

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

(New Syllabus)

DECEMBER 2018

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

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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 well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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EXECUTIVE PROGRAMME EXAMINATION

DECEMBER 2018

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE: *Answer ALL Questions.*

Question 1

- (a) *Critically examine the statement by Austin that "Law is the command of sovereign".*
- (b) *Discuss the doctrine of 'Res Sub Judice' under Section 10 of Civil Procedure Code, 1908.*
- (c) *Discuss the test laid down by the Supreme Court of India to determine the entity of "State", whether it is 'instrumentality or agency of State'.*
- (d) *Swaraj an employer of ABC Company Ltd., appointed Rakesh as an independent contractor. Discuss under what circumstances Swaraj would be liable for the fault of Rakesh. (5 marks each)*

Answer 1 (a)

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).

According to Austin Law has three main features:

1. It is a command.
2. It is given by a sovereign authority.
3. It has a sanction behind it.

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. Command requires the presence of two parties- the commander (political superior) and the commanded (political inferior). Sanction is the evil consequence that follows on the violation of a command.

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.

According to Austin the sovereign does not have to obey anyone but the modern states have their powers limited by national and international laws and norms.

Answer 1(b)

Section 10 of the Civil Procedure Code, 1908 provides that no Court shall proceed with the trial of any suit in which the matter in issue is also directly and substantially in issue in a previously instituted suit between the same parties or between parties under whom they or any of them claim, litigating under the same title, where such suit is pending in the same or any other Court in India having jurisdiction to grant the relief claimed, or in any Court beyond the limits of India established or continued by the Central Government and having like jurisdiction, or before the Supreme Court. Doctrine of Res Sub Judice restricts or bar under Section 10 of the Civil Procedure Code, 1908.

However, the pendency of a suit in a foreign court does not preclude the Courts in India from trying a suit founded on the same cause of action.

To prevent Courts of concurrent jurisdiction from simultaneously trying two parallel suits in respect of same matter in issue, Section 10 is enacted. The purpose is also to avoid conflict of decision. It is really intended to give effect to the rule of res judicata. The institution of second suit is not barred by Section 10. It merely says that the trial cannot be proceeded with.

Answer 1(c)

Article 12 of the Constitution of India defines State and its scope includes the Government and Parliament of India; the Government and Legislature of each of the States; and all local or other authorities within the territory of India or under the control of the Government of India.

In the case of *Ajay Hasia v. Khalid Mujib*, AIR 1981 SC 481, the Supreme Court has enunciated the following test for determining whether an entity is an instrumentality or agency of the State:

- (1) If the entire share capital of the Corporation is held by the Government, it would go a long way towards indicating that the corporation is an instrumentality or agency of the Government.
- (2) Where the financial assistance of the State is so much as to meet almost the entire expenditure of the corporation it would afford some indication of the corporation being impregnated with government character.
- (3) Whether the corporation enjoys a monopoly status which is conferred or protected by the State.
- (4) Existence of deep and pervasive State control may afford an indication that the corporation is a State agency or an instrumentality.
- (5) If the functions of the corporation are of public importance and closely related to government functions, it would be a relevant factor in classifying a corporation as an instrumentality or agency of government.
- (6) If a department of government is transferred to a corporation, it would be a strong factor supporting an inference of the corporation being an instrumentality or agency of government.

Answer 1(d)

A master/employer 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. This is known as vicarious liability. The relationship of an individual with that of his/ her independent contractor is not that of master-servant.

The employer is not liable merely because an independent contractor commits a tort in the course of his employment. The employer is liable only if he himself is deemed to have committed a tort. This may happen in one of the following three ways:

- (i) When employer authorizes him to commit a tort.
- (ii) In torts of strict liability
- (iii) Negligence of independent contractor.

In the present case, Swaraj would be liable for the fault of Rakesh in the above mentioned circumstances.

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

- (a) Distinguish between 'Ratio Decidendi' and 'Obiter Dicta' in a judgment by a Court.
- (b) Distinguish between 'Admission' and 'Confession' under Indian Evidence Act, 1872.
- (c) Distinguish between 'Damnum Sine Injuria' and 'Injuria Sine Damnum' under the law relating to Torts.
- (d) In exceptional cases, mere 'preparation' to commit an offence is punishable under Indian Penal Code, 1860. Discuss. (4 marks each)

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

- (i) Discuss 'Digital Signature' and 'Electronic Signature' under the Information Technology Act, 2000.
- (ii) Discuss the 'Rule of Strict Liability' under the Law of Torts.
- (iii) Explain the 'Rule of Harmonious Construction' for interpretation under General Clause Act, 1997.
- (iv) "Article 20 of the Constitution of India guarantees protection against self-incrimination". Explain briefly. (4 marks each)

Answer 2(a)

The underlying principle of a judicial decision, which is only authoritative, is termed as ratio decidendi. The proposition of law which is necessary for the decision or could be extracted from the decision constitutes the ratio. The concrete decision is binding between

the parties to it. The abstract ratio decidendi alone has the force of law as regards the world at large. In other words, the authority of a decision as a precedent lies in its ratio decidendi.

The literal meaning of Obitor Dicta is “said by the way”. The expression is used especially to denote those judicial utterances in the course of delivering a judgement which taken by themselves, were not strictly necessary for the decision of the particular issue raised. These statements thus go beyond the requirement of a particular case and have the force of persuasive precedents only.

Answer 2(b)

An admission is defined in Section 17 of the Indian Evidence Act, 1872 as a statement, oral or documentary or contained in electronic form which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances mentioned under Sections 18 to 20 of the Indian Evidence Act, 1872. Thus, whether a statement amounts to an admission or not depends upon the question whether it was made by any of the persons and in any of the circumstances described in Sections 18-20 and whether it suggests an inference as to a fact in issue or a relevant fact in the case. Thus admission may be verbal or contained in documents as maps, bills, receipts, letters, books etc. An admission must be clear, precise, not vague or ambiguous.

Sections 24 to 30 of the Indian Evidence Act, 1872 deal with confessions. However, the Act does not define a confession but includes in it admissions of which it is a species. Thus confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession.

Answer 2(c)

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.

Injuria Sine Damnum 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 *Damnum* or damages. An absolute right is one, the violation of which is actionable per se, i.e., without the proof of any damage. *Injuria sine damnum* covers such cases and action lies when the right is violated even though no damage has occurred.

Answer 2(d)

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

Under the Indian Penal Code, 1860, mere preparation to commit offences is punishable as they are considered to be grave offences. Some of them are as follows:

- (i) Preparation to wage war against the Government (Section 122).
- (ii) Preparation for counterfeiting of coins or Government Stamps (Sections 233 to 235, 255 and 257).
- (iii) Possessing counterfeit coins, false weights or measurements and forged documents (Section 242, 243, 259, 266 and 474).
- (iv) Making preparation to commit dacoity (Section 399).

Answer 2A(i)

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

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

According to Section 2(1) (ta) of the Information Technology Act, 2000, “Electronic Signature” means authentication of any electronic record by a subscriber by means of the electronic technique specified in the Second Schedule and includes digital signature.

Section 3A of the Information Technology Act, 2000 deals with electronic signature. A subscriber may authenticate any electronic record by such electronic signature or electronic authentication technique which is considered reliable; and may be specified in the Second Schedule.

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

Answer 2A(ii)

Under the Rule of Strict Liability the defendant is liable even though the harm to the plaintiff occurred without intention or negligence on the defendant’s part. In other words, the defendant is held liable without fault. These cases fall under the following categories:

- (i) *Liability for Inevitable Accident* – Such liability arises in cases where damage is done by the escape of dangerous substances brought or kept by anyone upon his land.
- (ii) *Liability for Inevitable Mistake* – Such cases are where a person interferes with the property or reputation of another.
- (iii) *Vicarious Liability for Wrongs committed by others* – Responsibility in such cases is imputed by law on grounds of social policy or expediency. These case involve liability of master for the acts of his servant.

The Rule of Strict Liability was laid down in the case of *Ryland v. Fletcher* (1868) L.R. 3 H.L. 330. It has been explained that two conditions are necessary in order to apply the rule i.e.

- (i) Escape from a place of which the defendant has occupation or over which he has a control to a place which is outside his occupation or control or something likely to do mischief if it escapes; and
- (ii) Non-natural use of Land : The defendant is liable if he makes a non-natural use of land.

If either of these conditions is absent, the rule of strict liability will not apply.

Answer 2A(iii)

The principle of harmonious construction is similar to the idea of broad or purposive approach. The key to this method of Constitutional interpretation is that provisions of the Constitution should be harmoniously interpreted. Constitutional provisions should not be construed in isolation from all other parts of the Constitution, but should be construed as to harmonize with those other parts. A provision of the Constitution must be construed and considered as part of the Constitution and it should be given a meaning and an application which does not lead to conflict with other Articles and which confirms with the Constitution's general scheme. When there are two provisions in a statute, which are in apparent conflict with each other, they should be interpreted such that effect can be given to both and that construction which renders either of them inoperative and useless should not be adopted except in the last resort.

Answer 2A(iv)

According to Article 20(3) of the Constitution of India, no person accused of any offence shall be compelled to be a witness against himself. In other words, an accused cannot be compelled to state anything which goes against him. But it is to be noted that a person is entitled to this protection, only when all the three conditions are fulfilled:

1. that he must be accused of an offence;
2. that there must be a compulsion to be a witness; and
3. such compulsion should result in his giving evidence against himself.

So, if the person was not an accused when he made a statement or the statement was not made as a witness or it was made by him without compulsion and does not result as a statement against himself, then the protection available under this provision does not extend to such person or to such statement.

The 'right against self-incrimination' protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated. [*Selvi v. State of Karnataka*, AIR 2010 SC 1974].

Question 3

- (a) *Atul mortgages his house of the value of ₹50,000 to Vijay. After some time Vijay buys the house from Atul for ₹25,000. Decide the amount on which Vijay has to pay the stamp duty under Indian Stamp Act, 1889.*

- (b) *What are the restrictions on right to freedom of speech and expression under Article 19 of the Constitution of India ?*
- (c) *Discuss briefly the grounds for opposing the 'foreign award' made under the Arbitration and Conciliation Act, 1996.*
- (d) *The 'mens rea' is an essential element to constitute an offence under Indian Penal Code, 1860. Discuss briefly. (4 marks each)*

Answer 3(a)

Section 24 of the Indian Stamp Act, 1889 provides that in the case of sale of property subject to mortgage or other encumbrances, any unpaid mortgage money or money charged together with the interest, if any, due on the same shall be deemed to be part of the consideration for the sale provided that where property subject to a mortgage is transferred to the mortgagee he shall be entitled to deduct from the duty payable on the transfer the amount of any duty already paid in respect of the mortgage.

In the given problem, Atul mortgages a house of the value of Rs. 50,000/- to Vijay for Rs. 25,000/- Afterwards Vijay buys the house from Atul. A Stamp duty is payable by Vijay as per expenditure specified in Section 24 of the Act is on Rs. 50,000/- less the amount of stamp duty already paid for the mortgage.

Answer 3 (b)

Article 19(2) of the Constitution of India specifies the grounds on which the freedom of speech and expression may be restricted. It enables the Legislature to impose by law reasonable restrictions on the freedom of speech and expression under the following heads:

- Sovereignty and integrity of India
- Security of the State
- Friendly relation with foreign States
- Public Order
- Decency or morality or
- Contempt of Court
- Defamation
- Incitement to an offence

Answer 3(c)

Section 48 of the Arbitration and Conciliation Act, 1996 enumerates the conditions for enforcement of foreign awards and provides that the party, against whom the award is invoked, may use one or more of the following grounds for the purpose of opposing enforcement of a foreign award, namely:

- (i) the parties to the agreement referred to in section 44 of the Arbitration and Conciliation Act, 1996 were, under the law applicable to them, under some incapacity, or the said agreement is not valid under the law to which the parties have subjected it or, failing any indication thereon, under the law of the country where the award was made; or

- (ii) the party against whom the award is invoked was not given proper notice of the appointment of the arbitrator or of the arbitral proceedings or was otherwise unable to present his case; or
- (iii) the award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to arbitration or
- (iv) the composition of the arbitral authority or the arbitral procedure was not in accordance with the agreement of the parties, or, failing such agreement, was not in accordance with the law of the country where the arbitration took place; or
- (v) the award has not yet become binding on the parties, or has been set aside or suspended by a competent authority of the country in which or under the law of which, that award was made; or
- (vi) the subject-matter of the difference is not capable of settlement by arbitration under the law of India; or
- (vii) the enforcement of the award would be contrary to the public policy of India.

Answer 3(d)

The basic principle of criminal liability is embodied in the legal maxim '*actus non facit reum, nisi mens sit rea*'. It means '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.

Mens rea is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the '*actus reus*'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. '*Mens rea*' is judged from the external conduct of the wrong-doer by applying objective standards.

The word '*mens rea*' as such is not used in the Indian Penal Code, 1860, but the idea underlying in it is seen in the entire Code. Generally, in the Indian Penal Code, 1860, every offence is defined with precision embodying the necessary *mens rea* in express words. The *mens rea* or evil intent of the wrong-doer is indicated by the use of such words as- intentionally, voluntarily, fraudulently, dishonestly, maliciously, knowingly etc.

Question 4

- (a) What is '*documentary evidence*' under Indian Evidence Act, 1872 ? Explain briefly.
- (b) Manoj died on 3rd August, 2016 before a right to institute a suit accrued, leaving behind a minor son of the age of 15 years. Decide the time from where the period of limitation shall be calculated under Limitation Act, 1963.
- (c) Explain in brief the '*International Commercial Arbitration*' under the Arbitration and Conciliation Act, 1996.
- (d) In a civil case what remedies are available for the defendant against whom an *ex-parte* decree has been passed by the court ? (4 marks each)

Answer 4(a)

Documents produced for the inspection of the Court is called Documentary Evidence. The contents of a document must be proved either by primary or by secondary evidence.

As per Section 62 of the Indian Evidence Act, 1872, primary evidence means the document itself produced for the inspection of the Court. The rule that the best evidence must be given of which the nature of the case permits has often been regarded as expressing the great fundamental principles upon which the law of evidence depends. The general rule requiring primary evidence of producing documents is commonly said to be based on the best evidence principle and to be supported by the so called presumption that if inferior evidence is produced where better might be given, the latter would tell against the withholder.

Secondary evidence is generally in the form of compared copies, certified copies or copies made by such mechanical processes as in themselves ensure accuracy. Section 63 of the Indian Evidence Act, 1872 defines the kind of secondary evidence permitted by the Act.

Answer 4(b)

The given problem is based on Sections 16 of the Limitation Act, 1963. In case of death of a person before the right to institute a suit accrues, the period of limitation shall be computed from the time when there is a legal representative of the deceased capable of instituting such suit or making such application.

In the given case, the period of limitation shall be computed from the time when the minor son attain the age of majority and become eligible/capable of filing a suit or making such application as required under the Law.

Answer 4(c)

According to Section 2(1)(f) of the Arbitration and Conciliation Act, 1996, International Commercial Arbitration means an arbitration relating to disputes arising out of legal relationships, whether contractual or not, considered as commercial under the law in force in India and where at least one of the parties is —

- (i) an individual who is a national of, or habitually resident in, any country other than India; or
- (ii) a body corporate which is incorporated in any country other than India; or
- (iii) an association or a body of individuals whose central management and control is exercised in any country other than India; or
- (iv) the Government of a foreign country.

Answer 4(d)

In a civil case, a defendant has four remedies available if an ex-parte decree is passed against him:

- (i) He may file an appeal against the ex-parte decree under Section 96 of the Civil Procedure Code.

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

Question 5

- (a) *Discuss in brief the provisions for challenging the arbitrator under the Arbitration and Conciliation Act, 1996.* (8 marks)
- (b) *Discuss 'the procedure established by law' under Article 21 of the Constitution of India with decided case laws.* (8 marks)

Answer 5(a)

Section 12(3) of the Arbitration and Conciliation Act, 1996, states that an arbitrator may be challenged only if circumstances exist that give rise to justifiable doubts as to his independence or impartiality, or he does not possess the qualifications agreed to by the parties.

Section 12(4) of the Arbitration and Conciliation Act, 1996 provides that a party may challenge an arbitrator appointed by him, or in whose appointment he has participated, only for reason, of which he becomes aware after the appointment has been made.

Section 12(1) of the Arbitration and Conciliation Act, 1996, provides that when a person is approached in connection with his possible appointment as an arbitrator, he shall disclose in writing any circumstances -

- (a) such as the existence either direct or indirect, of any past or present relationship with or interest in any of the parties or in relation to the subject matter in dispute, whether financial, business, professional or other kind, which is likely to give rise to justifiable doubts as to his independence or impartiality; and
- (b) which are likely to affect his ability to devote sufficient time to the arbitration and in particular his ability to complete the entire arbitration within a period of twelve months.

According to Section 12(2) of the Arbitration and Conciliation Act, 1996, an arbitrator, from the time of his appointment and throughout the arbitral proceedings, shall, without delay, disclose to the parties in writing any circumstances referred to in sub section (1) unless they have already been informed of them by him.

Section 12(5) of the Arbitration and Conciliation Act, 1996 states that notwithstanding any prior agreement to the contrary, any person whose relationship, with the parties or counsel the subject matter of the dispute, falls under any of the categories specified in the Seventh Schedule of the Act shall be ineligible to be appointed as an arbitrator.

Answer 5(b)

According to Article 21 of the Constitution of India no person shall be deprived of his life or personal liberty except according to procedure established by law.

