
 - (c) any other information as may be specified by the Board.
3. The Adjudicating Authority shall, within fourteen days of the receipt of the application, ascertain the existence of a default from the records of an information utility or on the basis of other evidence furnished by the financial creditor.
4. Where the Adjudicating Authority is satisfied that -
 - (a) a default has occurred and the application is complete, and there is no disciplinary proceedings pending against the proposed resolution professional, it may, by order, admit such application; or
 - (b) default has not occurred or the application is incomplete or any disciplinary proceeding is pending against the proposed resolution professional, it may, by order, reject such application.

However, before rejecting the application, the Adjudicating Authority shall give a notice to the applicant to rectify the defect in his application within seven days of receipt of such notice.

5. The corporate insolvency resolution process shall commence from the date of admission of the application.
6. The Adjudicating Authority shall communicate the order to the financial creditors and the corporate debtor within seven days of admission or rejection of such application, as the case may be.

Answer 6(b)

The Insolvency and Bankruptcy (Second Amendment) Code, 2020 has inserted section 10A in the Code for suspension of initiation of corporate insolvency resolution process. It states that:

Notwithstanding anything contained in sections 7, 9 and 10 no application for initiation of corporate insolvency resolution process of a corporate debtor shall be filed, for any default arising on or after 25th March, 2020 for a period of six months or such further period, not exceeding one year from such date, as may be notified in this behalf. Moreover, the said provision shall not apply to any default committed under the said sections before 25th March, 2020.

Provided that no application shall ever be filed for initiation of corporate insolvency resolution process of a corporate debtor for the said default occurring during the said period.

The above stated provision was inserted vide Insolvency and Bankruptcy Code (Amendment) Ordinance, 2020 in light of COVID-19 pandemic that has impacted business, financial markets and economy all over the world, including India, and created uncertainty and stress for business for reasons beyond their control. This ordinance was repealed by the said Second Amendment 2020 in the Code.

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 2021-22, unless stated otherwise.

PART I

1. A company shall be deemed to be one as per section 2(18) of the Income Tax Act, 1961 in which public are substantially interested and is owned by the Government or Reserve Bank of India (RBI) or in which not less than _____ of the shares whether singly or taken together are being held by the Government or Reserve Bank of India or a Corporation owned by the RBI.
 - (A) 50%
 - (B) 40%
 - (C) 51%
 - (D) 45%

2. "Assessee" as per section 2(7) of the Income Tax Act, 1961, means a person by whom income tax or super tax or any other sum of money is payable under this Act and includes :
 - (A) every person who is deemed to be an assessee in default under any provision of this Act,
 - (B) every person in respect of whom any proceeding under this Act has been taken for assessment of his income or income of any other person in respect of which he is assessable,
 - (C) every person who is deemed to be an assessee under any provision of this Act.
 - (D) All of the above

3. Income tax as per section 4(1) of the Income Tax Act, 1961 shall be charged on the total income of the previous year of every person. The definition of person given in section 2(31) of the Act does not include in it :
 - (i) Association of person
 - (ii) Association of firms
 - (iii) Body of Individuals
 - (iv) Notified Entities

- (A) (i) and (ii)
 - (B) (ii) and (iv)
 - (C) (iii) and (iv)
 - (D) (i) and (ii)
4. Tax as per provisions of Income Tax Act, 1961 is charged both on revenue and capital receipts by taking them as income. Find and state from the following items of receipts, which is specifically not included in the income :
- (A) Sum received under an agreement for not carrying out any activity in relation to any profession.
 - (B) Fair market value of inventory which is converted into capital asset.
 - (C) Amount of subsidy received which is taken into account for determination of the actual cost of the depreciable asset.
 - (D) Compensation received by a person in connection with termination of his employment.
5. Pankaj Kumar, a citizen of India having salaried employment received amount of dividend of ₹42,725 from a Canadian Company credited in his bank account in Canada in March 2020. The amount of dividend of ₹42,725 was remitted to India during the month of February, 2021. The amount of dividend so received shall be taxable in A.Y. 2021-22 when the residential status of Pankaj Kumar is:
- (A) Resident and Ordinarily Resident
 - (B) Resident but Not-Ordinarily Resident
 - (C) Non-Resident
 - (D) Not included in any case
6. The residential status of Raghav, born in Delhi and a citizen of India, who was staying in India during the period September, 2020 to March, 2021 for 125 days, for the A.Y. 2021-22 would be, if Raghav during the previous year 2020-21 was having income in India of ₹17,25,000 besides the income of ₹30 lacs from foreign sources which is not liable to tax in any other Country by reason of his domicile.
- (A) Resident and ordinarily resident
 - (B) Resident but not ordinarily resident
 - (C) Non-resident
 - (D) Deemed resident
7. Total income computed under the head of Salary of ₹6,50,000 and of other sources of Sevak Kumar, who have attained the age of 60 years on 01.04.2021 for the year ended on 31.03.2021 is of ₹6,50,000 after claiming deduction of ₹60,000 under section 80C of the Act. The liability of Sevak Kumar when he

opts to pay tax under the provisions of section 115BAC and by availing the benefit of CBDT Circular No. 28/2016 dated 27.07.2016 for A.Y. 2021-22 shall be :

- (A) ₹34,840
 - (B) ₹40,560
 - (C) ₹28,600
 - (D) ₹44,200
8. The tax liability of Raja Co-operative Society (does not opt to pay tax under section 115BAD) on the total income of ₹1,20,000 for P.Y. 2020-21, is :
- (A) ₹24,960
 - (B) ₹37,440
 - (C) NIL
 - (D) ₹34,320
9. The total Income earned and derived by an agriculturist Vijay Kumar during the P.Y. 2020-21 comprises of :
- (i) from growing flowers and creepers
 - (ii) from growing of bamboos
 - (iii) from dairy farming
 - (iv) from rent received of land used for grazing of cattle required for agricultural activities
- Vijay Kumar asks you to state which out of the above shall be treated as agricultural income being exempt from tax as per section 10(2) of the Act.
- (A) (i), (ii) and (iv)
 - (B) (ii) and (iii)
 - (C) (i) and (ii)
 - (D) (i), (ii), (iii) and (iv)
10. Certain income derived and earned by a Sikkimese individual are being exempt as per section 10(26AAA) of the Income Tax Act, 1961. Find which out of the following income, would be exempt in the hands of a Sikkimese individual in A.Y. 2021-22 :
- (A) Income from any source in the State of Sikkim
 - (B) Income by way of dividend
 - (C) Income from interest on securities
 - (D) All of the above

