

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

(New Syllabus)

JUNE 2021 Session

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

Statutory body under an Act of Parliament

(Under the jurisdiction of Ministry of Corporate Affairs)

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These answers have been written by competent persons and the Institute hope that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

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

JUNE 2021

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

- (a) Discuss the main feature of Statutory Corporation under Administrative Law.
- (b) Vijay, an accused, committed an offence of dacoity in 2015. At that time dacoity was punishable with imprisonment of 10 years. In 2016 during his trial, a law was passed which made dacoity punishable with life imprisonment. Which penalty would be applicable on accused Vijay ? Discuss the answer with reference to Article 20(1) of the Indian Constitution.
- (c) Natural law says that certain rights are inherent by virtue of human nature and can be understood universally through human reason. Explain.
- (d) What is meant by Tribunal ? Explain the object of Tribunals. (5 marks each)

Answer 1(a)

The main features of Statutory Corporations are as under:

- It is incorporated under a Special Act of Parliament or State Legislative Assembly.
- It is an autonomous body and is free from government control in respect of its internal management. However, it is accountable to the Parliament or the state legislature.
- It has a separate legal existence.
- It is managed by the Board of Directors, which is composed of individuals who are trained and experienced in business management. The members of the Board of Directors are nominated by the Government.
- It is supposed to be self sustained in financial matters. However, in case of necessity it may obtain a loan and/or seek assistance from the government.
- The employees of these enterprises are recruited as per their own requirements by following the terms and conditions of recruitment decided by the Board.

Answer 1(b)

According to Article 20(1) of the Constitution of India, no person shall be convicted of any offence except for violation of a law in force at the time of the commission of the act charged as an offence, nor be subjected to a penalty greater than that which might have been inflicted under the law in force at the time of the commission of the offence.

Ex-post facto laws are laws which punished what had been lawful when done. If a

particular act was not an offence according to the law of the land at the time when the person did that act, then he cannot be convicted under a law which retrospectively declares that act as an offence.

Even the penalty for the commission of an offence cannot be increased with retrospective effect.

In the given case, for committing dacoity the punishment in 2015 was 10 years imprisonment and Vijay commits dacoity in that year. By a law passed after his committing the dacoity the punishment, for his act cannot be increased to life imprisonment, because punishment cannot be increased retrospectively.

Answer 1(c)

Natural School

Natural law says that certain rights are inherent by virtue of human nature and can be understood universally through human reason.

Under this school fall most of the ancient definitions given by Roman and other ancient Jurists.

Ulpine defined Law as "the art or science of what is equitable and good."

Cicero said that Law is "the highest reason implanted in nature."

Justinian's Digest defines Law as "the standard of what is just and unjust."

In all these definitions, propounded by Romans, "justice" is the main and guiding element of law.

Ancient Hindu view was that 'law' is the command of God and not of any political sovereign. Everybody including the ruler, is bound to obey it. Thus, 'law' is a part of "Dharma". The idea of "justice" is always present in Hindu concept of law.

Salmond, the prominent modern natural law thinker, defines law as "the body of principles recognised and applied by the State in the administration of justice."

In other words, the law consists of rules recognised and acted upon by the courts of Justice. It may be noted that there are two main factors of the definition. First, that to understand law, one should know its purpose: Second, in order to ascertain the true nature of law, one should go to the courts and not to the legislature.

Answer 1(d)

A Tribunal, generally, is any person or institution having an authority to judge, adjudicate on, or to determine claims or disputes – whether or not it is called a tribunal in its title. Tribunal is an administrative body established for the purpose of discharging quasi-judicial duties. An Administrative Tribunal is neither a Court nor an executive body. It stands somewhere midway between a Court and an administrative body. Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them. The Tribunal has to exercise its powers in a judicious manner by observing the principles of natural justice or in accordance with the statutory provisions under which the Tribunal is established.

The main objective of establishing Tribunals as set out in the Statement of Objects and Reasons of The Constitution (Forty-Second Amendment) Act, 1976 is as under:

- To reduce the mounting arrears in High Courts and
- To secure the speedy disposal of service matters, revenue matters and certain other matters of special importance in the context of the socio-economic development and progress.

The exigencies of the situation proclaiming the enforcement of new rights in the wake of escalating State activities and furtherance of the demands of justice have led to the establishment of Tribunals. Any person aggrieved by an order of the Tribunal may prefer an appeal to the Appellate Tribunal. Tribunals basically deal with the cases under special laws and therefore they provide special adjudication, outside Courts. To overcome the situation that arose due to the pendency of cases in various Courts, domestic tribunals and other Tribunals have been established under different Statutes. Tribunals are the quasi-judicial bodies established to adjudicate disputes related to specified matters which exercise the jurisdiction according to the Statute establishing them.

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

Question 2

- (a) *Whether in case of consent and compromise decree in between parties, principle of Res Judicata shall apply ? Discuss.*
- (b) *“To constitute a tort, there must be a wrongful act and legal damages”. Explain.*
- (c) *Explain the term “Receipt” under the Indian Stamp Act, 1899.*
- (d) *Discuss the importance of ‘Illustrations’ for interpretation of statutes.*

(4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *Discuss the aim and objects of the General Clauses Act, 1897.*
- (ii) *The decision of a Court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. Discuss it in the light of provisions under section 3 relating to Bar of Limitation under Limitation Act, 1963.*
- (iii) *Discuss the important forms of ‘mens rea’ under the Indian Penal Code, 1860.*
- (iv) *Explain the requisites of a ‘warrant of arrest’. What is the time limit within which the police officer should bring the person arrested before the court.*

(4 marks each)

Answer 2(a)

A consent or compromise decree is not a decision by Court. It is an acceptance of something to which the parties had agreed. The Court does not decide anything. The compromise decree merely has the seat of the Court on the agreement of the parties. As such, the principle of res judicata does not generally apply to a consent or compromise decree. But when the court on the facts proved comes to a conclusion that the parties

intended that the consent decree should have the effect of deciding the question finally, the principle of *res judicata* may apply to it.

Section 11 of the Code of Civil Procedure, 1908 deals with the doctrine of *Res Judicata*. The doctrine underlines the general principle that no one shall be twice vexed for the same cause, however, it does not apply in case of Consent and Compromise between parties, but depends on the Court, subject to the facts of the case.

Answer 2(b)

A tort consists of some act or omission done by the defendant whereby he has without just cause or excuse caused some harm to plaintiff. To constitute a tort, there must be:

- (i) *Wrongful act*: The act complained of, should under the circumstances, be legally wrongful as regards the party complaining. In other words, it should prejudicially affect any of the above mentioned interests, and protected by law. Thus, every person whose legal rights, e.g., right of reputation, right of bodily safety and freedom, and right to property are violated without legal excuse, has a right of action against the person who violated them, whether loss results from such violation or not.
- (ii) *Legal damages*: It is not every damage that is a damage in the eyes of the law. It must be a damage which the law recognizes as such. In other words, there should be legal injury or invasion of the legal right. In the absence of an infringement of a legal right, an action does not lie. Also, where there is infringement of a legal right, an action lies even though no damage may have been caused. As was stated in *Ashby v. White*, (1703) 2 Ld. Raym. 938 legal damage is neither identical with actual damage nor is it necessarily pecuniary.

Two maxims, namely: (i) *Damnum sine injuria*, and (ii) *injuria sine damnum*, explain this proposition.

Damnum sine injuria

Damnum means harm, loss or damage in respect of money, comfort, health, etc. *Injuria* means infringement of a right conferred by law on the plaintiff. The maxim means that in a given case, a man may have suffered damage and yet have no action in tort, because the damage is not to an interest protected by the law of torts. Therefore, causing damage, however substantial to another person is not actionable in law unless there is also a violation of a legal right of the plaintiff. Common examples are, where the damage results from an act done in the exercise of legal rights. Thus, if I own a shop and you open a shop in the neighborhood, as a result of which I lose some customers and my profits decline, I cannot sue you for the loss in profits, because you are exercising your legal right. [*Gloucester Grammar School case*, (1410) Y.B. Hill. 11 Hen, IV to 27, pp. 21,36].

Injuria sine damnum

It means injury without damage, i.e., where there is no resultant damage yet it is an injury or wrong in tort, i.e., where there is infringement of a legal right not resulting in harm but plaintiff can still sue in tort. Some rights or interests are so important that their

violation is an actionable tort without proof of damage. Thus when there is an invasion of an "absolute" private right of an individual, there is an injuria and the plaintiff's action will succeed even if there is no Damnum or damages. An absolute right is one, the violation of which is actionable per se, i.e., without the proof of any damage. Injuria sine damnum covers such cases and action lies when the right is violated even though no damage has occurred. Thus the act of trespassing upon another's land is actionable even though it has not caused the plaintiff even the slightest harm.

Answer 2(c)

Receipt

"Receipt" includes any note, memorandum or writing:

- (a) whereby any money or any bill of exchange, cheque or promissory note is acknowledged to have been received; or
- (b) whereby any other movable property is acknowledged to have been received in satisfaction of a debt; or
- (c) whereby any debt or demand, or any part of a debt or demand is acknowledged to have been satisfied or discharged; or
- (d) which signifies or imports any such acknowledgement,

and whether the same is or is not signed with the name of any person. (Section 2(23))

A mere acknowledgement in writing of the receipt of immovable property will not attract sub-clause (b). Under sub-clause (c), any acknowledgement in satisfaction or discharge of any debt or demand or any part thereof is covered, for instance, a receipt given by the secretary or other manager of a club acknowledging payment of the club dues comes within the sub-clause.

An ordinary cash memo issued by a shopkeeper or another person selling the goods or other merchandise is not a receipt, unless it contains an acknowledgement of receipt of the money.

A letter acknowledging the receipt of money or cheque is a receipt. A document merely saying that the signatory has received a sum of Rs. 500 is a receipt.

Answer 2(d)

"Illustrations attached to sections are part of the statute and they are useful so far as they help to furnish some indication of the presumable intention of the legislature. An explanation is at times appended to a section to explain the meaning of words contained in the section. It becomes a part and parcel of the enactment. But illustrations cannot have the effect of modifying the language of the section and they cannot either curtail or expand the ambit of the section which alone forms the enactment. The meaning to be given to an 'explanation' must depend upon its terms, and 'no theory of its purpose can be entertained unless it is to be inferred from the language used.'" (*Lalla Ballanmal v. Ahmad Shah*, 1918 P.C. 249).

An explanation, normally, should be so read as to harmonise with and clear up any ambiguity in the main section and should not be so construed as to widen the ambit of

the section. It is also possible that an explanation may have been added *ex abundanti cautela* to allay groundless apprehension.

Answer 2A(i)

The General Clauses Act, 1897 is a consolidating Act. It consolidates the General Clauses Act, 1868 and the General Clauses Act, 1887. The General Clauses Act, 1897 has been enacted with the aim and objective to provide one single statute as a composite structure in defining different provisions as regards to the interpretation of words and legal principles which would better placed to be defined for the general application for various rules and regulations.

The General Clauses Act, 1897 contains 'definitions' of some words and also some general principles of interpretation. The General Clauses Act is very operational in the absence of clear definition in the specific enactments and in the construction or interpretation of statute. The Act gives a clear suggestion for the conflicting provisions and differentiates the legislation according to the commencement and enforcement to avoid uncertainty.

This Act also defines certain words or expressions so that there is no unnecessary repetition of definition of those words in other Acts. It also provides a set of rules which regulate certain aspects of operation of other enactments. The definitions of General Clauses Act, 1897 are applicable to all Central Acts and Regulations made after the commencement of this Act, unless there is anything repugnant in the subject or context.

Answer 2A(ii)

Bar of Limitation

Section 3 of the Limitation Act, 1963 provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not. The provisions of Section 3 of the Act are mandatory. The Court can *suo motu* take note of the question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint. It is a vital section upon which the whole Limitation Act depends for its efficacy.

The effect of Section 3 of the Act is not to deprive the Court of its jurisdiction. Therefore, decision of a court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. A decree passed in a time barred suit is not a nullity.

Answer 2A(iii)

Mens rea is defined as the mental element necessary to constitute criminal liability. It is the attitude of mind which accompanies and directs the conduct which results in the 'actus reus'. The act is judged not from the mind of the wrong-doer, but the mind of the wrong-doer is judged from the act. Intention, Negligence and recklessness are the important forms of *mens rea*. They are explained as under:

- (i) *Intention* : Intention is defined as 'the purpose or design with which an act is done'. Intention indicates the position of mind, condition of someone at particular time of commission of offence and also will of the accused to see effects of his unlawful conduct. Criminal intention does not mean only the specific intention

but it includes the generic intention as well. For example: A poisons the food which B was supposed to eat with the intention of killing B. C eats that food instead of B and is killed. A is liable for killing C although A never intended it.

- (ii) *Negligence* : Negligence is the second form of mens rea. Negligence is not taking care, where there is a duty to take care. Negligence or carelessness indicates a state of mind where there is absence of a desire to cause a particular consequence. The standard of care established by law is that of a reasonable man in identical circumstances. What amounts to reasonable care differs from thing to thing depending on the situation of each case. In criminal law, the negligent conduct amounts to mens rea.
- (iii) *Recklessness* : Recklessness occurs when the actor does not desire the consequence, but foresees the possibility and consciously takes the risk. It is a total disregard for the consequences of one's own actions. Recklessness is a form of mens rea.

Answer 2A(iv)

Warrant of Arrest

Every warrant of arrest issued by a Court under the Code of Criminal Procedure, 1973 shall be in writing, signed by the presiding officer of such Court, and shall bear the seal of the Court. Such warrant shall remain in force until it is cancelled by the Court which issued it, or until it is executed. (Section 70).

The form of warrant of arrest is Form No.2 of the Second Schedule of the Code of Criminal Procedure, 1973. The requisites of a warrant are as follows:

1. It must be in writing.
2. It must bear the name and designation of the person who is to execute it;
3. It must give full name and description of the person to be arrested;
4. It must state the offence charged;
5. It must be signed by the presiding officer; and
6. It must be sealed.

Such warrant is only for production of a person before the concerned Court and not before the police officer.

Under Section 76 the police officer or other person executing the warrant of arrest shall (subject to the provisions of Section 71 as to security) bring the person arrested before the Court without unnecessary delay provided that such delay shall not in any case exceed 24 hours exclusive of the time necessary for the journey from the place of arrest to the Magistrate's Court.

Question 3

- (a) *When the opinion of any person is relevant except experts under the Indian Evidence Act, 1872 ?*
- (b) *Explain the interim measures of protection for which a party during the arbitral*

proceedings may apply to the arbitral tribunal under section 17(1) of Arbitration and Conciliation Act, 1996.

- (c) *Who can present documents for registration at the proper registration office under the Registration Act, 1908 ? Explain.*
- (d) *In R. P. Ltd. Vs. Indian Express Newspapers, the Supreme Court read into Article 21 – the right to know. Discuss how right to know is related to Right to Information under The Right of Information Act, 2005. (4 marks each)*

Answer 3(a)

The Indian Evidence Act, 1872 provides that, in addition to the opinions of experts, opinion of any other person is also relevant in the following cases:

- (a) Opinion as to the handwriting of a person if the person giving the opinion is acquainted with the handwriting of the person in question. (Section 47)
- (b) Opinion as to the digital signature of any person, the opinion of the Certifying Authority which has issued the Electronic Signature Certificate. (Section 47A)
- (c) Opinion as to the existence of any general right or custom if the person giving the opinion is likely to be aware of the existence of such right or custom. (Section 48)
- (d) Opinion as to usages etc. words and terms used in particular districts, if the person has special means of knowledge on the subject. (Section 49)
- (e) Opinion expressed by conduct as the existence of any relationship by persons having special means of knowledge on the subject. (Section 50)

Answer 3(b)

Interim measures ordered by arbitral tribunal

Section 17 (1) of the Arbitration and Conciliation, 1996 provides that a party may, during the arbitral proceedings, apply to the arbitral tribunal—

- (i) for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or
- (ii) for an interim measure of protection in respect of any of the following matters, namely:
- (a) the preservation, interim custody or sale of any goods which are the subject matter of the arbitration agreement;
- (b) securing the amount in dispute in the arbitration;
- (c) the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any party, or authorising any samples to be taken, or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;

- (d) interim injunction or the appointment of a receiver;
- (e) such other interim measure of protection as may appear to the arbitral tribunal to be just and convenient,

and the arbitral tribunal shall have the same power for making orders, as the court has for the purpose of, and in relation to, any proceedings before it.

Answer 3(c)

Section 32 of the Registration Act, 1908 specifies the persons who can present documents for registration at the proper registration office. Such persons 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.

It is immaterial whether the registration is compulsory or optional; but, if it is presented for registration by a person other than a party not mentioned in Section 32 of the Registration Act, 1908, such presentation is wholly inoperative and the registration of such a document is void (*Kishore Chandra Singh v. Ganesh Prashad Bhagat, AIR 1954 SC 316*).

For the purpose of Section 32 of the Registration Act, 1908, a special power of attorney is required as provided under Section 33 of the Act. A general power of attorney will not do. Section 33 of the Act requires that a power of attorney, in order to be recognized as giving authority to the agent to get the document registered, should be executed before and then authenticated by the Registrar within whose district or sub-district the principle resides.

Answer 3(d)

Right to Know

In *R.P. Limited v. Indian Express Newspapers*, the Supreme Court read into Article 21 of the Constitution the right to know. The Supreme Court held that right to know is a necessary ingredient of participatory democracy. In view of transnational developments when distances are shrinking, international communities are coming together for cooperation in various spheres and they are moving towards global perspective in various fields including Human Rights, the expression "liberty" must receive an expanded meaning. The expression cannot be limited to mere absence of bodily restraint. It is wide enough to expand to full range of rights including right to hold a particular opinion and right to sustain and nurture that opinion. For sustaining and nurturing that opinion it becomes necessary to receive information. Article 21 of the Constitution of India confers on all persons a right to know which include a right to receive information.

Question 4

- (a) Explain the procedure for obtaining 'Electronic Signature Certificate' under the Information Technology Act, 2000.

- (b) *What are the essential conditions of a valid custom ? Discuss. Explain any four.*
- (c) *“Any law which is inconsistent with the fundamental rights is void ‘to the extent of inconsistency’ and it is not necessary to strike down the whole Act as invalid, if only a part is invalid.” Discuss.*
- (d) *If the intention of the legislature is not clear, there are number of presumptions. Explain any four presumptions. (4 marks each)*

Answer 4(a)

Sections 35-39 of the Information Technology Act, 2000 deal with Electronic Signature Certificates. As per section 35 of the Act, Certifying Authority issues Electronic Signature Certificate. Following is the procedure of obtaining Electronic Signature Certificate:

- (1) Any person may make an application in prescribed form to the Certifying Authority for the issue of electronic signature Certificate in such form as may be prescribed by the Central Government.
- (2) Every such application shall be accompanied by the prescribed fees.
- (3) Every such application shall be accompanied by a certification practice statement or where there is no such statement, a statement containing such particulars, as may be specified by regulations.
- (4) On receipt of an application, the Certifying Authority may, after consideration of the certification practice statement or the other statement and after making such enquiries as it may deem fit, grant the electronic signature Certificate or for reasons to be recorded in writing, reject the application.

No application shall be rejected unless the applicant has been given a reasonable opportunity of showing cause against the proposed rejection.

