

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

(New Syllabus)

DECEMBER 2020

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be 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 2020

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE: *Answer ALL Questions.*

Question 1

- (a) *'Justice, Equity and Good Conscience' is the main Secondary Source of Indian Law. Explain it.*
- (b) *Discuss the 'Doctrine of Eclipse' under the Constitution of India.*
- (c) *Section 41 of the Criminal Procedure Code, 1973 enumerates the different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. Explain any five Categories of such cases.*
- (d) *Explain the 'Purposive Rule' of Interpretation, under the General Clauses Act, 1897. (5 marks each)*

Answer 1(a)

The concept of "justice, equity and good conscience" was introduced by Impey's Regulations of 1781. In personal law disputes, the courts are required to apply the personal law of the defendant if the point at issue is not covered by any statute or custom. In the absence of any rule of a statutory law or custom or personal law, the Indian courts apply to the decision of a case what is known as "justice, equity and good conscience", which may mean the rules of English Law in so far as they are applicable to Indian society and circumstances.

The Ancient Hindu Law had its own versions of the doctrine of justice, equity and good conscience. In its modern version, justice, equity and good conscience as a source of law, owes its origin to the beginning of the British administration of justice in India. The Charters of the several High Courts established by the British Government directed that when the law was silent on a matter, they should decide the cases in accordance with justice, equity and good conscience. Justice, equity and good conscience have been generally interpreted to mean rules of English law on an analogous matter as modified to suit the Indian conditions and circumstances.

The Supreme Court has stated that it is now well established that in the absence of any rule of Hindu Law, the courts have authority to decide cases on the principles of justice, equity and good conscience unless in doing so the decision would be repugnant to, or inconsistent with, any doctrine or theory of Hindu Law.

Answer 1(b)

According to Article 13 of the Constitution of India an existing law inconsistent with a fundamental right became in-operative from the date of the commencement of the

Constitution, yet it is not dead altogether. A law made before the commencement of the Constitution remains eclipsed or dormant to the extent it comes under the shadow of the fundamental rights, i.e. is inconsistent with it, but the eclipsed or dormant parts become active and effective again if the prohibition brought about by the fundamental rights is removed by the amendment of the Constitution. This is known as the doctrine of eclipse.

The doctrine was first evolved in *Bhikaji Narain Dhakras v. State of M.P.*, A.I.R. 1955 S.C. 781. In this case, the validity of C.P. and Berar Motor Vehicles Amendment Act, 1947, empowering the Government to regulate, control and to take up the entire motor transport business was challenged. The Act was perfectly a valid piece of legislation at the time of its enactment. But on the commencement of the Constitution, the existing law became inconsistent under Article 13(1), as it contravened the freedom to carry on trade and business under Article 19(1)(g). To remove the infirmity the Constitution (First Amendment) Act, 1951 was passed which permitted creation by law of State monopoly in respect of motor transport business. The Court held that the Article by reason of its language could not be read as having obliterated the entire operation of the inconsistent law or having wiped it altogether from the statute book. In case of a pre-Constitution law or statute, it was held, that the doctrine of eclipse would apply. The relevant part of the judgement is:

“The true position is that the impugned law became as it were, eclipsed, for the time being, by the fundamental right. The effect of the Constitution (First Amendment) Act, 1951 was to remove the shadow and to make the impugned Act free from all blemish or infirmity.”

Answer 1(c)

Section 41 of the Criminal Procedure Code 1973, enumerates different categories of cases in which a police officer may arrest a person without an order from a Magistrate and without a warrant. Any police officer may without an order from a Magistrate and without a warrant, arrest any person—

- (a) who commits, in the presence of a police officer, a cognizable offence;
- (b) against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists that he has committed a cognizable offence punishable with imprisonment for a term which may be less than seven years or which may extend to seven years whether with or without fine, if the following conditions are satisfied, namely:—
 - (i) the police officer has reason to believe on the basis of such complaint, information, or suspicion that such person has committed the said offence;
 - (ii) the police officer is satisfied that such arrest is necessary—
 - a. to prevent such person from committing any further offence; or
 - b. for proper investigation of the offence; or
 - c. to prevent such person from causing the evidence of the offence to disappear or tampering with such evidence in any manner; or
 - d. to prevent such person from making any inducement, threat or promise to any person acquainted with the facts of the case so as to dissuade him from disclosing such facts to the Court or to the police officer; or

- e. as unless such person is arrested, his presence in the Court whenever required cannot be ensured, and the police officer shall record while making such arrest, his reasons in writing:

Provided that a police officer shall, in all cases where the arrest of a person is not required under the provisions of this sub-section, record the reasons in writing for not making the arrest.

- (ba) against whom credible information has been received that he has committed a cognizable offence punishable with imprisonment for a term which may extend to more than seven years whether with or without fine or with death sentence and the police officer has reason to believe on the basis of that information that such person has committed the said offence;
- (c) who has been proclaimed as an offender either under this Code or by order of the State Government; or
- (d) in whose possession anything is found which may reasonably be suspected to be stolen property and who may reasonably be suspected of having committed an offence with reference to such thing; or
- (e) who obstructs a police officer while in the execution of his duty, or who has escaped, or attempts to escape, from lawful custody; or
- (f) who is reasonably suspected of being a deserter from any of the Armed Forces of the Union; or
- (g) who has been concerned in, or against whom a reasonable complaint has been made, or credible information has been received, or a reasonable suspicion exists, of his having been concerned in, any act committed at any place out of India which, if committed in India, would have been punishable as an offence, and for which he is, under any law relating to extradition, or otherwise, liable to be apprehended or detained in custody in India; or
- (h) who being a released convict, commits a breach of any rule made under sub-section (5) of section 356; or
- (i) for whose arrest any requisition, whether written or oral, has been received from another police officer, provided that the requisition specifies the person to be arrested and the offence or other causes for which the arrest is to be made and it appears therefrom that the person might lawfully be arrested without a warrant by the officer who issues the requisition.

Answer 1(d)

In Halsbury's Laws of England, it is stated: Parliament intends that an enactment shall remedy a particular mischief and it is therefore presumed that Parliament intends that the court, when considering, in relation to the facts of the instant case, which of the opposing constructions of the enactment corresponds to its legal meaning, should find a construction which applies the remedy provided by it in such a way as to suppress that mischief. The doctrine originates in Heydon's case where the Barons of the Exchequer resolved 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:

- what was the common law before the making of the Act;
- what was the mischief and defect for which the common law did not provide;
- what remedy Parliament has resolved and appointed to cure the disease of the commonwealth; and
- the true reason of the remedy, and then the office of all the judges is always to make such construction as shall –
 - suppress the mischief and advance the remedy; and
 - suppress subtle inventions and evasions for the continuance of the mischief pro private commode (for private benefit); and
 - add force and life to the cure and remedy according to the true intent of the makers of the Act pro publico (for the public good).

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

Question 2

- (a) *Distinguish between Battery and Assault as enumerated under the Law of Torts.*
- (b) *Distinguish between ‘Libel’ and ‘Slander’ under Indian Penal Code, 1860.*
- (c) *Distinguish between ‘Primary Evidence’ and ‘Secondary Evidence’, under the Indian Evidence Act, 1872.*
- (d) *Explain the terms ‘Patta’ and ‘Kabuliyat’, under the Indian Stamp Act, 1899.*
(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Discuss the provisions of Sections 14 and 15 of Information Technology Act, 2000, on secure electronic records.*
- (ii) *How ‘Decree’ is defined under Section 2(2) of the Civil Procedure Code, 1908 and mention essentials of a Decree.*
- (iii) *Explain any four rights of a party to appear before the National Company Law Tribunal, under the Companies Act, 2013.*
- (iv) *Discuss any four Extra Judicial Remedies under Law of Torts.*
(4 marks each)

Answer 2(a)

Battery

Any direct application of force to the person of another individual without his consent or lawful justification is a wrong of battery. To constitute a tort of battery, therefore, two things are necessary: (i) use of force, however, trivial it may be without the plaintiff's

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

Assault

Assault is any act of the defendant which directly causes the plaintiff immediately to apprehend a contact. Thus, when the defendant by his act creates an apprehension in the mind of the plaintiff that he is going to commit battery against him, the tort of assault is committed. The law of assault is substantially the same as that of battery except that apprehension of contact, not the contact itself has to be established. Usually when there is a battery, there will also be assault, but not for instance, when a person is hit from behind. To point a loaded gun at the plaintiff, or to shake fist under his nose, or to curse him in a threatening manner, or to aim a blow at him which is intercepted, or to surround him with a display of force is to assault him clearly if the defendant by his act intends to commit a battery and the plaintiff apprehends it, is an assault.

Answer 2(b)

In libel, the defamatory statement is made in some permanent and visible form, such as writing, printing or pictures. In slander it is made in spoken words or in some other transitory form, whether visible or audible, such as gestures or in articulate but significant sounds.

Libel is a representation made in some permanent form, e.g. written words, pictures, caricatures, cinema films, effigy, statue and recorded words. In a cinema films both the photographic part of it and the speech which is synchronized with it amount to tort.

Slander is the publication of a defamatory statement in a transient form; statement of temporary nature such as spoken words, or gestures.

Generally, the punishment for libel is more severe than for slander.

In India both libel and slander are treated as a crime. Section 499 of the Indian Penal Code recognizes both libel and slander as an offence. However, punishments in criminal law are stricter than in law of tort.

Answer 2(c)

“Primary evidence” means the document itself produced for the inspection of the Court (Section 62 of the Indian Evidence Act, 1872). 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. According to Section 63, “secondary evidence” means and includes.

- (1) certified copies given under the provisions hereafter contained;

- (2) copies made from the original by mechanical processes which in themselves ensure the accuracy of the copy, and copies compared with such copies;
- (3) copies made from or compared with the original;
- (4) counterparts of documents as against the parties who did not execute them;
- (5) oral accounts of the contents of a document given by some person who has himself seen it.

Section 65 stipulates the cases in which secondary evidence relating to documents may be given. As already stated, documents must be proved by primary evidence but in certain cases for example, where the document is lost or destroyed or the original is of such a nature as not to be easily, movable, or consists of numerous documents, or is a public document or the original is a document that under the Indian Evidence Act or some law is allowed to be given in evidence by a certified copy, the existence, condition or contents of the document may be proved by secondary evidence.

Answer 2(d)

“Lease” means a lease of immovable property and includes also a patta; 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;

Patta - A patta is an instrument given by the Collector of District or any other receiver of the revenue, to the cultivator, specifying the condition or conditions upon which the lands are to be held and the value or proportion of the produce to be paid therefor.

Kabuliyat - A Kabuliyat is executed by the lessee, accepting the terms of the lease and undertaking to abide by them. Although, it is not a lease under Section 105 of the Transfer of Property Act, it is expressly included in the definition for the purposes of the Stamp Act.

Answer 2A(i)

The Central Government under the Information Technology Act, 2000 may prescribe the security procedure for electronic records, having regard to the commercial circumstances prevailing at the time when the procedure is used (Section 16). When the security procedure has been applied to an electronic record at a specific point of time, then such record is deemed to be a secure electronic record, from such point of time to the time of verification. (Section 14)

An electronic signature shall be deemed to be a secure electronic signature if—

- (i) the signature creation data, at the time of affixing signature, was under the exclusive control of signatory and no other person; and
- (ii) the signature creation data was stored and affixed in such exclusive manner as may be prescribed. (Section 15).

Answer 2A(ii)

“Decree” is defined in Section 2(2) of the Civil Procedure Code, 1908 as (i) the formal expression of an adjudication which, so far as regards the Court expressing it; (ii)

conclusively; (iii) determines the rights of the parties; (iv) with regard to all or any of the matters in controversy; (v) in the suit and may be either preliminary (i.e. when further proceedings have to be taken before disposal of the suit) or final.

But decree does not include:

- (a) any adjudication from which an appeal lies as an appeal from an Order, or
- (b) any order of dismissal for default.

Essentials of a decree are:

- There must be a formal expression of adjudication.
- There must be a conclusive determination of the rights of the parties.
- The determination must be with regard to or any of the matters in controversy in the suit.
- The adjudication should have been given in the suit.

Answer 2A(iii)

Rule 45 of the NCLT Rules deals with rights of a party to appear before the Tribunal. According to Rule 45:

- (1) Every party may appear before a Tribunal in person or through an authorised representative, duly authorised in writing in this behalf.
- (2) The authorised representative shall make an appearance through the filing of Vakalatnama or Memorandum of Appearance in Form No. NCLT - 12 representing the respective parties to the proceedings.
- (3) The Central Government, the Regional Director or the Registrar of Companies or Official Liquidator may authorise an officer or an Advocate to represent in the proceedings before the Tribunal.
- (4) The officer authorised by the Central Government or the Regional Director or the Registrar of Companies or the Official Liquidator shall be an officer not below the rank of Junior Time Scale or company prosecutor.
- (5) During any proceedings before the Tribunal, it may for the purpose of its knowledge, call upon the Registrar of Companies to submit information on the affairs of the company on the basis of information available in the MCA21 portal. Reasons for such directions shall be recorded in writing.
- (6) There shall be no audio or video recording of the Bench proceedings by the parties or their authorised representatives.

Answer 2A(iv)

Extra Judicial remedies under Law of torts are available in certain cases. It is lawful to redress one's injuries by means of self-help without recourse to the court; these are as under:

- (a) *Self Defence* - It is lawful for any person to use reasonable forces to protect himself, or any other person against any unlawful use of force.

- (b) *Prevention of Trespass* - An occupier of land or any person with his authority may use reasonable force to prevent trespassers entering or to eject them but the force should be reasonable for the purpose.
- (c) *Re-entry on Land* - A person wrongfully disposed of land may retake possession of land if he can do so in a peaceful and reasonable manner.
- (d) *Re-capture of Goods* - It is neither a crime nor a tort for a person entitled to possession of a chattel to take it either peacefully or by the use of a reasonable force from one who has wrongly taken it or wrongfully detained it.
- (e) *Abatement of Nuisance* - The occupier of land may lawfully abate (i.e. terminate by his own act), any nuisance injuriously affecting it. Thus, he may cut overhanging branches as spreading roots from his neighbour's trees, but (i) upon giving notice; (ii) by choosing the least mischievous method; (iii) avoiding unnecessary damage.
- (f) *Distress Damage Feasant* - An occupier may lawfully seize any cattle or any chattel which are unlawfully on his land doing damage there and detain them until compensation is paid for the damage. The right is known as that of distress damage feasant-to distrain things which are doing damage.

Question 3

- (a) State any four obligations of Public Authority prescribed under Section 4(1)(b) of the Right to Information Act, 2005.
- (b) The test of 'Sufficient Cause' is purely an individualistic test, under the Limitation Act, 1963. Clarify.
- (c) State the provisions of Section 25 in Arbitration and Conciliation Act, 1996 regarding default of a party.
- (d) "Section 32 of the Registration Act, 1908 specifies the persons who can present documents for registration". Narrate them.

(4 marks each)

Answer 3(a)

Every public authority under the Act has been entrusted with a duty to maintain records and publish manuals, rules, regulations, instructions, etc. in its possession as prescribed under the Act. [Section 4(1)(a) RTI Act, 2005]

As per Section 4(1)(b), every public authority has to publish the following within one hundred and twenty days of the enactment of this Act:

- the particulars of its organization, functions and duties;
- the powers and duties of its officers and employees;
- the procedure followed in its decision making process, including channels of supervision and accountability;
- the norms set by it for the discharge of its functions;
- the rules, regulations, instructions, manuals and records used by its employees for discharging its functions;

- a statement of the categories of the documents held by it or under its control;
- the particulars of any arrangement that exists for consultation with, or representation by themembers of the public, in relation to the formulation of policy or implementation thereof;
- statement of the boards, councils, committees and other bodies consisting of two or morepersons constituted by it. Additionally, information as to whether the meetings of these are open to the public, or the minutes of such meetings are accessible to the public;
- a directory of its officers and employees;
- the monthly remuneration received by each of its officers and employees, including the system of compensation as provided in its regulations;
- the budget allocated to each of its agency, indicating the particulars of all plans, proposed expenditures and reports on disbursements made;
- the manner of execution of subsidy programmes, including the amounts allocated and the details and beneficiaries of such programmes;
- particulars of recipients of concessions, permits or authorizations granted by it;
- details of the information available to, or held by it, reduced in an electronic form;
- the particulars of facilities available to citizens for obtaining information, including the working hours of a library or reading room, if maintained for public use;
- the names, designations and other particulars of the Public Information Officers.
- Such other information as may be prescribed; and thereafter update the publications every year.

Answer 3(b)

The test of “sufficient cause” is purely an individualistic test. It is not an objective test. Therefore, no two cases can be treated alike. The statute of limitation has left the concept of ‘sufficient cause’ delightfully undefined thereby leaving to the court a well-intended discretion to decide the individual cases whether circumstances exist establishing sufficient cause. There are no categories of sufficient cause. The categories of sufficient cause are never exhausted. Each case spells out a unique experience to be dealt with by the Court as such. [*R B Ramlingam v. R B Bhvansewari* (2009) 2 SCC 689].

Answer 3(c)

Section 25 of Arbitration and Conciliation Act, 1996 provides that unless otherwise agreed by the parties, where, without showing sufficient cause,-

- a. the claimant fails to communicate his statement of claim in accordance with sub-section (1) of section 23, the arbitral tribunal shall terminate the proceedings;
- b. the respondent fails to communicate his statement of defence in accordance with sub-section (1) of section 23, the arbitral tribunal shall continue the

proceedings without treating that failure in itself as an admission of the allegation by the claimant and shall have the discretion to treat the right of the respondent to file such statement of defence as having been forfeited.

- c. a party fails to appear an oral hearing or to produce documentary evidence, the arbitral tribunal may continue the proceedings and make the arbitral award on the evidence before it.

Answer 3(d)

Section 32 of Registration Act, 1908 specifies the persons who can present documents for registration at the proper registration office. They are as follows:

- (a) some person executing or claiming under the same, or in the case of a copy of a decree or order, claiming under the decree or order, or
- (b) the representative or assign of such person, or
- (c) the agent of such person, representative or assign, duly authorised by power-of-attorney executed and authenticated in the manner hereinafter mentioned.

Question 4

- (a) *Explain the procedure for lodging of caveat before National Company Law Tribunal and what is the validity period of such caveat ? (4 marks)*
- (b) *A is a warehouse-keeper. Z going on journey entrusted his furniture to A, under a contract that it shall be returned on payment of a stipulated sum for warehouse room. Before coming Z from journey, A has sold furniture. What offence has been committed by the A and what is punishment for it ? Explain. (4 marks)*
- (c) *What are the principal sources of Administrative Law in India ? Explain in brief. (4 marks)*
- (d) *Explain the rule of 'Expressio Unis Est Exclusio Alterius' under Interpretation of statutes. (4 marks)*

Answer 4(a)

- (1) Any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before National Company Law Tribunal by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the form prescribed and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant which full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up:

Provided, that the Tribunal may pass interim orders in case of urgency.

- (2) The caveat shall remain valid for a period of ninety days from the date of its filing.

Answer 4(b)

A has committed the Offence of “Criminal Breach of Trust”. Whoever, being in any manner entrusted with property, or with any dominion over property, dishonestly misappropriates or converts to his own use that property, or dishonestly uses or disposes of that property in violation of any direction of law prescribing the mode in which such trust is to be discharged, or of any legal contract, express or implied, which he has made touching the discharge of such trust, or wilfully suffers any other person so to do, commits “criminal breach of trust”.

Whoever commits criminal breach of trust shall be punished with imprisonment of either description for a term which may extend to three years, or with fine, or with both.

