

GUIDELINE ANSWERS

PROFESSIONAL PROGRAMME (*New Syllabus*)

DECEMBER 2020

MODULE 1



THE INSTITUTE OF
Company Secretaries of India

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE
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The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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PROFESSIONAL PROGRAMME EXAMINATION
DECEMBER 2020
**GOVERNANCE, RISK MANAGEMENT, COMPLIANCES
AND ETHICS**

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer **ALL** Questions.

PART I

Question 1

Rakesh is the Managing Director of ABC Co. Ltd., a listed company having its registered office in Bangalore. In December, 2018 an allegation of the Managing Director's immediate family members and Alfa Co. Ltd. which got a ₹1,000 crore contract from ABC Co. Ltd. entering into a quid pro quo deal surfaced in the public domain. The matter was personally enquired by the Chairman of the Board of Directors and nothing improper was found. In March, 2019 another complaint from an anonymous "Whistle Blower" was received alleging non-adherence to code of conduct, conflict of interest and quid pro quo by the Managing Director while dealing "with certain customers."

The allegations were refuted by the Board of Directors of ABC Co. Ltd. as "being malicious and baseless" but when the controversy started getting blown out of proportion the company stated in a regulatory filing that its Board had decided to institute an independent enquiry in the matter and pending such enquiry, the Managing Director had been asked to go on leave. The enquiry revealed that Rakesh did not make proper disclosure about his family links with the corporate customer to the Board. It also transpired that Rakesh gave scant respect to "conflict of interest and due disclosure or recusal requirements" while awarding contracts to Alfa Co. Ltd. with which his close family members had business interests. Upon the findings of the enquiry being made public, Rakesh resigned and the company stated that it will treat his resignation as "termination for cause" and will also stop payments of unpaid benefits due to him.

In the background of the aforesaid case, answer the following questions :

- (a) How, if so, has Rakesh failed to discharge his duties as a director of ABC Co. Ltd. ? Which regulations of the SEBI LODR have been breached by him ?*
- (b) State the characteristics of an effective Board of Directors.*
- (c) Analyze the performance of the Board of Directors in handling the complaints against Rakesh, the Managing Director of ABC Co. Ltd.*
- (d) Discuss the principles for Corporate Governance in order to improve the practices followed by ABC Co. Ltd. to prevent such situations from recurring.*

(5 marks each)

Answer 1(a)

The directors of a company are required to act in the best interest of the company since they occupy a position of trust and owe a fiduciary duty to the shareholders of the company.

Under section 166 of the Companies Act, 2013 the duties of the directors include:

- (a) duty to exercise his duties with due and reasonable care, skill and diligence and to exercise independent judgment.
- (b) not to involve in a situation in which he may have a direct or indirect interest that conflicts, or possibly may conflict, with the interest of the company.
- (c) not to achieve or attempt to achieve any undue gain or advantage either to himself or to his relatives, partners, or associates and if such director is found guilty of making any undue gain, he shall be liable to pay an amount equal to that gain to the company.

In the instant case Rakesh has failed to disclose the business interest of his immediate family member have with Alfa Co. Ltd. which has business relations with ABC Co. Ltd. And had been given contract worth Rs. 1000 crores. Thus Rakesh has violated the provisions of section 166 of the Companies Act, 2013 in discharge of his duties. Further Rakesh should have made disclosure of his interest as per section 184 of the Companies Act, 2013.

Regulation 4(2)(f) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 contains the responsibilities of the board of directors of a listed entity. As regards, disclosure of information, it states the following:

- (i) Disclosure of information:
 - (1) Members of board of directors and key managerial personnel shall disclose to the board of directors whether they, directly, indirectly, or on behalf of third parties, have a material interest in any transaction or matter directly affecting the listed entity.
 - (2) The board of directors and senior management shall conduct themselves so as to meet the expectations of operational transparency to stakeholders while at the same time maintaining confidentiality of information in order to foster a culture of good decision-making.

Thus in view of the above Rakesh has breached the provisions of Regulation 4 of the SEBI (LODR) Regulations, 2015.

Answer 1(b)

The role of the board of directors in a company is to provide entrepreneurial leadership to the company. An effective board defines the purpose and then sets a strategy to achieve it shapes its culture and the way it conducts its business.

Following are the main characteristic of an effective board of directors:

- (i) It should have a judicious mix of internal and independent directors with a variety

of experience and core competence. The majority of the board of directors should be independent from the organization.

- (ii) It should have a set of required competencies articulated for the board and committees, and current board members should as a whole display the entire set of required competencies.
- (iii) It should have a board manual that articulates terms of reference for the board, board committees, individual directors, and the code of conduct? It should have a forward list of topics for the year.
- (iv) At least one member of the board should have extensive experience in the industry of the organization.
- (v) Each director should get a comprehensive orientation on the business of the organization and meet key senior staff before the first board meeting.
- (vi) Directors should be offered continuing education in governance or a program of director certification.
- (vii) Each director should display a keen interest or passion in the undertaking of the organization.
- (viii) Directors should regularly attend both board and committee meetings.
- (ix) Directors should be encouraged and supported when asking difficult or awkward questions of management.
- (x) The Chairman should solicit views from each director specifically.
- (xi) The Chairman should ask board members to refrain from expressing their personal views at the outset of a discussion.
- (xii) The Chair should manage the timing of the board meetings to ensure there is sufficient time for discussion after each topic addressed by management.
- (xiii) The board should regularly have outside experts to advise on specific topics.
- (xiv) The board should have an in-camera meeting both before and after each board meeting.
- (xv) The board should retain an independent consultant to help evaluate director and board performance.
- (xvi) At the beginning of a board meeting, the committee chairman should have an opportunity to summarize (verbally or in writing) the issues addressed and decisions taken at prior committee meetings.
- (xvii) The board should have an effective system to provide board members with timely, relevant and reliable financial and strategic information about the organization.
- (xviii) The board should review the risk identification and management system of the organization.
- (xix) The board should approve the business plan and major expenditures.
- (xx) The board should work with the CEO and senior staff to develop and review the strategic plan.

Answer 1(c)

It has been stated that initially the Chairman had enquired into the matter personally and had found nothing improper. However, this seems more of an opinion rather than based on any detailed enquiry. Thereafter when another complaint was received, the Board simply refuted the matter citing it as “malicious and baseless”.

The approach of the board in rejecting the allegations as “malicious and baseless” without conducting any enquiry into the matter raises serious questions on its functioning. Instead of addressing the concerns raised the board tried to sweep the matter under the carpet. The board should have tried to reassure the stakeholders immediately by taking steps to conduct an investigation into the matter to set the matter right. A voluntary investigation carried on behalf of the board would have increased the reputation of the board. The board could then have taken steps to protect the interest of the company. Only when the matter went out of hand, the Board decided to institute an independent enquiry. Later it was found that Rakesh had not followed the dictum of law.

Thus, overall the performance of the Board in handling the complaint against Rakesh doesn't seem satisfactory. The Board should have acted proactively in the interest of the stakeholders.

Answer 1(d)

To improve its functioning and efficiency, ABC Co. Ltd. should align its corporate governance practices with the board principles for corporate governance by listed entities as given below:

- (i) The company should ensure timely and accurate disclosure of all material matters including the financial position, performance, ownership and governance of the company.
- (ii) The responsibilities of the board of directors should be clearly defined.
- (iii) The board of directors shall lay down a code of conduct for all members of board of directors and senior management of the listed entity.
- (iv) All members of the board of directors and senior management personnel shall affirm compliance with the code of conduct of board of directors and senior management on an annual basis.
- (v) The Board should monitor and manage potential conflicts of interest of management, members of the board of directors and shareholders, including misuse of corporate assets and abuse in related party transactions
- (vi) The board of directors shall exercise objective independent judgement on corporate affairs.
- (vii) The board of directors shall consider assigning a sufficient number of non-executive members of the board of directors capable of exercising independent judgement to tasks where there is a potential for conflict of interest.
- (viii) Members of the board of directors shall act on a fully informed basis, in good faith, with due diligence and care, and in the best interest of the listed entity and the shareholders.

- (ix) The board of directors shall set a corporate culture and the values by which executives throughout a group shall behave.
- (x) The board of directors shall maintain high ethical standards and shall take into account the interests of stakeholders.

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

Question 2

- (a) Write a short note on Dividend distribution policy. (5 marks)
- (b) "A responsible business activity contributes to good public policy and to human rights in the communities in which it operates." Explain the responsibilities of business provided in the Caux Round Table's (CRT) Stakeholder Management Guidelines. (5 marks)
- (c) The Audit Committee of Polar Ltd., a company listed with BSE, consists of three directors, Ashish, Nitin and Rekha. Ashish is the chairman of the Audit Committee and is also the CEO of Polar Ltd., Nitin and Rekha are independent directors and all three directors are financially literate. Rekha is a Chartered Accountant with more than 15 years' experience in finance and accounting. Discuss the above constitution of the Audit Committee in the light of the legal requirements in this regard. (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) KLIP Travels Ltd. (KLIP) is a BSE listed company in the travel industry. Arun Kumar is the Chairperson of KLIP. There has been a major re-shuffle in the composition of the Board of Directors of KLIP with several old directors retiring and many new individuals inducted as directors. The Chairperson of the company, Arun, is keen to give an Induction kit to the newly inducted members on the Board but is unsure of its contents. As the Company Secretary of KLIP, prepare the induction kit. (5 marks)
- (ii) You are the Company Secretary of XYZ Insurance Co. Ltd. The Board of Directors of your company requires you to draw up a policy based on the principles spelt out in the stewardship code for insurers in India. (5 marks)
- (iii) Discuss the need for Internal Audit as a tool for Corporate Governance in the present day organizations. (5 marks)

Answer 2(a)

The provisions pertaining to Dividend Distribution Policy are contained in Regulation 43A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. Regulation 43A of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 provides that:

- (1) The top five hundred listed entities based on market capitalization (calculated as on March 31 of every financial year) shall formulate a dividend distribution policy which shall be disclosed in their annual reports and on their websites.

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

Provided that if the listed entity proposes to declare dividend on the basis of parameters in addition to clauses (a) to (e) or proposes to change such additional parameters or the dividend distribution policy contained in any of the parameters, it shall disclose such changes along with the rationale for the same in its annual report and on its website.

- (3) The listed entities other than top five hundred listed entities based on market capitalization may disclose their dividend distribution policies on a voluntary basis in their annual reports and on their websites.

Answer 2(b)

According to the Caux Round Tables (CRT) Principles for Responsible Businesses as a global corporate citizen a responsible business activity contributes to good public policy and to human rights in the communities in which it operates:

In this context it is envisaged that a responsible business has a responsibility to:

- a. Respect human rights and democratic institutions, and promote them wherever practicable.
- b. Recognize government's legitimate obligation to society at large and support public policies and practices that promote social capital.
- c. Promote harmonious relations between business and other segments of society.
- d. Collaborate with community initiatives seeking to raise standards of health, education, workplace safety and economic well-being.
- e. Promote sustainable development in order to preserve and enhance the physical environment while conserving the earth's resources.
- f. Support peace, security and the rule of law.
- g. Respect social diversity including local cultures and minority communities.
- h. Be a good corporate citizen through ongoing community investment and support for employee participation in community and civic affairs.

Answer 2(c)

The legal requirement for the composition of the Audit Committee are mentioned under sub section (1) and (2) of section 177 of the Companies Act, 2013 which states

that the Board of Directors of every listed public company shall constitute an Audit Committee.

The Audit Committee shall consist of a minimum of three directors with independent directors forming a majority.

Provided that majority of members of Audit Committee including its Chairperson shall be persons with ability to read and understand, the financial statement.

Further regulations 18(1) of the SEBI (LODR) Regulations, 2015 requires that every listed entity shall constitute a qualified and independent audit committee in accordance with the terms of reference, subject to the following:

- (a) The audit committee shall have minimum three directors as members.
- (b) Two-thirds of the members of audit committee shall be independent directors
- (c) All members of audit committee shall be financially literate and at least one member shall have accounting or related financial management expertise.

Explanation (1).- For the purpose of this regulation, “financially literate” shall mean the ability to read and understand basic financial statements i.e. balance sheet, profit and loss account, and statement of cash flows.

Explanation (2).- For the purpose of this regulation , a member shall be considered to have accounting or related financial management expertise if he or she possesses experience in finance or accounting, or requisite professional certification in accounting, or any other comparable experience or background which results in the individual’s financial sophistication, including being or having been a chief executive officer, chief financial officer or other senior officer with financial oversight responsibilities.

- (d) The chairperson of the audit committee shall be an independent director and he shall be present at Annual general meeting to answer shareholder queries.

In the given case

- (i) There are three directors in the audit committee.
- (ii) All the directors are financial literate.
- (iii) Majority (2/3) of the members of the audit committee are independent directors.
- (iv) One director, namely Rekha is chartered accountant and have accounting and related financial management expertise.

But the chairman of the audit committee is Ashish who is also CEO of Polar Ltd. and not an independent director. Thus the conditions of regulation 18(1) of the SEBI (LODR) Regulations, 2015 is not fully complied with. Therefore in order to validate the composition of audit committee either Nitin or Rekha should be appointed as the Chairman of the audit committee.

Answer 2A(i)

An induction kit is generally given to the newly inducted directors and it may contain the following information about the company to enable the newly inducted director to familiarise himself about the company and the environment in which it operated:

- (i) Memorandum and Articles of Association with a summary of most important provisions.

- (ii) Brief history of the company.
- (iii) Current business plan, market analysis and budgets.
- (iv) All relevant policies and procedures, such as a policy for obtaining independent professional advice for directors.
- (v) Protocol, procedures and dress code for Board meetings, general meetings, staff social events, site visits etc including the involvement of partners.
- (vi) Press releases in the last one year.
- (vii) Copies of recent press cuttings and articles concerning the company.
- (viii) Annual report for last three years.
- (ix) Notes on agenda and Minutes of last six Board meetings.
- (x) Board's meeting schedule and Board committee meeting schedule.
- (xi) Description of Board procedures.
- (xii) Organization Chart.

Answer 2A(ii)**Policy of XYZ Insurance Co. Ltd. based on the Principles of Stewardship Code for Insurers**

IRDAI has issued the guidelines on Stewardship Code for Insurers in India in the form of a set of principles to be adopted by them. It requires the insurers to draft a policy as regards their conduct at general meetings of their investee companies to improve their governance. The Policy shall be duly approved by the Board of Directors. As an insurance company, XYZ Insurance Co. Ltd. shall approve a policy in this regard. The Policy of XYZ Insurance Co. Ltd. shall incorporate the following

- (i) The company discharges its stewardship responsibilities and publicly disclose it. The company's stewardship responsibilities are monitoring and engaging with companies on matters such as strategy, performance, risk, capital structure, and corporate governance, including culture and remuneration.
- (ii) The company manages conflicts of interest in fulfilling its stewardship responsibilities and publicly disclose it. The company identifies and manages conflicts of interest with the aim of taking all reasonable steps to put the interests of their client or beneficiary first.
- (iii) The Company monitors its investee companies. The company regularly monitors its investee companies in respect of its performance, leadership effectiveness, succession planning, corporate governance, reporting and other parameters. The company nominates directors on the board of its investee company for active involvement.
- (iv) The company intervenes in its investee companies. The company intervenes when it has concerns about the investee company's strategy, performance, governance, remuneration or approach to risks, including those that may arise

from social and environmental matters. In case of non-resolution of company's concerns, the company escalates the matter.

- (v) The company collaborates with other institutional investors, where required, to preserve the interests of the policyholders (ultimate investors) and discloses the collaboration.
- (vi) The voting decisions of the company aims to promote the overall growth of the investee companies and, in turn, enhance the value of their investors. The voting policy of the company, voting decisions and the rationale is disclosed on its website.
- (vii) The company reports periodically on its stewardship activities. The company also provides a periodic report to its policyholders of how the company has discharged its responsibilities, in a easily understandable format. But the company do not intend to manage the affairs of the investee company. The company may also at any time decide to sell its holding in the investee company, if it is in the best interest of clients or beneficiaries.

Answer 2A(iii)

Internal Audit is an independent management function, which involves a continuous and critical appraisal of the functioning of an entity with a view to suggest improvements thereto and add value to and strengthen the overall governance mechanism of the entity including entity's strategic risk management and internal control system.

