

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME (*New Syllabus*)

JUNE 2019

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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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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PROFESSIONAL PROGRAMME EXAMINATION

JUNE 2019

**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

PART - I

Question 1

ABC Ltd. is a public limited company listed on NSE and BSE. The company is enjoying cash credit limit of Rs 10 crores with Trust Bank against the book debts. The said cash credit limit is renewed from time to time and for this purpose the Trust Bank requires the financial papers from the company which include the Balance Sheet and Profit and Loss Account, list of sundry debtors (with age-wise outstanding) and projected financial data viz: Turnover, Profit, Non-performing debtors etc.

The company was in the process of the finalisation of its annual accounts as of 31st March, 2018 and the same was to be put before the Audit Committee of Board (ACB), meeting of which was scheduled to be held on 5th July, 2018, for recommendation to the Board of Directors. The CC limit with the Trust Bank which was due for renewal from 31st March, 2018, renewed on ad-hoc basis for three months only on the basis of provisional data, subject to the submission of final papers, else the CC limit account of the company will turn into non-performing account. Since the Trust Bank also wants the CC Limit account in performing status, it insisted the company to submit the final data even before the approval of the ACB/ Board in order to renew the limit and prevent the account from turning into NPA.

Based on the above facts the Company approaches you, being a Corporate Law Consultant.

Answer the following queries raised by the ABC Ltd. :

- (a) Whether HP Ltd can provide the financial information (which is price sensitive information) to its banker without getting it perused and approved by the ACB and Board ? Quote your answer with relevant provisions of law.*
- (b) If the Manager of the Trust Bank Branch, where the CC Limit account is maintained, is provided the unapproved financial papers and on the basis of these financial papers, he comes to know that company has shown profit with a rise of 20% from the previous year, so he purchased the shares of the company from the market with lesser price (in expectation of high jump in price after declaration of the result). When the results were officially declared by the company, the shares jumped to 30% and the branch manager off loaded the purchases so made. Whether the Manager will be treated as Insider as per the SEBI (Prohibition of Insider Trading) Regulations, 2015 ?*

- (c) What are the provisions relating to the trading when a person is in possession of unpublished price sensitive information as per the SEBI (Prohibition of Insider Trading) Regulations, 2015 ?
- (d) What are the penal provisions for insider trading as prescribed in the Companies Act, 2013 and SEBI Act, 1992. (5 marks each)

Answer 1(a)

In terms of Sub-Regulation (1) of Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 2015, no insider shall communicate, provide, or allow access to any unpublished price sensitive information, relating to a company or securities listed or proposed to be listed, to any person including other insiders except where such communication is in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Sub-Regulation (2) of Regulation 3 states that no person shall procure from or cause the communication by any insider of unpublished price sensitive information relating to a company or securities listed or proposed to be listed, except in furtherance of legitimate purposes, performance of duties or discharge of legal obligations.

Sub-Regulation (2A) of Regulation 3 provides that the board of directors of a listed company shall make a policy for determination of “legitimate purposes” as a part of “Codes of Fair Disclosure and Conduct” formulated under regulation 8.

The Explanation to Sub-Regulation (2A) of Regulation 3 further clarifies that for the purpose of illustration, the term “legitimate purpose” shall include sharing of unpublished price sensitive information in the ordinary course of business by an insider with partners, collaborators, lenders, customers, suppliers, merchant bankers, legal advisors, auditors, insolvency professionals or other advisors or consultants, provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

Thus, as a prudent rule the price sensitive information should not be passed on until it is for legitimate purposes. However, as per Explanation to Sub-Regulation (2A), unpublished price sensitive information can be shared with banker/lender for legitimate purposes like renewal of Credit limits provided that such sharing has not been carried out to evade or circumvent the prohibitions of these regulations.

Answer 1(b)

Sub-Regulation (2B) of Regulation 3 of SEBI (Prohibition of Insider Trading) Regulations, 2015 provides that any person in receipt of unpublished price sensitive information pursuant to a “legitimate purpose” shall be considered an “insider” for purposes of these regulations and due notice shall be given to such persons to maintain confidentiality of such unpublished price sensitive information in compliance with these regulations.

According to the above para, the branch manager who is in receipt of unpublished price sensitive information for the legitimate purpose is an insider under the regulations.

Also as per Regulation 4(1), no insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information. When a person who has traded in securities has been in

possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Answer 1(c)

Regulation 4 of SEBI (Prohibition of Insider Trading) Regulations, 2015 deals with the provisions relating to trading when in possession of unpublished price sensitive information.

Regulation 4(1) : No insider shall trade in securities that are listed or proposed to be listed on a stock exchange when in possession of unpublished price sensitive information:

Explanation – When a person who has traded in securities has been in possession of unpublished price sensitive information, his trades would be presumed to have been motivated by the knowledge and awareness of such information in his possession.

Provided that the insider may prove his innocence by demonstrating the circumstances including the following:

- (i) the transaction is an off-market inter-se transfer between insiders who were in possession of the same unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision. Provided that such unpublished price sensitive information was not obtained under sub-regulation (3) of regulation 3 of these regulations. Provided further that such off-market trades shall be reported by the insiders to the company within two working days. Every company shall notify the particulars of such trades to the stock exchange on which the securities are listed within two trading days from receipt of the disclosure or from becoming aware of such information.
- (ii) the transaction was carried out through the block deal window mechanism between persons who were in possession of the unpublished price sensitive information without being in breach of regulation 3 and both parties had made a conscious and informed trade decision; Provided that such unpublished price sensitive information was not obtained by either person under sub-regulation (3) of regulation 3 of these regulations.
- (iii) the transaction in question was carried out pursuant to a statutory or regulatory obligation to carry out a bona fide transaction.
- (iv) the transaction in question was undertaken pursuant to the exercise of stock options in respect of which the exercise price was pre-determined in compliance with applicable regulations.
- (v) in the case of non -individual insiders: –
 - (a) the individuals who were in possession of such unpublished price sensitive information were different from the individuals taking trading decisions and such decision-making individuals were not in possession of such unpublished price sensitive information when they took the decision to trade; and

- (b) appropriate and adequate arrangements were in place to ensure that these regulations are not violated and no unpublished price sensitive information was communicated by the individuals
- (c) possessing the information to the individuals taking trading decisions and there is no evidence of such arrangements having been breached;
- (vi) the trades were pursuant to a trading plan set up in accordance with regulation 5.

Regulation 4(2): In the case of connected persons the onus of establishing, that they were not in possession of unpublished price sensitive information, shall be on such connected persons and in other cases, the onus would be on the Board.

Regulation 4(3): The Board may specify such standards and requirements, from time to time, as it may deem necessary for the purpose of these regulations.

Answer 1(d)

Section 195 of the Companies Act 2013, which was dealing with the matter relating to insider trading has been omitted by the Companies Amendment Act, 2017 w.e.f 09/02/2018.

However, penalty for insider trading is provided under Section 15G of the SEBI Act, 1992. It provides that if any insider who,—

- (i) either on his own behalf or on behalf of any other person, deals in securities of a body corporate listed on any stock exchange on the basis of any unpublished price-sensitive information; or
- (ii) communicates any unpublished price-sensitive information to any person, with or without his request for such information except as required in the ordinary course of business or under any law; or
- (iii) counsels, or procures for any other person to deal in any securities of anybody corporate on the basis of unpublished price-sensitive information, shall be liable to a penalty which shall not be less than ten lakh rupees but which may extend to twenty-five crore rupees or three times the amount of profits made out of insider trading, whichever is higher.

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

Question 2

- (a) *The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises. Elucidate the statement.*
- (b) *Dr. Ganguly Committee recommended some Corporate Governance norms which are applicable only to private sector bank. What were these recommendations ?*
- (c) *Whether the rule of majority, was established in the case of Foss v. Harbottle [(1843) 67 ER 189], is still relevant ? Narrate your answer with relevant provisions of the Companies Act, 2013 and in light of the decided case law.*

(5 marks each)

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

- (i) *What is the Code for Stewardship for the insurers ?*
- (ii) *"The NFRA is an independent regulator established under Section 132 of the Companies Act, 2013 to oversee the auditing profession". Discuss.*
- (iii) *Write a brief note on "The ICSI National Awards for Excellence in Corporate Governance".* (5 marks each)

Answer 2(a)

OECD has defined corporate governance to mean "A system by which business corporations are directed and controlled". Corporate governance structure specifies the distribution of rights and responsibilities among different participants in the company such as board, management, shareholders and other stakeholders; and spells out the rules and procedures for corporate decision making.

The corporate governance framework should recognise the rights of stakeholders established by law or through mutual agreements and encourage active co-operation between corporations and stakeholders in creating wealth, jobs, and the sustainability of financially sound enterprises – this statement is the fourth principle of OECD Principles of Governance. This principle recognizes the interest of stakeholders and their contribution to the long term success of the company. The corporate governance framework should consider interest of all stakeholders and include following -

- The rights of stakeholders that are established by law or through mutual agreements are to be respected.
- Where stakeholder interests are protected by law, stakeholders should have the opportunity to obtain effective redress for violation of their rights.
- Mechanisms for employee participation should be permitted to develop.
- Where stakeholders participate in the corporate governance process, they should have access to relevant, sufficient and reliable information on a timely and regular basis.
- Stakeholders, including individual employees and their representative bodies, should be able to freely communicate their concerns about illegal or unethical practices to the board and to the competent public authorities and their rights should not be compromised for doing this.
- The corporate governance framework should be complemented by an effective, efficient insolvency framework and by effective enforcement of creditor rights.

Answer 2(b)

The RBI vide its circular dated 20th June 2002, circulated to all scheduled commercial banks, a Report of the Consultative Group of Directors of Banks/Financial Institutions (Dr. Ganguly Group) - Implementation of recommendations. The RBI through this circular urged the banks that these recommendations be adopted and implemented by banks.

Dr. Ganguly Committee's recommendations on corporate governance applicable only to private sector bank are as under:

- (I) Eligibility criteria and 'fit and proper' norms for nomination of directors:
 - (a) The Board of Directors of the banks while nominating/ co-opting directors should be guided by certain broad 'fit and proper' norms for directors, viz. formal qualification, experience, track record, integrity etc.
 - (b) The following criteria, which are considered for the boards of public sector banks, may also be followed for nominating independent/ non-executive directors on private sector banks:
 - The candidate should normally be a graduate (which can be relaxed while selecting directors for the categories of farmers, depositors, artisans, etc.)
 - He/she should be between 35 and 65 years of age.
 - He/she should not be a Member of Parliament/Member of Legislative Assembly/ Member of Legislative Council.
- (II) Commonality of directors of banks and non-banking finance companies (NBFC):

In case, a director on the board of an NBFC is to be considered for appointment as director on the board of the bank, the following conditions must be followed:

 - He/she is not the owner of the NBFC, [i.e., share holdings (single or jointly with relatives, associates, etc.) should not exceed 50%].
 - He/she is not related to the promoter of the NBFC.
 - He/she is not a full-time employee in the NBFC.
 - The concerned NBFC is not a borrower of the bank.
- (III) Composition of the Board:

The composition of the Board should be commensurate with the business needs of the banks and should be blend of professionals having skills such as, marketing, technology and systems, risk management, strategic planning, treasury operations, credit recovery etc.

Answer 2(c)

In the case of *Foss v. Harbottle [1843]*, it was held that the Courts would not generally interfere with the decisions of the company which it was empowered to take in so far they had been approved of by the majority and made exceptions to breaches of charter documents, fiduciary duties and frauds or oppression and inadequate notice to the shareholders. The principle is still relevant as the court was right in ruling that every shareholder is bound by the terms and conditions of incorporation of the company, which operated as a set of mutually binding obligations.

However, in the process of implementing the objectives of the company, one should not override the legitimate expectations of minority shareholders. The following are the

various sections which deal with the minority shareholders under the Companies Act, 2013.

- Oppression & Mismanagement [Sections 241-246]
- Class Action Suits [Section 245]
- Appointment of director by small shareholders (Section 151)
- Promoting the confidence of minority shareholders (Schedule IV - Code for Independent Directors)

Case : In a judgment by Supreme Court, upholding the landmark judgement passed by Madras High Court (HC), ordered S V Global (SVG) Mill, which was carved out of the 200-year-old textiles major Binny, to pay Rs. 100 crore to minority shareholders to buy them out. The minority shares were owned by S Natarajan, one of the original promoters of Binny, and his associates. The Apex court, under Article 142 of the Constitution, directed that a sum of Rs. 100 crore be paid, to the respondents (associates of Natarajan) for the buyout of all the respondents' shares in the company.

Answer 2A(i)

The IRDAI has implemented a code for stewardship for the insurers. The code is in the form of a set of principles, which the insurers would need to adopt. The principles may be uniformly adopted for institutional investors, like Mutual Funds, Pension Funds, Foreign Portfolio Investors (FPIs), Alternative Investment Funds (AIFs), etc. The code broadly requires the insurers to have a policy as regards their conduct at general meetings of the investee companies and the disclosures relating thereto. The code was made applicable from FY 2017-18.

Stewardship Principles provided in the Code

- Principle 1: Insurers should formulate a policy on the discharge of their stewardship responsibilities and publicly disclose it.
- Principle 2: Insurers should have a clear policy on how they manage conflicts of interest in fulfilling their stewardship responsibilities and publicly disclose it.
- Principle 3: Insurers should monitor their investee companies.
- Principle 4: Insurers should have a clear policy on intervention in their investee companies.
- Principle 5: Insurers should have a clear policy for collaboration with other institutional investors, where required, to preserve the interests of the policyholders (ultimate investors), which should be disclosed.
- Principle 6: Insurers should have a clear policy on voting and disclosure of voting activity.

Answer 2A(ii)

The NFRA is an independent regulator established under Section 132 of the Companies Act, 2013 to oversee the auditing profession. The NFRA has been established as an independent regulators for enforcement of auditing standards and ensuring the quality of

audits to strengthen the independence of audit firms and therefore enhance investor and public confidence in financial disclosures of companies. The powers and functions of NFRA are majorly pertaining to oversee the auditing profession that may be studied under the following points-

- (A) To investigate either suo-motu or on a reference made by the Central Government in matters of professional misconduct committed by any member or Chartered Accountants firm.
- (B) To make recommendations to the Central Government on formulation and laying down of accounting standards and auditing policies for adoption by companies or their auditors.
- (C) To monitor and implement compliance relating to accounting standards and auditing policies as prescribed.
- (D) To oversee the quality of service of professions associated with compliance of accounting standards and auditing policies and suggest measures for improvement.
- (E) NFRA shall have equivalent powers as a civil court under the Code of Civil Procedure, 1908. It can exercise the powers related to:-
 - (i) discovery and production of books or other documents as specified by NFRA;
 - (ii) summoning and enforcing the attendance of persons and examining them on oath;
 - (iii) inspection of books, registers and other documents of any person;
 - (iv) issuing commissions for examination of witness or other documents.
- (F) NFRA may impose penalties:
 - (i) not less than one lakh rupees which may extend up to five times of the fees received in case of individuals and
 - (ii) not less than ten lakh rupees which may extend up to ten times of the fees received in case of firms.
- (G) NFRA may consider an investigation based on monitoring and compliance review of auditor or audit firm upon recommendations by Member- Accounting and Member- Auditing.
- (H) NFRA shall receive a final report from the Committee on Enforcement on matters referred to them and issue a notice in writing to the investigated company or the professional on whom the action is proposed to be taken.
- (I) NFRA may conduct quality review of the following class of companies:-
 - (a) Listed companies,
 - (b) Unlisted companies having net worth or paid up capital of not less than 500 crores or annual turnover of not less than 1000 crores as on 31st March of immediately preceding financial year,

- (c) Companies having securities listed outside India.
- (J) NFRA may debar any member or a firm from engaging himself or itself from practice as a member of the Institute of Chartered Accountants of India for a minimum period of six months which may extend upto ten years on account of proved misconduct.
- (K) NFRA shall have the power to accept or overrule clarifications received or objections raised in writing.
- (L) NFRA may investigate against the auditor or audit firms which conducts-
- (a) audit of 200 or more companies in a year,
 - (b) audit of 20 or more listed companies.

Answer 2A(iii)

The ICSI National Awards for Excellence in Corporate Governance : In pursuit of excellence and to identify, foster and reward the culture of evolving globally acceptable standards of corporate governance among Indian companies, the “ICSI National Award for Excellence in Corporate Governance” was instituted by the ICSI in the year 2001. The Awards are based on the outcome of concerted and comprehensive process of evaluation which enables the Jury to judge on the basis of parameters, the practices of corporate governance as followed by Indian corporates and acknowledge the best practices worthy of being exemplified. The underlying guideline for the Corporate Governance Award is to identify the corporates, which follow the best corporate governance norms in letter and spirit. The institution of the Award aims at promoting the cause of Corporate Governance by:

- Recognizing leadership efforts of corporate boards in practising good corporate governance principles in their functioning;
- Recognizing implementation of innovative practices, programmes and projects that promote the cause of corporate governance;
- Enthusing the corporates in focusing on corporate governance practices in corporate functioning; and
- Implementation of acknowledged corporate governance norms in letter and spirit.

The Institute also annually bestows upon a corporate leader the “ICSI Lifetime Achievement Award for Translating Excellence in Corporate Governance into Reality” keeping in view the attributes like:

- Outstanding contribution to social upliftment and institution building;
- Exemplary contribution in enhancement of stakeholders’ value;
- A visionary with innovative ideas;
- Long tradition of trusteeship, transparency and accountability;
- Qualities of leadership, team spirit, integrity and accountability;
- Proven track record of adherence of statutory obligations; and
- Social acceptance and approval.

