

GUIDELINE ANSWERS
EXECUTIVE PROGRAMME

JUNE 2023

MODULE 1

These answers have been written by competent persons and the Institute hope that the **GUIDELINE ANSWERS** will assist the students in preparing for the Institute's examinations. It is, however, to be noted that the answers are to be treated as model answers and not as exhaustive and the Institute is not in any way responsible for the correctness or otherwise of the answers compiled and published herein.

The Guideline Answers contain the information based on the Laws/Rules applicable at the time of preparation. However, students are expected to be updated with the applicable amendments which are as follows:

CS Examinations Applicability of Amendments to Laws

December Session upto 31 May of that Calender year

June Session upto 30 November of previous Calender Year

C O N T E N T S

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MODULE 1

1. Jurisprudence, Interpretation & General Laws
2. Company Law
3. Setting up of Business Entities and Closure
4. Tax Laws (OMR Based Exam)

EXECUTIVE PROGRAMME EXAMINATION

JUNE 2023

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

Question 1

(a) The students of Patra University appeared in an examination under a special scheme, and their results were declared but the degree of successful students was not issued as the University decided to further examine the students on the additional subject. Can the University do so? Discuss the relevant rule of evidence.

(b) "Trade, commerce and intercourse throughout the territory of India shall be free." Critically examine this statement with reference to Indian Constitution.

(c) Discuss the position of vicarious liability of an employer for an independent contractor. What are the conditions when an employer is liable and when he is not liable?

(d) Throw light on the role of a Conciliator in a Conciliation Proceeding under the Arbitration and Conciliation Act, 1996. In what manner a Conciliation Proceeding may be terminated?

(5 marks each)

Answer 1(a)

The facts of the given situation are similar to case of *Biju Patnaik University of Tech. Orissa v. Sairam College*, AIR 2010 (NOC) 691 (Orissa) decided by High Court of Orissa. In this case one private university permitted to conduct special examination of students prosecuting studies under one time approval policy. After inspection, 67 students were permitted to appear in the examination and their results declared. However, university declined to issue degree certificates to the students on the ground that they had to appear for further examination for another condensed course as per syllabus of university. It was held that once students appeared in an examination and their results declared, the university is estopped from taking decision withholding degree certificate after declaration of results.

In the given situation the relevant rule of evidence is doctrine of *estoppel*. The general rule of estoppel is when one person has by his declaration, act or omission, intentionally caused or permitted another person to believe a thing to be true and to act upon such belief, neither he nor his representative shall be allowed, in any suit or proceeding between himself and such person or his representative to deny the truth of that thing. (Section 115 of Indian Evidence Act, 1872).

It is based on the principle that it would be most inequitable and unjust that if one person, by a representation made, or by conduct amounting to a representation, has induced another to act as he would not otherwise have done, the person who made the representation should not be allowed to deny or repudiate the effect of his former statement to the loss and injury of the person who acted on it (*Sorat Chunder v. Gopal Chunder*).

In the given situation, doctrine of estoppel can apply and the university can be estopped from further examining the students on additional subjects.

Answer 1(b)

Part XIII of the Constitution of India under Article 301 guarantees the freedom of trade, Commerce and Intercourse, subject to reasonable restrictions & public interest as mentioned in Article 302 to 307. It is to be noted that Article Part XIII (Article 301-307) is in addition to Articles 14 & 19. Article 301 states:

Subject to the other provisions of Part XIII, trade, commerce and intercourse throughout the territory of India shall be free.

The object of the freedom declared by this Article is to ensure that the economic unity of India may not be broken by internal barriers.

The Supreme Court in the very first case on the matter (*Atiabari Tea Co. v. State of Assam, A.I.R. 1951 S.C. 232*) declared that only those laws which “directly and immediately” restrict or impede the freedom of trade and commerce are covered by Article 301 and such laws which directly and incidentally affect the freedom guaranteed in that article are not within the reach of Article 301.

With respect to regulatory laws also, we may say that if they are the laws which facilitate the freedom of trade and commerce then they are not at all laws which impede the free flow of trade and commerce directly or indirectly. The freedom of trade and commerce guaranteed under Article 301 applies throughout the territory of India; it is not only to inter-state but also to intra-state trade, commerce and intercourse. But in no way it covers the foreign trade or the trade beyond the territory of India. Therefore, the foreign trade is free from the restriction of Article 301.

Trade and commerce which are protected by Article 301 are only those activities which are regarded as lawful trading activities and are not against policy. The Supreme Court held that gambling is not “trade”. Similarly, prize competitions being of gambling in nature, cannot be regarded as trade or commerce and as such are not protected under Article 301 (*State of Bombay v. RMD, AIR 1957 SC 699*).

The freedom guaranteed by Article 301 is not made absolute and is to be read subject to the following exceptions as provided in Articles 302-305:

(a) Parliament to Impose Restriction in the Public Interest

According to Article 302, Parliament may, by law, impose such restrictions on the freedom of trade, commerce and intercourse as may be required in the public interest.

(b) Parliament to make Preference or Discrimination

Parliament cannot by making any law give preference to one State over the other or make discrimination between the States except when it is declared by that law that it is necessary to do so for the purpose of dealing with a situation arising from scarcity of goods in any part of the territory of India [Article 303 (1) and (2)].

(c) Power of the State Legislature

The Legislature of a State may by law:

- (i) impose on goods imported from other States or the Union territories any tax to which similar goods manufactured or produced in that State are subject, so, however, as not to discriminate between goods so imported and goods so manufactured or produced; and
- (ii) impose such reasonable restrictions on the freedom of trade, commerce or intercourse within the State as may be required in the public interest.

However, no bill or amendment for making a law falling in provision above can be introduced or moved in the Legislature of a State without the previous sanction of the President. [Article 304]

(d) Saving of Existing Laws

The law which was already in force at the commencement of the Constitution shall not be affected by the provisions of Article 301 except in so far as the President may, by order, otherwise direct (Art 305).

(e) Saving of Laws providing for State Monopoly

The laws which create State monopoly in any trade, etc. are saved from attack under Article 301, i.e., they are valid irrespective of the fact that they directly impede or restrict the freedom of trade and commerce.

Answer 1(c)

An employer is vicariously liable for the torts of his servants committed in the course of their employment, but he is not liable for the torts of those who are his independent contractors.

An independent contractor is one who works for another but who is not controlled by that other in his conduct in the performance of that work. These definitions show that a person is a servant where the employer “retains the control of the actual performance” of the work.

When Employer is Liable for the acts of Independent Contractor

The employer is not liable merely because an independent contractor commits a tort in the course of his employment; the employer is liable only if he himself is deemed to have committed a tort. This may happen in one of the following three ways:

- (i) When employer authorizes him to commit a tort.
- (ii) In torts of strict liability.
- (iii) Negligence of independent contractor.

When Employer is not Liable for the acts of an Independent Contractor

An employer is not liable for the tort of an independent contractor if he has taken care in the appointment of the contractor. In *Philips v. Britania Hygienic Laundry Co. (1923)*, the owner of lorry was held not liable when a third-party's vehicle was damaged, in consequence of the negligent repair of his lorry by a garage proprietor.

Answer 1(d)

Section 67 of the Arbitration and Conciliation Act, 1996 provides the provisions relating to Role of conciliator. These are as under:

- (1) The conciliator shall assist the parties in an independent and impartial manner in their attempt to reach an amicable settlement of their dispute.
- (2) The conciliator shall be guided by principles of objectivity, fairness and justice, giving consideration to, among other things, the rights and obligations of the parties, the usages of the trade concerned and the circumstances surrounding the dispute, including any previous business practices between the parties.
- (3) The conciliator may conduct the conciliation proceedings in such a manner as he considers appropriate, taking into account the circumstances of the case, the wishes the parties may express, including any request by a party that the conciliator hear oral statements, and the need for a speedy settlement of the dispute.
- (4) The conciliator may, at any stage of the conciliation proceedings, make proposals for a settlement of the dispute. Such proposals need not be in writing and need not be accompanied by a statement of the reasons therefor.

Section 76 of the Arbitration and Conciliation Act, 1996 provides the provisions relating to the manner of termination of conciliation proceedings. According to this section, the conciliation proceedings shall be terminated:

- (a) by the signing of the settlement agreement by the parties, on the date of the agreement; or
- (b) by a written declaration of the conciliator, after consultation with the parties, to the effect that further efforts at conciliation are no longer justified, on the date of the declaration; or
- (c) by a written declaration of the parties addressed to the conciliator to the effect that the conciliation proceedings are terminated, on the date of the declaration; or
- (d) by a written declaration of a party to the other party and the conciliator, if appointed, to the effect that the conciliation proceedings are terminated, on the date of the declaration.

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

Question 2

(a) Distinguish between *Ratio decidendi* and *Obiter dicta*. What are the rules governing binding force of judicial precedents? Discuss.

(4 marks)

(b) Where in an enactment, there are two provisions which cannot be reconciled, they should be so interpreted that, if possible, the effect may be given to both. Explain this statement.

(4 marks)

(c) If the date of enactment is not specified under the legislation, when does it come into force? Cite the relevant provision of the General Clauses Act, 1897.

(4 marks)

(d) Is Section 3 of the Limitation Act, 1963 mandatory in nature ? Discuss.

(4 marks)

OR (Alternate question to Q. No. 2)

Question 2A

(i) "A judge is supposed to be indifferent to the parties to the controversy. He cannot act as a judge of a case in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality." Elucidate.

(ii) "Reference and Review are various remedies provided under the Civil Procedure Code, 1908 to cater to different situations." Explain.

(iii) What is Special Court under the Companies Act, 2013? Discuss any two offences which are triable by these courts?

(iv) "A mere alteration of the document does not make it a forged document unless made for some gain." Explain this statement under Indian Penal Code, 1860.

(4 marks each)

Answer 2(a)

Distinguish between *Ratio Decidendi* & *Obiter Dicta*

Basis of Distinction	<i>Ratio Decidendi</i>	<i>Obiter Dicta</i>
Meaning	The reasons for the court's ruling are known as the <i>ratio decidendi</i> .	The <i>obiter dicta</i> is a standard remark that may aid in comprehending the circumstances that led to the court's conclusion.
Purpose	The ratio is the judge's decision on a legal issue, not simply a recitation of the law.	<i>Obiter dicta</i> are legal ideas or observations expressed by judges that have no bearing on the result of the case.
Enforceability	The <i>ratio decidendi</i> has binding authority.	<i>Obiter dicta</i> are not legally enforceable.
Role	<i>Ratio decidendi</i> is a norm of law that the judge openly or implicitly	<i>Obiter dicta</i> is a rule of law, stance taken by a judge that was not explicitly

	treats as an essential step in reaching the decision.	or implicitly considered as a required step in obtaining his judgment.
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Rules Governing binding force of judicial precedents:

- The decisions of High Court are binding on all the subordinate courts and tribunals within its jurisdiction. The decisions of one High Court have only a persuasive value in a court which is within the jurisdiction of another High Court. But if such decision is in conflict with any decision of the High Court within whose jurisdiction that court is situated, it has no value and the decision of that High Court is binding on the court. In case of any conflict between the two decisions of co-equal Benches, generally the later decision is to be followed.
- In a High Court, a single judge constitutes the smallest Bench. A Bench of two judges is known as Division Bench. Three or more judges constitute a Full Bench. A decision of such a Bench is binding on a Smaller Bench. One Bench of the same High Court cannot take a view contrary to the decision already given by another co-ordinate Bench of that High Court. Decision of a Division Bench is binding on a single judge of the same High Court. Thus, a decision by a Bench of the High Court should be followed by other Benches unless they have reason to differ from it, in which case the proper course is to refer the question for decision by a Full Bench.
- The High Courts are the Courts of co-ordinate jurisdiction. Therefore, the decision of one High Court is not binding on the other High Courts and have persuasive value only.
- The Supreme Court is the highest court and its decisions are binding on all courts and other judicial tribunals of the country. Article 141 of the Constitution makes it clear that the law declared by the Supreme Court shall be binding on all courts within the territory of India.

However, it does not mean that every statement in a judgement of the Supreme Court has the binding effect. Only the statement of ratio of the judgement is having the binding force.

Answer 2(b)

Where in an enactment, there are two provisions which cannot be reconciled, they should be so interpreted that, if possible, effect may be given to both. This is what is known as the "rule of harmonious construction". The rule may be understood with the help of below mentioned cases:

A statute must be read as a whole and one provision of the Act should be construed with reference to other provisions in the same Act so as to make a consistent enactment of the whole statute. Such a construction has the merit of avoiding any inconsistency or repugnancy either within a section or between a section and other parts of the statute. It is the duty of the Courts to avoid "a head on clash" between two sections of the same Act and, "whenever it is possible to do so, to construct provisions which appear to conflict so that they harmonise" (*Raj Krishna v. Pinod Kanungo, A.I.R. 1954 S.C. 202 at 203*).