Answer 4(b)

Requisites of a Valid Custom

A custom will be valid at law and will have a binding force only if it fulfils the following essential conditions:

- (i) *Immemorial (Antiquity)* : A custom to be valid must be proved to be immemorial; it must be ancient. According to Blackstone, "A custom, in order that it may be legal and binding must have been used so long that the memory of man runs not to the contrary, so that, if any one can show the beginning of it, it is no good custom". English Law places a limit to legal memory to reach back to the year of accession of Richard 1 in 1189 as enough to constitute the antiquity of a custom. In India, the English Law regarding legal memory is not applied. All that is required to be proved is that the alleged custom is ancient.
- (ii) *Certainty* : The custom must be certain and definite, and must not be vague and ambiguous.
- (iii) *Reasonableness* : A custom must be reasonable. It must be useful and convenient to the society. A custom is unreasonable if it is opposed to the principles of justice, equity and good conscience.

- (iv) *Compulsory Observance* : A custom to be valid must have been continuously observed without any interruption from times immemorial and it must have been regarded by those affected by it as an obligatory or binding rule of conduct.
- (v) *Conformity with Law and Public Morality* : A custom must not be opposed to morality or public policy nor must it conflict with statute law. If a custom is expressly forbidden by legislation and abrogated by a statute, it is inapplicable.
- (vi) *Unanimity of Opinion* : The custom must be general or universal. If practice is left to individual choice, it cannot be termed as custom.
- (vii) *Peaceable Enjoyment* : The custom must have been enjoyed peaceably without any dispute in a law court or otherwise.
- (viii) *Consistency* : There must be consistency among the customs. Custom must not come into conflict with the other established customs.

Answer 4(c)

A law is void only "to the extent of the inconsistency or contravention" with the relevant Fundamental Right. It is known as Doctrine of Severability. According to Article 13 of the Constitution of India, it is not the entire law which is affected by the provisions in Part III, but the law becomes invalid only to the extent to which it is inconsistent with the Fundamental Rights. So only that part of the law will be declared invalid which is inconsistent, and the rest of the law will stand.

However, on this point a clarification has been made by the Courts that invalid part of the law shall be severed and declared invalid if really it is severable, i.e., if after separating the invalid part the valid part is capable of giving effect to the legislature's intent, then only it will survive, otherwise the Court shall declare the entire law as invalid.

The doctrine has been applied invariably to cases where it has been found possible to separate the invalid part from the valid part of an Act. Article 13 of the Constitution only says that any law which is inconsistent with the fundamental rights is void "to the extent of inconsistency" and this has been interpreted to imply that it is not necessary to strike down the whole Act as invalid, if only a part is invalid and that part can survive independently. In *A.K. Gopalan v. State of Madras, A.I.R. 1950 S.C. 27*, the Supreme Court ruled that where an Act was partly invalid, if the valid portion was severable from the rest, the valid portion would be maintained, provided that it was sufficient to carry out the purpose of the Act.

Answer 4(d)

Where the meaning of the statute is clear, there is no need for presumptions. But if the intention of the legislature is not clear, there are number of presumptions. These are:

- (a) that the words in a statute are used precisely and not loosely.
- (b) that vested rights, i.e., rights which a person possessed at the time the statute was passed, are not taken away without express words, or necessary implication or without compensation.
- (c) that "*mens rea*", i.e., guilty mind is required for a criminal act. There is a very

strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent.

The general rule applicable to criminal cases is "*actus non facit reum nisi mens sit rea*" (The act itself does not constitute guilt unless done with a guilty intent).

- (d) that the state is not affected by a statute unless it is expressly mentioned as being so affected.
- (e) that a statute is not intended to be inconsistent with the principles of International Law. Although the judges cannot declare a statute void as being repugnant to International Law, yet if two possible alternatives present themselves, the judges will choose that which is not at variance with it.
- (f) that the legislature knows the state of the law.
- (g) that the legislature does not make any alteration in the existing law unless by express enactment.
- (h) that the legislature knows the practice of the executive and the judiciary.
- (i) legislature confers powers necessary to carry out duties imposed by it.
- (j) that the legislature does not make mistake. The Court will not even alter an obvious one, unless it be to correct faulty language where the intention is clear.
- (jj) the law compels no man to do that which is futile or fruitless.
- (k) legal fictions may be said to be statements or suppositions which are known, to be untrue, but which are not allowed to be denied in order that some difficulty may be overcome, and substantial justice secured. It is a well settled rule of interpretation that in construing the scope of a legal fiction, it would be proper and even necessary to assume all those facts on which alone the fiction can operate.
- (l) where powers and duties are inter-connected and it is not possible to separate one from the other in such a way that powers may be delegated while duties are retained and vice versa, the delegation of powers takes with it the duties.
- (m) the doctrine of natural justice is really a doctrine for the interpretation of statutes, under which the Court will presume that the legislature while granting a drastic power must intend that it should be fairly exercised.

Question 5

- (a) *Elaborate the offences relating to computers and connected matters therein.*
- (b) *"Under the Indian Constitution, Parliament is empowered to make law even on the subjects enumerated in the State List". Discuss the power of Parliament to make Laws on State List. (8 marks each)*

Answer 5(a)

Sections 65-78 of Chapter XI of the Information Technology Act, 2000 deal with offences relating to computers etc. and connected matters. These offences include:

Tampering with computer source documents

Whoever knowingly or intentionally conceals, destroys or alters or intentionally or

knowingly causes another to conceal, destroy, or alter any computer source code used for a computer, computer programme, computer system or computer network, when the computer source code is required to be kept or maintained by law for the time being in force, shall be punishable with imprisonment up to three years, or with fine which may extend up to two lakh rupees, or with both.

Computer related offences

If any person, dishonestly or fraudulently, does any act referred to in section 43, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both. (Section 66)

The offences listed in Information Technology Act, 2000 are as under:

- (a) Dishonestly receiving stolen computer resource or communication device
- (b) Identity theft
- (c) Cheating by personation by using computer resource
- (d) Violation of privacy
- (e) Cyber terrorism
- (f) Publishing or transmitting obscene material in electronic form
- (g) Publishing or transmitting of material containing sexually explicit act, etc., in electronic form
- (h) Publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form
- (i) Misrepresentation
- (j) Breach of confidentiality and privacy
- (k) Disclosure of information in breach of lawful contract
- (l) Publishing electronic signature Certificate false in certain particulars
- (m) Publication for fraudulent purpose.

Answer 5(b)

Under the following circumstances the Parliament is authorised to make Laws on the subjects enumerated in the State List –

- (i) *In the National Interest (Article 249)* - Parliament can make a law with respect to a matter enumerated in the State List if the Council of States declares by a resolution supported by two-thirds of its members present and voting, that it is necessary or expedient in the national interest that Parliament should make a law on that matter. By such declaration Parliament gets the authority to legislate on that matter for the whole or part of the country so long as the resolution of the Council of States remains in force. But such resolution shall remain in force for a period not exceeding one year.
- (ii) *During a proclamation of emergency (Article 250)* - While a Proclamation of

Emergency is in operation, Article 250 of the Constitution of India removes restrictions on the legislative authority of the Union Legislature in relation to the subjects enumerated in the State List. Thus, during emergency, Parliament shall have power to make laws for the whole or any part of the territory of India with respect to all matters in the State List.

- (iii) *Breakdown of Constitutional Machinery in a State (Article 356 and 357)* - In case the Governor of a State reports to the President, or if he is otherwise satisfied that the Government of a State cannot be carried on according to the provisions of the Constitution, then he (President) can make a proclamation to that effect. By that proclamation, he can assume to himself all or any of the functions of the Government of the State and all or any of the powers vested in or exercisable by the Governor or anybody or authority in the State, and declare that the powers of Legislature of that State shall vest in Parliament.
- (iv) *On the request of two or more States (Article 252)* - Article 252 of the Constitution enumerates the power of Parliament to legislate for state. The exercise of such power is conditional upon an agreement between two or more States requesting Parliament to legislate for them on a specified subject
- (v) *Legislation for enforcing international agreements (Article 253)* - Parliament has exclusive power with respect to foreign affairs and entering into treaties and agreements with foreign countries and implementing of treaties and agreements and conventions with foreign countries. But a treaty or agreement concluded with another country may require national implementation and for that purpose a law may be needed. To meet such difficulties, the Constitution authorises the Parliament to make law on any subject included in any list to implement:
 - (a) any treaty, agreement or convention with any other country or countries, or
 - (b) any decision made at any international conference, association or other body.

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

Question 6

- (a) *Administrative law is the by-product of ever increasing functions of the Governments. Now, States have no longer policies limited to maintaining internal order and external threats. Examine.* (4 marks)
- (b) *The managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him. He had done so without the knowledge of his Principal. Explain whether the Principal will be liable ?* (4 marks)
- (c) *What is the effect of acknowledgement on the period of limitation under the section 18 of the Limitation Act, 1963 ? Explain.* (4 marks)
- (d) *What is Temporary injunction under the Code of Civil Procedure, 1908 ? Under what circumstances can it be granted ? Discuss.* (4 marks)

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

- (i) Define 'criminal breach of trust' under section 405 of the Indian Penal Code, 1860. State the essential ingredients of the offence of criminal breach of trust.
- (ii) Discuss the power to issue order in urgent cases of nuisance or apprehended danger under section 144 of the Criminal Procedure Code, 1973.
- (iii) Extra-Judicial confession was made before a witness who was a close relative of accused and the testimony of said witness was reliable and truthful. Examine the relevancy of this confession.
- (iv) What are the ways in which arbitral proceeding is terminated under the Arbitration and Conciliation Act, 1996 ? Explain. (4 marks each)

Answer 6(a)

Administrative law is the by-product of ever increasing functions of the Governments. States are no longer police states, limited to maintaining internal order and protecting from external threats. These, no doubt continue to be the basic functions but a state that is limited to this traditional role will de-legitimize itself.

With the rise of political consciousness, the citizens of a state are no longer satisfied with the state's provisioning of traditional services. The modern state is, therefore, striving to be a welfare state.

It has taken the task to improve social and economic conditions of its people. It involves undertaking a large number of complex tasks. Development produces economic and social changes and creates challenges in the field of health, education, pollution, inequality etc. These complex problems cannot be solved except with the growth of administration. States have also taken over a number of functions, which were previously left to private enterprise. All this has led to the origin and the growth of administrative law.

Answer 6(b)**Principal and Agent (Specific authority)**

Qui facit per alium facit per se - he who acts through another is acting himself, so that the act of the agent is the act of the principal. When an agent commits a tort in the ordinary course of his duties as an agent, the principal is liable for the same. In *Lloyd v. Grace, Smith & Co. (1912) A.C. 716*, the managing clerk of a firm of solicitors, while acting in the ordinary course of business committed fraud, against a lady client by fraudulently inducing her to sign documents transferring her property to him. He had done so without the knowledge of his principal who was liable because the fraud was committed in the course of employment.

The House of Lords in this case held that, by allowing the managing clerk to deal with clients, the firm had given him ostensible authority to conduct certain types of business. Therefore the firm was liable for the fraud.

Normally, the tortfeasor is liable for his tort. But in some cases a person may be

held liable for the tort committed by another. A master is vicariously liable for the tort of his servant, principal for the tort of his agent and partners for the tort of a partner. This is known as vicarious liability in tort.

Answer 6(c)

Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement of liability in respect of property or right on the period of limitation. The following requirements should be present for a valid acknowledgement as per Section 18:

- There must be an admission or acknowledgement.
- Such acknowledgement must be in respect of any property or right.
- It must be made before the expiry of period of limitation.
- It must be in writing and signed by the party against whom such property or right is claimed.

If all the above requirements are satisfied, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

Answer 6(d)

Temporary injunction - The Court may grant temporary injunction to restrain any such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit, where it is proved by affidavit or otherwise:

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

It would be necessary for the plaintiff to satisfy the Court that substantial and irreparable harm or injury would be suffered by him if such temporary injunction (till the disposal of the suit) is not granted and that such loss or damage or harm cannot be compensated by damages.

Answer 6A(i)

According to Section 405 of Indian Penal Code, 1860, 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".

The essential ingredients of the offence of criminal breach of trust are as under:

1. The accused must be entrusted with the property or with dominion over it,
2. The person so entrusted must dishonestly misappropriate or convert to his own use that property, or;
3. The accused must dishonestly use or dispose of that property or wilfully suffer any other person to do so in violation,
 - (i) of any direction of law prescribing the mode in which such trust is to be discharged, or;
 - (ii) of any legal contract (express or implied) made touching the discharge of such trust.

Answer 6A(ii)

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

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

Answer 6A(iii)

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

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

In *Ram Khilari v. State of Rajasthan, AIR 1999 SC 1002*, the Supreme Court held that where an extra-judicial confession was made before a witness who was a close relative of the accused and the testimony of said witness was reliable and truthful, the conviction on the basis of extra judicial confession is proper.

In another case, the Supreme Court has further held that the law does not require that the evidence of an extra-judicial confession should be corroborated in all cases. When such confession was proved by an independent witness who was a responsible officer and one who bore no animus against the accused, there is hardly any justification to disbelieve it. Also, where the Court finds that the confession made by the accused to his friend was unambiguous and unmistakably conveyed that the accused was the perpetrator of the crime and the testimony of the friend was truthful, reliable and trustworthy, a conviction based on such extra-judicial confession is proper and no corroboration is necessary.

Therefore, in the given situation, the Extra-Judicial confession may be relevant.

Answer 6A(iv)

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

Under section 32(2) of the Arbitration and 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 recognizes 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.

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) *Amount lying in the securities premium account belongs to the shareholders and can be used freely for their benefit.*
- (b) *Debapriya was appointed as alternate director of Julien in Amal Housing Finance Ltd. The company was served a demand notice by Goods & Service Tax department for ₹25 lakh for violation of certain provisions of GST law. Due to cash crunch the CEO approached Debapriya for a help of ₹12 lakh. Debapriya borrowed ₹7.50 lakh from his sister's husband and gave to the company. The company recorded the same in its books of account.*
- (c) *Dealing with dividend is the prerogative of Board of directors. However there are certain parameters included in dividend distribution policy of a company.*
- (d) *Every company is required to comply the disclosure requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 in their Board Report. (5 marks each)*

Answer 1(a)

In accordance with the provisions of Section 52(2) of the Companies Act, 2013, the securities premium can be utilised only:

- (a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
- (b) in writing off the preliminary expenses of the company;
- (c) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
- (d) in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
- (e) for the purchase of its own shares or other securities under Section 68 of the Companies Act, 2013.

Accordingly, the amount available in the securities premium is restrictive in nature and can only be used for specified purposes.

Answer 1(b)

Rule 2(1)(c)(viii) of the Companies (Acceptance of Deposits) Rules 2014, provides that any amount received from a person who, at the time of receipt of the amount, was a director of the company shall not be regarded as deposit, if the director from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

However, proviso to Section 73(1) read with Rule 1(3)(iii) of the Companies (Acceptance of Deposits) Rules 2014 excludes a housing finance company registered with National Housing Bank established under the National Housing Bank Act, 1987 from the provisions of Section 73 to 76A of the Companies Act, 2013 and the Companies (Acceptance of Deposits) Rules, 2014.

So, the transaction of accepting money from the director recorded by Amal Housing Finance Ltd. in its book of account is not regarded as non-compliance of the provisions of the Companies Act 2013.

Answer 1(c)

Regulation 43A of the SEBI (LODR) Regulations, 2015 provides for formulation of policy for dividend distribution which broadly specifies the external and internal factors including parameters that may be considered while declaring dividend and the circumstances under which the shareholders of the company may or may not expect dividend.

The dividend distribution policy shall include the following parameters:

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

Therefore, the top 500 listed entities based on market capitalization (calculated as on March 31 of every financial year) is required to formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites.

The listed entities other than top 500 listed entities based on market capitalisation may also disclose their dividend distribution policies on a voluntary basis in their annual reports and on their website.

Answer 1(d)

As per Section 134 read with Rule 8(5) (x) of the Companies (Accounts) Rules, 2014, every company except (Small Companies and One Person Companies) is required to include the following in its Director's Report:

- Statement that the company has complied with provisions relating to the constitution of Internal Complaints Committee under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Disclosure Requirements under the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013

The Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 is applicable to every workplace, establishment, company or organisation employing 10 or more employees irrespective of its location or nature of industry. The said Act provides for constitution of a Committee to be known as the "Internal Complaints Committee".

Section 21 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 mandates that Internal Committee shall prepare an Annual Report and Section 22 of the said Act provides that the employer shall include in its report the number of cases filed, if any, and their disposal under this Act in the Annual Report.

Rule 14 of Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Rules, 2013 provides that the annual report which the Complaints Committee is required to prepare under Section 21 of the Sexual Harassment of Women at Workplace (Prevention, Prohibition & Redressal) Act, 2013 shall contain the following details:

- (a) Number of complaints of sexual harassment received in the year;
- (b) Number of complaints disposed off during the year;
- (c) Number of cases pending for more than 90 days;
- (d) Number of workshops or awareness programme against sexual harassment carried out;
- (e) Nature of action taken by the employer or District Officer.

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

Question 2

- (a) *As a Company Secretary, explain the procedure of satisfaction of charge.*
- (b) *Books of account have to be kept only at the registered office of the company. As a corporate consultant give your comments in this regard.*
- (c) *Jupiter Ltd. intends to acquire shares in another company. How much amount can be invested by Jupiter Ltd. without passing special resolution considering the facts mentioned below ?*

<i>Particulars</i>	<i>Amount (₹ crore)</i>
<i>Paid-up Share Capital</i>	<i>1,000</i>
<i>Free Reserves</i>	<i>- 340</i>
<i>Securities Premium Account</i>	<i>780</i>
<i>Investment in another company</i>	<i>780</i>

Examine.

- (d) Santosh, CEO of the company, has advised the Board of directors of an unlisted company that in order to market the public issue and generate interest and awareness amongst the public a prospectus can be issued without giving details of number of shares and the issue price. Examine the correctness of the advice in light of the provisions of the Companies Act, 2013.
- (e) What are the requirements to form a proprietary company under the Australian Corporations Act, 2001 ? (3 marks each)

Or (Alternate question to Q. No. 2)

Question 2A

- (i) Every company is required to have active website. Comment.
- (ii) Appointed date and Effective date are very important in any merger or amalgamation through a scheme of arrangement. Do you agree ?
- (iii) Assistant Company Secretary of JKL Ltd. has made excess payment of ₹1 lakh to MCA for filing of E-forms. What is the procedure of refund of MCA-21 fees ?
- (iv) ABC Products Ltd. has taken term loan of ₹5 crore from bank and has given the properties situated at Maldives as a prime security of loan. Can the company give the properties situated outside India for security of loan ? Referring to the provisions of the Companies Act, 2013, discuss.
- (v) Monika Ltd. wants to purchase its own 5,00,000 equity shares @ ₹10/- each out of the following :

	₹lakh
(a) Unsecured Loans	25
(b) Balance of Free Reserves	15
(c) Securities Premium Account	10

Examine the legality of the above transactions for the buy-back of securities of the company under the provisions of the Companies Act, 2013. (3 marks each)

Answer 2(a)

According to Section 82 of the Companies Act, 2013 read with Rule 8 of the Companies (Registration of Charges) Rules, 2014, the company shall give intimation to the Registrar of Companies of the payment or satisfaction in full of any charge within a period of 30 days from the date of such payment or satisfaction in Form No.CHG-4 along with the specified fees.

The Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of such additional fees as prescribed.

On receipt of intimation of satisfaction of charge, the Registrar of Companies shall issue a notice to the holder of the charge calling upon him to show cause within such time not exceeding 14 days, as may be specified in such notice, as to why payment or satisfaction in full should not be recorded as intimated to the Registrar of Companies.

