

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 15

NOTE : Answer **ALL** Questions.

PART-I

1. ALN Biotech LLP, a limited liability partnership incorporated under the Limited Liability Partnership Act, 2008, is engaged in the research and manufacture of medical diagnostic equipment in India.

In 2022, with the objective of expanding its product portfolio and accessing advanced medical technology, ALN Biotech LLP (Referred as 'ALN Biotech') entered into a Joint Venture arrangement with Karl Global GMBH (Referred as 'Karl Global'), a foreign corporation based in Germany, for the manufacture and distribution of specialized medical devices in India.

After negotiations, the parties executed a document titled "Memorandum of Understanding and Joint Venture Framework Agreement" containing, inter alia, the following key provisions :

- Profit Sharing Clause : The profits of the joint venture business were to be shared between ALN Biotech and Karl Global in the ratio of 60 : 40 respectively.
- Confidentiality Clause : Both parties agreed to maintain strict confidentiality regarding proprietary technology, manufacturing processes, research data, and business strategies exchanged during the course of the joint venture.

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- Non-Compete Clause : Karl Global agreed that during the subsistence of the joint venture and for three years thereafter, it would not engage, directly or indirectly, in the manufacture or sale of similar medical devices in India without the consent of ALN Biotech.
- Arbitration Clause : Any dispute arising out of or relating to the agreement was to be resolved through arbitration seated in New Delhi in accordance with the provisions of the Arbitration and Conciliation Act, 1996.
- Termination Clause : Either party could terminate the agreement upon material breach by the other party after giving 90 days' written notice and an opportunity to cure the breach.

The document was signed by authorised representatives of both entities. However, it was titled as “Memorandum of Understanding (MoU)”, and certain operational details were to be finalized in subsequent agreements.

For about 18 months, the parties collaborated in developing medical devices using technology provided by Karl Global and manufacturing infrastructure provided by ALN Biotech.

Subsequently, Anuj one of the Partner of ALN Biotech discovered that Karl Global had begun independently manufacturing and marketing similar medical devices in India through another affiliated company. ALN Biotech LLP alleges that the foreign partner :

- Misused confidential technical information shared during the joint venture;
- Violated the non-compete obligation contained in the agreement; and
- Diverted potential customers of the joint venture business.

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In response, Karl Global contends that :

- The document signed between the parties was merely a Memorandum of Understanding expressing intent and not a legally binding contract.
- The confidentiality and non-compete provisions are not enforceable.
- No formal joint venture company was incorporated; therefore, the arrangement lacks legal enforceability.

ALN Biotech LLP has approached you as a Practicing Company Secretary to examine the agreement and provide a detailed legal opinion on the enforceability of the arrangement and the remedies available. On the above background, answer the following questions referring relevant provisions :

- (a) Whether the contention of Karl Global on confidentiality clause and non-compete clause in the present case is correct. Discuss with reference to the relevant provisions of the Indian Contract Act, 1872.
- (b) Distinguish between an Agreement, Contract, and Deed in legal drafting. Explain how the enforceability of the document signed between ALN Biotech and Karl Global would be determined with reference to the Indian Contract Act, 1872.
- (c) Explain the principles of clarity, precision and consistency in legal drafting. How do these principles help to avoid disputes regarding the interpretation of contractual clauses ?

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- (d) Prepare a note to the Partners of ALN Biotech, briefing on structuring of Joint Ventures and important clauses normally be included in a Joint Venture Agreement.
- (e) State how Foreign Collaboration Agreement and Joint Venture Agreement are different and also state the important clauses a Foreign Collaboration Agreement should contain for its enforceability.

(5 marks each)

2. (a) Arjun, the promoter shareholder of Viru Sports Accessories Private Limited, agreed to sell 25% of the company's equity shareholding to Kavin, a strategic investor, through a Share Purchase Agreement (SPA) executed between the parties.

The agreement recorded the purchase consideration, payment schedule, representations and warranties relating to the company's financial statements and an arbitration clause for dispute resolution. However, the agreement did not contain several clauses that are normally expected in a contemporary acquisition transaction, including provisions relating to indemnification for undisclosed liabilities, conditions precedent to closing, disclosure schedules, limitation of liability and governing law.