The Supreme Court applied this rule in resolving a conflict between Articles 25(2)(b) and 26(b) of the Constitution and it was held that the right of every religious denomination or any section thereof to manage its own affairs in matters of religion [Article 26(b)] is subject to a law made by a State providing for social welfare and reform or throwing open of Hindu religious institutions of a public character to all classes and sections of Hindus [Article 25(2)(b)]. (*Venkataramana Devaru v. State of Mysore, A.I.R. 1958 S.C. 255*).

Answer 2(c)

Section 5 of the General Clauses Act, 1897 provides the provisions relating to coming into operation of enactments. It states:

Where any Central Act is not expressed to come into operation on a particular day, then it shall come into operation on the day on which it receives the assent,—

- (a) in the case of a Central Act made before the commencement of the Constitution, of the Governor-General, and
- (b) in the case of an Act of Parliament, of the President.

Further, unless the contrary is expressed, a Central Act or Regulation shall be construed as coming into operation immediately on the expiration of the day preceding its commencement.

If the date of enactment is not specified under the legislation, it comes into force in accordance with Section 5 of General Clauses Act, 1897.

Answer 2(d)

Section 3 of the Limitation Act, 1963 (the Act) provides that any suit, appeal or application if made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not. The provisions of Section 3 of the Act are mandatory. The Court can *suo motu* take note of question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint. It is a vital section upon which the whole limitation Act depends for its efficacy.

The Court is under an obligation to dismiss a suit if it is filed beyond the time prescribed by the Limitation Act. The provisions of Section 3 are mandatory and the Court will not proceed with the suit if it is barred by time. Under Section 3 of the Act, it is clearly mentioned that every suit instituted, appeal preferred and the application made after the prescribed period shall be dismissed. Even though limitation has not been set up as a defence.

However, the effect of Section 3 is not to deprive the Court of its jurisdiction. Therefore, decision of a Court allowing a suit which had been instituted after the period prescribed is not vitiated for want of jurisdiction. A decree passed in a time barred suit is not a nullity.

In case of *Noharlal Verma vs. District Cooperative Central Bank Limited, Jagdalpur, (SC), 2008*, the Supreme Court observed that, if the statute stipulates a particular period of limitation, no concession or order would make an application barred by time to be within the limitation and the authority had no jurisdiction to consider such application on merits.

Answer 2A (i)

A judge is supposed to be indifferent to the parties to the controversy. He cannot act as a judge of a case in which he himself has some interest either pecuniary or otherwise as it affords the strongest proof against neutrality. This is because of the importance of one of the most important principles in the administration of justice, i.e. justice must not only be done but also seen to be done. This is necessary to inspire confidence in the people in the judicial system. The given statement is related to Rule against *bias* which is also one of the important principle of Natural Justice. The rule is discussed as under:

According to rule "Rule against bias (*nemo iudex in causa sua*)" no person should be made a judge in his own cause. Bias means an operative prejudice whether conscious or unconscious in relation to a party or issue. It is a presumption that a person cannot take an objective decision in a case in which he has an interest. The rule against bias has two main aspects- one, that the judge must not have any direct personal stake in the matter at hand and two, there must not be any real likelihood of bias.

Bias can be of the following three types:

(a) Pecuniary bias: The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, howsoever small, would vitiate the adjudication. Thus, a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.

(b) Personal bias: There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge.

(c) Subject matter bias: A judge may have a bias in the subject matter, which means that he himself is a party, or has some direct connection with the litigation. To disqualify on the ground of bias there must be intimate and direct connection between adjudicator and the issues in dispute.

Answer 2A (ii)

The main aim of CPC is to facilitate justice and seek an end to the litigation rather than provide any form of punishment and penalties. Reference and Review are remedies provided under Civil Procedure Code, 1908 to cater different situation. These situations are as under:

Reference

Section 113 of the Civil Procedure Code, 1908 provides that subject to such conditions and limitations as may be prescribed, any Court may state a case and refer the same for the opinion of the High Court, and the High Court may make such order thereon as it thinks fit.

Reference is made to the High court when it has reasonable doubt during any suit, appeal, execution proceeding etc. Reference means referring a case to High court on a question of law.

The underlying object for this provision is to enable subordinate court to obtain, in non-appealable cases, the opinion of High court in the absence of a question of law and there by avoid the commission of an error which could not be remedied later on. Such provision also ensures that the validity of a legislative provision (Act, Ordinance or regulation) should be interpreted and decided by the highest court in the state and there wouldn't remain any chance of misrepresentation. Reference should be made before passing of the judgment in the court.

Review

The right of review has been conferred by Section 114 of the Civil Procedure Code, 1908. It provides that any person considering himself aggrieved by a decree or order may apply for a review of judgement to the court which passed the decree or made the order on any of the grounds as mentioned in Order 47 Rule 1, namely:

- (i) discovery by the applicant of new and important matter or evidence which, after the exercise of due diligence, was not within his knowledge or could not be produced by him at the time when the decree was passed or order made, or
- (ii) on account of some mistake or error apparent on the face of the record, or
- (iii) for any other sufficient reason, and

The Court may make such order thereon as it thinks fit.

Review is the process of judicial re-examination of a case by the same court and by the same judge who has passed the judgment or order. The procedure of review has been embedded in the legal system to correct and prevent miscarriage of Justice.

Answer 2A (iii)

According to section 435(1) of the Companies Act, 2013(the Act), the Central Government may, for the purpose of providing speedy trial of offences under the Act, except under section 452, by notification establish or designate as many Special Courts as may be necessary.

A Special Court shall consist of—

- (a) a single judge holding office as Session Judge or Additional Session Judge, in case of offences punishable under the Act with imprisonment of two years or more; and
- (b) a Metropolitan Magistrate or a Judicial Magistrate of the First Class, in the case of other offences,

who shall be appointed by the Central Government with the concurrence of the Chief Justice of the High Court within whose jurisdiction the judge to be appointed is working.

According to section 436(1)(a) of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, all offences specified section 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned.

Offences Triable by Special Court:

- Contravention of provisions related to loan, guarantee etc. for the purpose of purchase or subscription for any shares in the company or in its holding company.
- Matters pertaining to knowingly failure to distribute dividends.
- Matter related to Fraud including repayment of any debt Contribution in contravention of the provisions relating to Prohibitions and restrictions regarding political contributions.
- Disobeying the direction issued by the Registrar or the inspector under section 207.
- Disobeying the direction issued by the Registrar or the inspector under section 217.

Answer 2A (iv)

The statement “A mere alteration of the document does not make it a forged document unless made for some gain” can be explained with the help of applicable provision and decided case laws. They are explained as under:

According to section 463 of the Indian Penal Code, 1860, whoever makes any false document or false electronic record or part of a document or electronic record, with intent to cause damage or injury, to the public or to any person, or to support any claim or title, or to cause any person to part with property, or to enter into any express or implied contract, or with intent to commit fraud or that fraud may be committed, commits forgery.

The Supreme Court in *Ramchandran v. State*, AIR 2010 SC 1922, has held that to constitute an offence of forgery document must be made with dishonest or fraudulent intention. A person is said to do a thing fraudulently if he does that thing with intent to defraud but not otherwise.

The Supreme Court in *Parminder Kaur v. State of UP*, has held that mere alteration of document does not make it a forged document. Alteration must be made for some gain or for some objective.

Similarly, in *Balbir Kaur v. State of Punjab*, 2011 CrLJ 1546 (P&H), the allegation against the accused was that she furnished a certificate to get employment as ETT teacher which was found to be bogus and forged in as much as school was not recognized for period given in certificate. However, the certificate did not anywhere say that school was recognized. It was held that merely indicating teaching experience of the accused, *per-se*, cannot be said to indicate wrong facts. So the direction which was issued for prosecution is liable to be quashed.

Question 3

(a) What are the objects of summary trials under Criminal Procedure Code, 1973? State any four offences which may be summarily tried.

(b) What are the benefits of E-stamping? How do we verify e-stamping?

(c) What is the effect of the non-registration of documents that need to be registered under the Registration Act, 1908?

(d) State the penalty provisions for failure to furnish information, return and to maintain records under the Information Technology Act, 2000.

(4 marks each)

Answer 3(a)

There are three kinds of trials primarily – warrant, summons and summary. Summary Trials are mentioned in Chapter XXI of the Code of Criminal Procedure, 1973. In this trial, the cases are disposed of speedily as the procedure is simplified and the recording of such cases are done summarily.

In this type of trial, only the offences which fall into the small/petty category are tried. Complex cases are reserved for warrant or summons trial. To determine whether a case should be tried summarily, the facts stated in the complaint form the primary basis. The Object of Summary trial in the Code of Criminal Procedure, 1973 is, a speedy trial by dispensing with formalities or delay in proceedings. By summary cases

is meant a case which can be tried and disposed of at once. Generally, it will apply to such offences not punishable with imprisonment for a term exceeding two years.

Following offences may be tried summarily:

- (i) offences not punishable with death, imprisonment for life or imprisonment for a term exceeding two years;
- (ii) theft under Section 379, Section 380 or Section 381 of the Indian Penal Code, where the value of the property stolen does not exceed Rs. 2,000;
- (iii) receiving or retaining stolen property, under Section 411 of the Indian Penal Code, where the value of such property, does not exceed Rs. 2,000;
- (iv) assisting in the concealment or disposal of stolen property, under Section 414 of the Indian Penal Code, where the value of such property does not exceed Rs. 2,000;
- (v) offences under Sections 454 and 456 of the Indian Penal Code;
- (vi) insult with intent to provoke a breach of the peace, under Section 504 of the Indian Penal Code;
- (vii) abatement of any of the foregoing offences;
- (viii) an attempt to commit any of the foregoing offences, when such attempt is an offence;
- (ix) any offence constituted by an act in respect of which a complaint may be made under Section 20 of the Cattle Trespass Act, 1871.

Answer 3(b)

Benefits of e-stamping

E-Stamping is a computer based application and a secured way of paying Non Judicial stamp duty to the Government. The prevailing system of physical stamp paper / franking is being replaced by E-Stamping system. The benefits of e-Stamping are as under:

1. e-Stamp Certificate can be generated within minutes;
2. e-Stamp Certificate generated is tamper proof;
3. e-Stamp Certificate generated has a Unique Identification Number;
4. Easy accessibility and faster processing;
5. Security;
6. Cost savings and User friendly.

Government of India, Ministry of Finance, Department of Economic Affairs appointed SHCIL to act as Central Record Keeping Agency (CRA).

Verification of e-stamping

An e-Stamp can be verified online by clicking on verify e-Stamp certificate and entering the required details i.e

1. State
2. Certificate Number (UIN)
3. Stamp Duty Type (Description of Document)
4. Certificate Issue Date
5. 6 character alphanumeric string

UIN is a Unique system generated number mentioned on the e-Stamp Certificate. Anybody, having the Unique Identification Number, can check the authenticity of the Certificate through www.shcilestamp.com.

Answer 3(c)

Section 49 of the Registration Act, 1908 provides the provisions relating to Effect of non-registration of documents required to be registered. It states:

No document required by section 17 of the Registration Act, 1908 or by any provision of the Transfer of Property Act, 1882, to be registered shall:

- (a) affect any immovable property comprised therein, or
 - (b) confer any power to adopt, or
 - (c) be received as evidence of any transaction affecting such property or conferring such power,
- unless it has been registered:

Section 49 is mandatory, and a document which is required to be registered cannot be received in evidence as affecting immovable property.

An unregistered document which comes within Section 17 cannot be used in any legal proceeding to bring out indirectly the effect which it would have if registered.

However, as provided in Section 49, proviso, an unregistered document affecting immovable property and required by Registration Act, 1908 or the Transfer of property Act, 1882 to be registered may be received as evidence of a contract in a suit for specific performance or as evidence of part performance of a contract for the purposes of Section 53A of the Transfer of Property Act, 1882 or as evidence of any collateral transaction not to be effective by registered instrument. All that the proviso to Section 49 permits is that in a suit for specific performance an unregistered document affecting immovable property may be given in evidence. The purpose is that the document which has not conveyed or passed title may still be used as evidence of the terms.

In *K. Narasimha Rao v. Sai Vishnu*, AIR 2006 NOC (A.P.) p. 80, it has been held that: It is settled legal principle that an unstamped instrument is not at all admissible in evidence even for collateral purpose. But an unregistered instrument originally unstamped, if duly stamped subsequently can be admitted in evidence even though it continues to be unregistered for collateral purpose but actual terms of transaction cannot be looked into. In instant case, however settlement deed in question produced by defendant was not only unregistered but also insufficiently stamped. That apart on an objection raised by plaintiff, Court had already passed an order directing impounding of document, which was never complied with by defendant. In such circumstances, document in question, which still remained insufficiently stamped could not be admitted in evidence even for collateral purpose. Application filed by defendant seeking to admit said document for collateral purpose is liable to be dismissed.

Answer 3(d)

Section 44 of the Information Technology Act, 2000 provides the provisions relating to Penalty for failure to furnish information, return, etc. It states:

If any person who is required under the Information Technology Act, 2000 or any rules or regulations made thereunder to:

- (a) furnish any document, return or report to the Controller or the Certifying Authority fails to furnish the same, he shall be liable to a penalty not exceeding one lakh and fifty thousand rupees for each such failure;
- (b) file any return or furnish any information, books or other documents within the time specified therefor in the regulations fails to file return or furnish the same within the time specified therefor in the regulations, he shall be liable to a penalty not exceeding five thousand rupees for every day during which such failure continues;
- (c) maintain books of account or records, fails to maintain the same, he shall be liable to a penalty not exceeding ten thousand rupees for every day during which the failure continues.