Question 3

- (a) *A successful compliance-risk management program which is an essential for sound and vibrant operational system contains certain elements. Point out such elements.*
- (b) *CSB Ltd. a Listed Company is holding a Meeting of Board of Directors. The Agenda Items inter alia include the item for approval with respect to declaration of Interim Dividend for current fiscal. However, information of the Meeting as well as for closing of the trading window has already been intimated to the Stock Exchange. There are 7 members on the Board of Directors. On the date of Meeting, 2 Directors were out of Country, whereas the remaining Directors were present in the Meeting. The Directors in abroad were willing to participate through video conferencing. One of the Independent Directors objected that the item for declaration of Interim Dividend can't be discussed through video conferencing and should be deferred for ensuing physical meeting of Board of Directors.*
- Examine in the light of the provisions of the Companies Act, 2013 and list out the matters which shall not be dealt with in any meeting held through video conferencing or other audio visual means.*
- (c) *Which categories of companies are required to have Audit Committee of Board (ACB) as per the Companies Act, 2013 and as per the SEBI (LODR) Regulations, 2015.*
- (d) *Highlight the OECD Principles of Corporate Governance with respect to Disclosures and Transparency.*
- (e) *Write a brief note on Caux Round Table (CRT). (3 marks each)*

Answer 3(a)

The compliance framework needs to be comprehensive, dynamic, and customizable, allowing the organization to identify and assess the categories of compliance risk to which it may be exposed. A successful compliance-risk management program which is an essential component for sound and vibrant operational system contains the following elements:

- *Active board and senior management oversight* : An effective board and senior management oversight is the cornerstone of an effective compliance risk management process.
- *Effective policies and procedures* : Compliance risk management policies and procedures should be clearly defined and consistent with the nature and complexity of an institution's activities.
- *Compliance risk analysis and comprehensive controls* : Organizations should use appropriate tools in compliance risk analysis like self-assessment, risk maps, process flows, key indicators and audit reports; which enables in establishing an effective system of internal controls.
- *Effective compliance monitoring and reporting* : Organizations should ensure that they have adequate management information systems that provide

management with timely reports on compliances like training, effective complaint system and certifications.

- *Testing* : Independent testing should be conducted to verify that compliance-risk mitigation activities are in place and functioning as intended throughout the organization.

Answer 3(b)

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

- (a) the approval of the annual financial statements;
- (b) the approval of the Board's report;
- (c) the approval of the prospectus;
- (d) the Audit Committee Meetings for consideration of financial statements including consolidated financial statements to be approved by the Board.
- (e) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Provided that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means but he shall not be counted in quorum.

As per the rule discussed above, there is no restriction on discussing declaration of interim dividend through video conferencing. Also, if the majority of directors are present in the meeting physically, other directors can participate through video conferencing even though they shall not be counted in quorum.

Answer 3(c)

Section 177(1) of the Companies Act, 2013 provides that the Board of Directors of every listed public company and such other class or classes of companies, as may be prescribed, shall constitute an Audit Committee.

Rule 6 of the Companies (Meetings of Board & its Powers) Rules, 2014 states that the Board of directors of every listed public company and a company covered under Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 shall constitute an 'Audit Committee' and a 'Nomination and Remuneration Committee of the Board'. The class of companies covered under Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014 are-

- (i) All listed public companies
- (ii) All public companies with a paid up capital of 10 crore rupees or more;
- (iii) All public companies having turnover of 100 crore rupees or more;
- (iv) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

Regulation 18(1) of SEBI Listing Regulations, 2015 provides that every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference.

Answer 3(d)

OECD has defined corporate governance to mean “A system by which business corporations are directed and controlled”. Corporate governance structure specifies the distribution of rights and responsibilities among different participants in the company such as board, management, shareholders and other stakeholders; and spells out the rules and procedures for corporate decision making

The OECD principles of Corporate Governance with respect to Disclosures and transparency are given hereunder-

The corporate governance framework should ensure that timely and accurate disclosure is made on all material matters regarding the corporation, including the financial situation, performance, ownership, and governance of the company:

- Disclosure should include, but not be limited to, material information on:
 1. The financial and operating results of the company.
 2. Company objectives and non-financial information.
 3. Major share ownership, including beneficial owners, and voting rights.
 4. Remuneration of members of the board and key executives.
 5. Information about board members, including their qualifications, the selection process, other company directorships and whether they are regarded as independent by the board.
 6. Related party transactions.
 7. Foreseeable risk factors.
 8. Issues regarding employees and other stakeholders.
 9. Governance structures and policies, including the content of any corporate governance code or policy and the process by which it is implemented.
- Information should be prepared and disclosed in accordance with high quality standards of accounting and financial and non-financial reporting.
- An annual audit should be conducted by an independent, competent and qualified, auditor in accordance with high-quality auditing standards in order to provide an external and objective assurance to the board and shareholders that the financial statements fairly represent the financial position and performance of the company in all material respects.
- External auditors should be accountable to the shareholders and owe a duty to the company to exercise due professional care in the conduct of the audit.
- Channels for disseminating information should provide for equal, timely and cost-efficient access to relevant information by users.

Answer 3(e)

The Caux Round Table (CRT) is an international network of business leaders working to promote a morally and sustainable way of doing business. The Caux Round Table was founded in 1986 by Frits Philips Sr, former President of Philips Electronics, and Olivier Giscard d'Estaing, former Vice-Chairman of INSEAD, as a means of reducing escalating international trade tensions between Europe, Japan and the USA. At the urging of Ryuzaburo Kaku, then Chairman of Canon Inc, the CRT began to focus attention on the importance of global corporate responsibility in reducing social and economic threats to world peace and stability. This led to the development of the 1994 Caux Round Table Principles for Business around three ethical foundations, namely:

- responsible stewardship;
- the Japanese concept of Kyosei - living and working for mutual advantage; and
- respecting and protecting human dignity.

These principles recognize that while laws and market forces are necessary, they are insufficient guides for responsible business conduct. The Caux Round Table believes that the world business community should play an important role in improving economic and social conditions. Through an extensive and collaborative process in 1994, business leaders developed the CRT Principles for Business to embody the aspiration of principled business leadership. The CRT believes that its Principles for Responsible Business provide necessary foundations for a fair, free and transparent global society.

PART - II**Question 4**

- (a) *Whether Risk Management and Corporate Governance Principles have any relations ? Explain.*
- (b) *What are the different dimensions of identifying threats in Risk Analysis process? In a company there is a probability of increase of 40% cost of raw material from present level of Rs 10 crores. What shall be risk value of cost of production ?*
- (c) *While conducting the Audit, Secretarial Auditor found that by forged signature, accountant had transferred huge amount in dummy account. There was a big financial scam in the organization. Reporting on fraud, Management has desired that a Risk Management Policy to detect and control the Fraud be prepared.*

Being a Company Secretary, point out the major aspects to be included in Fraud Risk Management Policy.

- (d) *Point out the situations where the Risk Analysis may be useful.*

(5 marks each)

Answer 4(a)

Risk management and corporate governance principles are strongly interrelated. An organization implements strategies in order to reach their goals. Each strategy has related risks that must be managed in order to meet these goals. Risk is an important element of corporate functioning and governance. There should be a clearly established

process of identifying, analyzing and treating risks, which could prevent the company from effectively achieving its objectives. It also involves establishing a link between risk-return and resourcing priorities. The Board has the ultimate responsibility for identifying major risks to the organization, setting acceptable levels of risk and ensuring that senior management takes steps to detect, monitor and control these risks. The Board must satisfy itself that appropriate risk management systems and procedure are in place to identify and manage risks.

Corporate governance concerns the relationships among the management, board of directors, controlling shareholders, minority shareholders, and other stakeholders. Good corporate governance contributes to sustainable economic development by enhancing the performance of companies and increasing their access to foreign capital. Incorporating risk management in corporate governance of an organisation is very important.

Risk governance includes the skills, infrastructure and culture deployed as directors exercise their oversight. Good risk governance provides clearly defined accountability, authority, and communication/reporting mechanisms. A process for risk management cannot be initiated unless there is a perception and knowledge of risk surrounding the business. The board shall have to identify the extent and type of risks it faces and the planning necessary to manage and mitigate the same for ensuring growth for the benefit of all the stakeholders.

The updated G20/OECD Principles of Corporate Governance provides on considering the establishment of specialized board committees in areas such as remuneration, audit and risk management. The sixth principle of OECD Principles of Corporate Governance deals with the responsibilities of the board with respect to Risk Management provides-

- The board should fulfill certain key functions, including - reviewing and guiding corporate strategy, major plans of action, risk management policies and procedures, annual budgets and business plans; setting performance objectives; monitoring implementation and corporate performance; and overseeing major capital expenditures, acquisitions and divestitures.
- Ensuring the integrity of the corporation's accounting and financial reporting systems, including the independent audit, and that appropriate systems of control are in place, in particular, systems for risk management, financial and operational control, and compliance with the law and relevant standards.

Answer 4(b)

After identification of the risk parameters, the second stage is of analyzing the risk which helps to identify and manage potential problems that could undermine key business initiatives or projects. To carry out a Risk Analysis, first the possible threats are identified and then the likelihood that these threats will materialize is estimated. The analysis should be objective and should be industry specific. Within the industry, the scenario based analysis may be adopted taking into consideration of possible events that may occur and its alternative ways to achieve the given target. The first step in Risk Analysis is to identify risks or threats both existing and possible which may pertain to:

- *Human* – Illness, death, injury, or other loss of a key individual.
- *Operational* – Disruption to supplies and operations, loss of access to essential assets, or failures in distribution.

- *Reputational* – Loss of customer or employee confidence, or damage to market reputation.
- *Procedural* – Failures of accountability, internal systems, or controls, or from fraud.
- *Project* – Going over budget, taking too long on key tasks, or experiencing issues with product or service quality.
- *Financial* – Business failure, stock market fluctuations, interest rate changes, or non-availability of funding.
- *Technical* – Advances in technology, or from technical failure.
- *Natural* – Weather, natural disasters, or disease.
- *Political* – Changes in tax, public opinion, government policy, or foreign influence.
- *Structural* – Dangerous chemicals, poor lighting, falling boxes, or any situation where staff, products, or technology can be harmed.

There is a probability of increase of 40% of price rise in the raw material. If this happens, it will increase the cost of production in the next year. So, the risk value of the cost of the production can be derived by the following formula:

$$\text{Risk value} = \text{Probability of event} \times \text{Cost of event}$$

By, putting the values

$$\text{Risk value} = 0.40 (\text{Probability of event}) \times \text{Rs. } 10 \text{ Crores (Cost of event)} = \text{Rs. } 4 \text{ Crores}$$

Answer 4(c)

The management should be pro-active in fraud related matter. A fraud is usually not detected until and unless it is unearthed. A Fraud Risk Management Policy should be incorporated, aligned to its internal control and risk management. The Fraud Risk Management Policy will help to strengthen the existing anti-fraud controls by raising the awareness across the company and promote an open and transparent communication culture. It would also promote zero tolerance to fraud/misconduct and encourage employees to report suspicious cases of fraud/misconduct. The policy would spread awareness amongst employees and educate them on risks faced by the company.

The major aspects to be included in Fraud Risk Management Policy are –

- *Defining fraud* : This shall cover activities which the company would consider as fraudulent.
- *Defining Role & responsibilities* : The policy may define the responsibilities of the officers who shall be involved in effective prevention, detection, monitoring & investigation of fraud. The company may also consider constituting a committee or operational structure that shall ensure an effective implementation of anti-fraud strategy of the company. This shall ensure effective investigation in fraud cases and prompt as well as accurate reporting of fraud cases to appropriate regulatory and law enforcement authorities.
- *Communication channel* : Encourage employees to report suspicious cases of fraud/misconduct. Any person with knowledge of suspected or confirmed incident

of fraud/misconduct must report the case immediately through effective and efficient communication channel or mechanism.

- *Disciplinary action* : After due investigations disciplinary action against the fraudster may be considered as per the company's policy.
- *Reviewing the policy* : The employees should educate their team members on the importance of complying with Company's policies & procedures and identifying/ reporting of suspicious activity, where a situation arises. Based on the developments, the policy should be reviewed on periodical basis.

Answer 4(d)

After identification of the risk parameters, the second stage is of analyzing the risk which helps to identify and manage potential problems that could undermine key business initiatives or projects. To carry out a Risk Analysis, first the possible threats are identified and then estimate the likelihood that these threats will materialize. The analysis should be objective and should be industry specific. Within the industry, the scenario based analysis may be adopted taking into consideration of possible events that may occur and its alternative ways to achieve the given target.

Risk Analysis can be complex, as it requires to draw on detailed information such as project plans, financial data, security protocols, marketing forecasts and other relevant information. However, it's an essential planning tool, and one that could save time, money, and reputations. Risk analysis can be useful in many situations like:

- While planning projects, to help in anticipating and neutralizing possible problems.
- While deciding whether or not to move forward with a project.
- While improving safety and managing potential risks in the workplace.
- While preparing for events such as equipment or technology failure, theft, staff sickness, or natural disasters.
- While planning for changes in environment, such as new competitors coming into the market, or changes to government policy.

PART - III

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

Question 5

- (a) *You have been appointed as Company Secretary of a newly incorporated public limited company, which is engaged in providing logistic services across India. The company has come out with a public issue and its shares are listed at BSE and NSE. How would you implement a Corporate Compliance Management culture in the company ? (5 marks)*
- (b) *You are a company secretary of a listed company. The company has borrowings from the Banks/FIs worth Rs. 75 crores, which is in the form of Term Loan and Working Capital Finance. You noticed that the company is not having Vigil Mechanism in place. Suggest the suitable strategy to the Board for establishment*

of Vigil Mechanism in the company quoting the relevant provisions of the Companies Act, 2013 and SEBI (LODR) Regulations, 2015. (5 marks)

- (c) *Apart from Statutory Audit, for some class of companies, Internal Audit is also mandatory. Which companies are required to have Internal Audit as per the provisions of the Companies Act, 2013 ? (5 marks)*
- (d) *What are the Financial Information which are required to be disclosed on website of the Company as per Regulation 46 of SEBI (LODR) Regulations, 2015 ? (5 marks)*

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *"A corporate compliance program is a formal program specifying an organization's policies, procedures and actions within a process to help prevent and detect violations of laws and regulations". In this context discuss the essential of an effective compliance program. (5 marks)*
- (ii) *Internal check and internal control are two frequently used terms in risk management and compliance. Explain the meaning of Internal Check and Internal Control and also mention how these two are different from each other. (5 marks)*
- (iii) *In addition to the Financial Capital, the Integrated Reporting examines five additional capitals that should guide an organisation's decision-making and long-term success. Which are these five additional capitals ? (5 marks)*
- (iv) *Explain the scope of "Administrative Control". (5 marks)*

Answer 5(a)

Being a Company Secretary i.e. 'Compliance Manager/ Officer' of the company, I would ensure that the company is in total compliance with all regulatory provisions. I would ensure that all statutory and non-statutory disclosures are made to shareholders and other stakeholders in true letter and spirit. I would draft a Corporate Compliance Management Policy and put up before the board of directors for their approval and implementation. The policy would contain following aspects-

- *Background and business strategy of the company* : This will include the brief background of the company, area of operation, competition prevailing from the peer companies and SWOT analysis of the company, marketing strategies to be adopted, use of technology in providing better services to the customers.
- *Identification of applicable laws* : This will include identifying the applicable laws, application of control measures to mitigate the risk, generation of reports for identifying the non-compliances, reminder before the due date for compliances and having internal control on compliances.
- *Individual responsibilities on compliances to be clearly defined* : Responsibility with respect to compliances would be clearly defined in the compliance management programme, which will enable the compliance officer to co-ordinate with the respective officials in respect of deviations if any.

- *Evaluation* : Compliance management system would have a proper evaluation methodology through questionnaires for departmental heads etc. at regular intervals.
- *Bridging the gap between compliance in letter and compliance in letter and spirit*: The compliance management system would be made in such a manner that the compliance is made in letter and spirit.
- *Updation* : Updation of compliance management programme is very essential as and when there is any change in any of the applicable law.

Answer 5(b)

Sec 177 (9) of the Companies Act, 2013 provides that every listed company or such class or classes of companies, as may be prescribed, shall establish a vigil mechanism for directors and employees to report genuine concerns in such manner as may be prescribed. Rule 7 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that every listed company and the companies belonging to the following class or classes shall establish a vigil mechanism for their directors and employees to report their genuine concerns or grievances:

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

Regulation 22 of SEBI (LODR) Regulations, 2015 provides that every listed entity shall establish a vigil mechanism for directors and employees to report concerns about unethical behaviour, actual or suspected fraud or violation of the listed entity code of conduct or ethics policy.

Since the company is a listed company, it should establish vigil mechanism as per both Section 177(9) of the Companies Act, 2013 and SEBI (LODR) Regulations, 2015 with following provisions-

- The audit committee shall oversee the vigil mechanism through the committee and if any of the members of the committee have a conflict of interest in a given case, they should recuse themselves and the others on the committee would deal with the matter on hand.
- The vigil mechanism shall provide for adequate safeguards against victimisation of employees and directors who avail of the vigil mechanism and also provide for direct access to the Chairperson of the Audit Committee or the director nominated to play the role of Audit Committee, as the case may be, in exceptional cases.
- In case of repeated frivolous complaints being filed by a director or an employee, the audit committee or the director nominated to play the role of audit committee may take suitable action against the concerned director or employee including reprimand.
- The details of establishment of such mechanism shall be disclosed by the listed entity on its website and in the Board's report.

