

Roll No.

Time allowed : 3 hours

Maximum marks : 100

Total number of questions : 6

Total number of printed pages : 8

NOTE : Answer ALL Questions.

1. (a) “Shareholders democracy means the rule of shareholders, by the shareholders and for the shareholders in the corporate enterprise, to which the shareholders belong”. Comment on the above and enumerate any *five* provisions of the Companies Act, 2013 which demonstrate the same.
- (b) “National Company Law Tribunal (NCLT) can rectify mistakes in its own orders on *suo-moto* basis.” Comment with reference to the Companies Act, 2013 and Judicial Pronouncements.
- (c) “A legal compliance program is generally defined as a formal program specifying an organization’s policies, procedures, and actions with an intent to prevent and detect violations of laws and regulations”. Comment briefly.
- (d) “A Company and its officers will not be eligible for compounding again for similar offence”. Elucidate.

(5 marks each)

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

2. (a) Mr. Naryanan was the Managing Director of ABC India Limited and his wife Mrs. Kaika was also a director of the Company. Proceedings were initiated by Registrar of Companies (ROC) against the Company and its directors. Mr. Narayanan died while the proceedings were pending. Subsequently, Mrs. Kaika was impleaded as an accused in the proceedings after his death. She filed an application in High Court

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under section 204 of Criminal Procedure Code, 1973, praying for discharge on the ground that notice had not been served upon her by the ROC.

Would High Court grant relief to Mrs. Kaika on this ground ? Answer with reference to Judicial Pronouncement(s).

- (b) The Board of Directors of BIJI Private Limited made an application to the Registrar of Companies under section 248(2) of the Companies Act, 2013 for removal of name of the Company. The Board submitted an affidavit that Company has no pending liabilities. However, it was later found that few amounts were still payable to creditors.

What penalties can be levied under the Companies Act, 2013 for such an application ?

- (c) Mrs. Meera was the Managing Director of ME India Private Limited. During her tenure, she sold few properties of the Company and cleared all the registered mortgages. She also diverted Company's funds of ₹ 50 Lakhs to her bank account and diverted another ₹ 10 Lakhs to pay off and discharge the Housing Loan on her daughter's property. Later, winding up proceedings were initiated against the Company.

Can the Liquidator of the Company commence proceedings against Mrs. Meera and her daughter in these circumstances ?

- (d) Mrs. P who holds 500 equity shares of Zeta Limited made an application through instrument of transfer to the Company for transfer of 300 equity shares in favour of Mrs. H. Zeta Limited refused to register the transfer of shares in favour of Mrs. H, stating that she has been declared as a wilful defaulter by the banks.

What are the rights available to Mrs. H, under the Companies Act, 2013 for such refusal ?

(4 marks each)

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OR (Alternate question to Q. No. 2)

- 2A.** (i) XYZ Software Technologies Limited of Bengaluru was engaged in business of software exports. During the past years, it had exported services to its Parent entity in United States of America (USA), but failed to realize and repatriate the foreign exchange due on its exports to India, within the stipulated time. The Adjudicating Authority imposed a penalty under the provisions of Foreign Exchange Management Act, 1999. Being aggrieved by this penalty, the Company seeks your advice to file an appeal. Advise the Company.
- (ii) “Several large companies and financial institutions worldwide no longer exist today as they neglected the basic rules of Corporate Governance, Risk Management and Control”.
Comment in the background of today’s business environment.
- (iii) PSU Bank Limited, a public sector bank has detected a fraud being committed by one of its large corporate customers. The alleged fraud seems to have been perpetrated over a period of time, by diverting the funds received from the Bank to offshore tax heavens by the promoter group. A forensic audit was ordered to examine the details of such transactions. Meanwhile, the Central Government has asked the Central Bureau of Investigation (CBI) to investigate the fraud.
Discuss which division of CBI would investigate this case.
- (iv) Mr. Ze, a Company Secretary has recently set up a Practice. Mr. Almora a businessman reached out to Mr. Ze, to incorporate a Company. Mr. Ze assisted him with the list of information required and also extended his professional services for incorporation of the Company. When Mr. Ze was reviewing the documents provided to him, for uploading the forms, he noticed that the documents contained false information. Mr. Ze was apprehensive to go ahead with the incorporation of the Company. Advise Mr. Ze.