An effective internal audit function can play a significant role within the corporate governance framework of a company. Over the last decade internal audit has developed and grown in importance. Efficient internal audit functions provide objective assurance/ assessments to the board (and to the audit committee) about the adequacy and effectiveness of the processes by which risks are identified and prioritised; managed, controlled, and mitigated.

In most of the countries and business sectors internal audit reports professionally to an audit committee and managerially to the chief executive or chief financial officer. Internal audit is an independent and objective appraisal function; it supports senior management and the (management) board. Internal audit activities are performed in diverse legal and cultural environments; within organisations that vary in size and structure. Internal audit functions should comply with the relevant professional standards.

Internal Audit is a tool of control:

- (i) To measure and evaluate the effectiveness of the working of an organization
- (ii) To ensure that all the laws, rules and regulations governing the operations of the organization are adhered to
- (iii) To identify risks and also suggests remedial measures, thereby acting as a catalyst for change and action.

Question 3

Write short notes on :

- (a) *Factors to be kept in mind for planning to mitigate compliance risk.*

- (b) *Mission and objectives of International Corporate Governance Network (ICGN).*
- (c) *Regulation 30(3) of SEBI (LODR), 2015 regarding disclosure of events upon application of materiality guidelines.*
- (d) *Matters that cannot be discussed in a Board meeting conducted through Video-conferencing.*
- (e) *Matters to be discussed under “Management Discussion and Analysis” to be disclosed in Annual Report of listed companies. (3 marks each)*

Answer 3(a)

To put in place a system or plan for mitigation of compliance risks an organization needs to keep in mind the following factors:

- What kinds of compliance failures would create significant brand risk or reputational damage? Could the failures arise internally, in the supply chain, or with regard to third parties operating on the organization’s behalf?
- What is the likely impact of that damage on the organization’s market value, sales, profit, customer loyalty, or ability to operate?
- What kinds of compliance missteps could cause the organization to lose the ability to sell or deliver products/services for a period of time?
- How should the compliance program design, technology, processes, and resource requirements change in light of growth plans, acquisitions, or product/category/ service expansions?
- Is the organization doing enough to inform customers, investors, third parties, and other stakeholders about its vision and values? Is it making the most of ethics, compliance, and risk management investments as potential competitive differentiators?
- What are the total compliance costs—beyond salaries and benefits at the centralized level—and how are costs aligned with the most significant compliance risks that could impact the brand or result in significant fines, penalties, and/ or litigation?
- How well-positioned is the compliance function? Does it have a seat “at the table” in assessing and influencing strategic decisions?
- What are the personal and professional exposures of executive management and the board of directors with respect to compliance?

Answer 3(b)

The International Corporate Governance Network (“ICGN”) is a not-for-profit company limited by guarantee and not having share capital under the laws of England and Wales founded in 1995.

ICGN’s mission is to promote effective standards of corporate governance and investor stewardship to advance efficient markets and sustainable economies world-wide.

It has four primary objectives:

- (i) to provide an investor-led network for the exchange of views and information about corporate governance issues internationally
- (ii) to examine corporate governance principles and practices and
- (iii) to develop and encourage adherence to corporate governance standards and guidelines
- (iv) to generally promote good corporate governance.

Answer 3(c)

Regulation 30(3) of the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 specifies that the listed entity shall make disclosure of events specified in Para B of Part A of Schedule III, based on application of the guidelines for materiality, as specified in regulation 30(4) of SEBI (LODR) Regulations, 2015.

The listed entity shall consider the following criteria for determination of materiality of events/ information:

- (a) the omission of an event or information, which is likely to result in discontinuity or alteration of event or information already available publicly or
- (b) the omission of an event or information is likely to result in significant market reaction if the said omission came to light at a later date
- (c) In case where the criteria specified in sub-clauses (a) and (b) are not applicable, an event/information may be treated as being material if in the opinion of the board of directors of listed entity, the event / information is considered material.

The listed entity shall frame a policy for determination of materiality, based on criteria specified in the regulation 30(4) of SEBI (LODR) Regulations, 2015, duly approved by its board of directors, which shall be disclosed on its website.

Answer 3(d)

The following types of matters cannot be discussed in a board meeting conducted through video conference:

1. Approval of the annual financial statements.
2. Approval of the Board's report.
3. Approval of the prospectus.
4. Audit Committee Meetings for consideration of accounts.
5. Approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

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

Answer 3(e)

As part of the Directors Report or as an addition thereto, a Management Discussion and Analysis Report should form part of the Annual Report.

This Management Discussion and Analysis should include discussion on the following matters within the limits set by the company's competitive position:

- (a) Industry structure and developments
- (b) Strength and weakness
- (c) Opportunities and Threats
- (d) Segment-wise or product-wise performance
- (e) Outlook
- (f) Risks and concerns
- (g) Internal control systems and their adequacy
- (h) Discussion on financial performance with respect to operational performance
- (i) Material developments in Human Resources, Industrial Relations front, including number of people employed.
- (j) Environmental Protection and Conservation, Technological conservation, Renewable energy developments, Foreign Exchange conservation
- (k) Corporate Social Responsibility

PART II**Question 4**

- (a) *Discuss in brief Enterprise Risk Management, its components and limitations. (5 marks)*
- (b) *"Risk analysis is an essential tool and one that could save time, money and reputations." Explain the statement and bring out the use of risk analysis. (5 marks)*
- (c) *"Non-financial risks do not have direct and immediate impact on business, but the consequences are very serious and later do have significant financial impact as well if not controlled at the initial stage." List the non-financial risks encountered during the course of business by a business entity. (5 marks)*
- (d) *What is meant by handling of risk ? Explain risk retention as a method of handling risk. (5 marks)*

Answer 4(a)

Enterprise risk management is a process, put in place by an entity's board of directors, management and other personnel, applied in strategy setting and across the enterprise, designed to identify potential events that may affect the entity, and manage risk to be within its risk appetite, to provide reasonable assurance regarding the achievement of entity objectives.

Enterprise risk management encompasses:

- i. Aligning risk appetite and strategy.
- ii. Enhancing risk response decisions.
- iii. Reducing operational surprises and losses.
- iv. Identifying and managing multiple and cross-enterprise.
- v. Seizing opportunities.
- vi. Improving deployment of capital.

Enterprise risk management consists of eight interrelated components. These are derived from the way management runs an enterprise and are integrated with the management process. These components are:

1. Internal Environment
2. Objective Setting
3. Event Identification
4. Risk Assessment
5. Risk Response
6. Control Activities
7. Information and Communication
8. Monitoring

Enterprise risk management is not strictly a serial process, where one component affects only the next. It is a multidirectional, iterative process in which almost any component can and does influence another.

Limitations

While enterprise risk management provides important benefits, it also has certain limitations. In addition to factors discussed above, limitations result from the realities that human judgment in decision making can be faulty, decisions on responding to risk and establishing controls need to consider the relative costs and benefits, breakdowns can occur because of human failures such as simple errors or mistakes, controls can be circumvented by collusion of two or more people, and management has the ability to override enterprise risk management decisions.

These limitations preclude a board and management from having absolute assurance as to achievement of the entity's objectives.

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 identify the possible threats 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 is 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.
- When all the permutations-combinations of possible events/ threats are listed while analyzing the risk parameters and the steps taken to manage such risks, the risk matrix is designed / popped-up before the decision making and implementing authority.

Answer 4(c)

The various non-financial risk faced in a business may be listed as follows:

1. *Business/ Industry & Services Risk*- Business risks implies uncertainty in profits or danger of loss and the events that could pose a risk due to some unforeseen events in future, which causes business to fail. Business risk refers to the possibility of inadequate profits or even losses due to uncertainties e.g., changes in tastes, preferences of consumers, strikes, increased competition, change in government policy, obsolescence etc. Every business organization contains various risk elements while doing the business. Such type of risk may also arise due to business dynamics, competition risks affecting tariff prices, customer relation risk etc.
2. *Strategic Risk* - Business plans which have not been developed properly and comprehensively since inception may lead to strategic risk. For example, strategic risk might arise from making poor business decisions, from the substandard execution of decisions, from inadequate resource allocation, or from a failure to respond well to changes in the business environment.
3. *Compliance Risk* - This risk arises on account of non-compliance or breaches of laws/ regulations which the entity is supposed to adhere. It may result in deterioration of reputation in public eye, penalty and penal provisions.
4. *Fraud Risk* - Fraud is perpetrated through the abuse of systems, controls, procedures and working practices. It may be perpetrated by an outsider or insider. Fraud may not be usually detected immediately and thus the detection should be planned for on a proactive basis rather than on a reactive basis.

5. *Reputation Risk* - This type of risk arises from the negative public opinion. Such type of risk may arise from for example from the failure to assess and control compliance risk and can result in harm to existing or potential business relationships.
6. *Transaction Risk*- Transaction risk arises due to the failure or inadequacy of internal system, information channels, employees integrity or operating processes.
7. *Disaster Risk* - On account of natural calamities like floods, fire, earthquake, man-made risks due to extensive exploitation of land for mines activity, land escalation, risk of failure of disaster management plans formulated by the company etc.
8. *Regulatory Risk* - On account of change in Government policies and perceptions. Especially this type of risks is associated with Food and beverages and Pharmaceuticals industries.
9. *Technology Risk* - Failure of system caused due to tampering of data access to critical information, non availability of data and lack of controls.

Answer 4(d)

Handling the risk refers to responding to the risk situation when the risk actually materialize. For handling the risk first the ownership of the risk should be allocated and the responsibilities of the persons handling the risk need to be identified and assigned. The persons concerned should document the risk when it arises and report it to the higher ups in order to have early risk mitigation measures and later to minimise the risk.

Risk retention/absorption: It is the handling the unavoidable risk internally and the firm bears/ absorbs it due to the fact that either because insurance cannot be purchased of such type of risk or it may be of too expensive to cover the risk and much more cost-effective to handle the risk internally. Usually, retained risks occur with greater frequency, but have a lower severity.

An insurance deductible is a common example of risk retention to save money, since a deductible is a limited risk that can save money on insurance premiums for larger set backs. There are two types of retention methods for containing losses as under:

1. *Active Risk Retention* : Where the risk is retained as part of deliberate management strategy after conscious evaluation of possible losses and causes.
2. *Passive Risk Retention* : Where risk retention occurred through negligence. Such type of retaining risk is unknown or because the risk taker either does not know the risk or considers it a lesser risk than it actually is.

PART III

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

Question 5

- (a) *Describe the essentials of an effective compliance program.*
- (b) *“Internal control can help an entity in achieving its objectives but it is not a panacea.” Discuss.*

- (c) *What do you mean by Corporate Sustainability Reporting? Discuss the benefits and key drivers of sustainability reporting.*
- (d) *You are the Company Secretary of Super Chef Ltd. Shirley, the newly appointed CEO of Super Chef Ltd. is not clear about the concept of internal control and her role and responsibilities with regard to internal controls of the company. She approaches you to understand the same. Prepare a short note to brief Shirley on Internal control and her role and responsibilities in this regard.*
- (5 marks each)*

OR (Alternate question to Q. No. 5)

Question 5A

- (i) *The Board of Directors of Fresco Pvt. Ltd. is in the process of reviewing the list of laws applicable to the company. As the Company Secretary of Fresco Pvt. Ltd., advise the Board on the components of a robust internal compliance reporting program.*
- (ii) *“Corporate reporting is an essential means by which companies communicate with investors as a part of their accountability and stewardship obligation.” Comment and list out the expected information required by investors.*
- (iii) *“Risk can arise or change due to circumstances.” Comment and point out the circumstances which result into risks for an entity.*
- (iv) *“Internal check refers to allocation of duties in a scientific way so that no one is responsible for all phases of the transactions.” Explain the essential features of Internal check in the light of above statement.*
- (5 marks each)*

Answer 5(a)

The elements of an Effective Compliance Program may be listed as under:

1. *High level company personnel who exercise effective oversight* : The organization’s governing body should be knowledgeable about the effective compliance program and should have oversight of it. The governing body should have the overall responsibility for the compliance program and shall ensure the effectiveness of it. Specific individuals shall have overall responsibility for the day to day operations of the compliance program. A Compliance Officer shall be designated by the organization’s governing body, who shall periodically report to the higher level management/ governing body. The Compliance Officer should be given adequate resources with appropriate authority and direct access to the governing body.
2. *Written policies and procedures* : The employees of the organization should be appraised about the legal requirements so that employees understand their obligations. The employees should be encouraged to report suspected fraud and other irregularities without fear.
3. *Training and education* : The employees of the organization should be provided reasonable training to understand the organization’s compliance programme and its policies and processes.

4. *Lines of communication* : Information about the compliance program must be widely communicated at all levels of an organization. To enhance the effectiveness of the compliance program, the program must establish lines of communication whereby, employees and agents may seek guidance and report concerns, including the opportunity to report anonymously (such as a compliance hot line); There are assurances that there will be no retaliation for good faith reporting.
5. *Standards enforced through well-publicized disciplinary guidelines* : The organization's compliance and ethics program should be promoted and enforced consistently through well-publicized guidelines that provide, incentives to support the compliance and ethics program, disciplinary measures for disobeying the law, the organization's policies, or the requirements of the compliance and ethics program.
6. *Internal compliance monitoring* : The organization shall take reasonable steps, including monitoring and auditing, to, ensure that the organization's compliance and ethics program is followed, periodically evaluate the effectiveness of the organization's compliance program.
7. *Response to detected offenses and corrective action plans* : After monitoring and auditing of the compliance program, the organization shall take reasonable steps to, respond appropriately to any violations of the law or policies to prevent future misconduct, modify and improve the organization's compliance and ethics program.

Answer 5(b)

In a business entity the internal control should be adequate to cover all the key and sensitive areas of the organization. No one person should be allowed to complete one set of transactions. The control mechanism once established should be reviewed periodically in order to assess the lacunas and to remove the same. The password sharing should be strictly prohibited and stringent action should be taken against the erring staff. The efficacy of the internal control mechanism depends when the employees accepts this philosophy in the true letter and spirit.

A good and efficient Internal control system can assist in the following ways:

1. help an entity achieve its performance and profitability targets, and prevent loss of resources.
2. help ensure reliable financial reporting.
3. help ensure that the enterprise complies with laws and regulations, avoiding damage to its reputation and other consequences.
4. In sum, it can help an entity get to where it wants to go, and avoid pitfalls and surprises along the way.

While internal control as such is inherently useful and help organisation in many ways yet it is not a panacea as it also has its limitations such as:

1. Internal control cannot change an inherently poor manager into a good one.

2. Internal control cannot ensure success, or even survival in case of shifts in government policy or programs, competitors' actions or economic conditions, since these are beyond the management's control.
3. An internal control system, no matter how well conceived and operated, can provide only reasonable-- not absolute--assurance to management and the board regarding achievement of an entity's objectives.
4. The likelihood of achievement is affected by limitations inherent in all internal control systems.
5. Controls can be circumvented by the collusion of two or more people, and management has the ability to override the system.
6. Another limiting factor is that the design of an internal control system must reflect the fact that there are resource constraints, and the benefits of controls must be considered relative to their costs.

Answer 5(c)

Corporate Sustainability reporting is a process for publicly disclosing an organization's economic, environmental, and social performance. Through sustainability reporting, organizations report on progress against performance goals not only for economic achievements, but for environmental protection and social well-being. A sustainability report is an organizational report that gives information about economic, environmental, social and governance performance. Sustainability reporting aims to communicate an organization's sustainability priorities, policies, programs and performance to its investors. It comprises information on how a company, proactively and beyond regulations, acts responsibly towards the environment around it and works towards equitable and fair business practices and brings to life products and services with lower impacts on the natural environment. Such a report describes how a company has implemented a greener supply chain, has engaged with local communities, is helping tackle climate-change issues, or is "innovating for the poor".

The benefits of Corporate sustainability reporting includes:

- i. Increased understanding of risks and opportunities
 - ii. Emphasizing the link between financial and non-financial performance
 - iii. Influencing long term management strategy and policy, and business plans
 - iv. Streamlining processes, reducing costs and improving efficiency
 - v. Benchmarking and assessing sustainability performance with respect to laws, norms, codes, performance standards, and voluntary initiatives
 - vi. Avoiding being implicated in publicized environmental, social and governance failures
 - vii. Comparing performance both internally and between organizations as well as among external sectors
- External benefits of sustainability reporting can include:
- a. Mitigating – or reversing – negative environmental, social and governance impacts
 - b. Improving reputation and brand loyalty

- c. Enabling external stakeholders to understand the organization's true value, and tangible and intangible assets
- d. Demonstrating how the organization influences, and is influenced by, expectations about sustainable development

The key drivers of sustainability reporting are:

1. Regulations
2. Customers
3. Loyalty
4. NGO's and the media
5. Employees
6. Peer pressure from other companies
7. Companies themselves
8. Investors

Answer 5(d)

The Committee of Sponsoring Organizations of the Treadway Commission (COSO) defines Internal Control as a process, effected by an entity's board of directors, management, and other personnel, designed to provide reasonable assurance regarding the achievement of objectives relating to operations, reporting, and compliance.