11. Simran Products Ltd having registered Office at Mumbai has setup two manufacturing Units, one unit at Special Economic Zone (SEZ) and other unit at Domestic Tariff Area (DTA). The unit in SEZ was set up and started manufacturing from 02.01.2012 and unit in DTA from 18.08.2015 Simran Products Ltd provide that during the previous year ended on 31.03.2021 the total turnover of Unit in SEZ and in DTA is ₹17,00,00,000 and ₹6,50,00,000 respectively. Export sales of unit in SEZ and DTA is ₹5,00,00,000 and ₹2,50,00,000 respectively. Net profit of unit in SEZ and DTA is ₹1,60,00,000 and ₹90,00,000 respectively. Simran Products Ltd, would be eligible to claim deduction under section 10AA for AY. 2021-22 of an amount of :

- (A) ₹79,19,048
 (B) ₹38,09,524
 (C) ₹47,05,882
 (D) ₹23,52,942

12. Harsh (age 45 Years) is appointed as VicePresident in High Hope India Ltd, Mumbai on 1/02/2020. He has been provided a car of 2000 cubic capacity (CC) which is exclusively used by him for private and personal purposes only. The actual cost of the Car is ₹18,00,000 and the monthly expenditure of Car of ₹5,000 is fully met by the employer. Perquisite value of Car subject to tax in the hands of Harsh in A.Y. 2021-22 would be :

- (A) ₹28,800
 (B) ₹21,600
 (C) ₹60,000
 (D) ₹2,40,000

13. Compute the gross total income (GTI) of Prashant, Resident of Mumbai for the A.Y. 2021-22, from the information given below by taking that Prashant has not opted to pay tax on his income as per section 115 BAC of the Act :

Particulars	Amount (₹)
Share of profit from a partnership firm	
(Prashant is a sleeping partner in the firm and share of profit includes amount of ₹2,00,000 of long-term Capital gain on transfer of plot of land)	4,45,000.00
Salary received from a private limited company engaged in cultivation and manufacture of coffee in the state of Kerala	5,00,000.00
Interest on accumulated balance of PPF Account	1,25,000.00
Amount received on winning from Maharashtra State Lottery	2,06,400.00

- (A) ₹11,10,000
 (B) ₹8,00,000

- (C) ₹7,50,000
(D) ₹4,50,000
14. No. of days in a month for purposes of computing taxable Gratuity in case the employee is covered under the Payment of Gratuity Act, 1972, are :
- (A) 25 Days
(B) 28 Days
(C) 31 Days
(D) None of the above
15. Manoj a salaried employee, provides the following information regarding his income for the period 01.04.2020 to 31.03.2021 where he was employed by Ram Company up to 31st May, 2020 and by Shyam Company from 1st June, 2020. All the figures given in the table below are on per month basis paid by the companies.

Particulars	Amount in ₹	
	Ram Company	Shyam Company
Basic Salary	42,000.00	56,000.00
D.A. (entire amount is part of salary for calculating pension)	4,000.00	0.00
Commission on sales	7,500.00	8,000.00
HRA (Rent paid for flat in Jaipur ₹8,000)	0.00	9,000.00

Compute the amount of income of Manoj chargeable to tax for the A.Y. 2021-22 under the head of salary.

- (A) ₹8,06,200
(B) ₹8,13,000
(C) ₹7,97,000
(D) ₹7,63,000
16. Siddharth has 3 houses in different buildings in Mumbai kept and used for self-occupation. Treatment to be given in respect of income under the head house property relating to these 3 houses for A.Y. 2021-22 shall be :
- (A) One house, at the option of Siddharth, will be treated as self-occupied. The other 2 houses will be deemed to be let out.
(B) One house at the option of A.O. will be treated as self-occupied. The other 2 houses will be deemed to be let out.
(C) Two houses, at the option of Siddharth, will be treated as self-occupied. The other house will be deemed to be let out.
(D) Two houses at the option of A.O., would be considered as self-occupied. The other house will be deemed to be let out.

17. Rajneesh and Amarjeet are the co-owners of a house located at Delhi having 50% share each, which is being used by both of them as self-occupied property. The house was purchased in the year 2004 by taking the loan from SBI. The interest paid by each co-owner during the previous year 2020-21 on loan (taken for acquisition of property during the year 2004) is ₹3,05,000. The amount of allowable deduction in respect of interest paid to each of the co-owner when both of them do not opt for section 115BAC in A.Y. 2021-22 would be :
- (A) ₹3,05,000
 - (B) ₹1,52,500
 - (C) ₹2,00,000
 - (D) ₹30,000
18. A House owned by Meghna and located at Jaipur was on rent till it was sold out in the month of March, 2020. She received an amount of ₹45,000 as arrears of rent from the tenant in the month of February, 2021. The taxable amount of arrears of rent so received by her in A.Y. 2021-22 would be :
- (A) ₹31,500
 - (B) ₹22,500
 - (C) ₹45,000
 - (D) NIL
19. Samode Power Generation Ltd an electricity company charging depreciation on straight line method (SLM) on each asset separately, sells one of its machinery in June, 2020 for ₹3,40,000. The WDV of the machinery at the beginning of the year on 1st April, 2020 is ₹3,70,000. No new machinery was purchased or added during the year 2020-21. The shortfall of ₹30,000 between the sale value and the WDV of the machine shall be treated as :
- (A) Short-term capital loss
 - (B) Normal depreciation
 - (C) Terminal depreciation
 - (D) Business loss
20. Narendra Singh, engaged in Retail Cloth business purchased furniture for Shop on 10.04.2020 for ₹7,500 in cash and again on 15.04.2020 for ₹30,000 and ₹50,000 by a bearer cheque and account payee cheque, respectively. The furniture was fitted in the shop by 20.4.2020. Depreciation allowable for A.Y. 2021-22 would be :
- (A) ₹5,000
 - (B) ₹5,750
 - (C) ₹8,000
 - (D) ₹8,750