Question 4

(a) What are the appellate authorities and time limit to file an appeal against the decision under the Right to Information Act, 2005?

(b) Explain in brief the relationship between the statute of Limitation and Writs under the Constitution.

(c) Differentiate between rule of *res judicata* and *res subjudice*.

(d) Discuss how an arrest should be made under Section 46 of the Criminal Procedure Code, 1973.

(4 marks each)

Answer 4(a)

Section 19 of the Right to Information Act, 2005 (RTI Act) lays down two stages of appeal, the First Appeal is to be made to the appellate authority and the Second Appeal lies with the Central Information Commission or the State Information Commission. The appeals process under the RTI Act is aimed at redressing any grievance suffered by the Applicants in a quicker way.

First Appeal: Any person who, does not receive a decision within the time specified or is aggrieved by a decision of the Central Public Information Officer or State Public Information Officer, may within 30 (thirty) days from the expiry of such period or from the receipt of such a decision prefer an appeal to such officer who is senior in rank to the Central Public Information Officer or State Public Information Officer as the case may be, in each public authority.

However, such officer may admit the appeal after the expiry of the period of thirty days if he or she is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Further, where an appeal is preferred against an order made by a Central Public Information Officer or a State Public Information Officer, under section 11 of RTI Act to disclose third party information, the appeal by the concerned third party shall be made within 30 (thirty days) from the date of the order.

Second Appeal: A second appeal against the decision in First appeal as mentioned above shall lie within 90 (ninety) days from the date on which the decision should have been made or was actually received, with the Central Information Commission or the State Information Commission.

However, the Central Information Commission or the State Information Commission, may admit the appeal after the expiry of the period of ninety days if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

Answer 4(b)

The subject of limitation is dealt with in entry 13, List III of the Constitution of India. The Legislature may, without violating the fundamental rights, enact statutes prescribing limitation within which actions may be brought or varying or changing the existing rules of limitation either by shortening or extending time provided a reasonable time is allowed for enforcement of the existing right of action which would become barred under the amended Statute.

The Statute of Limitation is not unconstitutional since it applies to right of action in future. It is a shield and not a weapon of offence.

The State cannot place any hindrance by prescribing a period of limitation in the way of an aggrieved person seeking to approach the Supreme Court of India under Article 32 of the Constitution. To put curbs in the way of enforcement of Fundamental Rights through legislative action might well be questioned under Article 13(2) of the Constitution. It is against the State action that Fundamental Rights are claimed (*Tilokchand Motichand v. H.P. Munshi, AIR 1970 SC 898*).

The Limitation Act does not in terms apply to a proceeding under Article 32 or Article 226 of the Constitution. But the Courts act on the analogy of the statute of limitation and refuse relief if the delay is more than the statutory period of limitation (*State of M.P. v. Bhai Lal Bhai, AIR 1964 SC 1006*). Where the remedy in a writ petition corresponds to a remedy in an ordinary suit and latter remedy is subject to bar of a statute of limitation, the Court in its writ jurisdiction adopts in the statute its own rule of procedure and in absence of special circumstances imposes the same limitation in the writ jurisdiction.

If the right to property is extinguished by prescription under Section 27 of the Limitation Act, 1963, there is no subsisting right to be enforced under Article 32 of the Constitution. In other case where the remedy only, not the right, is extinguished by limitation the Court will refuse to entertain stale claims on the ground of public policy (*Tilokchand Motichand v. H.P. Munshi, AIR 1970 SC 898*).

Answer 4(c)

Differentiation between rule of *res judicata* and *res subjudice*

- *Res judicata* means a matter is already decided and cannot be heard again. *Res judicata* prevents a second trial of the formerly settled disputes. Whereas *res subjudice* applies to the pending suit. It bars parallel proceedings. *Res subjudice* prevents parallel proceedings on the same matter.
- *Res judicata* is covered under Section 11 of the Code of Civil Procedure, 1908 whereas *Res subjudice* is covered under Section 10 of the Code of Civil Procedure, 1908.
- In *Res judicata* the suit had been decided by the competent court. The issue must be the same in subsequent and former suits. The suit must be filed between the same parties. The court must have jurisdiction. The former and subsequent suits have the same title. While in *Res subjudice*, there must be two suits and one must have already commenced. The matter in issue is the same. The suit was filed in a competent court. The suit must be pending in court. The title of the suit and the parties are the same.
- Aim of *Res judicata* is to end the litigation proceedings. While *Res subjudice* aims to prohibit parallel proceedings between the same parties.

Answer 4(d)

How an arrest should be made under section 46 of Criminal Procedure Code, 1973

In making an arrest the police officer or other person making the same shall actually touch or confine the body of the person to be arrested, unless there be a submission to the custody by word or action. However, where a woman is to be arrested, unless the circumstances indicate to the contrary, her submission to custody on an oral intimation of arrest shall be presumed and, unless the circumstances otherwise require or unless the police officer is a female, the police officer shall not touch the person of the woman for making her arrest.

If such person forcibly resists the endeavour to arrest him, or attempts to evade the arrest, such police officer or other person may use all means necessary to effect the arrest.

However, nothing in section 46 of Criminal Procedure Code gives a right to cause the death of a person who is not accused of an offence punishable with death or with imprisonment for life.

Moreover, save in exceptional circumstances, no woman shall be arrested after sunset and before sunrise, and where such exceptional circumstances exist, the woman police officer shall, by making a written report, obtain the prior permission of the Judicial Magistrate of the first class within whose local jurisdiction the offence is committed or the arrest is to be made.

Question 5

(a) X, a surgeon, knowing that a particular operation is likely to cause the death of Y and intending in good faith Y's benefit, operates on Y with Y's consent to relieve him of his pain. Y dies during the operation. What offence X has committed? Discuss any six general exceptions with an example provided under the Indian Penal Code, 1860 for a person accused of committing any offence.

(b) What instruments may be stamped with adhesive? Why and how affixed stamps are cancelled as per the Indian Stamp Act, 1899?

(8 marks each)

Answer 5(a)

Section 88 of Indian Penal Code, 1860 (IPC) provides that nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by

the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm.

According to illustration to section 88 of IPC, A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

The given situation is similar to the illustration mentioned above. X, the surgeon operates on Y intending in good faith Y's benefit with Y's consent to relieve him of his pain. It can be inferred from the situation that Y gave his consent with his will to take the risk of an operation and the likely harm. If Y is of age of majority and of a sound mind his consent will be a valid consent. So, it can be said that X, the surgeon will not be guilty of any offence as the death was not caused intentionally.

General exceptions under Indian Penal Code, 1860 for a person accused of committing any offence

The Indian Penal Code, 1860 also provides for general exceptions for a person accused of committing any offence under the Indian Penal Code to plead in his defense. General defences or exceptions are contained in Chapter IV of the IPC. In general exceptions to criminal liability there will be absence of *mens rea* (guilty mind) on the part of the wrong-doer. The general exemptions are as under:

1. Mistake of Fact- bound by law: According to section 76 of IPC, if any one commits any act which he is bound to do or mistakenly believes in good faith that he is bound by law to do it, he is not guilty. The mistake or ignorance must be of fact, but not of law. If the mistaken facts were true, the act would not be an offence. Mistake of fact, is a general defence based on the Common Law maxim – *Ignorantia Facti Excusat*, *ignorantia juris non excusat*- (Ignorance of fact excuses; Ignorance of law does not excuse). In mistake of fact the accused does not possess *mens rea* or guilty mind.

2. Act of Judge when acting judicially (section 77): If any judge in his authority in good faith believing authorized by law commits any act, no offence is attracted.

3. Act done pursuant to the judgment or order of Court (section 78): When any act is committed on judgment or order of the Court of Justice which is in force, it is no offence even if the judgment or order of the Court is without any jurisdiction, though the person who executes the judgment and order must believe that the Court has the jurisdiction. Section 77 protects judges from any criminal liability for their judicial acts. Section 78 extends this protection to ministerial and other staff, who may be required to execute orders of the court. If such immunity was not extended, then executing or implementing court orders would become impossible.

4. Mistake of Fact-justified by law: According to section 79 of the IPC, if any one commits any act which is justified by law or by reason of mistake of fact and not by reason of mistake of law believes himself to be justified by Law.

5. Accident in doing a lawful act: According to section 80, if any one commits any offence by accident or misfortune without *malafide* or without knowledge in performance of his legal duty in legal manner with proper care and caution is no offence. The protection under this section will apply only if the act is a result of an accident or a misfortune. The word 'accident' is derived from the Latin word '*accidere*' signifying 'fall upon, befall, happen, chance. It rather means an unintentional, an unexpected act. Thus, injuries caused due to accidents in games and sports are all covered by this section.

6. Act likely to cause harm, but done without criminal intent, and to prevent other harm (section 81): Any act done by anyone without any criminal intent for saving or preventing harm to third person or property in good faith is no offence. According to the 'explanation' to this section, it is a question of fact in such a case whether the harm to be prevented or avoided was of such a nature and so imminent as to justify or excuse the risk of doing the act with the knowledge that it was likely to cause harm.

7. Act of a child under seven years of age (section 82): If any child who is below seven years of age commits any offence, he is not guilty because it is the presumption of law that that a child below 7 years of age is incapable to having a criminal intention (*mens rea*) necessary to commit a crime.

8 Act of a child above seven and under twelve of immature understanding (section 83): If any minor child is in between seven and twelve years of age and not attained the maturity of what is wrong and contrary to law at the time of commission of offence is not liable to be convicted and punished.

9 Act of a person of unsound mind (section 84): Nothing done by any person of unsound mind is an offence if at the time of doing it, by reason of unsoundness of mind, is incapable of knowing the nature of the act, or that he is doing what is either wrong or contrary to law.

10. Act of a person incapable of judgment by reason of intoxication caused against his will (section 85): Nothing is an offence which is done by a person who, at the time of doing it, is, by reason of intoxication, incapable of knowing the nature of the act, or that he is doing what is either wrong, or contrary to law: provided that the thing which intoxicated him was administered to him without his knowledge or against his will.

11. Offence requiring a particular intent or knowledge committed by one who is intoxicated (section 86): In cases where an act done is not an offence unless done with a particular knowledge or intent, a person who does the act in a state of intoxication shall be liable to be dealt with as if he had the same knowledge as he would have had if he had not been intoxicated, unless the thing which intoxicated him was administered to him without his knowledge or against his will.

12. Act not intended and not known to be likely to cause death or grievous hurt, done by consent (section 87): When anyone commits any act without any intention to cause death or grievous hurt and which is not within the knowledge of that person to likely to cause death or grievous hurt to any person who is more than eighteen years of age and has consented to take the risk of that harm, the person doing the act has committed no offence.

This section is based on the principle of '*volenti non fit injuria*' which means he who consents suffers no injury. The policy behind this section is that everyone is the best judge of his own interest and no one consents to that which he considers injurious to his own interest.

13. Act not intended to cause death, done by consent in good faith for person's benefit (section 88): Nothing, which is not intended to cause death, is an offence by reason of any harm which it may cause, or be intended by the doer to cause, or be known by the doer to be likely to cause, to any person for whose benefit it is done in good faith, and who has given a consent, whether express or implied, to suffer that harm, or to take the risk of that harm. Section 88 extends the operation of consent to all acts except that of causing death intentionally provided that the act is done in good faith for the benefit of the consenting party.

I:- A, a surgeon, knowing that a particular operation is likely to cause the death of Z, who suffers under the painful complaint, but not intending to cause Z's death, and intending, in good faith, Z's benefit, performs that operation on Z, with Z's consent. A has committed no offence.

But if surgeon while performing the operation leaves a needle inside the abdomen of the patient who die due to septic- He would be liable criminally for causing death by negligence because he did not perform the operation with due care and caution.

14. On consent of guardian if any act is done in good faith to it (section 89): This section gives power to the guardian of a child under 12 years of age or a person of unsound mind to consent to do an act done by a third person for the benefit of the child or a person of unsound mind. Anything done by the third person will not be an offence provided that it is done in good faith and for the benefit of the child or a person of unsound mind. This section gives protection to the guardians as well as other person acting with the consent of a guardian of a person under 12 years of age or a person of unsound mind.

15. Consent (section 90): The consent is not valid if it is obtained from a person who is under fear of injury, or under a misconception of fact and if the person doing the act knows, or has reason to believe, that the consent was given in consequence of such fear or misconception. The consent is also not valid if it's given by a person who, from unsoundness of mind, or intoxication, is unable to understand the nature and consequence of that to which he gives his consent. The consent is given by a person who is under twelve years of age is also not valid unless the contrary appears from the context.

16. Exclusion of acts which are offences independently of harm caused (section 91): The exceptions in sections 87, 88 and 89 of IPC do not extend to acts which are offences independently of any harm which

they may cause, or be intended to cause, or be known to be likely to cause, to the person giving the consent, or on whose behalf the consent is given.