According to COSO an organization needs to focus on separate aspects of internal control for achievement of the following objectives:

- Effectiveness and efficiency of the entities operations.
- Reliability, limitations and transparency of financial reporting.
- Compliance with applicable laws and regulations.

The chief executive officer is ultimately responsible and should assume "ownership" of the system. More than any other individual, the chief executive sets the "tone at the top" that affects integrity and ethics and other factors of a positive control environment. In a large company, the chief executive fulfils this duty by providing leadership and direction to senior managers and reviewing the way they're controlling the business. Senior managers, in turn, assign responsibility for establishment of more specific internal control policies and procedures to personnel responsible for the unit's functions. In a smaller entity, the influence of the chief executive, often an owner-manager is usually more direct. In any event, in a cascading responsibility, a manager is effectively a chief executive of his or her sphere of responsibility. Of particular significance are financial officers and their staffs, whose control activities cut across, as well as up and down, the operating and other units of an enterprise.

Answer 5(A)(i)

An internal reporting mechanism need not be extensive however it must go far

beyond a written policy. It must be designed to reflect the practices, laws and culture of the countries in which the company is operating. Any broken link in the reporting chain can interrupt the flow of information from the reporter to those who need to hear and act on it. A sound program should include the following elements:

- *Communication* : make the program known to all levels of employees
- *Accessibility* : make the program available to all the employees around the company in various local languages.
- *Culture Appropriateness* : adopt the program to the constraints imposed by local culture, history and practice.
- *Universality* : make the reporting mechanism available to relevant third parties e.g. suppliers, consultants, customers.
- *Confidentiality and Anonymity* : guarantee confidentiality and permit discreet or anonymous report.
- *Screening* : provide safeguard against frivolous or malicious reports.
- *Collect Data* : monitor reports, track them over time, identify vulnerabilities and take corrective action.
- *Remedial action and feedback* : take action and provide feedback to the reporter as appropriate.
- *Management visibility* : report to the audit committee or board of directors.
- *Employee Protection* : protect reporting employee both during employment and after departure from the company.

Answer 5(A)(ii)

Corporate reporting is an essential means by which companies communicate with investors as part of their accountability and stewardship obligations. The current financial reporting model was developed in the 1930's for an industrial world. In general, the model provides a backwards-looking review of performance and does not provide enough relevant information for decision-making today.

The financial reporting model is like “looking in the rear-view mirror,” when in fact the road ahead is very turbulent and there are huge impacts on the company, both societal and environmental.

It is not necessarily the volume of information, but the lack of a comprehensive story, which is where improvements in corporate reporting are needed.

Investors expect information about:

- Business model and strategy,
- Intangible factors and sustainability (i.e. economic, environmental, social) commitments,
- Impacts and performance that affect a company's value today and its ability to create value in the future,

- Key aspects of corporate governance,
- Internal controls,
- Human rights / diversity practices and policies,
- Key financial ratios

Answer 5(A)(iii)

Risks relevant to reliable financial reporting include external and internal events, transactions or circumstances that may occur and adversely affect an entity's ability to initiate, record, process, and report financial data consistent with the assertions of management in the financial statements. Management may initiate plans, programs, or actions to address specific risks or it may decide to accept a risk because of cost or other considerations. Risks can arise or change due to circumstances such as the following:

- *Changes in operating environment* : Changes in the regulatory or operating environment can result in changes in competitive pressures and significantly different risks.
- *New personnel* : New personnel may have a different focus on or understanding of internal control. New or revamped information systems: Significant and rapid changes in information systems can change the risk relating to internal control.
- *New or revamped information systems* : Significant and rapid changes in information systems can change the risk relating to internal control.
- *Rapid growth* : Significant and rapid expansion of operations can strain controls and increase the risk of a breakdown in controls.
- *New technology*: Incorporating new technologies into production processes or information systems may change the risk associated with internal control.
- *New business models, products, or activities* : Entering into business areas or transactions with which an entity has little experience may introduce new risks associated with internal control.
- *Corporate restructurings* : Restructurings may be accompanied by staff reductions and changes in supervision and segregation of duties that may change the risk associated with internal control.
- *Expanded foreign operations* : The expansion or acquisition of foreign operations carries new and often unique risks that may affect internal control, for example, additional or changed risks from foreign currency transactions.
- *New accounting pronouncements* : Adoption of new accounting principles or changing accounting principles may affect risks in preparing financial statements.

Answer 5(A)(iv)

The term 'internal check' refers to allocation of duties in such a manner that the work of one person is checked by another while that other is performing his own duties in a normal way. Internal check is the organisation of duties of staff in a scientific way so that no one is responsible for all phases of the transaction and the work of one employee is so distributed that the discrepancies are revealed in the process of

performance of duties of that employee. The duties are divided and sub-divided in such a manner that discrepancies flow out from the system itself.

Essential features of internal check are given hereunder:

- (1) There should be proper division of work and responsibilities.
- (2) The duties of each person should be properly defined so as to fix definite responsibilities of each individual.
- (3) Possibilities of giving absolute control to anybody should not be left out unchecked.
- (4) Too much confidence on a person should be avoided.
- (5) The duties of staff should be rotated and one person should not be allowed to occupy a particular area of operation for long.
- (6) Necessary safeguards should be provided so as to avoid collusion of thoughts which quite often leads to commission of fraud.
- (7) The person handling cash, stock, securities should be given compulsory leave so as to prevent their having uninterrupted control.
- (8) Physical inventory of fixed assets and stocks should be taken periodically.
- (9) Assets should be protected from unauthorised use.
- (10) To prevent loss or misappropriation of cash, mechanical devices such as the automatic cash register, should be employed.
- (11) The financial and administrative powers should be distributed very judiciously among different officers and the manner in which these are actually exercised should be reviewed periodically.
- (12) Accounting procedures should be laid down for periodical verification and testing of different sections of accounting records to ensure that they are accurate

PART IV

Question 6

- (a) A 'Code of Ethics' and a 'Code of Conduct' are often confused or used interchangeably. Discuss.
- (b) Explain the concept and need to apply the Triple Bottom approach for CSR.
(5 marks each)

Answer 6(a)

The terms "Code of Ethics" and "Code of Conduct" are often mistakenly used interchangeably. They are, in fact, two unique documents. Codes of ethics, which govern decision-making, and codes of conduct, which govern actions, represent two common ways that companies self-regulate.

Similarities: Both a Code of Ethics and a Code of Conduct are similar as they are

used in an attempt to encourage specific forms of behaviour by employees. Ethics guidelines attempt to provide guidance about values and choices to influence decision making. Conduct regulations assert that some specific actions are appropriate, others in appropriate. In both cases, the organization's desire is to obtain a narrow range of acceptable behaviour from employees.

Differences : With similarities, comes differences. Both are used in an attempt to regulate behaviour in very different ways. Ethical standards generally are wide-ranging and non-specific, designed to provide a set of values or decision-making approaches that enable employees to make independent judgments about the most appropriate course of action. Conduct standards generally require little judgment; you obey or incur a penalty, and the code provides a fairly clear set of expectations about which actions are required, acceptable or prohibited. Violation of code of ethics may not lead to action against the employee but violation of code of conduct may lead to disciplinary action.

Answer 6(b)

Within the broader concept of corporate social responsibility, the concept of Triple Bottom Line (TBL) is gaining significance and becoming popular amongst corporates. Coined in 1997 by John Ellington, noted management consultant, the concept of TBL is based on the premise that business entities have more to do than make just profits for the owners of the capital, only bottom line people understand. "People, Planet and Profit" is used to succinctly describe the triple bottom lines. "People" (Human Capital) pertains to fair and beneficial business practices toward labour and the community and region in which a corporation conducts its business. "Planet" (Natural Capital) refers to sustainable environmental practices. It is the lasting economic impact the organization has on its economic environment A TBL company endeavors to benefit the natural order as much as possible or at the least do no harm and curtails environmental impact. "Profit" is the bottom line shared by all commerce.

The need to apply the concept of TBL is caused due to –

- (a) Increased consumer sensitivity to corporate social behaviour
- (b) Growing demands for transparency from shareholders/stakeholders
- (c) Increased environmental regulation
- (d) Legal costs of compliances and defaults
- (e) Concerns over global warming
- (f) Increased social awareness
- (g) Awareness about and willingness for respecting human rights
- (h) Media's attention to social issues
- (i) Growing corporate participation in social upliftment

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 2020-21 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) Determine the amount of Input Tax Credit (ITC) admissible under the provisions of CGST Act, 2017 to PQR Ltd in respect of the following transactions which have taken place in the month of January, 2020.

Take note that (i) all the conditions necessary for availing the ITC have been complied with and fulfilled; and (ii) the registered person PQR Ltd is not eligible for any threshold exemption.

Support your answer by giving brief reasons.

Particulars	Amount of GST (₹)
(i) Goods used in constructing an additional floor of office building at Jaipur	24,750
(ii) Packing materials used in the factory	6,500
(iii) Goods destroyed in flood waters due to natural calamities	4,750
(iv) Paper purchased for computers printing and for photocopying machine used in Administrative Office	1,250
(v) Inputs used for tests or for quality control check	15,600

(5 marks)

- (b) Romeo Small Finance Bank Ltd is engaged in providing financial related services and of various types of loan facilities to its constituents, furnishes the following information relating to various services provided and the gross amount received during the month of December, 2019.

Particulars of service	Amount (₹ in lacs)
(1) Commission received for debt collection service	10
(2) Discount earned on bills discounted	3
(3) Penal interest recovered from the customers for the delay in payment of loan EMIs/Dues	2
(4) Commissioner received for service rendered to Government for the collection of taxes	5
(5) Interest earned on reverse repo transaction	10
(6) Service to merchants accepting credit/debit card payments using point of sale (POS) machine of Bank. (In 30% cases, the amount per transaction was up to ₹1,800 while in the other cases, the amount was exceeding ₹2,000)	20

Compute the value of taxable supply and of the amount of GST payable for the month of December, 2019 of Romeo Small Finance Bank Ltd. Gross amount does not include the amount of GST. Take the Rate of GST as 18%. (5 marks)

- (c) Examine the correctness or otherwise of the following statements in accordance with the provisions of GST Act, 2017 and support your answer by giving brief reasons:
- (i) The composition scheme will not be an optional scheme.
 - (ii) A taxable person having same PAN can opt to pay tax under composition scheme by seeking separate registration for branches.
 - (iii) A taxable person will be eligible to opt for composition scheme only for one out of the three or more business verticals.
 - (iv) Composition scheme can be availed, where the taxable person effects interstate supplies.
 - (v) Composition tax can be collected from the customers. (1×5=5 marks)
- (d) Ram Bharose, intends to start business of supply and selling of the specified goods in Delhi as proprietor. However, he is not able to determine because of the complexity of the provisions of the CGST Act, 2017 as to :
- (i) the classification of the goods proposed to be supplied by him [as the classification of said goods has been contentious]; and
 - (ii) the place of supply as the supplies of the said goods is to be made from Delhi to buyer located in New York.

He therefore approached his tax advisor, who advised him to get first registered under the CGST Act and thereafter apply for the advance ruling in respect of these issues as the advance ruling would bring certainty and transparency and

would also avoid litigation later. In this backdrop and the information given, you are required to advise Ram Bharose with respect to the following:

- (i) Whether he needs to get himself registered first under GST law before applying for the advance ruling? (2 marks)
- (ii) Can advance ruling be obtained to determine (a) the classification of the goods proposed to be supplied; (b) the place of supply, where the supplies of said goods is from Delhi to buyers in New York? (3 marks)

Answer 1(a)

Computation of Input Tax Credit for the month of January, 2020

<i>Particulars of Transaction</i>	<i>Amount of ITC</i>
Goods used in construction of an additional floor of office building at Jaipur (Working Note -1)	Nil
Packing Materials used in a factory (since used in course of business and taxable value of output goods include cost towards packing in terms of section 15(2)(c) CGST Act, 2017 hence, ITC on packing material shall be available)	6,500
Goods destroyed due to natural calamities (Working Note -2)	Nil
Paper for photocopying machine used in Administrative Office (since used in course of business hence, ITC shall be available)	1,250
Inputs used for tests or quality control check (since used in course of business hence, ITC shall be available)	15,600
Total ITC available	23,350

Working Notes:

- 1) As per section 17(5)(d) of CGST Act, 2017, Input Tax Credit shall not be available in respect of goods or services or both received by a taxable person for construction of an immovable property (other than plant or machinery) on his own account including when such goods or services or both are used in the course of furtherance of business. Hence, input tax credit shall not be available in respect of goods used in construction of an additional floor of office building.
- 2) Section 17(5)(h) of CGST Act, 2017, Input Tax Credit shall not be available in respect of goods lost, stolen, destroyed, written off or disposed of by way of gift or free samples. Hence, no ITC shall be available in respect of goods destroyed due to natural calamities.

Answer 1(b)

**Romeo Small Finance Bank Ltd.
Computation of Value of Taxable Supply and of GST payable
for the month of December, 2019**

<i>Particulars</i>	<i>Amount (Rs.)</i>
Commission received on debt collection	10,00,000
Discount earned on Bills Discounted [Exempt Entry 27 of Notification No. 12/2017-CT (Rate)]	Exempt
Penal interest charged for delay in repayment [Includible in value as per Section 15(2)(d) of the CGST Act]	2,00,000
Commission received for services rendered to Government for collection of taxes. [Since an activity carried out for consideration and there is no exemption in force, liable to GST]	5,00,000
Interest earned on Reverse Repo transaction [Reverse Repo are 'securities'—Not covered in goods as well as in services. Additionally, interest earned on securities is exempt vide Entry 27 of Notification No. 12/2017-CT (Rate), hence not taxable]	Exempt
Service to merchants accepting credit/debit card payments using Point of Sale machine(POS) of Bank [in 30% cases, the amount per transaction was up to Rs. 1800 hence exempt vide Entry 34 of Notification No. 12/2017-CT(R); while in other cases, the amount was exceeding Rs. 2000 hence liable to GST] (70% of 20,00,000)	14,00,000
Value of Taxable Supply	31,00,000
Total GST payable @18% on Rs. 31,00,000	5,58,000

Answer 1(c)

- i) **No**, it is an Optional scheme provided the eligibility criterion to opt the scheme is being satisfied by the person. [Section 10 CGST Act, 2017]
- ii) **No**, a registered person shall not be eligible to opt for composition scheme unless all such registered persons (branches having separate registration under a single PAN) opt to pay tax under the composition scheme as per CGST Act, 2017.[Proviso to Section 10(2) CGST Act, 2017].
- iii) **No**, composition scheme would become applicable for all the business verticals/registrations which are held by the person with same PAN. [Proviso to Section 10(2) CGST Act, 2017]
- iv) **No**, composition scheme is applicable subject to the condition that the taxable person does not affect inter-state supplies. [Section 10(2)(c) CGST Act, 2017]
- v) **No**, the taxable person under composition scheme is restricted from collecting tax in any manner. [Section 10(4) CGST Act, 2017]

Answer 1 (d)

- i) **Registration not mandatory for Advance Ruling:** As per section 95(c) of the CGST Act, 2017, Advance ruling under GST can be sought by a registered person or by a person desirous of obtaining registration under GST law.

Therefore, it is not mandatory for Ram Bharose to be registered first before making an application for advance ruling. The advise given by the tax advisor is therefore not correct.

- ii) (a) **Classification issue can be raised:** Section 97(2) of the CGST Act, 2017 stipulates the questions/matters on which advance ruling can be sought. It provides that advance ruling can be sought *inter alia* for determining the classification of any goods or services or both.

Therefore, Ram Bharose can seek the advance ruling for determining the classification of the goods proposed to be supplied by him.

- (b) **Place of supply issue cannot be raised:** Determination of place of supply is not one of the specified questions/matters on which advance ruling can be sought under section 97(2).