21. The W.D.V. of a block (Plant and Machinery, rate of depreciation 15%) as on 1.4.2020 is ₹5,00,000. A second hand machinery costing ₹1,00,000 was acquired on 15.11.2020 through account payee cheque but put to use on 01.12.2020. Part of this block was sold for ₹3,00,000 on 05.01.2021. The depreciation allowable as per section 32 of the Act for A.Y. 2021-22 would be :
- (A) ₹45,000
(B) ₹42,500
(C) ₹37,500
(D) ₹48,750
22. According to section 35 (2AA) of the Income Tax Act, 1961, the amount of deduction to be claimed for the sum paid to a National Laboratory for carrying out scientific research under an approved program in A.Y. 2021-22 would be :
- (A) Actual amount of sum so paid
(B) 2 times of sum so paid
(C) 1.75 times of sum so paid
(D) 1.50 times of sum so paid
23. HSP, an eligible assessee, following mercantile system of accounting and carrying on eligible business as specified in section 44AD of the Act provides the following details relating to the business carried out during the year ended on 31.3.2021 :
- (i) Total turnover of business ₹120 lakh
(ii) Out of the total turnover of ₹120 lakh amount of ₹25 lakh received by account payee cheques, ₹40 lakh received by cash up-to March, 21 but amount of ₹25 lakh received by account payee bank drafts in May, 2021 and amount of ₹30 lakh would not be received till due date of filing of return for A.Y. 2021-22.
- The amount of deemed profits to be declared by HSP as per section 44AD(1) for A.Y. 2021-22 shall be :
- (A) ₹9.60 lakh
(B) ₹7.20 lakh
(C) ₹8.60 lakh
(D) ₹9.10 lakh
24. John Miller & Co. of UK is maintaining and operating a branch in India for sale of its garment products. The adjusted total income of the Indian branch for the year ended on 31-03-2021 was of ₹80 lakh after charge of H.O. expenses of ₹20 lakh. The Indian branch intends to claim the maximum amount of H.O. expenses

which is being allowable while computing its income to be declared in the return for A.Y. 2021-22. The amount of HO expenses allowable shall be :

- (A) 3% of the adjusted total income
 - (B) Nil as HO is a foreign company
 - (C) 20 lakh
 - (D) 5% of the adjusted total income
25. Net Profit of Honey Sugar Ltd Jalgaon for the year ended 31.03.2021 is ₹8,60,000 after charge of the following expenses to Profit and Loss account :
- (i) Interest on loan payable to SBI of ₹45,000 (shall be paid on 10.10.2021)
 - (ii) License fees to Maharashtra Government of ₹50,000 (was paid on 25.05.2021)

Honey Sugar Ltd during the previous year 2020-21, made payments of the following expenses pertaining to earlier years which have not been debited to Profit & Loss Account for the period 01.04.2020 to 31.03.2021 :

- (i) Interest on loan payable to SBI of ₹30,000 for the P.Y. 2019-20 (was paid on 10.10.2020)
- (ii) License fee to Maharashtra Government of ₹60,000 for the P.Y. 2019-20 (was paid on 25.05.2020)

Compute the total income of Honey Sugar Ltd for A.Y. 2021-22 by taking that due date for submission of Return of Income (ROI) is Sep. 30th of the A.Y.

- (A) ₹8,15,000
 - (B) ₹8,75,000
 - (C) ₹9,25,000
 - (D) ₹8,65,000
26. Which out of the following transactions shall not be regarded as transfer as per provision of section 47 of the Income Tax Act, 1961 for the purpose of working of amount of Capital Gains ?
- (A) Transfer made outside India of Rupee Denominated Bond (RDB's) an Indian company, issued outside India by a non-resident to another non-resident.
 - (B) Compulsory acquisition of capital asset under any law.
 - (C) Extinguishment of rights in respect of Capital Asset.
 - (D) Conversion of Capital asset into stock in trade.
27. Ganesh has sold a piece of land located at Jaipur for a consideration of ₹25 lakhs to Ram on 15-5-2020. Ram paid stamp duty of ₹3,00,000 @ 10% of the value determined by the Stamp Valuation Authority of the land. The land was purchased by Ganesh on 15.08.2019 for ₹12 lakh. Ganesh was not satisfied

with the value determined by the authority and therefore his case was referred to valuation officer. The valuation officer determined the value of land at ₹26 lakhs. The taxable capital gains in hands of Ganesh in A.Y. 2021-22 will be :

- (A) ₹13 Lakh
 - (B) ₹14 Lakh
 - (C) ₹16 Lakh
 - (D) ₹18 Lakh
28. Whenever there is a transfer of a capital asset by a partner to the firm by way of capital contribution or otherwise, the consideration of such transferred capital asset as per Income Tax Act, 1961 would be taken as :
- (A) The market value of the Capital Asset on the date of transfer.
 - (B) The Cost less notional depreciation of the Capital asset.
 - (C) The value of the asset recorded in the books of the firm.
 - (D) Any of the above, at the option of the assessee.
29. Geeta aged, 66 years received dividend of ₹15,00,000 from ABC Ltd in P.Y. 2020-21. Share of the company were purchased by her by taking loan of ₹50,00,000 from a financial institution. Interest paid on loan so taken for the purpose of making investment in the shares of ABC Ltd for the year was of ₹6,00,000. State the income which would be subject to tax under other sources in the hands of Geeta for A.Y. 2021-22 :
- (A) ₹15,00,000
 - (B) ₹12,00,000
 - (C) ₹9,00,000
 - (D) ₹5,00,000
30. Mrs. Vinita has reported the following transactions :
- (i) Received Cash gifts on the occasion of her marriage on 23.01.2021 of ₹2,25,000. It includes gift of ₹30,000 received from non-relatives.
 - (ii) On 02.12.2020, being her birthday, she received gift by account payee cheque of ₹81,000 from her mother's brother.
 - (iii) On 01.10.2020, she acquired a vacant site from her friend for ₹8,15,000. The Stamp Valuation Authority fixed the value of site at ₹9,50,000 for stamp duty purposes.
 - (iv) She bought 1000 equity shares of a listed company from Mona on 05.10.2020 for ₹7,00,000. The value of such shares in the stock exchange on the date of purchase was of ₹7,65,000.

She asks you to determine and find out the amount chargeable to tax in her hands for A.Y. 2021-22 :

- (A) ₹2,00,000
- (B) ₹2,81,000
- (C) ₹3,11,000
- (D) ₹3,71,000

31. Pinky (a minor child of age 5 years) gets a gift on 20.11.2020 of ₹10,00,000 from her father's friend. On the same day, the amount of ₹10,00,000 was deposited as fixed deposit for 3 years in SBI in the name of Pinky by her father. Interest of ₹35,000 was credited on such fixed deposit during the P.Y. 2020-21. State the amount of income and in whose hands the same will be subject to tax in A.Y. 2021-22.

- (A) Income of ₹10,33,500 shall be taxable in the hands of father.
- (B) Income of ₹33,500 shall be taxable in the hands of father
- (C) Income of ₹10,33,500 shall be taxable in the hands of father or mother whose income before this clubbing is higher.
- (D) Income of ₹33,500 shall be taxable in the hands of father or mother, whose income before this clubbing is higher.