Answer 5(c)

Section 138 of the Companies Act, 2013 read with Rule 13 of the Companies (Accounts) Rules, 2014 provides for the mandatory appointment of an internal auditor who 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 for classes of company given below-

- every listed company,
- every unlisted public company having –
 - paid up share capital of 50 crore rupees or more during the preceding financial year; or
 - turnover of 200 crore rupees or more during the preceding financial year; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year; or
 - outstanding deposits of 25 crore rupees or more at any point of time during the preceding financial year; and
- every private company having –
 - turnover of 200 crore rupees or more during the preceding financial year; or
 - outstanding loans or borrowings from banks or public financial institutions exceeding 100 crore rupees or more at any point of time during the preceding financial year.

Answer 5(d)

The financial information which are required to be disclosed on website of the company as per the Regulation (46) of SEBI (LODR) Regulations, 2015 are –

- (i) financial information including:
 - notice of meeting of the board of directors where financial results shall be discussed;
 - financial results, on conclusion of the meeting of the board of directors where the financial results were approved;
 - complete copy of the annual report including balance sheet, profit and loss account, directors report, corporate governance report etc;
- (ii) shareholding pattern;
- (iii) details of agreements entered into with the media companies and/or their associates, etc;
- (iv) schedule of analyst or institutional investor meet and presentations made by the listed entity to analysts or institutional investors simultaneously with submission to stock exchange;

- (v) new name and the old name of the listed entity for a continuous period of one year, from the date of the last name change;
- (vi) With effect from October 1, 2018, all credit ratings obtained by the entity for all its outstanding instruments, updated immediately as and when there is any revision in any of the ratings.
- (vii) Separate audited financial statements of each subsidiary of the listed entity in respect of a relevant financial year, uploaded at least 21 days prior to the date of the annual general meeting which has been called to inter alia consider accounts of that financial year.

Answer 5A(i)

A corporate compliance program is generally defined as a formal program specifying an organization's policies, procedures, and actions within a process to help prevent and detect violations of laws and regulations.

The essential of a successful compliance program are as under:

- (i) *Development of written Compliance Policies, Procedures and framing of Standards* : The successful implementation of any compliance program needs a well drafted written document of the compliance policy. The policy shall contain the regulatory aspects which are in force as on the date of the framing of the policy, set a Code of Conduct / Standards, action to be taken in case of deviations from the set standards and also the initiation of the disciplinary actions against the erring staff.
- (ii) *Designation of a compliance officer and compliance committee* : The Compliance Policy shall contain a clause for appointment of a designated compliance officer, who shall take care of the regulatory compliance related functions and he shall be responsible to ensure adherence to the compliance policy and put up a note before the Board of Directors periodically for their perusal and directions wherever required. The Board approved note, wherever required be submitted to Regulatory Authorities.
- (iii) *Developing open lines of communication* : The Compliance Policy shall have a provision to welcome open communication as a product of organizational culture and internal mechanisms for reporting instances of potential fraud and abuse. This concept of whistle blower, may prove to be early warning signals and may be effective in prevention thereof. The name and designation of the reporting official shall be kept confidential.
- (iv) *Appropriate training and education* : For effective implementation of the compliance policy, there is need of proper training and education to the field functionaries and policy implementing officials.
- (v) *Internal monitoring and auditing* : The compliance policy shall contain a clause for having the effective auditing and monitoring plans.
- (vi) *Response to detected deficiencies* : Wherever the deficiencies in the prescribed procedure come in the knowledge of the concerned official, there shall be a reporting system to make a report to the designated official.

- (vii) *Enforcement of disciplinary standards* : There shall be a clause in the compliance policy to take the disciplinary action against the erring official, who have not adhered to the prescribed set of rules and regulations.
- (viii) *Effective use of Information technology* : By using available tools of information technology compliances can be managed effectively. There are various compliance management software available which facilitate compliance management.

Answer 5A(ii)

Internal check may be referred to as a system of instituting checks on the day- to-day transactions which operate continuously as a part of routine system whereby the work of one person is complementary to the work of another, the object being the prevention or early detection of errors or fraud. The objective of such allocation of duties is that no single individual has an exclusive control over any one transaction or group of transactions.

Internal control, as defined in accounting and auditing, is a process for assuring achievement of an organization's objectives in operational effectiveness and efficiency, reliable financial reporting, and compliance with laws, regulations and policies. It is a means by which an organization's resources are directed, monitored, and measured. It plays an important role in detecting and preventing fraud and protecting the organization's resources, both physical (e.g., machinery and property) and intangible (e.g., reputation or intellectual property such as trademarks).

Differences

<i>Internal check</i>	<i>Internal control</i>
Internal check refers to the way of allocating responsibility, segregation of work, where work of the subordinates is checked by the immediate supervisors to verify that the work is carried out according to the company policies and guidelines.	Internal control is the system implemented by a company to ensure the integrity of financial and accounting information and that the company is progressing towards fulfilling its profitability and operational objectives in a successful manner.
Scope of internal check is narrower compared to internal control.	Internal control is a broader aspect in which internal check play a vital role.
Internal checks are implemented at all organizational levels such as tactical and operational level.	Internal controls are designed and documented at the corporate management level.

Answer 5A(iii)

Integrated reporting is a concept that has been created to better articulate the broader range of measures that contribute to long-term value and the role, organisations play in society. Central to this is the proposition that value is increasingly shaped by factors additional to financial performance, such as reliance on the environment, social reputation, human capital skills and others. This value creation concept is the backbone of integrated reporting.

In addition to financial capital, integrated reporting examines five additional capitals that should guide an organisation's decision-making and long-term success — its value creation in the broadest sense. They are –

- *Manufactured capital* : Manufactured capital is seen as human-created, production-oriented equipment and tools.
- *Intellectual capital* : It is a key element in an organization's future earning potential, investment in R&D, innovation, human resources and external relationships, which can determine the organization's competitive advantage.
- *Human capital* : It is generally understood to consist of individual's capabilities and the knowledge, skills and experience of the company's employees and managers as they are relevant to the task at hand as well as the capacity to add to the reservoir of knowledge, skills and experience.
- *Social and relationship capital* : Social and relationship capital may include relationships within an organization, as well as those between an organization and its external stakeholders, depending on where social boundaries are drawn.
- *Natural capital* : It may be defined as any stock of natural resources or environmental assets such as soil, water, and atmosphere, ecosystems which provide a flow of useful goods or services now and in the future.

Answer 5A(iv)

A number of controls falling under operational controls can also be administrative controls. Examples of operational controls are: quality control, works standards, periodic reporting, policy appraisal etc.

Administrative controls are very wide in their scope. They include all other managerial controls concerned with decision-making process. They are concerned with the authorisation of transactions and include anything from plan of organisation to procedures, record keeping, distribution of authority and the process of decision-making. They include controls such as time and motion studies, quality control through inspection, performance budgeting, responsibility accounting and performance evaluation etc.

Administrative controls have an indirect relationship with financial records and the auditor may evaluate only those administrative controls which have a bearing on the financial records.

Thus, administrative controls are those which help in improving the efficiency, productivity and not necessarily recorded under the accounting systems. Works standards, quality control, methods study and motion study are examples of administrative control.

PART – IV

Question 6

- (a) *What is Risk-adjusted return on capital (RAROC) and how is it calculated ?*
- (b) *Discuss in brief the composition of Lokpal and its powers.*

(5 marks each)

Answer 6(a)

Risk-adjusted return on capital (RAROC) is a profitability metric that can be used to analyse return in relation to the level of risk taken on. It can be used to compare the performance of several investments with differing levels of risk exposure. RAROC was developed by Bankers Trust in the late 1970s and early 1980s in response to regulatory interest in the capital ratios of financial institutions and the implementation of capital adequacy regulations. RAROC is often used by banks to determine the amount of capital required to support the bank's activities.

In business enterprises, risk is traded off against benefit. RAROC is defined as the ratio of risk adjusted return to economic capital. The economic capital is the amount of money which is needed to secure the survival in a worst-case scenario, it is a buffer against unexpected shocks in market values. Economic capital is a function of market risk, credit risk, and operational risk, and is often calculated by VaR (Value at Risk).

RAROC system allocates capital for two basic reasons:

- Risk management
- Performance evaluation

For risk management purposes, the main goal of allocating capital to individual business units is to determine the bank's optimal capital structure that is economic capital allocation is closely correlated with individual business risk. As a performance evaluation tool, it allows banks to assign capital to business units based on the economic value added of each unit.

Risk-adjusted return on capital (RAROC) is a modified return on investment (ROI) figure that takes elements of risk into account. The formula used to calculate RAROC is:

$$\text{RAROC} = R - E - \text{EL} + (\text{Income from Capital}/\text{Capital})$$

Where:

R = Revenue

E = Expenses

EL = Expected losses

Income from Capital = Capital Charges x Risk free rate

Answer 6(b)

Composition of Lokpal : Lokpal is a statutory, multi-member body which has no constitutional backing. It consists of one Chairperson and a maximum of 8 members.

- *Chairperson* : A person becomes eligible for the appointment as Chairperson of Lokpal if he is a former Chief Justice of India, a former member of Supreme Court or an eminent person with impeccable integrity and outstanding ability. Additionally, he should have adequate knowledge and 25 years of experience in the matters of the anti-corruption policy, finance, vigilance, law and management, and public administration.

- *Members* : Out of 8 permissible members, 50% are from the judiciary. Rest 50% of members are from OBC/SC/ST/women and minorities. Judicial members should either be a former Judge of Supreme Court or a former Chief Justice of a High Court. In the case of non-judicial members, they should be eminent persons with impeccable integrity and outstanding ability in their chosen professional areas. They should have at least of 25 years of experience in matters relating to anti-corruption policy, vigilance, public administration, vigilance, law, management, and finance.

Powers of Lokpal

Its inquiry wing has the power to search and seize objects both movable and immovable objects and make reports based on them. These reports would be taken up by the 3-member Lokpal benches for further scrutiny. The benches would give the opportunities for the allegedly corrupt officers to say in their defense. After this, the benches would undertake any of the following alternatives-

- If the officers are found guilty, the benches would grant their sanction to the prosecution wing or CBI to file charge sheets against them. The benches can also direct the concerned government departments to start proceedings against them.
- If the officers are found innocent, the benches would direct the filing of the closure of case reports before the Special Court.

ADVANCED TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer ALL Questions.

2. ALL the references to sections in Part-II of the Question Paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2019-20 unless stated otherwise.
3. Wherever necessary, suitable assumptions can be made and the same be stated clearly in the answer.
4. Working notes should form part of the answer.

PART-I

Question 1

- (a) Mudit Enterprises, registered in the state of Maharashtra (Mumbai) is engaged in supply of various goods and services exclusively to persons notified under section 51 of the CGST Act, 2017.

Calculate the amount of TDS to be deducted by the recipient if any, from the details given below of three independent contracts for the month of November, 2018 :

Particulars	Contracts		
	I	II	III
Place of supply	Mumbai	Mumbai	Mumbai
Registered place of recipient	Mumbai	Mumbai	Delhi
Total contract value (inclusive of GST) (₹)	2,75,000	3,10,000	4,50,000
Payment due in November, 2018 (exclusive of GST) (₹)	55,000	60,000	1,20,000

Note : Take the rate of CGST, SGST and IGST as 6%, 6% and 12% respectively.
(5 marks)

- (b) Amar Publishing House, registered under CGST Act, 2017 in Delhi is engaged in printing and selling of books as well as trading of stationery items. It has provided following information of a single consignment which is to be supplied to a person in Jaipur (Rajasthan) :
- (i) Value of exempted supplies of ₹12,000 and value of taxable supplies of ₹32,000 are indicated on tax invoice.
 - (ii) Value of goods to be sent to unregistered job worker on delivery challan having value of ₹16,000.

Note : All amounts given above are excluding GST.

Calculate the consignment value, for the purpose of generating e-way bill for Interstate supply of goods. Take rate of tax on taxable goods of IGST @ 12%. Legal provision explained in brief should form part of the answer. (5 marks)

- (c) Ramakrishna Trivedi, a registered supplier of Bengaluru has received the following amounts from the various activities undertaken by him during the month ended on 31st October, 2018 :

S.No.	Particulars	Amount (₹)
(i)	Services related to funeral including transportation of dead bodies	30,000
(ii)	Commission received as an insurance agent, from insurance company	95,000
(iii)	Business assets (old computer) given to friends free of cost, the market value of all the computers was ₹2,00,000. No input tax credit has been availed on such computers when used for business	No amount received as given free
(iv)	Amount received from PQR Ltd. for performance of classical dance in one program	1,99,000
(v)	Service provided to recognized sport body as Coach, for participation in a sporting event organized by a recognized sports body.	75,000

Note : All the amount stated above are exclusive of GST, wherever applicable.

You are required to calculate gross value of taxable supply on which GST is required to be paid by Ramakrishna Trivedi for the month of October, 2018.

Legal provision explained in brief should form part of the answer. (5 marks)

- (d) Gokhale & Sons is registered in Karnataka and paying GST under composition scheme, provides the following details for the tax period ended on 31st December, 2018 :

S.No.	Particulars	(₹)
(i)	Taxable turnover of goods within state	25,00,000
(ii)	Exempted turnover of goods within state	27,00,000

Calculate the total GST without bifurcation between CGST and SGST to be paid by Gokhale & Sons for the tax period ended on 31st December, 2018 in following independent situation on the basis of details of turnover as given :

(i) If Gokhale & Sons is Manufacturer

(ii) If Gokhale & Sons is Trader

(5 marks)

Answer 1(a)

The tax at source (TDS) would be deducted @ 1% under CGST Act and 1% under SGST/ UTGST Act or 2% under IGST Act as the case may be, of the payment made to

the supplier where the total value of such supply, under a contract, exceeds ₹2,50,000 (excluding the amount of GST indicated in the invoice). Thus, individual supplies may be less than ₹2,50,000/- but if the value of supply under a contract is more than ₹2,50,000/-, TDS will have to be deducted as per rates prescribed.

Case I : Given contract value is inclusive of GST, therefore to calculate contract value for TDS purpose the same is calculated exclusive of GST (CGST and SGST)

$$2,75,000 * 100/112$$

$$= 245535.71 \text{ or } ₹245536 \text{ (rounded off)}$$

Since the total value of supply under the contract does not exceed ₹2,50,000, tax is not required to be deducted on amount of ₹55,000.

Case II : The contract value exclusive of GST shall be:

$$3,10,000 * 100/112$$

$$= 276785.71 \text{ or } ₹2,76,786 \text{ (rounded off)}$$

Since the total value of supply under the contract exceed ₹2,50,000, tax is required to be deducted on ₹60,000 @ 1% under CGST Act and 1% under SGST Act because this is an intra-state transaction (i.e. place of supply and location of supplier is in the same State).

$$\text{Hence, TDS would be } 1\% \text{ of } 60,000 = ₹600 \text{ (CGST) and } ₹600 \text{ (SGST)}$$

Case III : The proviso to section 51(1) of CGST Act, 2017 lays down that when the location of the supplier and the place of supply is in a State which is different from the State/ Union territory of registration of the recipient, there will be no TDS.

Since the location of the supplier and the place of supply is Mumbai and the State of registration of the recipient is Delhi, no tax is liable to be deducted in the given case on amount of ₹1,20,000.

Answer 1(b)

Determination of the value of consignment for E-way Bill

As per Rule 138 of the CGST Rules, 2017, Consignment value of goods shall be the value, determined in accordance with the provisions of section 15 of the CGST Act, 2017, declared in an invoice, a bill of supply or a delivery challan, as the case may be, issued in respect of the said consignment and also includes the central tax, State or Union territory tax, integrated tax and cess charged, if any, in the document and shall exclude the value of exempt supply of goods where the invoice is issued in respect of both exempt and taxable supply of goods.

Hence, according to the above rule, consignment value shall be:

<i>Particulars</i>	<i>Amount (₹)</i>
Taxable value of Supply	32,000
Add : IGST on taxable value of supply @ 12% on 32,000	3,840
Add : Value of goods to be sent to job worker on delivery challan	16,000
Total value of consignment	51,840

Answer 1(c)

S. No.	Particulars	Amount (₹)
(i)	Services related to funeral including transportation of dead bodies of ₹30,000 <i>Note: As per Section 7(2)(a) read with Schedule III of CGST Act, 2017 this is neither be treated as supply of goods nor supply of services.</i>	Not a supply
(ii)	Commission received as an insurance agent, from insurance company of ₹95,000 <i>Note: Above service is covered under reverse charge mechanism (RCM) where tax is payable by the recipient i.e. insurance company [Notification No. 13/2017-Central Tax (Rate) dated 28.06.2017]</i>	Taxable under RCM
(iii)	Business assets (old computer) given to friends free of cost. <i>Note: As per Schedule I any kind of disposal or transfer of business assets made by an entity on permanent basis even though without consideration qualifies as supply. However, this provision would apply only where the input tax credit (ITC) has been availed on such assets.</i> Since no ITC is claimed when such computers used for business, it is not a supply.	Not a supply
(iv)	Amount received from PQR Ltd. for performance of classical dance in one program of ₹1,99,000 <i>Note: This service is exempt only if the consideration charged for such performance is not more than ₹1,50,000. Here, it is more than ₹1,50,000, hence taxable in total</i>	1,99,000
(v)	Service provided to recognized sports body as Coach of ₹75,000 <i>Note: This service is exempt from GST under Notification No. 12/2017- Central Tax (Rate) dated 28.06.2017</i>	Exempt
	Total taxable turnover	1,99,000

Answer 1(d)

As per amendment in Notification No. 8/2017 vide Notification No. 1/2018 Central Tax dated 01.01.2018 , effective rate of tax under composition scheme for manufacturers

has been reduced from 2% to 1% (CGST + SGST) w.e.f. 01.01.2018. Thus, w.e.f. 01.01.2018, uniform rate of 1% is applicable for both manufacturers and traders paying tax under composition scheme.

