

*Roll No. ....*

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

*Total number of printed pages : 7*

*NOTE : Answer ALL Questions.*

1. (a) “Section 300 of Criminal Procedure Code (CrPC) contains adequate provisions to protect a person from being prosecuted for the same offence again”. Comment with reference to a suitable case law.  
(5 marks)
- (b) During the income-tax assessment of PR Ltd., the Assessing Officer suspected that the Company concealed incentive income received from its related parties. The Assessing Officer wanted to pursue this further and seized certain documents and records of the Company without obtaining permission from the Competent Authorities. It has been more than two months since the documents have been seized. Is the Assessing Officer empowered to do so ? Evaluate whether the act of the Assessing Officer is justified.  
(5 marks)
- (c) Gaj, Managing Director of MGR Ltd. retired on March 31, 2021 upon attaining superannuation. The Company had allotted residential premises during his tenure, for his stay as part of his remuneration. At the time of full and final settlement of the amounts like gratuity, leave pay and other amounts payable to him, it was noticed that Gaj had let out the Company’s leased premises to Val, his distant relative. The management decided to hold back the full and final settlement amount and was considering to file a complaint against Gaj for breach of trust and misuse of Company’s property. Is the management’s contention tenable ?  
(5 marks)

: 2 :

- (d) The Board of Directors of All India Tyre Manufacturers Association Ltd., passed a resolution to the effect that no member who is indulging in activities detrimental to the interests of the Company be permitted to examine the records or obtain certified copies thereof. A member of the Company who is also a member of the rival association demands inspection of the register of members, minutes of general meetings and certified copies thereof. The Company refuses the inspection, on the basis of resolution passed by its Board of Directors. Examine the validity of refusal by the Company in the light of the provisions of the Companies Act, 2013 and the remedial action, if any, available to the aggrieved member.

(5 marks)

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

2. (a) SWR is a director of MI Real Estate Ltd. whose wife Van, also works in the Company as part of the management. Van has applied for housing loan of ₹ 35 lakhs for construction of a house. Can the Company grant such loan ? Evaluate with reference to the provisions of the Companies Act, 2013 and also explain the penal provisions, if any.
- (b) Singleton OP & Co., a One Person Company, passed certain resolutions on September 15, 2021 which were supposed to be filed with ROC in Form MGT-14, within the stipulated time. However, Singleton OP & Co., filed it with ROC on October 30, 2021. Comment if there has been any violation. If so, what are the penalties ?
- (c) “For conducting a Class Action Suit, publication of notice is a *sine qua non*.” Explain the procedure of ‘publication of notice’ provided under the National Company Law Tribunal Rules, 2016.
- (d) “Though the concept of ‘Whistle Blower’ is a landmark for the Corporate Governance and Section 177 of the Companies Act, 2013 has specific mention about vigil mechanism, its implementation is not upto the mark in the Indian corporate context.” Comment.

(4 marks each)

: 3 :

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

- 2A. (i) Aru, the Director of Power Corporation Ltd., a Public Sector Undertaking has been accused of misappropriation and other offences. Further, criminal prosecution was also initiated against him. Aru contends that this prosecution is not legal as necessary approval of the authorities has not been obtained. In background of a decided case law, examine whether prosecution of Aru under CrPC, 1973 is appropriate.
- (ii) Excellent & Co., Company Secretaries were the Secretarial Auditors of Opoco Ltd. During the secretarial audit, the Secretarial Auditor was verifying the board approvals and other documentation for the loan taken by the Company and they found that a fraud of ₹ 3.5 crores was committed against the Company, by its officers which was not observed by the Statutory Auditors of the Company. In this background, explain the duties and responsibilities of Secretarial Auditors under the Companies Act, 2013.
- (iii) Explain the effect of Settlement Order on third party rights or other proceedings. Also, state the circumstances under which the Settlement Order is revoked.
- (iv) Hosco Transport Company (HTC), is a transport corporation which is exempted under Section 17 of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952. During the current year, the corporation deducted the employees contribution from the wages payable to the employees. The amount deducted by the corporation was not remitted to the EPF Trust, maintained by the corporation, due to acute financial crunch. Evaluate whether this amounts to Criminal Breach of trust.