The expression 'procedure established by law' means procedure laid down by statute or procedure prescribed by the law of the State. Accordingly, first, there must be a law justifying interference with the person's life or personal liberty, and secondly, the law should be a valid law, and thirdly, the procedure laid down by the law should have been strictly followed.

The law laid down in *A.K. Gopalan v. State of Madras*, AIR 1950 SC 27, that the expression 'procedure established by law' means only the procedure enacted by a law made by the State. Subsequently, in Maneka Gandhi's case (AIR 1978 SC 49), it was laid down, that the law must now be taken to be well settled that Article 21 does not exclude Article 19 and a law prescribing a procedure for depriving a person of 'personal liberty' will have to meet the requirements of Article 21 and also of Article 19, as well as of Article 14.

The procedure must be fair, just and reasonable. It must not be arbitrary fanciful or oppressive. An interesting, follow-up of the Maneka Gandhi's case came in a series of cases.

In *Bachan Singh v. State of Punjab*, AIR 1980 S.C. 898, it was reiterated that in Article 21 the founding fathers recognised the right of the State to deprive a person of his life or personal liberty in accordance with fair, just and reasonable procedure established by valid law.

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

Question 6

- (a) Explain in brief 'Principle of Estoppel' under Indian Evidence Act, 1872.
- (b) Define 'Lease' under the Indian Stamp Act, 1889.
- (c) Explain the 'mischief rule' under the Interpretation of Statutes.
- (d) What remedies can be sought under the Law of Torts ? (4 marks each)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) Discuss the liability of Corporate body for data protection under Information Technology Act, 2000.
- (ii) Discuss in brief the composition and the powers of Central Information Commission (CIC) given under the Right to Information Act, 2005.
- (iii) Explain in brief 'Audi Alterum Partem Rule' under the Administrative law.
- (iv) Discuss the summary trial by a Magistrate under the Criminal Procedure Code, 1973. (4 marks each)

Answer 6(a)

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

The doctrine of estoppel is based on the principle that it would be most inequitable

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

Answer 6(b)

According to Section 2(16) Indian Stamp Act, 1899. “Lease” means a lease of immovable property and includes also:

- (a) a patta;
- (b) a kabuliyat or other undertaking in writing, not being a counterpart of a lease to cultivate, occupy or pay or deliver rent for, immovable property;
- (c) any instrument by which tolls of any description are let;
- (d) any writing on an application for a lease intended to signify that the application is granted.

Answer 6(c)

Mischief Rule was enunciated by the Barons of the Exchequer “that for the sure and true interpretation of all statutes in general (be they penal or beneficial, restrictive or enlarging of the Common Law) four things are to be discerned and considered. They are (1) What was the Common Law before the making of the Act; (2) What was the mischief and defect for which the Common Law did not provide; (3) What remedy the Parliament had resolved and appointed to cure the disease of the Commonwealth; and (4) The true reason of the remedy.

The consideration of the “mischief” or “object” of the enactment is common and will often provide the solution to a problem of interpretation. The rule directs that the Courts must adopt that construction which “shall suppress the mischief and advance the remedy”. But this does not mean that a construction should be adopted which ignores the plain natural meaning of the words or disregard the context and the collection in which they occur.

Answer 6(d)

Under the Law of Torts remedies can be in the form of Judicial Remedies and Extra Judicial Remedies.

Judicial Remedies

Three types of judicial remedies are available to the plaintiff in an action for tort namely: (i) Damages, (ii) Injunction, and (iii) Specific Restitution of Property.

Extra Judicial Remedies

In certain cases it is lawful to redress one’s injuries by means of self-help without recourse to the court. These remedies are:

- (a) Self Defence

- (b) Prevention of Trespass
- (c) Re-entry on Land
- (d) Re-capture of Goods
- (e) Abatement of Nuisance
- (f) Distress Damage Feasant

Answer 6A(i)

As per Section 43A of the Information Technology Act, 2000, where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

According to Section 46 of the Information Technology Act, 2000, an adjudication officer is to be appointed by the Central Government for adjudging whether any person has committed a contravention of the Act or of any rule, regulation, direction or order issued under the Act. He may impose penalty or award compensation in accordance with the provisions of the relevant section.

Answer 6A(ii)

As per Right to Information Act, 2005 the Central Information Commission is to be constituted by the Central Government through a Gazette Notification. The Central Information Commission consists of the Chief Information Commissioner and Central Information Commissioners not exceeding 10. The Chief Information Commissioner and Information Commissioners shall be persons of eminence in public life with wide knowledge and experience in law, science and technology, social service, management, journalism, mass media or administration and governance.

The Central Information Commission has a duty to receive complaints from any person—

- who has not been able to submit an information request because a PIO has not been appointed;
- who has been refused information that was requested;
- who has received no response to his/her information request within the specified time limits;
- who thinks the fees charged are unreasonable;
- who thinks information given is incomplete or false or misleading; and
- any other matter relating to obtaining information under this law.

If the Commission feels satisfied, an enquiry may be initiated and while initiating an enquiry the Commission has same powers as vested in a Civil Court.

Answer 6A(iii)

The rule of audi alteram partem is the rule of fair hearing . The principle of natural justice is audi alteram partem (hear the other side) i.e. no one should be condemned unheard. It requires that both sides should be heard before passing the order. This rule implies that a person against whom an order to his prejudice is passed should be given information as to the charges against him and should be given an opportunity to submit his explanation thereto.

Following are the ingredients of the rule of fair hearing:

- (a) Right to notice : Hearing starts with the notice by the authority concerned to the affected person.
- (b) Right to present case and evidence
- (c) Right to rebut adverse evidence
- (d) Disclosure of evidence
- (e) Reasoned decision: When the adjudicatory bodies give reasons in support of their decisions, the decisions are treated as reasoned decision.

Answer 6A(iv)

Summary trial means the "speedy disposal" of cases. By summary cases is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years.

Section 260(1) of the Criminal Procedure Code sets out the provisions for summary trials. It says:

- (a) any Chief Judicial Magistrate;
- (b) any Metropolitan Magistrate;
- (c) any Magistrate of the First class who is specially empowered in this behalf by the High Court, may, if he thinks fit, try in a summary way all or any of the following offences:
 - (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
 - (ii) theft under Section 379, Section 380 or Section 381 of the Indian Penal Code, where the value of the property stolen does not exceed Rs. 2000;
 - (iii) receiving or retaining stolen property, under Section 411 of the Indian Penal Code, where the value of such property, does not exceed Rs. 2000;
 - (iv) assisting in the concealment or disposal of stolen property, under Section 414 of the Indian Penal Code, where the value of such property does not exceed Rs. 2000;
 - (v) offences under Sections 454 and 456 of the Indian Penal Code;
 - (vi) insult with intent to provoke a breach of the peace under Section 504 of the Indian Penal Code and criminal intimidation under section 506 of the Indian Penal Code;

- (vii) abetment of any of the foregoing offences;
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (ix) any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.

Section 260(2) of the Criminal Procedure Code states that when in the course of a summary trial it appears to the Magistrate that the nature of the case is such that it is undesirable to try it summarily, the Magistrate shall recall any witnesses who may have been examined and proceed to re-hear the case in the manner provided in this Code.

Summary trial is a speedy trial by dispensing with formalities or delay in proceedings. Section 262 of the Criminal Procedure Code envisages procedure for summary trials.

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) Raman Pvt. Ltd. has only two shareholders, X and Y. All shares were fully paid-up. X sold all his shares to Y and the company carries on its business activities thereafter.*
- (b) Every company is required to disclose the details of vigil mechanism in the Board Report.*
- (c) A public company may issue secured irredeemable debentures.*
- (d) Chief Financial Officer is responsible to maintain books of account of the company. (5 marks each)*

Answer 1(a)

According to section 3A of Companies Act, 2013, if at any time the number of members of a company is reduced, in the case of a private company, below two, and the company carries on 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 two members, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

Hence in the given case of Raman Pvt. Ltd., out of the two shareholders X and Y, X sold all his shares to Y and the company carried on its business activities thereafter, pursuant to the referred section where the company carries its business for more than six months, Mr. Y shall be severally liable for the payment of the whole debts of the company contracted after those six months, and may be severally sued therefor.

Answer 1(b)

Section 177(9) of Companies Act, 2013 read with Rule 7 of Companies (Meetings of Board and its Powers) Rules, 2014 the following companies are required to establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances.

- (a) every listed company;

- (b) the Companies which accept deposits from the public;
- (c) the Companies which have borrowed money from banks and public financial institutions in excess of fifty crore rupees.

Further the sub-section (10) provides that the details of establishment of such mechanism shall be disclosed by the company on its website, if any, and in the Board's report.

Answer 1(c)

A Debenture, in which no time is fixed for the company to pay back the money, is an irredeemable debenture.

According to Rule 18(1)(a) Companies (Share Capital and Debentures) Rules, 2014 an issue of secured debenture may be made for a period of redemption not exceeding ten years from the date of issue. In case of certain companies such redemption period may exceed ten years but not exceed thirty years.

After the commencement of the Companies Act, 2013, no company either public or private can issue perpetual or irredeemable debentures.

Answer 1(d)

Section 128 of the Companies Act, 2013 deals with provisions relating to maintenance of Books of accounts by the company. According to sub section (6) of section 128 if the Managing Director, the Whole-Time Director in charge of finance, the Chief Financial Officer or any other person of a company charged by the Board with the duty of complying with the provisions of section 128, fails to comply with the provisions shall be punishable with imprisonment for a term which may extend to one year or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees or with both.

Accordingly it is the responsibility of the Chief Financial Officer along with Managing Director and whole time director in charge of finance of the company to maintain the Books of Accounts of the company.

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

Question 2

- (a) *Any expenditure incurred for the benefit of the society will be considered as expenditure in pursuance of corporate social responsibility policy. Comment with reference to the provisions of the Companies Act, 2013. (3 marks)*
- (b) *Minutes of the meetings of the company shall be preserved for a period of not less than eight years. Comment with reference to the provisions of the Companies Act, 2013. (3 marks)*
- (c) *If a company has appointed a Company Secretary then his signature is mandatory on the share certificate issued by the company. Analyse with reference to the provisions of the Companies Act, 2013. (3 marks)*
- (d) *The concept of treasury shares in United Kingdom is same as buy-back of shares in India. Examine. (3 marks)*

- (e) *Filing of financial statements in XBRL mode and by using XBRL taxonomy is mandatory to certain companies. Discuss, referring to the provisions of the Companies Act, 2013.* (3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *On 3rd December, 2018 the Registrar of Companies applied to the Regional Director for seeking sanction to file a winding up application against a company. On next day i.e. on 4th December, 2018 the Regional Director granted its sanction. Examine the validity of Regional Director's action.* (3 marks)
- (ii) *A company declared dividend on 21st November, 2018. It reports on 22nd December, 2018 that it could not pay dividend to 46 members as they are not traceable for last three years. Advise the company with regard to unpaid dividend under the provisions of the Companies Act, 2013.* (3 marks)
- (iii) *A member of an incorporated company becomes insolvent. He claimed right to vote and receive dividend from the company. Referring to the provisions of the Companies Act, 2013 discuss whether his claim is valid.* (3 marks)
- (iv) *In a case pertaining to oppression and mismanagement, the respondents pleaded that the legal heirs of a deceased member whose name is still on the register of members are not entitled to apply before Tribunal, as only member of the company can complain about oppression and mismanagement. Thus, legal heirs have no locus standi. Examine this argument in the light of decided cases.* (3 marks)
- (v) *The Board of directors of Wood Ltd. are authorised to borrow money upto ₹2 crore. The Board of directors got sanctioned a loan of ₹30 lakh from a Bank for payment of debt liabilities of the company. But the Board of directors used this amount towards payment of their travelling & tour expenses. Will Wood Ltd. be held liable for repayment of the loan ? Discuss.* (3 marks)

Answer 2(a)

Section 135 of Companies Act, 2013 provides that a company falling under specified criteria shall put in place a Corporate Social Responsibility Policy indicating the activities to be undertaken by the company in areas or subject, specified in Schedule VII of Companies Act, 2013. It is further provided that the Board of Directors of every company shall ensure that the activities as are included in Corporate Social Responsibility Policy of the company are undertaken by the company.

The expenditure incurred for the benefit of society shall be considered as expenditure in pursuance to Section 135 of Companies Act, 2013, only if the same falls under Corporate Social Responsibility Policy of the Company.

Answer 2(b)

Section 118 of Companies Act, 2013 read with Secretarial Standards on Board Meetings (SS-1) and Secretarial Standards on General Meetings (SS-2), Minutes of all Board Meetings and shareholders meetings shall be preserved permanently in physical or in electronic form with Timestamp.

Answer 2(c)

According to Section 46(3) of the Companies Act, 2013 a share certificate, issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, is the prima facie evidence of the title of the person to such shares.

Hence where the company has appointed a Company secretary then his signature is mandatory on the share certificate issued by the company.

Answer 2(d)

Section 124 read with chapter 6 of U.K Companies Act, 2006 deals with treasury shares Treasury shares are purchased by the company out of the distributable profits of the company and the company is allowed to hold such shares. The aggregate nominal value of shares held as treasury shares must not exceed 10 percent of nominal value of issued share capital.

In India the Section 68 of Companies Act, 2013 allows buy back of its own shares but does not allow a company to hold shares. Bought back shares are to be cancelled within seven days, hence in India, bought back shares cannot be held as treasury stock. In India buy back of shares cannot exceed 25 percent of total paid up capital in any financial year.

Answer 2(e)

Rule 3 of the Companies (filling of Documents and Forms in Extensive Business Reporting Language) Rules 2018 mandates the following select class of companies mentioned below to file financial statements in XBRL (eXtensible Business Reporting Language) mode and by using the XBRL taxonomy:

- (i) all companies listed with any Stock Exchange(s) in India and their Indian subsidiaries; or
- (ii) all companies having paid-up capital of Rupees five crore and above; or
- (iii) all companies having turnover of Rupees one hundred crore and above; or
- (iv) all companies who were required to file their financial statements for FY 2010-11, using XBRL mode.

However, the companies in banking, insurance, power sector, non-banking financial companies and housing finance companies are exempted from XBRL filing till further orders.

Answer 2A(i)

According to section 272(1) of Companies Act, 2013 a petition to the Tribunal for the winding up of a company can be presented by Registrar of Companies. However, Registrar shall obtain the previous sanction of the Central Government to the presentation of a petition. The section also provides that the Central Government shall not accord its sanction unless the company has been given a reasonable opportunity of making representations. The power of Central Government in this context has been delegated to Regional Directors.

In the given case Regional Director granted its sanction on the very next day of filing of the petition without giving reasonable opportunity to the company of being heard. Here the action of Regional Director is invalid.

Answer 2A(ii)

According to Section 126(1) of the Companies Act, 2013 where a dividend has been declared by a company but has not been paid or claimed within thirty days from the date of the declaration to any shareholder entitled to the payment of the dividend, the company shall, within seven days from the date of expiry of the said period of thirty days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the Unpaid Dividend Account.

In the given case the company declared dividend on 21st November, 2018, the dividend remains unpaid after 30 days of declaration i.e. 22nd December, 2018. The company is advised to transfer the remaining unpaid or unclaimed dividend to a special account called the Unpaid Dividend Account in any scheduled bank within seven days from the date of expiry of the said period of thirty days. Further any money transferred to the Unpaid Dividend Account of a company which remains unpaid or unclaimed for a period of seven years from the date of such transfer shall be transferred by the company along with interest accrued, if any, thereon to the Investor Education and Protection Fund.

Answer 2A(iii)

An insolvent may be a member of a company as long as he is on the register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver [*Morgan v. Gray*, (1953)]. Hence his claim is invalid and his dividend shall be paid to official assignee.

Answer 2A(iv)

According to section 241 of Companies Act, 2013 any member of the company may make an application to the tribunal for relief in cases of oppression or mismanagement under given circumstance. In *Worldwide Agencies (P) Ltd. v. Margaret T. Desor (1990)*, it was decided that the legal representatives of a deceased member whose name is still on the register of members are entitled to file a petition under Sections 397 and 398 of the Companies Act, 1956, for relief against oppression or mismanagement.

In the present case the abovementioned case is applicable, where the member has died and his name still exists in the register of members, the legal heirs are entitled to maintain the petition.

Answer 2A(v)

In a decided case of *V.K.R.S.T Firm v. Oriental Investment Trust Ltd.* under the authority of the company, its managing director borrowed large sums of money and misappropriated it. The company was held liable stating that where the borrowing is within the powers of the company, the lender will not be prejudiced simply because its officer have applied the loan to unauthorized activities provided the lender had no knowledge of the intended misuse.

Applying the principles of the above decided case in the given case Wood Ltd. will be held liable for repayment of the loan of Rupees 30 lakhs which well within the sanctioned limits of the company.

Question 3

- (a) Ram is a practising Chartered Accountant and partner of two audit firms namely PYMG and YE. In the immediately preceding financial year, PYMG has completed its two terms of five consecutive years in Gayatri Pvt. Ltd. having paid-up share capital of ₹60 crore. Now Gayatri Pvt. Ltd. is considering appointing YE firm as its statutory auditors. Can Gayatri Pvt. Ltd. appoint YE firm as its auditors ?

What will be your answer in the following cases ?