32. The details of income/loss of Keshav engaged upto 30.10.2020 in salaried employment and thereafter in different businesses computed under various heads of income for the previous year 2020-21 are given hereunder :

Particulars of Income/Loss.	Amount (₹)
Income from Salary	4,60,000
Loss from self-occupied house property	1,25,000
Loss from let-out house property	2,75,000
Loss from specified business u/s 35AD	80,000
Loss from Retail cloth business	1,70,000
Long term capital gain on sale of land	3,00,000
Income from other sources of Interest	1,20,000

The gross total income of Keshav for A.Y. 2021-22 after set off of the losses would be :

- (A) ₹5,10,000
- (B) ₹2,30,000
- (C) ₹3,10,000
- (D) ₹7,60,000

33. Deduction in respect of profits and gains from certain newly undertaking other than Infrastructure Development Undertaking as per section 80-IB is allowed to an assessee whose gross total income includes profits & gains derived from which of the following business ?
- (i) Cold chain facility for agriculture produce
 - (ii) Hotel
 - (iii) Hospital anywhere in India
 - (iv) Production of Mineral-oil
- (A) (i) & (iv)
(B) (i), (ii) & (iv)
(C) (i), (iii) & (iv)
(D) (i), (ii), (iii) & (iv)
34. Ankita gave a donation on 15.8.20 of ₹1,00,000 to PM Cares Fund by way of RTGS transfer, on 11.9.20 of ₹25,000 to Rajiv Gandhi Foundation by account payee cheque and on 21.2.21 a cash donation of ₹11,000 to a public charitable trust. The deduction allowable under section 80G for the various donations given during the year out of the GTI for A.Y. 2021-22 for filing return of income would be :
- (A) ₹1,36,000
(B) ₹1,25,000
(C) ₹1,12,500
(D) ₹62,500
35. Narendra has purchased a house in Ajmer for self-residence on 10.04.2020 for ₹45 lakh. (Stamp duty value also the same). The house was purchased with assistance of bank loan which was sanctioned on 25.03.2020 and disbursed on 05.04.2020. Narendra has paid interest of ₹4.26 lakhs on such loan during the P.Y. 2020-21. State the treatment of interest paid by him be given for claiming deduction as per provisions of Act, while filing return of Income for A.Y. 2021-22:
- (A) Interest of ₹2 lakh allowable u/s 24
(B) Interest of ₹2 lakh allowable u/s 24 and ₹2.26 lakh allowable u/s 80 EEA
(C) Interest of ₹2 lakh allowable u/s 24 and ₹1.5 lakh allowable u/s 80 EEA
(D) Interest of ₹4.26 lakh allowable u/s 80 EEA
36. Xavier, citizen of India a resident individual engaged in salaried employment in Ahmedabad purchased 3000 shares on 03.07.2020 in CD Ltd, @ ₹75 per share. On 10.07.2020, these 3000 shares were gifted by him to his wife. CD Ltd allotted 1000 bonus shares to Mrs. Xavier on 30.01.2021. Mrs. Xavier on 05.03.2021

sold/transferred 4000 shares of CD Ltd for Rs. 150 per share to Rajeev outside stock exchange. On the date of sale (05.03.21), the lowest quotation of shares of CD Ltd at BSE was ₹250 per share. The tax implication of the above transactions in the hands of Mr. and Mrs. Xavier for A.Y. 2021-22 will be :

- (A) The LTCG arising on transfer of 4000 shares will be taxable in the hands of Xavier by virtue of sec. 64(1)(iv)
 - (B) The STCG arising on transfer of 4000 shares will be taxable in the hands of Xavier by virtue of sec. 64(1)(iv)
 - (C) The STCG of Rs. 2,25,000 arising on transfer of original shares will be included in the income of Xavier and STCG of ₹1,50,000 arising on transfer of bonus shares will be taxable as income of Mrs. Xavier.
 - (D) The STCG of ₹5,25,000 arising on transfer of original shares will be included in the income of Xavier and STCG of ₹2,50,000 arising on transfer of bonus shares will be taxable as income of Mrs. Xavier
37. B Gifted debentures of a company to Miss G on 15.09.2017. Miss. G married B's son M on 11.04.2018. Interest on debentures for the P.Y. 2020-21 paid by the company is ₹4,00,000. Such interest in the A.Y. 2021-22 shall be :
- (A) Included in the total income of B u/s 64(1)(vi)
 - (B) Taxable in the hands of Mrs. M alone
 - (C) Included in the total income of M u/s 64(1)(vi)
 - (D) Included in the total income of M or B whose total income is more before including such interest
38. R & S are 2 partners of RS & Co. (a partnership firm). The firm was constituted on 01.04.2020 after the death of M (father of R & S) to continue the business of M. M carried a proprietary business of Food Grains and the accumulated losses up to 31.03.2020 were ₹50,000. Particulars of income and loss of RS & Co. for the P.Y. 2020-21 are :
- (i) Income from Grain business ₹4,00,000.
 - (ii) Loss in Cloth Business Rs. 60,000
 - (iii) Speculative business income ₹2,00,000
- Against the income of ₹6,00,000 for the year partners of the firm want to set-off the following :
- (i) Loss in Cloth business of firm ₹60,000
 - (ii) Business Loss of ₹50,000 of M accumulated up to 31.03.2020
 - (iii) H.P. loss of R of ₹25,000
 - (iv) Speculative loss of S of ₹32,000
 - (v) Disputed sales tax liability of M of the financial year 2016-17 of ₹15,000

which was paid by the firm on 01.12.2020 but not deducted from any of the income given above.

Determine and find out the income of RS & Co. which will be subject to tax for A.Y. 2021-22 :

- (A) ₹4,90,000
- (B) ₹5,25,000
- (C) ₹5,35,000
- (D) ₹4,75,000

39. Utpal Dutt an individual assessee engaged in the business of Gold/Silver Jewellery at Kolkata presents the following information and asks you to state the amount of tax required to be paid by him for A.Y. 2021-22 :

Particulars	(₹ In Lakhs)
(i) Tax calculated on Total Income :	
– as per regular provisions of Income-tax Act, 1961	18
– as per section 115JC of the Act	14
(ii) AMT credit brought forward from A.Y. 2020-21	6

- (A) 18 lakhs
- (B) 14 lakhs
- (C) 12 lakhs
- (D) 8 lakhs

40. Every person engaged in carrying on business is mandatorily required to apply for allotment of PAN, in case the total sales exceed of ₹..... during the previous year.