Further, section 96 of the CGST Act, 2017 provides that AAR constituted under the provisions of SGST Act/ UTGST Act shall be deemed to be the AAR in respect of that State/ Union territory under CGST Act. This implies that ruling given by AAR will be applicable only within the jurisdiction of the concerned State/ Union territory.

Hence, Ram Bharose cannot seek the advance ruling for determining the place of supply of the goods proposed to be supplied from Delhi to buyers in Newyork.

However in the case of *Sutherland Mortgage Services INC Vs Principal Commissioner (Kerala High Court)*, it was held that Authority for Advance Ruling (AAR) has jurisdiction to determine Place of Supply under GST.

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

Question 2

- (a) *PQR Travels Ltd. engaged in providing diversified services of transportation of passengers by various modes provides the details of the various services so provided to the passengers and of the amount collected there against for the month of March, 2020. Service of Transportation of Passengers :*

(1) <i>by National Waterways</i>	₹40,00,000
(2) <i>by Air conditioned State carriages</i>	₹30,00,000
(3) <i>by contract carriages for tourism purposes</i>	₹25,00,000
(4) <i>from Mumbai to Chennai port in a vessel and such service is not for tourism purpose</i>	₹12,00,000
(5) <i>in Metered Cab</i>	₹32,50,000

(6) in Radio Taxis	₹25,00,000
(7) in Air conditioned contract carriages	₹25,00,000

Compute the value of the taxable supply of the services and of the amount of GST liability payable thereon by PQR Travels Ltd for March, 2020 by taking the applicable rate of GST at 5%. (5 marks)

- (b) Anand Kumar, a regular tax payer, filed his return of outward supplies (GSTR-1) for the month of August, 2019 before the due date. Later on, in February, 2020 he discovered certain error in the GSTR-1 return of the month of August, 2019 so filed before the due date and thus intends to correct the GSTR-1 and consults you to seek an opinion.

You are required to advise as to the suitable course of action to be taken according to statutory provisions contained under the CGST Act, 2017 so as to enable him to rectify the error so noticed in the already filed GSTR-1 return of the month of August, 2019. (5 marks)

- (c) Radhey Gobind & Co engaged in the wholesale business particularly dealing in the product of which supply was exempt from tax under GST. Subsequently, tax was imposed on the sale of the product by a notification issued from 01-10-2019. Radhey Gobind & Co continued to sell the product without making any change in the selling price of the product. Later, in the month of March, 2020 they realised that because of no change in the selling price, they had paid higher quantum of tax and therefore decided to file an application for refund claim by stating that there was no change in the price before and after imposition of tax and hence the burden of tax had not been passed on to the buyer.

Discuss and explain in the context of provisions of the CGST Act, 2017 supported with a decided case law, if any, whether the stand taken for refund claim by Radhey Gobind & Co shall be acceptable. (5 marks)

- (d) A show cause notice (SCN) indicating various discrepancies was issued by the proper officer to a registered person. However, the registered person despite opportunity given, failed to give satisfactory explanation and reply relating to the shortcomings indicated in the SCN.

In this backdrop, state as per provisions of the CGST Act, 2017 what actions now against the registered person may be taken by the proper officer? (5 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Destiny Advertising Agency, Ahmedabad supplying services to different customers for making booking of advertisements in different media, provides the following details and of the amounts charged there against for the month of January, 2020:

Particulars	Amount (₹ Lakh)
(1) Aerial advertising	15
(2) Sale of time slot for advertisement to be broadcast on television	12
(3) Advertisement via banner at public places	7
(4) Sale of time slot for advertisement on FM Radio/98 Radio Mirchi	13
(5) Advertisements in Dainik Bhaskar newspaper	9
(6) Advertisement on cover and back pages of books	1

Compute the taxable value of the services and of the amount of GST payable. Take the rate of GST in print media of 5% and in other cases of 18%. All amounts given are exclusive of GST. Ignore the threshold limit. (5 marks)

(ii) Trident Beauty Cosmetics Ltd operating multiple wholesale outlets of cosmetic products in different suburbs in Mumbai, Maharashtra received an order worth ₹3,54,000 (inclusive of GST leviable @ 18%) for supply of different cosmetic products from Prasanna Cosmetics Store of Delhi. Trident Beauty Cosmetics Ltd while checking the stocks found that order worth ₹ 1,18,000 can be fulfilled from the company's Dadar (Mumbai) store and remaining goods worth ₹2,36,000 can be supplied from its Malad (Mumbai) store. Both the stores were instructed to issue separate invoices for the goods supplied and sent by them to Prasanna Cosmetics Store of Delhi. The goods are required to be transported to Delhi in a single conveyance owned by Radhey Transport Carriers of Dadar (Mumbai). You are required to advise Trident Beauty Cosmetics Ltd as per provision under the CGST Act, 2017 with regard to issuance of e-way bill/(s). (5 marks)

(iii) A show cause notice (SCN) under section 73(1) of the CGST Act, 2017 is being proposed to be issued to Evergreen Farm Technologies Pvt. Ltd on 31.07.2023 on account of short payment of tax during the period between 1.7.2019 and 31.12.2019. Evergreen Farm Technologies Pvt. Ltd contends that the show cause notice so proposed to be issued on 31.07.2023 is time barred in law and is thus a bad notice. You are required to examine the technical veracity of the contention of Evergreen Farm Technologies Pvt. Ltd as per CGST Act, 2017. (5 marks)

(iv) When can Summary Assessment order be made by the proper Officer under the provisions of the CGST Act, 2017 ? Can such an order be requested to be withdrawn and if yes, then how and before which authority ? (5 marks)

Answer 2(a)

**Computation of Taxable Value of Supply and of GST liability
PQR Travels Ltd. for March, 2020**

S. No.	Particulars	Amount (Rs.)
1.	Transportation of passengers by National Waterways [Exempt vide Entry 17 of Notification No. 12/2017-CT (Rate)]	Nil
2.	Transportation of passengers by Air conditioned State carriages	30,00,000

3.	Transportation of passengers by contract carriage for tourism	25,00,000
4.	Transportation of passengers from Mumbai to Chennai port in a vessel [being in a public transport vessel sailing in India not for tourism – is exempt vide Entry-17 of Notification No. 12/2017-CT (Rate)]	Nil
5.	Transportation of passengers in Metered Cab [Exempt vide entry 17 Notification No. 12/2017-CT (Rate)]	Nil
6.	Transportation of passengers in Radio Taxis	25,00,000
7.	Transportation of passengers in air-conditioned contract carriages	25,00,000

Taxable value of supply of services 1,05,00,000

Rate of GST payable 5%

Total GST payable (1,05,00,000 x 5) = 5,25,000

Answer 2(b)

As per section 37(3) of the CGST Act, 2017, any registered person, who has furnished the details for any tax period and which have remained unmatched under section 42 or section 43 of the CGST Act, 2017 shall upon discovery of any error or omission therein rectify such error or omission in such manner as may be prescribed in the tax period in which it is noticed.

The tax payer shall also be paying the tax and interest, if any, in case there is a short payment of tax on account of such error or omission, in the return to be furnished for such tax period.

Rectification of details furnished in GSTR-1 shall not be allowed after:

- i) filing of monthly return for the month of September following the end of the financial year to which such details pertain; The due date of filing GSTR-3B for September 2019 in this case is 20.10.2019; **or**
- ii) filing of the relevant annual return. Due date of filing of the annual return in this case is 31.12.2020; **whichever is earlier.**

In the present case, the error has been noticed in the GSTR-1 for August 2019. Such error can be corrected on or before the filing of monthly return for the month of Sept 2020 or before the filing of annual return for 2019-20. In case, Mr. Anand Kumar can very well make the required corrections in GSTR-1 of August 2019 through "Amendment Tables" in GSTR-1 to be filed for the month of February 2020.

He should also pay the tax and interest, if any, in case there is short payment, in the return to be furnished for February 2020.

Answer 2(c)

Section 54 read with section 77 and Rule 89(2) under the CGST Act, 2017 allows refund of tax under various conditions which mainly cover payment of wrong tax by a

registered person. One of the conditions for grant of refund to the applicant is that the burden of tax so claimed as refund should not have been passed on to any other person.

Apex Court in the case of *CCE v. Allied Photographic 2004 166 ELT 3* has held that even if there is no change in the price before and after the assessment (before and after imposition of tax), it does not lead to the irrebuttable conclusion that incidence of tax has not been passed on to the buyer as such uniformity may be due to various factors.

Thus, even if the price remains the same before and after imposition of tax, the assessee has to establish with tangible evidence that he has not passed on the burden of tax to the buyer in any manner to the satisfaction of the proper officer.

Thus, in the ordinary course, the refund claim made by Radhey Gobind & Co will be sanctioned but credited to the consumer welfare fund. However, if Radhey Govind & Co. adduces sufficient evidence to prove that such tax has not been recovered from the buyer, the refund claim can be granted thereto.

Answer 2(d)

Section 61 of the CGST Act, 2017: Scrutiny of Return

The registered person is required to give satisfactory reply in respect of the shortcomings or the discrepancies brought to his notice by the proper officer within a period of thirty days or such further period as may be permitted by the proper officer.

In case, after accepting the discrepancies, no satisfactory explanation is furnished then the proper officer may;

- a) Initiate Audit of accounts of the registered person by the tax authorities under section 65, or
- b) Initiate special audit of accounts under section 66, or
- c) Initiate inspection, search and seizure under section 67, or
- d) Proceed to determine the tax and other dues against the registered person under section 73 or section 74 of the CGST Act, 2017.

Answer 2A(i)

Destiny Advertising Agency, Ahemdabad Computation of Taxable Value of Supply and of GST payable of January, 2020

S. No.	Particulars	Amount (Rs.)
1.	Aerial advertising	15,00,000
2.	Sale of time slot for advertisement in TV Serial	12,00,000
3.	Advertisement via banners at public places	7,00,000
4.	Sale of time slot for advertisement on FM radio and 98 Radio Mirchi	13,00,000
5.	Advertisement in Dainik Bhaskar news paper (Print media hence GST applicable @5%)	9,00,000

6. Advertisement on cover and back pages of books (Books are covered in Print media – hence GST applicable @ 5%)	1,00,000
Total Value of Taxable Supply	57,00,000
Value of supply Taxable @ 5% (9,00,000+1,00,000)	10,00,000
Value of supply Taxable @ 18% (15,00,000+12,00,000+7,00,000+13,00,000)	47,00,000
GST Payable (10,00,000 x 5 %) + (47,00,000 x 18%) = 50,000 + 8,46,000	8,96,000

Answer 2A(ii)

Trident Beauty Cosmetics Ltd. would be required to prepare two separate e way bills since value of each of the invoice exceeds Rs. 50,000 and each invoice is to be considered as separate consignment for the purpose of generating e-way bill.

Central Board of Indirect Taxes and Customs (CBIC) has clarified that if multiple invoices are being issued by the supplier to one recipient, then for the movement of goods of more than one invoice multiple e-way bills have to be generated.

One e-way bill has to be generated for each invoice, irrespective of the fact whether same or different consignors or consignees are involved. Multiple invoices cannot be clubbed to generate one e-way bill.

However, Rule 138(6) CGST Rules, 2017 provides that after e-way bill has been generated for each invoice/ consignment, where multiple consignments are intended to be transported in one conveyance, the transporter may indicate the serial number of e-way bills generated in respect of each such consignment electronically on the common portal and a consolidated e-way bill in FORM GST EWB-02 may be generated by him on the said common portal prior to the movement of goods.

Thus, after generating all these separate e-way bills, one consolidated e-way bill can be generated/prepared by the transporter for transportation purpose, where the goods are transported in one vehicle.

Therefore, in the present case both the stores issuing the invoice will generate separate e-way bill and thereafter one consolidated e-way bill can also generated by Radhey Transport Carriers of Dadar (Mumbai) as the goods from both the stores be transported to Delhi in one conveyance.

Answer 2A(iii)

The Show Cause Notice under section 73(1) of the CGST Act, 2017 can be issued as per section 73(2) at least 3 months prior to the time limit specified for issuance of order under section 73(10) of the CGST Act, 2017.

The adjudication order under section 73(1) of the CGST Act, 2017 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.

The due date under section 44 of the CGST Act, 2017 for furnishing annual return for a financial year is 31st day of December following the end of such financial year. SCN under section 73(1) of the CGST Act, 2017 thus can be issued within 2 years and 9 months from the due date for furnishing of the annual return for the financial year to which the short-paid/not paid tax is related.

The SCN has been issued for the period between 1.7.2019 to 31.12.2019 which falls in the financial year (FY) 2019 - 20. Due date for furnishing the annual return for the FY 2019 - 20 is 31.12.2020 and 3 years period from due date of filing annual return expires on 31.12.2023. Thus, SCN under section 73(1) ought to have been issued latest by 30.09.2023. Since in the given case, the notice has been issued on 31.07.2023 notice is not time barred and has been issued correctly.

The contention of Evergreen Farm Technologies Pvt. Ltd. is not valid in law.

Answer 2A(iv)

As per Section 64 of the CGST Act, 2017, 'Summary Assessments' can be initiated by the proper officer to protect the interest of revenue when:

- (a) has evidence that a taxable person has incurred a liability to pay tax under the Act, and
- (b) believes that the delay in passing an assessment order will adversely affect the interest of revenue.

Such order can be passed after seeking permission from the Additional Commissioner /Joint Commissioner.

In certain cases, like when goods are under transportation or are stored in a warehouse, and the taxable person in respect of such goods cannot be ascertained, the person in charge of such goods shall be deemed to be the taxable person and will be assessed to tax.

A taxable person against whom a summary assessment order has been passed can apply for its withdrawal to the Jurisdictional Additional/Joint Commissioner within thirty days of the date of receipt of the order.

The Jurisdictional Additional/Joint Commissioner, if finds that the order is erroneous, he can order for withdrawal and direct the proper officer to carry out determination of tax liability in terms of section 73 or 74 of CGST Act. The Additional/Joint Commissioner can follow a similar course of action on his own motion, if he finds the summary assessment order to be erroneous.

Question 3

- (a) *Examine by giving reasons in brief in the context of provisions contained under the CGST Act, 2017 as to taxability or otherwise of the following independent supply of services :*
 - (i) *Tejas & Co of Delhi a tour operator provided services to Robert, a foreign tourist resident of UK for his tour conducted in Rajasthan and Agra for a sum of ₹ 2,50,000 and of Jammu Kashmir for a sum of ₹ 1,00,000 and received the total amount of ₹ 3,50,000.*

- (ii) Ms. Purnima acts as a Team Manager for Indian Sports League (ISL) a recognized sports body. She was contracted by a Multi Brand Retail Company to act as Manager for a Tennis tournament organized by them and was paid an amount of ₹ 5,00,000. (4 marks)

- (b) Determine the time of supply (TOS) by giving reason in brief in each of the following cases in accordance with the provisions in CGST Act, 2017 :

No.	Date of Completion of service	Date of Invoice	Date of receipt of payments
1.	16.07.2019	21.07.2019	26.08.2019
2.	16.08.2019	11.10.2019	01.10.2019
3.	16.10.2019	11.10.2019	Part payment on 01.10.2019 Remaining payment on 26.10.2019
4.	16.10.2019	11.11.2019	Part payment on 12.11.2019 Remaining payment on 15.11.2019

(4 marks)

- (c) Ram Avtar resident of Nagpur has entered into a roll over contract approached NDMC Bank Ltd on 12-01-2020 for selling US \$ 4,50,000 at the rate of ₹ 75 per USD. RBI reference rate on 12-01-2020 was ₹ 76 and the rate of exchange declared by CBEC for the day was ₹ 76.50 per USD.

Calculate the value of taxable supply by explaining in brief the provisions of CGST Act, 2017 and rules framed thereunder. (4 marks)

- (d) Discuss and explain in brief the provisions relating to refund of the amount of advance tax deposited by a casual taxable person under section 27(2) of the CGST Act, 2017. (4 marks)

- (e) The proper officer under the CGST Act, 2017 can authorize arrest of any person under section 69 of the CGST Act, 2017. State all those situations when the proper officer can authorize arrest of any person. (4 marks)

Answer 3(a)

- i) Services provided by a tour operator to a foreign tourist in relation to a tour conducted wholly outside India are exempt vide Entry 54 of Notification No. 2/2017-IT (Rate). In this case tour is conducted in Rajasthan, Agra and Jammu Kashmir. IGST Act applies to whole of India including Jammu & Kashmir, hence exemption will not operate and Tejas and Co. of Delhi will be liable to pay GST and tax be payable on the entire amount of Rs. 3,50,000.
- ii) Services provided to a recognized sports body by an individual as a player, referee, umpire, coach or team manager for participation in a sporting event organized by a recognized sports body are exempt vide Entry 68 of Notification

No. 2/2017-IT (Rate). Since Multi Brand Retail Company is not a recognized sports body hence exemption will not be available. Thus, the services provided by Ms. Purnima will be liable to GST and tax be payable on amount of Rs. 5,00,000.