- (i) If appointing company is a one person company;
- (ii) If appointing company is a small company. (5 marks)
- (b) Premium Ltd. is considering buy-back of its shares without using any proceeds of shares or other specified securities. The balance sheet of Premium Ltd. shows the following status as on 31st March, 2018 :

Asset/Liabilities	Amount
Share Capital :	
1,00,000 Equity shares of ₹10 each (fully paid)	₹10,00,000
Free reserves	₹5,00,000
Unsecured debt	₹7,00,000
Secured debt	₹15,00,000

Determine the maximum quantum of buy-back of shares with the shareholders' approval as on 1st April, 2018. (5 marks)

- (c) The Board of directors of XYZ Ltd. wants to delegate all or any of their powers to any of the directors of the company or any person even not in the employment of the company for transfer of securities. Referring to the provisions of the Companies Act, 2013 advise in the matter. (5 marks)

Answer 3(a)

According to the provisions of section 139 of the Companies Act, 2013 read with Rule 5 of Companies (Audit and Auditors) Rules, 2014 the following companies are required to appoint and rotate auditors:

- all listed companies;
- all unlisted public companies having paid up share capital of rupees ten crore or more;
- all private limited companies having paid up share capital of rupees fifty crore or more;

- d. all companies having paid up share capital of below threshold limit mentioned in (a) and (b) above, but having public borrowings from financial institutions, banks or public deposits of rupees fifty crores or more.

An individual auditor who has completed his term as auditor for more than one term of five consecutive years and an audit firm who has completed the term as auditor for more than two terms of five consecutive years shall not be re-appointed as an auditor of the company.

It is further provided that as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years

Accordingly in the present case the company is required to appoint and rotate the auditors on completion of the tenure. Thus Gayatri Ltd cannot appoint YE audit firm as auditor of the company.

- a. In case the appointee company is a One Person Company, rotation of auditor does not apply and hence the appointing company can appoint YE audit firm as auditor.
- b. In case the appointee company is a Small Company, rotation of auditor does not apply and hence the appointing company can appoint YE audit firm as auditor.

Answer 3(b)

The maximum quantum of buy-back that Premium Ltd. can make as on 1st April, 2018, in pursuance to section 68 of Companies Act, 2013 is 25% of aggregate of paid-up capital and free reserves of the company. Further provided that the reference to twenty-five per cent shall be construed with respect to its total paid-up equity capital in that financial year and the ratio of the aggregate of secured and unsecured debts owed by the company after buy-back should not be more than twice the paid-up capital and its free reserves.

Accordingly, in the present case we have,

Free Reserves - ₹5,00,000

Securities premium Account – Nil

Proceeds of other specified securities- Nil

Total Debt i.e. (7,00,000+ 15,00,000) - ₹22,00,000

Sum of paid up Equity capital + free reserves - ₹15,00,000

Hence, the maximum fund available for buy-back (in absence of securities premium account and proceeds of issue of any other specified securities) is ₹5,00,000

Amount that must be maintained as sum total of free reserves and paid up equity capital is half of total debt i.e. half of ₹22,00,000 i.e. ₹11,00,000

Buy back can be made upto 25% of Paid up capital and free reserves i.e. ₹10,00,000 + ₹5,00,000 i.e. ₹15,00,000 *25% = ₹3,75,000.

Further debt equity ratio is

Debt:

Secured and unsecured debt= 15,00,000+ 7,00,000= 22,00,000

Capital after Buy Back:

Total Capital= 10,00,000-3,75,000= 6,25,000

Free reserve= 5,00,000-3,75,000= 1,25,000

Total Capital+ free reserve= 6,25,000+ 1,25,000=7,50,000

Debt equity ratio= 22,00,000/7,50,000= 2.93

The ratio being more than twice the paid-up capital and its free reserves the maximum quantum of ₹3,75,000 is not advisable.

As stated above post buyback debt equity ratio must not be more than 2. Accordingly, post buyback total capital and free reserve must be half of debts i.e (15,00,000 + 7,00,000) /2 = 11,00,000. The maximum buyback of equity may be {(10,00,000 +5,00,000) -11,00,000}/2 = ₹2,00,000.

Therefore, in the given case, maximum possible buyback is of ₹2,00,000 amounting to 20,000 equity shares of ₹10 each.

Answer 3(c)

There is no restriction on delegation of powers of the board of directors of the company except as provided in first proviso to section 179(3) of Companies Act, 2013. It provides that The Board may delegate power to borrow money, to invest the fund of the company and to grant loan or give guarantee or provide security in respect of loans, by way of resolution to any committee of directors, the managing director, manager or any other principal officer, or principal officer of a branch of the company.

Apart from this the board of directors may delegate all or any of its powers to any person including a person not in employment of the company if the Articles of Association so provides.

Accordingly, in present case the Board of Directors of XYZ Ltd. may delegate the powers relating to transfer of securities only when the Articles of association allows delegation of the powers to any of the directors of the company or any person not in employment of the company.

PART II

Question 4

- (a) Anil, a shareholder holding 9% equity shares of the company, who is not holding any directorship wants to stand for directorship in Pritam Ltd. in its next annual general meeting. State the procedure for appointment of Anil as per the provisions of the Companies Act, 2013. (5 marks)
- (b) Articles of Reality Ltd. provides that directors participating through audio-visual means in its Board meetings shall always be counted for quorum. Examine the validity of this provision with reference to the Companies Act, 2013. (5 marks)

(c) *Logical Solutions Ltd., a listed company, is having a Corporate Social Responsibility (CSR) committee constituted with the following members :*

Rohan — Whole-time director & Chairman of CSR committee and Board

Sohan — Non-executive director

Mohan — Independent director

Can company constitute a Nomination and Remuneration committee consisting of same three members of CSR committee with same composition ? Discuss. (5 marks)

(d) *Draft an appropriate resolution to authorise the Board to borrow for company's business upto a limit beyond paid-up share capital and free reserves. Assume facts and figures. (5 marks)*

Answer 4(a)

In case Mr. Anil not a retiring director in the company is desirous of standing for directorship of the Pritam Ltd., in pursuance of section 160 of the Companies Act, 2013 the following procedure needs to be followed:

1. The proposed director or some member intending to propose him as a director, has, not less than fourteen days before the general 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, along with the deposit of one lakh rupees 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 per cent. of total valid votes cast either on show of hands or on poll on such resolution.
2. The company shall, at least seven days before the general meeting, inform its members of the candidature of a person for the office of a director or the intention of a member to propose such person as a candidate for that office-
 - a. by serving individual notices, on the members through electronic mode to such members who have provided their email addresses to the company for communication purposes, and in writing to all other members; and
 - b. by placing notice of such candidature or intention on the website of the company, if any; or
 - c. Publishing the same in vernacular newspaper seven days before the meeting
3. The candidate may obtain Director Identification Number (DIN) and give his consent in DIR-2.
4. If the candidate is elected the company shall file DIR-12.

Answer 4(b)

According to section 173 of Companies Act, 2013 read with Rule 3 and 4 of Companies (Meetings of Board and its powers) Rules, 2014, a director participating in a

meeting through video conferencing or other audio visual means shall be counted for the purpose of quorum, unless he is to be excluded for any items of business under Rule 4.

According to Rule 4 the following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

- (i) the approval of the Annual Financial Statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement , if any, to be approved by the Board under sub section (1) of section 134 of Companies Act, 2013; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Provided that in case where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means.

Answer 4(c)

According to section 178 of Companies Act, 2013 The Board of Directors of every listed public company shall constitute the Nomination and Remuneration Committee consisting of three or more non-executive directors out of which not less than one-half shall be independent director. The chairperson of the company (whether executive or non-executive) may be appointed as a member of the Nomination and Remuneration Committee but shall not chair such Committee.

In present case the CSR Committee cannot serve as Nomination and Remuneration committee as the composition is different.

Answer 4(d)

Special Business

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

“RESOLVED THAT pursuant to the provisions of Section 180(3)(c) and other applicable provisions, if any, of the Companies Act, 2013, and subject to such approval as may be necessary, consent of the company be and is hereby accorded to the Board of directors of the company for borrowing, from time to time, such sum of money as may not exceed Rs. (Rupees), for the purpose of the business of the company, notwithstanding that the moneys to be borrowed together with the monies already borrowed (apart from temporary loans obtained from the company's bankers in the ordinary course of business) will exceed the aggregate of the paid-up capital of the company and its free reserves, that is to say, the reserves not set apart for any specific purpose, provided that the total amount upto which the monies may be borrowed by the Board of directors of the company shall not exceed the aggregate of the paid-up capital and free reserves of the company by more than the sum of ‘..... (Rupees)’ at any one time.

Resolved further that the Board be and is hereby authorized to do all the acts, deed and things as it may in its absolute discretion deem necessary and appropriate to give effect to the above resolution”.

Explanatory Statement

The shareholders of the company had, at the extraordinary general meeting of the company held on, passed a special resolution under Section 180 (3) (c) for borrowing the maximum amount of Rupees, upto which the Board of directors of the company could borrow funds from financial institutions and banks in excess of the company’s paid-up capital and free reserves. However, in view of the increased business activities of the company, the said ceiling of Rupees (.....) has been found to be inadequate. Your directors are of the opinion that the ceiling of borrowings by the Board be raised to rupees _____.

Hence the proposed resolution for consideration and approval by the members of the company. None of the directors is concerned or interested in the proposed resolution.

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

Question 5

- (a) *Kirti Ltd. has total paid-up share capital of ₹23 crore and its annual general meeting is scheduled on 27th December, 2018. Ritik is holding paid-up share capital having nominal value of ₹3 crore and Sonu is holding paid-up share capital having nominal value of ₹2.4 crore. On 24th December, 2018 both Ritik and Sonu wanted to issue proxy in favour of Rohit to attend meeting on their behalf. Rohit is not a member of any company. Decide under the provisions of the Companies Act, 2013 whether both Ritik and Sonu can appoint Rohit as their proxy. (4 marks)*
- (b) *In Pallavi Chemicals Ltd. resolution for issue of bonus shares in the general meeting was put to remote e-voting and requisite majority has approved but quorum is not present at the general meeting. What would be the implications ? (4 marks)*
- (c) *Assume yourself as Company Secretary in practice and secretarial auditor of Rama Ltd. which is having its annual general meeting scheduled on 17th August, 2018 at its registered office in Mumbai. On 16th August, 2018 you have a business meeting fixed at Kochi and return flight to Mumbai in the evening of 16th August, 2018. But due to bad weather conditions all flights departing from Kochi are declared cancelled. Discuss the alternatives available to you with regard to the annual general meeting of Rama Ltd. (4 marks)*
- (d) *A Board meeting of a listed public company was called at shorter notice to transact an urgent business. None of the Independent directors could attend the meeting. Examine the validity of resolution(s) passed at the meeting referring to the provisions of the Companies Act, 2013. (4 marks)*
- (e) *Fashion Ltd. holds a general meeting for passing a special resolution regarding appointment of Shyamlal 72 years as Managing Director of the company. Out of the 50 members present in the meeting 25 voted in favour, 15 against and 10*

members did not cast their vote. Can company appoint Shyamal as Managing Director of the company ? Discuss. (4 marks)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) In a general meeting, a motion was put for removal of small shareholders' director. A small shareholder contended that only small shareholders are entitled to vote on this motion as it is related to removal of small shareholders' director and motion should be passed as special resolution. Is the argument valid ? Analyse with reference to the provisions of the Companies Act, 2013. (4 marks)
- (ii) On 4th September, 2018 Varun was appointed as Managing Director of Astha Ltd. by the Board of directors subject to the approval of the members at the next general meeting. On 10th September, 2018 Varun in the capacity of managing director executed an agreement with Shabeer to purchase some machines. On 3rd October, 2018 members in the general meeting did not approve the appointment of Varun. Later on company refuses to accept delivery of machines from Shabeer on the ground that agreement was executed by Varun whose appointment is not approved by the members. Is refusal of company valid on the said ground ? Examine. (4 marks)
- (iii) SRM Ltd. has paid ₹15 lakh as an insurance premium on behalf of its Company Secretary and Managing Director for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company. Can the company pay such insurance premium ? Discuss referring to the provisions of the Companies Act, 2013. (4 marks)
- (iv) Director, Ravi, was appointed on 1st July, 2018. On 2nd July, 2018 he wrote to Managing Director of the company to inspect the minutes of the board meeting held on 1st August, 2017. The Managing Director refused as he was not a director at that time. Ravi attended a meeting held on 1st September, 2018 and resigned on 3rd October, 2018. On 4th October, 2018 he wrote to the Managing Director to send him a copy of the signed minutes of the meeting held on 1st September, 2018. Again, the Managing Director refused. Are the actions of Managing Director valid under Companies Act, 2013/Secretarial Standards ? Comment. (4 marks)
- (v) On 5th January, 2018 in a general meeting a motion for removal of a director was put to vote. The Chairman declared the motion passed as ordinary resolution by show of hands. In the next general meeting held on 28th September, 2018, a member questioned the validity of the said resolution which was declared as passed by the Chairman alleging that majority votes were against the motion and asked the chairman to disclose number of votes cast in favour of and against the said resolution. Referring to the provisions of the Companies Act, 2013 discuss if the demand of member is tenable. (4 marks)

Answer 5(a)

Section 105 of the Companies Act, 2013 provides that a member, who is entitled to attend and vote, can appoint another person as a proxy to attend and vote at the meeting

on his behalf. Proxy need not be a Member. A Proxy can act on behalf of Members not exceeding fifty and holding in the aggregate not more than ten percent of the total share capital of the company carrying Voting Rights.

However, a Member holding more than ten percent of the total share capital of the company carrying Voting Rights may appoint a single person as Proxy for his entire shareholding and such person shall not act as a Proxy for another person or shareholder.

Ritik holding in the given case is 13.0% and Sonu is 10.4%, since the holding of both severally exceeds 10% of total share capital of the company same person cannot be appointed as Proxy for both Ritik and Sonu, he can be appointed as proxy for either of the two.

Answer 5(b)

The general meeting can only be held valid if the quorum is present at the meeting. The resolution that was put to remote e-voting and has obtained majority votes shall be taken up at adjourned meeting. Meeting without requisite quorum is invalid.

Answer 5(c)

According to section 146 of the Companies Act, 2013 the auditor shall, unless otherwise exempted by the company, attend either by himself or through his authorised representative, who shall also be qualified to be an auditor, any general meeting and shall have right to be heard at such meeting on any part of the business which concerns him as the auditor.

In the given circumstance provision of section 146 is applicable and authorized representative may be sent to attend the general meeting of the company.

Answer 5(d)

According to section 173(3) of the Companies Act, 2013 a meeting of the Board may be called at shorter notice to transact urgent business subject to the condition that at least one independent director, if any, shall be present at the meeting. In case of absence of independent directors from such a meeting of the Board, decisions taken at such a meeting shall be circulated to all the directors and shall be final only on ratification thereof by at least one independent director, if any.

Accordingly all decisions taken at the meeting needs to be circulated to all the directors and shall be final only on ratification of atleast one independent director.

Answer 5(e)

According to Section 196(3) of the Companies Act, 2013 no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of twenty-one years or has attained the age of seventy years. Further appointment of a person who has attained the age of seventy years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person

In case where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is

satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

A person who has attained the age of seventy may be appointed as the managing director of the company after passing special resolution. In the present case the special resolution was not passed.

Mr. Shyamal may be appointed as the Managing Director since the votes cast in favour exceed the vote cast against the resolution and Central Government approval may be obtained by the Board of Directors of the Company to appoint him as managing director. If the Central Government is satisfied the approval may be granted.

Answer 5A(i)

A small shareholder director can be removed by in pursuance to section 169 of Companies Act, 2013 by passing an ordinary resolution in a general meeting. All the shareholders are eligible to vote irrespective of small shareholder or otherwise. The argument hence is not valid.

Answer 5A(ii)

According to section 196 (5) of Companies Act, 2013 where an appointment of a managing director, whole-time director or manager is not approved by the company at a general meeting, any act done by him before such approval shall not be deemed to be invalid.

In accordance with above stated provision in the present case the contention of refusing to accept delivery of goods on the grounds that the appointment of managing director was not approved at the general meeting and agreement was signed prior to general meeting and after appointment by the Board does not stand valid.

Answer 5A(iii)

According to section 197(13) of Companies Act, 2013 where any insurance is taken by a company on behalf of its managing director, whole-time director, manager, Chief Executive Officer, Chief Financial Officer or Company Secretary for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, the premium paid on such insurance shall not be treated as part of the remuneration payable to any such personnel. Further it has been provided that if such person is proved to be guilty, the premium paid on such insurance shall be treated as part of the remuneration.

In accordance with above stated provision in the present case the company can pay the insurance premium of Rs. 15.00 lacs for company secretary and managing director for indemnifying any of them against any liability in respect of any negligence, default, misfeasance, breach of duty or breach of trust for which they may be guilty in relation to the company, and such shall not be treated as remuneration.

Answer 5A(iv)

According para 7.7.1. of Secretarial Standard on Board Meeting a Director is entitled to inspect the Minutes of a Meeting held before the period of his Directorship. Further

para 7.7.2 provides that a Director is entitled to receive a copy of the signed Minutes of a Meeting held during the period of his Directorship, even if he ceases to be a Director.

Hence the actions of managing director are not valid. Claim of Mr. Ravi for inspecting the Minutes of a Meeting held before the period of his Directorship and for receiving a copy of the signed Minutes of a Meeting held during the period of his Directorship is valid.

Answer 5A(v)

According to section 107 of Companies Act, 2013 at any general meeting, a resolution put to the vote of the meeting shall, unless a poll is demanded under section 109 or the voting is carried out electronically, be decided on a show of hands. A declaration by the Chairman of the meeting of the passing of a resolution or otherwise by show of hands and an entry to that effect in the books containing the minutes of the meeting of the company shall be conclusive evidence of the fact of passing of such resolution or otherwise.

Hence the demand of members is not tenable.