Illustration

Causing miscarriage (unless caused in good faith for the purpose of saving the life of the woman) is offence independently of any harm which it may cause or be intended to cause to the woman. Therefore, it is not an offence “by reason of such harm”; and the consent of the woman or of her guardian to the causing of such miscarriage does not justify the act.

17. Act done in good faith for benefit of a person without consent (section 92): Nothing is an offence by reason of any harm which it may cause to a person for whose benefit it is done in good faith, even without that person’s consent, if the circumstances are such that it is impossible for that person to signify consent, or if that person is incapable of giving consent, and has no guardian or other person in lawful charge of him from whom it is possible to obtain consent in time for the thing to be done with benefit. This defense is subject to certain exceptions.

18. Communication made in good faith (section 93): No communication made in good faith is an offence by reason of any harm to the person to whom it is made, if it is made for the benefit of that person.

Illustration: A, a surgeon, in good faith, communicates to a patient his opinion that he cannot live. The patient dies in consequence of the shock. A has committed no offence, though he knew it to be likely that the communication might cause the patient’s death.

19. Act to which a person is compelled by threats (section 94): Except murder, and offences against the State punishable with death, nothing is an offence which is done by a person who is compelled to do it by threats, which, at the time of doing it, reasonably cause the apprehension that instant death to that person will otherwise be the consequence. For this defense to be valid the person acting under threat should not have himself put under such a situation.

20. Act causing slight harm (section 95): Nothing is an offence by reason that it causes, or that it is intended to cause, or that it is known to be likely to cause, any harm, if that harm is so slight that no person of ordinary sense and temper would complain of such harm.

Answer 5(b)

Instruments which may stamped with Adhesive Stamps

Section 11 of Indian Stamp Act, 1899 provides the provisions relating to Use of adhesive stamps. The following instruments may be stamped with adhesive stamps, namely:

- a) instruments chargeable with a duty not exceeding ten naye paise, except parts of bills of exchange payable otherwise than on demand and drawn in sets;
- (b) bills of exchange, and promissory notes drawn or made out of India;
- (c) entry as an advocate, vakil or attorney on the roll of a High Court;
- (d) notarial acts; and
- (e) transfers by endorsement of shares in any incorporated company or other body corporate.

Why affixed stamps are cancelled

Section 12(1)(a) of Indian Stamp Act, 1899 provides that any person affixing any adhesive stamp to any instrument chargeable with duty which has been executed by another person shall, when affixing such stamp cancel the same so that it cannot be used again. Under section 12(1)(b), an obligation has been imposed on person executing any instrument on any paper bearing an adhesive stamp, to cancel the stamp, if such cancellation has not been done, at the time of such execution. If a person fails to cancel the stamp, he becomes liable to penalty in accordance with Section 63. The object is to prevent the same stamp from being used again.

Under section 12(2), any instrument bearing an adhesive stamp which has not been cancelled is deemed to be unstamped.

How affixed stamps are cancelled

Section 12(3) deals with the mode of cancellation of stamp. It provides that the cancellation of an adhesive stamp may be done by the person concerned by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner. Sub-section (3) merely lays down as a guidance one of the ways in which an adhesive stamp can be cancelled.

Further, the cases decided by the courts have also held few modes as valid, which are as under:

- (i) By merely drawing a line across it.
- (ii) Drawing of diagonal lines right across the stamps with ends extending on to the paper of the document.
- (iii) A cross marked by an illiterate person indicating his acknowledgement.

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

Question 6

(a) What are the public nuisances against which conditional order for removal can be made under Section 133 of the Criminal Procedure Code, 1973?

(4 marks)

(b) List any eight (8) acts done without permission of the owner under the Information Technology Act, 2000 that makes a person liable to pay damages by way of compensation.

(4 marks)

(c) "Every confession must be an admission but every admission may not amount to a confession." Examine this statement.

(4 marks)

(d) Briefly state the essential features of an Arbitral Award under the Arbitration and Conciliation Act, 1996.

(4 marks)

OR (Alternate question to Q. No. 6)

Question 6A

(i) Discuss the provisions related to the place of registration of documents affecting immovable property as per the Registration Act, 1908.

(ii) Explain the object of interpretation. What is the function of the court in interpretation?

(iii) Discuss the principle of protection against compulsion of self-incrimination embodied in Article 20(3) of the Constitution of India with the help of judicial decisions.

(iv) According to Kelsen, law is a "normative science". Explain.

(4 marks each)

Answer 6(a)

According to section 133 of the Criminal Procedure Code, 1973, the following are the public nuisances against which conditional order for removal can be made:

- (1) that any unlawful obstruction or nuisance should be removed from any public place or from any way, river or channel which is or may be lawfully used by the public; or
- (2) that the conduct of any trade or occupation, or the keeping of any goods or merchandise, is injurious to the health or physical comfort of the community, and that in consequence such trade or occupation should be prohibited or regulated or such goods or merchandise should be removed or the keeping thereof regulated; or
- (3) that the construction of any building, or, the disposal of any substance, as is likely to occasion configuration or explosion, should be prevented or stopped; or

(4) that any building, tent or structure, or any tree is in such a condition that it is likely to fall and thereby cause injury to persons living or carrying on business in the neighbourhood or passing by, and that in consequence the removal, repair or support of such building, tent or structure, or the removal or support of such tree, is necessary; or

(5) that any tank, well or excavation adjacent to any such way or public place should be fenced in such manner as to prevent danger arising to the public; or

(6) that any dangerous animal should be destroyed, confined or otherwise disposed of.

Answer 6(b)

Section 43 of the Information Technology Act, 2000 provides the provisions relating to Penalty and compensation for damage to computer, computer system, etc. It states:

If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network:

(a) accesses or secures access to such computer, computer system or computer network or computer resource;

(b) downloads, copies or extracts any data, computer data base or information from such computer, computer system or computer network including information or data held or stored in any removable storage medium;

(c) introduces or causes to be introduced any computer contaminant or computer virus into any computer, computer system or computer network;

(d) damages or causes to be damaged any computer, computer system or computer network, data, computer data base or any other programmes residing in such computer, computer system or computer network;

(e) disrupts or causes disruption of any computer, computer system or computer network;

(f) denies or causes the denial of access to any person authorised to access any computer, computer system or computer network by any means;

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of the Information Technology Act, 2000 rules or regulations made thereunder;

(h) charges the services availed of by a person to the account of another person by tampering with or manipulating any computer, computer system, or computer network;

(i) destroys, deletes or alters any information residing in a computer resource or diminishes its value or utility or affects it injuriously by any means;

(j) steal, conceal, destroys or alters or causes any person to steal, conceal, destroy or alter any computer source code used for a computer resource with an intention to cause damage;

he shall be liable to pay damages by way of compensation to the person so affected.

Answer 6(c)

Admissions are define under section 17 of the Indian Evidence Act, 1872(the Act). It states:

An admission is a statement, oral or documentary or contained in electronic form, which suggests any inference as to any fact in issue or relevant fact, and which is made by any of the persons, and under the circumstances, mentioned in the Act after section 17.

Sections 24 to 30 of the Act deal with confessions. However, the Act does not define a confession but includes in it admissions of which it is a species. Thus confessions are special form of admissions. Whereas every confession must be an admission but every admission may not amount to a confession.

A confession, however, is received in evidence for the same reason as an admission, and like an admission it must be considered as a whole. Further, there can be an admission either in a civil or a criminal

proceedings, whereas there can be a confession only in criminal proceedings. An admission need not be voluntary to be relevant, though it may affect its weight; but a confession to be relevant, must be voluntary. There can be relevant admission made by an agent or even a stranger, but, a confession to be relevant must be made by the accused himself. A confession of a co-accused is not strictly relevant, though it may be taken into consideration, under Section 30 of the Act in special circumstances.

In view of the above, it can be said that "Every confession must be an admission but every admission may not amount to a confession".

Answer 6(d)

As per Section 2(1)(c) of the Arbitration and Conciliation Act, 1996(the Act), "arbitral award" includes an interim award. This definition does not give much detail of the ingredients of an arbitral award. However, taking into account various other provisions of the Act, an award can have following essential features:

1. Written and stamped: An award is required to be made in writing. The arbitral award is required to be made on stamp paper of prescribed value (as applicable at the place of making the award) and in writing. An oral decision is not an award under the law.

2. Signed: The award is to be signed by the members of the arbitral tribunal. However, the signature of majority of the members of the tribunal is sufficient if the reason for any omitted signature is stated.

3. Reasoned: The making of an award is a rational process which is accentuated by recording the reasons. The award should contain reasons.

However, there are two exceptions where an award without reasons is valid i.e.

(a) Where the arbitration agreement expressly provides that no reasons are to be given, or

(b) Where the award has been made under Section 30 of the Act i.e. where the parties settled the dispute and the arbitral tribunal has recorded the settlement in the form of an arbitral award on agreed terms.

4. Dated: The award should be dated i.e. the date of making of the award should be mentioned in the award.

5. Mention of Place: Place of arbitration is important for the determination of rules applicable to substance of dispute, and recourse against the award. The arbitral tribunal is under obligation to state the place of arbitration as determined in accordance with Section 20 of the Act. Place of arbitration refers to the jurisdiction of the Court of a particular city or State.

6. Clarity of Value and Interest: The arbitral tribunal may include in the sum for which award is made, interest up to the date of award and also a direction regarding future interest.

7. Cost of Arbitration: The award may also include decisions and directions of the arbitrator regarding the cost of the arbitration.

8. Delivery of copies: After the award is made, a signed copy should be delivered to each party for appropriate action like implementation or recourse against arbitral award.

Answer 6A (i)

Section 28 of the Registration Act, 1908(the Act) provides the provision relating to Place for registering documents relating to land. It states:

Save as in this Part otherwise provided, every document mentioned in section 17, sub-section (1), clauses (a), (b), (c) , (d) and (e), section 17, sub-section (2), insofar as such document affects immovable property, and section 18, clauses (a), (b) (c) and (cc), shall be presented for registration in the office of a Sub-Registrar within whose sub district the whole or some portion of the property to which such document relates is situate.

According to section 30 of the Act, any Registrar may in his discretion receive and register any document which might be registered by any Sub-Registrar subordinate to him.

According to section 31 of the Act, in ordinary cases the registration or deposit of documents under the Act shall be made only at the office of the officer authorised to accept the same for registration or deposit. However, such officer may on special cause being shown attend at the residence of any person desiring to present a document for registration or to deposit a will, and accept for registration or deposit such document or will.

Answer 6A (ii)

Object of Interpretation

The object of interpretation has been explained in Halsbury's Laws of England. It states: "The object of all interpretation of a 'Written Document' is to discover the intention of the author, the written declaration of whose mind the document is always considered to be. Consequently, the construction must be as near to the minds and apparent intention of the parties as possible, and as the law will permit. The object of interpretation is to see what is the intention expressed by the words used. The words of the statute are to be interpreted so as to ascertain the mind of the legislature from the natural and grammatical meaning of the words which it has used. According to Salmond, interpretation or construction is the process by which the Court's seek to ascertain the meaning of the legislature through the medium of the authoritative forms in which it is expressed.

Functions of the Courts in Interpretation

The function of the court is to ascertain what the parties meant by the words which they have used; to declare the meaning of what is written in the instrument, and not of what was intended to have been written; to give effect to the intention as expressed, the expressed meaning being, for the purpose of interpretation, equivalent of the intention. It is not possible to guess at the intention of the parties and substitute the presumed for the expressed intention. The ordinary rules of construction must be applied, although by doing so the real intention of the parties may, in some instances be defeated. Such a course tends to establish a greater degree of certainty in the administration of the law".

Answer 6A (iii)

According to Article 20(3) of the Constitution of India, no person accused of any offence shall be compelled to be a witness against himself. In other words, an accused cannot be compelled to state anything which goes against him. But it is to be noted that a person is entitled to this protection, only when all the three conditions are fulfilled:

1. that he must be accused of an offence;
2. that there must be a compulsion to be a witness; and
3. such compulsion should result in his giving evidence against himself

So, if the person was not an accused when he made a statement or the statement was not made as a witness or it was made by him without compulsion and does not result as a statement against himself, then the protection available under this provision does not extend to such person or to such statement.

The 'right against self-incrimination' protects persons who have been formally accused as well as those who are examined as suspects in criminal cases. It also extends to cover witnesses who apprehend that their answers could expose them to criminal charges in the ongoing investigation or even in cases other than the one being investigated. [*Selvi v. State of Karnataka, AIR 2010 SC 1974*].

Answer 6A (iv)

Kelsen described law as a "normative science" as distinguished from natural sciences which are based on cause and effect, such as law of gravitation. The laws of natural science are capable of being accurately described, determined and discovered whereas the science of law is knowledge of what law ought to be. According to Kelsen, 'law is a primary norm which stipulates sanction'.