Answer 4(c)

There are four principal sources of administrative law in India:

1. *Constitution of India* : It is the primary source of administrative law. Article 73 of the Constitution provides that the executive power of the Union shall extend to matters with respect to which the Parliament has power to make laws. Similar powers are provided to States under Article 162. Indian Constitution has not recognized the doctrine of separation of powers in its absolute rigidity.
2. *Acts/ Statutes* : Acts passed by the central and state governments for the maintenance of peace and order, tax collection, economic and social growth empower the administrative organs to carry on various tasks necessary for it. These Acts list the responsibilities of the administration, limit their power in certain respects and provide for grievance redressal mechanism for the people affected by the administrative action.
3. *Ordinances, Administrative directions, Notifications and Circulars* : Ordinances are issued when there are unforeseen developments and the legislature is not in session and therefore cannot make laws. Ordinances allow the administration to take necessary steps to deal with such developments. Administrative directions, notifications and circulars are issued by the executive in the exercise of power granted under various Acts.
4. *Judicial decisions* : Judiciary is the final arbiter in case of any dispute between various wings of government or between the citizen and the administration. In India, we have the supremacy of Constitution and the Supreme Court is vested with the authority to interpret it. The courts through their various decisions on the exercise of power by the administration, the liability of the government in case of breach of contract or tortious acts of Governments servants lay down administrative laws which guide their future conduct.

Answer 4(d)

The rule “Expressio Unis Est Exclusio Alterius” means that express mention of one thing implies the exclusion of another.

At the same time, general words in a statute must receive a general construction, unless there is in the statute some ground for limiting and restraining their meaning by reasonable construction; because many things are put into a statute ex abundanti cautela,

and it is not to be assumed that anything not specifically included is for that reason alone excluded from the protection of the statute. The method of construction according to this maxim must be carefully watched. The failure to make the 'expressio' complete may arise from accident. Similarly, the 'exclusio' is often the result of inadvertence or accident because it never struck the draftsman that the thing supposed to be excluded requires specific mention. The maxim ought not to be applied when its application leads to inconsistency or injustice.

Similarly, it cannot be applied when the language of the Statute is plain with clear meaning (*Parbhani Transport Co-operative Society Ltd. v. Regional Transport Authority, AIR 1960 SC 801*)

Question 5

- (a) *Elaborate the provisions of Civil Procedure Code, 1908 regarding suits by or against minors and what will be the impact after minor attains the age of majority?*
- (b) *Article 19(1)(g) of the Constitution of India provides that all citizens shall have the right to practice any profession, or to carry on any occupation, trade or Business. Explain.*

(8 marks each)

Answer 5(a)

A minor is a person (i) who has not completed the age of 18 years and (ii) for whom or his/her property a guardian has been appointed by a Court, or whose property is under a Court of Wards, the age of majority is completed at the age of 21 years.

Every suit by a minor shall be instituted in his name by a person who in such suit shall be called the next friend of the minor. The next friend should be a person who is of sound mind and has attained majority. However, the interest of such person is not adverse to that of the minor and that he is not in the case of a next friend, a defendant for the suit. (O.32, Rules 1 and 4 of Civil Procedure Code).

Where the suit is instituted without a next friend, the defendant may apply to have the plaint taken off the file, with costs to be paid by the pleader or other person by whom it was presented. (O.32, R.2).

Where the defendant is a minor the Court, on being satisfied of the fact of his minority, shall appoint a proper person to be guardian for the suit for such minor [O.32, R.3(1)].

An order for the appointment of a guardian for the suit may be obtained upon application in the name and on behalf of the minor or by the plaintiff [O.32, R.3(2)]

A person appointed as guardian for the suit for a minor shall, unless his appointment is terminated by retirement, removal or death, continue as such throughout all proceedings arising out of the suit including proceedings in any appellate or revisional court and any proceedings in the execution of a decree. [O.32, R.3(5)].

When minor attains majority - When the minor plaintiff attains majority he may elect to proceed with the suit or application or elect to abandon it. If he elects the former course, he shall apply for an order discharging the next friend and for leave to proceed in his own name and the title of the suit will be corrected. If he elects to abandon the suit

or application, he shall, if a sole plaintiff or sole applicant apply for an order to dismiss the suit on repayment of the costs incurred by the defendant or opposite party etc.

Answer 5(b)

Article 19(1)(g) of the Constitution of India provides that all citizens shall have the right to practise any profession, or to carry on any occupation, trade or business.

An analysis of the case law reveals that the emphasis of the Courts has been on social control and social policy. However, no hard and fast rules have been laid down by the Court for interpreting this Article. The words 'trade', 'business', 'profession' used in this Article have received a variety of interpretations. The word 'trade' has been held to include the occupation of men in buying and selling, barter or commerce, work, especially skilled, thus of the widest scope (*The Management of Safdarjung Hospital v. K.S. Sethi*, AIR 1970 S.C. 1407).

The word 'business' is more comprehensive than the word 'trade'. Each case must be decided according to its own circumstances, applying the common sense principle as to what business is. A profession on the other hand, has been held ordinarily as an occupation requiring intellectual skill, often coupled with manual skill. Like other freedoms discussed above, this freedom is also subject to reasonable restrictions. Article 19(6) provides as under:

Nothing in sub-clause (g) shall affect the operation of any existing law in so far as it imposes, or prevent the State from making any law imposing, in the interests of the general public, reasonable restrictions in the exercise of the right conferred by the said sub-clause, and in particular, nothing in the said sub-clause shall affect the operation of any existing law in so far as it relates to, or prevent the State from making any law relating to –

- (i) the professional or technical qualifications necessary for practising any profession or carrying on any occupation, trade or business, or
- (ii) the carrying on by the State, or by a corporation owned or controlled by the State, of any trade, industry or service whether to the exclusion, complete or partial, of citizens or otherwise.

Article 19(1)(g) of the Constitution guarantees that all citizens have the right to practice any profession or to carry on any occupation or trade or business. The freedom is not uncontrolled, for, clause (6) of the Article authorises legislation which (i) imposes reasonable restrictions on this freedom in the interests of the general public; (ii) prescribes professional or technical qualifications necessary for carrying on any profession, trade or business; and (iii) enables the State to carry on any trade or business to the exclusion of private citizens, wholly or partially.

In order to determine the reasonableness of the restriction, regard must be had to the nature of the business and conditions prevailing in that trade. It is obvious that these factors differ from trade to trade, and no hard and fast rules concerning all trades can be laid down. The word 'restriction' used in clause (6) is wide enough to include cases of total prohibition also. Accordingly, even if the effect of a law is the elimination of the dealers from the trade, the law may be valid, provided it satisfies the test of reasonableness or otherwise.

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

- (a) *Section 3 of the Indian Evidence Act, 1872 deals with the term 'Evidence'. Explain it. (4 marks)*
- (b) *Discuss the documents or transactions to which the Information Technology Act, 2000 does not apply. (4 marks)*
- (c) *Describe in brief the provisions of Section 19 of the Limitation Act, 1963 regarding the effect of payment on account of debt or of interest on legacy. (4 marks)*
- (d) *Section 20 of the Right to Information Act, 2005 deals with the penalties imposed on a Public Information Officer (PIO). Explain. (4 marks)*

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

- (i) *Describe the concept of 'E-Stamping' under Indian Stamp Act, 1899.*
- (ii) *Elaborate the provisions of Section 32 of Arbitration and Conciliation Act, 1996 regarding the termination of arbitral proceedings.*
- (iii) *Define 'Complaint' under Criminal Procedure Code, 1973.*
- (iv) *Explain the rule of 'nemo iudex in causa sua' under Administrative Law. (4 marks each)*

Answer 6(a)

The term evidence is defined under Section 3 of the Evidence Act, 1872 as follows: "Evidence" means and includes:

- (1) all statements which the Court permits or requires to be made before it by witnesses, in relation to matters of fact under inquiry; such statements are called oral evidence;
- (2) all documents (including electronic records) produced for the inspection of the Court; such documents are called documentary evidence.

The word evidence in Indian Evidence Act signifies only the instruments by means of which relevant facts are brought before the Court, viz., witnesses and documents, and by means of which the court is convinced of these facts.

Answer 6(b)

Documents or Transactions to which the Information Technology Act shall not apply:

1. A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881.
2. Power-of-attorney as defined in section 1A of the Powers-of-Attorney Act, 1882.
3. A trust as defined in section 3 of the Indian Trust Act, 1882.

4. A will as defined in clause (h) of section 2 of the Indian Succession Act, 1925, including any other testamentary disposition by whatever name called.
5. Any contract for the sale or conveyance of immovable property or any interest in such property.

Answer 6(c)

As per Section 19 of the Limitation Act where payment on account of a debt or of interest on a legacy is made before the expiration of the prescribed period by the person liable to pay the debt or legacy or by his agent duly authorised in this behalf, a fresh period of limitation shall be computed from the time when the payment was made. The proviso says that, save in the case of payment of interest made before the 1st day of January, 1928, an acknowledgement of the payment must appear in the handwriting of, or in a writing signed by the person making the payment.

According to the explanation appended to Section 19:

- (a) where mortgaged land is in the possession of the mortgagee, the receipt of the rent or produce of such land shall be deemed to be a payment;
- (b) 'debt' does not include money payable under a decree or order of a court for the purpose of this Section.

Thus, according to section 19 a fresh period of limitation becomes available to the creditor when part-payment of debt is made by the debtor before the expiration of the period of limitation.

Answer 6(d)

Section 20 of the Right to Information Act, 2005 imposes stringent penalty on a Public Information Officer (PIO) for failing to provide information. Every PIO will be liable for fine of Rs.250 per day, up to a maximum of Rs.25,000/-, for –

- (i) not accepting an application;
- (ii) delaying information release without reasonable cause;
- (iii) malafidely denying information;
- (iv) knowingly giving incomplete, incorrect, misleading information;
- (v) destroying information that has been requested; and
- (vi) obstructing furnishing of information in any manner.

The Information Commission (IC) at the Centre and at the State levels will have the power to impose this penalty. They can also recommend disciplinary action for violation of the law against the PIO for persistently failing to provide information without any reasonable cause within the specified period.

Answer 6A(i)

E-Stamping is a computer based application and a secured way of paying Non Judicial stamp duty to the Government. The government introduced the e-stamping to make the stamp duty payment convenient. E-stamp is generated by the system on payment of Stamp Duty. The benefits of e-Stamp are: e-Stamp Certificate can be

generated within minutes; e-Stamp Certificate generated is tamper proof; e-Stamp Certificate generated has a Unique Identification Number; Easy accessibility and faster processing; Security; Cost savings and User friendly.

Answer 6A(ii)

As per section 32 (1) of Arbitration & Conciliation Act, 1996, the arbitral proceedings shall be terminated by the final arbitral award or by an order of the arbitral tribunal under sub-section (2).

Under section 32 (2) of Arbitration & Conciliation Act, 1996, the arbitral tribunal shall issue an order for the termination of the arbitral proceedings where,

- a. the claimant withdraws his claim, unless the respondent objects to the order and the arbitral tribunal recognises a legitimate interest on his part in, obtaining a final settlement of the dispute,
- b. the parties agree on the termination of the proceedings, or
- c. the arbitral tribunal finds that the continuation of the proceedings has for any other reason become unnecessary or impossible.

Section 32(3) says that the mandate of the arbitral tribunal terminates with the termination of the arbitral proceedings. This is subject to the provisions of Sections 33 and 34(4) of the Act.

Answer 6A(iii)

“Complaint” means any allegation made orally or in writing to a Magistrate, with a view to his taking action under the Code of Criminal Procedure, 1973 that some person, whether known or unknown, has committed an offence, but it does not include a police report. [Section 2(d)]

However, a report made by the police officer in a case which discloses after investigation, the commission of a non-cognizable offence shall be deemed to be a complaint, and the police officer making the report as a complainant. In general a complaint about an offence can be filed by any person except in cases of offences relating to marriage, defamation and offences mentioned under Sections 195 and 197.

It is to be noted that a complaint in a criminal case is what a plaint is in a civil case.

Answer 6A(iv)

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

Bias can be the following types:

- (a) Pecuniary Bias
- (b) Personal Bias
- (c) Subject matter Bias

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) *Reduction of share capital and Diminution of share capital mean the same.*
- (b) *Annual Return is a significant document in relation to the company.*
- (c) *An encumbrance may be created by a charge, pledge or a mortgage.*
- (d) *In the United Kingdom, the name of the company may be entered in its register of members as a member in certain cases. (5 marks each)*

Answer 1(a)

Section 66(1) of the Companies Act, 2013 states that subject to confirmation by the Tribunal on an application by the company, a company limited by shares or limited by guarantee and having a share capital may, by passing a special resolution, reduce the share capital in any manner and in, particular, may—

- (a) extinguish or reduce the liability on any of its shares in respect of the share capital not paid-up; or
- (b) either with or without extinguishing or reducing liability on any of its shares,—
 - (i) cancel any paid-up share capital which is lost or is unrepresented by available assets; or
 - (ii) pay off any paid-up share capital which is in excess of the wants of the company,

alter its memorandum by reducing the amount of its share capital and of its shares accordingly.

While, Section 61(1)(e) of the Companies Act, 2013 provides that, a limited company having share capital, if authorised by its Articles, may cancel shares, by passing an ordinary resolution in that behalf, which have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled. Diminution needs no confirmation by the Tribunal.

Further, Section 61(2) of the Companies Act, 2013 specifically states that the

cancellation of shares under section 61(1) of the Companies Act, 2013 shall not be deemed to be reduction of share capital.

Thus, Reduction of Share Capital and Diminution of Share Capital is not the same.

Answer 1(b)

Annual Return is a significant document in relation to the company

Annual Return is a significant document for the stakeholders of a company as it provides a very comprehensive information about various aspects of a company. It is perhaps the most important document required to be filed by every company with the Registrar of Companies. Apart from the Financial Statements, this is the only document to be compulsorily filed with the Registrar of Companies, every year irrespective of any events / happenings in the company. While the Financial Statements give information on the financial performance of a company, it is the Annual Return which gives extensive disclosure and greater insight into the non-financial matters of the company and the people entrusted with the management of the company.

Annual Return contains the following particulars in consonance with the Section 92(1) of the Companies Act, 2013:

- (1) its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
- (2) its shares, debentures and other securities and shareholding pattern;
- (3) its indebtedness [*omitted by the Companies (Amendment) Act, 2017 (Yet to be notified by CG)*];
- (4) its members and debenture-holders along with changes therein since the close of the previous financial year;
- (5) its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
- (6) meetings of members or a class thereof, Board and its various committees along with attendance details;
- (7) remuneration of directors and key managerial personnel;
- (8) penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment;
- (9) matters relating to certification of compliances, disclosures as may be prescribed;
- (10) details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors [*indicating their names, addresses, countries of incorporation, registration and percentage of shareholding held by them - omitted by the Companies (Amendment) Act, 2017 (yet to be notified by CG)*] and
- (11) such other matters as may be prescribed.

Answer 1(c)

An encumbrance means a restriction imposed on the owner's right over his property. All the three words used above impose a restriction on the right of the owner over his own property.

As per Clause 16 of Section 2 of the Companies Act, 2013, charge means an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

A charge is called fixed or specific when it is created to cover assets which are ascertained and definite or are capable of being ascertained and defined, at the time of creating the charge whereas a floating charge is not attached to any definite property but covers property of a fluctuating type such as stock in trade.

On the contrary, in case of a fixed or a floating charge the possession of the assets remains with the borrower. The ownership of the property also remains with the borrower. In case of fixed charge he has no right to sell or transfer the asset except with the consent of the charge holder. In case of a floating charge the borrower can treat his floating assets as if they have not been charged. He loses this right only when he commits a default and the charge holder decides to take action for recovery of the money due. In this case we say the floating charge crystallizes.

A mortgage is the transfer of an interest in specific immovable property for the purpose of securing the payment of money advanced or to be advanced by way of loan, an existing or future debt or performance of an agreement which may give rise to pecuniary liability.

In a pledge the borrower loses possession of the goods pledged as a security for repayment of a debt or performance of an obligation. The pawnor (pledgor) remains the owner of the property. He is entitled to get back the possession on repayment of the debt. However, in all these cases if the borrower commits a default in payment of the principal and interest thereof the lender gets a right to sell the property and recover the amount due to him.

Thus, an encumbrance may be created by a charge, pledge or a mortgage.

Answer 1(d)

Section 724 of the U.K. Companies Act, 2006 deals with the Treasury Shares, a limited company can make a purchase of its own shares out of distributable profits. The company may

- (a) hold shares (or any of them) or
- (b) deal with any of them, at any time,

in accordance with section 727 or 729 of the U.K. Companies Act, 2006 w.r.t. disposal and cancellation of treasury shares.

Accordingly, when such Treasury Shares are held by the company, then the name of the company must be entered in the register of members (or as the case may be, the company's name must be delivered to the registrar) as the member holding those shares.

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

(a) Sumeet, Puneet and Manmeet were subscribers to the Memorandum of Association of a private company for 500 shares, 300 shares and 200 shares respectively. After incorporation, Sumeet and Puneet bought the shares, they had subscribed for, from the company whereas Manmeet bought 200 shares from Sumeet. Will Manmeet be liable to the company for the shares, he has not bought from the company? (3 marks)

(b) The following summarized information is available in respect of a company for the year ended 31st March, 2019:

	₹ Lakh
Equity Share Capital 10,000 shares of the face value of ₹100 each	10
Free Reserve	2
Revaluation Reserve	1
Profit and Loss Account (Dr.)	0.35
Net loss for the year 2018-2019	0.25

The company has paid dividends to the equity shareholders @ 8%, 10% and 12% during the immediately preceding three financial years. Advise the Board of directors the maximum amount they can pay this year by way of dividends.

(3 marks)

(c) Arup entered into a transaction with Brilliant Merchandise Ltd. for a contract worth ₹ 51 lakh. The Articles of Association of the company stipulate that a contract above ₹ 25 lakh should be approved by a meeting of the Board of directors. Anjaan, Deputy General Manager (Commercial) produces a forged document which shows a resolution approving the contract having been passed in a Board Meeting. Later, the forgery is discovered. Arup pleads that his contract with the company is protected by the Doctrine of Indoor Management. Will Arup succeed? (3 marks)

(d) KBC Ltd. filed Form PAS-3 with the Registrar of Companies (ROC), Mumbai as required under the Companies Act, 2013 with late fees as it was not filed within the due date. The ROC on examining the e-form, found it necessary to call for further information. He gave a notice to the company directing it to furnish the required information within the prescribed time. The company furnished only a part of the required information. Discuss the consequences of the action in such circumstances under the provisions of the Companies Act, 2013.

(3 marks)

(e) P Realtors Ltd., A Construction Ltd. and five other individuals have incorporated XYZ Builders Ltd. to construct a commercial complex. P Realtors Ltd. and A Construction Ltd. have executed an agreement according to which none of these companies can sell their shares in the new company before completion of construction of the commercial complex. Due to financial crunch, P Realtors

decides to sell its shares in XYZ Builders Ltd. to PQR Builders Ltd. Can A Construction Ltd. restrain the transfer of shares before completion of construction of the commercial complex ? (3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) An application has been made by a shareholder of a company to the National Company Law Tribunal (NCLT) that the company which has been just incorporated has supplied incorrect information in the documents filed for incorporation. Examine what action can be taken by the NCLT if the contention of the shareholder is proved to be true? (3 marks)
- (ii) DEF Traders Ltd. is incorporated as a small company. State with reference to the relevant legal provisions whether it is required to set up a Corporate Social Responsibility Committee ? (3 marks)
- (iii) HIJ Engineers Ltd. has a paid-up capital of ₹ 20 lakh, Free Reserves of ₹ 3 lakh and Securities Premium of ₹ 2 lakh. It has granted a loan of ₹ 14 lakh to KLM Traders Ltd. The Board of Directors is proposing the following transactions without securing approval of the members :

(I) Sanctioning a loan of ₹ 2 lakh to KLM Cement Ltd. and

(II) Sanctioning a loan of ₹ 3 lakh to an employee of the company.