- (A) 1 lakh
- (B) 2 lakh
- (C) 5 lakh
- (D) 10 lakh

41. The notice of demand after completion of assessment as per section 156 of the Income Tax Act, 1961 in respect of tax payable on the income of the transferred asset to be clubbed in the hands of transferor can be served on

- (A) Transferor
- (B) Transferee
- (C) Both (A) and (B)
- (D) Neither (A) nor (B)

42. As per section 192A of the Income Tax Act, 1961 premature withdrawal made from recognized P.F. would attract TDS at the rate of :
- (A) 5%
 - (B) 20%
 - (C) 10%
 - (D) 0%
43. Tax deducted is deemed to be income received for the purpose of computing the income of an assessee as per section 198 of the Income Tax Act, 1961. However, tax deducted is an exception and would not be deemed to be an income received during the previous year chargeable to tax under the Act.
- (A) u/s 194 N
 - (B) u/s 194 M
 - (C) u/s 194 LA
 - (D) u/s 194 I
44. Payment of advance tax is to be made in four installments on or before 15th June, 15th Sept., 15th Dec. and 15th March by the assessee. However the benefit of payment of advance tax in one instalment on or before 15th March is available to an assessee who is computing profits on presumptive basis of the Income Tax Act, 1961.
- (A) Under section 44AD
 - (B) Under section 44AD and 44ADA and 44AE
 - (C) Under section 44AD and 44AE
 - (D) Under section 44AD and 44ADA
45. Star Ltd in whose case the due date of filing the return of income for the A.Y. 2020-21 was 30.09.2020 failed to file its return of income despite of notices issued by the A.O. The A.O. completed the assessment as per section 144 on 24.12.2021 and determined a tax liability of ₹2,20,000 without giving credit of advance tax and TDS but before charge of interest as per sections 234A, 234B and 234C. Star Ltd. had paid advance tax of ₹40,000 and TDS of Rs. 18,000. Determine the amount of interest payable in this context as per section 234B of the Act, by Star Ltd :
- (A) ₹9,720
 - (B) ₹34,020
 - (C) ₹51,030
 - (D) ₹46,200

46. The person responsible for paying the income/ amount which is subject to TDS/ TCS is under obligation to deduct/collect the Tax at Source and therefore, as per provisions under the Income Tax Act is required to apply for Tax Deduction Account Number (TAN) in the application to be filed online in Form No.
- (A) 49A
 - (B) 48A
 - (C) 49B
 - (D) 48B
47. Quarterly return of TDS in Form No. 24Q, 26Q or 27Q is required mandatory to be filed as E-TDS return in electronic media only where
- (A) Deductor is an Office of the Government
 - (B) Deductor is a person not covered u/s 44AB
 - (C) The number of deductees record are less than 20
 - (D) None of the above
48. As per section 153(B)(1)(b), time limit of completion of assessment in respect of the assessment year relevant to the previous year in which search is conducted under section 132 or requisition is made under section 132A within a period of _____ from the end of the financial year in which the last authorizations for search under section 132 or for requisition under section 132A was executed.
- (A) 12 months
 - (B) 21 months
 - (C) 24 months
 - (D) 36 months
49. An appeal against the order passed by the Assessing Officer under section 143(3) read with section 148 of the Income Tax Act can be filed by an aggrieved assessee before the :
- (A) Addl. Commissioner of Income Tax
 - (B) Commissioner of Income Tax (Appeals)
 - (C) ITAT
 - (D) Commissioner of Income Tax
50. The Chief Commissioner or Commissioner or an assessee aggrieved by an order passed by the Appellate Tribunal may file an appeal to the High Court within of the date on which the order appealed against is received by the Chief Commissioner or Commissioner or by Assessee by precisely stating the substantial questions of law involved in memorandum of appeal.
- (A) 60 days
 - (B) 90 days
 - (C) 120 days
 - (D) 180 days

PART II

51. GST is one of the biggest taxation reforms of Independent India being implemented with the aim of enhancing the overall growth of the Nation. It is a comprehensive indirect tax levy on goods as well as services at the
- (A) Supply based; National Level
 - (B) Movement based; State Level
 - (C) Destination based; National Level
 - (D) Value based; State Level
52. India has adopted a dual model of GST where tax is charged concurrently by the Centre and the States. Therefore, for on intrastate sale, the GST as per CGST Act, 2017 is charged equally as :
- (A) CGST & IGST
 - (B) CGST & SGST
 - (C) SGST & IGST
 - (D) Both (B) & (C)
53. The uniform policy recommended by the GST Council on e-way bill being to be implemented all over the country be totally
- (A) eliminating the check-post system;
 - (B) breaking the entry barriers;
 - (C) increasing the bottlenecks in transportation system;
 - (D) (A) & (B) above
54. A supply made by a taxable person to a recipient consisting of two or more taxable supply of goods or services or both or any combination thereof which are naturally bundled and supplied in conjunction with each other in the ordinarily course of business out of which one is a principal supply has been defined under the CGST Act, 2017 to mean :
- (A) Mixed supply
 - (B) Composite supply
 - (C) Bundled supply
 - (D) Both (A) & (B)
55. Ashoka Enterprises appoints Babul to procure certain goods for them. Babul identifies various suppliers who can provide such goods and asks Chetna Enterprises to send the goods and issue the invoice directly to Ashoka Enterprises. Examine and state in the context of CBIC Circular No. 57/31/2018 – GST and

- provisions of CGST Act, 2017 the act of Babulal in this case be treated as of
- (A) Middlemen
 - (B) Procurement Agent
 - (C) Pure Agent
 - (D) Broker
56. Various taxes levied under different Acts were sub-summed under CGST Act, 2017 on the objective of one nation one tax. However, certain items still continue to be taxed both under the Central Excise law & GST law even after implementation of CGST Act, 2017. Find such items out of the following :
- (A) Motor Spirit and Natural Gas
 - (B) Alcoholic liquor for human consumption
 - (C) Tobacco & Tobacco products
 - (D) All of the above
57. Under model of GST adopted by India taxes paid on the inward supplies made by a registered person is available as Input Tax Credit (ITC), which can be utilized for making payments as per section 49 of the CGST Act, 2017. The ITC of CGST can be utilized for :
- (A) CGST only
 - (B) SGST only
 - (C) 1st SGST & then IGST
 - (D) 1st CGST & then IGST
58. As per provision of CGST Act, 2017, supply comprising of two or more individual supplies of goods or services deliberately bundled by a taxable person for a single price that attracts the highest rate of tax of any of the supplies within the package is called as
- (A) Mixed supply
 - (B) Composite supply
 - (C) Taxable supply
 - (D) Both (B) & (C)
59. A registered person can opt under Composition Levy only in respect of one out of his two or more business verticals having same Permanent Account Number (PAN) as per provisions of the CGST Act, 2017.
- (A) Yes
 - (B) No