PART III

Question 6

- (a) *Shalini, practising Company Secretary, has disclosed information acquired in the course of her professional engagement to a person other than the client, without the consent of such client. Can she do so ? Can she retain the digital signature of her client for uploading e-forms on MCA portal ? (5 marks)*
- (b) *Rakesh, practising Company Secretary, has accepted the position of Secretarial Auditor previously held by another Company Secretary in practice by communicating through SMS. He also used designation 'Company Law Consultant' in his visiting cards. Examine with reference to the relevant provisions of Company Secretaries Act, 1980 and/or Companies Act, 2013 whether these are in order. (5 marks)*

Answer 6(a)

Clause 1 of Part I of Second Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he discloses information acquired in the course of his professional engagement to any person other than the client so engaging him, without the consent of such client, or otherwise than as required by any law for the time being in force. This clause indicates the position of trust and confidence reposed by the client in a Company Secretary in practice. Thus Shalini is guilty under the above mentioned clause.

It is suggested that Shalini may retain digital signature of client after obtaining a formal letter signed by his client authorising PCS to make use of his Digital signature.

Answer 6(b)

Clause 8 of Part I of First Schedule to the Company Secretaries Act, 1980 provides that that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he accepts the position of a Company Secretary in Practice previously

held by another Company Secretary in Practice without first communicating with him in writing.

The primary requirement under this clause is of prior communication with the previous incumbent. This is intended for reasons of professional courtesy.

It would be necessary that the communication, in order to be effective, shall be by a registered letter or by hand with an acknowledgement so that there is positive evidence of the communication having been complete. With the advent of use of the technology, communication by any electronic medium viz., SMS, Whats App and such other Messenger apps is permitted, provided the sender (the PCS taking up the assignment) is able to establish that the message is delivered to the recipient before he or she takes up the assignment.

Hence Rakesh is not guilty of professional misconduct in this case.

Clause 8 of Part I of First Schedule to the Company Secretaries Act, 1980 provides that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he uses any designation or expressions other than Company Secretary on professional documents, visiting cards, letterheads or signboards, unless it is a degree of a University established by law in India or recognised by the Central Government or a title indicating membership of the Institute of Company Secretaries of India or of any other institution that has been recognised by the Central Government or may be recognised by the Council.

Designations like Company Law Consultant, Income Tax Consultant, Corporate Adviser, Investment Adviser, Management Consultant etc. are prohibited.

Hence Rakesh is guilty of professional misconduct in this case.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

- (a) Amar is a young entrepreneur willing to establish an incubator set up in the space of IT, software development, cloud computing or hardware/software maintenance. Advise Amar regarding the benefits available to entrepreneurs in establishing start-ups.
- (b) Ehsan along with his nine (9) friends desires to incorporate a Company, not for profit, for the protection of environment, as permissible under the Companies Act, 2013. Advise on the procedural aspects for the incorporation and formation of such Company.
- (c) 43% of the paid up share capital of V4C Ltd. is held by the Central Government and 8% is held by the Life Insurance Corporation of India and Unit Trust of India (Public Institutions). Analyze the definition of 'Government Company' under the provisions of the Companies Act, 2013 and decide whether V4C Ltd. is a Government Company.
- (d) As a practicing Company Secretary, advise your client regarding the annual compliance requirements to be followed by LLP. (5 marks each)

Answer 1(a)

It is not an exaggeration to say that Government provides numerous benefits to start-ups in order to promote economic growth. Some of the key benefits offered are as under:

1. *Simple process* : Anyone interested in setting up a start-up can fill up a simple form on website or mobile app launched by Government of India and upload certain documents online.
2. *Reduction in cost* : The government also provides lists of facilitators of patents and trademarks. They provide high quality intellectual property rights services including fast examination of patents at lower fees. The government will bear all the facilitator fees and the startups have to bear only statutory fees. Consequently, start-ups may avail around 80% reduction in cost of filing the patents.
3. *Easy access to funds* : Rs 10000 crore fund (generally called as Fund of Funds)

is set up by government to provide funds to the startups as venture capital. The government is also giving guarantee to the lenders to encourage banks and other financial institutions for providing venture capital. Rs 1,285 crore has been committed towards startups since the launch of the Rs 10,000-crore fund in January 2016. It is also projected that “When the fund of funds completes its fund-raising, the corpus will touch almost Rs 14,000 crore.

4. *Tax holiday for 3 years* : Startups will be exempted from income tax for 3 years, provided they get a certification from Inter Ministerial Board (IMB).
5. *Apply for tenders* : Startups can apply for government tenders. They are exempted from the "prior experience / turnover" criteria applicable for normal companies while responding to government tenders.
6. *R&D facilities* : Around Seven new research parks are in schedule to set up to provide facilities to startups in the R&D sector.
7. *No time consuming compliances* : Various compliances have been simplified for startups to save time and money. Startups shall be allowed to self-certify compliance with 9 labour and 3 environmental laws.
8. *Tax saving for investors* : People investing their capital gains in the venture funds set up by government will get exemption from capital gains. This will help startups to attract more investors. There are certain other tax exemptions available for start-ups.
9. *Choose your investor* : The startups will have an option to choose between the Venture Capital, giving them the liberty to choose their investors.
10. *Easy exit* : In case of exit, a start-up can close its business within 90 days from the date of application of winding up.
11. *Meet other entrepreneurs* : Government has proposed to hold 2 startup fests annually both nationally and internationally to enable the various stakeholders of a startup to interact and share business ideas. This will provide huge networking opportunities

Therefore, Amar is advised to establish an incubator set up in the space of IT, software development, cloud computing or hardware/software maintenance in order to get the maximum benefits.

Answer 1(b)

A Company, not for profit, with the object of protection of environment, permissible to be set up as per Section 8 of the Companies Act, 2013 is required to follow the following steps for its incorporation.

Before, initiation for incorporation of Section 8 Company, all the proposed directors of the proposed company should obtain a valid DIN (Director Identification Number). If not, then steps should be taken for applying for DIN and obtain the same.

Availing of name

- (a) Name availability shall be checked and application to Registrar of Companies ("ROC") for reservation of name in form "RUN" (Reserve Unique Number) shall

be made.

- (b) After obtaining name, an application seeking license for the formation of proposed Company 8 is to be made in e-form INC 12 to the ROC.
- (c) The ROC may, on being satisfied of the facts of the case, issue a license to the Ehsan (or his friends) and allow them to be registered as a limited liability company under Section 8 without addition to its name of the word "Limited" or as the case may be, the words "Private Limited".
- (d) After obtaining the license number, applicant can proceed further to incorporate a company by filing e form SPICe along with required attachments.

If concerned Registrar of Companies ("RoC") is satisfied that all the requirements of the Companies Act, 2013 have been complied with, RoC will register the association of person as a company u/s 8 (1) and will issue a certificate of incorporation carrying a unique Company Identification Number ("CIN").

It may be noted that in addition to all other documents and information required for incorporation of Companies, Memorandum of Association ("MOA") shall be in the form INC-13 in case of incorporation of Section 8. The MOA and/ or Articles of Association shall inter alia provide the following:

- i. The object of the proposed company must be the promotion of commerce, art science, sports, education, social welfare, religion, charity, and protection of environment or any such other object. [proposed object is already mentioned in Question itself, therefore, it is not required here]
- ii. The proposed company shall intend to apply its profits, if any or other income in promoting its objects and
- iii. Intend to prohibit the payment of dividend to its members.

In this case, Ehsan and his Friends can incorporate a Company registered u/s 8 (1) as above and will able to enjoy all the privileges and be subject to all the obligations of a limited company under the Companies Act, 2013.

Answer 1(c)

No, V4C is not a Government Company.

According to Section 2 (45) of the Companies Act, 2013, a Government Company means any company in which not less than 51% of the paid up share capital is held by—

- a. The Central Government (CG) or
- b. Any State Government or Governments (SG) or
- c. Partly by the Central Government and partly by one or more State Governments

Thus, in determining whether a company is a Government Company or not, the percentage of its paid up share capital held by CG and/ or SG shall be considered.

In the given problem, 43% of the paid up capital of V4C Ltd is held by CG, however, 8% shares are held by Life insurance Corporation of India and the Unit Trust of India, which are public authorities and not Central Government or State Government. In view

of the definition of the Government Company given u/s 2(45) of the Companies Act, 2013, the shares held by the Public institutions viz Life insurance Corporation of India and the Unit Trust of India shall not to be taken into consideration for identifying a Company as Government Company.

As CG holds 43% in V4C Ltd, therefore, it is not a Government Company.

Answer 1(d)

A limited liability partnership (LLP) is a partnership in which some or all partners (depending on the jurisdiction) have limited liabilities. It can exhibit elements of partnerships and corporations. In an LLP, each partner is not responsible or liable for another partner's misconduct or negligence. These are the following compliances which are required to be made by LLPs:

- a. Filing of Annual Return in Form 11 :** This form is a summary of the management affairs of the LLP, such as number of partners and their names. Form 11 needs to be filed within 60 days of the closure of the financial year. Hence, this annual return needs to be filed on or before 30th May every year by the LLP.

In case the annual turnover of the LLP crosses Rs 5 crore or the capital contribution from partners exceed more than Rs 50 lakh, the Annual Return should be accompanied by a certificate from the Practising Company Secretary.

Filing of Statement of Accounts of Financial Statements in Form 8 : LLPs are required to maintain their books of accounts in Double Entry System and have to prepare statement of solvency every year ending on 31st March. Form 8 needs to be filed on or before 30th October of every year.

- b. Filing of Income Tax Returns :** Every LLP is required to close financial year on 31st March every year and is also required to file returns with the Income Tax Department.

LLPs whose annual turnover exceeds Rs 40 lakh or whose capital contribution exceeds Rs 25 lakhs are required to get their accounts audited by a qualified Chartered Accountant mandatorily.

Last date for filing income tax return for LLPs requiring audit — 30th September of the Assessment Year ("AY"). LLPs are required to furnish report in Form 3CEB u/s 92 E of Income Tax — 30th November of the AY.

In any other case — 31st July of the AY.

Penalties:

As per LLP Act 2008, if there is any delay in filing Form 8 and Form 11 of LLP, then it will attract penalty of Rs 100 per day of default with no ceiling.

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

Question 2

- (a) *Partnership can be formed according to the nature of the agreement amongst partners. Explain.*
- (b) *Payment Banks is a new model of banks conceptualized by Reserve Bank of India. Elucidate.*

- (c) 'Start up India' initiative has been started by Government of India for creating conducive environment for start-ups in India. Explain the pre-conditions for determining an entity as a start up venture.
- (d) Explain the Doctrine of 'ALTER EGO' with suitable case law.
- (e) Global Education Network, Pakistan based Education Company wants to set up equity based joint venture in India. As a professional in India, Company seeks your advice about various restrictions under Foreign Direct Investment (FDI) of Government of India that a foreign entity may face. Advice.
- (4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Ankur has passed out MBA from a premier institution. He wants to become an entrepreneur but he is confused in choosing the form of ownership. Advise Ankur on the aspects which he should consider before deciding the form of ownership. (4 marks)
- (ii) State any six powers which are prudent to be included in the object clause of the Memorandum of Association of a Company as general and ancillary objects. (4 marks)
- (iii) Global Infra Ltd., an Indian entity, is in the process of drafting a joint venture agreement for forming joint venture (JV) with a foreign company based out of Singapore to expand its business outside India. Advise on the key issues which parties to the agreement should consider while drafting the JV agreement. (4 marks)
- (iv) Pratham Food Trading Pvt. Ltd. has a paid up capital of ₹50 lakh and turnover of ₹1.20 crore in the last financial year 2017-18. The company has filed its annual return for the relevant financial year signed by only one director of the company. With reference to the provisions of the Companies Act, 2013, analytically comment whether the act of the company is in order? (4 marks)
- (v) Easy Finance Ltd. is willing to enter into banking business via "Payment Bank". The Board of directors of the company seeks your advice with respect to the required criteria to be fulfilled by the company with respect to the following :
- (i) Application for license
- (ii) Minimum capital requirement
- (iii) Voting rights of shareholders
- (iv) Services that can be undertaken by the bank. (4 marks)

Answer 2(a)

According to the nature of agreement among partners, there can be three types of partnership as follows:

- i. *Partnership at will* : Such as partnership exists on the will of the partners i.e., it

can be bought to an end whenever any partner gives notice of his intention to do so.

- ii. *Particular partnership* : A particular partnership is formed for undertaking a particular venture. It comes to an end automatically with the completion of the venture.
- iii. *Partnership for a fixed duration* : Such partnership is for a fixed period of time.

Answer 2(b)

Payment Banks is a new model of banks conceptualized by Reserve Bank of India ("RBI"). With payment banks, RBI seeks to increase the penetration level of financial services to the remote areas of the country.

Payment Banks are regulated by the Reserve Bank of India. It released Guidelines for Licensing of Payment Banks on November 27, 2014 and Operating Guidelines for Payment Banks on October 6, 2016. Payment banks are to be registered as public limited companies under the Companies Act and an application has to be filed with Reserve Bank of India in Form III under Section 22 of the Banking Regulation Act, 1949 for a licence to commence banking business by a company incorporated in India and desiring to commence banking business

These banks can accept a restricted deposit, which is currently limited to Rs 1 lakh per customer and may be increased further. They can pay interest on these deposits just like savings bank account. Both current account and savings accounts can be operated by such banks. Payment banks can issue services like ATM cards, Debit cards, net banking, third party transfers and mobile banking and offer remittances services. These banks cannot grant loans or issue credit cards.

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

These bank accounts can be opened instantly through their respective mobile apps just by providing details like Aadhar number with KYC verification.

Payment Banks are regulated by the Reserve Bank of India.

Answer 2(c)

A start up company is an entrepreneurial venture which is typically an emerging, fast growing business that aims to solve an unmet need by developing a viable business model around an innovative product, service, processor a platform. A startup is usually a company designed to effectively develop and validate a scalable business model.

The Government of India has announced "Startup India" initiative for creating a conducive environment for startups in India. Various ministries of the Government of India have initiated a number of activities for the purpose.

To bring uniformity in the identified enterprises, an entity shall be considered as a "startup"

- a. Upto 5 years from the date of its incorporation / registration

- b. If its turnover for any of the financial years has not exceeded Rs 25 crore and
- c. It is working towards innovation, development, deployment or commercialization of new products, processes or services driven by technology or intellectual property.

Any such entity formed by splitting up or reconstruction of a business already in existence shall not be considered as "startup".

Answer 2(d)

Doctrine of ALTER EGO

It is used by the courts to ignore the status of shareholders, officers and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

In *Lennards Carrying Co. Ltd v. Asiatic Petroleum Co, Ltd*. [1915] AC 705, Viscount Haldane propounded the "alter ego" theory and distinguished it from vicarious liability. The House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.

Answer 2(e)

Restriction under FDI Policy of Government of India

Any non-resident entity can set up an equity based joint venture in India. However, some entities face restrictions under FDI Policy of Government of India. The restrictions are as follows:

1. Citizen or entity of Pakistan can invest only after approval of Government of India. They cannot invest in defence, space, atomic energy and sectors prohibited for foreign investment.
2. Citizen or entity of Bangladesh can invest only after approval of Government of India. However, there are no prohibited areas as in the case of entities from Pakistan.
3. NRI residents in Nepal and Bhutan as well as citizens of Nepal and Bhutan can invest on repatriation basis subject to investment coming in free foreign exchange (USD or EURO) through normal banking channels.
4. A Foreign Institutional Investor (FII) can invest only under Portfolio Investment Scheme which limits the individual holding of an FII to 10% of the capital of the company and the aggregate limit for FII investment to 24% of the capital of the company. This aggregate limit to 24% can be increased to the sectoral cap / statutory ceiling, as applicable, by the Indian Company concerned through a resolution by its Board of directors followed by a special resolution to that effect by its General Body and subject to prior intimation to RBI. The aggregate FII investment in the FDI and portfolio investment scheme should be within the above caps.

Therefore, Global Education cannot invest in defence, space, atomic energy and sectors prohibited in India. However, it can invest in other sectors i.e. in above case, it is education sector but with prior approval of central government.

Answer 2A(i)

One of the first decisions that is faced by an entrepreneur is how the business should be structured. All businesses must adopt some legal configuration that defines the rights and liabilities of participants in the business's ownership, control, personal liability, life span and financial structure. This decision will have long term implications, so he has to select the form of ownership that is right for him. In making a choice, he (in our case, Ankur) should take into account the followings:

- His vision regarding the size and nature of business;
- The level of control he wishes to have;
- The level of structure", he is willing to deal with;
- The business's vulnerability to litigation;
- Tax implications of the different organizational structures; Expected profit or loss of the business;
- Whether or not, he will need to re-invest earnings into the business; and His need for access to cash out of the business for himself.

Answer 2A(ii)

The following powers have been held not to be implied and it is, therefore, prudent to include them expressly in the object clauses of Memorandum of Association of a Company:

1. Acquiring any business similar to the company's own business. [*Ernest v, nicholls, (1857) 6 HLC 40*]
2. Entering into an agreement with other persons or companies for carrying on business in partnership or for sharing profit, joint venture or other arrangements. Very clear powers are necessary to justify such transactions [*Re European Society Arbitration Act (1878) 8 Ch 679*]
3. Taking shares in other companies having similar objects. [*Re Banned's Banking Co., ex parte and The Contract Corporation (1867) 3 Ch. App. 105. Re William Thomas & Co, Ltd. (1915) 1 Ch 325*]
4. Taking shares of other companies where such investment authorizes the doing indirectly that which will not be *intra virus* if done directly;
5. Promoting other companies or helping them financially [*Jointly Stock Discount Co. v. Brown, (1869) LR 8 EQ 381*]
6. A power to sell and dispose of the whole of a company's undertaking;
7. A power to use funds for political purposes;
8. A power to give gifts and make donations or contributions for charities not relating to the objects stated in the memorandum;

9. Acting as a surety or as a guarantor.

Answer 2A(iii)

Some of the key issues which must be kept in mind while drafting and finalizing the JV agreement are as follows which are indicative and not exhaustive:

- i. The business of the new company / LLP.
- ii. Manner and extent to which resources (financial, manpower, technology etc) will be brought in.
- iii. Provisions relating to allotment and transfer of shares.
- iv. Constitution of the Board of directors / designated partners.
- v. Manner in which decision making will take place (majority vote or consensus?).
- vi. Decision regarding the Chairman and Managing Director of the entity, their rights, duties and responsibilities.
- vii. Persons responsible for managing finances, marketing, production etc.
- viii. Dividend distribution policy.
- ix. Term of office of the nominated directors, the manner of their appointment and changes among them.
- x. Valuation of the company at the time of separation.
- xi. Dispute resolution mechanism.