If no cause is shown, by such holder of the charge, the Registrar of Companies shall order that a memorandum of satisfaction shall be entered in the register of charges maintained by the Registrar of Companies under Section 81 of the Companies Act, 2013 and shall inform the company. However, if the cause is shown to the Registrar, he shall record a note to that effect in the register of charges and shall inform the company accordingly.

Further, Proviso to Section 82(2) of the Companies Act, 2013 provides that the aforesaid notice shall not be required to be sent, in case intimation to the Registrar of Companies in this regard is in the specified form along with the Letter of the charge holder stating that the amount has been satisfied, which is a mandatory attachment in all cases of CHG-4 and is signed by the holder of charge.

Where the Registrar of Companies enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge in Form No. CHG-5.

Answer 2(b)

Section 128(1) of the Companies Act, 2013 requires every company to prepare and keep the books of accounts and other relevant books and papers and financial statements for every financial year at its registered office.

However, all or any of the books of accounts and other relevant papers may be kept at such other place in India as the Board of Directors may decide. When the Board so decides, the company shall, within 7 days of such decision, file with the Registrar of Companies, a notice in writing giving full address of that other place. Such intimation is to be made in e-form AOC 5 to the Registrar of Companies.

Therefore, Board of Directors of the company may decide any place, other than the Registered office of the company for keeping the books of accounts.

Answer 2(c)

As per section 186(2) of the Companies Act, 2013, no company shall, directly or indirectly:

- (a) give any loan to any person or other body corporate;
- (b) give any guarantee or provide security in connection with a loan to any other body corporate or person; and
- (c) acquire by way of subscription, purchase or otherwise, the securities of any 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, where the aggregate of the loans and investment so far made, the amount for which guarantee or security so far provided to or in all other bodies corporate along with the investment, loan, guarantee or security proposed to be made or given by the Board, exceed the limits specified under Section 186(2) of the Companies Act, 2013, no investment or loan shall be made or guarantee shall be given or security shall be provided unless previously authorised by a special resolution passed in a general meeting.

<i>Particulars</i>	<i>Amount in Rs. (Crore)</i>
Paid-up share capital.....A	1000
Free Reserves..... B	-340
Securities Premium AccountC	780
60% of paid-up capital, free reserves and securities premium account (A+B+C) x 60%= D i.e., 1440 * 60%	864
100% of free reserves and securities premium account (B+C) x 100% = E (780 - 340) i.e., 440 *100%	440
Higher of the two is D i.e., Rs.864 crore	
Investment in another company	780

Therefore, further investment that can be made by Jupiter Ltd. without passing special resolution will be higher of D or E reduced by investment already made i.e. (Rs.864- Rs.780= Rs.84 Crore)

Answer 2(d)

As per Explanation appended to Section 32 of the Companies Act, 2013, Red herring Prospectus means “a prospectus which does not include complete particulars of the quantum or price of the securities included therein.” In simple terms, a Red herring Prospectus is a prospectus, which does not include details of either price or number of securities being offered, or the amount of issue.

According to section 32(1) of the Companies Act, 2013, a company proposing to make an offer of securities may issue a Red herring Prospectus prior to the issue of a prospectus. Such company proposing to issue a Red herring Prospectus shall file it with the Registrar of Companies at least 3 days prior to the opening of the subscription list and the offer.

Therefore, the advice given by CEO Santosh is correct.

Answer 2(e)

A proprietary company is a company that is registered as, or converts to, a proprietary company under the Australian Corporations Act, 2001.

A proprietary company limited by shares must have at least one shareholder and must have at least one director. That director must ordinarily reside in Australia.

A proprietary company must:

- be limited by shares or be an unlimited company with a share capital;
- have no more than 50 non-employee shareholders; and
- not do anything that would require disclosure to investors under the Chapter 6D of the Act (except in limited circumstances).

Answer 2A(i)

The Companies Act, 2013 does not mandate companies to have an active website, but the SEBI (LODR) Regulations, 2015 requires that all listed entities shall maintain a functional website containing the basic information about the listed entity:

As per the provisions of the SEBI (LODR) Regulation, 2015, the listed entity shall disseminate the prescribed informations under a separate section on its website, including:

- (a) details of its business;
- (b) terms and conditions of appointment of independent directors;
- (c) composition of various committees of board of directors;
- (d) code of conduct of board of directors and senior management personnel;
- (e) details of establishment of vigil mechanism/ Whistle Blower policy;
- (f) criteria of making payments to non-executive directors, if the same has not been disclosed in annual report;
- (g) policy on dealing with related party transactions;
- (h) policy for determining 'material' subsidiaries;
- (i) details of familiarization programmes imparted to independent directors including the following details:-
 - (i) number of programmes attended by independent directors (during the year and on a cumulative basis till date),
 - (ii) number of hours spent by independent directors in such programmes (during the year and on cumulative basis till date), and
 - (iii) other relevant details.
- (j) the email address for grievance redressal and other relevant details;
- (k) contact information of the designated officials of the listed entity who are responsible for assisting and handling investor grievances;
- (l) financial information including:
 - (i) notice of meeting of the board of directors where financial results shall be discussed;
 - (ii) financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
 - (iii) complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc.
- (m) shareholding pattern;
- (n) details of agreements entered into with the media companies and/or their associates, etc.;

- (o) the information, report, notices, call letters, circulars, proceedings, etc. concerning non-convertible redeemable preference shares or non-convertible debt securities;
- (p) all information and reports including compliance reports filed by the listed entity;
- (q) information with respect to the following events:
 - (i) default by issuer to pay interest on or redemption amount;
 - (ii) failure to create a charge on the assets;
 - (iii) revision of rating assigned to the non-convertible debt securities.

It is important that the listed entity ensures the contents of the website are correct and updated at any given point of time.

Answer 2A(ii)

Appointed date and Effective date are two significant dates in any scheme of Merger and Amalgamation.

Mention of an appointed date is mandatory for the schemes falling under Section 232 of the Companies Act, 2013. Schemes involving Merger or Amalgamation or division of undertaking are required to fix an appointed date.

In *Marshall Sons & Co. India Ltd. vs. ITO*, it was held by the Hon'ble Supreme Court that every scheme of amalgamation has to necessarily provide a date with effect from which the amalgamation/transfer shall take place, and that such date may precede the date of sanctioning of the scheme by the Court, the date of filing of certified copies of the orders of the Court before the Registrar of Companies, and the date of allotment of shares, etc. It was observed therein that, the scheme, however, would be given effect from the transfer date (appointed date) itself.

Section 232(6) of the Companies Act, 2013 states that the scheme shall be deemed to be effective from the 'appointed date' and not a date subsequent to the 'appointed date'. This is an enabling provision to allow the companies to decide and agree upon an 'appointed date' from which the scheme shall come into force.

The "Effective date" is the date when the amalgamation/merger is completed in all respects after having gone through the formalities involved, and the transferor company is dissolved by the Registrar of Companies and certified copy of the order for the scheme of compromise and arrangement is filed with ROC and all other required statutory authorities, if any.

Answer 2A(iii)

In order to claim refund of multiple payments or incorrect payment or excess payment of MCA-21 fees, while using MCA services, following procedure is required to be followed:

- The Person is required to file the 'Refund Form' available on MCA21 portal for claiming refund.
- The refund of MCA21 fees is available in the following cases:
 - (a) Multiple Payments** -This includes cases where service seeker does multiple

filings such as in e-Form No. SH-7 and makes payments more than once (multiple times) for the same service. However, refund shall not be allowed in respect of approved e-Forms.

- (b) **Incorrect Payments** - This includes cases where the service seeker has made payment in respect of an e-Form or Stamp duty through an incorrect option under Pay miscellaneous fee facility.
 - (c) **Excess Payments** - This includes cases where any excess fee has been paid by the service seeker due to some incorrect data entered in the e-Form or incorrect data in MCA-21 system due to migration of data from legacy system.
- The refund form is to be filed within the stipulated time period. Also, there shall be deduction in the amount to be refunded based on time period within which refund e-form is filed.

Answer 2A(iv)

The Companies Act, 2013 does not limit a company to give any property situated in India or outside India. An inference can be drawn from Section 77(1) of the Companies Act, 2013, which permit registration of charges created on a property situated in or outside India.

Section 77(1) of the Companies Act, 2013, provides that it shall be the duty of every company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise, and situated in or outside India, to register the particulars of the charge signed by the company and the charge-holder together with the instruments, if any, creating/modifying such charge in Form CHG-1/CHG-9, as the case may be, and is required to be filed with the Registrar of Companies within a period of 30 days of the date of creation or modification of charge along with the specified fees.

Therefore, ABC Products Ltd. can give the properties situated at Maldives for security of term loan.

Answer 2A(v)

According to Section 68(1) of the Companies Act, 2013 a company may purchase its own shares or other specified securities (known as "buy-back") out of:

- (i) its free reserves; or
- (ii) the securities premium account; or
- (iii) the proceeds of the issue of any shares or other specified securities.

However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Thus, in given case Monika Ltd. can purchase its own 5,00,000 equity shares @10 each out of free reserves and from the securities premium account in accordance with the provisions of the Companies Act, 2013.

But it cannot do buy-back from the amount of Unsecured Loan as it will be contravention of the provisions of Section 68 of the Companies Act, 2013.

Question 3

- (a) Provide a specimen of board resolution for preparation of annual report in abridged form for mailing to the members. Assume facts and figures for the purposes of mentioning in the resolution. (5 marks)
- (b) Advise whether the internal auditor is required to be appointed in the following scenarios :

Amount (₹ crore)

Name of the Company	Status of the Company	Paid-up Capital	Turnover	Outstanding loans and borrowings
Lala Ltd.	Listed	49	195	99
Dilo Ltd.	Unlisted public	23	200	56
Craft Ltd.	Unlisted public	50	123	65
Wood Pvt. Ltd.	Private	55	186	89

Can the following persons be appointed as internal auditor ?

- (i) President (HR)
- (ii) DGM (Finance). (5 marks)
- (c) Chief Financial Officer (CFO) of a conglomerate is of the view that secretarial audit is mandatory for all the companies. He has approached you to determine whether secretarial audit is applicable in case of the following companies :

Amount (₹ crore)

Name of the Company	Status of the Company	Paid-up Share-Capital	Turnover
Helo Ltd.	Listed	49	120
Jam Ltd.	Unlisted	38	500
Butter Pvt. Ltd.	Subsidiary of Jam Ltd.	7	26

Advise the CFO.

(5 marks)

Answer 3(a)

The Board Resolution for preparation of Annual Report in abridged form

“**RESOLVED THAT** pursuant to the provisions of second proviso of Section 136(1) of the Companies Act, 2013 and Rule 10 of the Companies (Accounts) Rules 2014, the Annual Report comprising of the Balance Sheet, Profit and Loss Account and other relevant documents to be attached to the financial statements in abridged form for the

financial year ended 31st March..... also, to be prepared, finalised and audited in the prescribed Form No. AOC – 3 for sending to the members of the company."

“RESOLVED FURTHER THAT the draft audited financial statement containing salient features of financial statements for the year ended 31st March,..... , prepared in the prescribed Form No. AOC-3 as submitted to the meeting, be and are hereby approved and the same be authenticated by the directors of the company as required under Section 136 of the Companies Act, 2013 and be sent to the statutory auditors of the company for their report thereon and thereafter be sent to the members of the company for adoption at the ensuing annual general meeting of the company."

Answer 3(b)

Section 138 of the Companies Act, 2013 read with Rule 13 of the Companies(Accounts) Rules, 2014, prescribes the following class of companies which is required to appoint an internal auditor namely:-:

- (a) Every listed company;
- (b) Every unlisted public company having:
 - (i) paid up share capital of Rs.50 crore or more during the preceding financial year; or
 - (ii) turnover of Rs.200 crore or more during the preceding financial year; or
 - (iii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs. 100 crore or more at any point of time during the preceding financial year; or
 - (iv) Outstanding deposits of Rs. 25 crore or more at any point of time during the preceding financial year; and
- (c) Every private company having –
 - (i) Turnover of Rs.200 crore or more during the preceding financial year; or
 - (ii) Outstanding loans or borrowings from banks or public financial institutions exceeding Rs.100 crore or more at any point of time during the preceding financial year.

Accordingly, in the given case, answer is as under:

<i>Name of the company</i>	<i>Requirement to appoint internal auditor</i>
Lala Ltd.	Yes, since it is a listed company
Dilo Ltd.	Yes, since the turnover is Rs. 200 crore
Craft Ltd.	Yes, since the paid-up capital is Rs. 50 crore
Wood Pvt. Ltd.	No, since the turnover or loans / borrowings does not exceed the threshold limits

An internal auditor, shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board to conduct internal audit of the functions and activities of the company. The internal auditor may or may not be an employee of the company.

So, if President (HR) and DGM (Finance) satisfying the above criteria, can be appointed as internal Auditor.

Answer 3(c)

Considering the increasing importance of Corporate Governance, Section 204 of the Companies Act, 2013 mandates every listed company and such other class of prescribed companies to annex a Secretarial Audit Report, given by a Company Secretary in practice in Form MR-3 with its Board's report.

As per rule 9 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014, the prescribed class of companies is as under:

- (a) every public company having a paid-up share capital of Rs.50 Crore or more; or
- (b) every public company having a turnover of Rs.250 crore or more; or
- (c) every company having outstanding loans or borrowings from banks or public financial institutions of Rs.100 crore or more.

Secretarial Audit is also applicable to a private company which is a subsidiary of a public company, and which falls under the prescribed class of companies as indicated above.

In light of the above provisions, applicability is given in the table below:

<i>Name of the Company</i>	<i>Applicability of Secretarial Audit</i>	<i>Reason</i>
Helo Ltd.	Yes	Secretarial audit is applicable to every listed company.
Jam Ltd.	Yes	Turnover exceeds the prescribed limit.
Butter Pvt. Ltd.	No	Though it is a subsidiary of a public company, yet it does not fall under the prescribed threshold limit.

PART II

Question 4

- (a) Rohan is a well-known banker and holds directorship in 22 companies as on 30th September, 2020. The companies include 10 public companies, 11 private companies (including MNP Pvt. Ltd., a dormant company) and 1 company registered under section 8 of the Companies Act, 2013. Recently, on 20th December, 2020, ABC Ltd. in which Rohan is not a director acquired 100% shares in MNP Pvt. Ltd. In this context, answer the following :

- (i) Whether the directorships held by Rohan as on 30th September, 2020 are valid ?

- (ii) *Can Rohan continue to hold directorship in all 22 companies after acquisition made by ABC Ltd. ?*
- (iii) *Company Secretary of ABC Ltd. has proposed to restrict number of directorship of the directors in ABC Ltd. Whether the proposal given by the Company Secretary is tenable in light of the provisions of the Companies Act, 2013 ? (5 marks)*
- (b) *Raman is a director of Mega Ltd., a company engaged in the business of selling mineral water. Rohini, wife of Raman, is a partner in M/s. Total, a partnership firm, engaged in the business of selling packaged juices. Raman also holds 100 shares in Zimba Pvt. Ltd., a company engaged in the business of manufacturing bottles. Board of directors of Mega Ltd. intends to grant loan to M/s. Total and Zimba Pvt. Ltd. within the limits specified under the Companies Act, 2013. Examine whether Mega Ltd. can grant loan. If yes, what are the conditions ? (5 marks)*
- (c) *Board of directors of Charity Ltd. wants to understand from you applicability of the provisions relating to CSR to companies including requirements to constitute CSR committee. Inform the Board. (5 marks)*
- (d) *Approval of the Audit Committee to a related party transaction can be granted by passing a circular resolution. Discuss. (5 marks)*

Answer 4(a)

According to Section 165 of the Companies Act, 2013, no person shall hold office as a director, including any alternate directorship, in more than 20 companies at the same time. Whereas the maximum number of public companies in which a person can be appointed as a director shall not exceed 10.

For reckoning the limit of public companies in which a person can be appointed as director, directorship in private companies that are either holding or subsidiary company of a public company shall be included.

Further, for reckoning the limit of directorships of 20 companies, the directorship in a dormant company and section 8 companies shall not be included.

The members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors.

- (i) In the present case, holding of directorship of Rohan as on 30th September, 2020 is valid as he is holding directorship in 10 public companies and in 11 private companies out of which one company is dormant company and one company is registered under section 8 of the Companies Act, 2013. So, maximum directorship he is holding is in 20 companies.
- (ii) Upon MNP Pvt. Ltd. becoming subsidiary of ABC Ltd. (a public company) directorship in MNP Pvt. Ltd. shall also be included within the limit of 10 public companies.

Accordingly, if Rohan acts as director in more than 10 public companies, then same will be in contravention of Section 165 of the Companies Act, 2013.

- (iii) According to section 165(2) of the Companies Act, 2013 subject to the provisions of Section 165 (1), the members of a company may, by special resolution, specify any lesser number of companies in which a director of the company may act as directors. So, the proposal of Company Secretary is tenable.

Answer 4(b)

According to section 185(1) of the Companies Act, 2013, no company shall, directly or indirectly, advance any loan, including any loan represented by a book debt to, or give any guarantee or provide any security in connection with any loan taken by:

- (a) any director of company, or of a company which is its holding company or any partner or relative of any such director; or
- (b) any firm in which any such director or relative is a partner.
- (i) Accordingly, based on the above provisions of Section 185(1) of the Companies Act, 2013, Megha Ltd. cannot grant loan to M/s. Total, since it is a partnership firm in which wife of Raman (Director of the lending company) is a partner.**

Section 185(2) of the Companies Act, 2013 prescribes that a company may advance any loan including any loan represented by a book debt, or give any guarantee or provide any security in connection with any loan taken by any person in whom any of the director of the company is interested, subject to the condition that-

- (a) A special resolution is passed by the company in general meeting:
- Provided that the explanatory statement to the notice for the relevant general meeting shall disclose the full particulars of the loans given, or guarantee given or security provided and the purpose for which the loan or guarantee or security is proposed to be utilised by the recipient of the loan or guarantee or security and any other relevant fact; and
- (b) the loans are utilised by the borrowing company for its principal business activities.
- The expression “any person in whom any of the director of the company is interested” includes any private company of which any such director is a director or member.

- (ii) Accordingly, by complying with the conditions as prescribed above under Section 185(2) of the Companies Act, 2013, Megha Ltd. can grant loan to Zimba Pvt. Ltd. in which Raman is a member holding 100 shares.**

Answer 4(c)

Section 135 of the Companies Act, 2013 pertaining to Corporate Social Responsibility stipulates that:

- (i) every company having net worth of Rs.500 crore or more; or
- (ii) every company having turnover of Rs.1000 crore or more; or
- (iii) every company having net profit of Rs.5 crore or more.

during the immediately preceding financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of 3 or more directors, out of which at least 1 director shall be an independent director.

However, where a company is not required to appoint an independent director under Section 149(4) of the Companies Act, 2013, it shall have in its Corporate Social Responsibility Committee 2 or more directors.

Further, as per Rule 5 of the Companies (Corporate Social Responsibility Policy) Rules, 2014, a private company having only 2 directors on its Board shall constitute its CSR Committee with 2 such directors.

With respect to a foreign company covered under these rules, the CSR Committee shall comprise of at least 2 persons of which 1 person shall be as specified under clause (d) of section 380(1) of the Companies Act, 2013 and another person shall be nominated by the foreign company.

The role of the Corporate Social Responsibility Committee is—

- (a) to formulate and recommend to the Board, a Corporate Social Responsibility Policy which shall indicate the activities to be undertaken by the company in areas or subject, specified in Schedule VII of the Companies Act, 2013;
- (b) to recommend the amount of expenditure to be incurred on the activities referred to in clause (a) above; and
- (c) to monitor the Corporate Social Responsibility Policy of the company from time to time.