According to Kelsen, 'norm (sanction) is rules forbidding or prescribing a certain behaviour'. He saw legal order as the hierarchy of norms having sanction, and jurisprudence was the study of these norms which comprised legal order. Kelsen distinguished moral norm with legal norm and said that though moral norms

are 'ought' prepositions, a violation of it does not have any penal fallout. The 'ought' in the legal norm refers to the sanction to be applied for violation of law.

According to Kelsen, we attach legal-normative meaning to certain actions and not to others depending on whether that event is accorded any legal-normative by any other legal norm. This second norm gains its validity from some other norm that is placed above it. The successive authorizations come to an end at the highest possible norm which was termed by Kelsen as 'Grundnorm'. Thus, Kelsen's pure theory of law is based on pyramidal structure of hierarchy of norms which derive their validity from the basic norm. Grundnorm or basic norm determines the content and gives validity to other norms derived from it. Under Kelsen's pure theory, the Grundnorm does not derive its validity from any other norm and its validity must be presupposed. In his view the basic norm is the result of social, economic, political and other conditions and it is supposed to be valid by itself.

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE: 1. Answer ALL Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

PART-1

Question 1

(a) Explain the exceptions, if any, to the Majority Rule in *Foss v. Harbottle* case law.

(5 marks)

(b) Comment on the following:

(i) Credit rating at the time of accepting Deposit by a company is mandatory.

(ii) No company can invite Deposit without entering into a contract for deposit insurance

(iii) Creation of security for repayment of Deposit is not mandatory for all companies while accepting Deposit.

(iv) Trustees for Depositors can be removed by a simple majority.

(v) Only remedy for Depositors in case of default in repayment of Deposit by the company is to file a suit.

(5 marks)

(c) *Shortwalkers Limited* was a listed company operating fitness centres all over India. In their Meeting on 1st April, 2022 the Board of directors of the company approved purchase of gym equipment for ₹ 75 crore from *Fitness Solutions (Private) Limited* a company managed by Anita, wife of Sunil, the CFO of *Shortwalkers Limited*. The annual turnover of *Shortwalkers Limited* for the last financial year is ₹ 500 crore. The entire shareholding of *Fitness Solutions (Private) Limited* was held by Anita and two other directors.

In his report to the shareholders of *Shortwalkers Limited*, the auditor of the company made adverse remarks on the transaction stating that the approval of the Audit Committee and special resolution were not obtained before approving the deal.

The Board, in their report to the shareholders remarked that the purchase transaction was at arm's length price and Sunil, was not a related party and approval of audit committee and the shareholders was not necessary.

Referring to provisions of Companies Act, 2013, examine the submissions of the Board.

(5 marks)

(d) State the provisions of the Companies Act, 2013 for the issue of bonus shares by a listed company:

(i) Can a company declare bonus shares in lieu of dividend?

(ii) Is bonus shares same as stock dividend?

(5 marks)

Answer 1(a)

Exceptions to the majority rule:

- The majority rule in *Foss v Harbottle* 67 E.R. 189 ; (1843) 2 Hare 461 states that no action can be brought by a minority member against the directors in respect of a wrong alleged to be committed to the company. However, the rule in *Foss v Harbottle* is not absolute but is subject to certain exceptions. Apart from the protection by the Companies Act, 2013, the minority shareholders are also protected by common law i.e., unwritten customs and practices having the force of law.
- In a noted case *ICICI v Parasurampuria Synthetics limited*, the Delhi High Court has ruled that an automatic application of the rule of majority as enunciated in *Foss v Harbottle* to the Indian corporate realities case would not be proper. The Court has said that though financial institutions hold only a small percentage of the shares in a company, they provide the bulk of finance as working capital for the continuous day-to-day operations of

the company and therefore, to exclude them or to render them voiceless on application of the principles of *Foss v Harbottle* Rule would be unjust and unfair.

- The Rule also does not apply in case of *ultra-virus* acts. Where the directors representing the majority of shareholders perform an illegal act or *ultra-virus* act for the company, an individual shareholder has the right to bring an action / law suit to restrain the company by an order or an injunction of the Court from the carrying on any *ultra-virus* act by the company as decided in *Bharat Insurance Limited v Kanhya Lal* (A.I R 1935) case.
- When an act done by the majority amounts to a fraud on the minority shareholders, an action to restrain the company or the wrong doers can be brought by even an individual shareholder. The Court will see whether the resolution passed by the majority is bonafide for the benefit of the company as a whole (*Allen v Gold Reefs of West Africa case law*).
- If the wrong doers are in control of the company, the minority shareholders can take legal action for fraud by the majority.

The Court may entertain the plea because, if the minority shareholders are denied the right of legal action, their grievance would never reach the Court as the wrongdoers themselves being in control of the affairs of the company, they will never allow the company to sue the majority shareholders as decided in a case law (*Edwards v Haliwell* (1970) 2 All E.R)

Answer 1(b)

(i) According to Rule 3 of the Companies (Acceptance of Deposit) Rules, 2014, every eligible company shall obtain, at least once in a year, credit rating for deposits accepted by it and a copy of the rating shall be sent to the Registrar of Companies alongwith the return of deposits in Form DPT-3.

According to Rule 2(1)(e) of the Companies (Acceptance of Deposits) Rules, 2014 “eligible company” means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees of a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a resolution and also filed the said resolution with the Registrar of Companies before making any invitation to the Public for acceptance of deposits.

Credit rating is not mandatory for private companies and other non-eligible public companies which accept deposit only from its members.

(ii) The provision related to extent and manner of deposit insurance has been omitted according to Companies (Acceptance of Deposits) Amendment Rules, 2018 dated 05.07.2018. Therefore, the company can invite the deposits without entering into contract for deposit insurance.

(iii) As per rule 6 of the Companies (Acceptance of Deposits) Rules, 2014: Every company referred in Section 73(2) and eligible company as defined under Rule 2 of the Companies (Acceptance of Deposits) Rules, 2014, accepting deposits from its members shall provide security by creating charge on the assets of the company as referred to in Schedule III of the Act excluding its intangible assets.

(iv) As per rule 7 of the Companies (Acceptance of Deposits) Rules, 2014: Trustees for depositors can only be removed from office before the expiry of their term with the unanimous consent of all directors present at the meeting of Board of Directors. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

(v) Section 73(4) of the Companies Act, 2013 states that, where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

In addition to filing a suit before NCLT for repayment of deposit with accumulated interest, hundred or more depositors or depositors holding at least five percent of the total outstanding deposit can initiate a class action suit under section 245 of the Act before the NCLT.

Answer 1(c)

Section 188 of the Act, provides that except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as prescribed under Rule 15 of the Companies (Meetings of Board and its Powers) Rules, 2014, no company shall enter into any contract or arrangement with a related party with respect to —

- i. sale, purchase or supply of any goods or materials;
- ii. selling or otherwise disposing of, or buying, property of any kind;
- iii. leasing of property of any kind;
- iv. availing or rendering of any services;
- v. appointment of any agent for purchase or sale of goods, materials, services or property;
- vi. such related party's appointment to office or place of profit in the company, its subsidiary company or associate company; and
- vii. underwriting the subscription of any securities or derivatives thereof, of the company.

However, such approval by the Board of Directors will not be required for transactions entered in the ordinary course of business and on an arm's length basis. In other words, approval of the Board of Directors will only be required for related party transactions which are either not in the ordinary course of business or not on an arm's length basis.

- Under regulation 23 of SEBI Listing Obligations and Disclosure Requirements) Regulations, 2015, (LODR), transaction with a related party shall be considered material if the transaction(s) to be entered into individually or taken together with previous transactions during a financial year exceeds rupees one thousand crore or ten percent of the consolidated turnover of the listed entity as per the last audited financial statements of the listed entity, whichever is lower. The transaction entered here in case of Shortwalkers Ltd., shall be approved by Audit Committee as well as by the members in a general meeting, if the same exceeds 10% (Rs. 500Crores* 10%= Rs. 50 Crores) of the annual consolidated turnover as stated above.
- According to Section 2(76) of the Act, related party includes a KMP or his relative. As per Section 2(77) of the Act, relative includes wife and daughters. Hence, the contention of the Board that the supplier, i.e, Fitness Solutions (Pvt) Limited has neither a director nor his relative of Shortwalkers Limited as its director is not acceptable.
- Section 188(1) does not apply to any transaction entered into by the company in the ordinary course of business which are on arm's length basis.
- According to Section 188(2) of the Act, arm's length transaction means a transaction between two related parties that were conducted as if they were not related so that there was no conflict of interest.

In the instant case, since the transaction was between two related parties, due process should have been followed including approval of audit committee and approval of the company in general meeting by an ordinary resolution. The contention of auditor is correct.

Answer 1(d)

According to Section 63 of Companies Act, 2013: A company can issue fully paid-up bonus shares to its members in any manner, out of its free reserves, security premium or capital redemption reserve account. However, no bonus shares can be issued by capitalising reserves created by the revaluation of assets.

A company can capitalise its profits by issuing fully paid-up bonus shares only when-

- a) It is authorized by its articles and the shares are fully paid-up;
- b) It has been, on the recommendation of the Board of Directors, authorized in the General Meeting of the company by a special resolution;
- c) In case of listed company, an ordinary resolution will suffice;
- d) It is not defaulted on repayment of the principal or payment of interest on deposits or debt securities issued by it;
- e) It has not defaulted on payment of statutory dues of its employees such as, contribution to provident fund, gratuity and bonus.

(i) According to Section 63(3) of Companies Act, 2013, a company shall not issue bonus shares in lieu of dividend.

(ii) Yes, Stock dividend is the same as issue of bonus shares.

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

Question 2.

a) *Amar, Akash and Ashish were the owners of a coffee estate in Munnar. They registered a new company called Mandoli Coffee Estate Private Limited and transferred their coffee estate to the newly formed company.*

They claimed exemption from paying Registration charges and Stamp duty on the ground that since they were the only shareholders of the company, the transaction was nothing but transfer by them from one name to themselves in another name. Referring to the provisions of Companies Act, 2013, is their claim tenable?

(3 marks)

(b) *The Board of Customerlast Limited, an unlisted public company is exploring ways to increase its paid-up share capital from ₹ 125 crore to ₹ 150 crore. The CFO of the company suggested that instead of offering shares to all existing shareholders as a rights issue the company can issue further shares by private placement to four identified Qualified Institutional Buyers and the top 250 existing shareholders by receiving cash without offering shares to other shareholders.*

The company secretary of the company objects to the manner of raising further capital, i.e. the offerings to the select shareholders as well as receiving cash.

Referring to the provisions of Companies Act, 2013 decide.

(3 marks)

(c) *Harsh is a promoter director of Himmat Pvt. Ltd. He borrowed some funds from his friend for a certain purpose but the same is lying idle at present. Thus, he plans to give loan to the company for working capital needs. Harsh has approached you, a Practising Company Secretary, for suggestion, if there is any situation where such loan will not constitute Deposit. Advise Harsh with reference to the provisions of the Companies Act, 2013.*

(3 marks)

(d) *Magnificent Ltd. has filed various e-forms with Registrar of Companies due to various events in the Company. With reference to e-filing of forms, State for which services/ eforms, process for refund of fee is not applicable.*

(3 marks)

(e) *Stunning Commodities Ltd.* gave notice seeking information from *Ujjwal* (not a member of the Company) whom the company has reasonable cause to believe to be having knowledge of the identity of a significant beneficial owner (SBO) of the company. It is observed that information given by *Ujjwal* is not satisfactory. You are General Manager (Secretarial) of the Company. The CEO of the Company asks you for further action to be taken by the company on this, if any. Please advise.

(3 marks)

OR (Alternate question to Q. No. 2)

Question 2A.

(i) The legislative authority for enacting corporate laws and securities laws in India is distinctly different from the authority for enactment of corporate laws and securities laws in USA. Explain.

(3 marks)

(ii) Mr. Raj who is a resident of Bengaluru, sent a Transfer Deed for registration of transfer of shares, to the company at the address of its registered office in Delhi. He did not receive the share certificates even after the expiry of six months from the date of dispatch of transfer deed. He lodged a criminal complaint in the court at Bengaluru. Decide under the provisions of the Companies Act, 2013, whether the court at Bengaluru is competent to take action in the said matter?

(3 marks)

(iii) Write short note on Capital Redemption Reserve Account.

(3 marks)

(iv) As a Company Secretary, advise your client whether the following matters can be transacted by getting a resolution passed through postal ballots :

(a) Issue of shares with differential voting rights

(b) Sale of the whole of the undertaking of the Company

(c) Buy-back of own shares by the Company.

(3 marks)

(v) The Board of directors of ZED Ltd. (Listed Company) is actively considering a proposal to buy back its shares. Naveen has recently joined the Board as an Additional Director. You are the senior partner of a firm of Company Secretaries and Naveen has sought your views, if there is any requirement for filing Declaration of Solvency by the company with any regulatory authority and particulars thereof. Also, what would be the time gap between two buy-backs. Advise Naveen in the light of the provisions of the Companies Act, 2013.