- (C) Yes, subject to prior approval of proper officer
 - (D) Yes, subject to prior approval of GST Council
60. Schedule –II of the CGST Act, 2017 lists various activities or transactions which are to be treated as supply of goods or supply of services. Find and state which out of the following activities, is a supply of services.
- (A) Transfer of rights in goods or undivided share in goods without transfer of title
 - (B) Transfer of title in goods
 - (C) Transfer of title in goods under an agreement where property in goods passes at a future date on payment of full consideration
 - (D) Permanent transfer or disposal of goods forming part of business assets by or under the directions of the person carrying on the business whether or not for consideration
61. Section 10 of the CGST Act, 2017 contains the provisions regarding composition levy. Section 10(2A) has enhanced the scope of composition levy primarily for small service providers. Find from the following, who cannot opt for composition levy despite enhancement of its scope :
- (i) Supplier of services as Salon Stylist
 - (ii) Supplier of goods which are not leviable to tax
 - (iii) Manufacturer of furniture
 - (iv) Manufacturer of Ice-cream
 - (v) Casual taxable person
- (A) (i), (iii) and (v)
 - (B) (ii), (iv) and (v)
 - (C) (ii), (iii) and (iv)
 - (D) All of the above
62. Services provided to an educational institution are being notified as exempt from the levy of tax under GST. Find, from the following services provided to an educational institution by different service providers, which are exempt from the levy of tax under GST :
- (A) security services
 - (B) cleaning or housekeeping services
 - (C) transportation of students, faculty and staff
 - (D) all of the above

63. Import of services under the provisions of GST is to be treated as and would be subject to tax which is to be charged under.....
- (A) Inter-state supply, IGST
 - (B) Intra-state supply, SGST
 - (C) Inter-state supply, IGST on reverse charge
 - (D) Intra-state supply, SGST on reverse charge
64. JCC Professional Services is a firm constituted by Company Secretaries having office at Jaipur has been engaged by PQR International Ltd Mumbai for providing training to its employees working in Nagpur office. The place of supply (POS) in this case shall be and tax would be charged by JCC Professional Services under..... . (Assuming that the client was unregistered)
- (A) Jaipur; CGST/SGST
 - (B) Mumbai; IGST
 - (C) Nagpur; IGST
 - (D) Jaipur; IGST
65. Supplies made under the CGST Act, 2017 to SEZ be treated as and the supplies which are taxable but do not attract GST and for which ITC cannot be claimed be treated as
- (A) Zero rated; Exempt
 - (B) Nil rated; Non GST
 - (C) Exempt; Exempt
 - (D) Nil rated; Zero rated
66. Surya Enterprises received advance amount of ₹2,00,000 on 12-09-2020 from Ravi Kant against which invoice for the value of goods of ₹1,90,000 was issued on 16-09-2020. Balance amount of ₹10,000 on the request of Ravi Kant was to be adjusted in the next bill which was issued by Surya Enterprises on 03-10-2020. The time of supply (TOS) for the amount of ₹10,000 under GST shall be.....
- (A) 12-09-2020
 - (B) 16-09-2020
 - (C) 03-10-2020
 - (D) 17-09-2020
67. Ajay Chandra an agriculturist supplies rawcotton to Bhilwara Textiles,

manufacturers of Cotton Shirts. Details of events with date taken place in this transaction are :

Event	Date
(i) Placement of order for 2 Ton of Cotton	02.4.21
(ii) Bhilwara Textiles received goods	12.5.21
(iii) Invoice issued by Ajay Chandra	15.5.21
(iv) Payment by cheque made by buyer by recording in books of accounts	20.5.21
(v) Amount credited in bank account of Ajay Chandra and debited in bank of buyer	24.5.21

Time of supply (TOS) as per provisions of CGST Act, 2017 in this case would be

- (A) 12.5.21
 (B) 15.5.21
 (C) 20.5.21
 (D) 24.5.21
68. Madhu Sudan of Kota an unregistered person engages Wedding Event Company registered at Delhi for a destination marriage of her daughter Radhika to be solemnized in November, 2021 at Royal Palace of Jam Nagar, Gujarat. State and find out the place of services (POS) as per provisions of IGST Act, 2017 in this case.
- (A) Kota
 (B) Jam Nagar, Gujarat
 (C) Delhi
 (D) Both in (B) & (C)
69. Ashok supplies goods to Bhanu who further supplies such goods to Chetan on behalf of Ashok. The consideration for such supply was guaranteed by Bhanu if not paid by Chetan. State the relationship as per provisions of CGST Act, 2017 between Ashok and Bhanu.
- (A) Principal – Agents
 (B) Principal – Third Person
 (C) Seller – Buyer
 (D) Principal – Del credere Agent
70. Rajasthan State Government runs a Lottery “Dhan Varsha” draw of which to be made on Diwali, 2021. The tickets having face value of ₹100 each were supplied

to agents for ₹95 each whereas the price as notified in the official Gazette of Rajasthan Government was ₹92 of each ticket. State the value of the ticket as per Rule 31A of the CGST Rules, 2017.

- (A) ₹100
- (B) ₹89
- (C) ₹92
- (D) ₹95

71. “Goods or Services or both together are often supplied in combination and that’s when it may not be simple enough to distinguish supplies and identify separately, as each of them may attract a different rate of tax but is being sold as one package”. In this context examine the following statements and identify which are not correct example of supply as defined in sections 2(30) and 2(74) of the CGST Act, 2017 :

- (i) Atal buys a car and also purchases warranty and maintenance package for the car by paying a nominal amount. Car and package of warranty & maintenance are supply as per section 2(74) of the Act.
- (ii) Atal buys a Car and purchases package for warranty and maintenance of the car by paying a nominal amount. Car and package of warranty & maintenance are supply as per section 2(30) of the Act.
- (iii) Rajni buys a microwave oven and some utensils for use in microwave oven. Both microwave oven & utensils are sold at a single price. Microwave oven & utensils are a supply as per section 2(74) of the Act.
- (iv) Rajni buys chocolates, juices and butter from a shop. All the items have different prices, Chocolates, juices & butter are supply as per section 2(74) of the Act.