Six months after completion of the transaction, Kavin discovered that the company had substantial undisclosed tax liabilities arising from past regulatory assessments which were not disclosed during negotiations, even these points were not known to Arjun. Hence, both Arjun and Kavin re-negotiated the deal and Arjun agreed to enhance

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Kavin's equity stake to 33%. Now, both want to execute a comprehensive agreement to cover the risks of both the parties. On this background answer the following questions :

- (i) As a Company Secretary, recommend additional contractual clauses and safeguards that should have been incorporated in the agreement to adequately protect the interests of Kavin as a buyer of Shares.
- (ii) Evaluate the legal role of representations and warranties in acquisition agreements and explain how they operate as mechanisms for risk allocation and post-transaction remedies.

(5 marks each)

- (b) You are a Company Secretary in Practice. One of your clients approached for registration of Society. As your staff is not aware of the provisions regarding drafting Bye-laws for the Societies, explain him, how Societies differ from the Companies, its Registration Authority and what are the points to be kept in mind while drafting Memorandum and Bye-laws for the Society.

(5 marks)

3. (a) You are a newly appointed Company Secretary of Style Hub Private Limited, (Referred as 'the Company') a growing ready-made garment company. The Company recently expanded its operations through online platform to cater the needs of wider population and thereby expanding its customer base. In that process, the Company has entered into multiple digital arrangements, including agreements with logistics partners, online

marketplaces and direct consumers through its website and mobile applications. Most of these transactions are executed electronically, where users accept terms by clicking “I Agree” or by simply continuing to browse or purchase products.

The company also exchanges bulk order information with suppliers through automated systems. While these digital methods have improved efficiency and speed, the management is concerned about the legal validity and enforceability of such electronic agreements, especially in cases of disputes, unauthorized access, or denial of consent by users. The Managing Director of the Company has asked you to review and explain on how different forms of e-contracts operate and their recognition under Indian law. In the context of your Company’s online operations, state how are click-wrap and browse-wrap agreements legally recognized and what factors determine their enforceability in India ?

(5 marks)

- (b) You have been recently appointed as Company Secretary of Project Implementation Company. During the course of its business, the Company has to execute many Contracts. Hence, your Management is keen to devise a best Negotiation Policy for the use of Marketing Department. Managing Director of the Company informed you that ‘Negotiation with vendors is essential to secure favorable pricing, service levels and operational efficiency while minimizing risks’ and he has asked to prepare a note explaining the key steps involved in negotiating the best commercial and operational terms with a vendor ?

(5 marks)

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- (c) For each of the scenario mentioned below, applying the provisions of Transfer of Property Act, 1882 and identify the type of mortgage with reasoning :
- (i) Subham borrowed money from a bank and mortgaged his house as security without transferring possession. He agreed that if he failed to repay, the bank could approach the court to sell the property and recover dues. He retained ownership and possession.
 - (ii) Sita borrowed money from Mohan and transferred her land in the name of Mohan as a security attaching a condition that 'the transfer of Land will become absolute Sale, if Sita fails to repay the loan within two years and if she repaid on time (before two years), the property would revert back to her'.
 - (iii) Amit mortgaged his farmland to Ramesh and handed over possession. Ramesh was entitled to enjoy the produce and profits from the land instead of receiving interest on the loan. Until repayment, Amit could not reclaim possession.
 - (iv) Neha borrowed funds from a financial institution and transferred ownership of her property absolutely, with a promise to repay on a fixed date. The lender agreed to re-transfer the property upon repayment.
 - (v) Karan approached a bank in Delhi and deposited his property title deeds as security for a loan without executing a formal document. The intention was to create security over the property.

(1×5=5 marks)

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

4. (a) Zuben Developers Limited (Referred as ‘Zuben Developers’), a real estate development company, permitted Urban Café Private Limited to operate a café within a premium commercial complex owned by it. The agreement executed between the parties described the arrangement as a “License Agreement” and stipulated that Urban Café would occupy the designated premises for a fixed period of five years, subject to payment of monthly charges.