Can the Board of Directors sanction the aforesaid loans ? (3 marks)

- (iv) The following information as per latest balance sheet figures as on 31st March, 2019 is made available to you:

	₹ crore
Paid-up Share Capital	150
Free Reserve	50
Securities Premium Account	20
Capital Redemption Reserve	10

The company has not accepted any deposits as of now. The Board of Directors want to know what is the maximum amount it can accept by way of deposits from (i) members and (ii) the public.

Advise them. (3 marks)

- (v) Sunita sold her flat to NOP Televisions Ltd: on 1st April, 2016. The company appointed Prakash (a registered valuer and also husband of Sunita) on 1st May, 2019 to determine the value of the flat purchased from Sunita. Can Prakash validly undertake this assignment? Would your answer differ if the appointment had been made on 1st March, 2019? (3 marks)

Answer 2(a)

In the case of a subscriber, no application or allotment is necessary to become a member. Since, by virtue of his subscribing to the memorandum, he is deemed to have agreed to become a member and he becomes ipso facto member on the incorporation of the company and is liable for the shares he has subscribed.

According to Section 10(2) of the Companies Act, 2013, all monies payable by any member to the company under the Memorandum of Association or Articles of Association of the company shall be debt due from him to the company. Further, a subscriber to the Memorandum must make payment for his shares, even if the promoters have promised him the shares for services rendered in connection with the promotion of the company. When the Subscriber subscribes to the Memorandum, he gives an undertaking to the company that he will pay to the company for the shares he has subscribed.

Further, Subscribers has to take these shares directly from the company and not through transfer from other member(s).

In the instant case, Manmeet is not absolved from his liability to the company by purchasing the shares from Sumeet. He has a statutory obligation to buy the shares from the company by making payment to the company.

Answer 2(b)

As per Section 123 (1) of the Companies Act, 2013, a company can distribute dividends out of profits of the current year or from profits of previous financial years.

In the event of inadequacy or absence of profits in any financial year, if the company wants to propose declaration of dividend, it can pay it out of accumulated profits earned by it in previous years and transferred by the company to the free reserves, according to the conditions prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

In the instant case, the net loss for the year 2018-19 is ₹25000.

According to Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014 the following conditions must be fulfilled:

- (i) The rate of dividend cannot exceed the average of the rates at which dividend was declared in the three years immediately preceding that year i.e. $(8\%+10\%+12\%)/3 = 10\%$, so in this case, the amount of dividend should not exceed ₹1 Lakh.
- (ii) The total amount to be drawn from such accumulated profits shall not exceed one-tenth of the sum of its paid-up share capital and free reserves as appearing in the latest audited financial statement. Thus the company can draw only upto ₹1.2 lakh.
- (iii) The balance of reserves after such withdrawal shall not fall below 15% of its paid up capital as appearing in the latest audited balance sheet. Accordingly the maximum that may be withdrawn cannot exceed ₹ 50000.
- (iv) However, the amount so withdrawn must be used to set-off losses of the current year i.e. ₹25000.

Therefore, the maximum amount in this instant case that can be paid by way of dividend is ₹25000.

Answer 2(c)

The doctrine of Constructive Notice protects a company from outsiders. The doctrine provides that an outsider must read the Memorandum and Articles of the Company and satisfy himself that the contract he is seeking to enter into with the company is within its powers.

As far as internal procedures are concerned, an outsider is entitled to presume that everything has been according to the procedures laid down and there is no irregularity. An outsider cannot find out what is going on inside the doors as the doors of management are closed. This is known as the doctrine of Indoor Management [also known as rule in *Royal British Bank v. Turquand (1856) CI & B 327*].

However, in certain exceptional situations the doctrine of indoor management is not applicable and one of them is when a person relies on a forged document. Nothing can validate forgery. A company cannot be held liable for forgery committed by its officers. This has been established in the case *Ruben v. Great Fingall Consolidated case [1906] 1 AC 439*.

In the instant case Arup has relied on a forged document. Therefore he will not be protected and he will not succeed in his pleading.

Answer 2(d)

Rule 10(2) of the Companies (the Registration offices and Fees) Rules, 2014 provides that, where the Registrar on examining any application or e-form or document finds it necessary to call for further information or finds such application or e form or document to be defective or incomplete in any respect, he shall give intimation of such information called for or defect or incompleteness, by e-mail on the last intimated e-mail address of the person or the company, which has filed such application or e-form or document, directing him or it to furnish such information or to rectify such defects or incompleteness or to re-submit such application or e-Form or document within the prescribed time.

Rule 10(4) of the Companies (the Registration offices and Fees) Rules, 2014 provides that, in case where such further information called for has not been provided or has been furnished partially or defects or incompleteness has not been rectified or has been rectified partially or has not been rectified as required within the stipulated period, the Registrar shall either reject or treat the application or e-form or document, as the case may be, as invalid in the electronic record, and shall inform the person or the company.

Accordingly, where any document is recorded as invalid by the Registrar, the document may be rectified by the person or company by only fresh filing along with payment of fee and additional fee, as applicable at the time of fresh filing, without prejudice to any other liability under the Companies Act, 2013.

Answer 2(e)

With reference to the definition of a private company as provided under Section 2 (68) of the Companies Act, 2013, a private company is only authorised to exercise restriction by its Articles on the transfer of shares of the company held by its members.

In other words, in public companies the shares are freely transferable and no restrictions can be imposed on the members right regarding transfer of their shares.

In the instant case the agreement between P Realtors Ltd. and A Construction Ltd restricting their rights to transfer their shares till completion of the project will be held subservient to the provision contained in the Companies Act, 2013, which provide for free transferability of shares. Therefore, A Construction Ltd. will not be able to restrain P Realtors from transferring their shares in XYZ Builders Ltd. to PQR Builders Ltd.

Answer 2A(i)

According to Section 7(7) of the Companies Act, 2013, where a company has got incorporated by furnishing any false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the National Company Law Tribunal may on an application made to it, on being satisfied that the situation so warrants:

- (a) Pass such orders as it may think fit for regulation of the management of the company including changes, if any, in its Memorandum and Articles, in public interest or in the interest of the company and its members and creditors; or
- (b) Direct that the liability of the members shall be unlimited; or
- (c) Direct removal of the name of the company from the register of companies; or
- (d) Pass an order for winding up of the company; or
- (e) Pass any such orders as it deems fit.

Answer 2A(ii)

According to Section 135 of the Companies Act, 2013, only the following companies are required to constitute a Corporate Social Responsibility Committee which in the immediately preceding financial year have:

- (a) Net worth of ₹500 crore or more; or
- (b) Turnover of ₹1000 crore or more; or
- (c) Net profit of ₹5 crore or more

A small company is defined in section 2(85) of the Companies Act, 2013 to mean **a company, other than a public company** whose:

- (a) Paid up share capital does not exceed ₹50 Lakh or such higher amount as may be prescribed which shall not be more than ₹10 crore and
- (b) Turnover of which as per profit and loss account for the immediately preceding financial year does not exceed ₹2 crore or such higher amount as may be prescribed which shall not be more than ₹100 crore

As DEF Traders Ltd. is incorporated as small company, it does not meet the criteria specified in section 135 of the Companies Act, 2013 and would, therefore not be required to constitute a Corporate Social Responsibility Committee.

Answer 2A(iii)

Section 186 (2) of the Companies Act, 2013 provides that, no company shall directly or indirectly give any loan to any person or other body corporate exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more.

Further, Section 186(3) of the Companies Act, 2013 provides that where the aggregate of the loans and investment so far made, along with the investment or loan, proposed to be made or given by the Board, exceed the limits specified under section 186(2), no investment or loan shall be made unless previously authorised by a special resolution passed in a general meeting.

Hence, as per section 186(2) of the Companies Act, 2013, the limits for the loan and investment will be the amount whichever is more of the following:

- (a) 60% of paid up share capital, free reserves and securities premium account = ₹15 lakh or
- (b) 100% of free reserves and securities premium account = ₹5 lakh

In the instant case, since the company has already given loans of ₹14 lakh to KLM Traders Ltd and further proposed to grant loan, of ₹2 Lakh to KLM Cement Ltd, it will exceed the limit of ₹15 lakh, hence prior approval by special resolution in the general meeting will be required to be passed by HIJ. Engineers Ltd. in terms of Section 186(3) of the Companies Act, 2013.

As per Explanation w.r.t. to Section 186(2) of the Companies Act, 2013, the word person, used under this sub-section does not include any individual who is in the employment of the company.

Accordingly, there are no limit imposed on the right of a company to sanction a loan to an employee of the company under Section 186(2) of the Companies Act, 2013, the Board of directors can grant a loan of ₹3 lakhs to the employee. It does not require any approval from the members.

Answer 2A(iv)

As per Rule 3(4) of the Companies (Acceptance of Deposits) Rules, 2014, no eligible company can accept or renew-

- (a) any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds 10% of the aggregate of the paid-up share capital, free reserves and securities premium account of the company;
- (b) any other deposit, if the amount of such deposit together with the amount of such other deposits, other than the deposit referred to in clause (a), outstanding on the date of acceptance or renewal exceeds 25% of aggregate of the paid-up share capital, free reserves and securities premium account of the company.

In the instant case, as the net-worth of the company is exceeding ₹100 crore, so the company is assumed to be an eligible company. Further, aggregate of the paid-up share

capital, free reserves and securities premium account is ₹220 crores and the company has not accepted any deposits as of now.

Accordingly, from the members, the eligible company can accept upto 10% of ₹220 crores i.e. ₹22 crores. From the public it can accept upto 25% of ₹220 crores i.e. ₹55 crores.

Answer 2A(v)

According to Section 247(2)(d) of the Companies Act, 2013, valuer shall not undertake valuation of any assets in which he has a direct or indirect interest or becomes so interested at any time during a period of three years prior to his appointment as a valuer or three years after the valuation of assets was conducted by him.

In the instant case, Prakash had an indirect interest in the property because it was owned by his wife (Sunita). However, he was appointed on May 01, 2019 as valuer of the property, since a period of three years has already elapsed after the sale of property, Prakash can validly take up the assignment of valuation of the property.

However, if the appointment had been made on March 01, 2019, the period of three years would not have elapsed and he could not have taken up the assignment.

Question 3

- (a) *In the course of business of the company, RST Logistics Ltd. received ₹2 lakh on 31st March, 2015 as advance towards consideration for providing future services in the form of warranty as per their agreement with Apurva. The period for providing such services in terms of common business practice is 3 years. The amount is still lying as advance and while auditing the books of accounts for the year ended 31st March, 2019, the statutory auditor had commented about contravention of the provisions of the Companies Act, 2013 in its preliminary findings to the Vice-President (Finance). Advise the Vice-President (Finance) if the comments of the auditor are justified in terms of provisions of the Companies Act, 2013. (5 marks)*
- (b) *Manish, a shareholder of a company has not claimed his dividends from the company for the last 10 years due to different reasons. He wants to know whether he will be able to recover the dividends declared by the company for all these years. Explain to him, the relevant legal provisions. (5 marks)*
- (c) *Every company is required to get pre-scrutiny and pre-certification of e-forms by a practising professional before filing with the Registrar of Companies (ROC). Is this true? Explain the relevant legal provisions. (5 marks)*

Answer 3(a)

According to Rule 2(1) (xii) (e) of the Companies (Acceptance of Deposits) Rules, 2014. The term 'deposit' does not include any advance towards consideration for providing future services in the form of a warranty or maintenance contract as per written agreement or arrangement, if the period for providing such services does not exceed the period prevalent as per common business practice or five years, from the date of acceptance of such service whichever is less.

In the instant case, the amount of ₹2 lakh received on March 31, 2015 as advance towards consideration for providing future services in the form of a warranty, is still lying with the company until March 31, 2019 and the period prevalent as per common business practice, for providing such service is 3 years, which has expired.

Accordingly, this amount has come within the ambit of the term 'deposit'. Hence, the comments of the auditor are justified and the Vice-President (Finance) is advised to immediately refund the advance amount along with the due interest thereon to Apurva.

Answer 3(b)

According to Section 124 of the Companies Act, 2013 dividends must be paid within 30 days from the date of declaration and if any amount remains unpaid or unclaimed then the company is required to transfer the unpaid dividend to a special account, known as Unpaid Dividend Account opened by the company in any scheduled bank within seven days from the date of expiry of thirty days. If any money transferred to this account remains unpaid or unclaimed for a period of seven years from the date of transfer to such account it shall be transferred by the company to the Investor Education and Protection Fund established under Section 125 (1) of the Companies Act, 2013 maintained and administered by the Central Government.

In the present case, the amount of dividend for the first 3 years must have been transferred to the Investor Education and Protection Fund. The amount for remaining period must be in the Unpaid Dividend Account of the Company.

According to Section 125 of the Companies Act, 2013 read with Rule 7 of the IEPF (Accounting, Audit, Transfer and Refund) Rules, 2016, the person whose amounts has been transferred to Investor Education and Protection Fund, shall be entitled to get refund out of the fund in respect of such claims by submitting an online application in Form IEPF-5.

Manish should approach the company for amount of dividend for last 7 years.

Answer 3(c)

Pre-Scrutiny - Pre-scrutiny is a functionality that is used checking whether certain core aspects are properly filled in the e-form. It can be done by the company itself and no professional is required. Pre scrutiny function is available for all forms and is to be done by all class of companies.

Pre-Certification - Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practicing professionals. Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar of Companies. E-forms mentioned in Rule 8(12) of the Companies (Registration Offices and Fees) Rules, 2014 such as INC-22, AOC-4, MGT- 14, DIR-12 etc., are required to be pre-certified by Company Secretaries or Chartered Accountants or Cost Accountants who are in whole-time practice by all class of companies except One Person Company and Small Companies.

Thus, every company is required to do pre-scrutiny of e-forms but pre-certification of certain forms is not mandatory for every class of company.

PART II**Question 4**

- (a) *Examine the validity of the following statements :*
- (i) *'Every listed public company must have an independent woman director.'*
 - (ii) *"Every listed public company must have a small shareholders' director."*
(5 marks)
- (b) *A meeting of the Board of Directors was convened to approve the annual financial statements of the company. The company has a total of 9 directors out of which 4 directors were attending the meeting through video-conferencing while the Chairman and 4 other directors were personally present. Five directors (including the Chairman and those attending the meeting through video conferencing) gave their assent to approve the financial statements while three directors personally present dissented. Can the Chairman consider the financial statements as approved? Explain with reasons.*
(5 marks)
- (c) *RST Communications Ltd. has a total paid-up share capital of ₹ 6 crore consisting of 6 lakh shares of ₹ 100 each. Its annual general meeting had been scheduled for 15th September, 2019. On 25th August, 2019, two of its members jointly holding 5500 fully paid shares sent a notice to the company intimating their intention to move a resolution in the forthcoming Annual General Meeting for removing a director before the expiry of his term and appointing another person as a director in place of the director so removed. Is the company required to act on this notice? Explain with reference to the relevant legal provisions.* (5 marks)
- (d) *The Annual General Meeting (AGM) of a company is scheduled to be held on 22nd August, 2019 at 2 p.m. Taking into account the relevant legal provisions contained in the Companies Act, 2013 indicate the latest time for posting notices of the meeting to the members to ensure legal compliance.* (5 marks)

Answer 4(a)

According to Regulation 17 of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, the Board of Directors of the top 500 listed entities shall have at least one independent woman director by April 1, 2019 and the Board of Directors of the top 1000 listed entities shall have at least one independent woman director by April 1, 2020.

The top 500 and 1000 entities shall be determined on the basis of market capitalisation, as at the end of the immediate previous financial year.

Thus, every listed public company is not required to appoint independent woman director, but the listed entities falling under the above bracket must have an independent women director.

According to Section 151 of the Companies Act, 2013 r/w Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, a listed company may have one director elected by small shareholders upon notice by not less than one thousand small shareholders or one-tenth of the total number of such small shareholders, whichever

is lower. However, a listed company may opt to have a director representing small shareholders suo-motu.

Thus, appointment of small shareholders by listed company is optional.

Answer 4(b)

Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 prescribes that approval of annual financial statements must not be dealt with in any Meeting through video-conferencing or other audio-visual means. However, second proviso of Section 173(2) of the Companies Act, 2013 read with first proviso of Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014, provides that where there is quorum present in a meeting through physical presence of directors, any other director may participate in the meeting through video or other audio-visual means.

In the instant case, Chairman and 4 other directors were personally present, thus, fulfilling the requisite quorum through physical presence of Directors, the remaining 4 directors attending the meeting through Video Conferencing can participate in the meeting.

Accordingly, assent given by the Chairman and 4 directors participating through video-conferencing to approve the financial statements shall be valid and the resolution shall be deemed to be passed by requisite majority.

Answer 4(c)

According to section 115 r/w Rule 23 of the Companies (Management and Administration) Rules, 2014 and with Section 169(2) of the Companies Act, 2013, the special notice with the intention of removal of director of the company or to appoint somebody in place of a director so removed, is required to be sent by the members to the company not earlier than 3 months but at least 14 days before the date of the meeting at which the resolution is to be moved, exclusive of the day on which the notice is given and the day of the meeting.

A special notice required to be given to the company shall be signed, either individually or collectively by such number of members holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than ₹5 lakh has been paid up on the date of the notice.

In the instant case, since the two shareholders are jointly holding shares amounting to ₹5,50,000 and have sent a special notice 20 days before the date of Annual General Meeting intimating their intention to remove a director and appointing another person as director in place of director so removed is in compliance with the provisions under Rule 23 of the Companies (Management and Administration) Rules, 2014.

The company shall immediately after receipt of the notice, give its members notice of the resolution at least seven days before the meeting, exclusive of the day of dispatch of notice and day of the meeting, in the same manner as it gives notice of any general meetings. Where it is not practicable to give the notice in the same manner as it gives notice of any general meetings, the notice shall be published in English language in English newspaper and in vernacular language in a vernacular newspaper, both having wide circulation in the State where the registered office of the Company is situated and such notice shall also be posted on the website, if any, of the Company. The notice

shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.

Hence, the company is required to act on such notice and follow the other procedures w.r.t. removal of Director as prescribed under Section 169 of the Companies Act, 2013.

Answer 4(d)

According to Section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode. For the purpose of reckoning twenty-one days clear Notice, the day of sending the Notice and the day of Meeting shall not be counted.

Further in case the company sends the Notice by post or courier, an additional two days shall be provided for the service of Notice in line with Rule 35(6) of the Companies (Incorporation) Rules, 2014 which provides that in case of delivery by post, such service shall be deemed to have been effected, at the expiration of forty eight hours after the letter containing the same is posted.

In the instant case, the Annual General Meeting is called on August 22, 2019 at 2:00 P.M. Therefore, the notice must be sent latest by July 31, 2019. Further, if notice is sent by post or courier it must be posted latest by July 29, 2019.

