

*Roll No.* .....

**OPEN BOOK EXAMINATION**

*Time allowed : 3 hours*

*Maximum marks : 100*

*Total number of questions : 6*

*Total number of printed pages : 6*

**NOTE :** *Answer ALL Questions.*

**1. Case Study :**

ABC & Associates, Company Secretaries (ABC Firm) is a partnership firm having 5 partners. Each of the partners are Fellow member of the Institute of Company Secretaries of India. ABC is having presence in Mumbai.

All the 5 partners (all male) are having industry exposures and specialised in Secretarial Audits, Direct and Indirect Taxation, Company Formation, RoC related matters, FEMA and all other compliances related matters. All the partners are also Insolvency Professionals and Registered Valuers enrolled with the Insolvency and Bankruptcy Board of India.

The ABC Firm is also having some management trainees and paid employees and total staff strength is 38 (20 Management Trainees and 18 Professional employees).

Among the 20 Management Trainees (MT), Shanaya, one of the MT, who is a young lady, takes leave on and often, pretending some stories. The work assigned to her also used to get suffer and her immediate boss was also not satisfied with her working. In every CS Exam time, she used to take leave of at least one month in advance, but with no good result. Even in office hours, it was being observed that she used to chat with her friends on mobile and surfing on social sites on the office PCs/Laptops.

Shanaya was given a task to collect data from some of the clients in order to file their GST Returns. But as usual, she did not collect the required information and due to this the clients were fined for delayed filing of the returns. Her boss Narendra warned her not to repeat such incidences and be serious in attending the official work.

The ABC Firm used to have an office meeting on every Saturday at 4 pm. On 9th October, 2021, the office meeting was scheduled and all the MTs and employees were present to show their report card i.e. 'Work Done Report' during the week, and Plan for the next week. Each of the MT/Employee was categorically analysed individually and appropriate instructions were being given. When the Shanaya's turn came, Narendra (her boss) expressed his displeasure regarding the working of Shanaya and narrated the financial loss suffered by the clients. The Managing Partner (Vikram Singh) of the firm asked Shanaya, to be more vigilant in meeting out the statutory obligations, in order to maintain the reputation of the firm.

This time, Shanaya took it very seriously and after a few days later, she approached Vikram Singh (Managing Partner of the ABC Firm) alleging that Narendra is sexually harassing her. She denied of not given the task of collecting and filing of the GST Returns and delayed filing of returns, was the sole responsibility of Narendra and not of her. She said that Narendra often calls her, in his cabin and speaks the un-desirable languages. She also showed some WhatsApp chat which was shared from Narendra's Mobile to Shanaya's Mobile, containing some explicit languages. Due to these reasons, she does not like to come in the office and feel ashamed.

Vikram Singh, calmly listened her and asked her to make a written complaint. He called on Narendra in the evening (when all the office staff left) and discussed the matter in length and to submit his comments.

: 3 :

Incidentally, the whole of the office was under the supervision of the CCTV cameras. The recordings were kept safely in a separate device. The comments of the other MTs and the Staff were also recorded. From the CCTV recordings, a video footage was observed. Narendra was called by one client on his mobile asking for some information for which Shanaya was having the information. So Narendra came out of his cabin and handed over his mobile to Shanaya, to talk with that client. Shanaya took the advantage of this moment and sent some explicit language from Narendra's Mobile to her own mobile and then deleted the messages from Narendra's mobile.

Shanaya was showed this CCTV footage, when she was holding the mobile of Narendra and typing something. She later committed that it was done by her only, since Narendra has made negative comments on her working in the office meeting.

Base on the above facts, answer the following questions :

- (a) Whether the provisions of the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013 (POSH) is applicable to the office of Company Secretaries ?
- (b) Who shall be termed as 'employer' in this case ?
- (c) What is the meaning of 'sexual harassment' as prescribed in the Act ?
- (d) The provisions of the POSH Act are applicable only when the aggrieved woman is employed. Do you agree with this ? Comment.
- (e) What are the consequence, if any wrong complaint is made by woman ?

*(8 marks each)*

2. (a) Romesh was a godown keeper in a textile factory and in the course of his employment he committed theft of cotton bales worth Rs. 1.50 lakh and sold them in the market. This act of Romesh was caught red handed through the CCTV footage and physical inspection of the godown. Romesh was dismissed from his services immediately without paying gratuity to him. Whether the act of the employer is justified in forfeiting the amount of gratuity ? Narrate your answer as per the appropriate provisions of the Law.
- (b) Prakash Kumar advised workers in his factory to work on all Sundays in a month by compensating the weekly holiday on Wednesdays. Veena, a worker without availing the weekly holidays, claimed double of the wages for working on Sundays and normal wages for working on Wednesdays.
- Whether the claim of Veena is correct ? Justify your answer with reasons.
- (6 marks each)*
3. (a) Ruchika is working in an establishment and she legally adopted a girl child aged one month. She claimed for the maternity leave and other benefits but her employer denied since she has not given the birth, but adopted a child. Ruchika approaches to you for the opinion. Discuss whether Ruchika is entitled for the maternity benefits as provided under the relevant law.
- (6 marks)*
- (b) Saurabh is working in an Iron and Steel Factory. Due to the nature of his job, he has to deal with the hot iron (in semi liquid position) and due to continuous operations in this area, he was gradually loosing the vision in his eyes. Due to low vision, one day, he could not visualise properly and his left hand was burnt badly and as a result his left hand fingers were cut down and doctors advised him not to perform such nature of work in the establishment as it may cause permanent blindness in coming days.

: 5 :

The employer then posted him in clerical section of the factory where no such manufacturing activities are being carried on.

Saurabh claimed compensation from the employer since his nature of work was the only reason, due to which, he got serious injury of losing fingers of left hand. Whether the employer is liable to pay any compensation to Saurabh ? If so, under which provisions of the Act and on what grounds ?

(6 marks)

4. (a) Jagrati Co-operative Society (JCS) is engaged in the manufacturing and selling of Papad and Pickles and has employed 35 female workers belonging to the nearby villages. The JCS is registered with the Registrar of Co-operative Society under the Co-operative Societies Act, 1912 and is having its works/administrative office in Palghar, Maharashtra. The JCS is providing salary to its female workers, but is not deducting any Provident Fund. One day, Sandhya, a female worker of the JCS, made a complaint to the PF Dept. of that area for not deducting the PF from her salary. So the JCS received a notice from the PF Dept. The JCS has approached you for the legal advise. What will be your answer ?

- (b) Labour should not be treated as commodity and the peace could only be established, if it is based on social justice.

Describe the fundamental principles and measures to attain peace, which were adopted during the peak of the second world war, under the leadership of Edward Phelan.

(6 marks each)

5. (a) The Supreme Court of India, in a leading case, determined the triple test for determining any establishment as an 'industry' and the criteria for its dominant nature. Keeping in view of this, define the meaning of 'industry' as provided under the relevant law.
- (b) Comment on the significant role of Company Secretary in Labour Audit and how does it strengthen the industrial relations ?

*(6 marks each)*

6. The Code on Wages, 2019 is a complete code to amend and consolidate the laws relating to wages, bonus and matters related thereto. Substantiate your answer with salient features of the code.

*(12 marks)*

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