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

72. Generally the supplier of goods or services is liable to pay GST. However, in specified case the liability may be cast on the recipient under the reverse charge mechanism (RCM). Find and state in which out of the following cases the GST is payable by the recipient of services under RCM :

- (i) Services provided by way of sponsorship to MNO Ltd
- (ii) Services given by Y Ltd to Ram through its director
- (iii) Services by department of Posts by way of speed post to ABC Ltd
- (iv) Services provided by a recovery agent to IGB Bank Ltd

- (A) (i) and (iii)
(B) (i) and (iv)
(C) (ii) and (iii)
(D) (ii) and (iv)
73. In case of Goods Transport Agency (GTA) services, tax under CGST Act, 2017 is to be paid under forward charge basis where :
- (A) GST is payable @ 12%
(B) GST is payable @ 5% and a factory registered under Factories Act, 1948 is the recipient of GTA services
(C) GST is payable @ 5% and an unregistered individual customer is the recipient of GTA service
(D) None of the above
74. Find from the following which inward supplies are not eligible under section 17(5) of the CGST Act for input tax credit (ITC) in case of a company who is engaged in manufacturing of Paints and Chemicals :
- (A) Trucks used in supply of finished goods
(B) Food and beverages consumed by workers in factory
(C) Life and health insurance paid for staff as per Government policy
(D) Motor vehicle of sitting capacity of 12 (excluding driver)
75. XYZ Ltd of Jaipur purchased on 1.8.2019 a machine for ₹10 lakh and paid IGST @ 12%. The ITC of the capital goods used in business was claimed till the machine was sold on 5.12.2020 for ₹6,00,000 to Yadav Enterprises of Jaipur by charging tax under GST @ 12%. Find out the amount of tax payable/ITC reversible.
- (A) ₹1,56,000
(B) ₹84,000
(C) ₹72,000
(D) ₹90,000
76. Chandra Prakash acquired a capital asset on 1st April, 2019 which was used for manufacturing and production of goods/ supplies which are exempt under CGST Act, 2017. However, the Government, by the notification issued in November, 2020 made the supplies so manufactured as taxable. Cost of the capital asset was ₹5,00,000 on which GST @ 18% was charged. Amount of input tax credit (ITC) on such capital asset available for the reason of asset now being used in the production of taxable supplies shall be
- (A) ₹90,000

- (B) ₹63,000
(C) ₹58,500
(D) ₹54,000
77. Aryan Ltd has its head office (HO) at Mumbai and branches located at different places in different states across India. The HO collects the ITC on all purchases made and distributes the ITC amongst the branches as CGST, SGST, UTGST, IGST. Find out the type of entity, which is being exhibited by Aryan Ltd as per provisions of CGST Act, 2017.
- (A) Taxable Entity
(B) Input Service Distributor
(C) Principal and Agent
(D) HO and Branches
78. Section 10 of the CGST Act, 2017 contains the provisions regarding composition levy with the objective to bring simplicity and to reduce the compliance cost for the small tax payers. State which out of the following statements is not correct for a tax payer who has opted for composition scheme :
- (A) A registered person supplying goods under the composition scheme shall issue a bill of supply and cannot raise tax invoice
(B) Last day of payment of liability towards tax, interest, penalty, fees or any sum is 18th day of the month following each quarter
(C) Last date of payment of liability towards tax, interest, penalty, fees or any sum is 20th day of each month
(D) A composition dealer shall mention the words “composition taxable person, not eligible to collect tax on supplies” at the top of the bill of supply issued by him.
79. Tax payers who are required to pay tax for the supply of goods or services or both on the basis of reverse charge (RCM) under GST have to get registered themselves when they cross the threshold limit of turnover of.....
- (A) ₹20 lacs
(B) ₹10 lacs
(C) ₹40 lacs
(D) None of the above
80. Furnishing of details of outward supplies and of inward suppliers as per section 37 and 38 of CGST Act, 2017 are not applicable on a person paying tax under composition scheme. However, a person who has opted for composition scheme is still liable to file a return by 30th April, following the end of financial year in Form No.
- (A) GSTR 6
(B) GSTR 3

- (C) GSTR 5
(D) GSTR 4
81. Electronic Liability Register (ELR) specified in section 49(7) shall be maintained as per Rule 85 in form for each person liable to pay tax, interest, penalty, late fee or any other amount on the and all amounts payable by him shall be debited to the said register.
- (A) GST PMT – 01; Common Portal
(B) GST PMT – 06; GST Portal
(C) GST PMT – 01; GST Portal
(D) GST PMT – 05; Common Portal
82. Vikas Ltd provides following information and details for the month of November 2020 :
- (a) Intra-state outward supply ₹9 Lakhs
(b) Inter-state exempt outward supply ₹6 Lakhs
(c) Turnover of exported goods ₹12 Lakhs
(d) Payment made for availing GTA services ₹1 Lakh
- The aggregate turnover of Vikas Ltd for the month of November, 2020 shall be:
- (A) ₹9 Lakhs
(B) ₹15 Lakhs
(C) ₹27 Lakhs
(D) ₹21 Lakhs
83. Any amount paid by the taxpayer will be reflected in the electronic cash ledger. To initiate a payment, taxpayers should generate a challan online using form, which will be valid for a period of
- (A) GST PMT-06; 15 days
(B) GST PMT-07; 30 days
(C) GST PMT-08; 45 days
(D) GST PMT-09; 60 days
84. JC & Co., Chartered Accountants operating at Mumbai provided services to a client and issued the bill as under :
- (i) Professional Fees ₹1,00,000
(ii) Out of pocket Expenses ₹10,000
(iii) MCA fees for e-filing of documents ₹5,000

The value of service for the purpose of paying tax under GST would be taken as

- (A) ₹1,15,000
- (B) ₹1,10,000
- (C) ₹1,05,000
- (D) ₹1,00,000

85. Services provided by way of warehousing of certain specified goods are exempt under CGST Act, 2017. Find out from the following which in this context are exempt :

- (i) Processed Tea
- (ii) Jaggery
- (iii) Processed Coffee
- (iv) Unbranded Besan

- (A) (i) and (iii)
- (B) (ii)
- (C) (iv)
- (D) All of the above

86. Compute the value of taxable service in the context of provisions of CGST Act, 2017 and rules framed thereunder from the following transactions made available by Anand Agro Ltd engaged in agriculture related services for the month of Sept. 2020.