(3 marks)

Answer 2(a)

The facts of the case is similar to the case *Re. Kandoli Tea Co Ltd (1886) ILR 13 Cal 43*, which is even earlier than the celebrated case law in *Salomon v Salomon Co Ltd*, the Calcutta High Court rejected their plea and observed that the company was a separate person, a separate body altogether different from the shareholders and the transfer was as much a conveyance, a transfer of property, as if the shareholders were totally different persons.

It was recognized as the principle of "Lifting of the corporate veil." According to this principle the company is a separate legal entity which confers its own rights and duties.

Based on the well settled principle that a company is a separate, distinct juristic person different from its shareholders, the argument of Amar and others, are not tenable.

Answer 2(b)

1. As per Explanation I under Section 42(3) of the Act, "private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application (Form PAS-4), which satisfies the conditions specified in this section. As per Rule 14(1) of Companies (Prospectus and Allotment of Securities) Rules, 2014 a company shall not make an offer or invitation to subscribe to securities through private placement unless the proposal has been previously approved by the shareholders of the company, by a special resolution for each of the offers or invitations. Hence, the proposal of CFO on further raising of share capital by private placement is *prima facie* valid.
2. As per Rule 14(2) of Companies (Prospectus and Allotment of Securities) Rules, 2014: an offer or invitation to subscribe securities under private placement shall not be made to persons more than two hundred in the aggregate in a financial year: Provided that any offer or invitation made to qualified institutional buyers, or to employees of the company under a scheme of employees stock option as per provisions of section 62(1) (b) shall not be considered while calculating the limit of two hundred persons. In light of above provisions, the proposal to issue offer letter to Four QIBs is valid. But the company cannot issue securities under private placement to the top 250 shareholders.
3. As per Section 42(4) of the Companies Act, 2013: Every identified person willing to subscribe to the private placement issue shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash. Hence, the suggestion of CFO on receiving consideration by cash payment is not valid. In the light of above provisions, the objection of CS in raising the further capital through private placement is not correct. However, his objection to an offer or invitation to subscribe securities under private placement to 250 members and receiving the same in cash is correct.

Answer 2(c)

According to the section 2(31) of the Act read with Rule 2(1)(c) of Companies (Acceptance of Deposits) Rules, 2014, 'deposit' includes *inter alia* any receipt of money by way of deposit or loan or in any other form by a company, but does not include-

Rule 2(1)(c) (viii)- any amount received from a person who, at the time of the receipt of the amount, was a director of the company or a relative of the director of the private company. Provided that the director of the company or relative of the director of the private company, as the case may be, from whom money is received, furnishes to the company at the time of giving the money, a declaration in writing to the effect that the amount is not being given out of funds acquired by him by borrowing or accepting loans or deposits from others and the company shall disclose the details of money so accepted in the Board's report.

In the given case, Harsh has borrowed money from his friend. If he gives the same borrowed money to the company, he cannot give declaration in writing under the above sub rule and hence, if he does so, it will be in violation of the Act.

Rule 2(1)(c)(xiii)- Any amount brought in by the promoters of the company by way of unsecured loan in pursuance of the stipulation of any lending financial institution or a bank subject to fulfilment of the following conditions:- (a) the loan is brought in pursuance of the stipulation imposed by the lending institutions on the promoters to contribute such finance ; and (b) the loan is provided by the promoters themselves or by their relatives or by both; and (c) the exemption under this sub-clause shall be available only till the loans of financial institution or banks are repaid and not thereafter.

Thus, loan given by Harsh to Himmat Pvt. Ltd. will not be considered as Deposit if the loan satisfies the conditions as per rule 2(1)(c)(xiii) of the Companies (Acceptance of Deposits) Rules, 2014.

Answer 2(d)

The refund of MCA-21 fees is available in cases of multiple, incorrect and excess payments. It has to be informed to Magnificent Ltd. that refund process is not applicable for the following services/eforms:

- Public inspection of documents;
- Request for certified copies;
- Payment for transfer deeds;
- Stamp duty fee;
- IEPF payment;
- STP Forms;
- Form DIR-3.

Answer 2(e)

As per Section 90(5) of Companies Act, 2013, the Company shall give notice in Form BEN -4 to any person (whether or not a member of the company) whom the company knows or has reasonable cause to believe— to be having knowledge of the identity of a significant beneficial owner or another person likely to have such knowledge; And according to Section 90(7) of the Companies Act, 2013, the company shall—

(a) where that person fails to give the company the information required by the notice within the time specified therein; or

(b) where the information given is not satisfactory,

apply to the Tribunal within a period of fifteen days of the expiry of the period specified in the notice (Form BEN-4), for an order directing that the shares in question be subject to restrictions including:

(a) Restrictions on the transfer of interest attached to the shares in question;

(b) Suspension of the right to receive dividend or any other distribution in relation to the shares in question;

(c) Suspension of voting rights in relation to the shares in question

(d) Any other restriction on all or any of the rights attached with the shares in question.

In the light of the above Stunning Commodities Ltd. gave notice seeking information from Ujjwal (not a member of the company) whom the company has reasonable cause to believe to be having knowledge of the identity of the Significant Beneficial Owner (SBO) of the Company. It is observed that information given by Ujjwal is not satisfactory. Accordingly, the CEO has to be informed that the company can apply to Tribunal for order directing the shares in question be subject to restrictions.

Answer 2A (i)

In India both securities and corporate laws are centralized with the Parliament being the sole authority for enacting these statutes.

For example, Companies Act, 2013, Securities Contract (Regulation) Act, 1956, Limited Liability Partnership Act, 2008, Income Tax Act, 1961 are all important central laws uniformly applicable across the States and Union Territories in India.

ii) On the other hand, the corporate laws in USA are enacted and administered by the individual States having their own Constitution with the Secretary of State for the individual states looking after the incorporation and administration of Companies Act of that individual State.

Thus, in USA each State is competing with other states to attract companies to set up shop by offering easier incorporation terms and tax incentives.

iii) However, like in India, the security laws of USA are administered by a single, powerful central Authority called Securities Exchange Commission (SEC) which oversees the administration of stock exchanges.

This is similar to Security Exchange Board of India (SEBI) which administers securities listed on recognized stock exchanges while the Ministry of Corporate Affairs (MCA) administers the Companies Act, 2013 and Allied Acts for regulating the functioning of the corporate sector.

Answer 2A (ii)

According to Section 56(1) of the Companies Act, 2013 a company shall not register a transfer of securities of the company, unless a proper instrument of transfer duly stamped, dated and executed by or on behalf of the transferor and transferee has been delivered to the company by the transferor or transferee within a period of 60 days from the date of execution along with the share certificates relating to the securities, or if no such certificate is in existence, then along with the related certificate or letter of allotment of the securities.

According to Section 56(4) of the Companies Act, 2013 every company unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer. Hence, in the given case, if all the required formalities are duly complied with by the Transferor or Transferee, the Company was required to issue share certificate(s) within the stipulated time period.

Further, under section 56(6), where any default is made in complying with the provisions of sub-section (1) to (5) of Section 56 (which deals with transfer and transmission of shares), the company and every officer of the company who is in default shall be liable to a penalty of fifty thousand rupees.

The jurisdiction binding on the company is that of the State in which the registered office of the company is situated. Hence, in the given case the Bengaluru Court is not competent to take action in the matter.

- As per Section 55(2) (c) of the Companies Act, 2013 (Act), where preference shares of a company are proposed to be redeemed out of profits of the company, a sum equal to the nominal amount of preference shares to be redeemed shall be transferred to Capital Redemption Reserve account.
- The provision of the Act on reduction of capital under section 66 shall apply as if the Capital Redemption Reserve account is part of the paid-up share capital of the company.
- Again, under section 69 of the Act dealing with buy-back regulations, where a company purchases its own shares out of free reserves or security premium account, a sum equal to nominal value of the shares bought back shall be transferred to Capital Redemption Reserve account and also disclosed in the balance sheet.
- The amount in Capital Redemption Reserve account can be applied under section 69(2) of the Act by the company in paying up unissued shares of the company to be issued to members of the company as fully paid-up bonus shares under section 63 of the Act.

Answer 2A (iv)

As per rule 22 of the Companies (Management and Administration) Rules, 2014 below mentioned matters can be transacted through postal ballot subject to certain conditions:

- i. Issue of shares with differential voting rights;
- ii. Sale of the Whole of the Undertaking of a company;
- iii. Buy back of own shares by the company.

The rule 22 also states that-

- Any aforesaid items of business, required to be transacted by means of postal ballot, may be transacted at a general meeting by a company which is required to provide the facility to members to vote by electronic means under section 108, in the manner provided in that section.
- One Person Companies and other companies having members' upto two hundred are not required to transact any business through postal ballot.

In the light of above provisions, the company secretary can advise in following ways:

In case the company is having members less than 200: They are exempted to transact the business through postal ballot.

In case the company is listed company and is having members more than 1000: They may transact these business in general meeting.

For the companies apart from above two categories are required to transact the business through postal ballot.

Answer 2A(v)

This provision is covered under section 68(6) of the Companies Act, 2013 read with Rule 17(3) of Companies (Share Capital and Debenture) Rules, 2014. When a company proposes to buy-back its own shares or other specified securities under this section in pursuance of a special resolution or board resolution as the case may be, it shall, before making such buy back, file with Registrar and the Securities & Exchange Board of India (in case of listed companies), a declaration of solvency signed by at least 2 directors of the company, one of whom shall be the managing director, if any, in Form SH-9 and verified by an affidavit to the effect that the Board of Directors of the Company has made a full inquiry into the affairs of the company as a result of which they have formed an opinion that it is capable of meeting its liabilities and will not rendered insolvent within a period of one year from the date of declaration adopted by the Board.

As per proviso to section 68(2)(g) no offer of buy-back under section 68(2) shall be made within a period of one year reckoned from the date of the closure of the preceding offer of buy- back, if any.

Naveen who has recently joined the Board as an additional director should be apprised accordingly.

Question 3.

(a) You are a Speaker on Corporate Laws at a Seminar. One person from the audience has sought your opinion on the following matters:

(i) Can an Insolvent be a member in a company?

(ii) Can a Receiver be a member in a company?

(iii) How does an investor avail services of a Depository in case of pledge of shares?

(1+2+2=5 marks)

(b) A newly appointed auditor of a listed company came across the evidence of under invoicing of exports, round tripping of funds through tax heavens and fraudulent siphoning of funds amounting to ten million USD. Explain the further course of action by the auditor. Also explain what is fraud?

(5 marks)

(c) With reference to the provisions of Singapore Companies Act, explain when a Private Company need not hold annual general meeting? What is the due date of holding the annual general meeting of listed public company?

(3+2=5 marks)

Answer 3(a)

- i. Insolvent as member: Yes, An insolvent may be member as long as he is on the Register of members. He is entitled to vote, but he loses all beneficial interest in the shares and company will pay dividend on his shares to the Official Assignee or Receiver (Morgan Vs. Gray, (1953) ALL E.R. 213)
- ii. Receiver: A receiver whose name is not entered in the register of members cannot exercise any of the membership rights attached to a share unless in a proceeding to which company is a party and an order is made therein. Mere appointment of a receiver in respect of certain shares of a company without more rights cannot, deprive the holder of the shares whose name is entered in the Register of Members of the Company, the right to vote at the meeting of the company. [Balakrishna Gupta v. Swadeshi Polytext Ltd. (1985) 58 Com Cases 563 (S.C.)]
- iii. In the case of pledge: Before creation of any pledge or hypothecation in respect of a security, the beneficial owner is required to obtain prior approval of the depository and on creation of pledge or hypothecation; the beneficial owner shall give intimation of such pledge or hypothecation to the

depository. The depository shall make appropriate entries in its records which will be admissible as evidence.

Answer 3(b)

Meaning of Fraud:

According to Section 447 of Companies Act, 2013, fraud, in relation to the affairs of a company, *inter alia*, includes any act, omission, concealment of any fact or abuse of position committed by any person with intent to deceive, to gain undue advantage from or injure the interests of the company or its stakeholders or its creditors or any other person whether or not there is any wrongful gain or wrongful loss.

Following is the course of action to be taken by auditor:

- According to Section 143(12) read with Rule 13 of Companies (Audit and Auditors) Rules, 2014, if the statutory auditor has reason to believe that an offence of fraud which involves or is expected to involve an amount of rupees One crore or more, is being or has been committed against the company by its officers or its employees, the auditor shall report the matter to the Central Government.
- The auditor shall report the matter to the audit committee immediately but not later than two days of his knowledge of the fraud seeking the reply from the Board of Directors or the audit committee seeking their reply within 45 days.
- On receipt of such reply or observations, the auditor shall forward his report and the reply or observations of the Board or the Audit Committee along with his comments (on such reply or observations of the Board or the Audit Committee) to the Central Government within fifteen days from the date of receipt of such reply or observations.
- In case the auditor fails to get any reply or observations from the Board or the Audit Committee within 45 days, he shall forward his report to the Central Government along with a note containing the details of his report that was earlier forwarded to the Board or the Audit Committee for which he has not received any reply or observations.
- The report of auditor shall be in Form ADT-4 of the Companies (Audit and Auditors) Rules, 2014.