However, in practice, the café operator was granted exclusive possession of the premises, had the right to install fixtures and interior infrastructure and operated the premises without any regular interference from the developer.

After three years, Zuben Developers sought to terminate the arrangement with immediate effect on the ground that it was merely a licence revocable at will. Urban Café, however, disputed the termination and argued that the arrangement was in substance is a lease rather than a licence, thereby conferring statutory protection against arbitrary termination.

The dispute has raised on the true legal nature of the agreement and this has also highlighted them the importance of careful drafting in property transactions. On this background, answer the following questions referring case laws wherever applicable :

- (i) Distinguish between a lease and a licence in property law and also highlight the legal consequences that may arise from each form of arrangement.

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- (ii) Referring the case law, state the test(s) applied by courts in determining whether a particular property arrangement constitutes a lease or a licence, irrespective of the terminology used in the document.

(5 marks each)

- (b) Define 'Endorsements' and Distinguish between Endorsement in a Deed and Supplemental Deed. Also examine whether such instruments are liable to stamp duty, giving reasons.

(5 marks)

Or (Alternate question to Q. No. 4)

- 4A. (i) Iowa Renewable Energy Private Limited (Referred as 'Iowa'), a company engaged in solar power generation, entered into a Power Equipment Supply Agreement with Green Grid Engineering Limited (Referred as 'Green Grid') for the supply and installation of solar power equipment worth ₹ 50 Crore.

As per the agreement :

- Green Grid agreed to supply solar panels and install them within six months.
- Iowa paid 40% advance at the time of signing the agreement.
- The agreement contained clauses relating to performance guarantee, indemnity, force majeure and arbitration.

However, due to delays in supply and alleged defective equipment, Iowa suffered substantial financial loss. The company now intends to :

1. Examine the essential clauses of the agreement to determine whether the contract was properly drafted and enforceable.

2. Secure its interest by executing a Deed of Indemnity from the supplier for losses caused due to defective equipment.

The company has sought advice from a Company Secretary regarding the drafting and its legal implications. On the above background, answer the following questions :

- (a) Explain the objectives and important clauses of a commercial agreement, particularly in relation to the one mentioned in the given case.
(5 marks)
- (b) Identify and explain the important clauses that must be included in a commercial agreement to protect the interests of parties in large infrastructure supply contracts.
(5 marks)
- (ii) Akil entered into an Agreement for Sale on 10th January 2025 to purchase a residential property from Yash for ₹ 80 Lakh. Akil paid ₹ 20 Lakh as advance. The agreement stipulated that the balance amount would be paid within three months, upon which Yash would execute the sale deed in favour Akil. However, before the expiry of the stipulated period, Yash sold the same property to a third party, Leena, for a higher consideration, without informing Akil. Akil seeks legal opinion regarding his rights and remedies. In the given case, state whether a clause providing for exception and reservations would have legally protected Akil and explain in detail Exceptions and Reservations Clause included in a Deed.

(5 marks)

PART-II

5. Doom Infratech Limited, a public company engaged in infrastructure development and construction of large public projects, has recently been facing severe financial difficulties due to project delays, escalating operational costs and increasing debt obligations.

A consortium of financial institutions and banks, which had extended substantial credit facilities to the company, has filed an application under Section 7 of the Insolvency and Bankruptcy Code, 2016 before the National Company Law Tribunal (NCLT) seeking initiation of the Corporate Insolvency Resolution Process (CIRP) against the company on the ground of default in repayment of financial debt.

Simultaneously, the Securities and Exchange Board of India (SEBI) has issued a Show Cause Notice to Doom Infratech Limited alleging violations of disclosure obligations under the SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015. SEBI has proposed to initiate penal proceedings against the company for failure to make timely and accurate disclosures to investors.

Further complicating the situation, the Competition Commission of India (CCI) has initiated an investigation against Doom Infratech Limited and several other industry participants on allegations of bid rigging and anti-competitive conduct in public infrastructure tenders.