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

Question 5

- (a) *Rajeev and his wife Surekha are the only two directors of Rajsur Pvt. Ltd. Rajeev went abroad for two months. Before going abroad, he registered a general power of attorney in favour of his son Ranbeer, aged 21 years, to execute all documents on his behalf as an individual as well as director of Rajsur Pvt. Ltd. Ranbeer signed a contract on behalf of Rajsur Pvt. Ltd. by exercising his power of attorney. Is this contract binding upon the company? (4 marks)*
- (b) *Ratan is a member of Adarsh Club Ltd., a company formed for promoting sports and not for profit. For the ensuing extraordinary general meeting to be held on 5th November, 2019, he appointed his daughter Prema (not a member of the company) as proxy to attend the meeting as he would be out of station on that date. Accordingly, Prema deposited the proxy with the club on 2nd November, 2019. The club rejected the proxy instrument. Is the action of the club valid? (4 marks)*
- (c) *In a Board of Directors meeting of a private company held on 15th November, 2019 all the directors present, unanimously decided that the next meeting of the Board of Directors would be held on 29th November, 2019 at the registered office of the company. As a Company Secretary do you think a notice of the meeting of the Board of Directors need be sent to ensure legal compliance? (4 marks)*
- (d) *Owing to the resignation of Prashant, Managing Director of Beauty Herbals Ltd. on 15th October, 2019, the company appointed one of its Senior Deputy General Manager Kristina Kelly, aged 26 years and a Canadian citizen as its Managing*

Director with effect from 1st November, 2019 at a meeting of the Board of Directors held on 31st October, 2019. Kristina Kelly came to India for the first time for the purpose of taking up employment in India on 1st January, 2018. She got appointed in the Company on 1st April, 2018. From 1st December, 2018 she was sent for a training program for 6 months and she returned to India on 1st June, 2019. Advise the management of the company whether her appointment by the Board of Directors is valid and if any further compliances are required to validate her appointment. (4 marks)

- (e) *What do you understand by the term "secured computer system" in the context of virtual board meetings?*

Can all matters required to be approved by meeting of Board of Directors be approved by video conferencing? (4 marks)

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *Dhanvantri is the Chairman of the Risk Management Committee of Advanced Solutions Ltd. A meeting of this Committee of Directors has been scheduled to be held on 5th December, 2019 at 3.00 p.m. At 3.10 p.m. though the requisite quorum is present, Dhanvantri is not present. Can the meeting be still held or requires to be adjourned? Answer with reference to the relevant provisions.* (4 marks)
- (ii) *The Chairman of the Board of Directors of Jagruti Printers Ltd. has sent a draft of Resolution along with necessary papers to all the ten directors of the company to get it passed through a resolution by circulation. The last date for signifying the assent or dissent is 20th November, 2019. On 15th November, 2019, six directors communicated their assent while on 17th November, 2019 the remaining 4 directors requested that the resolution must be decided at a meeting. Referring to the relevant provisions of the Companies Act, 2013, decide whether the resolution can be deemed to have been passed or requires to be decided at a Board of Directors meeting?* (4 marks)
- (iii) *Kailash, a director of a company has sent in his resignation notice stating that he is resigning from the office of director with effect from 10th December, 2019. The notice was received by the company on 15th December, 2019. State the effective date of resignation of Kailash and the date up to which the company is required to intimate the Registrar of Companies (ROC). Is Kailash required to intimate his resignation to the ROC mandatorily?* (4 marks)
- (iv) *25 members of a company holding 11% of total paid up equity share capital made a requisition on 5th December, 2019 to the Board of Directors to convene an Extra Ordinary General Meeting (EGM). State the date by which the Board of Directors is required to proceed and the date by which the EGM should be held. What could the requisitionists do if the Board of Directors fail to act on the requisition ?* (4 marks)

(v) *Amit is having directorship of the following companies:*

<i>Nature of Companies</i>	<i>Number of of Companies</i>
<i>Public companies (including 2 dormant companies)</i>	<i>8</i>
<i>Private companies (including 2 subsidiaries of public companies)</i>	<i>10</i>
<i>Alternate director (in a private company)</i>	<i>1</i>
<i>Section 8 company</i>	<i>1</i>
<i>Indicate how many more directorships Amit can undertake in public or private companies.</i>	
	<i>(4 marks)</i>

Answer 5(a)

Section 166 (6) of the Companies Act 2013 prohibits assignment of office of director to any other person. Any assignment of office made by a director shall be void. Authorizing any person to sign a document as a director amounts to assignment of office of director.

Hence, in the instant case Rajeev cannot assign his office of directorship in Rajsur Pvt. Ltd. to his son Ranbeer by a general power of attorney to sign documents on his behalf as director of the company. Contracts signed by Ranbeer on behalf of the company are void and not binding upon the company.

Answer 5(b)

According to Section 105(1) of the Companies Act, 2013, any member a company who is entitled to attend and vote at the meeting of the company is entitled to appoint another person as a proxy (who may not be a member) to attend and vote at the meeting, though a proxy does not have the right to speak at such meeting and shall not be entitled to vote except on a poll in the meeting.

However, according to the third proviso to Section 105(1) of the Companies Act, 2013, members of certain class or classes of companies as may be specified by the Central Government shall not be entitled to appoint any other person as a proxy. Accordingly, in case of companies incorporated under Section 8 of the Companies Act, 2013 a member of a company is not entitled to appoint any other person as a proxy unless such other person is also a member of such company as prescribed under Rule 19 of the Companies (Management and Administration) Rules, 2014.

In the instant case, though the proxy has been deposited before the specified time period (i.e., at least 48 hours before the meeting) Prema cannot act as a proxy as she herself is not a member of the company. Therefore, Adarsh Club Ltd. is right in rejecting her proxy instrument.

Answer 5(c)

According to Section 173(3) of the Companies Act, 2013, a meeting of the Board shall be called by giving not less than seven days' notice in writing to every director at his address registered with the company and such notice shall be sent by hand delivery or by post or by electronic means.

As per Secretarial Standard-1, the Notice of the meeting of the Board shall be given even if meetings are held on pre-determined dates or at pre-determined intervals. Therefore, in the instant case even if the directors have agreed unanimously to hold the meeting on November 29, 2019, then also the Company Secretary need to send the Notice, Agenda and the Notes thereon separately for each Meeting in the aforesaid manner to ensure legal compliance.

Answer 5(d)

The Foreign national can also be appointed as a Managing Director of a company subject to the compliance of conditions prescribed under Section 196 along with Part I of Schedule V of the Companies Act, 2013.

As per Part I (e) of Schedule V of the Companies Act, 2013, the person is required to be **a resident of India** to be appointed as a Managing Director of the company.

As per Explanation I to the above schedule, resident in India includes a person who has been staying in India for a continuous period of not less than 12 months immediately preceding the date of his appointment as a managerial person and who has come to stay in India, —

- (i) for taking up employment in India; or
- (ii) for carrying on a business or vacation in India.

In the instant case, Kristina Kelly who is a Canadian citizen, appointed as Managing Director of the company w.e.f. November 01, 2019 has not stayed in India for a continuous period of 12 months immediately preceding the date of her appointment. Thus, her appointment as Managing Director by the Board of Directors of the Company is not valid as it is not in compliance with Part I of Schedule V of the Companies Act, 2013.

Hence, to validate her appointment, the company is required to file an application in e-Form MR-2 within a period of 90 days from the date of such appointment to the Central Government seeking the approval for such appointment as provided in Section 196 read with Rule 7 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014.

Answer 5(e)

According to Secretarial Standard-1, Secured Computer system in the context of virtual Board Meetings means computer hardware, software and procedure that

- (i) are reasonably secure from unauthorised access and misuse;
- (ii) provide a reasonable level of reliability and correct operation;
- (iii) are reasonably suited to perform the intended functions; and
- (iv) adhere to generally accepted security procedures

Section 173(2) of the Companies Act, 2013 read with Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014, prescribes that the following matters shall not be dealt with in any meeting held through video conferencing or other audio-visual means:

- (a) The approval of the Annual Financial Statements;

- (b) The approval of the Board's report;
- (c) The approval of the Prospectus;
- (d) The Audit Committee Meetings for consideration of financial statement including consolidated financial statement if any, to be approved by the board under Section 134(1) of the Companies Act, 2013;
- (e) The approval of the matter relating to amalgamation, merger, demerger acquisition and takeover.

However, where there is quorum present in a Board meeting through physical presence of directors, any other director may participate through video conferencing or other audio-visual means.

Accordingly, as per the above mentioned provisions, all matters required to be approved by meeting of Board of Directors cannot be approved by video-conferencing.

Answer 5A(i)

Regulation 72 of Table F of Schedule I to the Companies Act, 2013 provides that if at the meeting of Committee, the Chairman is not present within five minutes after the time appointed for holding the meeting, the members present may choose one of their members to be Chairman of the Meeting.

In the instant case, the Chairman of the Risk Management Committee is not present within the 5 minutes of the scheduled time of the meeting and the requisite quorum is present. Hence, the members present may elect any one among them to act as the Chairman of the meeting and hold the meeting.

Answer 5A(ii)

Section 175 of the Companies Act 2013 provides that, no resolution shall be deemed to have been duly passed by the Board of Directors by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors at their addresses registered with the company in India, by hand delivery or by post or by courier, or through electronic means which may include e-mail or fax and has been approved by a majority of the directors, who are entitled to vote on the resolution.

However, where not less than one-third of the total number of directors of the company for the time being require that any resolution under circulation must be decided at a meeting, the Chairman shall put the resolution to be decided at a meeting of the Board.

In the given case, majority directors had communicated their assent but subsequently before the due date more than one-third directors have requested that the resolution must be decided at a board meeting. Hence, the resolution sought to be passed by circulation will be required to be passed only at a Board meeting.

Answer 5A(iii)

According to Section 168(2) of the Companies Act, 2013, the resignation of a director shall take effect from the date on which the notice is received by the company or the date, if any, specified by the director in the notice, whichever is later. Thus, in the given case, the resignation of Kailash shall take effect from **December 15, 2019**.

Section 168(1) read with Rule 15 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 stipulates that the company shall within thirty days from the date of receipt of notice of resignation from a director, intimate to the Registrar of Companies in Form DIR- 12 along with specified fees and post the information on its website, if any. Thus, in this case the company will have to file form DIR-12 by **January 14, 2020**.

According to Rule 16 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 the resigning director may also forward to the Registrar of Companies, a copy of his resignation along with reasons for the resignation in form DIR-11 along with specified fees within a period of thirty days from the date of resignation.

Answer 5A(iv)

Section 100(2)(a) of the Companies Act, 2013 provide that the Board shall, at the requisition made in the case of a company having a share capital, by such number of members holding, on the date of the receipt of the requisition, not less than one-tenth of the paid-up share capital of the company carrying right to vote, call an Extra-ordinary General Meeting of the company within twenty-one days from the date of receipt of a valid requisition. Such meeting shall be held on a day not later than forty-five days from the date of receipt of such requisition.

Accordingly, in the given case, the requisition has been made by 25 members of a company, holding 11% of total paid-up equity share capital on December 05, 2019 to the Board of Directors, thus, it is a valid request. Thus, the Board of directors are required to call the Extra-ordinary General Meeting (EGM) within 21 days from the date of receipt of such valid requisition i.e., by December 26, 2019 and the EGM shall be held on a day not later than 45 days from the date of receipt of such requisition i.e., by January 19, 2020.

In case the Board fails to call and convene the Extra-ordinary General Meeting requisitioned by the Members within the specified time period, it may be called and held by the requisitionists themselves within a period of three months from the date of the requisition.

Therefore, in the present case, if the Board of Directors does not act upon the request, the requisitionists may call and convene an Extra-ordinary General Meeting on their own within 3 months from the date of the requisition i.e. by March 04, 2020.

Answer 5A(v)

According to Section 165(1) of the Companies Act, 2013, no person, can hold office as a director, including any alternate directorship, in more than twenty companies at the same time. For reckoning the limit of directorships in twenty companies, the directorship in a dormant company is excluded.

Further, out of the above twenty companies, the maximum number of Public Companies in which a person can be appointed as a director cannot be more than ten. For reckoning the limit of ten Public Companies, directorship in Private Companies that are either holding or subsidiary company of a Public Company shall also need to be included.

In the given case, Amit is holding a directorship in:

- 8 Public Companies (including 2 Dormant Companies);

- 10 Private Companies (including 2 subsidiaries of Public Companies);
- Alternate Director (in a Private Company);
- Section 8 Company

Accordingly, in Public Company presently he is holding 8 directorship and in Private Company 9 directorship. Hence, total number of directorships he is already holding is 17 (since, directorship in Section 8 Company is excluded, from reckoning the limit of directorship of 20 companies).

Thus, Amit can take up directorship in 2 more Public Companies and 1 more Private Company.

PART III

Question 6

- (a) *Kavita, a practicing company secretary, posted a request on whatsapp group of practicing company secretaries for providing secretarial audit in any company. She also made a similar request on whatsapp to her college friends. Has she committed professional misconduct? (5 marks)*
- (b) *Piyush a practicing company secretary is planning to establish a multi-disciplinary Professional firm to provide secretarial, financial and medico-legal services. For this purpose, he has invited the following persons for forming the multidisciplinary firm:*
- (i) *Atul, a practicing Chartered Accountant*
 - (ii) *Dr. Mukesh, a practicing physician*
 - (iii) *Pramod, an advocate enrolled on Bar Council of Kerala*
 - (iv) *Pratap, a medical insurance agent*
 - (v) *Shyam a member of the Institute of Actuaries of India*

Can Piyush constitute a multi-disciplinary firm with these persons? Is there any upper limit as to the number of partners who can constitute such a firm ? (5 marks)

Answer 6(a)

According to Clause 6 of Part I of the first Schedule to the Company Secretaries Act, 1980, a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if he/she 'solicits clients or professional work, either directly or indirectly, by circular, advertisement, personal communication, interview or by any other means'. However, there are two exceptions. According to the said clause, nothing contained in this clause shall be construed as preventing or prohibiting

- (i) Any Company Secretary from applying or requesting for or inviting or securing professional work from another Company Secretary in practice.
- (ii) A member from responding to tenders or enquiries issued by various users of

professional services or organizations from time to time and securing professional work as a consequence.

Accordingly, when Kavita posted a request on What'sapp group of Company Secretaries in Practice, it would not amount to professional misconduct. However, when she sends messages to her college friends seeking professional work it would amount to professional misconduct.

Answer 6(b)

Regulation 165A of The Company Secretaries Regulations, 1982 as inserted by the Company Secretaries (Amendment) Regulations, 2020, provides that a Company Secretary in practice may form multi- disciplinary firm with the member of other professional bodies as prescribed under regulations 168A and 168B of The Company Secretaries Regulations, 1982, in accordance with the regulating guidelines of the Council for functioning and regulation of such multidisciplinary firm.

Regulation 168B of Company Secretaries Regulations, 1982, determines the membership of professional body for partnership, accordingly for the purposes of entering into partnership under clauses (4) and (5) of Part I of the First Schedule to the Company Secretaries Act, 1980, a person shall be a member of any of the following professional bodies, namely: -

- The Institute of Chartered Accountants of India established under the Chartered Accountants Act, 1949;
- The Institute of Cost Accountants of India established under the Cost and Works Accountants Act, 1959;
- Bar Council of India established under the Advocates Act, 1961;
- The Institute of Engineers or Engineering from a University established by law or an institution recognised by law;
- The Indian Institute of Architects established under the Architects Act, 1972;
- The Institute of Actuaries of India established under the Actuaries Act, 2006;
- Professional bodies or institutions outside India whose qualifications relating to Company Secretary is recognised by the Council under Section 38(2) of the Company Secretaries Act, 1980.

Accordingly, in the present case Piyush can form a partnership only with Atul, a practicing Chartered Accountant, Pramod, an Advocate enrolled under Bar Council of Kerala and Shyam, a member of the Institute of Actuaries of India.

According to Section 464(1) of the Companies Act, 2013 read with Rule 10 of the Companies (Miscellaneous) Rules 2014, no association or partnership can be formed, consisting of more than 50 persons for the purpose of carrying on any business that has for its objects the acquisition of gain by the association or partnership or by individual members thereof, unless it is registered as a company under the Companies Act, 2013 or is formed under any other law for the time being in force. Provided that the number of persons which may be prescribed under this sub-section shall not exceed 100.

However, the same shall not be applicable to an association or partnership, if it is formed by professionals who are governed by Special Acts.

Accordingly, such a multi-disciplinary Professional firm formed by Piyush, Practicing Company Secretary can have more than 50 partners, as it is formed by professionals who are governed by their respective Special Acts. There is no upper limit on the number of partners in such professional firm.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

- (a) A Branch Office can be established by a body incorporated outside India, including a firm or association of persons, involved in manufacturing or trading activities. The permission to set-up a Branch Office has to be obtained from the RBI under the FEMA, 1999 provisions. In light of the RBI Master Circular of 2016, highlight the activities which are permitted by the RBI. (5 marks)
- (b) ABC Ltd. was incorporated on 11th December, 2018 as a Government Company with the main object to provide examination services to other Public Sector Undertakings where the employees are recruited through advertisement. The Secretary, Education informed the Managing Director that there are recent changes with respect to "Active Company Tagging Identities and Verification" in Companies (Incorporation) Rules, 2014. Comment about applicability of Active Compliance with respect to ABC Ltd., a Government Company. (5 marks)
- (c) Smt. H is head of the family consisting of her husband (who is physically challenged person) and two sons. She heard that there about numerous benefits in terms of management, decision making and taxation, if she forms a Hindu Undivided Family (HUF), form of organization which is peculiar to India. As a professional, advice key points to Smt. H in creation of HUF covering taxation aspects. (5 marks)
- (d) Can a Navratna Company in Oil and Gas sector in India, which are duly approved by the Government of India, invest in Overseas Unincorporated entities in oil sector without any limit under automatic route? (5 marks)

Answer 1(a)

Permitted Activities for a branch office by the Reserve Bank of India are as under:

- (1) Export / Import of goods
- (2) Rendering professional or consultancy services
- (3) Carrying out research work, in areas in which the parent company is engaged.
- (4) Promoting technical or financial collaborations between Indian companies and parent or overseas group company

- (5) Representing the parent company in India and acting as buying / selling agent in India
- (6) Rendering services in information technology and development of software in India
- (7) Rendering technical support to the products supplied by parent / group companies
- (8) Foreign airline / shipping company.

Answer 1(b)

As per Rule 25A of the Companies (Incorporation) Rules, 2014, every Company incorporated on or before December 31, 2017 is required to file the particulars of the Company and its registered office, in E-Form ACTIVE (Active Company Tagging Identities and Verification) on or before June 15, 2019. However, following companies are exempted for filing e-Form ACTIVE:

- (a) Companies which have been struck off
- (b) Companies under process of striking off
- (c) Companies under liquidation
- (d) Companies which are amalgamated or dissolved

Further, any company which has not filed its due financial statements under section 137 of the Companies Act, 2013 or due Annual Returns under Section 92 of the Companies Act, 2013 or both with the Registrar of Companies shall be restricted from filing e-Form-ACTIVE, unless such company is under management dispute and the Registrar has recorded the same on the register.

As the Company was incorporated as Government Company after December 31, 2017, hence, there is no need to file e-form ACTIVE for such companies.

Answer 1(c)**Key points in creation of HUF**

- Under the Income Tax Act, 1961, an HUF is a separate entity for the purpose of income tax return.
- The same tax slabs are applicable to HUF as to individual assessee.
- If you have ancestral property and earning some income from this property, then it is better to transfer this asset to HUF and save tax up to exemption limit applicable to individual.
- You can transfer the money received on sale of ancestral property / assets into your HUF.
- The income from property of HUF can be further invested in instruments such as shares, mutual funds, etc and will be assessed under HUF
- Existence of property or multiple members is not a pre-requisite to create HUF. A family which does not own any property may still have the character of Hindu joint family. This is because a Hindu is born as a member of the joint family.

- The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of ₹2.5 lakh.
- Apart from basic exemption of ₹2.5 lakh, section 80C deduction upto ₹1.5 lakh is also available.

Answer 1(d)

According to the Master Direction of Reserve Bank of India, Investment (or financial commitment) in unincorporated/ incorporated entities overseas in oil sector under the Automatic Route are as under:

- (1) Investments (or financial commitment) in unincorporated / incorporated entities overseas in the oil sector (i.e. for exploration and drilling for oil and natural gas, etc.) by Navaratna PSUs, ONGC Videsh Ltd (OVL) and Oil India Ltd (OIL) may be permitted by AD Category - I banks, without any limit, provided such investments are approved by the competent authority.
- (2) Other Indian companies are also permitted under the Automatic Route to invest in unincorporated entities overseas in the oil sector up to the limit prescribed provided the proposal has been approved by the competent authority and is duly supported by certified copy of the Board resolution approving such investment. Investment in excess of the prescribed limit shall require prior approval of the Reserve Bank.