Further, Notification No. 8/2017 Central Tax dated 27.06.2017 has also been amended to provide that for other categories of composition suppliers (other than manufacturers and restaurants), composition tax would be leviable as percentage of turnover of taxable supplies of goods. Prior to the amendment, the tax was payable as a percentage of the total turnover.

Hence, total tax will be as follow:

- (i) ₹52000 (1% of 52,00,000) (if Gokhale & Sons is a Manufacturer)
- (ii) ₹25000 (1% of 25,00,000) (if Gokhale & Sons is a Trader)

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

Question 2

(a) Determine with reason, whether the following statements are true or false with reference to provisions of GST law :

- (i) "A registered person shall issue separate invoices for taxable and exempted goods when supplying both taxable as well as exempted goods to an unregistered person". (2 marks)
- (ii) "A Non-banking financial company (NBFC) can issue a consolidated tax invoice at the end of every month for the supply made during that month". (1 mark)
- (iii) "It is mandatory to issue a tax invoice in case a registered person has opted for composition levy scheme". (2 marks)

(b) Parthiv Chemicals Pvt. Ltd. is a manufacturing company registered under GST in the State of Maharashtra. It manufactures two taxable products "Sun" and "Moon", and one exempt product "Jupiter". On 1st October, 2018, product "Moon" got exempted through an exemption notification and the exemption available on product "Jupiter" got withdrawn on the same date (1st October, 2018) under the same notification.

The above registered supplier has furnished the following details (amounts are excluding GST) chargeable at 18% GST :

S.No.	Particulars	Price (₹)
(a)	Machinery "L" purchased on 22-10-2018 for being used in manufacturing product "Sun" and "Jupiter"	1,20,000
(b)	Machinery 'M' purchased on 1st October, 2015 used till 30-9-2018 exclusively in manufacturing product "Jupiter". However, from 1-10-2018, such machinery will also be used for manufacturing product "Moon" besides "Jupiter"	5,00,000

(c)	Raw material used for manufacturing "Sun" purchased on 9-10-2018	2,20,000
(d)	Raw material used for manufacturing "Moon" purchased on 10-10-2018	4,00,000
(e)	Raw material used for manufacturing "Jupiter" purchased on 16-10-2018	1,00,000

All purchases are from outside the State from registered suppliers.

Compute the amount of input tax credit (ITC) to be credited to Electronic Credit Ledger for the month of October, 2018. (5 marks)

- (c) Mrs. Bharghavi is a registered supplier under GST law in Coimbatore, Tamil Nadu, running a factory for manufacture of electric motors. For giving training to her employees, she has utilized the services of Vibrant Trainers Pvt. Ltd., a registered supplier in Trissur, Kerala. The training programs are to be held at Trissur.
- (i) What will be the place of supply of services provided by Vibrant Trainers Pvt. Ltd. to Mrs. Bharghavi ? (2 marks)
- (ii) Will your answer be different, if Mrs. Bharghavi is not a registered supplier ? (2 marks)
- (iii) In the situation given in the problem, if the training is to be provided at Singapore, what will be the place of supply ? (1 mark)
- (d) What is the meaning of "Search warrant" with reference to CGST Act, 2017 ? State the contents of "Search warrant" also. (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Jitendra Ltd., of Delhi, a registered supplier, is manufacturing taxable goods. It provides the following details of taxable supply made by it for the month of March, 2019 :

Particulars	Amount (₹)
— List price of goods supplied (exclusive of taxes and discount)	12,00,000
— Subsidy received from Central Government for supply of taxable goods to Government school. Directly linked to price	1,10,000
— CGST and SGST chargeable on the goods	50,000
— Tax levied by Municipal Authority	25,000
— Secondary packing charged	10,000

Note :

- (i) *Jitendra Ltd. offers 2% discount on the list price of the goods which is recorded in the invoice for the goods.*
- (ii) *The list price of the goods is after considering the subsidy received from Central Government. However, the other charges/taxes/fee are charged to the customers over and above the list price.*

Calculate the value of taxable supply made by Jitendra Ltd. for the month of March, 2019. (5 marks)

- (ii) *Jayant Pvt. Ltd. of Jaipur (Rajasthan) provides the following information of the supplies made for the year 2017-18 :*

S.No.	Particulars	Amount (₹)
(i)	<i>Sale of high speed diesel on which Sales Tax (VAT) levied by Rajasthan Government</i>	<i>8,00,000</i>
(ii)	<i>Supply of goods directly by principal from the place of Jayant Pvt. Ltd. after completion of job work done by Jayant Pvt. Ltd.</i>	<i>9,00,000</i>
(iii)	<i>Taxable outward supply within Rajasthan</i>	<i>6,00,000</i>
(iv)	<i>Inward supply of services on which GST to be paid by Jayant Pvt. Ltd. under reverse charges</i>	<i>5,00,000</i>
(v)	<i>Outward supply on which GST to be paid by recipient under reverse charges</i>	<i>1,00,000</i>

Calculate the aggregate turnover for the purpose of registration under CGST Act, 2017 and state whether Jayant Pvt. Ltd. is liable for registration or not. Also provide brief reasons for the treatment of various items given above in the context of provisions of CGST Act, 2017.

Note : All the above amount are exclusive of taxes of any nature. (5 marks)

- (iii) *Determine the amount of Input Tax Credit (ITC) admissible to JKL Ltd., in the month of September, 2018 in respect of various inward supplies during the month from the following information.*

Assume that all the conditions necessary for availing the input tax credit have been fulfilled by JKL Ltd :

Items	GST Paid (₹)
<i>— Health Insurance of permanent factory employees, as per policy of company</i>	<i>60,000</i>
<i>— Raw materials for which invoice received and GST paid for full amount but only 90% of material received</i>	

<i>during the month and remaining 10% will be received in next month (October, 2018)</i>	1,13,000
— <i>Work contractor's service used for installation of plant and machinery</i>	1,18,000
— <i>Goods purchased against valid invoice from PQR Ltd, Although GST has been deposited by PQR Ltd. but JKL Ltd. has made payment to PQR Ltd. for such purchases in the month of November, 2018.</i>	50,000
— <i>Purchase of car used by director for the business meetings only</i>	25,000
	(5 marks)

(iv) *XY Company received an adjudication order passed by the Assistant Commissioner of Central Tax on 2nd December, 2018 under section 73 of the CGST Act, 2017 wherein it was decided as follows :*

IGST due ₹ 7,00,000

Interest ₹ 25,000

Penalty ₹ 50,000

XY Company filed an appeal before the Appellate Authority on 28th January 2019. How much the company has to pay as pre-deposit under section 107(6) of the CGST Act, 2017 if the assessee appeals against part of the demanded amount say Tax ₹4,00,000, interest ₹15,000 and penalty ₹30,000 and admits the balance liability of tax, interest and penalty ? (5 marks)

Answer 2(a)

(i) The given statement is false.

Where a registered person is supplying taxable as well as exempted goods or services or both to an unregistered person, a single "invoice cum bill of supply" may be issued for all such supplies (Rule 46A of the CGST Rules, 2017).

(ii) The given statement is true.

A non-banking financial company is allowed to issue a consolidated tax invoice or any other document in lieu thereof for the supply of services made during a month at the end of the month. [Rule 54(2) of the CGST Rules, 2017]

(iii) The given statement is false.

A registered person paying tax under the provisions of section 10 of CGST Act, 2017 (composition levy) is required to issue, instead of tax invoice, a bill of supply containing the specified particulars in the prescribed manner [Section 31(3)(c) read with Rule 49 of the CGST Rules, 2017].

Answer 2(b)

Computation of amount of input tax credit (ITC) credited to Electronic Credit Ledger for the month of October' 2018

<i>S. No.</i>	<i>Particulars</i>	<i>Amount of ITC to be credited (₹)</i>
(a)	Machinery "L" [Note 1]	21,600
(b)	Machinery "M" [Note 2]	36,000
(c)	Raw Material used for manufacturing "Sun" [Note 3]	39,600
(d)	Raw Material used for manufacturing "Moon" [Note 3]	Nil
(e)	Raw Material used for manufacturing "Jupiter" [Note 3]	18,000
Total ITC credited to Electronic Credit Ledger		1,15,200

Notes:

- ITC in respect of capital goods used or intended to be used exclusively for effecting supplies other than exempted supplies but including zero rated supplies shall be credited to the electronic credit ledger [Rule 43(1)(b) of the CGST Rules, 2017].
- Where any capital goods earlier used exclusively for effecting exempt supplies is subsequently also used for effecting taxable supplies, the value of capital goods being machinery "M" shall be arrived at by reducing the ITC at the rate of 5% for every quarter or part thereof and the amount so arrived at shall be credited to the electronic credit ledger [Proviso to Rule 43(1)(c) of the CGST Rules, 2017].
Thus, ITC on "M" shall be computed as under:
= ₹90000 – 54000 (90000*5%*12 quarters)
= ₹36,000
- ITC in respect of inputs used for effecting taxable supplies will be credited in electronic credit ledger. ITC in respect of inputs used for effecting exempt supplies will not be credited in electronic credit ledger [Rule 42 of CGST Rules, 2017].

Answer 2(c)

- When service in relation to training/ organization of an event (like training) is provided to a registered person, place of supply is the location of recipient [Section 12 of the IGST Act, 2017].
Therefore, if Mrs. Bhargavi is a registered person, the place of supply will be the location of recipient, i.e., Coimbatore, Tamil Nadu.
- When service in relation to training/ organization of an event (like training) is provided to an unregistered person, the place of supply is the location where the services are actually performed or the event is actually held [Section 12 of the IGST Act, 2017].
Therefore, in this case, place of supply will be Trissur, Kerala.
- When the training takes place outside India (Singapore), the place of supply will

be the location of recipient i.e. Coimbatore, Tamil Nadu whether Mrs. Bharghavi is registered or unregistered.

Answer 2(d)

Meaning of Search Warrant

The written authority given under an action of a government machinery to go, look through or examine carefully a place, area, person, object etc. to find out the concealed things is called search warrant.

The competent authority to issue search warrant as per section 67 of CGST Act, 2017 is an officer of the rank of Joint Commissioner or above. A search warrant must indicate the existence of a reasonable belief leading to the search.

Contents of Search Warrant

Search Warrant should contain the following details:

- 1) The violation under the Act.
- 2) The premise to be searched.
- 3) The name and designation of the person authorized for search.
- 4) The name of the issuing officer with full designation along with his round seal.
- 5) Date and place of issue.
- 6) Serial number of the search warrant.
- 7) Period of validity i.e. a day or two days etc.

Answer 2A(i)

Computation of value of taxable supply made by Jitendra Ltd. for the month of March, 2019

<i>Particulars</i>	<i>Amount (₹)</i>
List price of the goods	12,00,000
Less : Discount 2% of 12,00,000 [Since discount is known at the time of supply, it is deductible from the value in terms of section 15(3)(a) of the CGST Act, 2017]	(-) 24,000
Subsidy of ₹1,10,000 received from Central Government [not includible in the value in terms of section 15 of the CGST Act, 2017]	Nil
CGST and SGST of ₹ 50,000 chargeable on the goods [not includible in the value as per section 15(2)(a) of the CGST Act, 2017]	Nil
Tax levied by the Municipal Authority [includible in the value as per section 15 of the CGST Act, 2017]	25,000

Secondary packing charged [being incidental expenses, the same are includible in the value as per section 15 of the CGST Act, 2017]	10,000
Value of taxable supply	12,11,000

Answer 2A(ii)**Calculation of Aggregate Turnover**

<i>S. No.</i>	<i>Particulars</i>	<i>Amount (₹)</i>
i.	Sale of high speed diesel on which sales tax (VAT) levied by Rajasthan Government	8,00,000
ii.	Taxable outward supply within Rajasthan	6,00,000
iii.	Outward supply within State on which GST to be paid by recipient under reverse charge (RCM)	1,00,000
	Aggregate turnover	15,00,000

- 1) As per section 2(6) of the CGST Act, 2017, aggregate turnover includes the aggregate value of all exempt supplies. Thus, sale of high speed diesel is an exempt supply and is, therefore, includible while calculating the aggregate turnover.
- 2) The aggregate turnover exclude the value of inward supplies on which tax is payable under reverse charge but include outward supply on which GST to be paid by recipient under reverse charge.
- 3) Supply of goods after completion of job work by registered job worker shall be treated as the supply of goods by the principal in terms of explanation (ii) to section 22 of the CGST Act, 2017.

As per section 22 of the CGST Act, 2017, a supplier is liable to be registered, if his aggregate turnover in a financial year exceeds ₹20 lakh. However, if supplier receives any inward supply on which GST to be paid by recipient under reverse charge then he is compulsory required for registration even if its aggregate turnover is below ₹20 lakh. Hence, Jayant Pvt. Ltd. needs to be compulsory registered even though his turnover is less than the limit of ₹20 lakh.

Answer 2A(iii)**Calculation of Input Tax Credit (ITC) available to JKL Ltd. for the month of September, 2018**

<i>Particulars of items with Amount of GST</i>	<i>Amount (₹)</i>
Health Insurance of factory employees of ₹60,000	NIL

Note : As per section 17(5)(b)(iii) ITC is not available until and unless it is as per compulsory Government policy. Here it is only as per Company policy, therefore, ITC is not available.

Raw materials for which invoice received and GST paid for full amount but only 90% of material received during the month and remaining 10% will be received in next month ₹1,13,000	NIL
<i>Note: As per proviso to section 16(2), it will be available when last lot will be received, hence entire ITC be available in October, 2018</i>	
Work contractor's service used for installation of plant and machinery of ₹1,18,000	1,18,000
<i>Note: As per section 17(5)(c) ITC will not be available for works contract services when supplied for construction of an immovable property other than plant and machinery.</i>	
Since it is for plant and machinery, the ITC is available.	
Goods purchased against valid invoice from PQR Ltd.	₹50,000
<i>Note: ITC shall be admissible in month of September, 2018 even if payment is made by JKL Ltd. in the month of November, 2018 as payment is made within 180 days' period.</i>	
Purchase of car used by director for the business meetings only of ₹25,000	NIL
<i>Note : As per section 17(5)(a) input tax credit shall not be available in respect of Motor Vehicle (Car) for director even for business use only.</i>	
Total input tax credit available	1,68,000

Answer 2A(iv)

Section 107(6) of the CGST Act, 2017 provides that no appeal shall be filed before Appellate Authority, unless the appellant pays:

- (a) in full, such part of the amount of tax, interest, fine, fee and penalty arising from impugned order, as is admitted by him; and
- (b) 10% of remaining tax in dispute arising from impugned order

Thus, since XY Company admits the tax liability of ₹3,00,000 + Interest ₹10,000 and Penalty ₹20,000 it has to make a pre-deposit of:

- i. ₹3,30,000 (i.e. 300000 + 10000 + 20000)
- ii. ₹40,000 (i.e. 10% of 4,00,000)

Total ₹3,70,000

Question 3

- (a) *Green & Green Private Limited has been issued a show cause notice (SCN) on 15th March, 2019 under section 73(1) of the CGST Act, 2017 on account of short payment of tax for the month of April, 2018.*

Green & Green Private Limited contends that the show cause notice so issued is time-barred in law.

You are required to examine the technical veracity of the contention of Green & Green Private Limited in the context of provisions of the CGST Act, 2017.

(4 marks)

- (b) (i) *Deepak Garg started supply of goods within the state of Rajasthan from 1st December 2018. His turnover exceeded ₹20 lakh on 25th January 2019.*

However, he didn't apply for registration.

Determine the amount of penalty, if any, that may be imposed on Deepak Garg under CGST Act, 2017 on 31st March 2019, if the tax evaded as on said date, on account of failure to obtain registration is ₹8,000. (2 marks)

- (ii) *Kishore, an unregistered person under GST, purchases the goods supplied by Sanjay who is a registered person without receiving a tax invoice and thus helps in tax evasion.*

Determine maximum amount of penalty that may be imposed on Kishore under CGST Act, 2017. (2 marks)

- (c) *State the matters on which Advance Ruling can be sought under GST Law. State any four such matters as specified under the CGST Act, 2017. (4 marks)*

- (d) *Saraswathi Polymers Pvt. Ltd., has two units, one in Coimbatore, Tamil Nadu and another in Thrissur, Kerala. In the Coimbatore unit, it manufactures customised products only. Each lot consists of 100 units and is valued at ₹5 lakhs. These products require further processing before delivery to the customers. The further processing is done by the Kerala Unit, which enjoys a unique market position as there being no competitor providing similar services in Kerala.*

The Kerala Unit, besides processing the products of the Tamil Nadu Unit, undertakes processing work of outsiders also and collects charges from them. Other manufacturers in Kerala, who deliver products to this unit for further processing, value at ₹3.5 lakhs per 100 units.