Answer 3(b)

The time of supply (TOS) in each of the following cases shall be on the principle of date of invoice or the date of payment whichever is earlier.

No.	Date of completion of service	Date of invoice	Date on which payment is received	Time of supply (TOS)
1	16.07.2019	21.07.2019	26.08.2019	21.07.2019, since invoice issued within 30 days of completion of service and the payment received was later than the invoice.
2	16.08.2019	11.09.2019	01.09.2019	01.09.2019 since invoice issued within 30 days of completion of service and the payment received was earlier than the invoice.
3	16.09.2019	11.10.2019	Part payment on 01.10.2019 and Remaining payment on 26.10.2019	As Invoice is issued within 30 days from the date of completion of service, time of supply shall be 01.10.2019 for the part payment and 11.10.2019 for the remaining payment being the date of invoice.
4	16.10.2019	11.11.2019	Part payment on 12.11.2019 and Remaining payment on 15.11.2019	11.11.2019 for both payments. The invoice issued within 30 days of completion of service and the payments received after the date of invoice.

Answer 3(c)

Rule 32(2)(a) of CGST Rules, 2017 provides the manner of determination of the value of taxable supply so far as it pertains to purchase or sale of foreign currency including money changing.

The value of service for currency, when exchanged from, or to, Indian Rupees (INR), shall be equal to the difference in the buying rate or the selling rate, as the case may be and the Reserve Bank of India (RBI) reference rate for that currency at that time, multiplied by the total units of currency. Central Board of Excise and Customs (CBEC) rate has no relevance for determining the value of taxable supply of service.

Hence the value of taxable supply = RBI reference rate of USD x Total units of currency = Rs. (76 – 75) x 4,50,000 = Rs. 4,50,000.

The taxable value of supply shall be Rs. 4,50,000.

Answer 3(d)

As per provisions of section 54(13) of CGST Act, 2017, the amount of advance tax deposited by a casual taxable person under section 27(2), shall be refunded only when such person has, in respect of the entire period for which the certificate of registration granted to him had remained in force, furnished all the returns required under section 39 of the CGST Act, 2017.

Further, as per 4th proviso to Rule 89 of the CGST Rules, 2017, refund of any amount, after adjusting the tax payable by the applicant out of the advance tax deposited by him under section 27 at the time of registration, shall be claimed in the last return required to be furnished by him.

Answer 3(e)

The Commissioner of CGST under section 69 of CGST Act, 2017, by order in writing, can authorize any CGST Officer to arrest a person, if he has reasons to believe that such person has committed following offences as specified in section 132(1)(a)/(b)/(c)/(d) which is punishable under section 132(1)(i)(ii) or section 132(2) of the Act.

- a) supplies any goods or services or both without issue of any invoice, in violation of the provisions of this Act or the rules made thereunder, with the intention to evade tax;
- b) issues any invoice or bill without supply of goods or services or both in violation of the provisions of this Act, or the rules made thereunder leading to wrongful availment or utilisation of input tax credit or refund of tax;
- c) avails input tax credit using such invoice or bill referred to in clause (b);
- d) collects any amount as tax but fails to pay the same to the Government beyond a period of three months from the date on which such payment becomes due;

A person can be arrested, provided that:

- (i) where the amount of tax evaded or the amount of input tax credit wrongly availed or utilised or the amount of refund wrongly taken exceeds two hundred lakh rupees.
- (ii) where the person was earlier convicted of any of the above-mentioned offences.

Question 4

(a) *Ram Ratan who has imported a machine from UK in India provides the following information and details relating to such machine and requests you to compute the assessable value and of the total amount of payable Custom duty and other taxes to be levied :*

- | | |
|--------------------------|------------------|
| (i) FOB value of machine | - 8,000 UK Pound |
| (ii) Air Freight paid | - 2500 UK Pounds |

- (iii) Design and development charges paid in UK - 500 UK Pounds
- (iv) Commission payable to local agent @ 2% of FOB in INR
- (v) Date of bill of entry - 24.10.2019 (Rate BCD 20%, Exchange rate as notified by CBIC ₹120 per UK Pound)
- (vi) Date of entry inward - 20.10.2019 (Rate BCD 18%, Exchange rate as notified by CBIC ₹115 per UK Pound)
- (vii) Integrated tax payable @ 12%
- (viii) GST Compensation Cess – Nil
- (ix) Insurance charges actually paid but details not available. (6 marks)
- (b) Specify all those conditions which are required to be satisfied for imposing countervailing duty on the subsidized articles as specified in section 9 of the Customs Tariff Act, 1962. (4 marks)

Answer 4(a)**If Commission paid to local agent is treated as buying commission****Computation of Assessable value and of customs Duty**

<i>Particulars</i>	<i>Value in</i>	<i>Amount</i>
FOB Cost of machine	UK Pound	8000
Add: Design and development Charges paid in UK	UK Pound	500
Total	UK Pound	8500
Total sum in Indian Rs. Exchange rate to be applied as notified by CBIC as on the date of filing of Bill of Entry i.e. 1 Pound of Rs. 120	INR	10,20,000
Add: Commission to the Agent @ 2% of FOB [not to be included as buying commission is not includible as per Rule 10(1)(a)(i) of the Customs Rules]		
FOB value as per Customs Act		10,20,000
Add: Insurance charges (1.125% of customs FOB as per 3 rd proviso to Rule 10(2)) of Customs Valuation Rules)		11,475
Add: Air freight (restricted to 20% of custom FOB as per 5 th proviso to Rule 10(2)) of Customs Valuation Rules)		2,04,000
Total CIF value being the Assessable Value as per customs		12,35,475
Add: Basic Customs duty @ 20% (1)		2,47,095
Add: SWS @10% of (1) (2)		24,710

Total for Integrated tax u/s 3(7) of the Customs Tariff Act		15,07,280
Add: Integrated tax @12%	(3)	1,80,874
Total Imported Cost of the machine		16,88,154
Total customs duty and taxes payable = (1)+(2)+(3)	INR	4,52,679

Alternate Answer 4(a)

If Commission paid to local agent is treated as other than buying commission

Computation of Assessable value and of customs Duty

<i>Particulars</i>	<i>Value in</i>	<i>Amount</i>
FOB Cost of machine	UK Pound	8000
Add: Design and development Charges paid in UK	UK Pound	500
Total	UK Pound	8500
Total sum in Indian Rs. Exchange rate to be applied as notified by CBIC of 1 Pound of Rs. 120		10,20,000
Add: Commission to the Agent @ 2% of FOB cost (i.e. 160 x Rs. 120 per pound)		19,200
FOB value as per Customs Act		10,39,200
Add: Insurance charges (1.125% of customs FOB as per 3 rd proviso to Rule 10(2)) of Customs Valuation Rules)		11,691
Add: Air freight (restricted to 20% of custom FOB as per 5 th proviso to Rule 10(2)) of Customs Valuation Rules)		2,07,840
Total CIF value being the Assessable Value as per customs		12,58,731
Add: Basic Customs duty @ 20% (1)		2,51,746
Add: SWS @10% of (1) (2)		25,175
Total for Integrated tax u/s 3(7)		15,35,652
Add: Integrated tax @12% (3)		1,84,278
Total Imported Cost of the machine		17,19,930
Total customs duty and taxes payable = (1)+(2)+(3)		4,61,199

Answer 4(b)

The countervailing duty on subsidized articles as specified in section 9 of the Customs Tariff Act, 1962 is to be imposed, if the following conditions are satisfied.

- (a) Any country or territory, directly or indirectly, pays or bestows subsidy upon the manufacture or production or exportation of any article. Such subsidy includes subsidy on transportation of such article;
- (b) Such articles are imported into India;
- (c) Importation of such goods may/may not directly be from the country of manufacture/production;
- (d) The article, may be in the same condition as when exported from country of manufacture or production or may be changed in condition by manufacture, production or otherwise;
- (e) The subsidy provided by the exporting country relates to export performance;
- (f) The subsidy relates to the use of domestic goods over imported goods in the export article; or the subsidy has been conferred on a limited number of persons engaged in the manufacture, production or export of articles.

PART II

Question 5

- (a) *Chetan Lal had borrowed on Hundi a sum of ₹25,000 by way of a bearer cheque on 11.09.2019 and repaid the same with interest in total amounting to ₹30,000 by account payee cheque on 12.12.2019.*

The Assessing Officer (AO) had issued a show cause notice to treat the amount borrowed by Chetan Lal on Hundi as income chargeable to tax during the previous year ended on 31-03-2020. Chetan Lal seeks your opinion as to the correctness of the action of the AO. (3 marks)

- (b) *The concept of Permanent Establishment is important in determining the tax implications of cross border transactions. Examine the significance thereof (PE), when such transactions are governed by Double Taxation Avoidance Agreements (DTAA). (3 marks)*
- (c) *How and when a unilateral Advance Pricing Agreement (APA) entered into can be converted into a bilateral APA ? (3 marks)*
- (d) *What is the legislative intent/objective of bringing into existence the provisions relating to transfer pricing in relation to international transactions ? Explain the statement in the context of Income Tax Act, 1961. (3 marks)*
- (e) *The Assessing Officer can complete the assessment of income from international transactions in disregard of the order passed by the Transfer Pricing Officer (TPO) by accepting the contention of the assessee. Explain. (3 marks)*

Answer 5(a)

Section 69D of the Income Tax Act, 1961, provides that where any amount is borrowed on a hundi from, or any amount due thereon is repaid to, any person otherwise than through an account payee cheque drawn on a bank, the amount so borrowed or repaid shall be deemed to be the income of the person borrowing or repaying the amount aforesaid for the previous year in which the amount was so borrowed or repaid. For the purposes of this section, the amount repaid shall include the amount of interest paid on the amount borrowed.

In this case, Mr. Chetan Lal has borrowed Rs. 25,000 on Hundi by way of bearer cheque. Therefore, it shall be deemed to be the income of Mr. Chetan Lal for the previous year 2019-20.

However, the repayment of the same along with interest was made by way of account payee cheque, the same would not be hit by the provisions of section 69D of the Income tax Act, 1961. Therefore, the action of Assessing Officer is not valid in law to the extent of treating the amount repaid by account payee cheque as income during the previous year 2019-20.

Answer 5(b)

Double Taxation Avoidance Agreements (DTAA) generally contain an Article providing that business income is taxable in the country of residence, unless the enterprise has a permanent establishment in the country of source, and such income can be attributed to the permanent establishment.

As per section 92F(iia) of the Income tax Act, 1961, the term "Permanent Establishment" includes a fixed place of business through which the business of an enterprise is wholly or partly carried on. This means, to constitute a permanent establishment, there must be a place of business which is fixed and the business of the enterprise must be carried out wholly or partly through that place.

Section 9(1)(i) of the Income tax Act, 1961 requires existence of business connection for deeming business income to accrue or arise in India. DTAA's however provide that business income is taxable, if there is a permanent establishment in India.

Answer 5(c)

A unilateral Advance Pricing Agreement 'APA' can be converted into a bilateral APA before the mutually agreed draft agreement is forwarded by the DGIT (International Taxation) to the Board. While converting a unilateral APA application to a bilateral APA application, the applicant or its Associated Enterprise needs to make a similar request with the competent authority of the other country.

The bilateral request of the applicant shall be forwarded by the DGIT to the competent authority in India. The competent authority of India shall decide whether the bilateral request is allowable based on the existence of appropriate provision on lines of OECD Model Article 9(2) in the tax treaty between India and other country and also on the existence of an APA program in that other country.

If the request is allowed, then the application would be processed as a bilateral APA application.

Answer 5(d)

The presence of multinational enterprises in India and their ability to allocate profits among the enterprises within the group in different jurisdictions by controlling prices in intra-group transactions in such a way that there may be either no profit or negligible profit in the jurisdiction which taxes such profits and substantial profit will be in the jurisdiction which is a tax haven or where the tax liability on such profits is minimum.

This may adversely affect a country's share of due revenue. The profits derived by such enterprises carrying on business in India can be controlled by the multinational

group, by manipulating the prices charged and paid in such intra-group transactions, which may lead to erosion of tax revenue.

Therefore, transfer pricing provisions have been brought in by the Finance Act, 2001 with a view to provide a statutory framework which can lead to computation of reasonable, fair and equitable profits and tax in India, in the case of such multinational enterprises.

Answer 5(e)

Section 92CA(4) of the Income Tax Act, 1961, provides that the order of the Transfer Pricing Officer determining the arm's length price (ALP) of an International Transaction is binding on the Assessing Officer.

The Assessing Officer shall proceed to compute the total income from the International Transactions in conformity with the arm's length price (ALP) as determined by the Transfer Pricing Officer.

Therefore, the Assessing Officer cannot complete the assessment of income from international transactions in disregard of the order of Transfer Pricing Officer and on the basis of contention raised by the Assessee.

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

Question 6

(a) *Examine in the context of provisions contained under the Income Tax Act, 1961 in each of the following independent cases and state in brief whether there exists business connection in each of the cases in India so as to bring the income earned in the previous year, if any to be taxed in India:*

- (i) *Al Rahim Ltd a company resident in Dubai had setup a liaison office at Mumbai to receive trade enquiries from the customers in India. The work of the liaison office is not only restricted for forwarding the trade enquiries to the company in Dubai but was also to negotiate and enters into the contracts on behalf of Al Rahim Ltd with the customers in India.*
- (ii) *John Muller Pty Inc a resident company of USA has set up a branch office at Delhi for the purpose of purchase of various materials which are being used for manufacturing its products. The branch office is engaged in selling the products manufactured by John Muller Pty Inc and also in providing the sales related services to the customers in India on behalf of John Muller Pty Inc.*
- (iii) *Rajendra, a resident in India and based at NOIDA is appointed as agent by KOK Pty Inc a company incorporated in USA for exploring the Indian markets. He had not been given any authority to accept the orders but was allowed for canvassing the orders and then to communicate the same to company in USA. All the orders were directly received and accepted by the company and after receiving the price/value thereof, the delivery of goods was given directly by the company from any of its outlets outside India. None of the activities either of purchase of raw material or of manufacturing of finished goods took place in India. The agent was entitled to receive the commission as a percentage on the sales so concluded by KOK Pty Inc of USA.*

(2 Marks each = 6 Marks)

- (b) Explain the taxability or otherwise of the following transactions entered into during the previous year 2019-20 in the hands of the recipients as per provisions contained under the Income-tax Act, 1961 :
- (i) Nistha, a member of her father's HUF, transferred a house property owned by her to the HUF of her father without taking any consideration. The stamp duty value of the house property so transferred by her on the date of transfer is assessed at ₹15,00,000. The property so transferred by her was given on rent by the HUF.
 - (ii) Akshat received 1000 shares as a gift of ATOZ Ltd having face value of ₹10 each from his friend on the occasion of his 25th marriage anniversary. The fair market value on the date of gift of the shares of ATOZ Ltd was of ₹100 per share. He also received a car from his nephew on the same day and the fair market value of the car on the date of gift was assessed at ₹5,25,000.
(4 marks)
- (c) Examine in brief the doctrine of "form and substance" in the context of tax planning under the Income Tax Act, 1961. Support your answer with the decided court cases explaining the principle of form and substance which will prevail in Income Tax matters.
(5 marks)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) What do you understand by the term double taxation ? Discuss the connecting factors which lead to double taxation of an income.
(6 marks)
- (ii) "Live Tele Films" is a UK base foreign company not having any Indian citizen/resident of India holding its shares. It has shot a TV film during the year ended on 31-03-2020 entirely on the Indian locations so as to show the Indian cultural heritage. The film is to be telecast exclusively in the foreign countries, but it has also been agreed with the Government of India to give the right of telecast of the film in India to "DD-II" free of charge. The A.O. issued a show cause notice asking the foreign company to pay tax in India on the income derived by it from the telecast of the film for A. Y. 2020-2021. Company claims that it is not liable to pay any tax in India and therefore seeks your opinion.
(5 marks)
- (iii) XYZ Ltd took over the running business of a sole-proprietor by a sale deed. As per terms of the sale deed, XYZ Ltd required to pay overriding charges of ₹75,000 p.a. to the wife of the sole-proprietor for ten years in addition to the sale consideration. The sale deed also specifically mentioned that the amount of ₹75,000 is a charge on the net profits of XYZ Ltd who had accepted the obligation as a condition of purchase of the business as a going concern. Is the payment of overriding charges by XYZ Ltd, to the wife of the sole-proprietor in the nature of diversion of income or application of income ? Discuss and explain as per provisions of Income Tax Act, 1961.
(4 marks)

Answer 6(a)

- (i) All income accruing or arising directly or indirectly through or from any business connection in India is chargeable to tax in India as per section 9(1)(i) of the Income Tax Act, 1961. In the given case Al Rahim Ltd (Non-resident Company) is having a liaison office in India which is also having authority to negotiate and

conclude the contracts on behalf of the non-resident company. As per Explanation 2 of section 9 of the Income tax Act, 1961, there exists a business connection and therefore the income of the liaison office located at Mumbai shall be taxable in India in the hands of Al Rahim Ltd.