After taking into account the recommendations of the CSR Committee, the Board shall approve the CSR Policy for the company.

Answer 4(d)

Section 188(1) of the Companies Act, 2013 prohibits the Board from dealing with an item of business pertaining to a contract or arrangement with a related party through a circular resolution. However, the law is silent on dealing with any item of business by the Audit Committee through a circular resolution.

Here, the intention of the Legislature is required to be gathered from the language used; which means that attention should be paid to what has been said as also to what has not been said. As a consequence, though it cannot be added that the law imposes any restriction, the principle applicable on meetings of the Board would be applicable to the meetings of the Audit Committee too, while dealing with items of business on related party transactions.

As per the Secretarial Standard on Meetings of the Board of Directors (SS-1), the Audit Committee should discuss related party transactions which are not in the ordinary course of business or which are not on arm's length basis at its meetings and not through circulation. However, there is no bar on omnibus approval of limits being passed by a circular resolution by the Audit Committee.

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

- (a) In the following scenario, examine whether the amount of sitting fees decided by the Board of directors is in accordance with the provisions of the Companies Act, 2013 and rules made thereunder :

Name	Nature of directorship	Amount of sitting fees per meeting (₹)
Raja	Nominee director	1,20,000
Raju	Small shareholder director	1,00,000
Ritu	Independent director	1,00,000
Shalini	Independent director	75,000

(4 marks)

- (b) Board of directors of Yes No Ltd. proposes to appoint Arjun as managing director. Arjun has recently celebrated his 71st birthday. Arjun has spent his entire career in power sector and will be a strategic fit for Yes No Ltd. Company Secretary of the company suggests that Arjun can only be appointed through special resolution. Do you agree with the Company Secretary ? (4 marks)
- (c) Dim Dim Ltd. was incorporated on 31st December, 2019. An advisor to the company has suggested that since the Articles of Association (AOA) does not contain provisions relating to appointment of first directors, company can function without the directors until AOA is amended. Do you agree with the suggestion given by the advisor? Can Dim Dim Ltd. appoint a director who has just stayed for a period of 120 days in India during financial year 2019-20? (4 marks)
- (d) Himmat Ltd. has a paid-up capital of ₹50,00,000 divided into ₹5,00,000 shares of ₹10/- each. Special notice of intimation to move a resolution to remove Rajesh & Co., statutory auditor, before the expiry of their term and appointing Ritaban & Co. in their place has been given to the company by a shareholder holding 5,023 shares. In the above context, give your suggestion to Himmat Ltd. (4 marks)
- (e) Shankar was appointed as a small shareholders' director on 2nd March, 2017. Shankar has submitted a letter to the Board of directors expressing his desire to get re-appointed. In this context, the Board wants your opinion on the following points :
- Whether Shankar can be re-appointed as on 31st March, 2021 ?
 - Whether he is liable to retire by rotation as on 31st March, 2019 ?
 - Since Shankar is serving as director in many companies, whether his directorship in the capacity of small shareholders' director be included in the total number of directors as per the provisions of the Companies Act, 2013 ? Answer to the Board. (4 marks)

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

- (i) Vasu is independent director in various companies and he seeks your opinion regarding presence of independent director in different types of Committees. Advise.
- (ii) Logic Ltd. wants to remove Radhika, Company Secretary of the Company. Explain the procedure.
- (iii) Draft a postal ballot form of ZYX Ltd, a company in existence for last 10 years. Assume facts and figures.
- (iv) Can an annual general meeting be called at a shorter notice ? Would your answer be different if it were an extra-ordinary general meeting ?
- (v) The Board of Directors of Passion Ltd. has passed board resolutions for the following items. Examine the validity of resolution as a secretarial auditor of the company :
- (a) To invest the funds of the company for ₹15 Lakh in ABC Mutual funds;
- (b) To remit, or give time for the repayment of, any debt due from a director;
- (c) To invest otherwise in trust securities the amount of compensation received by it as a result of any merger or amalgamation;
- (d) To take over a company or acquire a controlling or substantial stake in another company; (4 marks each)

Answer 5(a)

Section 197(5) of the Companies Act, 2013 read with Rule 4 of the Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 prescribes that a company may pay a sitting fee to a Director for attending meetings of the Board or committees thereof, such sum as may be decided by the Board of Directors, which shall not exceed Rs. 1 lakh per meeting of the Board or committees thereof.

Provided that for Independent Directors and Women Directors, the sitting fee shall not be less than the sitting fee payable to other Directors.

Based on the above stipulated provisions, the following mentioned sitting fees payable is:

Name	Remarks
Raja (Nominee Director)	Sitting fees exceeds maximum amount and should be reduced to Rs. 1,00,000
Raju (Small Shareholder Director)	Sitting fees is within limit
Ritu (Independent Director)	Sitting fees is within limit
Shalini (Independent Director)	Sitting fees is within limit but it should not be less than other directors and hence should be Rs. 1,00,000

Answer 5(b)

As per Section 196(3) of the Companies Act, 2013, no company shall appoint or continue the employment of any person as managing director, whole-time director or manager who is below the age of 21 years or has attained the age of 70 years.

However, appointment of a person who has attained the age of 70 years may be made by passing a special resolution in which case the explanatory statement annexed to the notice for such motion shall indicate the justification for appointing such person.

Further, where no such special resolution is passed but votes cast in favour of the motion exceed the votes, if any, cast against the motion and the Central Government is satisfied, on an application made by the Board, that such appointment is most beneficial to the company, the appointment of the person who has attained the age of seventy years may be made.

Accordingly, in the given case, appointment of Mr. Arjun in Yes No Ltd. can also be made by an application made by the Board of Directors to the Central Government. Therefore, advice of Company Secretary is not correct.

Answer 5(c)

The first directors of most of the companies are named in their Articles of Association. Regulation 60 of Table F provides that the number of the directors and the names of the first directors shall be determined in writing by the subscribers of the memorandum or a majority of them.

Further, Section 152(1) of the Companies Act, 2013 provides that, where no provision is made in the Articles of Association of a company for the appointment of the first director, the subscribers to the memorandum who are individuals shall be deemed to be the first directors of the company until the directors are duly appointed.

Accordingly, in the given case, advice given by the advisor regarding first director is not correct.

Section 149(3) of the Companies Act, 2013 provides that every company shall have at least one director who has stayed in India for a total period of not less than 182 days during the financial year. However, in case of a newly incorporated company the requirement under this sub-section shall apply proportionately at the end of the financial year in which it is incorporated.

Hence, Dim Dim Ltd. which has been incorporated on December 31, 2019 can appoint a director who has just stayed for 120 days in India during the financial year, 2019-20.

Answer 5(d)

Section 115 read with rule 23 of Companies (Management and Administration) Rules, 2014 deals with resolutions requiring special notice.

Where a special notice is so required of any resolution, notice of the intention to

move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which the aggregate sum of not less than Rs.5 Lakhs has been paid-up on the date of notice.

The instances which require a special notice under the provisions of the Companies Act, 2013 are as follows:

- (a) Under Section 140(4) of the Companies Act, 2013, resolution for appointing a person as auditor at the annual general meeting other than a retiring auditor or providing expressly that the retiring auditor shall not be re-appointed.
- (b) Under sub-section (2) and (5) of section 169 to remove a director before the expiry of the period of his office and to appoint somebody in place of director so removed in the same meeting.

Accordingly, there is no such provision of special notice under the Companies Act, 2013, for removal of statutory auditor. However, the Articles of Association of company may provide for additional matters which may require special notice, in terms of Section 115 of the Companies Act, 2013.

Section 140(1) read with Rule 7 of the Companies (Audit and Auditors) Rules, 2014, clearly stipulates that the auditor appointed under section 139 of the Companies Act, 2013 may be removed from his office before the expiry of his term only by passing a special resolution of the company, after obtaining the previous approval of the Central Government by filling an application in form ADT-2 within 30 days of the resolution passed by the Board. Hence, Rajesh & Co. can be removed by following the prescribed procedures.

Further, as per Section 139(8) of the Companies Act, 2013, Ritaban & Co. can be appointed by the Board of Directors within 30 days to fill such casual vacancy.

Answer 5(e)

As per Section 151 read with Rule 7 of the Companies (Appointment and Qualifications of Directors) Rules, 2014, the tenure of small shareholders' director shall not exceed a period of 3 consecutive years and on the expiry of the tenure, such director shall not be eligible for re-appointment. Further, such director shall not be liable to retire by rotation.

A small shareholders' director is included in the total limit of directorship of 20 companies as prescribed under section 165 (1) of the Companies Act, 2013.

Based on the above provisions, answers to the questions are as under:

- (i) No, Shankar as small shareholder director cannot be re-appointed as on March 31, 2021.
- (ii) No, Shankar is not liable to retire by rotation as on March 31, 2019.
- (iii) Yes, Shankar's directorship will be counted in the over-all limit provided under Section 165 (1) of the Companies Act, 2013.

Answer 5A(i)**Presence of Independent Director in various Committees of the Board**

<i>Independent Director in various Committees</i>	<i>Composition as per the Companies Act, 2013</i>	<i>Companies as per the SEBI(LODR) Regulations, 2015</i>
Audit committee	<p>As per Section 177 of Companies Act, 2013</p> <p>The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.</p>	<p>According to Regulation 18 of the SEBI (LODR) Regulations, 2015</p> <p>a) The Audit Committee shall have minimum three Directors as members.</p> <p>b) Two-thirds of the members of audit Committee shall be Independent Directors</p> <p>c) In case of a Listed Entity having outstanding SR equity shares, the Audit Committee shall only comprise of Independent Directors.</p> <p>d) The chairperson of the audit committee shall be an independent director.</p>
Nomination and Remuneration Committee	<p>Section 178 of Companies Act, 2013 provides that:</p> <p>The Nomination and Remuneration Committee shall consist of three or more non-executive directors out of which not less than one - half shall be independent directors.</p>	<p>According to Regulation 19 of the SEBI (LODR) Regulations, 2015</p> <p>The Board of Directors shall constitute the Nomination and Remuneration Committee as follows:</p> <p>(a) the Committee shall comprise of at least three Directors and all Directors shall be non-executive Directors;</p> <p>(b) at least fifty percent of the Directors shall be Independent Directors; and</p> <p>(c) In case of a listed entity having outstanding SR equity shares, two-thirds of the Nomination and Remuneration Committee shall comprise of Independent Directors;</p>

		(d) The Chairperson of the nomination and remuneration committee shall be an Independent Director.
Stakeholders Relationship Committee	—	<p>Under Regulation 20 of the SEBI (LODR) Regulations, 2015, Stakeholders Relationship Committee shall consist of at least three directors, with at least one being an independent director, who shall be the members of the Committee.</p> <p>In case of a listed entity having outstanding SR equity shares, at least two-thirds of the Stakeholders Relationship Committee shall comprise of independent directors.</p>
Risk Management Committee		The majority of members of Risk Management Committee shall consist of members of the board of directors and in case of a listed entity having outstanding SR equity shares, at least two-thirds of the Risk Management Committee shall comprise of Independent Directors.
Corporate Social Responsibility Committee	<p>As per Section 135 of the Companies Act, 2013, Corporate Social Responsibility Committee shall consist of three or more directors out of which at least one should be an independent director.</p> <p>However, where a company is not required to appoint an independent director under section 149(4), it shall have in its Corporate Social Responsibility Committee two or more directors.</p>	—

Answer 5A(ii)

A Company Secretary can be removed or dismissed like any other employees of the organization. Since he/she is appointed by Board, the Board of Directors of a company has absolute discretion to remove a Company Secretary or to terminate his/her services

at any time for any reason or without any reason. However, principles of natural justice like show cause notice, hearing, reasoned order etc. must be followed.

A Company Secretary can be removed in accordance with the terms of appointment and the Board can record the same. The procedure for removal of Company Secretary is:

- Convene a Board Meeting after giving notice to all the Directors of the company as per section 173 of the Companies Act, 2013, place the matter of removal of the Company Secretary and pass a resolution to the effect. The resolution shall state the effective date of termination of the Company Secretary.
- The Company shall thereafter serve a notice of termination to the Company Secretary. The period of notice shall be governed by the employment letter or in its absence the termination policy of the Company.
- The Company Secretary shall cease to be in office from the date of expiry of notice.
- Company is required to file e-Form DIR-12 within 30 days of cessation with the Registrar of Companies together with requisite filing fees along with evidence of Cessation. - Inform the stock exchange, if the company is listed.
- Make entries in the Register maintained for recording the particulars of Company Secretaries under section 170 of the Companies Act, 2013.
- Issue a general public notice, if it is so warranted, according to size and nature of the company.

Thus, Logic Ltd. has to follow above procedures to remove Radhika, Company Secretary of the company.

Answer 5A(iii)

Postal Ballot Form

(On the letterhead of the Company)

1. Name and Registered Address of the Sole / First named Member
2. Name(s) of Joint-Holder(s), if any :
3. Registered Folio No. /DP ID No.* : / Client ID No.* (*Applicable to Members holding shares in dematerialized form)
4. Number of equity shares held :
5. I/We hereby exercise my / our vote in respect of the under mentioned resolutions to be passed through Postal Ballot as stated in the Notice dated _____ (date and year) of the Company by sending my / our assent or dissent to the said Resolution by placing the tick (✓) mark in the appropriate box below:

<i>Item No.</i>	<i>Brief Particulars of the Resolution</i>	<i>No. of Shares</i>	<i>I/ We assent to the Resolution (FOR)</i>	<i>I/We dissent to the Resolution (AGAINST)</i>
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Place:

Date:

Signature of Shareholder/Beneficial owner

Answer 5A(iv)

Shorter notice

As per Section 101 (1) of the Companies Act, 2013, Annual General Meeting may be called after giving a shorter notice, if consent is accorded in writing or by electronic mode by not less than 95% of the members entitled to vote at such meeting.

In the case of extra-ordinary general meeting, a shorter notice can be given if consent is accorded by the members of the company:

- (a) holding, if the company has a share capital, majority in number of members entitled to vote and who represent not less than 95% of such part of the paid-up share capital of the company as gives a right to vote at the meeting; or
- (b) having, if the company has no share capital, not less than 95%, of the total voting power exercisable at that meeting.

However, where any member of a company is entitled to vote only on some resolution or resolutions to be moved at a meeting and not on the others, those members shall be taken into account in respect of the former resolution or resolutions and not in respect of the latter.

Answer 5A(v)

- (a) As per Section 179(3)(e) of the Companies Act, 2013, the Board of Directors of a company shall exercise the powers to invest the funds of the company of Rs. 15 Lakhs in ABC Mutual funds by means of resolutions passed at meetings of the Board;
- (b) As per Section 180(1)(d) of the Companies Act, 2013, the Board of Directors of a company shall exercise the power to remit, or give time for the repayment of, any debt due from a director only with the consent of the company by a special resolution;
- (c) As per Section 180(1)(b) of the Companies Act, 2013, the Board of Directors of a company shall exercise the power to invest otherwise in trust securities, the amount of compensation received by it as a result of any merger or amalgamation with the consent of the company by a special resolution;
- (d) As per Section 179(3)(j) of the Companies Act, 2013, the Board of Directors of

a company shall exercise the powers to take over a company or acquire a controlling or substantial stake in another company by means of resolutions passed at meetings of the Board.

PART III

Question 6

- (a) *FMP & Associates, Company Secretaries, has sent a letter to the foreign exchange department of Reserve Bank of India stating that the firm has three partners who specialise in the law of Foreign Exchange & Management and asked the said Authority to include their name in the panel, whenever formed for providing advisory services. Comment with reference to the provisions of the Company Secretaries Act, 1980. (5 marks)*
- (b) *A complaint of professional misconduct is filed with ICSI against Swapan, a practising member. The Disciplinary Committee of ICSI is of the opinion that Swapan is guilty of professional misconduct mentioned in the Second Schedule to the Company Secretaries Act, 1980. The Committee, after affording Swapan an opportunity of being heard, ordered for removal of his name from Register permanently and also imposed penalty of ₹10 lakh. Is the action of the Committee valid? What actions can the Board of Discipline (a separate authority) take if it is of the opinion that a member is guilty of professional misconduct mentioned in the First Schedule to the Act, 1980? (5 marks)*

Answer 6(a)

Clause 6 of Part I of First Schedule to the Company Secretaries Act, 1980 states that a Company Secretary in practice shall be deemed to be guilty of professional misconduct if he solicits clients or professional work either directly or indirectly by a circular, advertisement, personal communication or interview or by any other means. Such a restraint has been put so that the members maintain their independence of judgement and able to command respect from their prospective clients.

Accordingly, CS firm FMP & Associates and its partners are guilty of professional misconduct under Clause 6 of Part I of First Schedule to the Company Secretaries Act, 1980 as it has solicited professional work from the Reserve Bank of India by inquiring about the maintenance of the panel and advertising about the partners of the firm having specialised knowledge of foreign exchange and management law.

Answer 6(b)

As per section 21B(3) of the Company Secretaries Act, 1980 where the Disciplinary Committee is of the opinion that a member is guilty of professional or other misconduct as mentioned in the Second Schedule or both the First Schedule and the Second Schedule to the Company Secretaries Act, 1980, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

- (a) Reprimand the member;

- (b) Remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to Rs. 5 Lakhs.

Applying above provisions to Swapan, a practising member, the order for permanent removal of name from Register of members is valid but fine can be imposed maximum upto Rs. 5 Lakhs.

As per section 21A(3) of the Company Secretaries Act, 1980 Where the Board of Discipline is of the opinion that a member is guilty of professional or other misconduct mentioned in the First Schedule to the Company Secretaries Act, 1980, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of 3 months;
- (c) impose such fine as it may think fit which may extend to Rs. 1 lakh.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

- (a) Neeraj Walia is head of family consisting of his wife and two sons. Fore-fathers of Neeraj Walia have accumulated huge wealth in the form of land and immovable properties. Now, with the ancestral wealth Neeraj Walia plans to carry on real estate and resorts business by creating HUF. He has approached you to create a HUF Deed, advise him on key points including taxation aspects to be considered in creation of HUF Deed. (5 marks)
- (b) Nidhi Companies can provide loans to its members' subject to certain limits as per Nidhi Rules, 2014. Rakesh being a member of a Nidhi Company wants to know the limits mentioned under Nidhi Rules, 2014 and also seek your advice whether a second loan can be granted within limits specified, if 1st loan is overdue, outstanding and remains unpaid. (5 marks)
- (c) State the consequences in each of the following cases giving reasons for your answers:
- (i) A Private Company has 210 members in total out of which 10 are the employees of the company. Will your answer differ, if 5 of these employees leave the employment of the company?
- (ii) A Public Company has 150 shareholders in total of which 47 members and 2 out of 4 directors dies due to epidemic. What is the time frame allowed under the Companies Act for compliance in case of non-compliance of provisions regarding status of the Company? (5 marks)
- (d) Somit Kapoor is an Indian businessmen dealing in manufacturing of antique designer jewels. He has retail shops across all major cities in India. He wants to diversify his business geographically and plans to open retail outlets outside India. What are the aspects he should look into in choosing investment locations outside India ? (5 marks)

Answer 1(a)

Key points in creation of HUF

- Under Income Tax Act, an HUF is a separate entity for the purpose of income tax return.