Sr. No.	Particulars of Services	Amount in ₹Lakh
1	Renting of Agro Machinery	5
2	Cultivation of Ornamental flowers	2.50
3	Processing of Tomato Ketchup	3
4	Plantation of Rubber	3.5
5	Processing of Potato Chips	1.5

- (A) ₹4.50 lakh
- (B) ₹10 lakh
- (C) ₹8 lakh
- (D) ₹5 lakh

87. Ascertain and find out as per provisions of CGST Act, 2017 and the notification issued thereunder which of the following is a correct statement ?
- (i) Services provided by government ITI's to individual trainees are exempt from GST.
 - (ii) Services provided by State Government and private sector service providers by way of transportation of patients in ambulance are exempt from GST.
 - (iii) Service of renting shops in a hospital are exempt from GST being health care services.
 - (iv) Service provided by police to PSU's are taxable.
- (A) (i), (ii) and (iv)
 - (B) (ii), (iii) and (iv)
 - (C) (iii) and (ii)
 - (D) All of the above
88. As per section 16 of the CGST Act, 2017 relating to eligibility and conditions for taking Input Tax Credit (ITC); state when the Input Tax Credit (ITC) be available where the goods are received in lots/installments;
- (A) 50% be taken on receipt of 1st installment and balance 50% on receipt of last installment of goods
 - (B) ITC can be availed upon receipt of last installment of goods
 - (C) Proportionate ITC can be availed on receipt of each lot/installment of goods
 - (D) 100% ITC can be taken on receipt of 1st installment of goods.
89. Taxes paid under GST by a registered person are covered both as Input Tax and Output Tax. State as per provisions of CGST Act, 2017, which out of the following are covered in the definition of Input tax.
- (i) Tax under RCM
 - (ii) IGST on imports
 - (iii) Taxes under Composition levy
 - (iv) CGST on intra-state services
- (A) (i) and (iii)
 - (B) (ii) and (iv)
 - (C) (i), (ii) and (iv)
 - (D) All of the above
90. Kuber, a registered person under GST as the proprietor of M/s Natraj Restaurant died on 15.07.2020 and left behind his wife & son. His son wants to continue the

business of the deceased father and therefore consulted the tax consultant to complete the formalities under the CGST Act, 2017. The consultant had given which out of the following advices to the son for carrying the business of Natraj Restaurant after the death of his father.

- (A) The son should get himself registered by filing application in GST-REG - 01 under the name of M/s Natraj Restaurant, in his own PAN and should also file form GST-ITC - 02.
 - (B) The son can get the authorized signatory changed by filing an application to the proper officer and can continue the same business in the capacity of legal heir.
 - (C) The son should close the old firm and start new business under different name or in the same name by filing application for registration.
 - (D) The son should do business in the capacity of a Manager and by making the wife of deceased (his mother) as the proprietor of M/s Natraj Restaurant.
91. Electronic Credit Ledger (ECL) shall be maintained in GST-PMT-2 by each registered person. State which out of the following are debited to the Electronic Credit Ledger :
- (A) Matched input tax credit
 - (B) Provisionally input tax credit
 - (C) Unmatched input tax credit
 - (D) All of the above
92. A person other than Casual/non-resident taxable should apply for registration as per provisions of section 25 of the CGST Act, 2017 within days from the date, he becomes liable for registration.
- (A) 60
 - (B) 30
 - (C) 90
 - (D) 45
93. Every registered person as per section 35 of the CGST Act, 2017 required to maintain the necessary accounts and other records at the and all such records could be electronic or manual.
- (A) place of an accountant address
 - (B) place of the proprietor/partner/director address
 - (C) principal place of business
 - (D) address of any place as given

94. As per Rule 138 of the CGST Rules, 2017 stipulates that E-way Bill under the GST laws required to be generated when the registered person causes movement of goods of the consignment in total of the value for more than ₹50,000 whether
- (A) in relation to supply
 - (B) for reason other than supply
 - (C) due to inward supply from unregistered person
 - (D) All of the above
95. The self assessed input tax credit (ITC) in the return filed in form GSTR-3B of the registered person shall be credited to his in accordance with section 41 or section 43A of the CGST Act, 2017.
- (A) Electronic Credit Ledger
 - (B) Electronic Cash Ledger
 - (C) Electronic Liability Ledger
 - (D) Electronic Ledger
96. The rates of Customs duty alongside the Classification (groups/sub-groups) are being given in the :
- (A) Customs Act, 1962
 - (B) Customs Tariff Act, 1975
 - (C) Customs Manual, 2001
 - (D) None of the above
97. Value of Insurance when not ascertainable while making valuation of the imported goods for the purpose of charge of custom duty is to be taken :
- (A) 1.10% of FOB
 - (B) 1.115% of FOB
 - (C) 1.120% of FOB
 - (D) 1.125% of FOB
98. Find from the following list which are to be treated as Port under the provisions of the Customs Act, 1962 :
- (i) Sea Port
 - (ii) Inland Railway Depot
 - (iii) Inland Container Depot
 - (iv) Airport
 - (v) Container Freight Stations not attached to Port

- (A) (i), (ii) and (iii)
 - (B) (i), (ii), (iii) and (v)
 - (C) (i), (iii) and (iv)
 - (D) (i), (ii), (iii), (iv) and (v)
99. The importer of goods as per section.....of the Customs Act, 1962 needs to submit duly signed "Bill of Entry" containing the details and the particulars of the goods.
- (A) 45
 - (B) 46
 - (C) 47
 - (D) 48
100. An application for refund of import duty paid under the Customs Act, 1962 where the goods are found to be defective or not in conformity with the specification; importer does not claim any duty drawback and relinquishes his title to the goods is to be filed within from the relevant date.
- (A) 6 Months
 - (B) 3 Months
 - (C) 2 Months
 - (D) 1 Year

ANSWER KEY
TAX LAWS - SELECT SERIES

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

Notes :

- Q. 6 Option D is correct as the assessee will be considered as deemed resident u/s 6(1A) of the Income tax Act, 1961. Further, if we assume that Mr. Raghav was in India before PY 2020-21 and fulfill the conditions, he will be ROR in India , accordingly, Option A will be correct. However, if we assume that Mr. Raghav was not in India before PY 2020-21 and does not fulfill the conditions, he will be considered as RNOR in India, accordingly, Option B is correct.
- Q. 7 The question is not specifically mentioned whether standard deduction u/s 16(iiia) of Rs. 50,000 has been deducted while computing salary income. Option A is correct as follow: Total Income 650000 + 60000 (Section 80C) = 710000. Accordingly Tax will be 34,840 i.e. Option A assuming Standard deduction u/s 16 (iia) of Rs. 50,000 has not been deducted while computing Salary Income. Option B is correct as follow: Total Income 650000 + 60000 (Section 80C) + 50000 (Standard Deduction) = 760000. Accordingly Tax will be 40560. Assuming Standard deduction u/s 16 (iia) of Rs. 50,000 has been deducted while computing Salary Income.
- Q. 64 Section 12(6) of Integrated Goods and Services Tax Act, 2017, The place of supply of services provided by way of admission to a cultural, artistic, sporting, scientific, educational, entertainment event or amusement park or any other place and services ancillary thereto, shall be the place where the event is actually held or where the park or such other place is located.

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