- (ii) The branch office of John Muller Pty Inc located at Delhi constitutes a business connection in India as per section 9(1)(i) of the Income tax act, 1961 since there is an element of continuity in the business transactions with the USA based company John Muller Pty Inc. The branch office, besides the purchase of raw material, is also engaged in selling the products manufactured by the company and in providing sales related services to customers in India on behalf of USA Company. Branch is considered as an extended arm of the company and a PE in India.

Therefore, in this case, the profits attributable to the operations conducted in India by the branch will be taxable in India in the hands of John Muller Pty Inc as per Income Tax Act, 1961.

- (iii) All income accruing or arising directly or indirectly through or from any business connection in India is chargeable to tax in India as per section 9(1)(i) of the Income tax Act, 1961. In the given case, Mr. Rajendra does not have any authority to accept or conclude any contracts on behalf of the company or to procure any raw material. All the orders were directly received and accepted by the company and after receiving the price/value thereof, the delivery of goods was given directly by the company from any of its outlets outside India.

It means that business connection does not exist in India in the case of KOK Pty Inc. and the income of the work done by the agent shall not be taxable in India in the hands of KOK Pty Inc. of USA.

The commission on the sales received by Mr. Rajendra from KOK Pty Inc shall be taxable in India in his hands.

Answer 6(b)

<i>S. No.</i>	<i>Taxable or Non-taxable</i>	<i>Amount liable to Tax (Rs.)</i>	<i>Reasons as per provisions of Income tax Act, 1961 as to Taxability or Non-Taxability</i>
i)	Non-Taxable	Nil	<p>Any Immovable property received without consideration by a HUF from any of its members covered under the definition of relative and therefore not taxable under section 56(2)(x) of the Income tax Act, 1961.</p> <p>Since Ms. Nistha is a member of the HUF, she is a relative of her father's HUF. Hence the stamp duty value of Rs. 15,00,000 of House Property on the date of transfer is not taxable in the hands of HUF.</p> <p>The Income of rent derived from such transferred house property by the HUF would be clubbed in the hands of Ms. Nistha under section 64(2) of the Income tax Act, 1961.</p>

ii)	Taxable	1,00,000	<p>As per provisions of section 56(2)(x) of the Income tax Act, 1961, in case the aggregate fair market value of property, other than immovable property, received without consideration exceeds Rs. 50,000 the whole of the aggregate value shall be taxable.</p> <p>In this case, the aggregate fair market value of shares (1000 x 100 = Rs. 1,00,000) exceeds Rs. 50,000. Hence the entire amount of Rs. 1,00,000 shall be taxable.</p> <p>Since, Car is not included in the definition of property for the purpose of section 56(2)(x) of the Income tax Act, 1961, therefore, the value of same of Rs. 5,25,000 shall not be taxable.</p>
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Answer 6(c)

The following are certain principles enunciated by the Courts on the question as to whether it is the form or substance of a transaction, which will prevail in Income-tax matters.

- (i) It is well settled that when a transaction is arranged in one form known to law, it will attract tax liability whereas, if it is entered into in another form which is equally lawful, it may not. In considering whether a transaction attracts tax or not, the form of the transaction put through is to be considered and not the substance. However, this rule applies only to genuine transactions. **[Motor and General Stores (P) Ltd. vs. CIT (1967) 66 ITR 692 (AP)]**
- (ii) True legal relation is the crucial element for taxability. The true legal relation arising from a transaction alone determines the taxability of a receipt arising from the transaction.

It is open for the authorities to pierce the corporate veil and look behind the legal facade at the reality of the transaction. The taxing authority is entitled as well as bound to determine the true legal relation resulting from a transaction.
- (iii) Substance is relevant and not the form:
 - a) In the case of an expenditure, the mere fact that the payment is made under an agreement does not preclude the department from enquiring into the actual nature of the payment **[Swadeshi Cotton Mills Co. Ltd. vs. CIT (1967) 63 ITR 57 (SC)]**
 - b) In order to determine whether a particular item of expenditure is of revenue or capital nature, the substance and not merely the form should be looked into. **[Assam Bengal Cement Co Ltd. vs. CIT (1955) 27 ITR 34 (SC)]**

Answer 6A(i)

Double taxation occurs when an assessee is required to pay two or more taxes for the same income, asset, or financial transaction in different countries. Double taxation occurs mainly due to overlapping tax laws and regulations of the countries where an

assessee operates his business. Double taxation Agreement is the systematic imposition of two or more taxes on the same income. The double tax liability is often mitigated by tax agreements, known as treaties, between countries.

The taxability of a Foreign Entity in any country depends upon two distinct factors, namely, whether it is doing business with that country or in that country. Internationally, the term used to determine the jurisdiction for taxation is “connecting factors”.

There are two types of connecting factors, namely, “Residence” and “Source”. It means a company can be subject to tax either on its residence link or its source link with a country.

Broadly, if a company is doing business with another country (i.e., host/ source country), then it would be subject to tax in its home country alone, based on its residence link. However, if a company is doing business in a host/ source country, then, besides being taxed in the home country on the basis of its residence link, it will also be taxed in the host country on the basis of its source link.

Jurisdictional Double Taxation: Accordingly, when source rules overlap, double taxation may arise i.e. tax is imposed by two or more countries as per their domestic tax laws in respect of the same transaction; income arises or is deemed to arise in their respective jurisdictions. This is known as “jurisdictional double taxation”.

In order to avoid such double taxation, a company can invoke provisions of Double Taxation Avoidance Agreements (DTAAs) (also known as Tax Treaty or Double Tax Convention - DTC) with the host/ source country, or in the absence of such an agreement, as Indian company can invoke provisions of section 91 of the Income-tax Act, 1961, providing unilateral relief in the event of double taxation.

Economic Double Taxation: Economic Double Taxation happens when the same transaction, item of income or capital is taxed in two or more states but in hands of different person (because of lack of subject identity).

Answer 6A(ii)

Section 9(1) of the Income Tax Act, 1961 states that any income accruing or arising whether directly or indirectly from any business connection in India shall be the income deemed to accrue or arise in India. However, Explanations (a) to (d) to this clause illustrate about the cases which will not be regarded as business connection in India.

According to Explanation (d) to this clause, no income shall be deemed to accrue or arise in India through or from operations which are confined to the showing of any cinematograph film in India provided the assessee who is non-resident is;

- (a) an individual who is not a citizen of India,
- (b) a firm which does not have any partner who is a citizen of India or who is resident of India,
- (c) a company which does not have any shareholders who is a citizen of India or who is resident in India.

In the instant case, the assessee is a foreign company who does not have any shareholder who is either citizen of India or resident of India and as such no income of the foreign company shall be deemed to accrue or arise in India.

Therefore the action of Assessing Officer is not correct in putting to tax income of the company for the Assessment Year 2020-2021 in India.

Answer 6(A)(iii)

This issue came up for consideration before the Allahabad High Court in the case of *Jit & Pal X-Rays (P) Ltd. vs. CIT (2004) 267 ITR 370*. The Allahabad High Court observed that the overriding charge which had been created in favour of the wife of the sole-proprietor was an integral part of the sale deed by which the going concern was transferred to the assessee.

The obligation, therefore, was attached to the very source of income i.e., the going concern transferred to the assessee by the sale deed. The sale deed also specifically mentioned that the amount in question was charged on the net profits of the assessee company and the assessee company had accepted that obligation as a condition of purchase of the going concern.

Hence, it is clearly a case of diversion of income by an overriding charge and not a mere application of income.

DRAFTING, PLEADINGS AND APPEARANCES

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

- (a) Enumerate the usual parts or components or clauses of a deed.
- (b) Draft a deed of sale by the liquidator of a company who has gone in voluntary liquidation. Assume facts.
- (c) Explain the principle of *res-judicata* and its impact on litigation.
- (d) 'Registrar of Companies is the Primary Regulatory Authority for the companies.'
Comment on this statement. (5 marks each)

Answer 1(a)

A deed is a legal document that is signed and delivered, especially one regarding the ownership of property or legal rights. Deed is the term normally used to describe all the instruments by which two or more persons agree to effect any right or liability. In legal sense, a deed is a solemn document.

A deed is divided into different paragraphs. Under each part relevant and related information is put in paragraph in simple and intelligible language. If a particular part is not applicable in a particular case that part is omitted from the document.

The usual parts or components or clauses of deeds in general are mentioned as follows:

- (1) Description of the Deed Title.
- (2) Place and Date of execution of a Deed.
- (3) Description of Parties to the Deed.
- (4) Recitals.
- (5) Testatum.
- (6) Consideration.
- (7) Receipt Clause.
- (8) Operative Clause.
- (9) Description of Property.
- (10) Parcels Clause.
- (11) Exceptions and Reservations.
- (12) Premises and Habendum.
- (13) Reddendum
- (14) Covenants and Undertakings.
- (15) Testimonium Clause.

- (16) Signature and Attestation.
- (17) Endorsements and Supplemental Deeds.
- (18) Annexures or Schedules

Answer 1(b)

THIS SALE DEED is made on this..... day of..... by voluntary liquidator of..... Co. Ltd., (in voluntary liquidation) (hereinafter called “the vendor”) of the one part, in favour of Shri....., son of Shri....., Occupation....., resident of..... (hereinafter called “the purchaser”) of the other part, under the terms and conditions mentioned below:

WHEREAS by a special resolution passed by the shareholders of..... Co. Ltd., at an Extraordinary General Meeting held on the..... day of....., of which notice as prescribed by law had been duly given, and it was resolved that the company be wound up voluntarily;

WHEREAS the said vendor was appointed its voluntary liquidator on..... the notice whereof was duly submitted to the Registrar of Companies..... as prescribed by law, on the..... day of.....;

AND WHEREAS in a meeting of the shareholders of the said company held in accordance with the provisions of the Companies Act,2013 it was resolved that the properties mentioned in the Schedule annexed hereto be sold by the vendor after publishing a notice for sale in..... and....., daily newspapers twice within a period of a fortnight, and pursuant to such resolution, the vendor had duly advertised the sale of the said properties in the issues of..... dated respectively and issues of dated respectively and pursuant thereto have received offers, the highest whereof was that of the said purchaser;

AND WHEREAS the said vendor agreed to sell and the said purchaser agreed to purchase the said properties on the terms and conditions mentioned herein and incorporated in an agreement to sell dated..... between the said vendor and the said purchaser.

NOW THIS DEED OF SALE WITNESSES AND IT IS HEREBY AGREED AND DECLARED AS FOLLOWS:

That pursuant to the agreement dated..... aforementioned and in consideration of the sum of Rs..... (Rupees.....) paid by the purchaser before the Sub-Registrar, on presentation of this Deed of sale for registration thereof (the receipt whereof the vendor hereby acknowledges) the vendor hereby transfers by way of sale and conveys on behalf of the said company all those items of the property mentioned more particularly in the Schedule attached hereto, unto the said purchaser, his heirs and assigns to have and to hold the same absolutely and forever.

IN WITNESS WHEREOF the parties aforementioned have signed this Deed of Sale on the date, month and the year aforementioned.

Witness: 1.

Vendor

Witness: 2.

Purchaser

Schedule

Item Nos.

1.

2.

3.

4.

Answer 1(c)

The principle of res judicata has been defined in Section 11 of the Code of Civil Procedure, 1908. 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. The principle of resjudicata applies only under following circumstances:

- (i) 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.
- (ii) The matter is in the court competent 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.

To sum up, it can be stated that no court will have the power to try any fresh suit or issue which has been already settled in the former suit between the same parties.

Answer 1(d)

The Registrar of the Company is defined under section 2(75) of the Companies Act, 2013 as “Registrar” means a Registrar, an Additional Registrar, a Joint Registrar, a Deputy Registrar or an Assistant Registrar, having the duty of registering companies and discharging various functions under this Act.

Registrars of Companies (ROCs) appointed under Section 396 of Companies Act, 2013 are vested with the primary duty of registering companies in States and Union Territories and ensuring that such companies comply with statutory requirements under the Act. These offices function as a registry of records, relating to the companies registered with them. The records are available for inspection by the public on payment of the prescribed fee. The Central Government exercises administrative control over these offices through the respective Regional Directors.

Hence it will be true to say that ‘Registrar of Companies is the Primary Regulatory Authority for the Companies’.

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

(a) Write notes on the following :

- (i) *Pre-incorporation contracts and ratification thereof.* (4 marks)
 - (ii) *Powers of Parliament to delegate and limitations of Law making role of the Parliament.* (4 marks)
 - (iii) *Supreme Court of India plays the role of the guardian of Constitution of India.* (4 marks)
- (b) *Draft an agreement in favour of a Bank to hypothecate goods to secure a working capital loan by the company.* (4 marks)

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

- (i) *Enumerate the different stages of a criminal trial in a Warrant case when instituted by Police Report.*
- (ii) *What are the powers of Board of Directors of a Company that can be exercised only in a full fledged Board Meeting under the provisions of The Companies Act, 2013.*
- (iii) *What do you understand by the term "Cause of Action". Why is this most important part of plaint ?*
- (iv) *When are issues framed by the court ? On what basis, issues are framed ?* (4 marks each)

Answer 2(a)(i)

Companies Act, 2013 does not contain any provisions about Promoter's Contract. The promoters of a company usually enter into contracts to acquire some property or right for the company which is yet to be incorporated, such contracts are called preliminary or pre-incorporation contracts. The promoters generally enter into such contracts as agents for the company about to be formed. The legal position is that since presence of two consenting parties is necessary for a contract, and the company before incorporation is a non-entity, thus the promoters cannot act as agents for the company, which has yet to come into existence. As such, the company is not liable for the acts of the promoters done before its incorporation.

When the company comes into existence, it is not bound by the pre-incorporation contracts even when it takes the benefit of the work done on its behalf. However, specific performance of a contract between a third party and the promoters may be successfully claimed by the third party against the company, when the company enters into possession of the property on the faith of the promoters' contract.

Similarly, the company, after incorporation, cannot enforce any contract made before its incorporation, which means the company cannot sue the other party to the contract if

the other party fails to carry out the contract. Promoters remain personally liable on the contract.

A company also cannot ratify a contract entered into by the promoters on its behalf before its incorporation. Therefore, it cannot by adoption or ratification obtain the benefit of the contract purporting to have been made on its behalf before it came into existence, as ratification by the company when formed is legally impossible.

Answer 2(a)(ii)

In view of the multifarious activities of a welfare state, the legislature cannot work out all the details to fit the varying aspects of complex situations. It must necessarily delegate the working out of details to the executive or any other agency. Therefore, one of the most significant developments of the present century is the growth in the legislative powers of the executives. There is no such general power granted to the executive to make law, it only supplements the law under the authority of legislature. This supplementary legislation is known as 'delegated legislation' or 'subordinate legislation'. The development of the legislative powers of the administrative authorities in the form of the delegated legislation occupies very important place in the study of the administrative law.