- The same tax slabs are applicable to HUF as to an individual assessee.
- One cannot transfer his own assets / money into HUF.
- If one 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.
- One can transfer the money received on sale of ancestral property / assets into 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 HUF. This jointness is understood in terms of faith and food. This is because a Hindu is born as a member of the joint family.
- Any gifts received by the members of HUF (birthday, marriage etc.) can be treated as assets of HUF.
- The HUF is taxable as separate person under income tax hence one can save tax from basic exemption of Rs. 2.5 lakh. HUF will also gain from the tax slab structure of computing income tax.
- Apart from basic exemption of Rs. 2.50 lakh, Section 80C deduction upto Rs. 1.5 lakh is also available.

Answer 1(b)

According to Rule 15 of Nidhis Rules, 2014 a Nidhi company can provide loans only to its members. The loans given by a Nidhi company to a member shall be subject to the following limits, namely:

- Rs. 2 lakhs, where the total amount of deposits of such Nidhi from its members is less than Rs. 2 crore;
- Rs. 7.50 lakhs, where the total amount of deposits of such Nidhi from its members is more than Rs. 2 crore but less than Rs. 20 crore;
- Rs. 12 lakhs, where the total amount of deposits of such Nidhi from its members is more than Rs. 20 crore but less than Rs. 50 crore; and
- Rs. 15 lakhs, where the total amount of deposits of such Nidhi from its members is more than Rs. 50 crore.

However, where a Nidhi has not made profits continuously in the three preceding financial years, it shall not make any fresh loans exceeding 50% of the maximum amounts of loans specified in above mentioned clauses.

A member shall not be eligible for any further loan, if he has borrowed any earlier loan from the Nidhi and has defaulted in repayment of such loan.

Based on above provision, Rakesh cannot be granted 2nd loan as he has defaulted in repayment of 1st loan.

Answer 1(c)

- (i) Section 2(68) of the Companies Act, 2013 provides that private companies can have a maximum of 200 members (except for One Person Companies).

This number does not include present employees and former employees who were members of the company while in that employment and have continued to be members after the employment has ceased.

Moreover, where two or more persons hold one or more shares in a company jointly, they shall, be treated as a single member.

Hence, the company is within the maximum limit of 200 members.

The answer would have remained same even if 5 employees leave the employment as threshold limit of 200 persons for private company does not take into account former employees who were members of the company while in employment and continued to be member even after employment ceased.

- (ii) Due to separate legal entity concept, a company limited by shares, whether private or public, is not affected by death of one of its shareholders, but the shares are transmitted to the next kin or legal heir of such deceased shareholder and the company continues to run its business as usual.

Section 149(1) of the Companies Act, 2013 requires that every public company shall have a minimum number of 3 directors.

Further, Section 161(4) of the Companies Act, 2013 states that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of Directors at a meeting of the Board which shall be subsequently approved by members in the immediate next General Meeting (Annual General Meeting or Extra-Ordinary General Meeting).

Therefore, in the given case of a director's death, subject to any provisions of the Articles of Association of the company, the Board is empowered to fill the resulting casual vacancy which may be filled by Board of Directors at Board meeting and which shall be subsequently approved by members in the immediate next General Meeting.

Answer 1(d)

For the purpose of making investment overseas and choosing location outside India, the following issues should be considered by Mr. Somit Kapoor:

Geographical location of the business:

- Infrastructure (ports, airports, storage, specific storage types – such as cold-storage, secure storage);
- Access (transportation of goods, materials and personnel);
- Relevance to supply chain: raw material sourcing, processing, despatch of finished produce;
- Availability of talent pool for productions (labour), services and management.

Economic aspects:

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability;
- Cost of doing business: return on investment computations vis-à-vis comparable locations;
- Laws relating to labour;
- Laws relating to taxation: investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double taxation, avoidance agreements, information sharing, requirements such as FATCA, TRC etc.

Political aspects:

- Friendly country, MFN status;
- Long standing and established legislative precedents with companies going through regulatory recourse;
- Their relations with neighboring countries and neighbours and your country.

Social aspects:

- Trade bodies, interaction between commercial entities of both nations;
- Expatriate-friendliness of the nation for relocation key employee personnel.

Technological aspects:

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress;
- Power, communication, telecom - availability, quality and coastal issues like infrastructure, geography, time zone, political, considerations/conditions, safety of investment, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

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

Question 2

- (a) *Melta LLC is a Limited Liability Corporation registered in California (USA). The company has no place of business in India by itself or through agent, but it's doing online business through electronic mode in India. Explain whether Melta LLC will be treated as a Foreign Company as per the provisions of the Companies Act, 2013.*
- (b) *The Article of Association of XYZ Ltd. provides that the Board of directors has authority to issue bonds provided such issue is authorized by the shareholders*

by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore it issued the bonds to X without passing any such resolution at general meeting. Can X recover the money from the company ? Decide referring the relevant case laws and provisions of the Companies Act, 2013 ?

- (c) PQ Pvt. Ltd. is the newly incorporated company engaged in manufacturing of machinery parts proposes to raise the funds through Private Equity and Angel Investors. Explain these equity financing options available to the company.
- (d) EFG Pvt. Ltd. wants to convert the Private Company into a One Person Company (OPC). The Company seeks your advice on the following matters :
- (i) Provisions regarding notice of general meeting
 - (ii) Whether company required to obtain 'No Objection Certificate'.
 - (iii) Types of e-forms required to be filed with ROC for such conversion
 - (iv) Penalty for contravention of provisions with respect to conversion.
- (e) 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. (4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) PQR Power Corporation is a Government Company incorporated on 01.12.2018. The Comptroller and Auditor General of India (CAG) has appointed the Auditors for the Company on 09.01.2019. Akshay, filed an RTI on 05.03.2019, to know the status of appointment of Auditors of the Company and further he writes to the Registrar of Companies stating that the appointment of the First Auditor is invalid and company has contravened the provisions of the Companies Act, 2013. Whether the contention of Akshay is tenable ? Also state the conditions for appointment of subsequent Auditors of PQR Power Corporation.
- (ii) U & P wants to create a Trust. Advise them in the following matters :
- (I) What are the various aspects to be decided before registration of a Trust ?
 - (II) Provision regarding signature and witnesses on the Trust deed.
 - (III) Basis of chargeability of stamp duty at the time of Registration ?
 - (IV) Can a Trust open a Bank Account in its name, if yes, then other than Trust deed what other documents are required to open the bank account ?
- (iii) Nataasha Dalvi was appointed as a Director of a Company imparting online education. She checked the MCA website to know the status of the Company and found that Company name is marked as 'ACTIVE – non-compliant'. Explain to her reasoning for such status and also brief her what types of Forms cannot be filed when Company is in 'ACTIVE – non-compliant' status.
- (iv) A Special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are generally formed for a special purpose. Elucidate.

- (v) *Hemanth, who is interested in making overseas investment (financial commitment) in an energy sector in Vietnam, which exceeds the prescribed limit of the net worth of his Company as per the latest audited Balance Sheet. Accordingly, investment falls under Approval route instead of Automatic route. What are factors to be taken into account by Reserve Bank of India for considering such application ?* (4 marks each)

Answer 2(a)

As per Section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which-

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
- (b) conducts any business activity in India in any other manner.

The Companies (Specification of Definitions Details) Rules, 2014 defines the term 'electronic mode' in the context of a foreign company under Rule 2(h). The same is also defined under Rule 2 (1)(c) of the Companies (Registration of Foreign Companies) Rules, 2014.

The definition of electronic mode encompasses all electronic based transactions, whether main server is installed in India or not, including, but not limited to- business to business and business to consumer transactions, data interchange and other digital supply transactions, offering to accept/inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India, financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management.

It further includes all online services and all related data communication services, whether conducted by e-mail, mobile devices, cloud computing, social media, data transmission or otherwise.

Hence, Melta LLC is treated as Foreign Company, even though it has no place of business in India, but it is conducting its online business through electronic mode in India.

Answer 2(b)

The principal of indoor management operates to protect the outsiders against the company. According to this doctrine, as laid down in *Royal British Bank v. Turquand*. (1856) 119 E.R. 886, persons dealing with a company having satisfied themselves that the proposed transaction is not in its nature inconsistent with the memorandum and articles, are not bound to inquire the regularity of any internal proceedings. In other words, while persons contracting with a company are presumed to know the provisions of the contents of the memorandum and articles, they are entitled to assume that the provisions of the articles have been observed by the officers of the company. It is not a part of the duty of an outsider to see that the company carries out its own internal regulations.

As based on the above case it is inferred that outsiders are bound to know the external position of the company but are not bound to know its indoor management. So,

in the given case X could sue the company and recover his money, as he was entitled to assume that the necessary resolution had been passed and the required formalities have been duly complied.

Answer 2(c)

Start-ups are usually equity financed/funded by way of a venture capital/ private equity investors and/or angel investors.

(a) Venture Capitalist/Private Equity

Venture capital ("VC") / Private Equity ("PE") is often the first large investment a start-up can expect to receive. Convertible instruments are usually the preferred option and most commonly used securities for VC/PE investment which includes compulsory convertible preference shares and compulsory convertible debentures. The investor and start-up will normally enter into a non-binding offer based on the preliminary valuation of the start-up usually followed with a financial, legal and technical due diligence on the start-up as required by the investors. Due diligence will help the investors to finalize the representation and warranties and also to identify conditions precedent to the completion of investments and conditions subsequent in the aforesaid transaction documents.

(b) Angel Investors

Angel investors are usually individuals or a group of industry professionals who are willing to fund the venture in return for an equity stake.

Under the SEBI (Alternative Investment Funds) Regulations, 2012, SEBI has made the following restrictions applicable to angel funds investing in an Indian company:

- (1) Angel funds shall invest in venture capital undertakings which:
 - (a) complies with the criteria regarding the age of the venture capital undertaking/startup issued by the Department of Industrial Policy and Promotion under the Ministry of Commerce and Industry, Government of India vide notification no. G.S.R. 180(E) dated February 17, 2016 or such other policy made in this regard which may be in force;
 - (b) have a turnover of less than Rs. 25 Crore;
 - (c) are not promoted or sponsored by or related to an industrial group whose group turnover exceeds Rs.300 Crore; and
 - (d) are not companies with family connection with any of the angel investors who are investing in the company.
- (2) Investment by an angel fund in any venture capital undertaking shall not be less than Rs.25 Lakhs and shall not exceed Rs.10 Crores.
- (3) Investment by an angel fund in the venture capital undertaking shall be locked-in for a period of one year.

Answer 2(d)

Legal Provisions related to Conversion of Private Company into One Person Company

are given in Section 18 of the Companies Act, 2013 read with Rule 7 of the Companies (Incorporation) Rules, 2014 which are as under:

A private company other than a company registered under section 8 of the Companies Act, 2013 having paid up share capital of Rs.50 Lakh or less and average annual turnover during the relevant period of Rs.2 crore or less may convert itself into one person company by passing a special resolution in the general meeting.

Or

A private company other than a company registered under section 8 of the Companies Act, 2013 may convert itself into one person company by passing a special resolution in the general meeting. (Amendment Effective From 1st April 2021)

(i) NOTICE OF GENERAL MEETING:

Section 101 of the Companies Act 2013 provides that company shall issue notice of General Meeting in writing to below mentioned persons at least 21 days before the actual date of the General Meeting:

- every member of the company, legal representative of any deceased member or the assignee of an insolvent member;
- the auditor or auditors of the company; and
- every director of the company.

Notice of a meeting shall specify the place, date, day and the hour of the meeting and shall contain a statement of the business to be transacted at such meeting.

- (ii)** As per Rule 7(2) of the Companies (Incorporation) Rules, 2014, before passing such special resolution in the Extra-Ordinary General meeting (EGM) to get approval of shareholders for Conversion of Private Company into One Person Company (OPC), the Company shall obtain No Objection Certificate in writing from existing members and creditors.

(iii) ROC FORM FILING

E- Form MGT.14 - Copy of the special resolution is required to be filed with concerned ROC through filing of form MGT. 14 within 30 days of passing Special Resolution in the EGM.

E-Form INC.6 - An Application for conversion of a Private Company into a OPC is required to be filed in e-Form INC.6 to the concerned Registrar of Companies, with all the necessary annexures and with prescribed fees.

- (iv) PENALTY** – As per Rule 7A of the Companies (Incorporation) Rules, 2014, if a One Person Company (OPC) or any officer of such company contravenes the provisions with respect to conversion, the OPC or any other Officer of such company shall be punishable with fine which may extend to Rs. 5,000/- and with a further fine which may extend to Rs. 500/- per day after first offence, during which such contravention continues.

Answer 2(e)

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 purpose of Contractual Joint Venture, the relationship between parties is set forth in the contract or agreement concluded between them.

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

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

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

Answer 2A(i)

Provisions relating to Auditor

I. Appointment of First Auditor in a Government Company:

As per Section 139(7) of the Companies Act, 2013, in the case of Government Company, the first auditor is required to be appointed by the Comptroller and Auditor General of India (C&AG) within 60 days from the date of registration of the Company. If C&AG fails to appoint such auditor within 60 days, then the Board of Directors of the company shall appoint such auditor within the next 30 days

In case of failure of the Board to appoint such auditor, it shall inform the members of the company, who shall within 60 days at an extraordinary general meeting appoint such auditor and such auditor shall hold office till the conclusion of the first annual general meeting.

Thus, PQR Power Corporation is a government company incorporated on 01.12.2018 and C&AG has appointed the Auditor on 09.1.2019 i.e. within 60 days from the date of incorporation of the corporation. Hence the contention of Mr. Akshay is invalid.

II Appointment for Subsequent Financial year:

As per Section 139(5) of the Companies Act, 2013, the appointment of Auditor

in a Government Company in every subsequent financial year shall be made by Comptroller & Auditor General of India within period of 180 days from the commencement of the financial year. The Auditor shall hold office till the conclusion of the Annual General Meeting.

Answer 2A(ii)

Various aspects to be decided before registration of the trust

- I) A Trust can be created by any person over 18 years of age and mentally sound and capable of understanding. Before registration of a trust, the following aspects have to be decided:
- (a) Name of the trust
 - (b) Address of the trust
 - (c) Objects of the trust (Charitable or Religious)
 - (d) One settler of the trust
 - (e) Two trustees of the trust
 - (f) Property of the trust-movable or immovable property (normally a small amount of cash/cheque is given to be the initial property of the trust, in order to save on the stamp duty).

II) Provision regarding signature and witnesses on the trust deed:

Obtain the signatures of Settlor, Trustees and Witnesses(s) at the appropriate places. Their photographs and Identity proof is also to be furnished. The Deed must be witnessed by at least two witnesses. The Settlor must sign all the pages of the Trust Deed.

III) Provision regarding stamp duty

Print the Trust Deed on stamp paper of appropriate value, depending on the stamp duty applicable in the State of execution.

- IV) Trust can apply for a permanent account number for the trust and open a bank account for it as it is a separate entity.

Other than Trust deed, the following documents would be required:

- a) Account opening form;
- b) Copy of PAN Card in the name of the Trust;
- c) Proof of address of the Trust;
- d) Certified copy of resolution regarding opening and operation of the account;
- e) Details of trustees, settlor, beneficiaries and signatories with their identity and address proof;(KYC documents)
- f) Power of attorney, if any, granted to any employee to transact business of the Trust;

- g) Registered and communication address of the Trust with telephone/fax/email address.
- h) Photographs of authorised signatories

Answer 2A(iii)

Rule 25A of the Companies (Incorporation) Rules, 2014 deals with the provision related to Active Company Tagging Identities and Verification (ACTIVE) which states that:

Every company incorporated on or before 31st December, 2017 was required to file the particulars of the company and its registered office, in e-form INC-22A-ACTIVE (Active Company Tagging Identities and Verification) on or before 15th June, 2019.

In case a company does not intimate, the said particulars, the Company was marked as "ACTIVE-non-compliant on or after 16th June, 2019 and shall be liable for action under Section 12(9) of the Companies Act, 2013.

Where a company files "e-Form ACTIVE", on or after 16th June, 2019, the company shall be marked as "ACTIVE Compliant", on payment of fee of Rs.10000.

Further, no request for recording the following event based information or changes is accepted by the Registrar of Companies from such companies who are marked as "ACTIVE-non-compliant", unless "e-Form ACTIVE" is filed, namely:-

- (i) SH-07 (Change in Authorized Capital);
- (ii) PAS-03 (Change in Paid-up Capital);
- (iii) DIR-12 (*Changes in Director except in case of :*
 - (a) cessation of any director or
 - (b) appointment of directors in such company where the total number of directors are less than the minimum number provided in clause (a) of section 149(1) of the Companies Act, 2013 on account of disqualification of all or any of the director under section 164.
 - (c) appointment of any director in such company where DINs of all or any its director(s) have been deactivated.
 - (d) appointment of director(s) for implementation of the order passed by the Court or Tribunal or Appellate Tribunal under the provisions of the Companies Act, 2013 or under the Insolvency and Bankruptcy Code, 2016).
- (iv) INC-22 (Change in Registered Office);
- (v) INC-28 (Amalgamation, de-merger).

Answer 2A(iv)**Purpose of Special Purpose Vehicle**

Yes, this is true that Special Purpose Vehicle (SPV) or Special Purpose Entities (SPE) are generally formed for special purpose as stated below:

The main purpose of a Special-Purpose Vehicle is to allow the parent company to make highly leveraged or speculative investments without endangering the entire company.

If any SPV goes bankrupt, it will not affect the parent company. SPVs are mostly formed to raise funds from the market or when Government Regulations specify creation of a separate vehicle for carrying out any specified activity.

SPVs are created by a parent company to implement large scale projects and operations of an SPV are legally limited to specific assets.

SPVs are also formed by bank and financial institution for Securitisation. The total assets of banks or financial institution mainly comprise of loans and receivables along with their future cash flow to a separate entity, which may be formed for a specific purpose. The SPV is allowed to raise debt which will be backed by these receivables and their future cash flows. The difference between the incomes received from these receivables and cost of servicing the debt will be profit/earning of the SPV. By securitization through SPV the risk involved in this activity is separated from the general business of the bank.

Government also forms SPVs for special projects. Purpose behind formation of SPV is to get easy finance and various approvals from State and Central Government at many levels and on completion of projects, it provides easy exit route for Government.

Answer 2A(v)

Overseas investment in the energy and natural resources sector exceeding the prescribed limit of the net worth of the Indian companies as on the date of the last audited balance sheet falls under the approval route and accordingly needs RBI approval.

Reserve Bank would inter alia, take into account the following factors while considering such applications:

- a. Prima facie viability of the Joint Venture/Wholly Owned Subsidiary outside India;
- b. Contribution to external trade and other benefits which will accrue to India through such investment (or financial commitment);
- c. Financial position and business track record of the India Party and the foreign entity, and
- d. Expertise and experience of the India Party in the same or related line of activity as of the Joint Venture/Wholly Owned Subsidiary outside India.

PART B

Question 3

(a) *A Textile Mill workers have shown interest in starting a Trade Union for the collective benefit of all the workers, seeks your guidance in the following matters:*

- (i) *Registration of the Union*
- (ii) *Forms required for registration*
- (iii) *Minimum requirement for membership of Trade Union*
- (iv) *Disqualification of office bearers of Trade Union*
- (v) *Cancellation of Registration.*

(b) *Cartoons Children Foundation is a charitable trust, formed with an objective of*

enhancing the standard of living of slum children and it carries out various welfare projects for children. The trust was registered during November, 2020. This foundation receives many donations from outside India, which is utilized for the activities like education, healthcare, livelihood of the needy and poor children. Explain whether the trust is eligible to receive such foreign contribution under Foreign Contribution Regulation Act, 2010 in Financial Year 2021-22. State the eligibility criteria for FCRA registration.