Therefore, Global Infra Ltd, has to keep in mind the above points while drafting the Joint Venture Agreement.

Answer 2A(iv)

Sub section (85) of Section 2 of the Companies Act, 2013 defines "Small Company" as under — "Small Company" means a Company, other than a public company —

- i. Paid up capital of which does not exceed fifty lakh 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 two 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.

By applying the above provision to the given problem, Pratham Food Trading Private Ltd would be a "Small Company" since it has paid up capital of Rs 50 lakh and turnover of Rs 1.20 crore in the last financial year 2017-18 which is within the limit prescribed under Section 2(85) of the Companies Act, 2013.

As per Section 92 of the Companies Act, 2013, the annual return of a private company classified as "Small Company", can be signed by a Company Secretary or by a Director of that private limited company as permitted by proviso to Section 92(1) of the Act.

In view of the above, in the given case, Company has filed its annual return for the relevant financial year signed only by one director of the company. Hence, the act of the company is in order.

Answer 2A(v)

Easy Finance Ltd. may enter into banking business via payment bank and criteria for the same has been discussed below:-

Compliances for a "Payment Bank"

- i. *Application for license* : Easy Finance Ltd desiring to commence banking business is required to file an application with Reserve Bank of India in Form III under section 22 of the Banking Regulation Act, 1949 for a license to commence banking business.
- ii. *Minimum capital requirement* : Minimum capital requirement is Rs 100 crore. For the first five years, the stake of the promoter should remain at least 40%.
- iii. *Voting rights of shareholders* : 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 RBI. Any acquisition of more than 5% will require approval from RBI.
- iv. *Services that can be undertaken by bank* : Payment banks can provide services like ATM cards, debit cards, net banking, third party transfers and mobile banking and offer remittance services. These banks can not grant loans or issue credit cards.

PART B

Question 3

- (a) *Rakesh is interested to form a Non-Banking Financial Company (NBFC) for carrying business of providing micro finance in the rural areas in the name of 'SABKO Loan Company Ltd.'. Advise him about the various categories of NBFCs and let him know as to which category of NBFC will suit him for applying the license. (5 marks)*
- (b) *Pankaj, Director of M/s Mustered Oil Manufacturing Company, seeks your advice for the selection of a trademark which he proposes to be used for its products. Describe various natures of trade marks and which trade marks are considered as strong in nature. (5 marks)*
- (c) *A group of labourers from Bharat Railways Catering were having some conflict of interest with their management. They filed a case in front of labour commissioner to decide upon their issues and concerns. During the pendency of the matter, they suddenly went on a strike against the management stopping the entire work at the Company. This strike was not supported by any prior notice to the management. Is the strike in this manner valid ? Discuss the*

matter of issuing a notice before the strike in terms of Industrial Disputes Act, 1947. (5 marks)

(d) *Mamta Coir Foam Ltd. was having 25 workers during previous year 2017-18 and they are in the process of reviewing the compliances under the Factories Act, 1948. Advise the company in the following matters in complying the provisions of Factories Act, 1948 :*

(i) *Weekly & daily hours*

(ii) *Interval for rest*

(iii) *Extra wages for overtime*

(iv) *Annual leave with wages*

(v) *Employment of young persons.* (5 marks)

Answer 3(a)

The advice to Mr. Rakesh on the various categories of NBFCs would be as follows:

Types of NBFC License

Before applying for NBFC License, the type and category of NBFC license must first be determined. The following are the categories of NBFC Companies:

Asset Finance Company (AFC) : An Asset Finance Company is a company which is a financial institution carrying on as its principal business the financing of physical assets such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipments, moving on own power and general purpose industrial machines.

Investment Company : An Investment Company is any company which is a financial institution carrying on as its principal business the acquisition of securities (shares / bonds / other financial securities).

Loan Company : Loan Company is any company which is a financial institution carrying on as its principal business the providing of finance whether by making loans or advances or otherwise for any activity other than its own but does not include an Asset Finance Company.

Infrastructure Finance Company : Infrastructure Finance Company is a non banking finance company that deploys at least 75% of its total assets in infrastructure loans, has a minimum Net Owned Funds of Rs 300 crore, maintains a minimum credit rating of "A" or equivalent with a Capital to Risk Asset Ratio of 15%

Systemically Important Core Investment Company : Systemically Important Core Investment Company is an NBFC with an asset size of over 100 crore, accepts public funds, and is involved in the business or acquisition of shares and securities subject to the fulfillment certain conditions.

Infrastructure Debt Fund : Infrastructure Debt Fund is a company registered as NBFC to facilitate the flow of long term debt into infrastructure projects. Infrastructure

Debt Funds raise resources through issue of Rupee or Dollar denominated bonds of minimum 5 year maturity. Only Infrastructure Finance Companies can sponsor such companies.

NBFC — Micro Finance Institution : Micro Finance Institution is a non-deposit taking NBFC that is engaged in micro finance activities.

NBFC Factor : NBFC Factor is a non deposit taking NBFC engaged in the principal business of factoring.

Further while considering the question, as to which category of NBFC would suit him for applying the licenses, Mr. Rakesh could be advised as below:

Looking into the features of various NBFCs, 'Non-Banking Financial Company - Micro Finance Institution (NBFC-MFI)' will suit Mr. Rakesh as this is for carrying business of providing micro finance in the rural areas.

Answer 3(b)

Considering the fact that Mr. Pankaj, Director of M/s Mustered Oil Manufacturing Company needs an advice on the selection of trademark, which could be proposed for the use for its product, the broad categories of trademarks are discussed as follows:

Generic marks : Generic marks means using the name of the product like "Salt" for Salt.

Descriptive marks : Descriptive marks mean the mark describing the characteristics of the products like using the mark "Fair" for fairness creams.

Arbitrary marks : Arbitrary marks means which exist in popular vocabulary but no logical relationship to the goods or services for which they are used, like 'Blackberry' for phones.

Suggestive marks : means the mark suggesting the characteristics of products like "Habitat" for home furnishings products.

Invented / Coined marks : It means coining a new word which has no dictionary meaning like "Adidas".

Further to the suggestion sought on which trademarks are considered strong in nature, the advice to Mr. Pankaj will be as below:

The strongest marks and thus the easiest to protect, are invented or arbitrary marks. The weaker marks are descriptive or suggestive marks which are very hard to protect. The weakest marks are generic marks which can never function as trademarks.

Answer 3(c)

The problem given in the instant question is covered under Section 22 of Industrial Dispute Act, 1947.

In specific to this query, according to Section 22 (1) of Industrial Dispute Act, 1947, no person employed in a public utility service shall go on strike in breach of contract —

- Without giving to the employer notice of strike, as herein after provided, within six weeks before striking; or

- Within fourteen days of giving such notice; or
- Before the expiry of the date of strike specified in any such notice as aforesaid; or
- During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings

In view of the above provision, it could be stated that the strike conducted by labourers of Bharat Railways Catering was not valid.

Answer 3(d)

Advice to Mamta Coir Form Limited for reviewing the compliances under Factories Act, 1948, on the following matter is provided as below:

- (i) *Weekly & Daily hours* : For Weekly hours, it is advised that weekly hours should not more be more than 48 hours and for daily hours, it should not be more than 9 hours.
- (ii) *Interval for Rest* : On Intervals for rest, it is to be ensured that at least half an hour (1/2 Hour) of interval should be provided for rest on a working for 5 hours.
- (iii) *Extra Wages for Overtime* : Extra wages for overtime is required to be double the normal rate of wages.
- (iv) Annual leave with wages: Considering the provisions of annual leave with wages, it is advised that for a worker having worked for 240 days –
 - One day of leave with wage is provided for every 20 days of work and.
 - For a child, one day of leave with wage is provided for every 15 days of work.
 - It is to be noted that Accumulation of leave is allowed for 30 days.
- (v) Employment of young persons: For ensuring the compliance on the employment of young persons, the advice to the company would reads as below:
 - There is a Prohibition of employment of young children that is the children below the age of 14 years.
 - Non adult workers (minors) are to carry tokens that is certificate of fitness, with them.
 - Working hours for children should not be more than 4.5 hours. Further, they are not permitted to work during night shift.

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

Question 4

- (a) Any corporate body doing business in India requires a Permanent Account Number (PAN), whether it is registered in India or not. Elucidate.

- (b) *A private limited company in the process of dissolution stops maintaining statutory registers. Company argues that since they are in the process of dissolution, there is no need to maintain statutory registers. What is the validity of the argument ? Explain the consequences of non-maintenance of such registers.*
- (c) *Registration under Central Goods & Services Tax Act, 2017 is made compulsory in certain cases, irrespective of the aggregate turnover. Explain.*
- (d) *Ramesh has purchased a shop in local market of New Delhi and wants to set up a business of electronic goods. Is he required to get his shop registered under the Shops and Establishment Act ? If so, advise him with the procedure.*
- (e) *Discuss the classes of work for which copyright protection is available under Copyright Act, 1957 duly amended from time to time. (3 marks each)*

OR (Alternate question to Q. No. 4)

Question 4A

- (i) *Which industries come under the purview of compulsory licensing as per New Industrial Policy, 2015 ? (3 marks)*
- (ii) *Prof. Ritika Verma has authored a book named 'IFRS – A Practical & Simple Approach'. She wants to get copyright of the same under the Copyright Act, 1957. Advise Ritika on the rights that are protected to her after obtaining the copyright of her book. (3 marks)*
- (iii) *Bhaskar Bhat has recently opened a school for providing elementary education to kids. He has hired both male and female employees in teaching and non-teaching cadre. He approached you to seek advice whether school is required to comply with the provisions of Maternity Benefit (Amendment) Act, 2017. Also state who are eligible to avail for maternity benefit under the Act ? (3 marks)*
- (iv) *ABC Ltd. is planning to enter into the business of Insurance for which Board of Directors of the Company seeks your advice about the norms in respect of paid up equity capital for carrying out the business of an insurer. Advise them accordingly with reference to the provisions of Insurance Act, 1938 as amended by Insurance Regulatory and Development Authority Act, 1999. Also state the items that are excluded in determining the amount of paid up equity capital of an insurer under the said Acts. (3 marks)*
- (v) *Managing Director of Goa Tourism Ltd. wants to constitute an Internal Complaint Committee (ICC) under the Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 as well as under such Rules, 2013. Advise him in the light of the provisions of the Act on the constitution of ICC to be formed. (3 marks)*

Answer 4(a)

A Permanent Account Number (PAN) is vital document for any taxpayer. PAN number is unique to each cardholder and helps identify the income tax payer. It also serves as an identity proof for a large number of purposes.

As per the statutory requirements, any corporate body doing business in India,

whether it is registered in India or abroad, requires a PAN card. Equally, an individual or entity which is engaged in a business with an Indian firm/entity requires a PAN card.

Further, it to be noted that it is also required for anybody who is involved in generating money out of India whether the company is registered, or has a permanent establishment, or an office in India.

Hence, a body corporate, company, firms other than LLP, one person company, LLP firm, sole proprietorship, trusts, corporations, limited liability companies, private firms, other associations, foreign institutional investors, hedge Funds all are required to have a PAN card in India.

Answer 4(b)

The argument of the Company that owing to their dissolution process, they need not to maintain statutory registers, does not seem to hold any validity.

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

Further, the company must understand the consequences of non-maintenance of the Registers, as different penal consequences are prescribed for not maintaining statutory registers prescribed under various sections of the Companies Act, 2013.

For example, if any company fails to maintain the Register of Charges (a statutory register) it could result in a fine of not less than Rs. 1 lakh, which may extend to Rs. 10 lakh. Further, the officers of the company may also be punishable with imprisonment for a term which may extend to six months or with a fine not less than Rs. 25000 which may extend to Rs. 1 lakh or with both.

Hence, it is important for all the companies including private limited company or limited company or one person company incorporated in India to maintain statutory registers.

Answer 4(c)

The explanation on the mandatory registration under Central Good and Services Tax, 2017, irrespective of the aggregate turnover is as follows:

Section 22 of Central Goods & Services Tax Act, 2017 mandates that every person who has an aggregate turnover of more than Rs. 20 Lakh in the relevant financial year, is liable to be registered under the Act. For the state of Jammu & Kashmir and North Eastern States, the threshold is Rs. 10 lakh. However, in the following cases registration is made compulsory irrespective of aggregate turnover:

- I. For a supplier who makes inter-state supplies.
- II. Casual taxable person.
- III. Nonresident taxable person.
- IV. E- commerce operators.

V. Persons discharging liabilities under reverse charge mechanism.

Answer 4(d)

Any shop or commercial establishment that commences operation shall apply to the Chief Inspector for a Shop and Establishment License, in a prescribed form along with the prescribed fees, within the prescribed time. Considering the fact that Mr. Ramesh has purchased a shop in the local market of New Delhi, therefore Ramesh as a business owner of the shop is compulsorily required to get the same registered under the Delhi Shops and Establishment Act, 1954.

Further, Mr. Ramesh is advised to follow the procedure for registering the Shop, which is described as below:

The application for license in the prescribed form containing the name of the employer, address of the establishment, name of the establishment, category of the establishment, number of employees and other relevant details as requested, must be submitted to the inspector of the area within 30 days of starting any work in the Shop /Establishment along with the prescribed fees.

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

Answer 4(e)

The copyright protection is available in the following classes of work under Copyright Act, 1957 duly amended from time to time :

- i. Original literary,
- ii. Dramatic,
- iii. Musical work (consists of music and also graphic notation of such works but excludes any words or action intended to be sung, spoken or performed with music)
- iv. Artistic works (painting, sculpture, drawing, engraving, photograph, architecture or any other work of artistic craftsmanship (whether or not any such work poses artistic work)
- v. Cinematograph films (work of visual recording on any medium produced through a process from which a moving image may be produced by any means and includes a sound recording accompanying such visual recording); and
- vi. Sound recordings (recording of sounds from which sounds may be produced regardless of the medium on which such recording is made or the method by which the sounds are produced).

Answer 4A(i)

Compulsory Licensing

Industrial Licensing was also abolished for all the Industries except for a short list of 18 industries in New Industrial Policy 1991. This number was further pruned to six

industries. As in 2015, only five industries were under compulsory licensing mainly on account of environmental, safety and strategic considerations. They are:

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

Regarding Alcoholic products, we note that production of rectified spirit exclusively for industrial use falls under the Centre's purview while in the case of potable alcohol, states have the last word. (This is as per Supreme Court decision in "Bihar Distillery Case"). So, DIPP is not the licensing authority in case of potable alcohol.

Answer 4A(ii)

The advice to Prof. Ritika on the rights protected to her after obtaining the copyright of her book is mentioned as below:

Protection to Authors

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

The following rights are protected:

- Reproduce the work
- Issue copies of the work to the public
- Perform the work in public
- Communicate the work to the public
- Make any translation of the work
- Make cinematograph or sound recording in respect of the work
- Make any adoption of the work.

Answer 4A(iii)

While advising Ms. Bhaskar Bhat on 'whether the school is required to comply with the provisions of Maternity Benefit (Amendment) Act, 2017' one must first understand the applicability of the Maternity Benefit (Amendment) Act, 2017.

Applicability of the Maternity Benefit (Amendment) Act, 2017

The Act is applicable to all establishments which are factories, mines plantations,

Government establishments, shops and establishments under the relevant applicable legislations or any other establishments as may be notified by the Central Government.

Therefore, the provisions of the Maternity Benefit (Amendment) Act, 2017 are applicable to a school.

The Eligibility to avail for Maternity benefit under the Act is as under :

As per the Act to be eligible for maternity benefit, a woman must have been working as an employee in an establishment for a period of at least 80 days in the past 12 months. Payment during the leave period is based on the average daily wage for the period of actual absence.

Answer 4A(iv)

In order to advise ABC Ltd. about the norms in respect of paid up equity capital for carrying out the business of an insurer, one must understand the requirement of Paid Up Equity Capital for carrying out the business of an insurer.

Accordingly, the requirement of Paid Up equity capital for insurance business are as below:

No person can carry on Insurance business unless & until he has obtained a certificate from the Insurance Development Regulatory Authority (IRDA) for a particular class of Insurance business. For e.g. A person can start life Insurance, marine Insurance, fire Insurance, health Insurance etc. But a life Insurance business cannot be combined with other type of Insurance business.

Every such application shall be made in the form IRDA/R1 for registration.