The Parliament cannot supply the necessary quantity and quality legislation for effective running of the country. Some of the limitations of the law making role of the Parliament are as under:

- (i) The Parliament conducts its session only for a limited period of time whereas the complexity of modern administration requires that there must be a law-making body available on tap. Certain emergency situations may arise which necessitate special measures. In such cases speedy and appropriate action is required. The Parliament cannot act quickly because of its political nature and because of the time required by the Parliament to enact the law.
- (ii) The volume of the business of the Parliament has increased and it has no time for the consideration of complicated and technical matters. The Parliament cannot provide the society with the requisite legislation because of lack of time. Most of the time of the Parliament is devoted to political matters, matters of policy and particularly foreign affairs.
- (iii) Certain matters covered by delegated legislation are of technical nature which require handling by experts. In such cases it is inevitable that powers to deal with such matters is given to the appropriate administrative agencies to be exercised according to the requirements of the subject matter. Legislature cannot provide for such matters as the members are at best politicians and not experts in various spheres of life.
- (iv) Parliament while deciding upon a certain course of action cannot foresee the difficulties, which may be encountered in its execution. Accordingly various statutes contain a 'removal of difficulty clause' empowering the administration to remove such difficulties by exercising the powers of making rules and regulations. These clauses are always so worded that very wide powers are given to the administration.

- (v) The practice of delegated legislation introduces flexibility in the law. The rules and regulations, if found to be defective, can be modified quickly. Experiments can be made and experience can be profitably utilized.

Answer 2(a)(iii)

Supreme Court of India is the highest level of Court of Indian juridical system which is established as per Part V, Chapter IV of the Constitution of India. It plays the role of the guardian of the Constitution of India.

The Supreme Court exercises original jurisdiction exclusively to hear the cases of disputes between the Central Government and the State Governments or between the States. The Supreme Court has original but not exclusive jurisdiction for enforcement of Fundamental Rights as per the provision of Constitution of India through the way of writs. This Court is also an appellate Court.

Supreme Court has the power to exercise extra ordinary jurisdiction to hear any appeal related to any matter for which any court or tribunal had decided with judgment through the option of special leave petition except the case of tribunal related to Armed Forces. Supreme Court has the power to withdraw or transfer any case from any High Court. The Supreme Court has the authority to review any verdict ordered. The order of Supreme Court is binding on all courts across India.

Advisory jurisdiction : The Supreme Court has the option to report its opinion to the President about any questions raised of public importance referred to it by the President.

Answer 2(b)

The Manager,

.....Bank,

.....

..... Sir,

In consideration of your Bank advancing to me/us on loan the sum of Rs. I/We hereby agree to hypothecate and hold under lien to the Bank as security for the repayment as per Schedule hereto of the principal amount of the loan and payment of interest on demand at.....% per annum subject to a maximum of.....% per annum above Bank Rate.

The goods so to be held by me/us under lien to the Bank I/We declare to be my/our absolute property, and to be stored in my/our godowns at..... I/We hereby agree to furnish you at the close of business on the last day of each English calendar month so long as any money remains due in respect of the said loan with a full and correct statement of particulars of all goods so held under lien to the Bank, with the market value thereof respectively on that day.

All goods from time to time held by me/us under lien to the Bank in terms of this agreement shall be kept separate and apart from all other goods in my/our possession, and no moneys shall be borrowed by me/us from any company, firm or person on the security of such goods stored in the same godown in a way that such other goods may be mixed with the goods held under lien to the Bank nor shall I/We do any other act by

means of which the Bank's lien on the goods so held shall be in any way impaired or affected.

It is understood that I/We are at liberty, from time to time in the ordinary course of business, to sell all or any of the goods from time to time held under lien to the Bank under this agreement provided that no such sale shall reduce the value of the goods held under lien below the amount of my/our said debt to the Bank plus the margin of..... per cent. In case of any goods held under lien to the Bank reducing the value of the goods held under this lien to less than the amount of my/our said debt to the Bank plus such margin, the proceeds of such sale, as soon as the same are received, shall be paid into the bank in part satisfaction of the said loan and shall in the meantime be held as specifically appropriated to payment of the amount due by me/ us on the security.

I/We empower you or any one from time to time authorised by you on behalf of the Bank to enter the godowns in which the goods held under lien to the bank under this agreement shall be from time to time stored, for the purpose of inspecting and taking an account of the said goods.

I/We further empower you or anyone authorised by you as aforesaid so long as any money advanced by the bank under this agreement remains unpaid, to take possession of any goods from time to time held by me/us under lien to the Bank under this agreement and or any promissory notes or bazaar chits held by me/us in respect of any of the goods which may have been sold in such manner as you may think fit and on so taking possession to exercise on behalf of the Bank all the rights of a pawnee under the Indian Contract Act and failing payment of the amount under this loan on....., to sell and realise the said goods and promissory notes or bazaar chits. No notice to me/ us of such sale shall be necessary, and I/ We hereby agree to waive any such notice. I/ We agree to accept the Bank account of such sale signed by the Manager, Accountant or other duly authorised officer of the Bank as sufficient proof of the correctness of the amount realised by the Bank and the charges and expenses incurred in connection with such realisation, and I/We hereby further agree to sign all documents, furnish all information and do all acts and things necessary for the purpose of enabling the Bank to sell any goods or realise any promissory notes or bazaar chits of which you shall so take possession.

I/We undertake to keep all held under lien to the Bank under this agreement, insured against fire to their full value, and to produce and deposit the policies with the Bank any time on demand and to hold all moneys which may become payable under any such policies in trust for the Bank so long as any money shall remain due in respect of my/our said loan. It shall be optional for, but not obligatory on the Bank, to insure the said goods in the Bank's name or to appropriate floating policies for the time being effected by the Bank towards insurance of the said goods and in either case to debit the said loan with relative premiums.

It is understood that the Bank's lien on the goods, so held under this agreement shall extend to any other sum or sums of money for which I/we or any other of us either separately or jointly with any other person or persons may be or become indebted or liable to the bank on any account.

Schedule of securities referred to in the agreement.....

Schedule of instalments for the repayment of the loan amount.....

Yours faithfully,

For A B C Ltd. (.....)

Managing Director,

New Delhi

Dated.....

Answer 2A(i)

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.

Different Stages of Criminal Trial in a Warrant Case when instituted by the police report

- *First Information Report* : Under Section 154 of the Code of Criminal Procedure, 1973 an FIR or First Information Report is registered by any person. FIR puts the case into motion. An FIR is information given by someone (aggrieved) to the police relating to the commitment of an offense.
- *Investigation* : The next step after the filing of FIR is the investigation by the investigating officer. A conclusion is made by the investigating officer by examining facts and circumstances, collecting evidence, examining various persons and taking their statements in writing and all the other steps necessary for completing the investigation and then that conclusion is filed to the Magistrate as a police report.
- *Charges* : If after considering the police report and other important documents the accused is not discharged then the court frames charges under which he is to be tried. In a warrant case, the charges should be framed in writing.
- *Plea of guilty* : Section 241 of the Code of Criminal Procedure, 1973 talks about the plea of guilty. After framing of the charges the accused is given an opportunity to plead guilty, and the responsibility lies with the judge to ensure that the plea of guilt was voluntarily made. The judge may upon its discretion convict the accused.
- *Prosecution evidence* : After the charges are framed, and the accused pleads not guilty, then the court requires the prosecution to produce evidence to prove the guilt of the accused. The prosecution is required to support their evidence with statements from its witnesses. This process is called “examination in chief”. The magistrate has the power to issue summons to any person as a witness or orders him to produce any document.
- *Statement of the accused* : Section 313 of the Criminal Procedure Code, 1973 gives an opportunity to the accused to be heard and explain the facts and

circumstances of the case. The statements of accused are not recorded under oath and can be used against him in the trial.

- *Defence evidence* : An opportunity is given to the accused to produce evidence so as to defend his case. The defence can produce both oral and documentary evidence.
- *Judgement* : The final decision of the court with reasons given in support of the acquittal or conviction of the accused is known as judgement. In case the accused is acquitted, the prosecution is given time to appeal against the order of the court. When the person is convicted, then both sides are invited to give arguments on the punishment which is to be awarded. The court must not only keep in view the rights of the victim of the crime but also the society at large while considering the imposition of appropriate punishment.

Answer 2A(ii)

Powers of the Board to be exercised at Board Meetings as prescribed under the Companies Act, 2013

As per section 179(3) of the Companies Act, 2013 the Board of Directors of a company shall exercise the following powers on behalf of the company by means of resolutions passed at meetings of the Board, namely:—

- (a) to make calls on shareholders in respect of money unpaid on their shares;
- (b) to authorise buy-back of securities under section 68;
- (c) to issue securities, including debentures, whether in or outside India;
- (d) to borrow monies;
- (e) to invest the funds of the company;
- (f) to grant loans or give guarantee or provide security in respect of loans;
- (g) to approve financial statement and the Board's report;
- (h) to diversify the business of the company;
- (i) to approve amalgamation, merger or reconstruction;
- (j) to take over a company or acquire a controlling or substantial stake in another company;
- (k) any other matter which may be prescribed:
 - (i) to make political contributions.
 - (ii) To appoint or remove key managerial personnel (KMP)
 - (iii) To appoint internal auditors and Secretarial Auditor

Answer 2A(iii)

The term Cause of Action refers to a set of facts or allegations that make up the grounds for filing a lawsuit. A Cause of Action is therefore by its very nature essential to a Suit, since without a Cause of Action a Civil Suit cannot arise.

'The Cause of Action' is that part of the Plaint which explains the background upon which the differences and disputes arose between the plaintiff and the defendant. In fact, the part of the plaint is the most important part, which explains the basis of the fight between the plaintiff and the defendant. Further this will reveal the agreement, relationship between them, when the breach started, where is happened and whether the suit is filed within the limitation period etc.

To win a case the Plaintiff must prove the major legal points of the case lie in his favour; these are called the "elements" of that cause of action. For example, for a claim of negligence, the elements are: the (existence of a) duty, breach (of that duty), proximate cause (by that breach), and damages. If a plaintiff does not allege facts sufficient to support every element of a claim, the court, upon motion by the opposing party, may dismiss the plaintiff for failure to state a claim for which relief can be granted.

The defendant to the Cause of Action must file a Written Statement to the plaintiff in which, he may admit or deny the claims made by the plaintiff and give his proof for the same and his written arguments to show how the law supports him. The Written Statement may also contain counterclaims in which the states its own causes of action. Finally, the answer may contain affirmative defences. Almost all defences must be raised at the first possible opportunity either in the Written Statement or by motion, else they are deemed waived by the Court.

Answer 2A(iv)

The court shall at first hearing, after reading the plaint and written statement ascertain upon what material propositions of facts or law parties are at variance.

Court is required to pronounce judgement on all the issues. Issues may be framed from allegations made on oath by the parties or in answer to interrogatories or from contents of documents produced by either party. If the court is of the opinion that the case or any part thereof may be disposed of on issue of law only, it may first try it, if issue relates to:-

- (i) Jurisdiction of the court,
- (ii) Bar to the suit created by law for the time being in force.

Where the parties are at issue on some question of law or fact and issues have been framed by the court as herein-above provided, if the court is satisfied that no further argument or evidence than what the parties can at once adduce is required upon such of the issues as may be sufficient for decision of the suit and that no injustice will result from proceeding with the suit forthwith, the court may proceed to determine such issues and if the finding thereon is sufficient for the decision, may pronounce judgement accordingly.

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

Question 3

- (a) Describe the specific contents that minutes of a meeting must contain under the provisions of The Companies Act, 2013. (4 marks)
- (b) There are some standards which are applicable for preparation of an opinion. Explain. (4 marks)

- (c) *Dress code is essential for looking professional while appearing before judicial bodies and tribunal.* (4 marks)
- (d) *Registration of power of Attorney is not compulsory. Explain with reference to decided cases.* (4 marks)

OR (Alternate question to Q. No. 3)

Question 3A

- (i) *Review of a case means re-examination or reconstruction of its own decision by the same court. Explain.*
- (ii) *What is a Resolution by Circulation as per Section 175 of the Companies Act, 2013 ?*
- (iii) *Draft an arbitration clause in a building construction agreement with assumed facts.*
- (iv) *What do you understand by the term Entrenchment provisions under Memorandum and Articles of Association of a company.* (4 marks each)

Answer 3(a)

Section 118(10) of the Companies Act, 2013 states that every company shall observe secretarial standards with respect to general and Board meetings specified by the Institute of Company Secretaries of India constituted under section 3 of the Company Secretaries Act, 1980 (56 of 1980), and approved as such by the Central Government.

As per Secretarial Standard-1 on 'Meetings of the Board of Directors' Minutes shall inter-alia contain:

- (a) The name(s) of Directors present and their mode of attendance, if through Electronic Mode.
- (b) In case of a Director participating through Electronic Mode, his particulars, the location from where he participated and wherever required, his consent to sign the statutory registers placed at the Meeting.
- (c) The name of Company Secretary who is in attendance and Invitees, if any, for specific items and mode of their attendance if through Electronic Mode.
- (d) Record of election, if any, of the Chairman of the Meeting.
- (e) Record of presence of Quorum.
- (f) The names of Directors who sought and were granted leave of absence.
- (g) Noting of the Minutes of the preceding Meeting.
- (h) Noting the Minutes of the Meetings of the Committees.
- (i) The text of the Resolution(s) passed by circulation since the last Meeting, including dissent or abstention, if any.
- (j) The fact that an Interested Director did not participate in the discussions and did not vote on item of business in which he was interested and in case of a related

party transaction such director was not present in the meeting during discussions and voting on such item.

- (k) The views of the Directors particularly the Independent Director, if specifically insisted upon by such Directors, provided these, in the opinion of the Chairman, are not defamatory of any person, not irrelevant or immaterial to the proceedings or not detrimental to the interests of the company.
- (l) If any Director has participated only for a part of the Meeting, the Agenda items in which he did not participate.
- (m) The fact of the dissent and the name of the Director who dissented from the Resolution or abstained from voting thereon.
- (n) Ratification by Independent Director or majority of Directors, as the case may be, in case of Meetings held at a shorter Notice.
- (o) Consideration of any item other than those included in the Agenda with the consent of majority of the Directors present at the Meeting and ratification of the decision taken in respect of such item by a majority of Directors of the company.
- (p) The time of commencement and conclusion of the Meeting.

Apart from the Resolution or the decision, Minutes shall mention the brief background of all proposals and summarise the deliberations thereof. In case of major decisions, the rationale thereof shall also be mentioned.

Answer 3(b)

Following are the standards applicable for preparation of an opinion:

1. *Generally* : A lawyer is expected to be well informed and to exercise such skill, prudence and diligence as lawyers of ordinary skill and capacity commonly possess and exercise in the performance of the tasks which they undertake. When a matter falls within a recognized area of legal specialty, such as tax or securities law, it is advisable to take that assignment only if it falls within the competence of the professional.
2. *Customary Practice* : An attorney does not ordinarily guarantee the soundness of his opinions and, accordingly, is not liable for every mistake he may make in his practice. He is expected, however, to possess knowledge of those plain and elementary principles of law which are commonly known by well informed attorneys, and to discover those additional rules of law which, although not commonly known, may readily be found by standard research techniques. The opinion preparers should devote the time needed to interpret and apply legal principles relevant to the situation at hand, ascertain (through appropriate inquiry and certificates of officers of the Company) the facts that underlie the opinion, and identify areas of significant uncertainty (if any) in the interpretation and application of legal principles. In certain cases, opinion givers may conclude that it is necessary to conduct research with respect to particular legal principles or to conduct an investigation of the underlying facts relevant to the opinion.
3. *Fraudulent or Misleading Opinions* : An opinion giver may be liable for an opinion that constitutes fraudulent misrepresentation. A lawyer owes a duty to non-

clients to refrain from fraudulent misrepresentation. It is generally understood that, regardless of compliance with other standards, and even if an opinion is technically correct, a lawyer should not render an opinion that the lawyer recognizes would be misleading to the opinion recipient.

4. *Ethical Issues Relating to the Provision of Opinions to Non-clients* : A lawyer delivering an opinion letter to a non-client should also consider ethical principles. For example, rendering an opinion to a non-client may conflict with the opinion giver's ethical obligations to maintain the confidences of its client. He should decline to give legal opinion in such cases.

Answer 3(c)

In professional life it is important to look presentable because personal appearance counts. How you look can be a major factor in how you are perceived by others. How you look, talk, act and work determines whether you are a professional or an amateur. The way you dress, speaks volumes about who you are as a person and as a professional.

A dress code is a set of rules governing a certain combination of clothing. Apart from the legal profession, professional dress code standards are established in major business organizations and these have become more relaxed in recent decades. Dress codes vary greatly from company to company, as different working environments demand different styles of attire. Even within companies, dress codes can vary among positions.