- (c) *Srinivas, a resident of Telangana, wishes to set up a Cigarette manufacturing unit. He is of the view that after availing FSSAI registration, he can start his Cigarette factory and no other licensing is required for the same. Explain Srinivas on the requirements of Industrial licensing based on category of Industries.*
- (d) *Dilip would like to carry on the business of manufacturing of Industrial chemicals and gases. One of his friend informs him that there are strict compliance norms under Air (Prevention and Control of Pollution) Act, 1981 for such type of Industry. Brief, Dilip on the various requirements to be complied under the aforesaid Act at the time of setting up of Industry. (5 marks each)*

Answer 3(a)

(i) Registration of Trade Union

- Any 7 or more members of a trade union may, by subscribing their names to the rules of the trade union and its compliance.
- There should be at least 10%, or 100 of the work-men, whichever is less, engaged or employed in the establishment or industry with which it is connected.
- It has on the date of making application not less than 7 persons as its members, who are workmen engaged or employed in the establishment or industry with which it is connected.

(ii) Forms Required for Registration of Trade Union

- Form A or any other Form as may be prescribed by the Appropriate Government.
- Names, occupations and address of the members' place of work.
- Address of its head office; & Names, ages, addresses and occupations of its office bearers.

(iii) Minimum Requirements for Membership of Trade Union

- Not less than 10%, or 100 of the workmen, whichever is less,
- Subject to a minimum of 7,
- Engaged or employed in an establishments etc.

(iv) Disqualification of Office Bearers of Trade Union

- If one has not attained the age of 18 years.
- Conviction for an offence involving moral turpitude and sentenced to imprisonment, unless a period of five years has elapsed since his release.

(v) Cancellation of Registration

- If the certificate has been obtained by fraud or mistake or it has ceased to exist or has wilfully contravened any provision of this Act.
- If it ceases to have the requisite number of members.

Answer 3(b)

Organizations seeking foreign contributions for definite cultural, social, economic, educational or religious programmes may obtain FCRA registration or receive foreign contribution through prior permission.

For grant of FCRA registration under FCRA, 2010, the association should:

- (i) be registered under an existing statute like the Societies Registration Act, 1860 or the Indian Trusts Act, 1882 or section 8 of the Companies Act etc;
- (ii) Normally be in existence for at least three years and has undertaken reasonable activity in its chosen field for the benefit of the society for which the foreign contribution is proposed to be utilised.

An organization in formative stage is not eligible for certificate of registration. Such organization may apply for grant of prior permission under FCRA, 2010. In case a newly registered entity would like to receive foreign contributions, then approval for a specific activity, specific purpose and from a specific source can be made to the Ministry of Home Affairs through the Prior Permission (PP) method.

As Cartoons Children Foundation is registered during November, 2020 (less than three years in existence). Hence Cartoons Children Foundation are required to take prior permission for a specific activity, specific purpose and from a specific source under FCRA, 2010 before accepting any foreign contribution in Financial Year 2021-22.

Answer 3(c)

Though industrial licensing has been abolished for all, there are five industries which still fall under compulsory licensing mainly on account of environmental, safety and strategic considerations. They are:

1. Distillation and brewing of alcoholic drinks
2. Cigars and cigarettes of tobacco and manufactured tobacco substitutes
3. Electronic Aerospace and defense equipment of all types
4. Industrial explosives including detonating uses, safety fuses, gun power, nitrocellulose and matches
5. Specified Hazardous chemical i.e. (i) Hydrocyanic acid and its derivatives (ii) Phosgene and its derivatives and (iii) Isocyanates & di-isocyanates of hydrocarbon, not elsewhere specified

Hence, Srinivas has to obtain license for setting up cigarette factory. FSSAI registration will not be the correct registration as the business falls under compulsory licensing.

Answer 3(d)**Compliance under Air (Prevention and Control of Pollution) Act, 1981 are as under:**

- Not to discharge air pollutant(s) in excess of the prescribed standards
- Furnish information to the State Pollution Control Board (SPCB) of any accident or unforeseen act or event
- Allow entry to the SPCB to ascertain that provisions of the Act are being complied with
- Provide information to enable SPCB to implement the Act
- Provide access to the SPCB for taking samples
- Comply with the directions issued in writing by the SPCB
- Obtain "Consent To Establish"
- Consent to be deemed as granted after four months from the date of receipt of application if no communication from the SPCB is received. A prior "Notice of Inspection" to be served by the SPCB
- Industry to ensure that specified emission sampling procedure is being followed by the SPCB
- Opportunity to file objections with the SPCB within 15 days from the date of service of notice
- SPCB to record reasons in writing in case it does not provide an opportunity to the industry to file objections
- Obtain "Consent to Operate"
- Apply for the renewal of "Consent to Operate" before expiry of the validity period.

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

- (a) *XYZ Pvt. Ltd., is engaged in manufacture of engineering components. The Company has investment of ₹5 Crore and Turnover of 25 Crore. The Company wants to know their category as per new definition of MSME. Will your answer differ, if XYZ Pvt. Ltd. is in service sector with the aforesaid limits of investment and turnover ?*
- (b) *State with reasons whether the following Companies require registration as NBFC with Reserve Bank of India, if not who is regulating authority for these Companies:*
- (i) *Infrastructure Debt Fund Company*
 - (ii) *Asset Finance Company*
 - (iii) *Merchant Banking Companies.*
- (c) *PT Pvt. Ltd., is engaged in the business of textile related products and employs 20 employees. Out of which, 11 employees draw a monthly salary of more than 25,000 each and 9 employees draw a monthly salary of less than 20,000 each. Because of this the Management of the Company is of the view that the Company is not covered under Employee's State Insurance (ESI) Act, 1948. Referring to*

relevant provisions clarify whether the contentions of the Management of PT Pvt. Ltd. is correct.

- (d) Brief on the applicability of Contract Labour (Regulation and Abolition) Act, 1970 for Contractor and Establishment. Also state the welfare measures to be taken by the Contractors.
- (e) 'Geographical indications are a special kind of Trademarks' — Analyze the correctness of the statement highlighting the differences between Geographical indications and Trademarks. (3 marks each)

OR (Alternate question to Q. No. 4)

Question 4A

- (i) Ameer is a registered Pharmacist under State Pharmacy Council wants to start his own pharmacy shop in India, for which he requires Drug license. Suggest him the minimum requirements for obtaining the Drug license.
- (ii) Pratap, a civil engineer devises a new principle of construction. He would like protect his new construction principle and approaches you to suggest for suitable Intellectual Property (IP) protection measures. Suggest Pratap, a suitable IP protection registration for his new principle of construction and brief him some of the salient features of the Act which provides such protection.
- (iii) Define Internal Complaints Committee under Prevention of Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.
- (iv) A Company already engaged in the business of marine and fire insurance would like to take-up the business of life insurance. Discuss the possibility of taking on this business. Also briefly describe under what circumstances registration of Insurance Companies may be suspended.
- (v) State the Register to be maintained under Companies Act 2013 corresponding to the following forms :
- (I) MGT-2
- (II) MBP-2
- (III) SH-6. (3 marks each)

Answer 4(a)

Under the new definition, there will be no more distinction between Manufacturing and Service MSMEs.

Micro Enterprise : Investment in Plant and Machinery or Equipment:

Not more than Rs.1 crore and Annual Turnover; not more than Rs. 5 crore.

Small Enterprise : Investment in Plant and Machinery or Equipment:

Not more than Rs.10 crore and Annual Turnover ; not more than Rs. 50 crore.

Medium Enterprise : Investment in Plant and Machinery or Equipment:

Not more than Rs.50 crore and Annual Turnover ; not more than Rs. 250 crore.

XYZ Pvt. Ltd. Can be categorised as a Small Enterprise as its investment is up to Rs. 10 crore and turnover is less than Rs. 50 crore.

Even if it is a service provider the Category will not change.

Answer 4(b)

- (i) *Infrastructure Debt fund* : is a company registered as NBFC to facilitate the flow of long-term debt into infrastructure projects. Infrastructure Debt Funds raise resources through issue of Rupee or Dollar denominated bonds. Hence, such Company requires registration as NBFC with Reserve Bank of India.
- (ii) *Asset Finance Company* : An Asset Finance Company is a company which is a financial institution carrying on as its principal business of the financing of physical assets such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipment's, moving on own power and general purpose industrial machines. Hence, such Company requires registration as NBFC with Reserve Bank of India.
- (iii) *Merchant Banking Companies* : Regulated by Securities and Exchange Board of India; do not require NBFC License.

Answer 4(c)

Registration of Employer : Any employer having more than 10 employees is mandatorily required to register under ESI.

Employees earning 21,000 INR per month or less shall make contribution for ESI scheme. Employees with higher wages are exempt.

Registration depends on the number of employees and not on earnings of the Employees. Though employees drawing more than Rs. 21,000 per month are exempt for ESI contribution. Registration limit is mandatory, if a Company has more than 10 employees, Accordingly PT Pvt. Ltd. have to obtain registration, even if the number of employees who are contributing is less than 10.

Answer 4(d)

Applicability of the Contract Labour (Regulation and Abolition) Act, 1970

- Every establishment in which 20 or more workmen are employed or were employed on any day of the preceding 12 months as contract labour.
- Every contractor who employs or who employed on any day of the preceding twelve months 20 or more workmen.

Welfare measures to be taken by the Contractor

- Contract labor either one hundred or more employed by a contractor for one or more canteens shall be provided and maintained.
- First Aid facilities.
- Number of rest-rooms as required under the Act.
- Drinking water, latrines and washing facilities.

Answer 4(e)

As per Section 2(1) (e) of the Geographical Indications of Goods (Registration and Protection) Act, 1999 "geographical indication", in relation to goods, means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

According to Section 2 (1) (zb) of the Trade Marks Act, 1999 "trade mark" means a mark capable of being represented graphically and which is capable of distinguishing the goods or services of one person from those of others and may include shape of goods, their packaging and combination of colours.

A trade mark is a sign which is used in the course of trade and it distinguishes goods or services of one enterprise from those of other enterprises.

Whereas a geographical indication is an indication used to identify goods having special characteristics originating from a definite geographical territory.

Answer 4A(i)

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

- **Area**: The minimum area of 10 square meter is required to start a medical shop or pharmacy or wholesale outlet. In case, the pharmacy business combines retail and wholesale, a minimum of 15 square meter is required.
- **Storage Facility**: The store must have refrigerator & air conditioner in the premises. According to the labelling specifications certain drugs like vaccines, sera, insulin injections etc., are required to be stored in the refrigerator.
- **Technical Staff**:
 - (a) *Wholesale* – The sale of drug by wholesale shall be made either in the presence of registered pharmacist or in the presence of a competent person who shall be a graduate with 1 year experience in dealing in drugs or a person who has passed S.S.L.C with 4 years' experience in dealing in drugs, specially approved by the department of drug control for the purpose.
 - (b) *Retail* – The sale of drug by retail must be made in the presence of registered pharmacist approved by the department. Registered pharmacist is required throughout the working hours.

Answer 4A(ii)

Pratap may register under the Designs Act, 2000. However, any mode or principle of construction or operation or anything which is in substance a mere mechanical device, would not be a registrable design. For instance a key having its novelty only in the shape of its corrugation or bent at the portion intended to engage with levers inside the lock associated with, cannot be registered as a design under the Act.

The salient features of the Design Act, 2000 are as under:

- (a) Enlarging the scope of definition of the terms "article", "design" and "introduction of definition of original".
- (b) Amplifying the scope of "prior publication".
- (c) Introduction of provision for delegation of powers of the Controller to other officers and stipulating statutory duties of examiners.
- (d) Provision of identification of non-registrable designs.
- (e) Provision for substitution of applicant before registration of a design.
- (f) Substitution of Indian classification by internationally followed system of classification.
- (g) Provision for inclusion of a register to be maintained on computer as a Register of Designs.
- (h) Provision for restoration of lapsed designs.

Answer 4A(iii)

According to Section 2(h) of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013, "Internal Committee" means an Internal Complaints Committee constituted under section 4.

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

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

Answer 4A(iv)

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

The registration of an Indian insurance company or insurer may be suspended for a class or classes of insurance business, in addition to any penalty that may be imposed

or any action that may be taken, for such period as may be specified by the Authority, in *the following cases*:

- Conducts its business in a manner prejudicial to the interests of the policy-holders;
- Fails to furnish any information as required by the Authority relating to its insurance business;
- Does not submit periodical returns as required under the Act or by the Authority;
- Does not co-operate in any inquiry conducted by the Authority;
- Indulges in manipulating the insurance business:
- Fails to make investment in the infrastructure or social sector as specified under the Insurance Act.

Answer 4A(v)

The register to be maintained under Companies Act 2013 corresponding to following forms are:

- (I) MGT-2 : Register of Debenture Holders/ Other Securities Holders.
- (II) MBP-2 : Register or Loans, Guarantee, Security and Acquisition Made By Company.
- (III) SH-6: Register of Employee Stock Option.

PART C

Question 5

- (a) *Some officers from Registrar of Companies (ROC), Mumbai, Maharashtra carried out a physical verification of the premises of a Company registered under Companies Act and found that there is no business operations being carried at that place.*

Whether ROC is empowered to carry out any physical verification under the Companies Act, 2013. Also brief whether ROC, based on such physical verification can initiate suo moto action to remove the name of the company from the Register of Companies maintained by his office. (3 marks)

- (b) *State the purpose of the following Forms under the Companies Act, 2013 :*

- (i) *Form STK – 2*
- (ii) *Form 24*
- (iii) *Form MSC – 4*

(3 marks)

- (c) *A Company is not carrying on any business for last two years, the Management of the Company decided to make an application for obtaining the status of Dormant Company. One of the Director stated that since, the Company is having unsecured loans from Shareholders and relatives of Directors, the Company cannot obtain the Dormant status.*

Citing relevant provisions of the Companies Act, 2013 and Rules made thereunder, explain whether the statement of the Director of the Company is correct? Will your answer differ, if the Company have also obtained Loans from Shareholders and relatives of Directors in the form of secured Debentures? (3 marks)

(d) A Company is in the process of Liquidation under Insolvency and Bankruptcy Code, 2016. Citing relevant provisions of the Code state where the following will rank in the order of priority on distribution of the assets of the Company :

(i) Workmen's dues for the period of 12 months preceding the liquidation commencement date.

(ii) Costs of Liquidation

(iii) Employees dues for the period of 15 months preceding the liquidation commencement date. (3 marks)

(e) A Company is having a paid-up Capital of 50 Lakhs and a Turnover of 1 Crore. The Company does not have any loans and outstanding deposits. The Board of Directors of the Company have decided not to carry on further business and proposed to wound up the Company.

One of the Director of the Company approaches you to suggest some methods to complete the winding up without cumbersome processes. Suggest him a suitable option by explaining the recent developments in this regard. (3 marks)

Answer 5(a)

There are situations where ROC can remove name of the company suo moto. Among those situations, one situation is that the Company is not carrying on any business or operations as revealed after the physical verification carried out under section 12 of the Companies Act, 2013.

Hence, the ROC's action of removing name suo moto is justified.

ROC is empowered to initiate action against the Company after following the principle of natural justice i.e. after giving sufficient notice, he can proceed for strike off of the Company under Section 248 of the Companies Act, 2013.

Answer 5(b)

The Purpose of the following Form under the Companies Act, 2013:

(i) Form STK-2 : Application by company to ROC for removing its name from Register of Companies.

(ii) Form INC-24 : Application for approval of Central Government for change of name

Or

Form 24 : Application for striking off name of Limited Liability Partnership under LLP Act, 2008.

(iii) Form MSC-4: Application is to be made for obtaining the status of an active company.

Answer 5(c)

According to section 455 of the Companies Act, 2013 and rules made thereunder, the Registrar shall not grant the status of a dormant company, if there is any outstanding loan, whether secured or unsecured. In case the company has any outstanding unsecured loan, the company must apply for the status of a dormant company after obtaining the concurrence or approval of the lender which is required to be enclosed with Form MSC-1.

Therefore, considering the provisions of the Companies Act, 2013 and rules made thereunder, the statement of the director of the company w.r.t. unsecured loans is not correct.

If the Company has obtained Secured Loans the Registrar shall not grant the status of a dormant Company.

Answer 5(d)

As per Section 53 of the Insolvency and Bankruptcy Code, 2016 following is the order of priority:

- (i) Costs of Liquidation
- (ii) Workmen's dues for the period of 24 months preceding the liquidation commencement date – along with secured creditors
- (iii) Employees dues for the period of 12 months preceding the liquidation commencement date – only 12 months shall be considered and balance shall be payable out of the remaining dues.

Answer 5(e)

With a view to systemize the procedure of winding up of a Company under the Companies Act, the Ministry of Corporate Affairs (MCA) vide notifications dated 24th January 2020, had notified the Companies (Winding Up) Rules, 2020. The Rules are applicable to companies going into winding up for the circumstances mentioned under Section 271 as well as "Summary procedure for liquidation under Section 361" of the Act. The Rules comprise of 191 rules and 95 forms and shall become applicable from 1st April 2020.

It allows the following companies to wind up their business by making an application to Central Government without approaching National Company Law Tribunal (NCLT) :

Companies accepting deposit and having total deposits	Upto INR 25 Lacs
Companies having total outstanding loan including secured loan	Upto INR 50 Lacs
Companies having total turnover	Upto INR 50 Crore
Companies with Paid up capital	Upto INR 1 crore

In the given case since, the Company Capital of Rs. 50 Lakh and Turnover of Rs. 1 Crore can wound up the Company without going to NCLT as per the new amendment.

Alternatively, a corporate person, who intends to liquidate itself voluntarily and has not committed any default, may initiate voluntary liquidation proceedings under Section 59, Chapter V of Part II of the Insolvency & Bankruptcy Code.

Question 6

- (a) *'The ROC had failed to prove the allegation that proper steps were taken in compliance of the mandatory provisions of Section 252 (4), (5), (6) of the Act which are a prerequisite for striking off the name of Company from the Register.'*—
Comment on this statement referring suitable case law with the decision in that case.
- (b) *Diamond Home Finance Limited (DHFL) is a housing finance company incorporated on 31.12.2018. It has failed to commence its business and now proposes to make an application to Registrar of Companies (ROC) for removing its name from the Register of Companies maintained by ROC.*

What type of specific certificate required to be submitted by DHFL to ROC along with its Application ? Also list out the types of Companies which are required to submit such certificate and brief the penalty for non-compliance.

(5 marks each)

Answer 6(a)

The present case is similar to the case of *International Security Printers Private Limited v. ROC Delhi dated 8th August, 2017*.

In this case, petition was filed by International Security Printers Pvt. Ltd challenging the order of ROC for striking off the name of the company. The ROC had exercised his power for strike off of companies. The Petitioner company stated that the following:

- No notice was issued to them and neither did the ROC adhere to any legal procedure which required a letter to be sent to the Company.
- The gazette notification was required to be published and the copy of the notification was required to be sent to the registered office of the Company.
- It was averred that without adhering to the aforesaid procedure, the impugned action was vitiated and was in gross violation of the principles of natural justice as no opportunity for hearing was given before taking the impugned step.

Hon'ble NCLT observed that the ROC had failed to prove the allegation that proper steps were taken in compliance of the mandatory provisions of Section 248 (4), (5), (6) of the Act which are a prerequisite for striking off the name of Company from the Register. In the absence of impugned action of the Respondent, the striking off would be arbitrary, illegal and against the principles of natural justice. Hence, the petition was accepted. The petitioner company was restored in the Register of Companies maintained by the ROC.