You are required to determine the value of 100 units supplied by the Tamil Nadu Unit of the registered supplier to its Kerala unit as per provisions of the CGST Act, 2017. (4 marks)

- (e) *Goyal Manufacturers, a registered person, instructs its one of the suppliers to send the input directly to Sumit Enterprises, who is a job worker, outside its factory premises for carrying out certain operations on the goods. The goods were sent by the supplier on 15th July, 2018 and were received by the job worker on 17th July, 2018.*

Whether Goyal Manufacturers are eligible to take Input Tax Credit (ITC) on the input goods directly received by the job worker from the supplier. Discuss, what action under the GST law is required to be taken by Goyal Manufacturers.

(4 marks)

Answer 3(a)

The show cause notice (SCN) under section 73(1) of the CGST Act, 2017 shall be issued at least 3 months prior to the time limit specified for issuance of order under section 73(10) and adjudication order under section 73(10) has to be issued within 3 years from the due date for furnishing of annual return for the financial year to which the short-paid/not paid tax relates to.

Thus, SCN under section 73(1) of the CGST Act, 2017 can be issued within 2 years and 9 months from the due date for furnishing of annual return for the financial year to which the short-paid / not paid tax relates to.

The SCN has been issued for the period April, 2018 which falls in the financial year 2018-19. Due date for furnishing annual return for the FY 2018-19 is 31.12.2019 and 3 year's period from the due date of filing annual return lapses on 31.12.2022.

Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2022, which in the given case, the notice has been issued on 15.03.2019, and therefore the same is in time.

The contention of Green & Green Private Limited that the SCN is time barred is wrong.

Answer 3(b)

- (i) Under section 122(1) of CGST Act, 2017 where a taxable person who is liable to be registered under this Act but fails to obtain registration, shall be liable to pay a penalty of ten thousand rupees or an amount equivalent to the tax evaded whichever is higher.

Hence Deepak Garg is liable for penalty of ₹10,000

- (ii) Under section 122(3) of the CGST Act, 2017 any person who aids or abets any of the offences specified in clauses (i) to (xxi) of sub-section (1), he/ she shall be liable to a penalty which may extend to twenty five thousand rupees.

Hence, Kishore is liable for maximum penalty of ₹25,000 since he is helping in the tax evasion which is an offence under the CGST Act, 2017.

Answer 3(c)

U/s 97(2) of the CGST Act, 2017 Advance Ruling can be sought for the following questions/ matters/ issues:

- 1) Classification of any goods or services or both;
- 2) Applicability of a notification issued under the provisions of this Act;
- 3) Determination of time and value of supply of goods or services or both;
- 4) Admissibility of Input Tax Credit of tax paid or deemed to have been paid;
- 5) Determination of tax liability to pay tax on any goods or services or both;
- 6) Clarification on registration requirements of the applicant;
- 7) Whether any particular thing done by the applicant with respect to any goods or

services or both amounts to or results in a supply of goods or services or both, within the meaning of that term.

Answer 3(d)

As per section 25(4) of the CGST Act, 2017, a person who has obtained or is required to obtain more than one registration, whether in one State or Union territory or more than one State or Union territory shall, in respect of each such registration, be treated as distinct persons for the purposes of this Act. Therefore, units of Saraswathi Polymers Pvt. Ltd. in Kerala and in Coimbatore are two distinct person.

As per rule 28 of CGST Rules 2017, the value of the supply of goods between distinct persons as specified in sub-sections (4) and (5) of section 25 of the CGST Act, 2017 or where the supplier and recipient are related, other than where the supply is made through an agent, shall,—

- (a) be the open market value of such supply;
- (b) if the open market value is not available, be the value of supply of goods or services of like kind and quality;
- (c) if the value is not determinable under clause (a) or (b), then the cost of supply plus 10% mark up or be determined by other reasonable means, in that sequence.

Provided that where the goods are intended for further supply as such by the recipient, the value shall, at the option of the supplier, be an amount equivalent to ninety percent of the price charged for the supply of goods of like kind and quality by the recipient to his customer not being a related person:

In the given case, open market value of the 100 units being supplied to Kerala unit is not available since the supplier manufactures customized products. Therefore the value of 100 units supplied by Tamil Nadu unit of Saraswathi polymers Pvt. Ltd. to Kerala unit will be the value of the goods of similar kind and quality supplied to Kerala unit by other customers which is being ₹3.5 lakhs per 100 units.

Since goods are not supplied as such by the Kerala unit, goods cannot be valued @ 90% of the price charged for the supply of like goods by the Tamil Nadu unit to its unrelated customers in terms of first proviso to rule 28 of CGST Rules, 2017. Hence, value be taken at ₹3.5 lakh for the 100 units supplied by Tamil Nadu Unit to its Kerala Unit for the purpose of processing.

Answer 3(e)

As per Section 19(2) of the CGST Act, 2017, the principal is entitled to take input tax credit of inputs sent for job work even if the said goods are directly sent to a job worker.

Section 19(3) of the CGST Act, 2017 further stipulates that where the inputs are sent directly to a job worker but are not received back by the principal within a period of 1 year of the date of receipt of inputs by the job worker, it shall be deemed that such input had been supplied by the principal to the job worker on the day when the said inputs were received by the job worker.

In view of aforementioned provisions, Goyal Manufacturers are eligible to take the input tax credit on the input goods directly received by the job worker from the suppliers.

However, if the inputs are not returned by Sumit Enterprises within 1 year from 17.07.2018 (date of receipt of input goods by job worker), it shall be deemed that such input had been supplied by Goyal Manufacturers to Sumit Enterprises on 17.07.2018 and Goyal Manufacturers shall be liable to pay the tax along with applicable interest.

Question 4

(a) ABC Ltd. imported a machine from UK in November, 2018. The details in this regard are as under :

- (i) FOB value of the machine : 12,000 UK Pound
- (ii) Freight (Air) : 4000 UK Pound
- (iii) Licence fee, the buyer was required to pay in UK : 500 UK Pound
- (iv) Buying commission paid in India ₹20,000
- (v) Designing charges paid to consultancy firm in New Delhi, which was necessary for such machine ₹1,00,000
- (vi) Actual landing charges paid at the place of importation ₹25,000.
- (vii) Insurance premium details were not available.
- (viii) For this purpose you may consider followings :
 - (a) Rate of exchange ₹98.00 per one pound.
 - (b) Rate of Basic Customs Duty (BCD) at 10%
 - (c) Integrated tax under section 3(7) of Customs Tariff Act at 12%
 - (d) Social Welfare surcharge as applicable
 - (e) Ignore GST Compensation Cess.

You are required to compute the total customs duty and integrated tax payable on the imported machine. You may make suitable assumptions wherever found necessary. (5 marks)

(b) Shandaar Scraps Ltd., imported during October, 2018 by sea a consignment of metal scrap weighing 7,000 M.T. (metric tonnes) from U.S.A. They filed a bill of entry for home consumption. The Assistant Commissioner passed an order for clearance of goods and applicable duty was paid by them.

Shandaar Scraps Ltd thereafter found, on taking delivery from the Port Trust Authorities (i.e., before the clearance for home consumption), that only 6,400 M.T. of scrap were available at the docks although they had paid duty for the entire 7,000 M.T., since there was no short-landing of cargo.

The short-delivery of 600 M.T. was also substantiated by the Port-Trust Authorities, who gave a "weighment certificate" to Shandaar Scraps Ltd.

On filing a representation to the Customs Department, Shandaar Scraps Ltd. has been directed in writing to justify as to which provision of the Customs Act, 1962 governs their claim for remission of duty on the 600 M.T. not delivered by the Port-Trust.

You are approached by Shandaar Scraps Ltd. as "Counsel" for an opinion/ advice. Examine the issues and tender your opinion as per Customs Act, 1962, giving reasons in brief and the provisions of the Customs Act, 1962. (5 marks)

Answer 4(a)

Computation of assessable value and total customs duty and integrated tax payable

<i>Particular</i>	<i>Amount (UK Pound)</i>
FOB Value	12,000
<i>Add</i> : License fee required to be paid in UK payable by the buyer as a condition of sale, are all includible in the assessable value – Rule 10(1)(c)	500
Customs FOB Value	12,500
	<i>Amount (₹)</i>
Value in rupees (Exchange rate is ₹98 per UK Pound * 12,500)	12,25,000
<i>Add</i> : Air freight (restricted to 20% of ₹12,25,000)	
<i>Note: In case of goods imported by air, freight cannot exceed 20% of Customs FOB value</i>	2,45,000
Insurance @ 1.125% of ₹12,25,000	
Insurance charges, when not ascertainable, have to be included @ 1.125% of FOB value of goods [Third proviso to Rule 10(2) of the Customs Valuation Rules].	13781.25
Buying commission is not includible in the assessable value	NIL
Designing charges paid for work done in India have not been included for the purpose of arriving at assessable value. Rule 10(1)(b)(iv)	NIL
No landing charges are to be added to the CIF value in view of the amendment in Rule 10(2)	NIL
CIF Value	14,83,781.25
Assessable Value	14,83,781.25
<i>Add</i> : Basic customs duty @ 10% (₹14,83,781*10%) [rounded off] (A)	1,48,378

Add : Social Welfare Surcharge (10% of ₹1,48,378) [rounded off] (B)	14,838
Value for integrated tax under Section 3(7) of the Customs Tariff Act, 1975	16,46,997
Add : Integrated tax under Section 3(7) @ 12% [rounded off](C)	1,97,640
Total customs duty and integrated tax payable [(A) + (B) + (C)]	3,60,856

Answer 4(b)

As per the provisions of section 23 of the Customs Act, 1962 where it is shown to the satisfaction of the Assistant Commissioner of Customs or Deputy Commissioner of Customs that any imported goods have been lost (otherwise than as a result of pilferage) or destroyed, at any time before clearance for home consumption, the Assistant Commissioner of Customs or Deputy Commissioner of Customs shall remit the duty on such goods. Therefore the duty shall be remitted only, if loss has occurred before clearance for home consumption.

In the given case, it is apparent from the facts that quantity of scrap received in India was 7000 metric tonnes and 600 metric tonnes thereof was lost when it was in custody of Port Authorities i.e. before clearance for home consumption was made. The loss of 600 MT of scrap cannot be construed to be pilferage, as loss of such huge quantity cannot be treated as "Petty Theft".

Hence, company is being advised to take shelter under section 23 justifying his claim for remission of duty on the goods short supplied by the Port Trust Authorities as per certificate issued.

PART – II**Question 5**

- (a) "Transfer pricing adjustments must be made while computing book profit for levy of Minimum Alternate Tax (MAT)".

In the context of provisions contained in the Income-tax Act, 1961, examine the correctness of the above statement. (3 marks)

- (b) Specify with brief reason, whether the following acts can be considered as an act of (i) Tax management; or (ii) Tax planning; or (iii) Tax evasion; or (iv) Tax avoidance :

(i) To reduce tax payable, Sunil Varma an individual, paid ₹55,000 as life insurance premium on the policy of his minor son.

(ii) A foreign company has an Indian subsidiary which is selling its product to the parent company at a price of ₹100 per unit while the same product is sold to another foreign company at ₹200 per unit.

(iii) Company claiming depreciation on the motor car which is being used by director for personal purposes. (3 marks)

(c) Briefly explain the provision of section 115 BBG of The Income Tax Act, 1961, regarding taxability of income earned from transfer of "Carbon Credits" for assessment year 2019-20. (3 marks)

(d) An individual has business income of ₹35,00,000 for previous year 2018-19. He for the previous year 2017-18 was subject to Alternate Minimum Tax (AMT) because of claiming deduction under section 80-IE of Income Tax Act, 1961. He has an AMT credit of ₹5,00,000.

Calculate the tax to be paid by him for assessment year 2019-20. Also work out the amount of balance of available AMT credit. (3 marks)

(e) ABC Ltd. has 2 factories one of which is in SEZ, Company moves the produce of the non SEZ factory at a price considerably lower than the fair market value to the SEZ factory. This lowers the cost of production of the SEZ factory and the goods are sold from therein after insignificant value addition. Consequently, the SEZ factory shows higher profits and that entitles the assessee to claim a higher deduction from the computation of income.

Can General Anti Avoidance Rules 'GAAR' specified under the Income Tax Act, 1961 be invoked in this case ? (3 marks)

Answer 5(a)

For the purpose of computing book profit for levy of minimum alternate tax, the net profit shown in the Statement of Profit and Loss account prepared in accordance with the Companies Act, 2013 must be increased / decreased only by the additions and deductions specified in Explanation 1 to section 115JB of the Income Tax Act, 1961.

The Explanation 1 to section 115JB of the Income Tax Act, 1961 does not provide for adjustments for Transfer Pricing and therefore, transfer pricing adjustments cannot be made while computing book profit for levy of Minimum Alternate Tax.

Hence, the statement that Transfer pricing adjustment must be made while computing book profit for levy of Minimum Alternate Tax (MAT) is incorrect.

Answer 5(b)

- (i) Premium paid on life insurance policy of minor son is allowed as deduction under section 80C of the Income tax Act, 1961. Therefore, ₹ 55,000 paid, by Mr. Sunil Varma, as premium on life insurance policy of his minor son is an act of **Tax Planning**.
- (ii) The transaction which is not at Arm's Length Price 'ALP' is an act of **Tax Avoidance**. In this case, an Indian subsidiary, while selling its products, charging less amount from its foreign parent company and shifting profits to outside India in order to avoid tax liability in India and therefore is an act of Tax Avoidance as the transaction is not at arm's length price.
- (iii) Claiming depreciation on motor car being used for personal purpose is not allowed under section 32 of the Income Tax Act, 1961. Therefore, the depreciation claimed by the company on the motor car which is being used by the director for personal purpose is an act of **Tax Evasion**.

Answer 5(c)

Tax on Income from transfer of Carbon Credits [Section 115BBG]: Where the total income of an assessee includes any income by way of transfer of carbon credits, the income-tax payable shall be the aggregate of:

- (a) the amount of income-tax calculated on the income by way of transfer of carbon credits, at the rate of 10%; and
- (b) the amount of income-tax with which the assessee would have been chargeable had his total income been reduced by the amount of income referred to in clause (a).

Notwithstanding anything contained in this Act, no deduction in respect of any expenditure or allowance shall be allowed to the assessee under any provision of this Act in computing his income referred to in clause (a) of sub-section (1).

Explanation : "carbon credit" in respect of one unit shall mean reduction of one tonne of carbon dioxide emissions or emissions of its equivalent gases which is validated by the United Nations Framework on Climate Change and which can be traded in market at its prevailing market price.

Answer 5(d)**Computation of Tax Liability for AY 2019-20 of an Individual**

<i>Particulars</i>	<i>Amount (₹)</i>
Normal Tax Liability on Income of ₹35,00,000	
On ₹2,50,000 – Nil	Nil
On (₹5,00,000 – ₹2,50,000) @ 5%	12,500
On (₹10,00,000 – ₹5,00,000) @ 20%	1,00,000
Balance (₹35,00,000 – ₹10,00,000) @ 30%	7,50,000
Total Tax Liability (excluding cess)	8,62,500
Add : Health and Education Cess @ 4%	34,500
Total Tax Liability	8,97,000
Alternate Minimum Tax 'AMT' @ 19.24% (18.5% + 4% cess) on ₹35,00,000	6,73,400

The tax payable by the assessee shall be ₹6,73,400 out of total tax liability of ₹8,97,000 after taking credit of AMT of ₹2,23,600. The Assessee will carry forward the balance AMT of ₹2,76,400 (₹5,00,000 – ₹2,23,600)

Answer 5(e)

There is no misrepresentation of facts in the situation given in the question and hence there is no tax evasion. In the given case, ABC Ltd. has made to shift the profits

from a taxable zone to a zone with tax benefits being SEZ and hence this would be dealt with by the transfer pricing regulation. Hence, GAAR will not be invoked in this case.

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

Question 6

(a) The net profit as per Statement of Profit and Loss of PQR Ltd., a resident company for the year ended 31st March, 2019 is ₹280 lakh arrived at after debiting/crediting following items :

- (i) Depreciation on Assets ₹110 lakh (includes ₹30 lakh on revaluation)
- (ii) Dividend received from Indian companies ₹8 lakh
- (iii) Transfer to general reserve ₹5 lakh
- (iv) Provision for tax ₹50 lakh
- (v) Proposed dividend ₹20 lakh
- (vi) Amount withdrawn from revaluation reserve ₹40 lakh.

Following further information are also provided by the company :

- (i) Provision for tax includes ₹15 lacs of tax payable on distribution of profit and of ₹3 lacs of interest payable on income tax.
- (ii) Brought forward loss and unabsorbed depreciation as per books are ₹13 lakh and ₹9 lakh respectively.

Compute Minimum Alternate Tax (MAT) under section 115JB of Income Tax Act, 1961 for the Assessment Year 2019-20. (5 marks)

(b) Explain the consequences that would follow if the Assessing Officer makes adjustment to Arm's Length Price (ALP) in international transactions of the assessee resulting in increase in total income. What are the remedies available to an assessee to dispute such adjustment made by the AO ? (5 marks)

(c) Zonik Inc of Canada holds 35% shares of Gama India Ltd. Gama India Ltd. imports 2000 unit of product X from Zonik Inc Canada at a price of ₹1,500 per unit and these are sold to Sunil Regency Ltd. at a price of ₹1,700 per unit. Gama India Ltd. has bought similar products from Ronak India Ltd. and sold to Vijay Ltd. at a gross profit of 14% on sales. Zonik Inc Canada offers a quantity discount of ₹15 per unit whereas Ronak India Ltd. does not offer such quantity discount. Gama India Ltd. incurred freight of ₹10 per unit and customs duty of ₹30 per unit in case of purchases made from Zonik Inc Canada.