In light of these regulatory and legal challenges, the Board of Directors of Doom Infratech Limited has decided to engage a Company Secretary in Practice to represent the company before the relevant authorities and to advise the company on appropriate legal strategies.

- (a) As a Company Secretary advising the company, outline an appropriate legal and representation strategy before the National Company Law Tribunal in relation to the Corporate Insolvency Resolution Process initiated under the Insolvency and Bankruptcy Code, 2016.
- (b) The company intends to explore the possibility of settling the proceedings initiated by SEBI. Explain the key elements of a consent Settlement Application that may be filed before SEBI under the applicable settlement regulations.
- (c) The company has authorized a Company Secretary to appear before the Competition Commission of India in connection with the ongoing investigation. Discuss the essential components and legal significance of an authorization for appearance before the Competition Commission of India.

(5 marks each)

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

6. (a) Julu Retail Limited is a Public Limited Company having a Chairman (who is also a Director), a Managing Director, four whole-time directors (Finance, Technical, Marketing, etc.), six other Directors including five Independent Directors and one-woman Independent Director. The Chairman, who has very influential background, frequently bypasses the formal chain of command and directly instructs the Finance Director to carry out certain tasks. Although uncomfortable, the Finance Director complies due to pressure. One day, the Chairman asks the Finance Director to carry out certain questionable

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instructions. This time, the Finance Director refuses, stating that such actions are not legally or ethically permissible. The Chairman becomes angry and, acting unilaterally, removes the Finance Director from his position without following any due process or corporate formalities.

On this background referring relevant provisions of the law and case laws, answer the following questions :

- (i) Stating the relevant provisions of the law, explain what options does the Finance Director have to challenge the decision ?
- (ii) Explain the principle of corporate democracy on removal of Directors without special notice by citing certain case laws ?

(5 marks each)

- (b) A civil suit is filed by Arvind against Birbal for recovery of money based on an alleged agreement. The Court issues summons to Birbal and the matter now reaches the stage where Birbal has to file his written statement. Birbal intends to contest the claim on multiple ground he disputes the existence of the agreement, claims that the suit is barred by limitation, and also argues that the Court lacks territorial jurisdiction. He approaches you to draft the written statement and wants to ensure that all possible defences are properly raised in a single document.

On the above background, as a Company Secretary explain Birbal on points that should be kept in mind while drafting the written statement, especially when multiple and different kinds of defences are to be taken ?

(5 marks)

OR (Alternative question to Q. No. 6)

- 6A.** (i) Kris Infra Limited (Referred as 'Kris Infra'), a large construction company engaged in commercial real estate development, entered into a comprehensive construction agreement with Sunder Lal Builders Private Limited (Referred as 'Sunder Lal Builders') for design and development of a multistorey commercial complex in Bengaluru. The agreement stipulated specific timelines for completion of various phases of the project along with detailed payment milestones.

During the course of execution of the project, disputes arose between the parties regarding delays in construction and alleged deviations from agreed project specifications. Kris Infra alleged that Sunder Lal Builders failed to meet the contractual deadlines and did not adhere to the technical standards specified in the contract. On this basis, Kris Infra terminated the contract and withheld payments amounting to ₹ 20 Crore. Aggrieved by the termination and non-payment, Sunder Lal Builders instituted a civil suit before the competent Civil Court seeking recovery of the outstanding amount along with damages for wrongful termination of the contract. In response, Kris Infra denied the allegations and contended that the termination was justified due to breach of contractual obligations and substantial delay attributable to Sunder Lal Builders.

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The Court directed both parties to file their pleadings and supporting affidavit-in-evidence in order to determine the issues involved in the dispute.

(a) Trace out the Legitimacy of Sunder Lal Builders' Claim and also discuss the remedies available to Kris Infra Limited.

(5 marks)

(b) As a Company Secretary of Kris Infra Limited draft an affidavit-in-evidence to be submitted before the court.

(5 marks)

(ii) Regulatory and quasi-judicial authorities play a significant role in corporate governance and compliance. In this backdrop, discuss the role of a Company Secretary while appearing before such authorities and indicate the procedural and professional responsibilities expected while representing a client.

(5 marks)

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