Answer 6(b)

No objection certificate from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act. In case of the following companies, such a No objection certificate should be attached to the application in form STK-2.

- (i) Companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;
- (ii) Housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;
- (iii) Insurance companies as referred to in the Insurance Act, 1938 or rules and regulations thereunder;
- (iv) Companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations there under;
- (v) Companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations there under;
- (vi) Asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations there under;

Penalty for non-compliances: If an application is made in violation of section 248(1), it shall be punishable with fine which may extend to one lakh rupees. An application filed under section 248(2) shall be withdrawn by the company or rejected by the Registrar as soon as conditions under sub-section (1) are brought to his notice.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2021-22, unless stated otherwise.

PART - I

1. Which of the following is not a merits of Direct Taxes ?
 - (A) Equity
 - (B) Simplicity
 - (C) Evasion
 - (D) Certainty
2. Which of the following is not a feature of Association of Persons (AOP) ?
 - (A) Joining together of two or more persons
 - (B) To produce income, profits or gains
 - (C) The coming together is voluntary in other words not mandated by any event or situation
 - (D) Only individuals can be members
3. Which of the following person's income would not be taxed in the previous year itself but would be taxed in the assessment year only ?
 - (A) Income of non-resident from shipping business in India
 - (B) Income of person leaving India temporarily for a short stay outside India
 - (C) Income of bodies formed for short duration
 - (D) Income of discontinued business
4. Mr. A (age 70) being a pensioner has total income (computed) of ₹ 5,50,000 for the previous year ended 31.03.2021. What would be his net tax liability payable by him including Higher Education Cess if opts for section 115BAC ?
 - (A) ₹ 23,400
 - (B) ₹ 5,600
 - (C) ₹ 15,600
 - (D) ₹ 8,320
5. Barua & Co. is a partnership firm. The firm earned ₹ 8,00,000 for the year ended

- 31st March, 2021 from sale of coffee grown and manufactured in India. How much of the income of the firm is chargeable to income tax for the assessment year 2021-22 ?
- (A) ₹ 2,80,000
(B) ₹ 3,20,000
(C) ₹ 2,00,000
(D) ₹ 8,00,000
6. Ajit (age 62) received 25,000 per month from 01.07.2020 by entering into reverse mortgage transaction with State Bank of India. The property mortgaged was acquired by him on 01.01.2002 for ₹30 lakhs. The fair market value of the property as on 01.07.2020 was ₹ 70 lakhs. How much of the amount received by Ajit under reverse mortgage is chargeable to tax for the assessment year 2021-22 ?
- (A) 2,25,000
(B) Nil
(C) 3,00,000
(D) 3,60,000
7. Mr. Y is a visually impaired person. He is employed in a public sector undertaking since 01.06.2019. He was paid 30,000 for the financial year ended 2020-2021 by way of transport allowance. How much of transport allowance is exempt from income-tax ?
- (A) ₹ 30,000
(B) ₹ 15,000
(C) ₹ 21,600
(D) Nil
8. Chaturvedi is employed in a company at Delhi. He was paid monthly house rent allowance of ₹ 15,000 during the previous year 2020-21. His Basic pay + DA (eligible for retirement benefits) for the year ended 31st March, 2021 is ₹ 12 lakhs. Chaturvedi paid ₹ 20,000 as rent per month for the accommodation occupied by him throughout the year. Compute the amount of HRA exempt from tax.
- (A) ₹ 1,80,000
(B) ₹ 1,20,000
(C) ₹ 2,40,000
(D) ₹ 60,000

9. State which of the following perquisite is not exempt perquisite for the assessment year 2021-22 ?
- (A) Personal expenditure through credit card reimbursed to employee by the employer
 - (B) Telephone facility in the residence of employee
 - (C) Subsidised lunch provided to employee by employer on working days
 - (D) Laptop given to employee for official use (ownership is with employer)
10. Vignesh was appointed in XYZ Ltd on 01.12.2020 for a monthly salary of ₹80,000. He was not employed prior to that date during the previous year 2020-21. Compute the salary income chargeable to tax for the assessment year 2021-22 on the assumption that Vignesh opted for section 115BAC.
- (A) ₹3,20,000
 - (B) ₹2,70,000
 - (C) ₹9,10,000
 - (D) ₹1,70,000
11. Sreelekha let out a property on rent from 01.08.2020 which was self-occupied previously for residential purposes. The actual rent was ₹30,000 per month. The municipal value was ₹35,000 per month. The fair rent is ₹40,000 per month. Standard rent under the Rent Control Act is ₹32,000 per month. What is her income under the head "house property" for the assessment year 2021-22.
- (A) ₹2,24,000
 - (B) ₹1,68,000
 - (C) ₹1,96,000
 - (D) ₹1,79,200
12. Rajsekar owned three identical properties. He let out one property for a monthly rent of ₹50,000 during the financial year 2020-21. The other two properties are self-occupied by him. Compute his income under the head house property for the assessment year 2021-22.
- (A) ₹8,40,000
 - (B) ₹12,60,000
 - (C) ₹4,20,000
 - (D) ₹3,40,000
13. Red Mfg. Ltd. purchased a new motor car for ₹14 lakhs on 01.11.2019 and used the same w.e.f. 01.12.2019. How much is the amount of depreciation allowable on the car for the assessment year 2021-22 ?
- (A) ₹2,10,000

- (B) ₹ 1,05,000
 (C) ₹ 3,15,000
 (D) ₹ 3,57,000
14. Green Ltd is located in a notified backward area in the State of Bihar. It is engaged in manufacturing activity. It acquired second hand plant and machinery by import from Japan for ₹100 lakhs on 01.05.2020. It also acquired new machinery from Chennai for ₹50 lakhs on 10.11.2020. Compute eligible deduction under section 32AD in respect of the said plant and machineries acquired for the assessment year 2021-22.
- (A) ₹ 15 lakhs
 (B) ₹ 22.5 lakhs
 (C) ₹ 7.5 lakhs
 (D) Nil
15. Browny Processors (P) Ltd paid ₹ 4,50,000 as contract charges to Martin. It deducted tax at source @ 1% for the expenditure incurred up to 30th April, 2020 of ₹1,50,000 and did not deduct tax on the subsequent payments of ₹3,00,000 made during the previous year 2020-21. How much of the expenditure would be added to its income while computing the income of Browny Processors (P) Ltd of the assessment year 2021-22 ?
- (A) ₹ 4,50,000
 (B) ₹ 3,00,000
 (C) ₹ 1,50,000
 (D) ₹ 90,000
16. Which of the following expenditure is liable for disallowance for contravention of section 40A(3) read with rule 6ABBA ?
- (A) Payment made in cash to Central or State Government exceeding ₹ 10,000 in a day
 (B) Payment in cash in villages having no banking facility for purchase of raw material being agricultural produce
 (C) Retrenchment compensation paid to employee ₹ 40,000
 (D) Deposit of cash of ₹ 22,000 directly into the bank account of the supplier for purchase of goods
17. Shruthi Herbals (P) Ltd engaged in manufacturing activity acquired an equipment for 5 lakhs meant for scientific research purposes in the financial year 2017-18. It claimed 150% of the cost of expenditure as deduction under section 35. The asset ceased to be used for scientific research purposes subsequently and it was sold for ₹ 4 lakhs on 16.08.2020. How much is taxable as a result of sale of such asset ?
- (A) ₹ 6,50,000

- (B) ₹ 4,00,000
- (C) ₹ 7,50,000
- (D) ₹ 3,00,000
18. Mahadev (age 66) discontinued his wholesale trading business w.e.f. 10.09.2019. He wrote off a sum of ₹2,70,000 due from Sankar in the previous year 2017-18 which was allowed as deduction in the tax assessment. Now in March, 2021 Mahadev recovered ₹ 90,000 as final and full settlement from Sankar. What is the tax consequence of the receipt of amount by Mahadev for the assessment year 2021-22 ?
- (A) No tax implication
- (B) ₹ 90,000 taxable as income from business
- (C) ₹ 90,000 taxable as income from other sources
- (D) ₹ 2,70,000 written off now chargeable to tax as income from business
19. Dr. Kamlesh Pai is a cardiac surgeon. For the previous year 2020-21, his gross receipts from profession was ₹ 36,40,000. He wants to declare income as per the applicable presumptive provision. Determine the amount of income as per the applicable presumptive provision for the assessment year 2021-22.
- (A) ₹ 2,91,200
- (B) ₹ 3,64,000
- (C) ₹ 9,10,000
- (D) ₹ 18,20,000
20. Ramnath has 4 heavy goods vehicle (gross un laden weight of each vehicle was 13,000 kilograms) and 1 light vehicles (gross weight was less than 12000 kilograms). He operated the vehicles on contract basis to a paper manufacturing company throughout the previous year 2020-21 and received ₹ 90 lakhs as hire charges as per contract. How much is the income chargeable to tax under applicable presumptive provision ?
- (A) ₹ 7,80,000
- (B) ₹ 7,14,000
- (C) ₹ 7,20,000
- (D) ₹ 4,50,000
21. Senthil & Co. is a partnership firm consisting of 2 partners with equal share. The partnership deed provides for interest on capital @ 18% per annum on capital of ₹ 5 lakhs each contributed by the partners. Both are working partners eligible for monthly salary of 10,000 each as per partnership deed. The firm has done total sales of ₹ 60 lakhs. Amounts realized by cash was ₹10 lakhs and balance through account payee cheque/draft/ECS through a bank account. How much

is the presumptive income of the firm under section 44AD for the assessment year 2021-22 ?

- (A) ₹ 64,000
- (B) ₹ 44,000
- (C) ₹ 4,60,000
- (D) ₹ 4,80,000

22. Larry Games Co. Ltd. engaged in medicine manufacture acquired on 22.11.2020 a patent from Andy Roberts by paying ₹ 100 lakhs. This enabled Larry Games Co. Ltd. to manufacture "Garner" a product for treatment of deadly contagious disease. How much is the eligible amount of depreciation on acquisition of patent ?

- (A) ₹ 12.50 lakhs
- (B) ₹ 25.00 lakhs
- (C) ₹ 50.00 lakhs
- (D) ₹ 100.00 lakhs

23. Manjula (age 62) sold a vacant land for ₹ 45,15,000 on 05.02.2021. The said land was acquired by her on 07.01.2019 for ₹ 28,00,000. She deposited ₹ 5 lakhs in Rural Electrification Bond on 30.03.2021. Cost inflation index : F Y 2018-19 = 280; FY 2020-21 = 301. Compute the capital gain chargeable to tax for the assessment year 2021-22.

- (A) Short-term capital gain ₹ 17.15 lakhs
- (B) Long-term capital gain ₹ 10.05 lakhs
- (C) Short-term capital gain ₹ 12.15 lakhs
- (D) Long-term capital gain ₹ 12.15 lakhs

24. Murali (age 67) reports the following transactions and you are required to determine which of the transaction shall be regarded as transfer and liable for tax ?

- (A) Distribution of capital assets on partial partition of HUF
- (B) Transfer of capital assets under reverse mortgage
- (C) Transfer of capital assets by holding company to subsidiary company for valuable consideration
- (D) Distribution of capital assets on the dissolution of partnership firm

25. Kapil Dev is engaged in manufacturing activity. The WDV of plant and machinery as on 01.04.2020 was ₹ 6,88,000. The entire plant and machinery were sold on 30.03.2021 for ₹ 7,80,000. The original cost of plant and machinery amounted to ₹ 14,65,000 acquired on 05.04.2017. Cost inflation index : FY 2017-18 = 272; 2020-21 = 301. Compute capital gain and state its nature.

- (A) Short-term capital gain ₹ 7,77,000

- (B) Short-term capital gain ₹ 92,000
- (C) Long-term capital gain ₹ 6,85,000
- (D) Long-term capital gain ₹ 18,647
26. In the case of investment in eligible startups which of the following condition is not applicable for the purpose of allowing exemption under section 54EE ?
- (A) Investment must be of long-term capital gain
- (B) Investment to be made within 6 months after the transfer of capital asset
- (C) Maximum investment is ₹ 50 lakhs
- (D) The amount is to be invested in convertible debentures issued by a company
27. Amin (age 68) sold on 12.05.2020 one vacant site at Baroda for ₹ 90 lakhs. The vacant site was inherited by him from his father in July 1999 as per the 'will' of his father. The FMV of vacant site on 01.04.2001 was ₹ 5 lakhs. He acquired a residential apartment in Singapore for ₹ 70 lakhs on 15.10.2020. Compute the capital gain chargeable to tax in the hands of Amin for the assessment year 2021-22.
- Cost inflation index F. Y. 2001-02 = 100/ F. Y. 2020-21 = 301
- (A) Long-term capital gain ₹ 74.95 lakhs
- (B) Long-term capital gain NIL
- (C) Long-term capital gain ₹ 4.95 lakhs
- (D) Long-term capital gain ₹ 65 lakhs
28. Rama Devi (age 53) sold 100 equity shares for ₹ 8,40,000 (STT paid) on 20.05.2020. Those shares were acquired on 21.03.2013 for ₹ 3 lakhs. The FMV as on 31.01.2018 was ₹ 5,50,000. How much is taxable under section 112A ? What is nature of such gain/ loss ? Cost inflation index FY 2012-13 = 200/2017-18 = 272/2020-21 = 301.
- (A) ₹ 2,31,360/Long-term capital gain
- (B) ₹ 3,88,500/Long-term capital gain
- (C) ₹ 2,90,000/Long-term capital gain
- (D) ₹ 12,250/Short-term capital gain
29. Shivsagar (age 64) is a retired pensioner with pension of 3,20,000 received during the previous year 2020-21. He has lottery winning of 6 lakhs on 23.03.2021. Compute his income tax liability for the assessment year 2021-22.
- (A) ₹ 1,88,240
- (B) ₹ 1,87,200
- (C) ₹ 87,360
- (D) ₹ 97,760

30. Which of the following income is not chargeable under the head "income from other sources" ?
- (A) Income from undisclosed sources
 - (B) Directors' sitting fees received from company
 - (C) Working partner salary received from partnership firm
 - (D) Agricultural income from land situated outside India in the case of resident of India
31. Dr. Kumar gifted a property fetching monthly rental income of ₹1,00,000 to his son's wife Divya on 31.05.2020 by executing a gift settlement deed. She paid municipal tax of ₹ 30,000 on 10.12.2020. Based on court decree arrear rent of ₹ 4 lakhs was paid by ex-tenant to present owner Divya on 01.03.2021. How much of income of Divya would be clubbed in the hands of Dr. Kumar ?
- (A) ₹ 8.19 lakhs
 - (B) ₹ 10.99 lakhs
 - (C) ₹ 10.79 lakhs
 - (D) ₹ 6.79 lakhs
32. Minor Shruti (age 13) has following incomes; (i) Net income from Dancing ₹ 75,000; (ii) Interest on bank fixed deposits ₹ 62,000 and (iii) Cash gift from friends of her parents (non-relatives) ₹ 45,000. How much of her income would be clubbed with the income of her parents after deduction under section 10(32) of the Act ?
- (A) 60,500
 - (B) 1,80,500
 - (C) 1,05,500
 - (D) 73,500
33. Padmaja has following income/loss for the previous year ended 31.03.2021 : (i) income from lottery winning of ₹ 7,00,000; (ii) loss from non-speculation business of ₹ 3,00,000; and (iii) dividend from Indian companies of ₹ 50,000. What is her total income chargeable to tax for the assessment year 2021-22 ?
- (A) ₹ 7,00,000
 - (B) ₹ 4,00,000
 - (C) ₹ 4,50,000
 - (D) ₹ 7,50,000
34. Which of the following is not eligible for carry forward and set off ?
- (A) Loss from activity of owning and maintaining race horses
 - (B) Loss under the head 'other sources'

- (C) Loss under the head 'house property'
- (D) Loss from transfer of short-term capital assets
35. Which of the following condition is not applicable for allowance of deduction for start-ups under section 80-IAC of the Act ?
- (A) It is a company incorporated after 01.04.2016 but before 01.04.2021
- (B) The total turnover does not exceed 100 crores and has not incurred loss in any previous year prior to the claim of deduction under this section for the first time
- (C) Holds a certificate of eligible business from Inter-Ministerial Board of Certification
- (D) Eligible for deduction @ 50% of the profits and gains derived from such business for 3 consecutive assessment years
36. Ramachari (age 83) is a pensioner who received ₹ 7,46,000 by way of pension during the previous year 2020-21. His only other income is interest of ₹ 65,000 from fixed deposit held in nationalized bank. What is the total income ?
- (A) ₹ 8,01,000
- (B) ₹ 7,11,000
- (C) ₹ 7,61,000
- (D) ₹ 7,21,000
37. In the case of a charitable trust registered under section 12AA, which of the following investment is not contained in section 11(5) of the Act for keeping the unspent incomes of the trust ?
- (A) Deposit in post office savings bank
- (B) Debentures issued by domestic companies unconditionally guaranteed by State Government
- (C) Investment in immovable property
- (D) Equity shares of listed domestic companies in India
38. Sam (P) Ltd has MAT credit of ₹ 10.50 lakhs belonging to the assessment year 2015-16. What is the maximum time limit up to which the MAT credit can be carried forward by Sam (P) Ltd ?
- (A) Assessment Year 2025-26
- (B) Assessment Year 2020-21
- (C) Assessment Year 2030-31
- (D) Assessment Year 2027-28

39. Ram Process (P) Ltd received ₹ 2,10,000 on transfer of Carbon Credit. The total income of the company is below ₹ 100 lakhs. How much is payable as income tax (including surcharge and higher education cess) on the said amount received on transfer of carbon credit ?
- (A) NIL
(B) ₹ 21,840
(C) ₹ 43,680
(D) ₹ 65,520
40. For which of the following transactions, quoting of PAN is mandatory.
- (A) Deposit of ₹ 26,000 in one day in post office saving bank account
(B) Life insurance premium paid during the year ₹ 48,000
(C) Payment to hotel bills of ₹ 49,000
(D) Fixed deposit in SBI of ₹ 55,000 on 10.02.2021
41. Botham Mfg. (P) Ltd paid ₹ 4,25,000 to LMN Services (P) Ltd who is engaged in operation of call centre for the company for the period from 01.09.2020 to 31.03.2021. How much is the amount of tax deductible at source by Botham Mfg (P) Ltd out of the amounts paid to LMN Services (P) Ltd ?
- (A) ₹ 42,500
(B) ₹ 6,375
(C) ₹ 8,500
(D) ₹ 4,250
42. EXE Automobiles (P) Ltd a dealer in motor car sold one motor car to A (having PAN) for ₹ 12,60,000 on 05.03.2021. How much is the amount of tax collectible at source ?
- (A) NIL
(B) ₹ 9,450
(C) ₹ 12,600
(D) ₹ 63,000
43. Manoj (age 45) earned ₹ 5,20,000 from business and ₹ 32,000 as interest on fixed deposits held with Canara Bank for the year ended 31st March, 2021. How much would be the amount of tax deductible at source by the bank on the said deposit?
- (A) NIL
(B) ₹ 3,200
(C) ₹ 6,400
(D) ₹ 9,600