(4 marks each)

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

3. (a) PQ Limited was a Company listed on XYZ Stock Exchange. The Company was making continuous losses and was not performing well. There were also reports of alleged financial irregularities in media. Also, many complaints were received by Securities Board of India (SEBI), regarding its listed securities. Subsequently, SEBI passed an Order to delist the securities of the Company from the said stock exchange.

As a Company Secretary, advise PQ Limited for further course of action.

- (b) Thinking Star Limited, a Public Limited Company was into manufacturing of steel and steel products. The Company wanted to expand its operations and to fund the same, it evaluated various options including bank loan, private placement, etc. However, due to a paucity of time the Company went ahead and funded its operations by issuing shares to a friend of Mr. XY, the Managing Director of the Company on private placement basis. The Company failed to comply with the provisions of the Companies Act, 2013. Mr. XY was not willing to act, unless there was any notice from the regulators. Mr. S, the Corporate Advisor to the Company suggested Mr. XY to compound the offence as it would be in the best interest of the Company.

Advise Mr. XY.

- (c) Explain the various types of Criminal Courts under the Criminal Procedure Code, 1973 and their powers in brief.

- (d) Mr. Krish, a resident of Mumbai is a friend of Mr. Parth, who stays in Manali. As Mr. Parth did not have much exposure and information about personal finance and investment options in Manali, he trusted his friend for his investments. As per their agreement, Mr. Parth remitted ₹ 1 Lakh to Mr. Krish to invest in mutual funds and stock market. Mr. Krish employs the money in his own business ignoring his understanding with Mr. Parth.

Has Mr. Krish committed criminal breach of trust ?

(4 marks each)

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OR (Alternate question to Q. No. 3)

3A. (i) During the previous year, Alfa Limited could not conduct its Annual General Meeting (AGM) within the timelines as per the Companies Act, 2013 due to some internal and operational issues. In the current year also, the Company could not conduct its AGM within stipulated time, thereby committing the same default in the current year as well.

What would be the penal provisions for such default ?

(ii) Infomatika Limited, a Public Limited Company was incorporated under the Companies Act, 1956 in the year 2010. During the financial year ended March 31, 2019, the Company made a contribution of ₹ 50 Lakhs to a local political party, which amounts to 9% of its average net profits during three immediately preceding financial years. Is the Company compliant with the provisions of the Companies Act, 2013, if not, what would be the penal provisions for such an act ?

(iii) Ms. Rekha was working as 'Gram Sachiv' for ten gram panchayats. She was a trusted person of the local villagers and they respected her. Ms. Rekha, collected a sum of ₹ 5 Lakhs from fifty villagers in the gram panchayats saying she would pay their house tax and issued receipts to them. Later it was found that she did not deposit the money into Government treasury, but utilized it for her personal purposes. The villagers wanted to file a case against Ms. Rekha, when they came to know of the misappropriation done by her.

Will the villagers be successful in filing a case against Ms. Rekha ?

(iv) Mr. A sold goods to Mr. B amounting to ₹ 1 crore. Mr. B was delinquent in payment, after repeated follow-ups, he issued a cheque for the said amount to Mr. A. The cheque was not honoured and Mr. A filed a cheque bouncing case against Mr. B. The Court issued summons to Mr. B. Later, Mr. A wanted to withdraw the case.

Will the Magistrate permit Mr. A to withdraw the case at this stage ?