Every Insurance company shall deposit in cash or in approved securities or partially in cash or partially in approved securities as per details given below: -

- (i) In case of Life Insurance business, a sum equivalent to 1% of his total gross premium written in India in any financial year commencing after the 31st day of March 2000 not exceeding rupees ten crores (Rs.10 crores).
- (ii) In the case of General Insurance business a sum equivalent to 3% of his total gross premium written in India in any financial year commencing after 31/3/2000 not exceeding rupees ten crores (Rs.10 crores).
- (iii) In case of reinsurance business, a sum of rupees twenty crores (Rs.20 crores).
- (iv) If the business is to be done in marine Insurance only & relates exclusively to country craft or its cargo or both the amount to be deposited Rs.1,00,000/- (Rs.1 lakh) only.
- (v) A certificate from the Reserve Bank of India showing the amount deposited.
- (vi) A declaration verified by an affidavit from the "Principal Officer" that the equity capital of the company has been complied with. The paid up equity excluding preliminary expenses and registration charges should be Rs.100 crores for life or General Insurance business and Rs.200 crores for the Reinsurance business.

If any insurer is carrying on business of insurance already then within 6 months from the commencement of the Act the paid up capital should be as per prescribed limits in the Act.

- (vii) A certified copy of the published prospects and of the standard policy forms of the insurer.
- (viii) Statement of assured rate, advantages, terms & conditions to be offered in connection with Insurance policies.
- (ix) In the case of the business the certificate from the actuary that such rates are workable & sound.
- (x) In the case of marine accident & miscellaneous Insurance business other than workmen's compensation & motor car Insurance the available forms, prospects and statements to be submitted.
- (xi) The receipt of deposit of Rs. 50,000/- for each class of business.
- (xii) If there is any foreign partner, a certified copy of Memorandum of understanding between Indian promoter and foreign promoter including details of support comfort letters exchanged between the parties.

Answer 4A(v)

The advice related to the Constitution of Internal Complaint Committee (ICC) under the provisions of Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 would be as below:

Internal Complaints Committee

The Act makes it mandatory for every employer to constitute an Internal Complaints Committee ("ICC") which entertains the complaints made by any aggrieved women. The members of the ICC are to be nominated by the employer and ICC should consist of

- i. A Presiding Officer;
- ii. Not less than two members from amongst employees preferably committed to the cause of women or who have had experience in social work or have legal knowledge and;
- iii. One member from amongst non-governmental organizations or associations committed for the cause of women or a person familiar with the issues relating to sexual harassment. In order to ensure participation of women employees in the ICC proceedings, the, Act requires that at least one-half of the members of ICC nominated by employer are women.

Local Complaints Committee

Provisions are provided under the Act to form Local Complaints Committee (LCC) for every district for receiving complaints of sexual harassment from establishments where the ICC has not been formed due to having less than 10 workers or if the complaint is against the employer himself.

PART C**Question 5**

- (a) *Radha Manufacturing Ltd. want to file an application for removal of name of company from the Registrar of Companies (ROC). Enumerate the various grounds for which Company is permitted to file an application for removal of name from ROC under the provisions of the Companies Act, 2013.*
- (b) *Anshul Gold Farm Ltd. has obtained the status of dormant company on 15th December, 2018. Enumerate the various exemptions which the company shall be entitled to under the Companies Act, 2013.*
- (c) *List out various situations in which a Company is not permitted to apply for strike off the name of the Company from Registrar of Companies.*
- (d) *Registrar of Companies may file an appeal before the National Company Law Tribunal for restoration of the name of the Company. Elucidate.*
- (e) *Explain the term “Significant Accounting Transaction” while determining status of a company as a dormant company under the Companies Act, 2013.*
(3 marks each)

Answer 5(a)**Strike Off by Way of Filing an Application by the Company**

Companies Act, 2013 provides for the power of the Registrar of Companies to remove or Strike Off the name of the Company from the Register of the Companies. This power includes the striking off under the Suo-Moto powers of the Registrar as well as by way of Application by the Company.

Strike off provisions gives an option to non- working company to get its name removed from the Register of Companies. There are many companies which are registered with Registrar of Companies (ROC) but due to various reasons they are not operative. The strike off provisions gives an option to such companies to apply to ROC for removal of their name from the Register of Companies. On the basis of following grounds, the company through its board of directors, can file an application for removal of name of company from the Register of Companies —

- Where a company has failed to commence its business within one year of its incorporation or;
- Where a company is not carrying on any business or operation for a period of two immediately preceding financial year and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013.

So , it is concluded that if Radha Manufacturing Ltd falls any one of the category mentioned above, they are permitted to file an application for removal of name from ROC.

Answer 5(b)**Benefits / Exemptions Provided to a Dormant Company**

As the Anshul Gold Farm Ltd has obtained the status of Dormant Company, they are eligible to enjoy the following exemptions:

- (a) Dormant Company shall hold only two board meetings in a year with a gap of 90 days in between the two meetings.
- (b) Dormant Company is not required to include the statement of cash flow in its financial statement.
- (c) The provision of rotation of auditors is not applicable in case of a dormant company.
- (d) Dormant companies enjoy the advantages of lower statutory compliance cost as there are few statutory compliances applicable to a dormant company as compared to active company.
- (e) 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.
- (f) Companies can enjoy the status of a dormant company for a period of 5 consecutive years.

Answer 5(c)**Situations in which company cannot apply for Strike off**

The Company cannot make any application for striking off the name of the Company from Register of Companies if any time in the previous 3 months the company:-

- i. Has changed its name;
- ii. Has shifted its registered office from one State to another;
- iii. Has made a disposal for value of property or rights held by it, immediately before cessation 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;
- iv. 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;
- v. Has made an application to the Tribunal for the sanctioning of a Compromise or Arrangement and the matter has not been finally concluded; or is being wound up under Chapter XX, whether voluntarily or by the Tribunal.

Answer 5(d)

The Registrar of Companies (RoC) may, within a period of three years from the date of passing of the order dissolving the company under section 248 of the Companies Act, 2013, file an application before the National Company Law Tribunal (NCLT) seeking

restoration of name of such company if it is satisfied that the name of the company has been struck off from the register of companies either inadvertently or on the basis of incorrect information furnished by the company or its directors. Therefore, it is clear that ROC may also file an appeal before the National Company Law Tribunal for restoration of the name of the company.

Answer 5(e)

Significant Accounting Transaction

Where a company is formed and registered under Companies Act for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar for obtaining the status of a dormant company.

Significant Accounting Transactions plays a very significant role for getting the status of Company as “Dormant”.

Any transaction may be called as “Significant Accounting Transaction which is made by the company except the transactions mentioned below:

- (a) Payment of fees by a company to the Registrar;
- (b) Payment made by a company to fulfill the requirements of this Act or any other law;
- (c) Allotment of shares to fulfil the requirements of this Act; and
- (d) Payments for maintenance of its office and records.

All the transactions apart from the above mentioned transactions will be considered as Significant Accounting Transactions.

Question 6

- (a) *RKG Infrastructure Ltd. were incurring continuous losses and its financial position went bad to worse. Now, Company is undergoing a corporate insolvency resolution process. Dinesh who is one of the senior employees of the company has not been paid his salary for over 3 months amounting to 4,50,000. He files an application for initiating corporate insolvency resolution process with an Adjudicating Authority. Analyze and state whether Dinesh is entitled to make an application to initiate corporate insolvency resolution process.*
- (b) *The Registrar has suo moto struck off the name of M/s A2Z Solutions, a LLP from the register as Registrar has a reasonable cause to believe that the LLP is not carrying on any business for last two years. Being aggrieved by the order of Registrar, the LLP wants to file an appeal before National Company Law Tribunal (NCLT) for restoration of the name of the LLP in the Registrar of Partnership maintained by the Registrar. Referring to the provisions of the Limited Liability Partnership Act, 2008, advise the company on the procedure to be followed for making an application to NCLT. (5 marks each)*

Answer 6(a)

Insolvency resolution process may be initiated under Insolvency and Bankruptcy Code (IBC), 2016 for the matters relating to Insolvency and Liquidation of Corporate debtors where the minimum amount of default is one lakh rupees, a financial creditor, an operational creditor or the corporate debtor itself may initiate Corporate Insolvency Resolution Process

A financial creditor either by itself or jointly with other financial creditors may file an application for initiating corporate insolvency resolution process against a corporate debtor before the Adjudicating Authority when a default has occurred.

An operational creditor is defined under Section 5(20) of the Insolvency and Bankruptcy Code, 2016 - to mean

"any person to whom an operational debt is owed and includes any person to whom such debt has been legally assigned or transferred".

In order to ascertain whether a person would fall within the definition of an operational creditor, the debt owed to such a person must fall within the definition of an operational debt as defined under Section 5(21) of the IBC.

As per the facts and definition under IBC, Dinesh is an operational creditor, in respect of such corporate debtor who is undergoing a corporate insolvency resolution process. So, he shall be entitled to make an application to initiate corporate insolvency resolution process.

Answer 6(b)

Section 75 of the Limited Liability Partnership Act, 2008 read with Rule 37 of Limited Liability Partnership Rules, 2009 provides for the procedure, powers of striking off the name of the LLP and restoration thereof in case of unjustified removal of the name of LLP.

Rule 37 of the Limited Liability Partnership Rules, 2009 provides that if an LLP, or any partner or creditor thereof, feels aggrieved by the LLP having been struck off the register, the National Company Law Tribunal (NCLT), on an application made by the

- LLP
- Partner or
- Creditor

before the expiry of five years from the publication in the Official Gazette of the notice aforesaid, may, if satisfied that the LLP was, at the time of the striking off, carrying on business or in operation or otherwise that it is just that the LLP be restored to the register, order the name of the LLP to be restored to the register; and the NCLT may, by order, give such directions and make such provisions as seem just for placing the LLP and all other partners in the same position as nearly as may be as if the name of the LLP had not been struck off.

Procedure for making application to NCLT

1. An application is to be filed before Hon'ble bench of NCLT where the registered

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

2. A copy of application or appeal is required to be sent to the Registrar concerned.
3. Registrar may send his report to NCLT as to his comments and views on the restoration of the name of the LLP
4. NCLT after hearing all the parties shall pass an appropriate order for restoration of the name of the LLP in the register.

Hence, it is clarified that M/s A2Z Solutions can make an application to NCLT since 5 years has not been lapsed and still eligible to file the same.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

- NOTE :** 1. Answer ALL Questions.
2. All the references to sections in Part-I of the Question Paper relate to the Income Tax Act, 1961 and relevant Assessment Year 2018-19, unless stated otherwise.
3. Working notes should form part of the answer.
4. Wherever necessary, suitable assumption can be made and the same be stated clearly in the answer.

PART I

Question 1

- (a) State which of the following is a taxable allowance and the quantum of allowance liable to tax in the hands of salaried employees :
- (i) Tiffin allowance given by a company to employees at ₹1,000 per month.
 - (ii) Non-practice allowance ₹5,000 per month given by State Government to doctors employed in State Government Service.
 - (iii) Transport allowance given by a company (home to office and back) ₹2,000 per month.
 - (iv) Leave travel allowance ₹10,000 (fixed) given every year to employees above certain grade. (4 marks)
- (b) State how the following incomes will be chargeable to tax and if taxable, also the head of income :
- (i) Mr. Balu, employed in a private company, let out a vacant land to X & Co. LLP for a monthly rent of ₹30,000.
 - (ii) A professor in an engineering college, earning income by way of examinership fee for valuation of answer-books.
 - (iii) Salary received by a Member of Parliament.
 - (iv) Salary received by a person as working partner in a partnership firm. (4 marks)
- (c) XYZ Pvt. Ltd. furnishes the following information relating to its two business units, one located in Special Economic Zone (SEZ) and other located in Domestic Tariff Area (DTA) for the year ended 31-3-2018 :

Particulars	(₹ in lakh)
Total turnover of Unit A located in SEZ	400
Profit of the business of Unit A	120
Export turnover of Unit A	200
Total turnover of Unit B located DTA	800
Profit of the business of Unit B	80

You are required to compute the deduction available under section 10AA to XYZ Pvt. Ltd. for the Assessment Year 2018-19 by taking that Unit-A in SEZ was set-up in the previous year 2015-16 and separate books of accounts are being maintained for both the units by the company. Give brief reasons for your answer in the context of provisions of the Act. (4 marks)

- (d) Mr. Ramseshan, General Manager of Gee Co. Ltd., retired on 31st October, 2017, after rendering service for 29 years and 8 months. His monthly salary break up are :

- (i) Basic salary ₹52,000;
- (ii) DA 50% of basic salary (eligible for retirement benefits);
- (iii) HRA ₹20,000;
- (iv) City Compensatory Allowance ₹5,000.

He received ₹15 lakh from the employer by way of gratuity. He is governed by the Payment of Gratuity Act, 1972. Determine the amount of gratuity chargeable to tax. (4 marks)

- (e) Give answer as per provisions contained under the Income-tax Act, 1961 in respect of each of the following questions for the assessment year as 2018-19:

[Only the end answer is needed, no working is required]

- (i) WDV as on 1st April, 2017 of the block of asset of Plant and Machinery depreciated @ 15% was of ₹6,00,000. Out of this block, one machine was sold for ₹2,00,000 on 1st July, 2017 and a new machine costing of ₹9,00,000 was added on 1st September, 2017 but put to use only from 1st November, 2017. What will be the amount of normal depreciation which can be claimed against such block of Plant and Machinery ?
- (ii) DAF Pvt. Ltd. fulfilling all the conditions specified in section 35AD of the Income-tax Act, 1961 has incurred capital expenditure of ₹50 lakh on purchase of land, ₹100 lakh (₹90 lakh by cheque and ₹10 lakh in cash) on construction of building and ₹30 lakh on plant & machinery during the previous year for setting up and operating a warehousing facility for storage of sugar. The warehouse become operational on 1st March, 2018. How much amount of deduction can the company claim for such capital expenditure as per section 35AD ?
- (iii) Mr. Anirudh, a resident individual, has computed for the previous year 2017-18, his business loss at ₹80,000, short-term capital gain on sale of gold of ₹60,000 long-term capital gain on sale of house of ₹3,00,000. State the amount of total income which shall be subject to tax in relevant assessment year.
- (iv) State the amounts subject to tax out of the following gifts received during the previous year 2017-18 by Mr. Girish :
 - (a) Wrist watch of ₹70,000 given by a non-resident friend.
 - (b) Cash of ₹51,000 given by elder brother. (4 marks)

Answer 1(a)

- (i) Tiffin allowance provided by the employer to employees is fully taxable in the hands of salaried employees as there is no section under the Income Tax Act, 1961 providing any such exemption. Hence the entire amount i.e. ₹1000 per month is chargeable to tax under the head of salaries.
- (ii) Non Practice allowance given by the State Government to doctors employed in State Government Service is fully taxable as there is no section under the Income Tax Act, 1961 providing any such exemption. Hence, the entire amount i.e. ₹5000 per month is chargeable to tax under the head of salaries.
- (iii) Transport allowance given by the company i.e. employer (for commuting home to office and back) to the employees is exempt upto ₹1600 per month (₹3200 pm in special cases i.e. Employee is Blind, Handicapped, Deaf or Dumb).

Option 1: Employee is not covered under special cases: Remaining amount i.e. ₹400 per month (₹2000 – ₹1600) is taxable under the head of salaries.

Option 2: Employee is covered under special cases: Nothing is taxable under the head of salaries as full amount of Rs. 2000 is exempt from tax.

- (iv) Leave travel allowance is eligible for exemption under section 10(5) twice in a block of four years subject to actual expenses incurred and certain conditions. However, the fixed travel allowance given by the employer to employees without verification of actual expenditure incurred is fully taxable. Hence, ₹10000 is taxable under the head of salaries.

Answer 1(b)

- (i) Income from letting out of vacant land is chargeable to tax under the head "Income from Other Sources" under section 56 of the Income Tax Act, 1961. While computing Income, deduction u/s 57 will be allowed from such Rent. Therefore, monthly rent received of ₹30,000 from vacant land is taxable under the head "Income from Other Sources" in the hands of Mr. Balu.
- (ii) Examiner-ship Fees for valuation of answer-books received by a professor is chargeable to tax under the head "Income from Other Sources" as the income earned by the professor is not in the course of employment.
- (iii) Salary received by Member of Parliament is taxable under the head "Income from Other Sources" and not under the head salaries as Member of Parliament is not an employee of the Government. He is only an elected representative of the people. Daily Allowance or any allowance received under the Members of Parliament (Constituency Allowance) Rules, 1986, by Member of Parliament is exempt u/s 10(17) of Income Tax Act, 1961.
- (iv) Salary paid to a working partner by a firm is nothing but appropriation of profits. Any salary, bonus, commission, or remuneration by whatever name called due to or received by partner of a firm shall not be regarded as salary but has to be charged as income under the head Profit and Gains from Business & Profession u/s 28 of the Income Tax Act, 1961. It is because of the fact that the relationship between the firm and its partner is not of employer and employee.

Salary to working partner is allowed as deduction to the Firm subject to Section 40(b) of the Income Tax Act, 1961 which in turn depends upon specified % of book profits. So, the amount of taxability in hands of the working partner depends upon deduction allowed to the firm. Therefore, the amount of salary taxable in hands of working partner shall be the amount allowed as deduction to the firm.

Answer 1(c)

100% of the profits derived from export of articles or things or services is eligible for deduction under section 10AA of the Income Tax Act, 1961 within the first five year period commencing from the year of manufacture or production of articles or things or provision of services by the unit in SEZ.

Unit-A in SEZ is in third year of operation and therefore deduction of 100% is available as per section 10AA(7). The profit derived from export of articles or things or services shall be the amount which bears to the profits of business of the undertaking, being the Unit, the same proportion as the export turnover of the business carried on by the undertaking as the separate books of accounts for both the units have been maintained.