44. Ramesh (age 75) engaged in business has total income of ₹ 8,00,000 for the year ended 31st March, 2021. How much of advance tax, he must have paid before 15th December, 2020 ? Ignore section 115BAC.
- (A) NIL
(B) ₹ 72,800
(C) ₹ 54,600
(D) ₹ 43,680
45. For which of the following, the filing of return of income is mandatory ?
- (A) Acquired jewellery for ₹ 2,10,000
(B) Made foreign travel and incurred expenditure of ₹ 2,05,000
(C) Made aggregate cash deposit in a savings bank account of ₹10,01,000 in the previous year
(D) Paid electricity bill of ₹ 56,000 in the previous year
46. A return of income filed by the assessee was found defective by the CPC, Bengaluru. The assessee was intimated of the defect on 02.04.2020. What is the time limit within which the defect has to be rectified by the assessee ?
- (A) 30.04.2020
(B) 17.04.2020
(C) 30.09.2020
(D) 31.03.2021
47. A assessee has admitted total income of ₹ 5,50,000 and filed return of income in the month of January of the assessment year (i.e. for asst. year 2020-21 in March 2021). How much is the fee payable under section 234F ?
- (A) ₹ 10,000
(B) ₹ 5,000
(C) ₹ 1,000
(D) NIL
48. MNO (P) Ltd filed its return for assessment year 2021-22 on 10.05.2021. State the time limit within which a notice under section 143(2) has to serve on the assessee.
- (A) 31.03.2022
(B) 31.12.2021
(C) 30.09.2022
(D) 30.09.2021

49. *The income tax assessment under section 143(3) of the Act of Jayant Co. Ltd. was completed by the Deputy Commissioner of Income Tax. Before whom, should Jayant Co. Ltd file its appeal against assessment ?*
- (A) *Joint Commissioner*
 - (B) *Commissioner of Income Tax (Appeals)*
 - (C) *ITAT*
 - (D) *High Court*
50. *X Co. (P) Ltd. having turnover of ₹ 220 lakhs for the previous year ended 31st March, 2021 failed to furnish tax audit report under section 44AB. How much could be levied as penalty on the assessee for the failure to furnish audit report under section 44AB ?*
- (A) *₹ 1,00,000*
 - (B) *₹ 1,10,000*
 - (C) *₹ 1,50,000*
 - (D) *₹ 10,000*

PART – II

51. *Who can be the chairperson for the Goods and Service Tax Council ?*
- (A) *Prime Minister*
 - (B) *President of India*
 - (C) *Union Finance Minister*
 - (D) *Any Minister nominated by any State Government as Minister of GST Council*
52. *Which of the following product is liable for Central Excise duty and not liable for GST ?*
- (A) *Aviation Turbine Fuel*
 - (B) *Jewellery*
 - (C) *Floor Tiles*
 - (D) *Iron and Steel*
53. *Which of the following shall not be treated as deemed supply under GST ?*
- (A) *Supply of goods of Principal to agent for the purpose of sale of such goods by agent on behalf of principal*
 - (B) *Import of service by a person from any of his other establishment outside India*
 - (C) *Permanent transfer of business assets where input tax credit has been availed on such assets*
 - (D) *Services from employee to employer*

54. Which of the following will not fall in the category of 'supply of service' ?
- (A) Renting of immovable property
 - (B) Permitting temporary use of intellectual property right
 - (C) Services of High Court
 - (D) Licence to occupy vacant land
55. Which of the following would be treated as deemed supply of goods or services?
- (A) Gift by employer to employee exceeding ₹ 50,000
 - (B) Funeral service
 - (C) Sale of land
 - (D) Functions performed by Members of Parliament
56. Soundarya & Co. sold product A, Product B and Product C as mixed supply. If sold separately the applicable GST rates are 5%, 12% and 28% respectively. What GST rate would apply when they are supplied together ?
- (A) 5% i.e. least rate
 - (B) 28% i.e. highest rate
 - (C) 12% i.e. standard rate
 - (D) 15% i.e. average rate
57. For a trader in the State of Uttarakhand, what is the turnover limit for supply of goods in order to opt for Composition Scheme ?
- (A) ₹ 75 lakhs
 - (B) ₹ 100 lakhs
 - (C) ₹ 150 lakhs
 - (D) ₹ 200 lakhs
58. Dhoni & Co., Delhi placed order with Rahul Trade LLP., Bengaluru for supply of 40 laptops to be delivered to its branch at Chennai. The supplier Rahul Trade LLP directed its branch in Coimbatore to deliver the same. What is the place of supply in this case ?
- Note : Chennai and Coimbatore are in the same State of Tamil Nadu.
- (A) Delhi
 - (B) Bengaluru
 - (C) Chennai
 - (D) Coimbatore

59. *Chennai Branch of BA Trainers Ltd rendered training to employees of CD Co. Ltd. of Hyderabad at Lonawala near Pune (Maharashtra). The head office of BA Trainers is located in Kolkata. Where is the place of supply of services ?*
- (A) *Chennai*
 - (B) *Kolkata*
 - (C) *Hyderabad*
 - (D) *Lonawala (Maharashtra)*
60. *Q Ltd, Kanpur supplied goods to R Ltd. of Delhi. The goods were removed on 20.10.2020 and were delivered on 23.10.2020. The invoice was issued on 02.11.2020 and the payment for supply was received on 31.12.2020. What is the time of supply ?*
- (A) *31.12.2020*
 - (B) *23.10.2020*
 - (C) *20.10.2020*
 - (D) *02.11.2020*
61. *What is the time of supply in the case of reverse charge mechanism ?*
- (A) *30 days from the date of invoice*
 - (B) *Date of receipt of goods*
 - (C) *Date of payment as reflected in the books of recipient*
 - (D) *Of all the above, whichever is earlier*
62. *What is the time of supply of service under reverse charge mechanism ?*
- (A) *60 days from the date of service*
 - (B) *90 days from the date of service*
 - (C) *60 days from the date of invoice and date of payment – whichever is earlier*
 - (D) *90 days from the date of service and date of payment – whichever is earlier*
63. *Which of the following will not be included in the value of taxable supply ?*
- (A) *Packing expenses incurred before delivery of goods or supply of services*
 - (B) *Interest collected from buyer for delayed payment of any consideration for any supply*
 - (C) *Discount granted for prompt payment by the recipient of supply as per terms of contract*
 - (D) *Penalty for delayed payment of any consideration for any supply*

64. When the value of supply is not determinable, the value as per Rule 30 of CGST Rules, 2017 shall be :
- (A) 110% of the cost of manufacture
 - (B) 120% of the cost of manufacture
 - (C) 105% of the cost of manufacture
 - (D) 150% of the cost of manufacture
65. Manked & Co. Delhi made supplies of ₹ 4,15,000 to Gupta & Co. of Noida (UP). Besides, it charged ₹ 10,000 towards packing charges. Mankad & Co. received ₹ 25,000 as subsidy from an NGO for such supply. It allowed discount @ 2% which is mentioned in the invoice. What is the value of supply ?
- (A) ₹ 4,06,700
 - (B) ₹ 4,41,000
 - (C) ₹ 4,16,500
 - (D) ₹ 4,31,200
66. A banking company has ₹ 52,000 by way of input tax credit for the month of January, 2021. How much of input tax credit it can avail and how much would lapse ?
- (A) ₹ 26,000 and balance 50% of ITC would lapse
 - (B) ₹ 13,000 and balance 75% of ITC would lapse
 - (C) ₹ 39,000 and balance 25% of ITC would lapse
 - (D) ₹ 52,000 and nothing would lapse
67. Purchase invoices beyond what period are not eligible for input tax credit ?
- (A) 6 months
 - (B) 1 year
 - (C) 2 years
 - (D) 9 months
68. Balaram has made purchase of raw material vide invoice dated 11.01.2021 which has IGST of ₹ 24,000 (18%). Up to which date, he is entitled to take input tax credit ?
- (A) 10.07.2021
 - (B) 10.01.2022
 - (C) 10.01.2023
 - (D) 10.10.2021

69. Chand & Co. bought a machine for ₹ 3 lakhs on 01.04.2019 plus GST @ 18% was charged on it. The goods manufactured became chargeable w.e.f. 01.08.2020. How much of input tax credit on such machinery purchase could be availed after the goods manufactured by it became taxable under GST ?
- (A) ₹ 40,500
(B) ₹ 27,000
(C) ₹ 54,000
(D) ₹ 37,800
70. Rex Ltd. purchased a machine for ₹ 5 lakhs plus GST 12% on 01.05.2019. It availed input tax credit and used the machine for manufacture of goods. On 12.12.2020, the machine was sold to its allied concern for ₹ 1,50,000 plus GST @ 12%. How much is the GST payable on sale of machine ?
- (A) ₹ 39,000
(B) ₹ 36,000
(C) ₹ 33,000
(D) ₹ 18,000
71. Trade LLP sent raw materials to a job worker on 01.06.2020. The raw materials were processed and became finished product. Within how many days the finished goods is either be brought back to its place or sold on its behalf from the premises of job worker ?
- (A) 4 months
(B) 6 months
(C) 1 year
(D) 2 years
72. Alpha Ltd dispatched on 10.09.2019 raw material to Beta Ltd for conversion into finished product. Beta Ltd manufactured and supplied finished goods to Alpha Ltd on 10.01.2021. The input tax credit on raw materials @ 5% was ₹ 3 lakhs. The finished goods were sold on 17.01.2021 for ₹ 100 lakhs and output tax was @ 12%. What would be the net output tax liability ?
- (A) ₹ 12 lakhs
(B) ₹ 9 lakhs
(C) ₹ 7 lakhs
(D) NIL
73. Which of the following utilization of input tax credit is not permitted ?
- (i) ITC of IGST against CGST
(ii) ITC of SGST against CGST

- (iii) ITC or IGST against SGST*
 - (iv) ITC of UTGST against CGST*
 - (v) ITC of CGST against UTGST*
 - (A) (i), (ii) and (iii)*
 - (B) (ii), (iii) and (iv)*
 - (C) (ii), (iv) and (v)*
 - (D) (iii), (iv) and (v)*
74. *The amount available in electronic credit ledger cannot be used for payment of which of the following :*
- (A) Interest*
 - (B) Penalty*
 - (C) Fees*
 - (D) All of the above*
75. *Which of the following persons need not obtain registration under GST on mandatory basis ?*
- (A) Persons making any inter-state taxable supply*
 - (B) Persons who are required to pay tax under reverse charge*
 - (C) Input Service Distributor*
 - (D) Supply of produce from the land cultivated by agriculturist*
76. *Bimal commenced proprietary business on 01.05.2020. His total value of supply exceeded the limit for mandatory registration on 05.09.2020. Within how many days, he is liable to get registered under the CGST Act, 2017 ?*
- (A) 5 days*
 - (B) 15 days*
 - (C) 30 days*
 - (D) 60 days*
77. *When the application seeking registration under GST is deficient and the proper officer has sought some details, within how many days of such intimation the applicant should furnish clarification, information or documents sought through electronic mode ?*
- (A) Within 7 days from the date of receipt of such intimation*
 - (B) Within 15 days from the original date of application for registration*
 - (C) Within 15 days from the date of receipt of such information*
 - (D) Within 30 days from the original date of application for registration*

78. *What is the time limit for issuing tax invoice in case of taxable supply of service?*
- (A) *Within 10 days from the date of supply of service*
 - (B) *Within 15 days from the date of receipt of consideration for supply of service*
 - (C) *Within 30 days from the date of receipt of consideration for supply of service*
 - (D) *Within 30 days from the date of supply of service*
79. *Mark & Co. LLP is a registered person under CGST Act. It has maintained books of FY 2018-19 and the GST annual return was also filed before the due date. Up to what period, the books of account and ancillary records of the financial year 2018-19 have to be retained by it ?*
- (A) *48 months from the due date of furnishing the annual return the books of account and ancillary records have to be retained by it*
 - (B) *60 months from the due date of furnishing the annual return the books of account and ancillary records have to be retained by it*
 - (C) *72 months from the due date of furnishing the annual return the books of account and ancillary records have to be retained by it*
 - (D) *84 months from the due date of furnishing the annual return the books of account and ancillary records have to be retained by it*
80. *What is the validity period of an e-way bill when the goods travel 500 kilometers between place of dispatch and place of destination of such goods ?*
- (A) *1 day*
 - (B) *3 days*
 - (C) *5 days*
 - (D) *7 days*
81. *Atul & Co. is a partnership firm engaged in manufacturing activity. For the outward supplies made in the month of January, 2021, what is the due date for filing GSTR-1 ?*
- (A) *05.02.2021*
 - (B) *11.02.2021*
 - (C) *10.02.2021*
 - (D) *20.02.2021*
82. *Ramji Medicals is a retail trader of medicines covered by composition levy of GST. For the financial year 2020-21, what is the 'due date' for filing annual return GSTR-4 ?*
- (A) *31.05.2021*
 - (B) *30.04.2021*

- (C) 30.09.2021
(D) 31.07.2021
83. What is the monetary limit beyond which a certificate in GST-RFD-1 by a Chartered Accountant or a Cost Accountant must be submitted along with the refund application ?
- (A) ₹ 1,00,000
(B) ₹ 2,00,000
(C) ₹ 5,00,000
(D) ₹ 10,00,000
84. A & Co. has output tax of IGST of ₹ 50,000; CGST ₹ 60,000 and SGST ₹ 90,000. It has input tax credit by way of IGST ₹ 90,000, CGST ₹ 30,000; SGST ₹ 38,000. How much is the net tax liability/ITC after set off ?
- (A) IGST=Nil/CGST=Nil/ SGST= ₹ 42,000
(B) IGST=Nil/CGST= ₹ 30,000/S GST= ₹ 12,000
(C) IGST= ₹(40,000)/CGST= ₹30,000/ SGST = ₹ 52,000
(D) IGST input = ₹ 11,000/CGST= Nil/ SGST = ₹52,000
85. What is the frequency and due date for filing GSTR-8 by e-commerce operator?
- (A) Monthly/20th of next month
(B) Quarterly/10th of day of next month after each quarter
(C) Half yearly – 10th day of the month after the half year
(D) Monthly/10th day of every next month
86. What is the highest rate of tax applicable under IGST ?
- (A) 12%
(B) 18%
(C) 40%
(D) 28%
87. What is the highest applicable approved rate prescribed under UTGST ?
- (A) 12%
(B) 18%
(C) 20%
(D) 28%

88. *To which of the following Union Territory the provisions of UTGST Act, 2017 will not apply ?*
- (A) Chandigarh
 - (B) Delhi
 - (C) Lakshadweep
 - (D) Andaman & Nicobar Islands
89. *Which of the following is not covered by exempt supply under UTGST Act, 2017?*
- (A) Goods with 'Nil' rate
 - (B) Non-taxable supply
 - (C) Goods exempt under section 8 UTGST Act
 - (D) Zero rated supply
90. *Which GST law would apply when goods are imported from foreign country ?*
- (A) CGST + SGST
 - (B) IGST
 - (C) CGST + UTGST
 - (D) IGST + UTGST
91. *What is the base year for the purpose of calculating the compensation under GST (Compensation to State) Act, 2017 ?*
- (A) F.Y. 2017-18
 - (B) F.Y. 2016-17
 - (C) F.Y. 2015-16
 - (D) F.Y. 2018-19
92. *Albert Co. Ltd, Chennai imported machinery from Germany for its unit located in EOU. The machine reached Chennai Port on 20.02.2021. The undertaking has deferred manufacture of article for which the machinery was originally imported. What is the time period up to which the machinery can be kept in the warehouse at port without payment of customs duty ?*
- (A) 6 months
 - (B) 1 year
 - (C) 3 years
 - (D) 5 years

93. *Beta Ltd, Mumbai imported machinery from Denmark. After using the machinery for 16 months, it was sold to Gama Inc. Canada. How much of the custom duty paid is eligible for refund to Beta Ltd ?*
- (A) 85%
 - (B) 75%
 - (C) 60%
 - (D) 50%
94. *Geo Ltd, Ahmedabad exported its machinery to EXE Co. Inc. of UK. It paid export duty of ₹ 21 lakhs. After using them for 12 months it was returned by Exe Inc. UK to Geo Ltd. How much Geo Ltd. is eligible for refund of export duty paid earlier ?*
- (A) ₹ 5,25,000 (25%)
 - (B) ₹ 10,50,000 (50%)
 - (C) ₹ 21,00,000 (100%)
 - (D) NIL
95. *Which of the following imported goods is not liable for confiscation ?*
- (A) *Prohibited goods found concealed in conveyance*
 - (B) *Dutiable goods removed from customs station, without permission*
 - (C) *Goods imported by sea off-loaded in an appointed Customs Port*
 - (D) *Goods imported by land through a route other than a specified route*
96. *The Authority for Advance Ruling (AAR) must give its ruling within.....days of the application.*
- (A) 30
 - (B) 45
 - (C) 90
 - (D) 120
97. *Beyond what time if the Duty drawback is not refunded, it becomes eligible for interest ?*
- (A) *Within 1 month*
 - (B) *Within 3 months*
 - (C) *Within 6 months*
 - (D) *Within 12 months*

98. *What is the rate of social welfare surcharge which is levied on Basic Customs Duty ?*
- (A) 10%
 - (B) 20%
 - (C) 30%
 - (D) 5%
99. *When goods cannot be classified in accordance with Rules 1, 2 or 3, how is it classified by applying which of the residuary principle ?*
- (A) *Latter the better principle*
 - (B) *Akin Principle*
 - (C) *Essential Character Principle*
 - (D) *Specific identification principle*
100. *In determination of FOB value of import what is the presumptive rate of cost of transport, if the actual cost is not ascertainable ?*
- (A) 10% of CIF Value
 - (B) 20% of FOB Value
 - (C) 20% of CIF Value
 - (D) 5% of FOB Value

ANSWER KEY
TAX LAWS - SELECT SERIES

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

Notes :

- Q. No. 4 None of the option are correct. Correct Answer is Rs. 18200
- Q. No. 5 Both option B/C may be considered as correct. Question is mentioned sale of Coffee grown and manufactured. If manufacturing is only limited to cured then Correct option is C i.e. Rs. 2,00,000. If manufacturing is related to cured, roasted and grounded, then Option B i.e. Rs. 3,20,000 is correct.
- Q. No. 11 None of the option are correct. Correct Answer is Rs. 2,68,800.
- Q. No. 15 Both option B/D may be considered as correct. Option B is correct if Mr. Martin is Non-Resident. Option D is correct if Mr. Martin is Resident.
- Q. No. 21 None of the option are correct. Correct answer is Rs. 380000.
- Q. No. 24 Option C and D both may be considered as correct.
- Q. No. 31 None of the options are correct. Correct answer is Rs. 959000.
- Q. No. 41 Option B is correct if concessional rate of TDS applied due to Pandemic. Option C is correct if no concessional rate is applied.
- Q. No. 42 Option B is correct if concessional rate of TDS applied due to Pandemic. Option C is correct if no concessional rate is applied.
- Q. No. 47 The Due date of filing of return of income has been extended for AY 2020-21 during the pandemic period. Option A is correct without considering the extended due date during the pandemic. Option D is correct considering the extended due date during the pandemic period.
- Q. No. 65 Solution of the given question is Rs. $415000+10,000+25,000- 8300$ (2% of 4,15,000) =Rs. 4,41,700.
- Q. No. 67 Section 16 (4) of Central Goods and Services Act, 2017 provides that A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- Q. No. 68 Section 16 (4) of Central Goods and Services Act, 2017 provides that A registered person shall not be entitled to take input tax credit in respect of any invoice or debit note for supply of goods or services or both after the due date of furnishing of the return under section 39 for the month of September following the end of financial year to which such invoice or debit note pertains or furnishing of the relevant annual return, whichever is earlier.
- Q. No. 72 Correct Answer is option B as Output Tax: 12% of Rs. 100 Lakhs = Rs. 12 Lakhs; Less: Input Tax Credit - Rs. 3 Lakhs; The net output tax liability will be Rs. 9 Lakhs.

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