On the basis of these facts explain the method which would be applicable for determination of Arm's Length Price (ALP) under Income Tax Act, 1961.

Determine the Arm's Length Price on the basis of the method as found to be applicable and also determine the effect on the net Profit/Income of Gama India Ltd. (assuming that there is no advance pricing agreement) in the scenario discussed above. (5 marks)

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

- (i) *Jim Crow Tex. Inc. is a company incorporated in London (England). 60% of its shares are held by Sampat Pvt. Ltd. a domestic company. Jim Crow Tex. Inc. has its presence in India also. The data relating to Jim Crow Tex. Inc. for financial year 2018-19 are as under :*

Particulars	India	England
Fixed assets at depreciated values for tax purposes (₹ in crores)	60	90
Intangible assets (₹ in crores)	80	190
Other assets (₹ in crores)	20	60
Income from trading operations (₹ in crores)	16	37
Income from investments (₹ in crores)	29	18
Number of employees	70	30

(Residents in respective countries)

State for the purpose of Place of Effective Management (POEM) whether the Jim Crow Tex. Inc shall be said to be engaged in 'Active Business Outside India' (ABOI) under Income Tax Act, 1961 on the basis of :

- (a) Income criteria
 (b) Assets criteria
 (c) Number of employees criteria. (5 marks)

- (ii) *Jyoti Limited of Kolkata is a company in which 70% of the shares are held by Sanjana Limited of Jaipur. Jyoti Limited declared a dividend amounting to ₹40 lakh to its shareholders for the financial year 2017-18 in its Annual General Meeting held on 12th August, 2018. Dividend distribution tax was paid by Jyoti Limited on 21st August, 2018. Sanjana Limited declared an interim dividend amounting to ₹60 lacs on 22nd October, 2018.*

Compute the amount of tax on dividend payable by Sanjana Limited under Income Tax Act, 1961 and also briefly state the relevant statutory provisions.

(5 marks)

- (iii) *State with reasons, whether Jackson LLC., (incorporated in Japan) and Vijayshree Ltd. a domestic company, are/can be deemed to be associated enterprises for the transfer pricing regulations in the following independent situations :*

(a) *Jackson LLC. has advanced a loan of ₹55 crores to Vijayshree Ltd. on 12th January, 2019. The total book value of assets of Vijayshree Ltd. is ₹100 crores. The market value of the assets, however, is ₹140 crores. Vijayshree Ltd. repaid ₹10 crores before 31st March, 2019.* (2 marks)

(b) *Total value of raw materials and consumables of Vijayshree Ltd. is ₹800 crores. Of this, Jackson LLC supplies to the tune of ₹740 crores, at prices mutually agreed upon once in six months and depending upon the market conditions.* (3 marks)

Answer 6(a)**Computation of Book Profit of PQR Limited under section 115JB For AY 2019-20**

<i>Particulars</i>	<i>Amounts (₹ In Lakhs)</i>
Profit as per P & L A/c	280
<i>Add</i> : Following amount as per Explanation 1 to section 115JB	
Depreciation on assets including depreciation on revaluation of assets	110
Transfer to General Reserve	5
Provision of tax including tax on distributed profit under section 115-O and including interest under the Income Tax Act	50
Proposed Dividend	20
Total	465
<i>Less</i> : Following amount as per Explanation 1 to section 115JB	
Dividend from Indian companies is exempt u/s 10(34)	(8)
Depreciation excluding depreciation on revaluation of assets	(80)
Amount withdrawn from revaluation reserve restricted to the amount of depreciation on account of revaluation	(30)
Unabsorbed depreciation or unabsorbed losses as per books of account whichever is less	(9)
Book Profits as per section 115JB	338
Tax @ 18.5%	62.53
<i>Add</i> : Surcharge @ 7%	4.38
Tax and Surcharge	66.91
<i>Add</i> : Health and Education Cess @ 4%	2.68
Total Tax Liability (as per section 115JB 'MAT')	69.59

Answer 6(b)

In case the Assessing Officer makes adjustment to Arm's Length Price 'ALP' in an international transaction which result into an increase in taxable income of the assessee, the following consequences shall follow:

1. No deduction under section 10AA or Chapter VI-A of Income Tax Act, 1961 shall be allowed from the income so increased.
2. No corresponding adjustment would be made to the total income of the other

associated enterprise (in respect of payment made by the assessee from whom tax has been deducted or is deductible at source) on account of increase in the total income of the assessee on the basis of the arm's length price so recomputed.

The remedies available to the assessee to dispute such an adjustment are:

1. In case the assessee is an eligible assessee under 144C of Income Tax Act, 1961, he can file his objections to the variation made in the income within 30 days [of the receipt of draft order by him] to the Dispute Resolution Panel and Assessing Officer. Appeal against the order of the Dispute Resolution Panel can be made to the Income-tax Appellate Tribunal.
2. In any other case, he can file an appeal under section 246A of Income Tax Act, 1961 to the commissioner (Appeals) against the order of the Assessing Officer within 30 days of the date of service of notice of demand.
3. The assessee can opt to file an application to the Commissioner of Income-tax for revision under section 264 of Income Tax Act, 1961 of the order of the Assessing Officer.

Answer 6(c)

Arm's Length Price is determined on the basis of Resale Price Method

<i>Particular</i>	<i>Amounts (₹)</i>
Resale price of goods purchased from Zonik Inc Canada (per unit)	1700
Less: Normal Gross Profit Margin @ 14% on ₹1700 (per unit)	(238)
Less: Expenses connected with purchases (fright and customs duty i.e. ₹10 + ₹30)	(40)
Less : Quantity discount allowed by Zonik Inc Canada	(15)
Arm's Length Price (per unit)	1407
Price paid to Zonik Inc Canada (per unit)	1500
Excess price paid per unit (₹1500 - ₹1407)	93
Increase in Income of Gama Limited (₹93 * 2000 units)	186000

Answer 6A(i)

- (a) **Income Criteria** : The passive income should not be more than 50% of its total income.

Total Income during the previous year 2018-19 is ₹100 crores [(16 crore + 29 crore) + (37 crores + 18 crores)]

Passive Income is ₹47 crores being income from investment (29 crores in India and 18 crores in England).

% of passive income to total income = 47 crores / 100 crores * 100 = 47%

Since passive income is 47% i.e. not more than 50% of its total income, the income condition for Active Business outside India 'ABOI' test is satisfied.

(b) Assets Criteria : Should have less than 50% of its total assets situated in India

Value of Total Assets during the previous year 2018-19 is ₹500 crores [160 crores in India + 340 crores in England].

Value of total Assets in India during the previous year 2018-19 is ₹160 crores.

% of assets situated in India to total assets = $160 \text{ crores} / 500 \text{ crores} * 100 = 32\%$

Since the value of assets situated in India is less than 50% of its total assets i.e. 32%, the assets condition for Active Business outside India 'ABOI' test is satisfied.

(c) Employee Criteria : Less than 50% of the total number of employees should be situated in India or should be resident in India.

Number of employees situated in India or resident in India is 70.

Total number of employees is 100 (70+30).

% of employees situated in India or are resident in India to total number of employees is $70/100 * 100 = 70\%$

Since employees situated in India or are resident in India are more than 50% of its total employees i.e. 70%, the employee condition for Active Business outside India 'ABOI' test is not satisfied.

Answer 6A(ii)

Tax on distributed profits of domestic companies [Section 115-O of Income Tax Act, 1961] : Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of 15%.

The amount referred to in sub-section (1) shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its domestic subsidiary company and the subsidiary has paid the tax which is payable under this section on such dividend [Section 115-O(1A)].

Grossing up of Distributed Profits : For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sub-section (1) as reduced by the amount referred to in sub-section (1A) [hereafter referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits

Calculation of Dividend Distribution Tax payable by Sanjana Limited (Grossing up excluding surcharge and cess)

<i>Particulars</i>	<i>Amount (In Lakhs)</i>
Dividend distributed by Sanjana Limited	60
<i>Less</i> : Dividend received from domestic subsidiary company i.e. Jyoti Limited (70% of ₹40 Lakh)	(28)
Net Distributed Profits	32
<i>Add</i> : Grossing up of Dividend (₹32 lakhs *15/85)	5.65
Gross Dividend	37.65
Additional Income Tax Payable by Sanjana Limited	
u/s 115-O [15% of ₹37.65]	5.65
<i>Add</i> : Surcharge @ 12%	.68
Tax including surcharge	6.33
<i>Add</i> : Health and Education Cess @ 4%	.25
Tax Liability	6.58

Alternate Answer 6A(ii)

Tax on distributed profits of domestic companies [Section 115-O] : Notwithstanding anything contained in any other provision of this Act and subject to the provisions of this section, in addition to the income-tax chargeable in respect of the total income of a domestic company for any assessment year, any amount declared, distributed or paid by such company by way of dividends (whether interim or otherwise) on or after the 1st day of April, 2003, whether out of current or accumulated profits shall be charged to additional income-tax (hereafter referred to as tax on distributed profits) at the rate of 15%.

The amount referred to in sub-section (1) shall be reduced by the amount of dividend, if any, received by the domestic company during the financial year, if such dividend is received from its domestic subsidiary company and the subsidiary has paid the tax which is payable under this section on such dividend [Section 115-O(1A)].

Grossing up of Distributed Profits : For the purposes of determining the tax on distributed profits payable in accordance with this section, any amount by way of dividends referred to in sub-section (1) as reduced by the amount referred to in sub-section (1A) [hereafter referred to as net distributed profits], shall be increased to such amount as would, after reduction of the tax on such increased amount at the rate specified in sub-section (1), be equal to the net distributed profits

Calculation of Dividend Distribution Tax payable by Sanjana Limited (Grossing up including surcharge and cess)

<i>Particulars</i>	<i>Amount (In Lakhs)</i>
Dividend distributed by Sanjana Limited	60
<i>Less:</i> Dividend received from domestic subsidiary company i.e. Jyoti Limited (70% of ₹40 Lakh)	(28)
Net Distributed Profits	32
<i>Add:</i> Grossing up of Dividend (₹32 lakhs *17.472/82.528)	6.78
Gross Dividend	38.78
Additional Income Tax Payable by Sanjana Limited u/s 115-O [15% of ₹38.78]	5.82
<i>Add:</i> Surcharge @ 12%	.70
Tax including surcharge	6.52
<i>Add:</i> Health and Education Cess @ 4%	.26
Tax Liability	6.78

Answer 6A(iii)

- (a) Jackson LLC (a foreign company, has advanced loan of ₹55 crores to Vijayshree Ltd., a domestic company, which amounts to 55% of book value of assets of Vijayshree Ltd. Since the loan advanced by Jackson LLC is not less than 51% of the book value of assets of Vijayshree Ltd., Jackson LLC and Vijayshree Ltd. are deemed to be associated enterprises for the purpose of transfer pricing regulations. The deeming provision would be attracted even if there is a repayment of loan during the same previous year which brings down its percentage below 51%.
- (b) The Jackson LLC supplies 92.50% (₹740 crore / ₹800 crores *100) of the raw material and consumables required by Vijayshree Ltd. which is more than the specified threshold limit of 90%, however, Jackson LLC and Vijayshree Limited are not deemed to be associated enterprises since the price of supply is not influenced by Jackson LLC but is mutually agreed upon once in six months depending upon prevailing market conditions.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

- (a) XYZ Ltd. wishes to convey Meeting of Board of Directors through Electronic mode. Draft a suitable Notice for the same. Assume other informations.
- (b) Draft a Resolution for appointment of 'David' as Company Secretary pursuant to Section 203 of The Companies Act, 2013.
- (c) "Registration of a Power of Attorney is not Compulsory". Comment.
- (d) "A Company is an artificial judicial person created by Law". Comment.

(5 marks each)

Answer 1(a)

Date : 01/06/2019 (ideally, should be on or more than 7 days before the meeting date)

Name of the Company : XYZ Ltd.

Registered Address : New Delhi

CIN : _____

Email : XYZ@gmail.com

Website : XYZ.com

NOTICE OF 4th BOARD MEETING

Mr. ABC
Director,
New Delhi.

Dear Sir,

1. NOTICE is hereby given that the 4th Meeting of the Board of Directors of the company will be held on Monday, the 12th June 2019 at 4.30 pm at New Delhi.
2. The Agenda of the business to be transacted at the Meeting will follow.
3. You may attend the Meeting through video conference, the details of which are enclosed. In case you desire to participate through such mode, please send a confirmation in this regard to Mr. P, the Company Secretary of the Company at XYZ@gmail.com within 2 days to enable making necessary arrangements.

Kindly make it convenient to attend the Meeting.

Yours faithfully,

For XYZ Limited
(Signature)

(Name)

(Designation)

(Email)

Answer 1(b)**Board resolution to be passed at a meeting and not by circulation**

“RESOLVED THAT pursuant to Section 203 of the Companies Act, 2013 and Rule 8 and Rule 8A of Companies appointment & remuneration of Managerial Personnel Rules 2014 and other applicable provision (including any modification or re-enactment thereof), if any, of the Companies Act, 2013 Mr. David, holding the prescribed qualification under Section 2(24) of the Companies Act, 2013, be and is hereby appointed as Company Secretary of the company w.e.f 1st April 2019, on the terms specified in the draft agreement/ appointment letter, placed on the table, a copy of which was initialled by the Chairman for the purpose of identification.”

“RESOLVED FURTHER THAT, Mr. David, Company Secretary, shall perform the duties which are required to be performed by a secretary under the Companies Act, 2013 and any other duties assigned to him by the Board or the Chief Executive Officer.”

“RESOLVED FURTHER THAT, Mr. X, Director be and is hereby authorised to sign and file the necessary forms/documents with the Registrar of companies and make entries, as appropriate, in the registers of the company.”

Answer 1(c)

Yes, registration of a power of attorney is not compulsory. Section 4 of the Powers-of-Attorney Act, 1882 provides that it may be deposited in the High Court or District Court within the local limits of whose jurisdiction the instrument lies with an affidavit verifying its execution, and a copy may be presented at the office and stamped as the certified copy and it will then be sufficient evidence of the contents of the deed.

In certain cases, registration of power of attorney may become compulsory under Section 17 of the Indian Registration Act, 1908. Thus, a power which authorises the donee to recover rents of immovable property belonging to the donor for the donee’s own benefit is an assignment and requires registration under clause (b) of Sub-section (1) of Section 17 of the Registration Act. Similarly, a power of attorney which creates a charge on the immovable property referred to therein in favour of the donee of the power requires registration [*Indra Bibi v. Jain Sirdar*, (1908) I.L.R. 35 Cal. 845, 848].

In other cases, a mere general power of attorney, even though it deals with immovable property, need not be registered (*Kochuvareed v. Mariappa*, A.I.R. 1954 T.C. 10, 17) since it does not come under any of the documents specified in the Indian Registration Act as requiring registration.

Answer 1(d)

A company is an artificial judicial person created by law having its own distinct entity form, has perpetual succession and capable of entering into contracts. Perpetual succession implies that upon death or disqualification of its owners or shareholders, the company continues to exist. Though company is bestowed with the characteristic of separate legal entity but it cannot take decision on its own. It is capable of acting in its own name, entering into contracts. It is capable of owning and holding property in its own name, sue others and to be sued by others in its name. Despite all these powers, since it is not a natural person, it expresses its will or takes its decisions through natural persons (i.e. directors or members) collectively which is known as “resolutions.”

In *Solomon vs. Solomon and Company Limited* for the first time, the principle of the separate legal entity or separate legal existence of a company was recognized by the House of Lords. It was held that once the company is incorporated, it becomes a separate entity in the eyes of law independent of a company from Mr. Solomon.

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

Question 2

Write notes on the following :

- (a) *Applicability of principle of res judicata.*
- (b) *Importance of Force Majeure Clause in Commercial contracts.*
- (c) *Conditions for Appeals before the Hon'ble Supreme Court in Civil cases.*
- (d) *Main functions of Directorate of Enforcement.* (4 marks each)

OR (Alternate question to Q. No. 2)

Question 2A

Write notes on the following :

- (i) *Can revision application be made where aggrieved party has right to appeal in the matter ? Elucidate with relevant provisions of Criminal Procedure Code.*
- (ii) *Describe the applicability of Secretarial Standard-1 under the Companies Act, 2013, issued by The Institute of Company Secretaries of India on Meeting of Board of Directors.*
- (iii) *Enumerate the stages of a criminal trial in a summons case.*
- (iv) *FIR and Complaint.* (4 marks each)

Answer 2(a)

The principle of res judicata aims at bringing finality to the litigation. The basic principle is that a final judgement rendered by a court of competent jurisdiction is conclusive on merits as to rights of the parties and constitutes an absolute bar against subsequent action involving the same claim. In other words, a matter once litigated, when it is adjudicated on merits, the same matter must not be litigated in another court.

The principle of resjudicata applies only under following circumstances:

- The matter directly and substantially in issue has been directly and substantially in issue in a former suit between same parties or between whom they claim litigation under the same title.
- The matter is in the competent court to try such subsequent suit or the suits in which such issue has been subsequently raised and has been heard and finally decided.