Deduction under section 10AA

Profits of the business of Unit A * (Export Turnover of Unit A / Total turnover of Unit A)

$$= ₹120 \text{ lakhs} * (200 / 400)$$

$$= ₹60 \text{ lakhs}$$

Answer 1(d)

Determination of Gratuity Chargeable to Tax

<i>Particulars</i>	<i>Amount (₹)</i>	<i>Amount (₹)</i>
Gratuity Received		15,00,000
<i>Less : Exemption u/s 10</i>		
(a) Monetary Limit	10,00,000	
(b) Gratuity Actually Received	15,00,000	
(c) 15 days salary for each completed year of service		
Basic Salary +DA * 15 / 26 * 30 years		
{(₹52000 + ₹26000) * 15/26 } * 30	13,50,000	
Least of the above (a),(b) or (c) is exempt		(10,00,000)
Taxable Gratuity		5,00,000

Answer 1(e)

- (i) The amount of normal depreciation u/s 32 of the Income Tax Act, 1961 shall be as follows:
 $(\text{₹}6,00,000 - \text{₹}2,00,000) * 15\% + (\text{₹}9,00,000 * 7.5\%) = \text{₹}1,27,500$
- (ii) The amount of deduction that can be claimed by the company for such capital expenditure as per section 35AD of the Income Tax Act, 1961 is ₹120 Lakhs (i.e. ₹90 lakhs for construction of building and ₹30 lakh on plant and machinery).
- (iii) The Total Income subject to tax for AY 2018-19 of Mr. Anirudh is ₹2,80,000 (i.e. long term capital gains on sale of house ₹3,00,000 + short term capital gain on sale of gold ₹60,000 – business loss ₹80,000).
- (iv) The amounts subject to tax with respect to the gifts received by Mr. Girish during the previous year 2017-18 is NIL as the gift from elder brother (being relative) is exempt from tax and wrist watch is not covered within the meaning of the term 'property' for the purpose of section 56(2)(vii/x) of the Income Tax Act, 1961 and therefore not taxable.

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

- (a) *Distinguish between exemptions, deductions and rebate under the Income-tax Act, 1961. (3 marks)*
- (b) *Suresh Raina (age 38), a resident individual, has total income computed at ₹50,86,000. He wants to know his income-tax liability for the assessment year 2018-19. Compute his net tax liability after providing marginal relief, if any. (3 marks)*
- (c) *State with brief reasons whether the following losses sustained during the year while carrying a business be allowable while computing the income under the head "Profits and gains of business or profession":*
- Robbery or dacoity and loss of money in a bank branch;*
 - Embezzlement of cash by the cashier;*
 - Loss due to non-recovery of advance given for supplies. (3 marks)*
- (d) *Vinod Kapoor gifted ₹8,00,000 to his wife Sunita Kapoor on 15th May, 2017. The amount of gift of ₹8,00,000 was invested by his wife in debentures of a company on 1st June, 2017 earning interest @ 12% p.a. Will the income of interest from the debentures purchased by Mrs. Sunita Kapoor from gifted money be clubbed with the income of Vinod Kapoor? (3 marks)*
- (e) *State the time limit for carry forward and set off of loss in the following cases :*
- Loss from speculation business;*
 - Loss under the head "Capital gains";*
 - Loss under the head 'Income from other sources'. (3 marks)*

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

- (i) Mohan is sales manager of Khan Co Ltd., at Mumbai. He furnishes you the following details for the year ended 31st March, 2018 :

Basic salary up to 31st August, 2017 ₹50,000 per month.

Basic salary from 1st September, 2017 ₹70,000 per month.

Dearness allowance 50% of basic salary (It is fully eligible for retirement benefits)

Transport allowance ₹2000 per month

Tax on employment ₹7,000 (₹3,000 paid by employer)

Motor car with engine cubic capacity more than 1.6 litres was given by the employer.

The car is self driven by Mr. Mohan. Running and maintenance expenses of car incurred by the employer ₹53,500. The car is used both for personal and official use.

Recognised provident fund contribution of the employer at 15% of basic salary.

Recognised provident fund contribution of employee ₹10,000 per month.

Donation to Prime Minister's Relief fund paid by cheque ₹20,000.

Compute the total income of Mohan for the assessment year 2018-19. (8 marks)

- (ii) Ms. Padmaja, aged 42, a resident individual, sold her residential house for ₹55 lakh to Robert on 1st July, 2017. The value of land for stamp duty purposes was ₹65 lakh. The land was acquired on 30th April, 1970 for ₹1,50,000. The fair market value of the land on 1st April, 1981 was ₹2,50,000 and on 1st April, 2001 was ₹10,00,000.

She paid brokerage to Ashwin @ 2% of the sale consideration. No tax was deducted at source. She acquired a residential house at Erode, Tamil Nadu in December, 2017 for ₹25,00,000 and subscribed to capital gain bonds issued by Rural Electrification Corporation on 10th Oct., 2017 for ₹9,50,000 and in bonds of National Highways Authority of India on 20th Feb., 2018 for ₹8,00,000.

Ms. Padmaja paid ₹20,000 by credit card for health insurance policy on her life in March, 2018. The property was let out for monthly rent of ₹30,000 till 31st June, 2017.

Cost inflation index : FY 2017-18 = 272.

Compute the total income of Ms. Padmaja for the Assessment Year 2018-19.
(7 marks)

Answer 2(a)

<i>Exemptions</i>	<i>Deduction</i>	<i>Rebate</i>
1. Exemptions means a source of income is exempt from Income Tax Act whether fully or partially.	1. Deductions are incentives provided by the government to reduce the Taxable income.	1. Rebate is a specified percentage of or an amount reduced from total income tax payable.
2. The exempted income is not included in the total Income of the assessee.	2. Income in respect of which deduction is allowed is firstly included in income and then deductions are allowed under different heads of income as well as from the total income.	2. Tax rebate is allowed as a reduction from the total tax payable.
3. Chapter III (Section 10) of the Income Tax Act, 1961 deals with exempt income.	3. Chapter VI-A (Section 80C to 80U) of the Income Tax Act, 1961 deals with deductions.	3. Section 87A deals with rebate under Income Tax Act, 1961.

Answer 2(b)

**Computation of Tax Liability of Mr. Suresh Raina (Resident Individual)
for AY 2018-19**

<i>Particulars</i>	<i>Amount ₹</i>	<i>Amount ₹</i>
Total Income		50,86,000
Income Tax on ₹10 lakhs (₹10,00,000-5,00,000)*20% + ₹12,500	1,12,500	
Income Tax on ₹40,86,000 @ 30%	12,25,800	
Total Tax excluding surcharge	13,38,300	
Surcharge@10%	1,33,830	
Total Tax including surcharge		14,72,130
Less : Marginal relief		
Tax after surcharge cannot exceed the following amount i.e. Tax on 50 lakhs i.e 13,12,500 + Increase in income beyond 50 lakhs i.e 86,000 = 13,98,500		
Excess shall be allowed as relief (₹1472130-₹1398500)		(73,630)
Tax after marginal relief		13,98,500
Add : EC + SHEC @ 3%		41,955
Total Tax Liability (Round off)		14,40,460

Answer 2(c)

Losses / Bad debts which are directly incidental to the business or profession of the assessee are allowable as per provisions contained under section 36/37 of the Income Tax Act 1961. Further as per the provision of section 37 of the Income Tax Act, Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Accordingly allowability of the given losses is as under:

- (i) *Robbery or Dacoity and loss of money in a bank branch* : Losses caused by robbery or dacoity is not deductible, but if it is incidental to business, it will be allowed as a deduction which depends upon the specific circumstances and the condition of being occurring or taking place. Any loss due to robbery in a bank branch will be allowed as deduction considering it incidental to business while computing the income under the head "Profit and Gains from Business and Profession as the bank is under an obligation to maintain some cash outside the strong room for payments to customer.
- (ii) *Embezzlement of cash by the cashier* : The loss of money due to embezzlement by an employee handling the fund of the business while discharging his official duties is allowed as deduction considering it incidental to business loss while computing the income under the head "Profit and Gains from Business and Profession.
- (iii) *Loss due to Non-Recovery of Advances given for supplies* : Bad debts relating to business are allowed as deduction provided the debt has been considered as Income in the books of the accounts. In case of bad debt on account of advances, the advance amount for supplies per se is not treated as Income and therefore such bad debt will not be allowed as deduction.

However, the same may be allowed as deduction under section 37 if the conditions of section 37 has been complied i.e. Any expenditure (not being expenditure of the nature described in sections 30 to 36 and not being in the nature of capital expenditure or personal expenses of the assessee), laid out or expended wholly and exclusively for the purposes of the business or profession shall be allowed in computing the income chargeable under the head "Profits and gains of business or profession".

Answer 2(d)

As per the provisions of section 64(1)(iv) of the Income Tax Act, 1961, In computing the total income of any individual, there shall be included all such income as arises directly or indirectly to the spouse of such individual from assets transferred directly or indirectly to the spouse by such individual otherwise than for adequate consideration or in connection with an agreement to live apart.

The amount of ₹8,00,000 was transferred by Mr. Vinod Kapoor to his spouse Ms. Sunita Kapoor, by way of gifts, without adequate consideration or to live apart, hence, the provisions of section 64(1)(iv) of the Income-tax Act, 1961 will be invoked. The provisions of clubbing of income will apply even if the form of assets is being changed by the transferee (spouse) of the receipt amount of gift which was in cash and converted into debentures.

In the present case, assets transferred in money and subsequently the form of assets is changed from money to debentures and therefore amount of interest income i.e. ₹80,000 on debenture will be clubbed with her husband income i.e. Mr. Vinod Kapoor.

Answer 2(e)

- (i) Loss from speculation business can be carried forward u/s 73 of the Income Tax Act, 1961 and set-off for a maximum period of 4 assessment years immediately succeeding the assessment year for which the loss was first computed.
- (ii) Loss under the head capital gains can be carried forward u/s 74 of the Income Tax Act, 1961 and set-off for maximum period of 8 assessment years immediately succeeding the assessment year for which the loss was first computed.
- (iii) Loss under the head Income from Other Sources which is not set-off in the year in which it is incurred cannot be carried forward and set-off in the subsequent assessment years. However, loss of owning & maintaining race horses can be carried forward u/s 74A of the Income Tax Act, 1961 and set-off for maximum period of 4 assessment years immediately succeeding the assessment year for which the loss was first computed.

Answer 2A(i)

Computation of Total Income of Mr. Mohan for the Assessment Year 2018-19

<i>Particulars</i>	<i>Amounts (₹)</i>
Basic Salary (₹50,000 * 5)	2,50,000
Basic Salary (₹70,000 * 7)	4,90,000
Dearness Allowance (50% of Basic pay i.e. 50% of ₹2,50,000 + ₹4,90,000)	3,70,000
Transport Allowance (₹2000 - ₹1600) * 12	4,800
Tax on employment paid by the employer	3,000
Motor Car Perquisites – engine cubic capacity more than 1.6 liters. Entire running expenses met by the employer and the car is used both for official and personal use by the employee. (₹2400 * 12)	28,800
Provident Fund contribution of employer (not in excess of 12% of Basic + Dearness Allowance for retirement benefits) [Rs. 7,40,000 * 15% i.e. 1,11,000] - [12% of (7,40,000 + 3,70,000 i.e. 1,33,200)]	–
Gross Salary	11,46,600
Less : Professional Tax	(7,000)
Gross Total Income	11,39,600
Less : Deduction under chapter VI-A	
Section 80C in respect of RPF contribution	(1,20,000)
Section 80G in respect of Prime Minister's Relief Fund	(20,000)
Total Income	9,99,600

Answer 2A(ii)**Computation of Total Income of Ms. Padmaja for the Assessment Year 2018-19**

Particulars	Amounts (₹)	Amounts (₹)
Income from House Property		
Rental Income (₹30000*3 month)	90,000	
Less : Deduction u/s 24 @ 30%	(27,000)	
Income from House Property		63,000
Capital Gains		
Sale Consideration	55,00,000	
Value of land for stamp duty purposes	65,00,000	
Higher of the two adopted as deemed sale consideration	65,00,000	
Less : Brokerage @ 2% of ₹55,00,000 (Brokerage is deductible even though tax was not deducted at source)	(1,10,000)	
Net Sale Consideration	63,90,000	
Less : Indexed cost of acquisition		
FMV as on 01.04.2001 (₹10,00,000 * 272/100)	(27,20,000)	
Long Term Capital Gains	36,70,000	
Less : Exemption under section 54	(25,00,000)	
Less : Exemption u/s 54EC		
(i) Subscribing to the capital gains bonds issued by REC is eligible investments as investments was made within 6 months after the date of transfer of capital assets.	(9,50,000)	
(i) Subscribing to the capital gains bonds issued by NHA is not eligible investments as investments was made beyond 6 months after the date of transfer of capital assets.	-	
Long Term Capital Gains		2,20,000
Gross Total Income		2,83,000
Less : Deduction u/s 80D with respect to health insurance premium		(20,000)
Total Income		2,63,000

Question 3

(a) Alok is employed in BCD Co. Ltd. as Finance Manager. The employer transferred the following assets to him on 15th April, 2017 :

- (i) Computer acquired by the employer in April, 2016 for ₹20,000 was given to Alok for a consideration of ₹1,000.
- (ii) Motor car acquired by the employer for ₹6 lakh in July, 2014 was given to Alok for ₹3 lakh.
- (iii) Furniture items acquired by the employer for ₹2 lakh in August, 2014 were given to Alok for ₹50,000.

Compute the amount of income, if any, taxable in the hands of Alok for the above transactions. (5 marks)

(b) PQR & Co. is a partnership firm consisting of 4 partners. The firm did a turnover of ₹305 lakh and derived Net Profit (as per Profit and Loss Account) of ₹15,20,000 before adjustment of the following :

- (i) Working partner salary to 2 partners ₹50,000 each, per month (as authorized by the deed of partnership).
- (ii) Capital of ₹10 lakh each contributed by all the partners. The partnership deed authorizes the payment of interest @ 15% per annum.
- (iii) Rent payable to one partner at ₹10,000 per month. This is not mentioned in the partnership deed.

Compute the total income of the firm after considering all items, as per the provisions of the Income-tax Act, 1961. (5 marks)

(c) State the rate of tax deductible or collectible at source under the provisions of the Income-tax Act, 1961 in respect of the following transactions :

- (i) Sale of scrap by a manufacturing company for ₹2 lakh;
- (ii) Sale of motor car by an authorized dealer and the price of car is ₹8,90,000.
- (iii) Monthly rent paid by a partnership firm to a resident partner ₹1,90,000.
- (iv) Commission paid by a company for purchase of machine to agent X & Co. ₹10,000.
- (v) Interest paid by Lalwani & Co. (firm) to Ravi (a resident) ₹7,000.

(5 marks)

Answer 3(a)

**Computation of taxable perquisites value in the hands of Mr. Alok for
AY 2018-19**

Particulars	Amounts (₹)	Amounts (₹)
Computer (acquired in April 2016 sold to Alok in April, 2017). No reduction in value as there is no completed year after the date of acquisition i.e. original value taken	20000	
Less : Sale Consideration		(1000)

Perquisites Value in respect of computer		19000
Motor Car (acquired in July 2014)	6,00,000	
Less : Deduction @ 20% for July 2014 to July 2015	(1,20,000)	
WDV	4,80,000	
Less : Deduction @ 20% for July 2015 to July 2016	(96,000)	
WDV	3,84,000	
Less : Deduction @ 20% for July 2016 to July 2017 – not applicable as it was sold on 15.04.2017	-	
	3,84,000	
Less : Sale consideration received from Mr. Alok	(3,00,000)	
Perquisites Value of Motor Car		84,000
Furniture items (acquired in August 2014)	2,00,000	
Less : Deduction @ 10% for Aug 2014 to Aug 2015 SLM basis	(20,000)	
	1,80,000	
Less : Deduction @ 10% for Aug 2015 to Aug 2016 SLM basis	(20,000)	
	1,60,000	
Less : Deduction @ 10% for Aug 2016 to Aug 2017 SLM basis – not applicable as it was sold on 15.04.2017	-	
	1,60,000	
Less : Sale consideration received from Mr. Alok	(50,000)	
Perquisites Value of Furniture Items		1,10,000
Total Perquisites Value chargeable in the hands of Mr. Alok		2,13,000

Answer 3(b)**Computation of Total Income of the Firm**

<i>Particulars</i>	<i>Amounts (₹)</i>
Net Profit as per Profit and Loss account	15,20,000
Less : Rent Payable to partner (Even though not authorized by the deed, it is deductible. There is no requirement that payment of rent need to be mentioned in the deed). [₹10,000*12]	(1,20,000)
Less : Interest on Capital @ 12% p.a. on ₹40 lakhs	(4,80,000)
Book Profit	9,20,000
Working Partner Salary as per deed ₹50,000 * 2 * 12 = 12,00,000	

Allowable working partner salary u/s 40(b)

On first ₹3,00,000 @ 90% = ₹2,70,000

On the balance of ₹6,20,000 * 60 % = 3,72,000

Total Salary = ₹6,42,000 (2,70,000 + 3,72,000)

Least of the above is deductible (6,42,000)

Income of the Firm 2,78,000

Answer 3(c)

- (i) On sale of scrap, Tax is Collectible at Source 'TCS' @ 1% u/s 206C of the Income Tax Act, 1961.
- (ii) Sale of motor car is liable for Tax Collection at Source (TCS) only when sale consideration exceeds ₹10 lakhs. In this case the sale consideration is ₹8.90 lakhs i.e. less than ₹10 lakhs and therefore no TCS is attracted.
- (iii) In case of partnership firm pays rent exceeding ₹1.80 lakhs, it is liable for tax deduction u/s 194I of the Income Tax Act, 1961 @ 10% irrespective of the fact that the payment is made to partner or outsider. In the present situation the payment made is ₹1,90,000 that exceeds the threshold limit i.e. ₹1,80,000, therefore TDS provision u/s 194 I of the Income Tax Act, 1961 is attracted and is liable for TDS @ 10%.
- (iv) As per Section 194 (H) of the Income Tax Act, 1961 commission paid by a company is liable for tax deduction when the commission payments exceed ₹15,000. As the payment made i.e. ₹10,000 is below the threshold limit i.e. ₹15,000, TDS provision contained in section 194H of the Income Tax Act, 1961 is not attracted.
- (v) Interest paid by the partnership firm exceeding ₹5,000 is liable for TDS @ 10% u/s 194A of the Income tax Act, 1961. Therefore, interest paid by Lalwani & Co. (firm) to Ravi (a resident) ₹7,000 is liable for tax deduction at source 'TDS' as the payment exceeds the threshold limit.