In view of the above, Navaratna Company which are duly approved by the Government of India, invest in overseas Unincorporated entities in oil sector without any limits, under the automatic route.

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

Question 2

- (a) *X is planning to start a mobile based and web based business. In selection of suitable form of a business organisation, 'degree of control and management' plays a significant role. Explain how this factor affects the choice of form of organisation. (4 marks)*
- (b) *PQR Ltd. was incorporated as a Government Company. The Authorised Share Capital of the Company is ₹15 Crore. The Paid-up Share Capital of the Company is ₹3 Crore. What provisions of section 203 of the Companies Act, 2013 are applicable to a Government Company with respect to appointment of Key Managerial Personnel? (4 marks)*
- (c) *Crowd Funding is a recent phenomena being practiced for getting seed funding usually through the internet. Elucidate. (4 marks)*
- (d) *The Paid-up Capital of X Ltd. is ₹10 Crore and Reserve and Surplus are negative (due to huge losses since previous few years) amounting ₹300 Crore. To pay the dues to Creditors, the Board of Directors passed the resolution for borrowing of ₹50 Crore and got funded through Financial Institution in term of Medium Term Loan for 3 years. Entire amount was utilized to pay the Debts. The Financial Institution when got the information that such act was ultra vires transaction,*

filed a suit against the Directors of the Company. The Plea of the Directors were that Shareholders and Directors have limited liability and doctrine of indoor management is applicable. Therefore, they are not personally liable. Comment. (4 marks)

- (e) *B is the Sole Proprietor of BN Metals. The business of the Company is to manufacture the parts of Boiler used in Turnkey Power Projects. The previous year's turnover was ₹348 Crore. B is now participating in a big tender having cost estimates of ₹145 Crore. However, as per tender specification, B is qualified to submit the tender but in view of the consultant appointed by him, the form of business should be Company or LLP. Explain limitations of Sole Proprietorship form of business organisation.* (4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *What are the duties of Designated Partner of LLP ?*
- (ii) *What penalty can be imposed on One Person Company or Officer of such company who contravenes the provisions with respect to conversion of Private Company into One Person Company ?*
- (iii) *Contractual joint venture is useful where the establishment of a separate legal entity is not needed or creation of such a separate legal entity is not feasible. Comment*
- (iv) *What are the Tax Exemptions available to Private Trust ?*
- (v) *Define the term 'Net Owned Fund'.* (4 marks each)

Answer 2(a)

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

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

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

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

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

So, while deciding to commence a business in any form 'X' should just not only consider risk, return, sharing, and control over decision making but should also consider the nature of business and the funding requirement over the period of time.

Answer 2(b)

Section 203 of the Companies Act, 2013 read with Rule 8 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 mandates the appointment of whole-time Key Managerial Personnel and makes it obligatory for every listed company and every other public company having a paid-up share capital of ₹10 crores or more, to appoint the following whole-time key managerial personnel:

1. Managing Director, or Chief Executive Officer or Manager and in their absence, a Whole-Time Director;
2. Company Secretary; and
3. Chief Financial Officer.

Further rule 8A of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 requires that every private company which has a paid-up share capital of ₹10 crore or more shall have a whole-time company secretary.

Vide notification dated June 05, 2015 issued by Ministry of Corporate Affairs, Government Companies are granted certain exemptions. As per the said notifications:

The provisions of sub-sections (1), (2), (3) and (4) of Section 203 of the Companies Act, 2013 with respect to appointment of key managerial personnel, holding of office, period within which appointment to be made in case of vacation of office of KMP, will not apply to a Managing Director or Chief Executive Officer or Manager and in their absence, a whole-time director of the Government company.

All the provisions of Section 203 of the Companies Act, 2013, attracting the penal provision contained in Section 203 (5) will not apply to a Managing Director or Chief Executive Officer or Manager and in their absence, a Whole-Time Director of the Government Company.

However, all the provisions of Section 203 of the Companies Act, 2013 will continue to apply to CFO and CS of Government Companies as only these persons will be mandatorily required to be appointed as whole time KMP in case of selected class of companies prescribed in the Companies Act, 2013.

As the Paid-up share capital of PQR Ltd. is ₹3 crores which is less than prescribed limit mentioned under Section 203 of the Companies Act, 2013, it is not required to appoint the whole-time Key Managerial Personnel in the Company.

Answer 2(c)

Crowd funding

This is a recent phenomenon being practiced for getting seed funding through small amounts collected from a large number of people (crowd), usually through the internet. Now we have companies existing in India which are specializing in "Crowd Funding".

The entrepreneur can get money for his venture by showcasing his idea before a large group of people and trying to convince people of its utility and success.

The entrepreneur needs to put up on a portal his profile and presentation, which should include the business idea, its impact, and the rewards and returns for investors. It should be supported by suitable images and videos of the project.

SEBI in 2014, even rolled out a “Consultation paper on Crowd Funding in India” proposing a framework in the form of Crowd funding to allow start-ups and SMEs to raise early stage capital in relatively small sums from a broad investor base. The Consultation Paper defined Crowd funding as solicitation of funds (small amount) from multiple investors through web-based platform or social networking site for specific project, business venture or social cause. However, SEBI has not issued any regulation in this regard. ,

Answer 2(d)

Section 180(1)(c) read with Section 179 of the Companies Act, 2013, provides that the Board of Directors can only with the consent of the company by a special resolution would borrow money, where the money to be borrowed, together with the money already borrowed by the company exceeds aggregate of its paid-up share capital, free reserves and securities premium, apart from temporary loans obtained from the company’s bankers in the ordinary course of business.

Now, whether a transaction is ultra vires the company can be decided on the basis of the following:

- if a transaction entered into by a company falls within the objects, it is not ultra vires and hence not void;
- if a transaction is outside the capacity (objects) of the company, it is ultra vires;
- if a transaction is in excess or abuse of the company’s powers, it is ultra vires and such transaction will be set aside by the shareholders or even ratification by the shareholders would not validate the acts done beyond the authority of the company itself.

Personal liability of Directors : It is one of the duties of directors to ensure that the corporate capital is used only for the legitimate business of the company and hence if such capital is diverted to purposes alien to company’s memorandum, the directors will be personally liable to replace it. In *Jehangir R. Modi v. Shamji Ladha*, [(1866-67) 4 Bom. HCR (1855)], the Bombay High Court held, “A shareholder can maintain an action against the directors to compel them to restore to the company the funds of the company that have by them been employed in transactions that they have no authority to enter into, without making the company a party to the suit”. In case of deliberate misapplication, criminal action can also be taken for fraud.

While the doctrine of ‘constructive notice’ seeks to protect the company against the outsiders, the principal of indoor management operates to protect the outsiders against the company.

Hence, in the present case, the Board has taken loan exceeding the prescribed limit under section 180(c) of the Companies Act, 2013, therefore, Directors are personally liable to repay the loan to financial institution.

Answer 2(e)

A sole proprietor generally suffers from the following limitations:

- (1) *Limitation of management skills* : A sole proprietor may not be able to manage the business efficiently as he is not likely to have necessary skills regarding all aspects of the business. This poses difficulties in the growth of business also.
- (2) *Limitation of resources* : The sole proprietor of a business is generally at a disadvantage in raising sufficient capital. His own capital may be limited and his personal assets may also be insufficient for raising loans against their security. This reduces the scope of business growth.
- (3) *Unlimited liability* : The sole proprietor is personally liable for all business obligations. For payment of business debts, his personal property can also be used if the business assets are insufficient.
- (4) *Lack of continuity* : A sole proprietor organisation suffers from lack of continuity. If the proprietor is ill, this may cause temporary closure of business. If he dies, the business may be permanently closed.

Answer 2A(i)

The LLP Agreement must specify the various rights and duties of the Designated Partners as may be mutually agreed by them. In the absence of such separate agreement between the partners about such rights and duties, etc., the provisions of Schedule I of the Limited Liability Partnership Act, 2008 will apply as prescribed in Section 23(4) of the said Act.

Duties of Designated Partner

- The Designated Partner shall devote their whole time and attention to the said partnership business diligently and faithfully by employing themselves in it, and carry on the business for the greatest advantage of the partnership.
- The Designated Partners shall be responsible for the doing of all acts, matters and things as are required to be done by the LLP in respect of compliance of the provisions of the Limited Liability Partnership Act, 2008, including filing of any document, return, statement and the like report etc.
- They shall protect the property and assets of the LLP.
- Upon every reasonable request, they shall inform the other partners of all letters, writings and other things which shall come to their hands or knowledge concerning the business of the LLP.
- They shall punctually pay their separate debts to the LLP.
- The Designated Partners shall be responsible for the doing of all such other acts arising out of LLP Agreement.

Answer 2A(ii)

According to Section 18 read with Rule 7A of the Companies (Incorporation) Rules, 2014, if a One Person Company (OPC) or any officer of such company contravenes any of the provisions of the Companies (Incorporation) Rules, 2014, the OPC or any other

officer of such company shall be punishable with fine which may extend to ₹5,000/- and with a further fine which may extend to ₹500/- for every day after the first offence, during which such contravention continues.

As Section 18 of the Companies Act, 2013 does not prescribe any penal provision for contravention of this section. Hence, the provisions of Section 450 of the Companies Act, 2013 related to punishment where no specific penalty or punishment is provided may be applicable in case of conversion of Private Company into One Person Company.

Answer 2A(iii)

The key characteristics of contractual Joint Venture are:

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

The contractual Joint Venture might be used where the establishment of a separate legal entity is not needed or the creation of such a separate legal entity is not feasible in view of one or the other reasons. The two parties do not share ownership of the business entity but each of the two parties exercises some elements of control in the joint venture. The contractual Joint Venture agreement can be entered into in situations where the project involves a narrow task or a limited activity or is for a limited team or where the laws of the host country do not permit the ownership of property by foreign citizens.

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

The way a Joint Venture Company would carry out its operations is always based on the negotiations between the parties, the results of which are reflected in the joint venture agreement entered into between the parties.

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

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

Answer 2A(iv)

Tax exemptions for a Private Trust

The taxability of the Trust depends upon the type of the trust. In the case of a non-discretionary trust, all income is taxable in the hands of the beneficiaries. But if the beneficiaries are minors, the income is to be clubbed with that of the parent with the higher income.

On the other hand, in the case of a discretionary trust, in which the shares of the beneficiaries are unknown and indeterminate, it is taxed in the hands of trust at the maximum marginal rate.

Section 161(1A) of the Income Tax Act, 1961 provides that if any part of the income of such a trust includes profits and gains from business, then the aforesaid principle of Section 161(1) would be ignored and the entire income of the trust including any profits and gains from business would be liable to income tax at the maximum marginal rate.

Thus, tax planning requires that the trustee should not have any income in the nature of profits and gains from business in the trust otherwise the entire income of the trust would become liable to maximum marginal rate of tax.

Further Private Trusts may comply with the provisions of Section 11 and 12 and 164 of the Income Tax Act, 1961.

Answer 2A(v)

According to Rule 3 of the Nidhis Rules, 2014, Net Owned Fund means the aggregate of paid up equity share capital and free reserves as reduced by accumulated losses and intangible assets appearing in the last audited balance sheet.

Further, the amount representing the proceeds of issue of preference shares shall not be included for calculating Net Owned Funds.

PART B

Question 3

- (a) *Z, a resident of Bangalore, desires to set up a food manufacturing unit where he will cook variety of food items like Idly, Dosa, PaniPuri, Pongal, Dry Samosa, Club Kachori and many more with the help of imported & automatic machines and pack itself for retail selling in the market under his brand name. Advise him on the registration requirement before starting any petty food business. (5 marks)*
- (b) *J Ltd. is a Public Sector Undertaking in business of Cement Manufacturing. For education to children of Employees and near villages, through a Trust, the Company also runs the Primary School within the Premise of the Society of the Company. Some persons of the Village are differentially able Physically challenged. Right of Persons with Disabilities Act, 2016 speaks about provisions relating to education of children with disabilities as well as duties of educational institutions. Explain the duties of educational institutions as mentioned therein. (5 marks)*
- (c) *If a lyricist copy a very catching phrase from another lyricist's song, there is likely to be infringement even if that phrase is very short. Referring to the statement, mention commonly known acts which are termed as infringement of copyright along with the penalty of infringement. (5 marks)*
- (d) *Whether National Green Tribunal (NGT) has power to hear civil matters related to environmental laws ? If yes, under which enactments ? Also, explain whether the provisions of the Civil Procedure Code applies to the proceedings before NGT ? (5 marks)*

Answer 3(a)

Food Safety and Standards Authority of India (FSSAI) license is mandatory before starting any food business. All the manufacturers, traders, restaurants who are involved

in food business must obtain a 14-digit registration or a license number which must be printed on food packages.

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

- a. Manufactures or sells any article of food himself or a petty retailer, hawker, itinerant vendor or temporary stall holder; or
- b. Distributes foods including in any religious or social gathering except a caterer; or
- c. Other food businesses including small scale or cottage or such other industries relating to food business or tiny food businesses with an annual turnover not exceeding Rs 12 lakhs and / or whose:
 - Production capacity of food (other than milk and milk products and meat and meat products) does not exceed 100 kg/ltr per day or
 - Procurement or handling and collection of milk is up to 500 litres of milk per day or
 - Slaughtering capacity is 2 large animals or 10 small animals or 50 poultry birds per day or less.

Hence based on the above requirement, Z has to apply for of a FSSAI registration before he start his food manufacturing business.

Answer 3(b)

Section 16 of the Right of Persons with Disabilities Act, 2016 specifically deal with the duties of educational institutes. It states that the State shall endeavour to:

1. To admit children with disability without any discrimination and provide equal opportunities to them with regards to education, sports and recreation;
2. Make buildings, campus and other facility accessible to children with disability;
3. To provide specific supports to such children in order to maximise academic and social development;
4. To make arrangements for students who are deaf or blind or both;
5. To provide for transportation facilities to children with high support needs.

Answer 3(c)

The following are some of the commonly known acts involving infringement of copyright:

- Making infringing copies for sale or hire or selling or letting them for hire;
- Permitting any place for the performance of works in public where such performance constitutes infringement of copyright;
- Distributing infringing copies for the purpose of trade or to such an extent so as to affect prejudicially the interest of the owner of copyright;
- Public exhibition of infringing copies by way of trade; and
- Importation of infringing copies into India.

A copyright owner can take legal action against any person who infringes the copyright and is entitled to remedies by way of injunctions, damages and accounts.

Penalty for infringement and the status of the infringing copies The minimum punishment for infringement of copyright is imprisonment for six months with the minimum fine of Rs. 50,000/-. In the case of a second and subsequent conviction the minimum punishment is imprisonment for one year and fine of Rs. one lakh.

Answer 3(d)

National Green Tribunal(NGT) established for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

The NGT has a power to hear all civil matters which are related to environment and questions regarding the enforcement and implementation of laws which fall under the The Water (Prevention and Control of Pollution) Act, 1974; The Water (Prevention and Control of Pollution) Cess Act, 1977; The Air (Prevention and Control of Pollution) Act, 1981; The Environment (Protection) Act, 1986; The Public Liability Insurance Act, 1991; The Biological Diversity Act, 2002 .

The NGT has been given the power to regulate the procedure by itself. It does not follow the principles of Civil Procedure Code instead it follows principles of natural justice. The NGT also at the time of giving orders shall apply the principles of sustainable development and also the principle that the one who pollutes shall pay. It will have the same power as of the Civil Court in deciding the matter falling within these seven legal acts. NGT will also not be bound by the rules of evidence as mentioned in the Indian Evidence Act.

Attempt all part either Q. No. 4 or Q. No.4A

Question 4

- (a) *Government of India is taking various steps towards “Ease of Doing Business” and “Make in India”. Apart from these initiatives, Govt. is also strengthening the principles ensuring the minimal impact of environment and one of the major steps is enforcement of Hazardous and Other Wastes (Management & Transboundary Movement) Amendment Rules, 2019. Highlight the key provisions of these rules. (3 marks)*
- (b) *State Government has decided to sell the loss making Undertaking in the sector of water supply. The workers employed in this sector announced strike to protest the said decision. In such situation, what are the circumstances under which the said strike shall be treated as breach of contract? (3 marks)*
- (c) *You are Company Secretary of U Ltd. The Board of Directors has required to prepare a check list of Sector Specific Laws to be complied with by the Company in Human Health Sector. Prepare the check list to be submitted before the Board. (3 marks)*
- (d) *Ms N is studying in Mass Media and under the syllabus; she needs to prepare a project report on Propaganda supported by Political Moto. Ms N wants to use*

the report of one of News channels but the same is protected under the Copyright Act. What are the exceptions where Ms N can use the material of copyright?

(3 marks)

- (e) You are appointed as Secretarial Officer of A Ltd., a BSE Listed company. Apart from the day to day secretarial work, you need to check & verify the purchase invoice and purchase order. Being an officer in that area, prepare the note on maintenance of Expense and Purchase Record and its advantage. (3 marks)*

OR (Alternate question to Q. No. 4)

Question 4A

- (i) What are the purpose and objective of The Plantation Labour Act, 1951 and which ministry administers the same? (3 marks)*
- (ii) What forms are required to be filed with ROC for registration of a new company where the registration of GST, EPFO and ESIC is also applied simultaneously? (3 marks)*
- (iii) Can a woman be employed in the Mine Industry? If yes, on what terms and conditions, a woman may be employed in any mine below the ground? (3 marks)*
- (iv) Registration of Import-Export Code (IEC) has lifetime validity. In view of the statement, mention essential features of IEC registration. (3 marks)*
- (v) Public Liability Insurance Act, 1991 is to save owner of establishment producing hazardous substance from hefty penalties. Elucidate. (3 marks)*

Answer 4(a)

Key provisions of the Hazardous and Other Wastes (Management & Transboundary Movement) Amendment Rules, 2019 are as follows:

1. Solid plastic waste has been prohibited from import into the country including in Special Economic Zones (SEZ) and by Export Oriented Units (EOU).
2. Exporters of silk waste have now been given exemption from requiring permission from the Ministry of Environment, Forest and Climate Change.
3. Electrical and electronic assemblies and components manufactured in and exported from India, if found defective can now be imported back into the country, within a year of export, without obtaining permission from the Ministry of Environment, Forest and Climate Change.
4. Industries which do not require consent under Water (Prevention and Control of Pollution) Act 1974 and Air (Prevention and Control of Pollution) Act 1981, are now exempted from requiring authorization also under the Hazardous and Other Wastes (Management & Transboundary Movement) Rules, 2016, provided that hazardous and other wastes generated by such industries are handed over to the authorized actual users, waste collectors or disposal facilities.

Answer 4(b)

Since undertaking is in the sector of Water supply so, according to Section 22(1) of the Industrial Dispute Act of 1947 no person employed in a public utility service shall go on strike in breach of contract-

- (a) Without giving to the employer notice of strike, as hereinafter provided, within six weeks before striking; or
- (b) Within fourteen days of giving such notice; or
- (c) Before the expiry of the date of strike specified in any such notice as aforesaid; or
- (d) During the pendency of any conciliation proceedings before a conciliation officer and seven days after the conclusion of such proceedings.

Answer 4(c)

Sector specific laws to be complied with by company in Human Health Sector are as under:

- National Medical Commission Act, 2019
- The Clinical Establishments (Registration and Regulation) Act, 2010
- Indian Medical Council Act, 1956
- The Drugs and Cosmetics Act, 1940
- The Pharmacy Act, 1948
- Dentist Act, 1948
- Nursing Council Act, 1947
- Homeopathic Central Council Act, 1973
- The Drugs and Magic Remedies (Objectionable Advertisement) Act, 1954
- The Narcotic Drugs and Psychotropic Substances Act, 1985
- The Medicinal and Toilet Preparations (Excise Duties) Act, 1956
- The Drugs Control Act, 1950
- Mental Health Act, 1987
- Transplantation of Human Organ Act, 1994
- Epidemic Disease Act, 1897

Answer 4(d)

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

- for the purpose of research or private study,
- for criticism or review,
- for reporting current events,

- in connection with judicial proceeding,
- performance by an amateur club or society if the performance is given to a non-paying audience, and
- making of sound recordings of literary, dramatic or musical works under certain conditions.
- for the purpose of education and religious ceremonies.