The word former suit means suit decided prior, irrespective of the date of institution. The matter must be decided on merits i.e. the issue was alleged by one party and

denied by the other. The principle of res-judicata is one of convenience and not one of absolute justice and it should not be unduly conditioned and qualified by technical interpretations.

Answer 2(b)

One of the very important provision witnessed in modern commercial contracts relates to Force Majeure clause or excuses for non-performance. This is also referred as 'Act of God', which includes circumstances and events like earthquake, floods, tsunami etc., which prevents one party to perform his part of the contract. A "Force Majeure" clause is a contract provision that relieves the parties from performing their contractual obligations when certain circumstances beyond their control arise, making performance inadvisable, commercially impracticable, illegal, or impossible.

This provision defines as to what particular circumstances or events beyond the control of the party would entitle him to delay or refuse the performance of the contract, without incurring liability for damage. It is usual to list the exact circumstances or events, like strike, lockout, riot, civil commotion, Government prohibition, etc. which would provide an excuse to the party to delay or refuse the performance. It may be further provided that events of a similar nature which are beyond the control of the party and which could not have been avoided with due diligence would also furnish the above relief.

A force majeure may operate to excuse all or any part of the obligations of one or both parties to agreement.

Answer 2(c)

The Supreme Court of India is the apex Court in the country and hence the final court of appeal for any litigant. The Supreme Court has appellate jurisdiction as well as original jurisdiction. Under Article 133 of the Constitution an appeal also lies in cases where the High Court certifies that a substantial question of law needs to be decided by the Supreme Court. Article 133 deals with conditions for appeals to the Hon'ble Supreme Court from decisions of High Court in civil proceedings. For an appeal to the Hon'ble Supreme Court the conditions laid down in this article must be fulfilled.

These conditions are:

- the decision appealed against must be a "judgement, decree or final order" of a High Court in the territory of India,
- such judgement, decree or final order should be given in a civil proceeding, and
- a certificate of the High Court to the effect that (i) the case involves a substantial question of law of general importance, and (ii) in the opinion of the High Court the said question needs to be decided by the Supreme Court.

Answer 2(d)

Directorate of Enforcement is a Multi-Disciplinary Organization mandated with the task of enforcing the provisions of two special fiscal laws – Foreign Exchange Management Act, 1999 (FEMA) and Prevention of Money Laundering Act, 2002 (PMLA).

The main functions of the Directorate are as under-

- Investigate contraventions of the provisions of Foreign Exchange Management

Act, 1999 (FEMA) which came into force with effect from 1.6.2000. Contraventions of FEMA are dealt with by way of adjudication by designated authorities of ED and penalties upto three times the sum involved can be imposed.

- Investigate offences of money laundering under the provisions of Prevention of Money Laundering Act, 2002 (PMLA) which came into force with effect from 1.7.2005 and to take actions of attachment and confiscation of property if the same is determined to be proceeds of crime derived from a Scheduled Offence under PMLA, and to prosecute the persons involved in the offence of money laundering. There are 156 offences under 28 statutes which are Scheduled Offences under PMLA.
- Processing cases of fugitive/s from India under Fugitive Economic Offenders Act, 2018. The objective of this Act is to provide for measures to deter fugitive economic offenders from evading the process of law in India by staying outside the jurisdiction of Indian Courts and to preserve the sanctity of the rule of law in India.
- Sponsor cases of preventive detention under Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA) in regard to contraventions of FEMA.
- Render cooperation to foreign countries in matters relating to money laundering and restitution of assets under the provisions of PMLA and to seek cooperation in such matters.

Answer 2A(i)

Sub-section (4) of Section 401 of the Code of Criminal Procedure, 1973, provides where under this Code an appeal lies and no appeal is brought, no proceeding by way of revision shall be entertained at the instance of the party who could have appealed.

The Code of Criminal Procedure provides a remedy, by way of appeal under Chapter XXX and if the party does not file an appeal against an order of the inferior criminal Court, he will not be permitted to prefer a revision against that order. But legal bar does not stand in the way of High Court's exercise of power of revision suo motu. It can itself call for the records of proceedings of any inferior criminal Court and has power to enhance the sentence by exercising its revisional jurisdiction.

The power however is to be exercised only in exceptional cases where there has been a miscarriage of justice owing to a defect in the procedure or a manifest error on the point of law, excess of jurisdiction, abuse of power, where decision upon which the trial court relied has since been reversed or overruled when the revision appeal is being heard.

Answer 2A(ii)

In terms of sub-section (10) of Section 118 of the Companies Act, 2013, every company is required to observe Secretarial Standard-1 except:

- (i) One Person Companies (OPC) having only one Director on its Board and
- (ii) Such other class or class of companies which are exempted by Central Government through Notification.

Exemptions shall be applicable to a Section 8 company provided it has not committed a default in filing its Financial Statements or Annual Return with the Registrar of Companies. However, such Section 8 companies need to comply with the applicable provisions of the Act relating to Board Meetings. In other words, the Secretarial Standard (SS-1) will be applicable to all companies like private, public, listed or a small company unless expressly exempted as stated above.

Answer 2A(iii)

According to Section 2(w) of Code of Criminal Procedure, 1973, those cases in which an offense is punishable with an imprisonment of fewer than two years is a summons case.

Stages of Criminal Trial in a summons case are-

- *Pre-trial*: In the pre-trial stage, the process such as filing of FIR and investigation is conducted.
- *Charges*: In summons trials, charges are not framed in writing. The accused appears before the court or is brought before the court then the Magistrate would orally state the facts of the offense he is answerable.
- *Plea of guilty*: The Magistrate after stating the facts of the offence will ask the accused if he pleads guilty or has any defense to support his case. If the accused pleads guilty, the Magistrate records the statement in the words of the accused as far as possible and may convict him on his discretion.
- *Plea of guilty and absence of the accused*: In cases of petty offences, where the accused wants to plead guilty without appearing in the court, the accused should send a letter containing an acceptance of guilt and the amount of fine provided in the summons.
- *Prosecution and defense evidence*: If the accused does not plead guilty, then the process of trial starts. The prosecution and the defense are asked to present evidence in support of their cases.
- *Judgement*: When the sentence is pronounced in a summons case, the parties need not argue on the quantum of punishment given. The sentence is the sole discretion of the judge. This right to appeal is also extended to the accused.

Answer 2A(iv)

FIR: According to Section 154 of the Code of Criminal Procedure, 1973, FIR means every information relating to the commission of a cognizable offence, if given orally to an officer in charge of a police station, shall be reduced to writing by him or under his direction, and be read over to the informant; and every such information, whether given in writing or reduced to writing as aforesaid, shall be signed by the person giving it, and the substance thereof shall be entered in a book to be kept by such officer in such form as the State Government may prescribe in this behalf.

Complaint under section 2(d) of the Code of Criminal Procedure, 1973 means any allegation made orally or in writing to a Magistrate, with a view to his taking action under this Code that some person, whether known or unknown, has committed an offence, but

it does not include a police report. The petition of complaint must be submitted to the Magistrate. If it is submitted to some other official it is not a complaint. In order to be a complaint, the petition must make allegations about occurrence of some offence.

The key differences between complaint and FIR are given hereunder:

- A written document prepared by the police, when the police get the information about the commission of a crime for the very first time, is known as FIR or first information report. Conversely, a petition filed with the magistrate that contains an accusation regarding the commission of an offence and a prayer is made that the accused should be penalized, is called complaint.
- While a complaint has no prescribed format, FIR can only be registered in the format prescribed by the law.
- One can make a complaint to the metropolitan magistrate, whereas an informant or plaintiff can lodge FIR to the police officer of the respective police station.
- The complaint is made for both cognizable and non-cognizable offences. Unlike, only cognizable offences are covered in case of FIR.
- Any person can make a complaint to the magistrate regarding the offence, except in the case of marriage and defamation wherein only aggrieved party can make a complaint. On the contrary, any person who is an aggrieved party, witness or is having the knowledge of the crime can file FIR.

Attempt all parts of either Q. No. 3 or Q. No. 3A

Question 3

Discuss the following :

- (a) *What are the provisions regarding quorum for the meeting of Board of Directors under Companies Act, 2013. Can article provide for the different quorum than the Companies Act, 2013 ?* (4 marks)
- (b) *Is it necessary to get the Power of Attorney attested ?* (4 marks)
- (c) *Bank was authorised by its Articles to issue bonds. The directors issued bond to 'A' without the requisite resolution. A filed a suit for recovery of the money against the company. The company resisted the suit on the ground that there was no resolution passed. Will 'A' succeed ?* (4 marks)
- (d) *The directors of the company were authorised under the Articles of Association of Company to borrow ₹20,000 without the consent of shareholders in general meeting. The directors themselves let ₹50,000 to the company without such consent. Is the company held liable for ₹50,000.* (4 marks)

OR (Alternate question to Q. No. 3)

Question 3A

Distinguish between the following :

- (i) *Ordinary Resolution and Special Resolution*
- (ii) *Simple Mortgage and English Mortgage*

(iii) *Summons and Warrant*

(iv) *Plaint and Written statement.*

(4 marks each)

Answer 3(a)

As per Section 174 of the Companies Act 2013,

- The quorum for a meeting of the Board of Directors of a company shall be one third of its total strength or two directors, whichever is higher, and the participation of the directors by video conferencing or by other audio visual means shall also be counted for the purposes of quorum under this sub-section.
- The continuing directors may act notwithstanding any vacancy in the Board; but, if and so long as their number is reduced below the quorum fixed by the Act for a meeting of the Board, the continuing directors or director may act for the purpose of increasing the number of directors to that fixed for the quorum, or of summoning a general meeting of the company and for no other purpose.
- Where at any time the number of interested directors exceeds or is equal to two-thirds of the total strength of the Board of Directors, the number of directors who are not interested directors and present at the meeting, being not less than two, shall be the quorum during such time.
- Where a meeting of the Board could not be held for want of quorum, then, unless the articles of the company otherwise provide, the meeting shall automatically stand adjourned to the same day at the same time and place in the next week or if that day is a national holiday, till the next succeeding day, which is not a national holiday, at the same time and place.

The Companies Act 2013 does not provide cap on higher number of quorum. As per Secretarial Standard- 1, Articles of Association may provide for higher number of directors for quorum.

Answer 3(b)

A power of attorney need not be attested. However, it would be advisable to execute the power of attorney before and have it authenticated by a Notary Public or any Court Judge/Magistrate, Indian Consul or Vice- Consul or representatives of the Central Government. If a power of attorney is so authenticated courts shall presume the authentic execution of the power of attorney (Section 85 of the Indian Evidence Act, 1872). Under Section 85 of the Indian Evidence Act, 1872, the Court shall presume that every document purporting to be a power of attorney, and to have been executed before and authenticated by a Notary Public or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government, was so executed and authenticated.

If a power of attorney gives authority to present documents for registration under Section 32 of the Registration Act, 1908 it must be executed before and authenticated by the Registrar or Sub-Registrar within whose District or Sub-District the principal resides or where the Registration Act is not in force, before any Magistrate or if it is executed outside India, before a Notary Public, or any Court, Judge, Magistrate, Indian Consul or Vice-Consul or representative of the Central Government (Section 33 of the Registration Act, 1908). But a power of attorney empowering an agent to execute a deed conveying

the property in an immovable property and get the deed registered thereby perfecting the transaction of conveyance, need not be executed before the Officer appointed to authenticate and register documents in as much as when the agent executes the document in the name of the principal, he is the executant thereof and as such can himself present the document for registration.

Answer 3(c)

This case relates to the doctrine of indoor management. This doctrine protects the outsider against the company. According to this doctrine, the person entering into a transaction with the company only needed to satisfy that his proposed transaction is not inconsistent with the articles and memorandum of the company. He is not bound to see the internal irregularities of the company and if there are any internal irregularities, the company will still be liable to honour its part of the contract as that outside person has acted in the good faith and he did not know about the internal arrangement of the company.

This doctrine was laid down in the case of *Royal British Bank v. Turquand*. It was held that “Outsiders are bound to know the external position of the company, but are not bound to know its indoor management.” Therefore, on the basis of this doctrine, ‘A’ will succeed to recover his money.

Answer 3(d)

This problem refers to the exception to the rule of doctrine of indoor management. The doctrine is not applicable where a person had express or implied knowledge of the irregularity. Despite knowing about this fact if a person lends money ultra vires articles, it cannot seek protection under the rule of indoor management.

In the case of *Howard vs. Patent Ivory Company*, the article of the company empowered directors to borrow up to 1000 pounds only. However, they could extend the limit of 1000 pound by consent in general meeting. Without such permission, they took 3500 pounds from one of the directors who took debentures. Later on, the company refused to pay back. The court held that the company is only liable to pay back 1000 pounds because the director had noticed about the limit and condition.

Similarly in this case, the company is liable for only Rs. 20,000 which was authorized by Article of Association. The company will not be held liable for Rs. 50,000 as this amount was in excess of the borrowing capacity of the company under Articles of Association.

Answer 3A(i)

Ordinary resolution : An ordinary resolution is one which is passed in the company’s general meeting by a simple majority of votes i.e. - 51%. No notice is required to be given for moving an ordinary resolution. All matters relating to the company’s business, except those which need to be settled by a special resolution, are settled by an ordinary resolution.

Special resolution : Special Resolution means a resolution in which special majority is needed to pass the resolution at the general meeting i.e the votes cast in favor of the resolution, whether in person or by proxy, should not be less than three times the votes cast against the resolution by members so entitled. A prior notice needs to be given for moving a special resolution in any meeting of the company and the notice should contain

the intention to propose the resolution as special resolution should be mentioned specifically. A special resolution is meant to make decisions in important matters and protect the rights of company's members.

The significant differences between ordinary resolution and special resolution are:

- Ordinary Resolution is one wherein simple majority is required to move the resolution at the general meeting. Special Resolution means a resolution in which supermajority is needed to pass the resolution at the general meeting.
- In the ordinary resolution, consent of at least 51% members, is required for the resolution to be passed. On the other hand, the special resolution requires the consent of at least 75% members, in favour of the resolution.
- The copy of an ordinary resolution, signed by the officer of the company should be filed with the registrar only in certain cases. As against this, a printed or handwritten copy of a special resolution, containing the signature of the officer of the company must be filed with the Registrar of Companies (ROC) within 30 days.
- Ordinary Resolution is passed to transact ordinary business. However, a special business can be transacted via special resolution or ordinary resolution, as per the requirements of the Companies Act, 2013.

Answer 3A(ii)

Simple Mortgage : In a simple mortgage, the mortgagor without delivering possession of the mortgaged property binds himself personally to pay the mortgage money and agrees expressly or impliedly that if he fails to pay the debt and interest in terms of the mortgage deed, the property may be sold and the proceeds applied in payment of the mortgaged money. It has following characteristics:-

- That the mortgagor must have bound himself personally to repay the loan.
- That to secure the loan he has transferred to the mortgagee the right to have the specific immovable property sold in the event of his having failed to repay.
- That the possession of the property is not delivered to the lender.

English Mortgage : In an English mortgage, a mortgagor binds himself to repay the mortgaged money on certain date and transfers the mortgaged property absolutely to the mortgagee subject to the proviso that he will re-transfer it to the mortgagor upon payment of the mortgaged money as agreed. In this mortgage the borrower promises to repay the borrowed money on a certain date. The borrower transfers the property to the lender. The lender will re-transfer the property when the money is repaid. The mortgaged property is absolutely transferred to the mortgagee.

Answer 3A(iii)

Summons : Summon is a legal notice, issued both in case of civil and criminal proceeding, in which a court orders an individual either to appear or to produce a document before the court, at a stipulated time and place. According to Section 2(w) of Code of Criminal Procedure, 1973, those cases in which an offence is punishable with an imprisonment of fewer than two years is a summons case. A summons case doesn't

require the method of preparing the evidence. Nevertheless, a summons case can be converted into a warrant case by the Magistrate if after looking into the case he thinks that the case is not a summons case. The different stages of criminal trial in a summons case are given from Section 251 to Section 259 of the Code of Criminal procedure.

Warrants : Warrant is described as a legal document issued by a judge or magistrate, which empowers a police officer to make an arrest, search or seize premises or undertake any action, concerning the administration of justice. According to Section 2(x) of Code of Criminal Procedure, 1973 a warrant case is one which relates to offences punishable with death, imprisonment for life or imprisonment for a term exceeding two years. The trial in warrant cases starts either by the filing of FIR in a police station or by filing a complaint before a Magistrate. Later, if the Magistrate is satisfied that the offence is punishable for more than two years, he sends the case to the Sessions court for trial. The process of sending it to Sessions court is called “committing it to Sessions court”. The stages of trial in warrant cases are given from Section 238 to Section 250 of the Code of Criminal Procedure, 1973.

Key Differences Between Summons and Warrant

- Summons can be understood as the legal order issued by the presiding officer to defendant or witness or any other person involved in a case. On the contrary, a warrant is described as a written authorization, issued by a judicial officer, i.e. a judge or magistrate, which authorizes the police officer to perform an act, for the regulation of justice.
- A summons contains a judicial order to appear or produce a document or thing before the court, whose non-compliance will result in the issuance of warrant against that person. Conversely, a warrant is an official authorization to the law enforcement officer to arrest the accused and produce before the court.
- A summons addresses the defendant or witness or any other person related to the case, whereas warrant addresses the police officer.
- Summons aims at notifying the person of the legal obligation to appear in the court. Unlike, a warrant is issued with an objective of bringing accused to the court, who've not appeared to the court, even after he/she is summoned.