*(4 marks each)*

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

3. (a) Explain whether the following offences are compoundable, if yes, by whom ?
- (i) Failure to disclose director's interest and participation by interested director.
  - (ii) Intentionally giving false evidence under Section 449 of the Companies Act, 2013.
  - (iii) Failure to maintain proper books of accounts before winding up.
  - (iv) Not publishing the order of confirmation of reduction in share capital by the Tribunal.
- (b) The Joint Commissioner of CGST authorised the Assistant Commissioner for search and seizure of certain goods and relevant documents available at the premises of SNL Ltd., where the goods were stored. Due to COVID-19 pandemic situation, the Assistant Commissioner could not inspect the premises on the scheduled date. Explain the further course of action available to the Officer under the CGST Act, 2017.
- (c) Sun, is the Company Secretary of S Ltd., a Company listed on Bombay Stock Exchange. During one of the Stakeholder Committees meetings, SKR, one of the Committee members raised a query on whether the Company can allow the transfer of partly paid up shares. There were quite some deliberations in the meeting around the transfer of shares. One such question which arose was whether Ek Private Ltd, one of the group companies, refuse the registration of any transfer or transmission of its securities, considering the fact that it is a private limited company. Explain briefly the provisions relating to transfer of partly paid up shares and the 'refusal notice' in connection with registration of transfer/transmission of Securities in a private limited company under the Companies Act, 2013.
- (d) Explain 'Execution of detention orders' and 'Revocation of detention orders' under the Conservation of Foreign Exchange and Prevention of Smuggling Activities Act, 1974 (COFEPOSA,1974).

(4 marks each)

: 5 :

**OR (Alternate question to Q. No. 3)**

**3A.** Write short notes on :

- (i) Offences triable by Special Courts.
- (ii) Rejection of Application under Securities and Exchange Board of India (Settlement Proceedings) Regulations, 2018.
- (iii) Rule of Opt-out.
- (iv) Economic Offences Wing (EOW) under DSPE Act, 1946

(4 marks each)

**4.** (a) Explain the factors which Competition Commission of India (CCI) will take into account to determine whether an agreement has any appreciable adverse effect on competition in the market.

(4 marks)

(b) The Articles of Association of Vraj Ltd. *inter alia* includes a provision “For obtaining a loan of more than rupees five crore from any bank, special resolution is necessary”. Due to business emergencies, on one occasion the Company obtained a bank loan of ₹ 5.5 crore from a Scheduled Bank by passing an ordinary resolution and completing the necessary documentation. Examine the validity of the act.

(4 marks)

(c) “D & O policies can take different forms, depending on the nature of the organization and the risks it faces, so it’s best to seek out an insurance company with deep experience in this specialized field. The policies are generally purchased by the organization to cover a group of individuals rather than by the individuals themselves. Even the non-profit organizations may also purchase D & O insurance policy for a better protection”. Comment.

(4 marks)

- (d) “The Company’s management is taken care of by the Board of Directors and the directors are expected to perform in the best interests of the company as they are in a fiduciary position. Even a single director’s intentions to gain an undue advantage out of stakeholders’ money can result in fraud.” Will fraud by just one director make the other directors liable ?

(4 marks)

5. (a) “Crisis management amounts to controlling of an unruly horse which, if not be properly bridled, it carries its rider where he knows not. Even if it is an apology, it has to be carefully crafted.” Explain the statement with the help of any two suitable cases.

- (b) HGV, is a Senior Partner in Supreme & Co. LLP, Practising Company Secretaries. The firm has good repute in handling corporate related matters including investigations and other representations. PRO, Company Secretary of Mano Lifesciences Ltd. is a professional acquaintance of HGV and has reached out to him for advice on investigation initiated on the Company. PRO has requested HGV to meet the Board of Directors of Mano Lifesciences Ltd. and make a presentation on various statutory aspects involved in investigation. Prepare a detailed note, explaining the provisions of investigation into affairs of a Company under Section 212 of the Companies Act, 2013.

(8 marks each)

6. (a) “Mediator or conciliator facilitates in arriving a decision to resolve the dispute and that he shall not and cannot impose any settlement.” In background of this statement, explain who is responsible to take a decision under Companies (Mediation and Conciliation) Rules, 2016 and what is the time limit for completion of mediation or conciliation.

(4 marks)

: 7 :

(b) There have been internal family issues between the directors of Sak Ltd., who also hold the majority shares in the Company. Due to these internal issues, the Annual General Meetings were not held for more than two years now. The advisor informed the management that it would result in continuing offence being committed by the Company and it could face penal actions. Explain briefly, what are continuing offences and the factors constituting such offences.

(4 marks)

(c) The independent directors of Suga Ltd., suggested the management that the Company should take “independent director insurance” policy. However, the executive directors contended that the Company already had a ‘Side A Insurance’ and so no other insurance policy was required. Is the contention of executive directors justified ?

(4 marks)

(d) SOS the Company Secretary of Stup Ltd., was providing orientation to directors who were appointed recently. In one such sessions, where SOS was explaining the overview of penal provisions under the Companies Act, 2013 one of the Directors asked if the penal liability can be escaped in case no specific penalty or punishment is provided for such contravention of the provisions of Act or rules made thereunder. Can a director or officer in default escape from liability if no specific penalty or punishment is provided for contravention of provisions of the Act ? Comment.

(4 marks)

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