To enhance the visibility and brand building of the profession and ensuring uniformity, the Council of the Institute of Company Secretaries of India has prescribed the following guidelines for professional dress for members while appearing before judicial/quasi-judicial bodies and tribunals:

- (a) The professional dress for male members will be Navy Blue suit and white shirt with a tie (preferably of the ICSI) or navy blue buttoned-up coat over a pant or a navy blue safari suit.
- (b) The professional dress for female members will be saree or any other dress of a sober colour with a navy blue jacket.
- (c) Members in employment may wear the dress/uniform as specified by the employer for all employees or if allowed the aforesaid professional dress.
- (d) Practising Company Secretaries appearing before any tribunal or quasi-judicial body should adhere to dress code if any prescribed for appearing before such tribunal or quasi-judicial body or if allowed the aforesaid professional dress.

It may be pointed out that any person whether a lawyer, pleader or authorized representative representing a litigant before any Court of law or a Tribunal or any other authority discharging the functions of a Court/a quasi judicial authority, should comport himself in a manner befitting his status as an officer of the Court, a privileged member of the community and a gentleman.

Answer 3(d)

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 is 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, 1908 as requiring registration.

Answer 3(A)(i)

Review means re-examination or re-consideration of its own decision by the very same court. An application for review may be necessitated by way of invoking the doctrine 'actus curiae neminem gravabit' which means an act of the court shall prejudice no man. The other maxim is, 'lex non cogit ad impossibilia' which means the law does not compel a man to do that what he cannot possibly perform.

Section 114 of the Code of Civil Procedure, 1908 provides for a substantive power of review by a civil court and consequently by the appellate courts. Section 114 of the code although does not prescribe any limitation on the power of the court but such limitations have been provided for in Order 47, Rule 1 of the CPC.

The section is worded as follows:

Review - Subject as aforesaid, any person considering himself aggrieved –

- (a) by a decree or order from which an appeal is allowed by this Code, but from which no appeal has been preferred,
- (b) by a decree or order from which no appeal is allowed by, this Code, or
- (c) by a decision on a reference from a Court of Small Causes,

may apply for a review of judgment to the court which passed the decree or made the order, and the court may make such order thereon as it thinks fit.

An 'aggrieved' person is one who has suffered a legal grievance, i.e., against whom a decision has been pronounced which has wrongfully affected his title or wrongfully deprived him of something which he was entitled to.

All decrees or orders cannot be reviewed. The right of review has been conferred by S. 114 and Order XLVII of the Code.

Answer 3(A)(ii)

Resolution by Circulation as per section 175 of the Companies Act, 2013

Section 175(1) : No resolution shall be deemed to have been duly passed by the Board or by a committee thereof by circulation, unless the resolution has been circulated in draft, together with the necessary papers, if any, to all the directors, or members of the committee, as the case may be, at their addresses registered with the company in India

by hand delivery or by post or by courier, or through such electronic means as may be prescribed and has been approved by a majority of the directors or members, who are entitled to vote on the resolution. A resolution in draft form may be circulated to the directors together with the necessary papers for seeking their approval, by electronic means which may include E-mail or fax.

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

Section 175(2): A resolution under section 175(1) shall be noted at a subsequent meeting of the Board or the committee thereof, as the case may be, and made part of the minutes of such meeting.

Answer 3(A)(iii)

Arbitration Clause

“It is further agreed between the parties every difference or dispute which may hereafter arise between the parties hereto or their respective representatives in relation to this agreement or arising there out, whether as to the constructions or operations thereof, or the respective rights and liabilities there under or any thing done hereunder or otherwise, shall be referred to a sole arbitrator in accordance with, and subject to, the provisions of the Arbitration and Conciliation Act, 1996. His award shall be final, accepted and binding on both the parties.”

Answer 3(A)(iv)

Section 5(3) of the Companies Act, 2013 contains the provision for the entrenchment. The articles may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if conditions or procedures that are more restrictive than those applicable in the case of a special resolution, are met or complied with.

The Companies Act 2013, recognizes an interesting concept of entrenchment. Essentially, the entrenchment provisions allow for certain clauses in the articles to be amended upon satisfaction of certain conditions or restrictions greater than those prescribed under the Act (such as obtaining 100% consent of members). This provision acts as a protection to the minority shareholders and is of specific interest to the investment community. This shall empower the enforcement of any pre-agreed rights and provide greater certainty to investors, especially in joint ventures.

The provisions for entrenchment referred to in section 5(3) shall be made either (a) on formation of a company, or (b) 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 the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in Form No.INC.2 or SPICe+ (Simplified Proforma for Incorporating company Electronically Plus: INC-32) as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014 at the time of incorporation of the company or in case of existing companies, the same shall be

filed in Form No.MGT.14 within thirty days from the date of entrenchment of the articles, as the case may be, along with the fee as provided in the Companies (Registration offices and fees) Rules, 2014.

Question 4

- (a) *Define affidavit. Draft a specimen affidavit of creditor in proof of the debt in proceeding for liquidation of a company. Assume facts.* (6 marks)
- (b) *What are building contracts and collaboration agreements. Is there a difference between them ?* (6 marks)
- (c) *Draft a specimen Board Resolution of appointment of Ripudaman Singh as an Independent Director of M/s. Rudraksh Ltd.* (4 marks)

Answer 4(a)

An affidavit is a sworn statement in writing made specially under oath before an authorized officer. Therefore, great care is required in drafting it. A Court may, at any time, for sufficient reason order that any particular fact or facts may be proved by affidavit or that the affidavit of any particular witness may be read at the hearing, provided that the Court may order the deponent to appear in person in Court for cross-examination [Order XIX Rule 2(1)].

Specimen Affidavit of Creditor in proof of his debt in Proceeding for the Liquidation of a Company

IN THE (HIGH) COURT OF.....

In the matter of Companies Act, 2013

And

The matter of the liquidation of..... Company Limited.

I, A.B., aged..... years, son of Shri..... resident of....., do hereby on oath (or on solemn affirmation) state as follows:

1. That the above named company was on the..... day of....., 20...., the date of the order for winding up the same, and still is justly and truly indebted to me in the sum of Rupees..... (Rs.....) only in account of (describe briefly the nature of the debt).
2. That in proof of the aforesaid debt I attach hereto the documents marked A, B and C.
3. That I have not, nor have any person or persons by my order or to my knowledge or belief for my use, received the aforesaid sum of Rupees..... or any part thereof, or any security or satisfaction for the same or any part thereof except the sum or security (state the exact amount of security).
4. That this my affidavit is true and, that it conceals nothing and no part of it is false.

Sd/- A.B.

Dated

Deponent

Verification

I, the above named deponent, verify that the contents of paragraphs 1 to 4 of this affidavit are true to my personal knowledge. 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..... 20..... of..... (time) by the deponent.

Sd/-.....

(Oath Commissioner)

Answer 4(b)

Building Contracts : Building contracts, being legal documents, have to be drawn in accordance with the provisions of the Indian Contract Act. All the essential ingredients of a contract, such as, a proposal, its acceptance, its due communication to the proposer, lawful consideration, lawful purpose and competence of parties to the contract, etc., must be duly satisfied and ensured while drafting such contracts.

It is essential to ascertain not only the legal position or condition of each of the parties to the contract, e.g. an individual, a firm or partnership, a company, or as the case may be, but also that each person signing the document has capacity to contract. The contract should clearly state the full names, addresses (The addresses being that to which all communications, including notices and judicial processes, should be sent), and capacities of each of the contracting parties and, in the case of firm, partnership or company, the name or complete style of the firm, partnership or company, its legal status, the date and place of its incorporation, registered office, and so on.

Collaboration Agreements : When two parties join hands for exchange of technical know-how, technical designs and drawings; training of technical personnel of one of the parties in the manufacturing and/or research and development divisions of the other party; continuous provision of technical, administrative and/or managerial services, they are said to be collaborating in a desired venture. The word “collaboration” has, however, acquired a specific meaning, which refers to cooperation between a party within India and a party abroad. The agreements drawn and executed between such collaborating parties are known as “foreign collaboration agreements”. With sophistication and technical advance achieved in the developed countries and motivated by the desire of carrying the country into the twenty-first century, the Indian entrepreneurs are seeking all possible avenues for obtaining technical know-how in the fields of industry, agriculture, mining, oil exploration, power generation, etc. A large number of Indian industrialists have already entered into long and short-term collaboration arrangements with foreign companies, firms etc. In order to ensure quick processing of the proposed collaboration arrangements and on a uniform basis, the Central Government has issued guidelines for prospective collaborators so that they submit their proposals in accordance with those guidelines.

DIN: _____

Address: _____

Date :

Place:

Question 5

- (a) Draft a writ of Quo-warranto under Article 226 of Constitution of India.
- (b) Draft a specimen Bail application U/s 437 of Criminal Procedure Code, 1973. Assume facts if necessary. (8 marks each)

Answer 5(a)

IN THE HIGH COURT OF DELHI AT NEW DELHI
 WRIT PETITION (CIVIL) NO. /

(UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA)
 IN THE MATTER OF:

A son of

Resident of

PETITIONER

VERSUS

1.College

New Delhi

Through its Principal

RESPONDENT NO. 1

2. Mr.

Assistant Professor

.....College

New Delhi

RESPONDENT NO. 2

WRIT PETITION UNDER ARTICLE 226 OF THE CONSTITUTION OF INDIA PRAYING FOR DIRECTION OR ORDER IN THE NATURE OF QUO WARRANTO TO THE RESPONDENTS AND REMOVE RESPONDENT NO. 2 FROM THE POST OF ASSISTANT PROFESSOR.

To,

The Hon'ble Chief Justice of High Court,
And His Companion Judges of the
Hon'ble High Court of Delhi.

MOST RESPECTFULLY SHOWETH:

- 1. That the Petitioner is filing the present writ petition under Article 226 of the constitution of India praying for direction or order in the nature of Quo Warranto to the respondents and remove Respondent No. 2 from the post of Assistant Professor.

2. That, the Petitioner is a Law abiding Citizen of India and residing the above address.
3. That, on....., the Respondent No. 2 has been appointed as Assistant Professor with College. Copy of Appointment letter is attached herewith.
4. That Respondent No. 2 has not qualified NET examination and not eligible to be appointed as Assistant Professor as per the UGC Regulations .
5. The Petitioner aggrieved by the impugned Appointment order of the Respondent No. 1 has approached this Hon'ble Court.

PRAYERS

In view of the facts & circumstances stated above, it is most respectfully prayed that this Hon'ble Court may be pleased to:-

- a) Issue a Writ in the nature of Quo Warranto to the Respondents to remove Respondent No. 2 from the Post of Assistant professor;
- b) Any other relief, order or direction this court may deem fit and proper under the facts and circumstances of this case.

PETITIONER

New Delhi

Date

Answer 5(b)

Specimen Bail Application under Section 437, Cr.P.C. 1973

In the Court of..... Magistrate

..... State

Versus

Accused AB son of TZ, Aged: R/o

Police Station:

FIR No.:

In the matter of petition for bail of accused AB, during police enquiry The humble petition of AB the accused above-named

Most respectfully showeth:

1. That your petitioner was arrested by the police on 5th March 20..... on mere suspicion. It is further stated that nearly a month has passed after the arrest but still the Investigating Police Officer has not submitted a charge-sheet.
2. That your petitioner was not identified by any inmate of the house of CM where the burglary is alleged to have taken place, nor was any incriminating article found in his house.

3. That your petitioner has reason to believe that one GS with whom your petitioner is on bad terms and who is looking after the case for complainant has falsely implicated your petitioner in the case out of grudge.
4. That your petitioner shall fully co-operate with the police/Investigating Agency, if any.
5. That your petitioner is not likely to abscond or leave the country. The petitioner further undertakes to comply with other conditions of grant of bail passed by this Hon'ble Court.

Your petitioner prays that your Honour may be pleased to call for police papers and after perusing the same be pleased to direct the release of your petitioner on bail.

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

..... Petitioner
 Through
 Advocate AB

Verification

I, AB, son of TZ, residing at..... by occupation business, do hereby solemnly affirm and say as follows:

1. I am the petitioner above-named. I know and I have made myself acquainted with the facts and circumstances of the case and I am able to depose thereto.
2. The statements in paragraphs 1 to 5 of the foregoing petition are true and correct to my knowledge and belief.
3. I sign this verification on the day of 20.....

Solemnly affirmed by the said AB on at the Court

House at..... AB

Before me

Oath Commissioner / Notary / Magistrate.

Question 6

- (a) Briefly explain four types of writs (Except Quo warranto) that are available under Article 32 of Constitution of India.
- (b) Draft an application for Caveat U/s 148A of Civil Prodecure Code, 1908 on a service matter with assumed facts. (8 marks each)

Answer 6(a)

As mentioned in Articles 32 and 226 of the Constitution, writs are in the nature of habeas corpus, mandamus, prohibition, certiorari and quo warranto. A brief discussion of each is as follows:

Habeas Corpus : The writ of habeas corpus is a remedy available to a person who is confined without legal justification. The words "Habeas Corpus" literally mean "to have a body". This is an order to let the Court know on what ground he has been confined and to set him free if there is no legal justification for his detention. This writ has to be obeyed by the detaining authority by production of the person before the Court. Under Articles 32

and 226 of the Constitution, any person may move the Supreme Court and the High Court of competent jurisdiction respectively, for the issue of this writ. The applicant may be the prisoner himself moving the Court or any other person may move the Court on his behalf to secure his liberty praying for the issue of the writ of habeas corpus. No person can be punished or deprived of his personal liberty except for violation of any law and in accordance with the due process of law. Dis-obedience to the writ of habeas corpus attracts punishment for contempt of Court under the Contempt of Courts Act, 1971.

Mandamus : The expression “mandamus” means a command. The writ of mandamus is, thus, a command issued to direct any person, corporation, inferior Court or Government authority requiring him to do a particular thing therein specified which pertains to his or their office and is further in the nature of a public duty. This writ is used when the inferior tribunal has declined to exercise jurisdiction. Mandamus can be issued against any public authority. The applicant must have a legal right to the performance of a legal duty by the person against whom the writ is prayed. Mandamus is not issued if the public authority has a discretion. Mandamus can be issued by the Supreme Court and all the High Courts to all authorities. However, it does not lie against the President of India or the Governor of a State for the exercise of their duties and powers (Article 360). It also does not lie against a private individual or body except where the State is in collusion with such private party in the matter of contravention of any provision of the Constitution or of a Statute. It is a discretionary remedy and the Court may refuse if alternative remedy exists except in case of infringement of Fundamental Rights.

Prohibition : The writ of prohibition is issued by the Supreme Court or any High Court to an inferior Court preventing the latter from usurping jurisdiction which is not legally vested in it. It compels courts to act within their jurisdiction when a tribunal acts without or in excess of jurisdiction or in violation of rules or law. The writ of prohibition is available only against judicial or quasi-judicial authorities and is not available against a public officer who is not vested with judicial functions. If abuse of power is apparent this writ may be prayed for as a matter of right and not a matter of discretion. The Supreme Court may issue this writ only in case of Fundamental Rights being affected by reason of the jurisdictional defect in the proceedings. This writ is available during the pendency of the proceedings and before the order is made.

Certiorari : The writ of certiorari is available to any person whenever any body of persons having legal authority to determine questions affecting the rights of subjects and having the duty to act judicially, acts in excess of its legal authority. The writ removes the proceedings from such body to the High Court in order to quash a decision that goes beyond the jurisdiction of the deciding authority.

Answer 6(b)

In the Court of the

CAVEAT APPLICATION NO. /20.....

In the matter of :

A.B. S/o of C.D.

R/oCaveator-Petitioner

Versus

Steel Authority of India Ltd(SAIL)

.....

Respondent /Opposite Party

MOST RESPECTFULLY SHOWETH:

1. That the caveator / petitioner was illegally terminated by the Respondent /Opposite Party from the post of Asst. Manager which was challenged before the Ld. Civil Judge,
2. That the Ld. Civil Judge by his judgment dated set aside the order of termination by further directing the respondent to reinstate the petitioner/ caveator with back wages. The copy of the said judgment is annexed herewith
3. That the petitioner reasonably apprehends that the respondent might file appeal against the said judgment and try ex parte order against the petitioner.
4. That the petitioner hereby lodges a caveat to the effect:

'Let nothing be done in the foresaid matter without notice to the petitioner'.

Caveator-Petitioner

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