On the basis of the explanation given above, as Ms. N is studying in mass media and wants to prepare a project report, which comes under above exception.

Answer 4(e)

To be able to determine the business's profitability it is important that you should record and retain details of expenses and purchases made by your business. Documents that contain such details include:

- Invoices received
- Credit card statements
- Receipts/ counterfoils
- Cheque book counterfoils
- Cash vouchers
- Salary information
- Credit Documents

Collectively, these will represent the sum total of monies expended by the business in the pursuit of its main activities. Retaining and filing this data shall lead to meaningful information on the expense patterns of the company which can then be used to make informed decisions by the business owners.

This data is also useful in a tax context as it will form the basis for the justification of profitability figures as reflected by the business in its returns of income during scrutiny proceedings undertaken by the income tax department.

Answer 4A(i)

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

The Act is administered by the Ministry of Labour & Employment.

Answer 4A(ii)

As part of Government of India's Ease of Doing Business (EODB) initiatives, the Ministry of Corporate Affairs has notified & deployed a new integrated Web Form christened 'SPICe+' (pronounced 'SPICe Plus') replacing the existing SPICe form. SPICe+ offer 11 services by 3 Central Govt Ministries & Departments. (Ministry of Corporate Affairs,

Ministry of Labour & Department of Revenue in the Ministry of Finance) and two State Govt.(Maharashtra & Karnataka), thereby saving as many procedures, time and cost for Starting a Business in India and would be applicable for all new company incorporations w.e.f 23rd February, 2020.

The form is divided in to two parts viz.: Part A-for Name reservation for new companies and Part B - offering a bouquet of services such as Incorporation, DIN allotment, Mandatory issue of PAN, Mandatory issue of TAN, Mandatory issue of EPFO registration, Mandatory issue of ESIC registration and Allotment of GSTIN (if so applied for) etc.

Registration for EPFO and ESIC shall be mandatory for all new companies incorporated w.e.f 23rd February 2020 and no EPFO & ESIC registration nos. shall be separately issued by the respective agencies.

Names of the Relevant web Forms shall be called as Form No – INC32 (SPICe- +) and AGILE Pro.

Answer 4A(iii)

Yes, a woman can be employed in Mine Industry.

In exercise of the power conferred under section 83(1) on the Mines Act, 1952, the Central Government hereby exempts the women employed in any mine above ground and in any mine below ground from the provisions of section 46 of the Mines Act, 1952, subject to the following conditions, namely:-

In the case of women employed in any mine below ground:

- The owner of a mine may deploy women between the hours of 6 am and 7 pm in technical, supervisory and managerial work where continuous presence may not be required;
- the deployment of women shall be after obtaining the written consent of the concerned woman employee;
- the women so deployed shall be provided with adequate facilities and safeguards regarding occupational safety, security and health;
- the deployment of women shall be subject to the framing and implementation of Standard Operating Procedures on the basis of the guidelines issued in this regard by the Chief Inspector of Mines from time to time;
- the deployment of women shall be in a group of not less than three.

Answer 4A(iv)

Import Export Code (IEC) registration is required by a person for exporting or importing goods. It is a 10 digit code which is issued by the Directorate General of Foreign Trade (DGFT). All businesses which are engaged in Import and Export of goods require registering Import Export Code.

Features of the Import Export Code (IEC) Registration are as under:

- *International Exposure* : IEC Code helps you to grow your business from local market to international market and expand your product or service across the globe.

- *Government Benefits* : IEC Code Registration you can avail all the export scheme benefits from DGFT.
- *No Renewals* : IEC Code issued by the DGFT for the lifetime validity so you have not required renew every year so it's a just one time cost of the registration.
- *No Annual Compliance* : IEC Code have no annual compliance like returns filings etc.
- *Individual person* : IEC Code can also be obtained by the individual.

Answer 4A(v)

Public Liability Insurance Act, 1991 is to provide compensation for damages to victims of an accident caused by handling any hazardous substance or as it is also called, to save the owner of production/storage of hazardous substance from hefty penalties. This is done by providing compulsory insurance for third party liability.

First time owner is put on anvil to provide the compensation/relief, when death or injury to any person (please note-other than a workman) or damage to any property has resulted from an accident of hazardous substance.

Actually the owner shall buy one or more insurance policies before he/she starts handling any hazardous substance. When any accidents come in knowledge of Collector, then he/she verify the occurrence of accident and order for relief as he/she deems fit.

PART C

Question 5

- Dormant company status is an excellent tool for keeping the assets in the company for its future usage. Explain. (3 marks)*
- State the powers of the Registrar in regard to 'fraudulent application for removal of name' of the company from the Register of companies. (3 marks)*
- Explain the term 'Insolvency Resolution Process Cost' as defined under the Insolvency and Bankruptcy Code, 2016. (3 marks)*
- What are the duties of an "Interim Resolution Professional" ? (3 marks)*
- List out the Companies, which cannot be removed through procedure prescribed under section 248 of the Companies Act, 2013. (3 marks)*

Answer 5(a)

A dormant company means a company which is inactive i.e., not carrying out any business activity and has applied to the Registrar of Companies ("ROC") to change its status in the Register of Companies maintained by the said Registrar of Companies from "Active Company" to "Dormant Company". A company may become dormant immediately after its registration or after a few years of its incorporation.

A Dormant Company offers excellent advantage to the promoters who want to hold an asset or intellectual property under the corporate shield for its usage at a later stage. For instance: if a promoter wants to buy land now for its future project at a comparatively lesser price, he may do the same through dormant company so that he can use the land

for its future project. Thus, ‘dormant company’ is an excellent tool for keeping assets in the company for its future usage. A dormant company may either be a public company or a private company or a One Person Company (OPC).

Answer 5(b)

If it is found that an application by a company has been made with the object of evading the liabilities of the company or with the intention to deceive the creditors or to defraud any other persons, the persons in charge of the management of the company shall, notwithstanding that the company has been notified as dissolved be liable for the following:

- (i) be jointly and severally liable to any person or persons who had incurred loss or damage as a result of the company being notified as dissolved; and
- (ii) be punishable for fraud in the manner as provided in section 447 of the Companies Act, 2013.

The Registrar has the power to recommend prosecution of the persons responsible for the filing of a fraudulent application.

Answer 5(c)

According to Section 5(13) of the Insolvency and Bankruptcy Code, 2016, “Insolvency resolution process costs” means –

- (a) the amount of any interim finance and the costs incurred in raising such finance;
- (b) the fees payable to any person acting as a resolution professional;
- (c) any costs incurred by the resolution professional in running the business of the corporate debtor as a going concern;
- (d) any costs incurred at the expense of the Government to facilitate the insolvency resolution process; and
- (e) any other costs as may be specified by the Board

Answer 5(d)

The Interim Resolution Professional (IRP) takes over the management of the corporate debtor and is in charge of day-to-day affairs of the corporate debtor. The powers of the board of directors or the partners of the corporate debtor, as the case may be, shall stand suspended and be exercised by the IRP. He may appoint professionals and consultants to support him in his duties. The IRP is responsible for complying with the requirements under any law for the time being in force on behalf of the corporate debtor.

The primary duties of the IRP are to:

- (a) Make public announcement about the CIRP of the corporate debtor
- (b) Invite claims from creditors
- (c) Get valuation of the corporate debtor done

On receipt of claims from the creditors, the IRP shall verify the claims and make list of accepted claims.

Within 30 days of commencement of CIRP, the IRP shall constitute a Committee of Creditors (COC) which primarily consists of all financial creditors of the corporate debtor. The IRP shall make every endeavour to protect and preserve the value of the property of the corporate debtor and manage the operations of the corporate debtor as a going concern.

Answer 5(e)

Companies which cannot be removed under Section 248 of the Companies Act, 2013 are as under:

- (i) Listed Companies
- (ii) Companies registered under section 8
- (iii) Companies having charges which are pending for satisfaction
- (iv) Companies whose application for compounding is pending for compounding of offences committed by the company or any of its officers in default
- (v) Companies against which any prosecution for an offence is pending in any court
- (vi) Vanishing Companies
- (vii) Companies that have been delisted due to non-compliance of listing regulations or listing agreement or any other statutory laws;
- (viii) Companies where inspection or investigation is ordered and being carried out or actions or such order are yet to be taken up or were complete but prosecutions arising out of such inspection or investigation are pending in the court.
- (ix) Companies which have accepted public deposits which are either outstanding or the company is in default in repayment of the same;
- (x) Companies where notices under section 234 of Companies Act, 1956 or 206 or 207 of the Companies Act, 2013 have been issued by the Registrar or Inspector and reply thereto is pending or report under section 208 is pending or where any prosecution arising out of such inquiry or scrutiny, if any, is pending with the court.

Question 6

- (a) *In case of application for removal of the name is filed, what are the attachments required to be enclosed with STK 2 ?*
- (b) *ABC Ltd. was incorporated in April, 2018. Due to the recession in the market and technical reasons, the Company could not commence its business till now. In the current situation, promoters of the company are willing to apply for removal of the name. Advise them :*
 - (i) *the various grounds on which promoters of the company can close down the company being non-operational.*
 - (ii) *whether your answer will change if the company has changed its registered office from Delhi to Noida in two months back. (5 marks each)*

Answer 6(a)

An application for removal of the name of the company shall be made in Form STK-2 along with the following documents will be attached in the Form STK-2:

- (a) No objection certificate from the appropriate concerned authority, if applicable (RBI, IRDA, Housing Finance, SEBI etc.)
- (b) Indemnity Bond duly notarised by every Director in Form STK-3. However, in case of a government company or a subsidiary of a government company, a duly notarised indemnity bond in Form STK-3A shall be given by an authorised representative, not below the rank of Under Secretary or its equivalent, in the administrative Ministry or Department of the Government of India or the State Government, as the case may be, on behalf of the company.
- (c) Statement of Accounts certified by CA in Form STK-8. Statement should not be older than 30 days before the date of application.
- (d) An Affidavit by every director in Form STK-4.
- (e) Certified true copy of special resolution duly certified by each of the directors of the company or consent of seventy five per cent of the members of the company in terms of paid up share capital as on the date of application.
- (f) Statement regarding pending litigations, if any, involving company.

Answer 6(b)(i)

Ground on which promoters of the company can close down the company being non-operational:

- Company which has failed to commence its business within one year of its incorporation or
- Company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act or
- The subscribers to the memorandum have not paid the subscription and a declaration to this effect has not been filed within 180 days of incorporation or
- The company is not carrying on any business or operations as revealed after the physical verification carried out under of the Companies Act.

Answer 6(b)(ii)

According to Section 249 of the Companies Act, 2013, the Company shall not make any application for the strike off of the company, if at any time in the previous 3 months, the company has done any of the below mentioned activities:

- i. Has changed its name or
- 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 cesser of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;

- 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 scheme of compromise or arrangement and the matter has not been finally concluded; or
- vi. is being wound up under Chapter XX of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2020-21, unless stated otherwise.

PART I

1. *Cannons of taxation as propounded by Adam Smith despite the modern development of economic sciences still apply and hold good. These cannons of taxation refer to administrative aspect of a tax. Find out from the following, which have been considered too under the Income Tax Act as being the fundamental cannons of taxation :*
 - (i) Cannon of Equity; (ii) Cannon of Economy*
 - (iii) Cannon of Uncertainty; (iv) Cannon of Non-convenience;*
 - (v) Cannon of Certainty*
 - (A) (i), (ii) & (v)*
 - (B) (ii), (iv) & (v)*
 - (C) (i), (iii) & (iv)*
 - (D) All the five above*

2. *The Central Board of Direct Taxes (CBDT) is a statutory authority for providing essential inputs for policy and planning of direct taxes in India and is also responsible for administration of direct tax laws through Income Tax Department and is functioning under the :*
 - (A) Income Tax Act, 1961*
 - (B) Financial Action Task Force (FATF)*
 - (C) Central Board of Revenue Act, 1924*
 - (D) Central Board of Revenue Act, 1963*

3. *Shane Warne, an Australian Cricketer coming to India regularly for plying different league matches since April, 2012 and was staying in India in each of the financial year for 100 days. His residential status for the previous year ended on 31.3.2020 relevant for A. Y. 2020-21 shall be :*
 - (A) Non-resident*
 - (B) Resident but not ordinary resident*
 - (C) Resident*
 - (D) Resident and ordinary resident*

4. A company shall be said to be engaged in "active business outside India" (ABOI), if the passive income is not ----- of its total income and ----- of its total assets are situated in India.
- (A) less than 50%; more than 50%
- (B) more than 50%; less than 50%
- (C) less than 50%; less than 50%
- (D) more than 50%; more than 50%
5. Incomes not actually received by the assessee during the relevant assessment year are also included in the total income as income deemed to have been received. Find which out of the following are the income deemed to have been received as per Income Tax Act, 1961 during the financial year :
- (i) Amount of unrecorded investment
- (ii) All sums deducted by way of tax at source
- (iii) Any dividend declared by a company
- (iv) Transferred balance in Recognised PF
- (A) (ii) & (iii)
- (B) (i), (ii) & (iii)
- (C) (i) & (iv)
- (D) (i), (ii), (iii) & (iv)
6. Xavier, a resident and ordinary resident had the income computed under the salary of ₹1,20,000; agriculture income of ₹25,000 in Indonesia being invested there and income of a business in Burma controlled from India of ₹20,000 during the previous year ended on 31.3.2020. He has brought into India ₹45,000 in January, 2020 out of the past untaxed profits earned in UK. His total income for tax purpose for Asst. Year 2020-21 shall be :
- (A) ₹1,65,000
- (B) ₹2,10,000
- (C) ₹1,40,000
- (D) ₹1,85,000
7. Chirag a resident individual of 67 years of age had total income earned from different sources during the previous year 2019-20 being computed as per provisions of Income-tax Act, 1961 of ₹4,75,000. His tax liability on such income for the Asst. Year 2020-21 will be ----- but tax payable shall be nil.
- (A) ₹11,700
- (B) ₹8,750

- (C) ₹9,100
(D) ₹11,250
8. *Grow Green Tea Company having tea gardens in Assam engaged in growing and manufacturing of tea in India. Total profits of the company from the business of growing/ plantation and manufacturing of tea for the year ended 31.03.2020 are of ₹2,50,000. Profits subject to tax as business income under Rule - 8 of the Income-tax Rules for A. Y. 2020-21 shall be -----*
- (A) ₹1,00,000
(B) ₹1,50,000
(C) ₹2,50,000
(D) ₹1,25,000
9. *Charles Fried working in Coal Mines in Dhanbad was receiving 'underground allowance for working in uncongenial, unnatural climate in underground Coal Mines' of an amount of ₹2,000 per month from the employer. Amount of ₹_____ received per month shall be treated as exempt as per section 10(14) of the Act.*
- (A) ₹2,000
(B) ₹800
(C) ₹1,000
(D) ₹1,500
10. *Find out from the following incomes which shall not be taken as forming part of the total income of an assessee for the purpose of taxation in any assessment year as per provisions of Income Tax Act, 1961 :*
- (i) *Pension received by an awardee of Mahavir Chakra*
(ii) *Income of a Notified News Agency*
(iii) *Pension received by widow of a Major who died in Balakot attack*
(iv) *Income received on behalf of any Regimental Fund*
- (A) (i), (ii), (iii) & (iv)
(B) (i), (iii) & (iv)
(C) (ii) & (iv)
(D) (ii) & (iii)
11. *Ramprasad engaged in turbine manufacturing business has a unit located in SEZ in Jodhpur. The unit in SEZ was in its third year of operation during the financial year 2019-20. Summarized results of SEZ Unit are :*
- Domestic turnover ₹200 lakh*
Export turnover ₹800 lakh

Net profit ₹180 lakh

Income exempt under section 10AA for Asst. Year 2020-21 shall be ----

(A) ₹180 lakh

(B) ₹90 lakh

(C) ₹144 lakh

(D) ₹135 lakh

12. Pares, a Company Secretary working in Roly Poly Ltd Chennai besides Salary, HRA, DA and Bonus was also getting fixed medical allowance of ₹10,000 from the employer. He spent out of the medical allowance so received an amount of ₹6,000 on his treatment, ₹2,000 on the treatment of his wife and ₹1,000 on the treatment of his major son not dependent on him. The amount of medical allowance received and to be exempt for Asst. Year 2020-21 shall be -----

(A) ₹8,000

(B) NIL

(C) ₹9,000

(D) ₹5,000

13. Ramavtar, an employee of GG Carriers provides the following details of his income received from the employer for the year ended on 31.3.2020 :

Salary ₹1,20,000

DA ₹24,000

Leave Salary ₹5,000

Bonus ₹6,000

Professional tax
paid by employer ₹1,000

Free Lunch ₹3,000

He has contributed ₹9,000 in statutory PF and had also paid ₹1,000 towards LIP premium. His total income for Asst. Year 2020-21 shall be ----

(A) ₹95,000

(B) ₹1,08,000

(C) ₹1,05,000

(D) ₹98,000

14. Pushpal, a non-resident Indian in the previous year 2019-20 was in receipt of rent of the house property located in Singapore of ₹30,00,000. The amount of rent was transferred and credited in the bank account of Pushpal, maintained with SBI, New Delhi by the tenant quarterly. However, the rent for the last

quarter of ₹7,50,000 was not transferred by the tenant in the account of Pushpal till 31-03-2020. The Rental Income of the house located in Singapore which will be subject to tax in India under the head Income from house property in A. Y. 2020-21 shall be-----

- (A) ₹22,50,000
 (B) ₹21,00,000
 (C) ₹15,75,000
 (D) Not taxable as property is in Singapore and he is non-resident
15. Find out with the help of given details/information, the gross annual value (GAV) of a house owned by Ramnath covered by Rent Control Act remained let out during the year 01-04-2019 to 01-04-2020 :
- (i) Municipal value ₹7,00,000
 (ii) Actual (de facto) Rent ₹6,48,000
 (iii) Fair Rent ₹6,60,000, and
 (iv) Standard Rent ₹7,20,000
- (A) 7,20,000
 (B) 6,48,000
 (C) 7,00,000
 (D) 6,60,000
16. Sonu had let out a house located at Jaipur to Monu since 1.4.2018 on a rent of ₹3,000 p.m. Monu paid the rent regularly up to 30.11.18 and vacated the house on 31.3.2019 when it was sold by Sonu to Ramu. Sonu after great persuasion could recover an amount of ₹9,000 from Monu in July, 2019. The Income chargeable under House Property in A. Y. 2020-21 shall be -----
- (A) ₹9,000
 (B) ₹6,300
 (C) NIL
 (D) ₹6,750
17. Supreme Court in case of Chennai Properties and Investments Ltd vs. CIT (2015) has held that income from letting of properties by a company whose main object as per the Memorandum of Association (MOA) is to acquire and let out properties be taxable as :
- (A) Income under "House Property"
 (B) Income under "Profits & Gains of business or profession"
 (C) Income under "Other Sources"
 (D) Income under "Capital Gains"