(4 marks each)

4. (a) In the Annual General Meeting (AGM) of Jollydays Limited, the matter of re-appointment of Mr. Jolly, the Executive Director (ED) came up for voting. During such discussion, allegations of fraud and financial irregularities were levelled against him by some members, which resulted in chaos in the meeting. The situation was normal only after the Chairman promised to initiate an inquiry against Mr. Jolly. The resolution at AGM to reappoint Mr. Jolly as ED, was not passed. The matter was published in the newspapers next day.

Under the Companies Act, 2013, can a Court take cognizance of the matter and *suo moto* initiate action against Mr. Jolly based on the media reports ?

(4 marks)

- (b) Greenary Limited, a Public Limited Company was in the business of generation and supply of electricity and had its factory near Krishnapatanam Beach. Mr. Pond, was the Vice-President (Operation), and was authorized by the Board of Directors of the Company to be in charge of the factory operations. As the factory was located on sea-shore, the Company was subject to the provisions of various Environmental Laws. The Company had not complied with the provisions relating to dumping/discharge of its production wastes, etc. Summons were issued against Mr. Pond by the adjudicating authority. Mr. Pond sent an email to you, the Company Secretary stating his designation would not tantamount to officer in default.

Would you agree with Mr. Pond ?

(4 marks)

- (c) Mr. Raj owned 50 acres of land. He agreed to sell the land to Mr. Sham for ₹ 5 crore and executed a conveyance for the same. Despite the execution of conveyance, Mr. Raj later mortgages the entire 50 acres to Mr. Rohit. He conceals the fact of previous sale to Mr. Sham and receives money from Mr. Rohit.

In the background of decided case law, indicate whether Mr. Raj would be held liable for cheating.

(4 marks)

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- (d) Mr. Mon had employed Ramu as a domestic help for quite sometime. Ramu had intention of robbing the house, so he planned the robbery on a day when most of the family members were out. Ramu was caught off guard, when Ms. Mona, mother of Mr. Mon, caught him committing the crime and tried to alert the police. Unfortunately in the scuffle, Ramu ended up killing Ms. Mona and ran away with the valuables. Investigation was initiated and Ram was caught by the Police. Mr. Mon contended that there are two separate crimes, one of murder and other of burglary and Ramu should be penalized for them separately.

Can offence committed by Ramu be clubbed in a single trial under Criminal Procedure Code, 1898 ?

(4 marks)

5. (a) HDF Limited, a listed entity was into real-estate business. Over a period in an attempt to diversify its operations it borrowed heavily from banks and financial institutions. The Company appointed a Merchant Banking firm, to provide strategic inputs for its business operations. On the recommendation of the firm, the Company created complex group structures and business models. Due to financial mismanagement and lack of strategic operations, the Company started making losses and over a period was not able to repay the loans it had taken. The Company also failed to repay the deposits it had raised from public. Gradually, the market capitalization of the Company eroded and now it has been reduced to a penny stock. The shareholders are evaluating the option of filing a case against the Company, the Merchant Banking firm and also the Rating Agency which were involved with the Company during such period. Evaluate whether the shareholders and depositors be successful in filing a suit in these circumstances.

(8 marks)

- (b) A notice of investigation was sent to Maina Limited for alleged misappropriation of funds in the Company. As the Company Secretary of the Company, prepare a report touching upon various aspects of the activities of Company which would prove that the allegation in the instant case is not true.

(8 marks)

6. (a) “Anticipating future risks is a key element of avoiding or mitigating those risks before they escalate into crisis.” Explain.
- (b) “Companies Act, 2013 is mixture of both civil law as well as criminal law.” Comment briefly.
- (c) “Errors and Omissions Insurance is a special type of coverage that protects a Company against claims that a professional service provided, caused client to suffer financial harm due to mistakes on the part of professional or because he may have failed to perform some service.”
Why should professionals opt for such an insurance ?
- (d) A Practicing Company Secretary wants to establish his practice in the field of Mediation and Conciliation. He wants to know whether he would not be eligible to be appointed as a Mediator or Conciliator as per Rule 5 of Companies (Mediation and Conciliation) Rules, 2016. Advise him.

(4 marks each)

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