In the instant case, as the company is a listed company, which is mandated under section 177 of the Companies Act to constitute an audit committee and the amount of fraud is about rupees 80 crore, the auditor should report the matter to the Central Government in time, whether or not a reply is received from the company.

Answer 3(c)

A private company need not hold annual general meeting for a financial year under section 175A of the Singapore Companies Act under the following cases-

- (a) If it is a private company in respect of which there is in force a resolution passed in accordance with sub section (2) to dispense with the holding of annual general meetings;
- (b) If, at the end of that financial year, it is a private company and has sent to all persons entitled to receive notice of general meetings of the company the documents mentioned in section 203(1) within the period specified in section 203(1)(b); or
- (c) If, at the end of that financial year, it is both a private company and a dormant relevant company the directors of which are, under section 201A; exempt from the requirements of section 201 for the financial year.

In accordance with section 175 of the Singapore Companies Act a general meeting of every company to be called the "annual general meeting" must, in addition to any other meeting, be held after the end of each financial year within 4 months in the case of a public company that is listed.

PART-II

Question 4.

(a) Rakesh Agarwal is a Non-Executive & Non-Independent director of Happy Travels Limited, an unlisted company. The paid-up share capital of the company is ` 120 crore. The company has availed a term loan of ` 65 crore. The Board of directors, in their meeting passed a resolution to grant a housing loan of rupees one crore to Rakesh for purchase of an apartment in Navi Mumbai at concessional interest rate. The company has implemented a housing loan for its permanent employees at concessional interest rates. The Secretarial Auditor has objected to the loan granted to Rakesh in his Secretarial Audit report.

Is the claim of Secretarial Auditor correct?

Will your answer differ if the company is a private limited company?

(5 marks)

(b) Draft minutes of 19th meeting of the Board of directors of Zwiggy Foods Ltd held on 28th January, 2022 were circulated on 5th February, 2022. In this backdrop, answer the following:

(i) Sonali, an independent director, who attended the meeting communicated her comments on 15th February, 2022. Do you think her comments can be considered?

(ii) Sujata, a small shareholder director, communicated her comments on 10th February, 2022 but she was absent in the meeting without obtaining leave of absence. Can her comments be taken on record?

(5 marks)

(c) The Board of directors of ABC Limited met thrice in the year 2021 and 4th meeting though called but could not be held for want of quorum. Examine with reference to the relevant provisions of the Companies Act 2013, whether any provision of the Act has been contravened?

(5 marks)

(d) The CFO of a well-known public company (one among top 20 listed companies) suggested to the Board of directors to constitute a Risk Management Committee with only the CFO and General Manager (HR) as its members. The Company Secretary of the company, however insisted that he should not only be included in the Risk Management Committee but should also be made the chairman of the committee as he is well versed in corporate laws.

Referring to the provisions of Companies Act, 2013 and the Relevant Rules, examine the proposal.

(5 marks)

Answer 4(a)

- As per Section 185 of Companies Act, 2013, no company shall advance any loan to a director of the company or his relative.
- However, a company may advance any loan to a director of a company by passing a special resolution by the company in general meeting. The explanatory statements to notice for the general meeting shall disclose full particulars of the proposed loan.
- As per Section 185(3) of the Act, the provisions of subsection shall not apply to giving of any loan to the Managing Director or Whole Time Director by the company as part of service conditions extended by the company to all its employees or as per any scheme approved by members by a special resolution.

As Rakesh is neither the Managing Director nor a whole time director of the company, the provisions of Section 185(1) & 185(2) are applicable to it. Hence, without passing a special resolution in the general meeting, no loan can be given to Rakesh.

If Happy Travels Ltd would have been a private company, the private company can give loan to a director as per Notification dated 5th June 2015 subject to the following conditions:

- a) No other body corporate has invested in the share capital of the private company
- b) The borrowings from banks is less than twice the paid up capital or rupees 50 crore whichever is lower.
- c) The private company has not defaulted on its borrowings from banks.

As Happy Travels Limited has availed a term loan of rupees 65 crore from a bank which is more than the ceiling of rupees 50 crore as per Notification dated 5th June 2015, it cannot grant the housing loan to Rakesh even if it is a private company.

Answer 4(b)

Finalization of Minutes

- As per Para 7.4 of SS-1: Within fifteen days from the date of the conclusion of the Meeting of the Board or the Committee the draft minutes thereof shall be circulated by hand or by speed post or by registered post or by courier or by email or by any other recognised electronic means to all members of the Board or the Committee as on the date of the Meeting, for their comments.
- The Directors, whether present at the Meeting or not, shall communicate their comments, if any, in writing on the draft Minutes within seven days from the date of circulation thereof, so that the Minutes are finalized and entered in the Minutes Book within the specified time limit of thirty days.
- If any director communicates his comments after the expiry of the said period of seven days, the Chairman, if so authorised by the Board, shall have the discretion to consider such comments.
- The draft Minutes should also be sent to those Directors who were not present at the Meeting for information and comments thereon, if any. This is because all the Directors are responsible for the decisions taken at any Board Meeting, whether or not they attended the Meeting.
- In the event director does not comment on the draft Minutes, the draft Minutes shall be deemed to have been approved by such director. A director who ceases to be a Director after a Meeting of the Board is entitled to receive the draft Minutes of that particular Meeting and to offer comments thereon, irrespective of whether he attended such Meeting or not.
- Minutes shall be entered in the Minutes Book within 30 days from the conclusion of the Meeting.
- The date of entry of the Minutes in the Minutes Book shall be recorded by the Company Secretary.
- Minutes, once entered in the Minutes Book, shall not be altered. Any alteration in the Minutes as entered shall be made only by way of express approval of the Board at its subsequent meeting and the fact of such alteration shall be recorded in the Minutes of such subsequent meeting.

Hence, (i) the comments given by Sonali are beyond the specified time limit and may be considered only subject to the discretion of the Chairman.

(ii). Comments of Sujata can be considered even if she did not attend the meeting.

Answer 4(c)

In terms of section 173(1) of the Companies Act, 2013, a company must hold a minimum number of four meetings of its Board of directors every year in such a manner that not more than 120 days shall elapse between two consecutive meetings of the Board.

The proviso to this sub-section provides that the Central Government may by notification, direct that these provisions will not apply in relation to any class or description of companies or may apply subject to such exceptions, modifications or conditions as may be specified in the notification.

As per section 174(4) of the act, if a meeting of the Board could not be held for want of quorum then, unless the articles otherwise provide the meeting shall automatically stand adjourned till the same day in the next week, at the same time and place, or if that day is a National Holiday till the next succeeding day which is not a national holiday, at the same time and place.

If there is no Quorum at the adjourned Meeting also, the Meeting shall stand cancelled. An adjourned Meeting being a continuation of the original Meeting, the interval period in such a case, shall be counted from the date of the original Meeting. Thus, in case of an adjourned Meeting, the gap of one hundred and twenty days for the purpose of fixing up the date of the next Meeting or for any other purpose should be counted from the date of the original Meeting.

In this case, the Board meeting of ABC limited was held 3 times and for the 4th time meeting was called but could not be held for want of quorum.

Hence, as per the provisions of the Companies Act, 2013 the Company has violated the provisions with respect to the convening the Board Meetings.

But if the 4th Board meeting was adjourned due to want of quorum and the adjourned meeting was duly held within the stipulated time, then the company has not contravened the provisions of the Act.

Answer. 4(d)

- As per Regulation 21 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), the Board of top 1000 listed companies shall constitute a Risk Management Committee (RMC). The top 1000 listed entities shall be determined on the basis of market capitalization as at the end of immediate preceding financial year and high value debt listed entities.
- The Risk Management Committee shall have minimum three members with majority being members of Board of Directors (BOD) including at least one independent director. In case of a listed entity having SR equity shares, at least two thirds of the members of RMC shall be independent directors.
- The chairman of RMC shall be a member of the BOD. Senior executives may be members of RMC.
- The RMC shall meet at least twice in a year. The quorum for the meeting of RMC shall be either two members or one third of the members of the RMC whichever is higher including at least one member of the BOD in attendance. Not more than 180 days shall lapse between two consecutive RMC meetings.
- The BOD shall define the role and responsibility of RMC and may delegate monitoring the risk management plans of the company to the RMC including cyber security.

In the instant case, as the company is among the top 20 public listed companies based on market capitalization, it is required to constitute RMC with independent directors, members of Board of Directors and senior executives. However, the Chairman of RMC has to be a Director of the company. Hence, the Company Secretary may be included as a member of the RMC, his contention that he should be made Chairman is wrong.

Also, the contention of the CFO to constitute RMC only with senior officers of the company is not correct.

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

Question 5.

(a) *Zero Motors Limited, a listed company has three manufacturing divisions:*

- (i) *Cycle Division*
- (ii) *Motorcycle Division*
- (iii) *Electric Scooter Division.*

The following information is given:

<i>Equity share capital:</i>	<i>300</i>
<i>Preference share capital:</i>	<i>120</i>
<i>General Reserve:</i>	<i>500</i>
<i>Revaluation Reserve:</i>	<i>200</i>
<i>Profit and Loss A/c (CR):</i>	<i>300</i>
<i>Long term loan:</i>	<i>480</i>
<i>Short term loan:</i>	<i>620</i>
<i>Gross revenue in last FY:</i>	<i>2010</i>
<i>Investment in Cycle division:</i>	<i>40</i>
<i>Turnover of Cycle division</i>	<i>450</i>

The Board of directors of the company have decided by unanimous resolution the following in their meeting held on 31st May, 2023:

- (i) *To obtain a further long term loan of Rupees 300 crore from financial institution.*
 - (ii) *To invest in trust securities the compensation received as a result of divestment of Cycle Division.*
- Referring to the provisions of Companies Act, 2013, decide if the board resolution is sufficient for the above proposals.*

(4 marks)

(b) *Prapti Hotels Ltd. want to appoint Susmita as an independent director from 1st January, 2022. It came to the knowledge of Vice President (Commercial) of the company that Susmita stayed at their*

hotel at Ooty for three days from 1st June to 3rd June, 2021 at room rent of ₹ 2,500 per day and thus had entered into a transaction with the company. The Hotel charged same room rent from other members of the general public during that time. Advise the Vice President (Commercial), if Susmita can be appointed as an independent director of the company from 1st January, 2022.

(4 marks)

(c) With respect to E-Voting, explain the following:

- (a) E-Voting
- (b) Agency
- (c) Cut-off date
- (d) Cyber security

(4 marks)

(d) Mercury Limited is incorporated in USA and having its registered office in Los Angeles. Board of directors of Mercury Limited taken a decision to merge Mercury Limited with Mars Limited, a company incorporated in India having its registered office in New Delhi. Referring to the provisions of the Companies Act 2013, advise the Board of directors of Mercury Limited for Merger.

(4 marks)

(e) The Board Meeting followed by the Annual General Meeting of a large listed company has just concluded and the Chairman is reluctant to call an Extra Ordinary General meeting or a Board Meeting any time soon. The Chairman of the company sought your advice on appointing Paritosh who has just retired as CMD from a large commercial bank as an independent director on the Board of the company for the period of seven years. Advise.

(4 marks)

OR (Alternate question to Q. No. 5)

Question 5A.

- (i) The Chief Financial Officer of a listed company be appointed as its Compliance Officer. Comment. (4 marks)
- (ii) Following particulars are extracted from the financial statements of Surat Gold and Diamonds limited for the year ended 31st March, 2023 :

(Unit in Rupees)

Salaries and perquisites paid to managing director ₹ 1,50,000 and whole time director ₹ 1,20,000.
Provision for bonus ₹ 1,00,000 and gratuity ₹ 1,00,000 (included the bonus ₹ 10,000 and gratuity ₹ 12,000 for the above directors)

Provision for doubtful debts ₹ 60,000

Profit on sale of forfeited shares ₹ 10,000

Short term capital gains ₹ 2,60,000

Contribution to approved charitable trust ₹ 1,00,000.

Provision for income tax ₹ 4,80,000 and surcharges ₹ 1,20,000

Net Profit for the FY 2022-23 ₹ 32,00,000

Aggregate amount of accumulated losses of previous years ₹ 2,50,000

The board of directors consisted of a managing director, a whole time director and three other non-executive directors. You are required to calculate the net profit for computing managerial remuneration and the maximum managerial remuneration payable to the above said five directors. State your assumptions.

(4 marks)

- (iii) Jyoti Prasad obtained two (2) Director Identification Number (DINs) by mistake in 2016 and 2019. He used his second DIN to become director in two private limited and three public limited companies. Later,

on realisation, he applied to Registrar of Companies for deactivation of his first DIN. The Registrar rejected the application. Examining relevant legal provisions, discuss.

(4 marks)

(iv) Lazybones, director of Global Travels Limited, an unlisted public company was removed from the Office of Director u/s 169 of Companies Act, 2013 after following due process of Notice and the principles of Natural Justice. The board of directors sought your opinion on filling up the vacancy caused by removal of director. Advise.

(4 marks)

(v) The following information is given:

(Rupees in Crores)

Name	Status	Paid-up Share Capital	Annual Turnover	Borrowings
Sky Limited	Listed	9	96	48
Earth Limited	Unlisted	19	420	45
Water (Private) Ltd.	Subsidiary of Earth Limited	4	112	27

(i) Which companies are required to constitute Nomination and Remuneration Committee (NRC)?