18. *The Income Computation and Disclosure Standards (ICDS) applicable from Asst. Year 2017-18 for the purpose of computation of Income under the head "Profits and gains of business or Profession" and "Income from other Sources" shall not apply for computation of ----- but shall apply for computation of -----*
- (A) *AMT; MAT*
(B) *Presumptive Income; MAT*
(C) *MAT; AMT*
(D) *AMT; Presumptive Income*
19. *Which out of the following elements shall be considered for bringing to tax the income under the head Income from Business & Profession ?*
- (i) *Ownership of the business is not necessary*
(ii) *Business must be legal*
(iii) *Income may be earned in cash or kind*
(iv) *Profit motive is not the sole consideration*
- (A) *(iii) & (iv)*
(B) *(i), (iii) & (iv)*
(C) *(ii) & (iii)*
(D) *All the above four*
20. *The WDV of a block of asset of plant & machinery subject to depreciation @ 15% as on 1.4.2019 was of ₹27,50,000. One machine out of this block, was sold on 01.07.2019 for ₹4,50,000 and a new machine of the value of ₹17,50,000 purchased on 1.8.2019 was put to use from 01-03-2020. The amount of depreciation to be claimed on the block of plant & machinery in the computation of income for A. Y. 2020-21 shall be :*
- (A) *₹4,76,250*
(B) *₹3,45,000*
(C) *₹6,07,500*
(D) *₹6,75,000*
21. *Additional Investment allowance of an amount equal to ----- of the cost of the new asset acquired and installed for manufacture or production of any article or thing in any notified backward areas in the State of ----- and the state of ----- during the period 1.4.2015 to 31.3.2020 is allowed in addition of the amount of deduction under section 32 AC of the Act.*
- (A) *15%; Andhra Pradesh; Karnataka*
(B) *25%; Andhra Pradesh; Telangana*
(C) *15%; Andhra Pradesh; Telangana*
(D) *25%; Andhra Pradesh; Karnataka*

22. Amitav had made payment of (i) ₹60,000 to IIT, Kanpur for an approved scientific research programme; (ii) ₹90,000 revenue expenditure on in house R&D facility as approved by prescribed authority and (iii) an amount of ₹2,00,000 to Indian Institute of Science, Bengaluru for scientific research. He wants to know about the total amount of deduction available as per provisions of the Act while computing the income under "Profits and gains from business" in the Asst. Year 2020-21.
- (A) 4,80,000
(B) 3,50,000
(C) 5,25,000
(D) 5,30,000
23. Pink & Pink is a Proprietorship firm of Pingajee, resident in India having turnover from manufacturing and sale of Toys for the financial year 2019-20 of ₹160 lakh. The gross turnover of ₹160 lakh includes the amount of ₹60 lakh received through electronic clearing system/RTGS/NEFT. The accounts are being not properly maintained by Pingajee and therefore he wants to pay tax on the income to be computed under section 44AD of Act. Advise Pingajee, as to the amount of income on which he will be required to pay tax for A. Y. 2020-21 as per section 44AD :
- (A) Not allowed to opt 44AD being turnover above ₹100 lakh
(B) ₹11,60,000
(C) ₹9,60,000
(D) ₹12,80,000
24. Ram, engaged in the business of plying, hiring or leasing of goods carriages as on 1st April, 2019 was having 5 trucks of gross vehicles weight of each truck of less than 12,000 Kgs. One truck out of these 5 trucks was sold by him on 23rd July, 2019 and after sale of one truck; 2 more trucks (1 of less than 12,000 Kgs and 1 of 16,900 Kgs of gross vehicle weight) were purchased on 5th September, 2019 and plied. He wants to declare the income of trucks as per provision of section 44 AE of the Act. He shall be required to declare an income of _____ in the return for A. Y. 2020-21 from plying of these vehicles during the previous year ended on 31.03.2020.
- (A) 5,29,500
(B) 4,95,000
(C) 5,61,500
(D) 5,54,000
25. Karnataka High Court in case of CIT vs. ITC Hotels Ltd. (2011) 334 ITR 109 has held that the expenditure incurred on the issue and collection of debentures

including the convertible debentures (which had to be converted into shares at a later date) shall be treated as -----

- (A) Revenue Expenditure
 - (B) Deferred Revenue Expenditure
 - (C) Capital Expenditure
 - (D) Revenue expenditure to be amortized in five years
26. The essential requirement for the incidence of tax on capital gains is the transfer of a "Capital Asset". Definition of transfer given under the Act is an inclusive definition. Find out which of the following are being included under transfer :
- (i) Conversion of asset into stock in trade
 - (ii) Extinguishment of rights
 - (iii) Redemption of Sovereign Gold Bonds issued by RBI by an individual
 - (iv) Transfer of asset under reverse mortgage
- (A) (i), (iii) & (iv)
 - (B) (i) & (ii)
 - (C) (i), (ii) & (iii)
 - (D) All the above four
27. Moti & Sons-HUF purchased a piece of land for ₹1,05,000 in July, 2002. In July, 2006 the HUF was partitioned and one of the coparcener Manak got this piece of land. The value of the land in July, 2006 was of ₹2,44,000 as assessed by Stamp Valuation Authority. Manak, after receipt of the land incurred expenses in August, 2007 of ₹2,58,000 on construction of room, boundary wall and kitchen. The land so received was sold by him on 11.2.2020 for ₹17,50,000. The amount of Capital Gain chargeable to tax in A. Y. 2020-21 will be----- (Take CII of 2002-03 as 105; 2006-07 as 122; 2007-08 as 129 and of 2019-20 as 289)
- (A) ₹8,83,000
 - (B) ₹3,44,000
 - (C) ₹12,48,000
 - (D) ₹9,28,000
28. The Apex Court in case of CIT vs. Equinox Solutions Pvt. Ltd, (2017) 393 ITR 563 has held that the sale of a running business with all its assets and liabilities would be covered as ----- under the Income-tax Act, 1961 for the purpose of tax thereon.
- (A) Normal sale
 - (B) Slump sale
 - (C) Transfer of business
 - (D) Conversion of business

29. Chiranjeevi entered into an agreement for sale of his house property located at Noida to Yashashwi on 1st August, 2018 for a total sale consideration of ₹125 lakh. Yashashwi paid an amount of ₹25 lakh by account payee cheque to Chiranjeevi on 1st August, 2018 and balance was agreed to be paid at the time of registration of the Conveyance Deed which could only be executed by Chiranjeevi on 1st October, 2019. The Stamp Valuation Authority determined the value of the house property on the date of registration of deed at ₹150 lacs. However, the value determined by the Stamp Valuation Authority of the house on the date of agreement (1st August, 2018) was ₹140 lacs. The amount of sale consideration for the purpose of computing the capital gain of the property in A.Y. 2020-21 to be taken by Chiranjeevi shall be :
- (A) ₹125 lacs
(B) ₹150 lacs
(C) ₹140 lacs
(D) ₹(140-25) = 115 lacs
30. Identify out of the following income which shall be chargeable to tax as income under the head - Income from Other Sources :
- (i) Income of Dividend
(ii) Income from composite hiring of building with machinery
(iii) Income from speculative business
(iv) Income of a Jockey
- (A) (i) & (ii)
(B) (iii) & (iv)
(C) (i), (ii), (iii) & (iv)
(D) (i), (iii) & (iv)
31. A flat in Jaipur was booked by Aditi for ₹30 lakh with UDB Builders on 01.09.2017 and an amount of ₹10 lakh was paid by account payee cheque. The possession of flat was given by the builder on 13.01.2020. The Stamp Valuation Authority have determined the value of the flat on the date of booking at ₹35,00,000 and on the date of possession given by the builder after execution of conveyance deed at ₹45,00,000. Find out the amount if any, chargeable to tax in respect of this flat in the hands of Aditi in the A.Y. 2020-21 under the head 'Income from other sources'.
- (A) ₹15,00,000
(B) NIL
(C) ₹5,00,000
(D) ₹10,00,000

32. *Revocable transfer of asset as per section 61 of the Income Tax Act, 1961 includes the transfer which gives a right to _____ of the asset or the income from such asset or assets during the _____ of transferee.*
- (A) *Re-assume power; Life time*
 - (B) *Revoke; Life time*
 - (C) *Transfer; Discretion*
 - (D) *Re-locate; Period of 10 years*
33. *Income from assets as per section 64(1)(iv) shall not be included in the income of transferor where any individual transfers directly or indirectly any asset other than house property to the spouse when _____*
- (A) *has received adequate consideration*
 - (B) *has been made with an agreement to live apart*
 - (C) *after the death of either transferor or transferee*
 - (D) *all in A, B & C*
34. *Where the net result for any assessment year in respect of any source falling under any head of income is a loss; the assessee is entitled to set-off the amount of such loss against his income from any other source under the same head. However, certain losses are not being allowed to be set-off as per General Rule. Find out from the following which are those :*
- (i) *Speculative business loss*
 - (ii) *Long term capital loss*
 - (iii) *Casual income*
 - (iv) *Loss from an exempt source*
- (A) *(i) & (ii)*
 - (B) *(i), (ii) & (iv)*
 - (C) *(i), (ii), (iii) & (iv)*
 - (D) *(i), (iii) & (iv)*
35. *Pankaj, fulfilling all the prescribed conditions for claiming deduction under section 80GG having adjusted total income of ₹1,84,000 before providing such deduction and was paying rent in respect of residential accommodation occupied by him at Delhi @ ₹4,800 p.m. He is entitled to claim the deduction for the house rent so paid in assessment year 2020-21 while computing his taxable income of an amount of -----*
- (A) *₹39,200*
 - (B) *₹46,000*
 - (C) *₹60,000*
 - (D) *₹57,600*

36. Babu Lal authored a book which is covered as per provision of section 80QQB and received an amount of royalty of ₹2,00,000 @ 20% during the year ended 31.3.2020. He had incurred an expenditure of ₹30,000 for earning the amount of royalty of ₹2,00,000. The entire royalty was received by him from abroad and amount of ₹1,10,000 out of the royalty amount shall be remitted to India till 30.09.2020. He can claim deduction out of such royalty income in assessment year 2020-21 for an amount of _____
- (A) ₹1,70,000
 (B) ₹80,000
 (C) ₹1,20,000
 (D) ₹2,00,000
37. Ram & Company constituted by 2 partners sharing profits & loss equally declared net loss of ₹20,000 after charge of salary of ₹10,000 p.m. paid to each of the working partners as authorized by the deed during the previous year 1.4.2019 to 31.3.2020. The amount of deduction in respect of payment of salary made to the partners while computing the income of the firm for assessment year 2020-21 will be allowed of ₹_____
- (A) 2,20,000
 (B) 2,40,000
 (C) 1,50,000
 (D) 1,98,000
38. The total income of the partnership firm Xavier & Company for the assessment year 2020-21 of ₹8,15,000 arrived at after claiming deduction u/s 35AD of ₹11,00,000, u/s 81-IB of ₹1,00,000, and donation paid to a registered political party by cheque of ₹85,000. The adjusted total income of the firm for payment of tax under section 115JC of the Act shall be ₹_____
- (A) 20,15,000
 (B) 21,00,000
 (C) 10,00,000
 (D) 19,15,000
39. Shanti Nagar Co-operative Society had derived the following income during the previous year 1.4.2019 to 31.3.2020 :
- | | |
|--|--------|
| (i) Marketing of agricultural produce of its members | 20,000 |
| (ii) Interest from members on delayed payment | 2,000 |
| (iii) Processing (without aid of power) of agricultural produce of its members | 5,000 |
| (iv) Supplying milk to the Government (raised by its members) | 25,000 |

(v) Agency business 15,000

(vi) Dividends from other Co-operative Societies 15,000

The total income of the Society for the A. Y. 2020-21 shall be _____

(A) ₹22,000

(B) ₹37,000

(C) ₹(82000 - 50000) = 32,000

(D) ₹2,000

40. BBG Pvt. Ltd is a domestic company engaged in the business of running and maintaining of hotels in India had total turnover in Asst. Year 2019-20 of ₹180 crores declared the total taxable income for the year ended 31.03.2020 of ₹12.5 crores. Tax payable on the income of ₹12.5 crores in the Asst. Year 2020-21 by the company shall be _____

(A) ₹3.64 Cr.

(B) ₹3.4775 Cr.

(C) ₹4.368 Cr.

(D) ₹4.173 Cr.

41. DLF Limited, an Indian domestic company received an amount of ₹15 lakh as dividend declared and distributed on 18.11.2019 by John Miller Inc of UK in which it holds 30% in nominal value of equity share capital. Indian company has paid interest of ₹5 lakh on the amount invested in the shares of John Miller Inc. The tax payable (rounded off in nearby two decimal points) on the amount of dividend received by the Indian company in assessment year 2020-21 shall be ----

(A) ₹3.12 lakh

(B) ₹2.50 lakh

(C) ₹2.34 lakh

(D) ₹2.68 lakh

42. ABC Ltd, a domestic company purchased on 14th October, 2019 its own unlisted shares. The consideration for the buyback of shares amounted to ₹50,00,000 which was paid by the company on the very same day. Amount received for the issue of such shares by the company 2 years ago was of ₹27,00,000. The company is required to make the payment of tax for the buy-back of shares in assessment year 2020-21 of ₹ -----

(A) 5,35,810

(B) 6,87,700

(C) 6,69,760

(D) 5,50,160

43. Quoting of PAN is compulsory/mandatory in respect of financial transactions undertaken during the year by an assessee. Find from the following transactions in which quoting of PAN is compulsory/mandatory :
- (i) deposit of cash of ₹60,000 on 11.06.2019 in bank account
 - (ii) payment of ₹40,000 made to hotel Raj Palace in cash on 11.07.2019
 - (iii) payment for purchase of travel ticket, to travel agent in cash of ₹55,000 on 10.05.2019
 - (iv) payment of ₹ 5,00,000 to RBI for purchase of Capital Gain Bonds as per section 54EC on 5.05.2019
- (A) (i), & (iii)
 - (B) (i), (iii) & (iv)
 - (C) (i), (ii) & (iii)
 - (D) All the four in, (i), (ii), (iii) & (iv)
44. DAB Builders entered into a registered agreement with Lallu Ram Yadav owning a land located at Jaipur under Joint Development Agreement to develop a real estate project on such land and in consideration of his share of being land in such project on the date of entering in the Joint Development Agreement paid an amount of ₹50 lakh by Account Payee Cheque in January, 2020. The amount of TDS to be deducted by DAB Builders on such payment shall be ₹ _____
- (A) 5,00,000
 - (B) 50,000
 - (C) 2,50,000
 - (D) 1,00,000
45. CK & Company is engaged in the diversified business of sale of Indian made foreign liquor, tendu leaves, forest produce neither being timber nor tendu leaves required to collect TCS as per section 206C of the Income Tax Act on the amount of sale proceeds of these products/items during the previous year ended on 31.03.2020 at the rate of -----
- (A) 1% on all the three
 - (B) 1%, 5% & 2.5%
 - (C) 2.5%, 1% & 5%
 - (D) 5%, 1% & 2.5%
46. The return of income for the previous year 2019-20 required to be filed by an individual who is not a senior citizen as per section 139(1) of the Act by 30th September, 2020. However, the assessee finds that he cannot file the return as per 139(1) within the due date. Can he file his return of income after the due date and if yes, by which date/time ?

- (A) On or before 31st December, 2020
(B) On or before 31st March, 2021
(C) On or before 31st March, 2022
(D) On or before 30th June, 2021
47. A notice under section 148 for A.Y. 2013-14 in the case of Jockey Limited where the original assessment was completed u/s 143(3) of the Income Tax Act, 1961 and the escaped income is of ₹_____ or more can be issued before 31.03.2020 by the Assessing Officer only with the approval of _____
(A) 5 lakh or more; Addl. Commissioner of Income Tax
(B) 5 lakh or more; Principal Commissioner or Commissioner
(C) 1 lakh or more; Principal Commissioner or Commissioner
(D) 1 lakh or more; Addl. Commissioner of Income Tax
48. Income-tax Department can also file an appeal before the Income Tax Appellate Tribunal, High Court and Supreme Court only in those cases where the tax affected in appeal is exceeding certain mandatory limit. An appeal by the Income Tax Department before the High Court can only be filed where the tax effect of appeal exceeds the amount of ₹_____
(A) 50 lakh
(B) 40 lakh
(C) 30 lakh
(D) 10 lakh
49. If any eligible investment fund is required to furnish statement or information or documents in respect of its activities in a financial year as per section 9A; fails to furnish such statement/information or documents within the time prescribed of _____ days shall be liable to pay by way of penalty a sum of ₹_____
(A) 60 days; 1 lakh
(B) 90 days; 1 lakh
(C) 90 days; 5 lakh
(D) 60 days; 5 lakh
50. Prosecution as per section 276CC of the Income Tax Act, 1961 for willful failure to file return of income in time under section 139(1), or in response to notice issued under section 142(1) or section 148 shall not be initiated where the tax payable on regular assessment as reduced by TDS and advance tax does not exceed-----
(A) ₹1,000
(B) ₹3,000
(C) ₹5,000
(D) ₹10,000

PART II

51. *The mechanism of GST Council is to ensure on different aspects of GST between the Centre and the States as well as amongst the States. The Chairperson of the GST Council is*
- (A) *uniformity; Prime Minister*
 - (B) *harmonization; Union Finance Minister*
 - (C) *synchronization; Union Finance Minister*
 - (D) *equalization; Union Minister of State of Revenue*
52. *GST is covered under _____ legislations whereas integrated GST, Compensation cess and Central GST are being charged by _____*
- (A) *3; Central and State Government*
 - (B) *4; Central and State Government*
 - (C) *5; Central Government*
 - (D) *5; Both Central and State Government*
53. *GST Council is the _____ constituted under _____ for making recommendations on various issues relating to policy making, formulation of principles and implementation of policies under Goods and Services Tax regime having its Headquarters located at _____*
- (A) *Apex Body; Article 279-A; Delhi*
 - (B) *Board ; Article 279A(i); NCR*
 - (C) *Committee of Ministers; Article 279-A; NOIDA*
 - (D) *Apex Body; Article 286; Chennai*
54. *Supply of goods by a principal to his agent where the agent undertakes to supply such goods on behalf of the principal and supply of goods by an agent to his principal where the agent undertakes to receive such goods on behalf of the principal are even without consideration but are construed as specified in Schedule-I of the CGST Act, 2017 as -----*
- (A) *supply of goods*
 - (B) *supply of services*
 - (C) *supply*
 - (D) *supply and known as deemed supply*
55. *Two or more taxable supplies of goods/services/both, being supplied in*

conjunction with each other, are deliberately bundled, a single price is charged for the supply and none of the supplies within the package is identifiable as principal supply is known under GST as -----

- (A) *Mixed supply*
 - (B) *Supply of goods and services*
 - (C) *Composite supply*
 - (D) *Both, composite and mixed supply*
56. *Few activities as specified in Schedule-III of CGST Act, 2017 shall be neither treated as supply of goods nor supply of services. Find out from the following activities which shall be neither treated as supply of goods nor supply of services as specified in this schedule :*
- (i) *Actionable claims other than lottery, bating, gambling*
 - (ii) *Services from employee to employer*
 - (iii) *Transportation of the deceased*
 - (iv) *Renting of immovable property*
- (A) *(i), (ii) & (iii)*
 - (B) *(i), (ii), & (iv)*
 - (C) *(ii) & (iii)*
 - (D) *all above*
57. *Section 2(30) of CGST Act, 2017 defines Composite Supply made by a taxable person to a recipient and the tax under GST on such composite supply is to be charged at the rate which is applicable to the _____*
- (A) *different supplies*
 - (B) *principal supply*
 - (C) *highest tax rate supply*
 - (D) *lowest tax rate supply*
58. *Section 10 of the CGST Act, 2017 contains the provisions regarding composition levy having objective to reduce compliance cost for the small tax payers who are having an annual turnover of less than ₹ _____ in the preceding financial year. However, in the States of Arunachal Pradesh and Uttarakhand the aggregate turnover limit shall be ₹ _____*
- (A) *1 Cr. ; 50 lakh*
 - (B) *1 Cr. ; 75 lakh*
 - (C) *1.5 Cr. ; 50 lakh*
 - (D) *1.5 Cr. ; 75 lakh*

59. A combo pack of cosmetic products comprising of items of (i) Hair Dryer of value of ₹1,500 taxable under GST @ 28%, (ii) Tooth-paste of value of ₹500 taxable @ 12% and (iii) different types of Combs of value of ₹500 taxable @ 5%. The total value of combo pack comprising of all such items is of ₹2,400. Tax to be charged on such combo pack under the CGST Act, 2017 shall be of -----
- (A) ₹540
(B) ₹485
(C) ₹672
(D) ₹700
60. A person opting to pay tax as per section 10 of the CGST Act, 2017 under composition levy shall as required in Chapter-II of Central Goods and Service Tax Rules, 2017 within 90 days of exercise of option give the intimation of details of stock and inward supplies from unregistered person in Form No. _____
- (A) GST CMP - 1
(B) GST CMP - 2
(C) GST CMP - 3
(D) GST CMP - 4
61. The Government being satisfied that in the public interest it is necessary so to do, it may on the recommendation of the Council grant exemption from tax as per section 11 of the CGST Act, 2017 as a general exemption and/or as a specific exemption. The general exemption under section 11(1) of the CGST Act, 2017 is granted by _____
- (A) notification
(B) special order
(C) general exemption order
(D) both by notification and special order
62. The liability to pay GST would depend on the mechanism the transaction aligns to the supplier who is not registered under GST, neither issues a tax invoice nor collects the GST. Tax to the Government on such supply is paid by the recipient. This mechanism under GST is known as _____
- (A) Forward charge mechanism
(B) Reverse charge mechanism
(C) Composition levy mechanism
(D) Taxable supply mechanism
63. The exempt supply has been defined as supply of any goods/services/both,

which attract a Nil rate of tax, or which may be wholly exempt from tax, and therefore, also includes non-taxable supplies. Find which out of the following is covered as an exempt supply under GST.