PART II

Question 4

- (a) State the different models of GST and the model which is followed in India.
- (b) State any four activities which are neither treated as supply of goods, nor supply of services, under the GST law.
- (c) Determine which of the following is inter-State supply or intra-State supply, and state whether CGST / SGST / IGST will apply : (with reasons)
 - (i) Supply of goods to A & Co., Surat from a unit located in SEZ in the same State, viz. Gujarat.
 - (ii) Export of garments from Bengaluru to Sweden.
- (d) State the legal position under the Customs Act, 1962 in respect of the following:
 - (i) Penalty for import of unaccounted goods;

- (ii) *Time limit for filing application for refund of import duty;*
- (iii) *Criminal liability by way of maximum imprisonment for offences;*
- (iv) *Akin principle.*
- (e) *Explain in brief, how the imports and/or exports will be taxed under the GST law and whether any set off will be available as Import Tax Credit (ITC) of the IGST paid on such imports and/or exports. (4 marks each)*

Answer 4(a)

Different countries follow different models of GST based upon their own legislative and administrative structure and requirements. The following are some of the significant models:

- (i) Australian Model where the tax is collected by the Centre and distributed to the States.
- (ii) Canadian Model where there are 3 variants of taxes.
- (iii) Kelkar-Shah Model based on Canadian Model where taxes are collected by the Centre, however, two different rates of tax are to be levied by the Centre and the States.
- (iv) Bagchi –Poddar Model which envisages a combination of Central Excise, Service Tax and makes it a common base of GST, it is to be levied both by the Centre and the States separately.

Considering the federal nature of Indian Constitution, dual model of GST is levied in India.

GST is levied both by Centre as well as the States and there are separate levies in the form of CGST/SGST and IGST.

Currently Brazil and Canada follow dual GST model like India.

Answer 4(b)

Schedule III to the CGST Act, 2017 says that the following transactions shall neither be treated as supply of goods nor supply of services:

- (i) Services from employee to employer
- (ii) Duties performed as chairperson or a member or director in a body established by Central or State Government or local authority and the person is not deemed as an employee before commencement of the Act.
- (iii) Functions performed by Members of Parliament, Member of State Legislature, Members of Panchayats, Members of Municipality and Members of other local authorities.
- (iv) Duties performed by any person who holds any post in pursuance of the provisions of the Constitution in that Capacity.
- (v) Services by any Court/Tribunal.
- (vi) Funeral, burial, crematorium or mortuary including transportation of the deceased.
- (vii) Sale of land (subject to clause 5(b) of Schedule II) and sale of building.
- (viii) Actionable claims (does not include lottery, betting and gambling).

Answer 4(c)

- (i) As per section 7(5) of IGST Act, 2017, supply of goods or services from or to units in SEZ is to be treated as inter-state supply. Hence IGST will apply in this scenario.
- (ii) As per section 7(5) of IGST Act, 2017, supply of goods or services to a place outside India shall be treated as inter-state supply. Therefore, export of garments from Bengaluru to Sweden is an inter-state supply of goods. Hence IGST will apply.

Answer 4(d)

- (i) Upto 200% of Customs duty could be levied as penalty for import of unaccounted goods.
- (ii) Refund application must be filed within 1 year from the date of payment of import duty.
- (iii) Criminal liability by way of imprisonment is upto 7 years under Customs Act, 1962.
- (iv) Goods which cannot be classified in accordance with Rules 1, 2 or 3 of interpretation rules under the Customs Tariff Act, 1975, shall be classified under the heading which includes goods that are the most “akin or similar”. For example anti-glare films used for car windows if not classified separately, it could be classified under “builders’ ware of plastic”, as that’s the closest it fit into [Rule 4 of interpretation rules under the Customs Tariff Act, 1975].

Answer 4(e)

All imports/exports will be deemed as inter-State supplies for the purpose of levy of tax under Goods and Services Tax (GST) and be taxed under IGST Act.

The incidence of tax will follow the destination principle and the tax revenue will accrue to the State where the imported goods and services are being consumed.

Full and complete set-off will be available as ITC of the IGST paid on the import of goods and services.

Exports of goods and services will be zero rated.

The exporter has the option either to export under Letter of Undertaking (LUT)/Bond without payment of duty and claim refund of ITC or pay IGST at the time of export and claim refund of IGST.

The IGST on import of goods is leviable under the provisions of the Customs Act, 1962 read with Customs Tariff Act, 1975 . While IGST on import of services would be leviable under the IGST Act.

Question 5

- (a) *State with brief reasons whether the following are to be treated as supply of goods/services, as per GST law :*
 - (i) *Transfer of business as a going concern.*
 - (ii) *Renting of immovable property.*

- (iii) *Permitting use of intellectual property right.*
- (b) *Subsequent to the grant of registration under the GST law, can the proper Officer conduct physical verification of the place of business ?*
- (c) *Explain the concept of “zero rated supply” and refund claim thereof, under IGST.*
- (d) *Explain the meaning, with distinctive features as per the CGST Act, 2017, relating to Composite Supply and Mixed Supply.*
- (e) *Nisha Enterprises had made supplies of ₹9,00,000 to D.K. Enterprises on which a tax of ₹90,000 was levied by Municipal Authorities. The CGST and SGST chargeable on the supply @ 5% was of ₹45,000. Packing charges of ₹25,000 are not being included in the price of supply value of ₹9,00,000.*

Nisha Enterprises received a subsidy of ₹60,000 from an NGO on the sale of such goods and the price mentioned above of ₹9,00,000 is after taking into account the subsidy so received. A discount of 1% is also offered by Nisha Enterprises as being mentioned on the invoice.

Determine the value of supply as per the provision of the CGST Act, 2017.

(3 marks each)

Answer 5(a)

- (i) Transfer of business as a going concern is not supply of goods/services and hence not liable for GST as per Schedule II of CGST Act, 2017.
- (ii) As per Schedule II of CGST Act, 2017, renting of immovable property is supply of service which is liable for GST.
- (iii) As per Schedule II of CGST Act, 2017, temporary transfer or permitting use or enjoyment of any intellectual property right is a supply of service and is liable for GST.

Answer 5(b)

Rule 25 of CGST Rules, 2017 empowers the proper officer to do physical verification of the place of business of a registered person after grant of registration.

Such verification may be made and the verification report along with other documents, including photographs, shall be uploaded in form GST REG 30 on the common portal (gst.gov.in) within 15 working days following the date of such verification.

Answer 5(c)

Exports and supplies to SEZs are considered as “zero rated supply” on which no tax is payable. However, ITC is allowed, subject to such conditions, safeguards and procedures as may be prescribed and refunds in respect of such supplies may be claimed by following either of these options.

- Supply made without payment of IGST under Letter of Undertaking (LUT)/bond and claim refund of unutilized ITC.
- Supply made on payment of IGST and claim refund of the same.

Answer 5(d)**Composite Supply**

Section 2(30) of CGST Act, 2017 defines “composite supply” as a supply made by a taxable person to a recipient consisting of two or more taxable supplies of goods or services or both, or any combination thereof, which are naturally bundled and supplied in conjunction with each other in the ordinary course of business, one of which is a principal supply.

The feature of a composite supply is that one of the supplies within the package is identifiable as a principal supply.

Mixed Supply

Under Section 2(74) of CGST Act, 2017, “mixed supply” means two or more individual supplies of goods or services, or any combination thereof, made in conjunction with each other by a taxable person for a single price where such supply does not constitute a composite supply.

Mixed supply comprising two or more supplies shall be treated as a supply of that particular supply which attracts the highest rate of tax.

Answer 5(e)

The value of supply being made to DK Enterprises by Nisha Enterprises shall be as under:-

<i>Particulars</i>	<i>Amount (₹)</i>
Price of supply charged	9,00,000
<i>Add:</i> Tax charged by Municipal Authorities	90,000
Packing Charges	25,000
Subsidy from NGO	60,000
Total Value	10,75,000
<i>Less:</i> Discount @ 1% of 9,00,000/-	9,000
Value of Supply	10,66,000

Notes:

1. CGST and SGST is not to be included in the determination of value of supply since the tax is charged post determination of that value.
2. Subsidy since received from a non-government body is to be added back to determine the value of supply.

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

Question 6

- (a) *Ram & Shyam LLP, engaged in the business of manufacturing of domestic use electrical items, provides the following details relating to the amount of GST*

paid on various items and asks you to suggest whether any Input Tax Credit under the CGST Act, 2017 be available against such items to them :

Particulars of Items	GST paid (₹)
Electrical Transformers utilized in the manufacturing process of electrical items.	3,00,000
Mini Trucks used for transporting the materials/goods in the Factory.	1,00,000
Food and pastries for consumption given to workers during working within the factory.	22,500

(3 marks)

- (b) Examine the following independent cases of supply of goods and services, and state in each of the cases, when should a tax invoice be issued by the person making supplies, as per the provisions of the CGST Act, 2017 :
- (i) Meenakshi Enterprises, Kolkata makes a supply of goods to Dhirani Enterprises, Ghaziabad. The goods were removed from the factory at Kolkata on 3rd September, 2017. Same is received by the buyer on 5th September, 2016.
 - (ii) Mohan Ltd., an event management company, has provided its services for an event at Photo Film Agencies at Mumbai, on 1st Nov., 2017.
 - (iii) Seema & Co. has entered into an Annual Maintenance Contract (AMC) with Vir Enterprises for one-year, effective 1st Nov., 2017 for the stabilizers installed in the factory. (3 marks)
- (c) State when a registration granted under the CGST Act, 2017 to a taxable person can be cancelled and what should be done by such person after cancellation of registration in the electronic cash ledger or electronic credit ledger ? (3 marks)
- (d) Explain the meaning of the term “Pure agent” for CGST purposes. (3 marks)
- (e) Explain the meaning as being assigned under the Customs Act, 1962 to the term “Foreign going Vessel/Aircraft”. (3 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) True Sai Cars Pvt. Ltd., Tamil Nadu is a dealer in cars. They import cars from abroad and sell it to customers in India. On 20th March, 2018, they have imported cars from Japan, as per following details :

Value of cars (Assessable value)	₹4,00,00,000
Customs duty	10%
IGST	28%
Compensation cess	20%

True Sai Cars Pvt. Ltd., are eligible to claim input tax credit (ITC). Their output IGST liability, before taking credit for ITC is ₹ 130 lakh. Compute the net liability towards customs duty and IGST. (5 marks)

- (ii) *Samodia Trading Company, a registered supplier, is liable to pay GST under forward charge mechanism. Determine the time of supply from the following information furnished by the firm Samodia Trading Company :*

- (a) *Goods supplied on 3rd May, 2018;*
 (b) *Invoice issued on 3rd May, 2018;*
 (c) *Payment received on 9th May, 2018;*

Provisions involved are to be explained briefly. (5 marks)

- (iii) *Sun Trading Company, an eligible registered dealer in goods making intra-State supplies within the State of Rajasthan has reported an aggregate turnover of ₹75 lakh in the preceding financial year :*

- (a) *Determine whether Sun Trading Company will be eligible for Composition levy.*
 (b) *Will your answer be different, if Sun Trading Company is making intra-State supply within the State of Jammu and Kashmir ?* (5 marks)

Answer 6(a)

- (i) As per Section 16 of CGST Act, 2017, Input Tax Credit (ITC) of GST paid on purchase of electrical transformers of ₹3,00,000/- shall be fully available to Ram & Shyam LLP as the transformers are being used in the course or furtherance of the business of manufacturing of domestic use electrical items.
- (ii) The ITC of Motor Vehicles is not allowable being a blocked credit under section 17 (5) of CGST Act, 2017, however, where such vehicles are being used for transportation of goods the same is allowable. Hence entire ITC of GST paid of ₹1,00,000/- for transportation of material in factory by Mini Trucks is available.
- (iii) ITC on food and beverages is a blocked credit under section 17(5) of CGST Act, 2017 unless the inward taxable supplies are consumed to make outward taxable supplies in the same category. In the present case the same is used for consumption of factory workers and therefore ITC of GST paid of ₹22,500/- on food items is not available.

Answer 6(b)

- (i) As per section 31 (1) of CGST Act, 2017, tax invoice shall be issued before or at the time of (a) removal of goods, where the supply involves movement of goods or (b) delivery of goods or making available thereof to the recipient in any other case. In the given case, the tax invoice for the goods removed on 3rd September 2017 must be issued on or before 3rd September, 2017.
- (ii) As per section 31 (2) of CGST Act, 2017 read with rule 47 of CGST Rules, 2017, tax invoice in case of supply of services shall be issued before or after the

provision of services but within a period of 30 days from the date of supply of service. In the given case, the tax invoice must therefore be issued within 30 days of providing service, that is by 30th Nov. 2017.

- (iii) As per section 31(5) of CGST Act, 2017 in case of continuous supply of services:
- (a) where the due date of payment is ascertainable from the contract, the invoice shall be issued on or before the due date of payment;
 - (b) where the due date of payment is not ascertainable from the contract, the invoice shall be issued before or at the time when the supplier of service receives the payment;
 - (c) where the payment is linked to the completion of an event, the invoice shall be issued on or before the date of completion of that event.

Since the question does not provide due date of payment, assuming that date of entering into AMC contract is due date of payment, hence the tax invoice shall be issued on or before 1st November, 2017.

Answer 6(c)

As per section 29 of CGST Act, 2017 the proper officer may either himself or on application filed by a registered person, or his legal heirs in case of a death of a registered person, cancel/revoke the registration of such person.

This cancellation could be from a prospective/retrospective date as the officer may deem fit. This cancellation would in no way interfere with the liabilities of the said person relating to the taxes and other dues.

A registered person whose registration is being cancelled will have to debit the electronic cash ledger or the electronic credit ledger equivalent to the credit of input tax in respect of inputs held in stock and inputs contained in semi-finished or finished goods held in stock or capital goods or plant and machinery on the day immediately preceding the date of such cancellation or the output tax payable on such goods, whichever is higher.

Answer 6(d)

The expression “pure agent” for CGST purposes means a person who :

- (i) enters into a contractual agreement with the recipient of supply to act as his pure agent to incur expenditure or costs in the course of supply of goods or services or both;
- (ii) neither intends to hold nor holds any title to the goods or services or both so procured or supplied and does not use for his own interest such goods or services so procured; and
- (iii) receives only the actual amount incurred to procure such goods or services in addition to the amount received for supply he provides on his own account.

Answer 6(e)

As per Section 2(21) of the Customs Act, 1962 Foreign going Vessel / Aircraft means a vessel or aircraft for carriage of goods / passengers between any port / airport in India and any port / airport outside India whether touching any intermediary location or not.

Foreign going Vessel / Aircraft as per Section 2(21) also includes:

- (i) Any naval vessel of any foreign government taking part in any naval exercises;
- (ii) Any vessel engaged in fishing or any other operations outside the territorial waters of India;
- (iii) Any vessel or aircraft proceeding to a place outside India for any purpose whatsoever.

Answer 6A(i)

<i>Particulars</i>	<i>Amount (₹)</i>
Cost of cars	4,00,00,000
Customs duty at 10% (A)	40,00,000
Social welfare Surcharge at 10% of (A) (B)	4,00,000
Total customs duty (C)	44,00,000
Total cost inclusive of duty (D)	4,44,00,000
IGST at 28% of (D) (E)	1,24,32,000
Compensation Cess at 20% of (D)(F)	88,80,000
Output GST	1,30,00,000
Less : ITC [IGST]	1,24,32,000
Balance GST liability	5,68,000

Note: ITC cannot be claimed of Compensation Cess.

Answer 6A(ii)

As per section 12 of CGST Act, 2017, the time of supply of goods, tax on which is payable under forward charge, is the earlier of the following two dates:

Date of issue of invoice or last date on which the invoice is required to be issued.

A registered person is further required to issue a tax invoice before or at the time of removal of goods for supply to the recipient. Thus, in the given case, the invoice for supply of goods should have been issued on or before the removal of goods i.e. on 03.05.2018.

Thus, the time of supply of the goods will be 03.05.2018.

Answer 6A(iii)

- (a) Section 10 of CGST Act, 2017 provides that a registered person whose aggregate turnover in the preceding financial year did not exceed ₹1 crore may opt for composition scheme. The turnover limit is ₹75 lakh in case of Special Category States. However, for Jammu and Kashmir and Uttarakhand, the turnover limit is of ₹1 crore only.

In the given case, the applicable turnover limit for composition scheme will be ₹1 crore as Rajasthan is not a Special Category State.

The aggregate turnover of the registered person Sun Trading Company in the given case does not exceed ₹1 crore and it satisfies other conditions of compositions scheme being not making inter-state supplies of goods. It is eligible for composition levy.

- (b) Since the turnover limit for determining the eligibility for composition scheme in the State of Jammu and Kashmir is also ₹1 crore, Sun Trading Company will be eligible for composition levy with other condition of not making inter-state supplies of goods being fulfilled in this case also.