Answer 3A(iv)

Plaint : A plaint is a legal document which contains the written statement of the plaintiff's claim. A plaint is the first step towards the initiation of a suit. In fact, in the very plaint, the contents of the civil suit is laid out. A plaint is usually divided in parts such as a heading, the cause title, the body, the prayer and signature and verification of the plaintiff. The heading signifies the appropriate jurisdiction of the court while cause title is the name, description and capacity of litigating parties. Plaint should contain name, description and residence of defendant. The entire legal machinery under the Civil Law is set in motion by filing of plaint and hence plaint is the actual starting point of all pleadings in a case.

Written Statement : Written statement means a pleading for defense. In other words, a written statement is the pleading of the defendant wherein he deals with every material fact alleged by the plaintiff along with any new facts in his favor or that takes legal

objections against the claim of the plaintiff. The defendant is required to file a written statement of his defense at or before the first hearing or such time as may be allowed along with the list of documents relied upon by him. If defendant disputes maintainability of the suit or takes the plea that the transaction is void it must be specifically stated. A general denial of grounds alleged in the plaint is not sufficient and denial has to be specific and must be substantiated with documentary evidence wherever possible. The denial should not be an evasive denial but it must be on point of substance. Every allegation of fact in the plaint if not denied specifically or by necessary implication or stated to be not admitted in the pleading shall be deemed to be admitted.

Question 4

Explain the following :

- (a) *Revocation of Gift.*
- (b) *Articles of Association are Company's internal rules and regulations, explain with relevant case laws.*
- (c) *Draft a specimen affidavit for issue of duplicate Share Certificate, as the original Share Certificate issued by the Company has lost. Assume data.*
- (d) *Deficiency in Pleadings would not affect the Plaintiffs Case. Discuss with reference to relevant case laws. (4 marks each)*

Answer 4(a)

Revocation of Gift : Section 126 of Transfer of Property Act, 1882 prescribes the circumstances when a gift may be suspended or revoked. As per Section 126, the donor and donee may agree that on the happening of any specified event which does not depend on the will of the donor a gift shall be suspended or revoked, but a gift which the parties agree shall be revocable wholly or in part at the mere will of the donor is void, wholly or in part as the case may be.

A gift may also be revoked in any of the cases (save want or failure of consideration) in which, if it were a contract it might be rescinded. Save as aforesaid a gift cannot be revoked. Gift in India is regulated by personal law, usages and customs. Under Hindu Law a gift once completed is binding upon the donor and it cannot be revoked by him unless the gift property was obtained by fraud or undue influence.

Example : A gives a field to B, reserving to himself, with B's assent, the right to take back the field in case B and his descendants die before A. B dies without descendants in A's lifetime. A may take back the field.

Answer 4(b)

Articles of Association is one of the important document for incorporation of a limited company. Articles are rules and regulations for management of internal affairs of the company. It constitutes a contract between the company and its members and among its members inter se. It is framed with the object of carrying out aims and objects of the company as contained in Memorandum and if necessary it may clarify anything contained in Memorandum. The article of a company contains the regulations for management of the company and other such matters, as may be prescribed.

The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures as that are more restrictive than those applicable in the case of a special resolution, are met or complied with. The provisions for entrenchment referred above shall only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

Guinness Vs. Land Corporation of Ireland (1882): There is an essential difference between the memorandum and the articles. The memorandum contains the fundamental conditions upon which alone the company is allowed to be incorporated. They are conditions introduced for the benefits of the creditors, and the outside public, as well as of the shareholders. The articles of association are internal regulations of the company.

Answer 4(c)

Affidavit

(On stamp paper of Rs. 10/- or above)

I _____ S/o or D/o _____ R/o _____ do hereby solemnly affirm and declare oath as under:

1. That I am a Shareholder of _____ Ltd, holding 1000 Equity shares having Folio No _____; Certificate No. _____ and distinctive nos. _____ to _____.
2. That the said share certificates, covering the above said shares have been lost.
3. That the FIR has been registered in _____ P.S. vide no. _____ dated _____.
4. That I have not sold and / or transferred the said shares in favour of any other person or persons.
5. That I have not pledged, created any charge or encumbrance on said shares in favour of any person or persons.
6. That I have filed a request to the Company viz _____ to issue duplicate certificate for the said shares.

(Deponent)

Verification

I, the above named deponent, verify that the contents of paragraphs 1 to 6 of this affidavit are true to my Personal knowledge and belief.

Sd/- A.B.

Dated.....

I,.....S/o.....R/o.....declare, from a perusal of the papers produced by the deponent before me that I am satisfied that he is Shri A.B.

Sd/-.....

Solemnly affirmed before me on this..... day of..... 2013 of..... (time) by the deponent.

Sd/-.....

(Oath Commissioner)

Answer 4(d)

The fundamental or basic rules of pleadings are:-

- Pleadings should state facts and not law;
- The facts stated in pleadings should be material facts;
- Pleadings should not state the evidence; and
- The facts in pleadings should be stated in a concise form.

Thus, the fundamental rule of pleadings says that pleadings should contain a statement of material facts and material facts only. It says that pleadings should state only facts and not law.

In the case of *Kedar Lal v. Hari Lal*, it was held that it is the duty of the parties to state only the facts on which they rely upon their claims. Here one most important question is arose i.e. what is the meaning of the term “material facts”.

In the case of *Union of India v. Sita Ram*, the court said that “material facts” means all facts upon which the plaintiff’s cause of action or the defendant’s defense depends, or in other words, all those facts which must be proved in order to establish the plaintiff’s right to relief claimed in the plaint or the defendant’s defense in the written statement.

Again in the case of *Udhav Singh v. Madhav Rao Scindia*, the Supreme Court said that the term material fact means “All the primary facts which must be proved at the trial by a party to establish the existence of a cause of action or his defense are material facts.”

Again in *Virender Nath v. Satpal Singh*, the Supreme Court held that: - “The phrase ‘material facts’ may be said to be those facts upon which a party relies for his claim or defense. In other words, ‘material facts’ are facts upon which the plaintiff’s cause of action or the defendant’s defense depends. What particulars could be said to be ‘material facts’ would depend upon the facts of each case and no rule of universal application can be laid down.

Question 5

- (a) *In a pending Suit defendant filed written statement denying Plaintiffs claim for right of recovery of building. In this process he filed list of five witnesses before the Hon'ble Court, three of whom were employees of City Development Authority.*

Court summoned three defense witnesses out of the list of five witnesses filed by the defendant and closed the evidence stage. Court passed a cryptic and unreasoned order. With a view to cure this defect in trial of the suit and to prevent the miscarriage of justice, defendant decided to file Revision Petition. Draft a suitable Revision Petition taking into account the above facts and assume data, wherever required.

(b) Draft a Specimen Petition by wife under section 125 Cr. P.C. 1973 for maintenance. (8 marks each)

Answer 5(a)

SPECIMEN FORM OF REVISION

In the High Court of.....

Civil Appellate Jurisdiction

Civil Revision No...of 2018

IN THE MATTER OF:

ABC S/o..... R/o.....Petitioner

Versus

XYZ S/o.....R/o.....Respondent

AND

IN THE MATTER OF:

CIVIL REVISION AGAINST THE ORDER DATED... PASSED BY THE LEARNED SUB-JUDGE, 1ST CLASS..... IN THE SUIT ENTITLED ABC -Vs. - XYZ (CIVIL SUIT NO. OF 2013)

May it please the Hon'ble Chief Justice, High Court of...and his companion Justices. The petitioner most respectfully showeth:

- A. That the petitioner named above has filed a suit against the respondents for the recovery of possession of a house situated in... , fully described in the plaint (copy attached as Annexure -1). The suit is pending in the court of Sub-Judge 1st Class..... and the next date of hearing is.....
- B. That on being summoned, the respondent appeared before the court below and filed his written statement wherein he denied the petitioner's title set up in the suit property.
- C. That the trial court framed issues on..... and directed the petitioner (plaintiff) to produce evidence, upon which the petitioner promptly furnished to the court below a list of witnesses, making a request that the witness be summoned by that Court.
- D. That on a previous date of hearing that is..., two witness of the petitioner had appeared and their statements were recorded. However, the learned Presiding Officer of the court below passed an order that the remaining witnesses be

produced by the petitioner-plaintiff on his own without seeking the assistance of the court. This order was passed despite a request by the petitioner that at least those witness named in the list who are State employees should be summoned by the court, as they are required to produce and prove some official records.

- E. That on the next date of hearing the learned trial court by the order impugned in this revision closed the evidence of the petitioner-plaintiff on the ground that the remaining witnesses were not produced by him.
- F. That the impugned order has caused great prejudice to the petitioner and if the same is allowed to stand the petitioner's suit is bound to fail.
- G. That the trial court has unjustifiably denied assistance of the court to the petitioner-plaintiff to secure the attendance of his witnesses. The interests of justice demand that he is provided with all legal assistance in this regard.

In the facts and circumstances discussed above the petitioner prays that this Hon'ble Court be pleased to quash and set aside the order under revision and direct the court below to provide assistance of the court for summoning the plaintiff-witnesses.

PETITIONER

Answer 5(b)

SPECIMEN PETITION BY WIFE UNDER SECTION 125, CR.P.C. 1973 FOR MAINTENANCE

In the Court of Judicial Magistrate 1st Class

Case No. under s. 125, Cr.P.C.

Petitioner W (wife)		Opposite Party H (husband)
Daughter of.....	<i>versus</i>	Son of.....
Village		Village.....
Thana		Thana
Occupation.....		Occupation.....

In the matter of petition for maintenance of petitioner W from the husband H under S.125, Cr.P.C.

The humble petition of W (wife), the petitioner above-named

Most respectfully Sheweth:

1. Your petitioner W is the married wife of the opposite party. The marriage between them was solemnized according to the Hindu rites on
2. The opposite party H is a clerk on the staff of AB & Co. Ltd. holding a responsible position and drawing salary of Rs. 15,000 per month.
3. The opposite party severely assaulted the petitioner on _____ and drove her away from the matrimonial house on _____ in presence of several

gentlemen of the locality.

4. That the opposite party leads a life of drunkenness, infidelity and debauchery. Besides, he is a man of uncertain temperament and would fly into rage without any reason whatsoever. He has lost all sense of decorum and would use extremely filthy language.
5. Your petitioner after being driven out of the house by the opposite party came over to her father's place on the same day and has been staying at father's house with his family members.
6. The opposite party was served with a pleader's notice to send your petitioner Rs. 2,000 every month for her maintenance but with no result. Having regard to the violent temper of H and his inhuman way of beating your petitioner she does not venture to go back to the place of the opposite party.

Your petitioner, therefore, prays that Your Honour may be pleased to issue notice on the opposite party and after taking evidence of both sides be pleased to order the opposite party to pay the petitioner maintenance at the rate of Rs. 2000 per month.

And your petitioner, as in duty bound, shall ever pray.

I, W daughter of MN resident at do hereby solemnly affirm and say as following:

1. I am the petitioner above-named and I know the facts and circumstances of the case and I am able to depose thereto.
2. The statements in the paragraphs 1, 2, 3, 4, 5 and 6 of the foregoing petition are true to my knowledge and that I have not suppressed any material fact.

Solemnly affirmed by the said

Mrs. Won the day of 2013 in the Court House at Calcutta

Before me Notary

Question 6

- (a) *'X' and 'Y' are partners. 'Z' a minor son of 'Y' was admitted to the benefits of the partnership. 'Y' dies and the business of the firm is carried on. During this period 'X' incurs losses heavily. The creditors of the firm demand losses from 'X' and 'Z'. The Lawyer has advised 'Z' that he is liable upto 'Z's capital investment in such partnership firm. Advise 'Z'.*
- (b) *ABC Ltd. called an Annual General Meeting on 28th December, 1998. As the quorum was not present on that day, the meeting was adjourned to 4th January, 1999 on which, date the meeting was duly held. No other AGM was held in 1999. Can the company be prosecuted for not holding AGM every year ?*
- (c) *Two shareholders sued the Directors of a Company, alleging various fraudulent and illegal transactions, whereby the Company's property was misapplied. The transactions were, however, of such nature as the majority of shareholders had the power to confirm. Will such suit succeed ? Why ?*
- (d) *Summary trial.* (4 marks each)

Answer 6(a)

A minor cannot be a partner in a firm but, with the consent of all the partners, he can be admitted to the benefits of partnership (Section 30) of the Indian Partnership Act, 1932. He is entitled to share in the profits and his share is liable for the acts of the firm, but he is not personally liable. He cannot be made liable for the losses of the firm. Within six months of attaining majority or obtaining knowledge of his admission, whichever is later, the minor may elect to become or not to become a partner in the firm.

The advice given by the lawyer that Z's liability is only upto his capital investment in the firm is not correct. Due to the death of Y the partnership between X and Y comes to an end. Z cannot be partner of X as he is minor and is not capable of entering into contract. (*Shri Ram vs. Gaurishankar*, AIR 1961, Bombay 136).

Moreover, the losses arise after the end of the partnership between X and Y. There is no liability upon Z and therefore he is not liable for the losses.

Answer 6(b)

Every type of company, must once in a year hold an annual general meeting as per Section 166 of the Companies Act, 1956. Not more than 15 months must elapse between the date of one annual general meeting and that of the next. However, a company may hold its first annual general meeting within 18 months from the date of its incorporation. In such a case, it need not hold any annual general meeting in the year of its incorporation as well as in the following year. In the case there is any difficulty in holding any annual general meeting (except the first annual meeting), the Registrar may, for any special reasons shown, grant an extension of time for holding the meeting by a period not exceeding 3 months provided the application for the purpose is made before the due date of the annual general meeting.

Case example : Meenakshi Mill Company Ltd. Vs. Assistant Registrar of Joint Stock Companies AIR 1938, in this case, the company failed to call an annual general meeting. The Company had called general meeting in December, 1934 which was adjourned and held on March 1935. It was pleaded by the company that since the general meeting called on 30th December, 1934, was adjourned to 31st March, 1935, and was held on that date, it follows that general meeting was held in 1934 and in 1935, and the general meeting held on the 28th January, 1936, was within 15 months of 31st March, 1935. It was held by the Court that the annual general meeting held in March 1935 was the adjourned meeting of 1934. There shall be a general meeting held once at least in every year, that is, one meeting per year, and as many meetings as there are years. 1935 is a separate year and distinct meeting should be held. The Company was convicted.

In this case ABC Ltd. called an AGM on 28th December, 1998 and because of want of quorum, the meeting was adjourned and the meeting was held on 4th January 1999. The meeting held on 4th January, 1999 was the adjourned meeting of 1998. Thus, the company must held meeting for the financial year 1999. If it is not doing so, company can be prosecuted for not holding AGM every year.

Alternate Answer as per Companies Act 2013

As per Section 96 of the Companies Act 2013, every company other than a One

Person Company shall in each year hold in addition to any other meetings, a general meeting as its annual general meeting and shall specify the meeting as such in the notices calling it, and not more than fifteen months shall elapse between the date of one annual general meeting of a company and that of the next:

- Provided that in case of the first annual general meeting, it shall be held within a period of nine months from the date of closing of the first financial year of the company and in any other case, within a period of six months, from the date of closing of the financial year:
- Provided further that if a company holds its first annual general meeting as aforesaid, it shall not be necessary for the company to hold any annual general meeting in the year of its incorporation:
- Provided also that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

In this case ABC Ltd. called an AGM on 28th December, 1998 and because of want of quorum, the meeting was adjourned and the meeting was held on 4th January 1999. The meeting held on 4th January, 1999 was the adjourned meeting of 1998. Thus, the company must held meeting for the financial year 1999. If it is not doing so, company can be prosecuted for not holding AGM every year.

Answer 6(c)

The suit filed by two shareholders against the directors of a company for alleged fraudulent act causing losses to the company will not succeed because if the majority of shareholders had the power to confirm the act of the directors, in such case any suit against the directors will not survive.

In *Foss v. Harbottle* (1842), two shareholders commenced legal action against the promoters and directors of the company alleging that they had misapplied the company assets and had improperly mortgaged the company property. The Court rejected the two shareholders' claim and held that a breach of duty by the directors of the company was a wrong done to the company for which it alone could sue. In other words, the proper plaintiff in that case was the company and not the two individual shareholders.

This rule is derived from two general legal principles of company law. Firstly, a company is a legal entity separate from its shareholders. Secondly, the Court will not interfere with the internal management of companies acting within their powers. Where an ordinary majority of members can ratify the act, the Court will not interfere. This simply means, if the majority can ratify an act, the minority cannot sue.

Answer 6(d)

Summary trial is the name given to trials where cases are disposed of speedily and the procedure are simplified and the recording of such trials are done summarily. Summary trials provide to procure justice even for small offences that may otherwise have taken years to complete legal proceedings. Those cases in which an offence is punishable with an imprisonment of not more than six months can be tried in a summary way.

Summary trials may be conducted in High Courts, City Civil Courts or Courts of Small Causes. It may also be conducted in certain other courts. However, the High Court may by notification in the Official Gazette order that only a particular category of suits may be tried by such court.

The trial procedure is provided from Section 260 to Section 265 of the Code of Criminal Procedure, 1973. The procedure followed in the summary trial is similar to summons case. In the judgement of a summary trial, the judge should record the substance of the evidence and a brief statement of the finding of the court with reasons. Imprisonment up to three months can be passed.

Stages of Criminal Trial in Summary Cases

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