- (A) *Branded Aata/Basan/Maida*
 - (B) *Services by Post Office*
 - (C) *Services by IRDA, SEBI, RBI, EPFO*
 - (D) *Services by the Government for transportation of passenger*
64. *The supply of Goods/Services/both under the CGST Act, 2017 and the UTGST Act, 2017, where location of supplier and the place of supply are in the different State or in different Union Territory is known as a -----*
- (A) *Inter-state supply*
 - (B) *Export supply*
 - (C) *Intra-state supply*
 - (D) *Non-taxable supply*
65. *Ramiz Ahmed, unregistered person based in Lucknow engages the services of an Event Management Company based in Delhi for his son marriage planned as a destination wedding at a Palace located in Jaipur. The place of supply in this case shall be ---- and tax to be charged under -----*
- (A) *Lucknow, IGST*
 - (B) *Delhi, IGST*
 - (C) *Lucknow, SGST*
 - (D) *Jaipur, IGST*
66. *The place of supply (POS), in the case of passenger transportation services as defined in section 12(9) of the IGST Act, 2017 provided to a registered person shall be the -----*
- (A) *location of service provider*
 - (B) *location of such registered person*
 - (C) *place where the passenger disembarks from the conveyance*
 - (D) *place where the passenger embarks on the conveyance*
67. *ATOZ Ltd supplied goods from its factory at Bikaner to PQR Ltd under a contract for the goods to be delivered at the factory of PQR Ltd located at Udaipur. The goods were removed on 9th September, 2019 from the factory of ATOZ Ltd and were delivered to the factory of PQR Ltd located at Udaipur on 15th September, 2019.*

The invoice was issued on 18th September, 2019 and the payment was credited to the bank account of ATOZ Ltd on 20th October, 2019 for which the entry in

the books was made on 19th Sept. 2019 when the cheque was received. The time of supply in this case will be -----

- (A) 18 September, 2019
 (B) 9 September, 2019
 (C) 15 September, 2019
 (D) 20 October, 2019
68. The time of supply (TOS) as per CGST Act, 2017 under Reverse Charge Mechanism (RCM) shall be -----
- (A) the date of receipt of goods
 (B) the date of payment as entered in books of the recipient or the date on which the payment is debited in his bank account whichever is earlier
 (C) the date immediately following 30 days from the date of issue of invoice or any other documents
 (D) earliest of (a) or (b) or (c)
69. An advance of ₹75,000 was received on 25th August, 2019 against the services rendered on 12th September, 2019 for the total value of ₹3,00,000. Invoice was also issued on the same day being 12th September, 2019 and the balance payment of ₹2,25,000 was received on 18th September, 2019. The time of supply and the value of supply under CGST Act, 2017 shall be :
- (A) 12th September, 2019; ₹3,00,000
 (B) 25th August, 2019; ₹3,00,000
 (C) 25th August, 2019; ₹75,000 and 12th September, 2019; ₹2,25,000
 (D) 18th September, 2019; ₹3,00,000
70. Nandita buys a voucher from Shoppers Stop on 14 February, 2020 for a value of ₹11,000 for giving as a gift to her brother having validity of the voucher for encashment till 03 March, 2020. The gift voucher so given by Nandita to her brother was redeemed by him on 1st March, 2020. The time of supply in this case shall be -----
- (A) 1st March, 2020
 (B) 3rd March, 2020
 (C) 14 February, 2020
 (D) None of the above
71. A machine which is taxable under GST at the rate of 18% was supplied on 10-06-2019 for which invoice was issued by the supplier on 03-08-2019 and payment was received on 10-08-2019. The rate of tax on the machine meanwhile was changed to 12% wef 01-08-2019. The supply of machine shall be charged to tax under GST at the rate of -----
- (A) 12%

- (B) 15%
- (C) $(18-12) = 6\%$
- (D) 18%
72. Section 15 of the CGST Act read with CGST Rules states that the value of taxable supply under GST is the transaction value. Further section 15(3) of the CGST Act defines items not to be included in the transaction value. Find from the following which shall not to be included in determination of the value of taxable supply.
- (A) commission
- (B) discount recorded in invoice
- (C) interest
- (D) late fee or penalty
73. Dhanvarsha is a lottery, authorized on 21 March, 2020 by the Rajasthan Government having face value of the ticket of ₹500 each. The draw of the lottery is scheduled to be held on the occasion of Diwali festival in November, 2020. The value of supply of one lottery ticket under Rule 31A of the CGST Rules, 2017 shall be taken at ₹----- when the price of each of the ticket as notified in the Official Gazette by the Rajasthan Government is of ₹385.
- (A) 500
- (B) 385
- (C) 391
- (D) 446
74. Toyota Innova Car purchased by Babu Lal for ₹17.50 lakh on 01.01.2019 with the financial assistance taken by way of a term loan from Bank of Baroda was repossessed on 01.01.2020 by the bank for the reason of default made by Babu Lal in making payment of outstanding amount of loan against the car of ₹14 lakh. The repossessed car was sold by the bank on 11.01.2020 for ₹13,75,000. The bank is liable to make payment of tax under GST for the sale of such repossessed car on the value of -----
- (A) ₹13,75,000
- (B) ₹17,50,000
- (C) ₹3,75,000
- (D) ₹14,00,000
75. Mishra Enterprises of Ahmedabad had made supplies of ₹3,50,000 to Beeta Enterprises of Ahmedabad. Municipal Authorities of Ahmedabad on such supplies levied the tax @ 10% of ₹35,000. CGST and SGST chargeable on the supply was of ₹42,000. Packing charges not included in the price of ₹3,50,000 amounted to ₹5,000. Subsidy of ₹20,000 was received from an NGO on the sale of such

goods and the price charged of ₹3,50,000 is after taking in to account the amount of subsidy so received. Discount offered is @ 2% which was mentioned on the invoice. The value of supply in this case shall be -----

- (A) ₹4,46,500
- (B) ₹4,03,000
- (C) ₹4,52,000
- (D) ₹4,01,800

76. Baba Automobiles had supplied the goods to Gogia Automobiles in the month of March, 2020 of the invoice value of ₹4,72,000. The supply so made was inclusive of tax charged as CGST and SGST which on the products so sold as per rates prescribed under CGST Act, 2017 is of 18%. The value of supply as per rule 35 of the CGST Rules, 2017 of such supply shall be -----

- (A) ₹ 4,00,000
- (B) ₹ 4,72,000
- (C) ₹ 3,87,040
- (D) ₹ 4,84,960

77. Input tax credit (ITC) as per section 16 of the CGST Act, 2017 be available to a registered person on fulfillment of certain conditions. Find from the following which are such conditions :

- (i) Possession of tax invoice
- (ii) Receipt of the goods or services
- (iii) Tax has been paid to supplier
- (iv) Furnished return u/s 39

- (A) (i) & (ii)
- (B) (i), (ii) & (iii)
- (C) (i), (ii) & (iv)
- (D) all the above four

78. A registered person shall not be entitled to take input tax credit (ITC) as per section 18(1) of the CGST Act, 2017 in respect of any supply of goods or services or both after the expiry of ----- from the date of issue of tax invoice relating to such supply.

- (A) 6 Months
- (B) 9 Months
- (C) 2 Years
- (D) 1 Year

79. Chetan Prasad purchased a machine of value of ₹ 2,50,000 on which GST at the rate of 18% was charged in invoice dated 03-04-2018. This machine was used by him in manufacturing of exempted supplies. However, the supplies manufactured by him become taxable from 01-11-2019. He claims that he is entitled for ITC on this machine because being used in manufacturing of taxable supplies. Find the amount of ITC available to him if any, relating to this machine as per rule 40(2) of the CGST Rules, 2017.

- (A) ₹ 29,250
- (B) ₹ 45,000
- (C) ₹ 31,500
- (D) ₹ 22,500

80. Inox Ltd engaged in manufacture of electrical appliances provides the details of the GST paid on various items during the month of January, 2020 and asks you to find out the amount of input tax credit (ITC) available to them :

Particulars	Amount (₹)
Transformers used in manufacturing process	3,00,000
Mini Trucks used for transportation in factory	2,00,000
Food, Pastries and articles consumed in factory	25,000
Machine capitalized with tax to claim depreciation	2,50,000

- (A) ₹ 5,25,000
- (B) ₹ 5,00,000
- (C) ₹ 7,50,000
- (D) ₹ 7,75,000

81. Section 24 of the CGST Act, 2017 specifies the list of persons who are required for taking of compulsory registration under the CGST Act, 2017. Find out from the following list who are required to take compulsory registration as per section 24 of the CGST Act, 2017 :

- (i) Input Service Distributor
 - (ii) An Inter-state supplier of taxable goods
 - (iii) A person required to pay tax under reverse charge
 - (iv) A person required to deduct tax u/s 51
- (A) (ii) & (iv)
 - (B) (i), (iii) & (iv)
 - (C) (i) & (iv)
 - (D) (i), (ii), (iii) & (iv)

82. *A non-resident taxable person as per Rule-13 of the CGST Rules, 2017 shall submit an application in form number ----- with a valid passport at least --- ----- prior to the commencement of business.*
- (A) *REG-1; 3 days*
 - (B) *REG-9; 5 days*
 - (C) *REG-5; 5 days*
 - (D) *REG-9; 3 days*
83. *The registered person shall submit an application as per Rule 19 of the CGST Rules, 2017, where there is any change in the particulars furnished in the application of registration, in form number ----- within ----- of such change.*
- (A) *GST REG-13; 7 days*
 - (B) *GST REG-14; 15 days*
 - (C) *GST REG-09; 7 days*
 - (D) *GST REG-10; 15 days*
84. *As per Rule-23 of the CGST Rules, 2017 where the proper officer is satisfied for the reasons to be recorded in writing that there are sufficient grounds for revocation of cancellation of registration; he shall revoke the cancellation of registration by an order in form ----- within ----- from the date of receipt of the application.*
- (A) *GST-REG-22; 30 days*
 - (B) *GST-REG-05; 30 days*
 - (C) *GST-REG-24; 7 days*
 - (D) *GST-REG-22; 7 days*
85. *A registered person as per section 35 of the CGST Act, 2017 is required to maintain proper accounts and records and keep at his registered, principal place of business. Find out from the following list of records which records are being specified under this section required to be maintained by the registered person:*
- (i) *Production or manufacturing of goods*
 - (ii) *Inward and Outward supply of goods or services or both.*
 - (iii) *Stock of goods*
 - (iv) *Input credit availed*
 - (v) *Output tax payable and paid*
 - (vi) *Such other particulars/records as may be prescribed*
- (A) *(i), (iii) & (iv)*
 - (B) *(i), (ii), (iii) & (v)*

- (C) (i), (iii), (iv), (v) & (vi)
- (D) All the six as given in above
86. As per section 36 of the CGST Act, 2017 a registered person who is party to an appeal/ any other proceedings before any authority/ tribunal shall have to maintain the accounts and books/records pertaining to the matters of such appeal for a minimum period of ----- after disposal of such appeal/ revision as the case may be.
- (A) 9 Months
- (B) 18 Months
- (C) 24 Months
- (D) 1 Year
87. A registered person/tax payer opting under composition levy as per provisions contained under CGST Act, 2017 is required to file an annual return in form number ----- by ----- following the end of financial year.
- (A) GSTR-3; 20th April
- (B) GSTR-4; 30th April 90.
- (C) GSTR-5; 10th April
- (D) GSTR-6; 13th April
88. Electronic Cash Ledger as per section 49(1) of the CGST Act, 2017 shall be maintained for each person on the common portal for crediting the amount deposited and for debiting the payments towards -----
- (A) interest
- (B) output tax
- (C) penalty and fee
- (D) all of the above
89. Section 49(7) of the CGST Act, 2017 read with Rule-85 mandate and require to maintain the ----- in GST form number ----- for each person liable to pay tax, interest, penalty, late fees or any other amount on the common portal of the department.
- (A) Electronic Payment Register; GST-PMT-2
- (B) Electronic Liability Register; GST-PMT-1
- (C) Electronic Credit Register; GST-PMT-1
- (D) Electronic Tax Register; GST-PMT-2

90. In case where the refund under GST arises because of an appeal and the same is not being refunded within ----- from the date of receipt of application, interest shall be payable at the rate of ----- per annum.
- (A) 90 days; 6%
 (B) 60 days; 6%
 (C) 60 days; 9%
 (D) 90 days; 9%
91. Special audit of accounts as per section 66 of the CGST Act, 2017 shall be carried out by the ----- as nominated by the Commissioner; who shall submit the audit report duly signed within the maximum period of ----- inclusive of extended period.
- (A) Chartered Accountant; 90 days
 (B) Chartered/Cost Accountant; 120 days
 (C) CS/Chartered/Cost Accountant; 120 days
 (D) Chartered/Cost Accountant; 180 days
92. The Central Government shall by notification as per section 16 the UTGST Act, 2017 constitute an Appellate Authority for Advance Ruling for Goods and Services Tax for hearing appeals against the ----- pronounced by the -----
- (A) Advance Ruling; Advance Ruling Authority
 (B) Order; Commissioner (Appeal)
 (C) Order; Appellate Tribunal
 (D) Ruling; Authority for Advance Ruling
93. The projected revenue of a concerned State for the base year 2015-16 calculated as per section 5 of GST (compensation to state) Act, 2017 is ₹100; then the projected revenue for the financial year 2019-20 of such State as per this Act shall be equal to -----
- (A) $100(1 + 14/100)^2$
 (B) $100(1 + 14/100)^3$
 (C) $100(1 + 14/100)^4$
 (D) $100(1 + 14/100)^5$
94. As per Rule 3(1) under the Customs Act, 1962, when the goods are imported, the CIF value has to be considered. CIF value for this purpose means to be equal to :
- (A) FOB value (-) Cost of freight (+) Insurance
 (B) FOB value (+) Cost of freight (+) Insurance
 (C) FOB value (+) Cost of freight (-) Insurance
 (D) FOB value (-) Cost of freight (-) Insurance

95. Customs duty under the Customs Act, 1962 on the imported goods is to be paid on transaction value adjusted in accordance with provision of Rule-10 which is known as CIF value. Calculate the CIF value of the imported goods from the following details and information :
- FOB value ₹ 6,35,000
 - Air Freight ₹ 1,40,000
 - Insurance ₹ 3,000
- (A) ₹ 7,78,000
(B) ₹ 7,65,000
(C) ₹ 7,82,144
(D) ₹ 7,83,719
96. Ascertain the assessable value in USD of the consignment of machine imported in India from US on the basis of information/ particulars given below -----
---.
- (i) Cost of Machine at the factory of the US Exporter \$ 17500
 - (ii) Transport charge from the factory to the sea port \$ 2500
 - (iii) Handling charges at the Port of Shipment \$ 200
 - (iv) Buying Commission paid by Importer \$ 50
 - (v) Freight Charges until the Indian Port \$ 2500
- (A) \$ 20,250
(B) \$ 22,750
(C) \$ 22,927
(D) \$ 22,977
97. Ascertain the total value including the import duty and other chargeable taxes paid on the consignment of Pan Masala imported into India by ABC Imports Limited. CIF value of the consignment is of ₹ 1,00,000 on which chargeable rate of Basic Custom Duty is 37.5%, IGST is 28% and Compensation Cess is 60%.
- (A) 2,65,550
(B) 2,65,756
(C) 2,81,500
(D) 2,89,280
98. The custodian allows the clearance of goods from the customs area on the basis of ----- and where the goods are not cleared within ----- of

unloading; demurrage charges are being levied by the port authorities under the Customs Act.

(A) Out Goods Order; 5 days

(B) Out of Charge Order; 1 day

(C) Clearance Order; 2 days

(D) Out of Charge Order; 3 days

99. A conveyance/vessel may reach a port but may not unload the goods at that port. Such a phenomenon of temporary stay at a port other than the destination port where the goods remain in the same vessel under the Customs Act is termed as-----.

(A) Transportation

(B) Warehousing

(C) Transit

(D) Transshipment

100. Duty Drawback under section 74 of the Customs Act, 1962 is admissible where the imported goods are not put to use after its import at the rate of ----

(A) 85%

(B) 90%

(C) 95%

(D) 98%

ANSWER KEY
TAX LAWS - SELECT SERIES

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

Notes

- Q. No. 21 There is a typo error in the question. Additional Investment Allowance for investment in notified backward areas is specified in Section 32AD of the Income tax Act, 1961 instead of section 32AC of the Income tax Act, 1961.
- Q. No. 36 Correct option is B i.e. 80000 (110000 -30000). However, while calculating deduction, if proportionate expenditure is deducted, thus, no options are correct .
- Q. No. 38 Since, there is typo error in the question paper mentioning u/s 81-IB instead of u/s 80-IB of the Income tax Act, 1961. Therefore, Both Option A/D may be considered as correct. Option A is correct considering section 80-IB of the Income tax Act, 1961 and accordingly added while computing adjusted total Income. Option D is correct without considering the section 81-IB mentioning incorrectly in the question paper.
- Q. No. 40 Option A/ C both may be considered as correct.
The turnover of FY 2018-19 (180 crore) is mentioned in the question paper. The turnover of FY 2017-18 is not mentioned in the question paper. Assuming the turnover of FY 2017-18 is also less than 400 crore, Option A is correct [12.5 crore * 25% + SC @ 12% + HEC 4%]. Otherwise Option C is correct [12.5 crore * 30% + SC @ 12%+ HEC 4%].
- Q. No. 43 The most appropriate option is B assuming payment for purchase of travel ticket for foreign country.
- Q. No. 48 All the options are incorrect. The correct answer is Rs. 1 Crore as per circular no. 17/2019 with respect to filing an appeal by the department before High Court, the tax affected in appeal must be exceeding Rs. 1 Crore.
- Q. No. 63 Services by IRDA, SEBI, RBI, EPFO is covered as an exempt supply under GST.
- Q. No. 69 The time of supply is earliest of issuance of invoice or receipt of payment. Therefore, in case of advance received for any supply, time of supply is fixed at the point when advance is received i.e. 25th August, 2019.
- Q. No. 71 The rate of tax on the machine on August 01, 2019 will be considered in this case.
- Q. No. 74 The Car was repossessed by the bank and was sold for Rs. 13,75,000 and accordingly GST is to be charged on the sale value.
- Q. No. 77 As per Section 16(2) of CGST Act, 2017 all the four conditions need to be satisfied.

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