(ii) Can the Chariman of the company also chair the NRC?

(iii) What is the minimum number of executive directors and independent directors on NRC?

(iv) What is the quorum and number of meetings of NRC in a financial year?

(4 marks)

Answer 5(a)

i) According to Section 180 of the Companies Act, 2013, the Board of Directors shall exercise their powers only with the consent of the members of the company by a special resolution in the following cases:

- To sell, lease or otherwise dispose of the whole or substantially whole of the company;
- To invest otherwise than in trust securities the amount of compensation received as a result of merger or amalgamation;
- To borrow money, where the money borrowed, together with the money already borrowed by the company will exceed aggregate of paid-up capital and free reserves.

However, a board resolution is sufficient if the company wants to borrow money, where the money to be borrowed is less than the aggregate of the paid-up share capital, free reserves and securities premium.

In the instant case, the money to be borrowed together with the money already borrowed as long term loans from financial institutions is rupees 780 Crore (480+300) and aggregate of the paid-up capital and free reserve rupees 1220 crore (300+120+500+300 = rupees 1220 crore).

Hence, a special resolution is not required. Board Resolution is sufficient.

ii) According to section 180 of the Act, a Special Resolution is required only in case the compensation on account of merger or amalgamation is invested otherwise than in trust securities.

In the instant case, as the compensation money on account of divestment of Cycle Division was invested only in trust securities, board resolution is sufficient.

Answer 5(b)

Section 149(6) of the Companies Act, 2013 provides that Independent Director, in relation to a company, means a director other than a managing director or a whole time director or a nominee director who has or had no pecuniary relationship other than remuneration as such director or having transaction not exceeding ten per cent. of his total income or such amount as may be prescribed, with the company, its

holding, subsidiary or associate company or their promoters or directors during the two immediately preceding financial years or during the current financial year.

This provision *inter alia* requires that an 'ID' should have no 'pecuniary relationship' with the company concerned or its holding/subsidiary/associate company and certain other categories specified therein during the current and last two preceding financial years. Clarifications have been sought whether a transaction entered into by an 'ID' with the company concerned at par with any member of the general public and at the same price as is payable/paid by such member of Public would attract the bar of 'pecuniary relationship' under section 149(6)(c). The matter was examined and it was clarified by MCA vide its circular no. 14/2014 dated 9th June, 2014 that in view of the provisions of section 188 which take away transactions in the ordinary course of business at arm's length price from the purview of related party transactions, an 'ID' will not be said to have 'pecuniary relationship, under section 149(6)(c) in such cases.

Therefore, staying of Susmita at the hotel in Ooty of Prapti Hotels Ltd. and making transactions with the company 6 months prior to her proposed appointment in the board as Independent Director cannot be termed as pecuniary relationship as those were at par with members of general public.

So, the Vice President (Commercial) should be advised that Susmita can be appointed as Independent Director in the Company from 1st January, 2022.

Answer 5(c)

a. *E-Voting*-means a secured system based process of display of electronic ballots, recording of votes of the members and the number of votes polled in favour or against, in such a manner that the entire voting exercised by way of electronic means gets registered and counted in an electronic registry in a centralised server with adequate cyber security.

b. *Agency* - The National Securities Depository Limited, the Central Depository Services (India) Limited or any other entity approved by the Ministry of Corporate Affairs subject to condition that the National Securities Depository Limited, the Central Depository Services (India) Limited or such other entity has obtained a certificate from the Standardisation Testing and Quality Certification Directorate, Department of Information Technology, Ministry of Communications and Information Technology, Government of India including with regard to compliance with parameters under Explanation.

c. *Cut-off date* — with respect to e-voting it means a date not earlier than seven days before the date of the general meeting for determining the eligibility to vote by electronic means either remotely or at the general meeting.

d. *Cyber Security*- means protecting information, equipment, devices, computer, computer resource, communication device and information stored therein from unauthorised access, use, disclosures, disruption, modification or destruction.

Answer 5(d)

Yes, Mercury Limited a foreign company can merge with Mars Limited, an Indian Company as per Section 234 of Companies Act, 2013.

Section 234(2) of Companies Act, 2013 states that subject to the provisions of any other law for the time being in force, a foreign company may with the prior approval of the Reserve Bank of India, merge into a company registered under this Act or *vice versa* and the terms and conditions of the scheme of merger may provide, among other things, for the payment of consideration to the shareholders of the merging company in cash, or in Depository Receipts, or partly in cash or partly in Depository Receipts, as the case may be, as per the scheme to be drawn up for the purpose.

For the purpose of sub section (2), the expression “foreign company’ means a company or body corporate incorporated outside India whether having a place of business in India or not.

Section 234(1) states that the provisions of this Chapter unless otherwise provided under any other law or the time being in force, shall apply *mutatis mutandis* to schemes of merger and amalgamations between companies registered under this Act and companies incorporated in the jurisdictions of such countries as may be notified from time to time by the Central Government. The Central Government may make rules, in consultation with the Reserve Bank of India, in connection with mergers and amalgamations provided under this section.

Answer 5(e)

- With effect from 1st January 2022 an independent director can be appointed on the board of a listed company only by a special resolution passed by the members at a general meeting as per Regulation 25(2A) read with Regulation 17 of SEBI (Listing Obligations and Disclosure Requirements), 2015 (LODR). Hence, approval of special resolution by the members in the general meeting is mandatory.
- However, as the Board Meeting and the Annual General Meeting (AGM) of the company has just concluded and as the chairman is unwilling to call an Extra Ordinary General meeting or the Board meeting in the near future, an alternative approach to solving the problem is appointing Paritosh as an additional director under section 161(1) of the Act by passing a board resolution by circulation under section 175 of the Act.
- According to Para 6.5 of Secretarial Standards 1 issued by ICSI, passing a resolution by circulation shall be considered valid as if it had been passed at a duly convened meeting of the Board of Directors.
- The maximum tenure of an independent director shall be for a period of five years as per Section 149(10) of the Companies Act, 2013. Hence, the suggestion of the chairman to appoint Paritosh for a period of seven years is not valid.
- The additional director shall hold office up to the date of next annual general meeting. In the next AGM, Paritosh can be appointed as an independent director for a further period of four years by passing a special resolution by the members.

Answer 5(A) (i)

i) According to Section 203 of the Companies Act, 2013, the functions of the company secretary, *inter alia*, shall include -

- a. Reporting to the Board of Directors (BOD) of the company compliance with the Rules made under the Act and other applicable laws.
- b. To ensure that the company complies with applicable Secretarial Standards issued by the Institute of Company Secretaries of India and approved by the Central Government.

ii) On the other hand, according to Regulation 6 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015, a listed company shall appoint a qualified company secretary as the compliance officer of the listed company. He shall be responsible for-

- a. Ensuring conformity with the regulatory provisions applicable to the listed entity in letter and spirit
- b. Co-ordination with and reporting to the SEBI, Stock Exchanges and depositors on compliance with applicable rules, regulations and directions of the Authorities.
Ensuring that the listed entity has followed correct procedures resulting in correctness, authenticity and comprehensiveness of publicly available information, statements and reports filed by the listed entity under these regulations.
- c. monitoring email address of grievance redressal division as designated by the listed entity for the purpose of registering complaints by investors.

iii) Thus, the compliance officer should be a duly qualified company secretary in employment of the listed company. According to Rule 8 of Companies (Appointment and Remuneration of managerial personnel) Rules, 2014, a company with a paid-up capital of rupees ten crore or more is required to appoint a company secretary.

iv) On the other hand, only a listed company is mandated to appoint a qualified company secretary in its employment as its compliance officer.
Hence, unless the CFO is also a qualified company secretary, he cannot be appointed as the compliance officer of the listed entity.

Answer. 5A (ii)

The adjusted net profit as per Section 198 read with Schedule V of the Companies Act, 2013 read with Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 is computed as given below:

	Unit in Rupees
Profit as per P&L A/c:	32, 00,000
Add items not deductible:	
i) Managerial remuneration to MD	1,50,000
ii) Managerial remuneration to WTD	1,20,000
iii) Provision for bonus to directors	10,000
iv) Provision for gratuity to directors	12,000
v) Provision for doubtful debts:	60,000
vi) Provision for income tax:	4,80,000
Sub Total:	8,32,000
Less items deductible	
a) Profit on sale of forfeited shares	(-10,000)
b) Short term capital gains	(-2,60,000)
c) Past accumulated losses	(-2,50,000)
Subtotal:	(-5, 20,000)

Therefore, adjusted net profit for managerial remuneration: Rs. 35, 12,000

Since the company has two whole time directors and three non-executives part time directors, the managerial remuneration payable to-

- i) MD & WTD: @10% of Adjusted Net Profit : Rs. 3,51,200
- ii) Three non-executive directors @1% of Adjusted Net profit: Rs. 35,120

Assumptions:

In accordance with Section 198 of the Act read with companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014-

- a. It is assumed that the accumulated past losses have not been deducted yet in computation of adjusted net profit for the purpose of managerial remuneration
- b. It is assumed that the surcharge of Rs. 1,20,000 on income tax is a tax in the nature of tax on excess on abnormal profit under section 198(4)(d)
- c. Contribution to charitable trust is bonafide and within approved limits under section 181 of the Act.

Answer 5A(iii)

As per section 155 of the Companies Act, 2013, no individual who has already been allotted a DIN under section 154 shall apply for, obtain or possess another DIN.

As per Rule 11 of the Companies (Appointment and Qualifications of Directors) Rules, 2014 the Central Government or Regional Director (Northern Region), Noida or any officer authorised by the Regional Director may, upon being satisfied on verification of particulars or documentary proof attached with the application received alongwith fee as specified in the Companies (Registration Offices and Fees) Rules, 2014 from any person, cancel or deactivate the DIN in case the DIN is found to be duplicated in respect of the same person provided the data related to both the DIN shall be merged with the validly retained number.

On an application made in Form DIR-5 by the DIN holder to surrender his or her DIN along with declaration that he has never been appointed as director in any company and the said DIN has never been used for filing of any document with any authority, the Central Government may deactivate such DIN: Provided that before deactivation of any DIN in such case, the Central Government shall verify e-records with the validly retained number.

In this case, Jyoti may make an application in form DIR-5 to surrender his first DIN with declaration as stated in above provisions.

Answer 5A (iv)

i)The vacancy resulting from removal of director under section 169 of the Act may be filled up by appointing another director at the same general meeting where Lazybones was removed from directorship by appointing any other person as a director. However, a special Notice for the proposed appointment of another person in the vacancy caused by removal of Lazybones needs to be given under section 169(2) of the Act.

ii)As per Section 169(5) of the Act, the vacancy caused by removal of Lazybones may be filled as a casual vacancy in accordance with provisions of Section 161(4) of the Act. As per Section 161(4) of the Act, in case of public company if the office of director appointed by the company is vacated before the expiry of his term of office in normal course, the resulting casual vacancy may be filled up by the Board of Directors at a meeting of the Board, which shall subsequently be approved by the members in the immediate next general meeting.

iii)In the given case, another person can be appointed in the place of the director removed from office by the Board. However, subject to the provisions of the Articles of Association of the company, the director appointed in the casual vacancy will hold office only up to the date which the director in whose place he was appointed would have held office if it had not been vacated.

iv)The company is required to file Form DIR-12 within 30 days of appointment of another person in the casual vacancy along with the fees provided under Companies (Registration Offices and Fees) Rules, 2014.

Answer 5(A) (v)

i.As per Regulation 19 of SEBI (Listing Obligations and Disclosure Requirements) Regulations, 2015 (LODR), a listed company shall constitute the Nomination and Remuneration Committee (NRC) with at least three directors all of whom shall be non-executive directors with at least fifty percent of the directors of NRC being independent directors.

According to Section 178 of Companies Act, 2013 (Act), read with Rule 6 of the Companies (Meetings of Board and its Power) Rules, 2014 and Rule 4 of Companies (Appointment and Qualification of Directors) Rules, 2014,-

(i) Every listed Public Company;

(ii) All Public companies with a paid up capital of 10 crore rupees or more; or

(iii) All Public companies having turnover of 100 crore rupees or more; or

(iv) All Public companies, having in aggregate, outstanding loans, debentures and deposits exceeding 50 crore rupees are required to constitute NRC consisting of three or more non-executive directors out of which not less than one half shall be independent directors.

According to proviso to Section 2(71) of the Companies Act, 2013) a company which is a subsidiary of a public company, not being a private company, shall be deemed to be a public company as per this Act even when it continues to be a private company in its Articles.

Hence all the three companies viz., Sky Ltd, Earth Ltd and Water (Private) limited are required to constitute NRC of their Board as they are either listed or their paid-up share capital or turnover or borrowings exceed the prescribed limits.

ii. Proviso to Section 178 states that the Chairman of the company may be appointed as a member of the committee but shall not chair the NRC. Hence the chairman of the company cannot be appointed as chairman of NRC. The Chairman of the NRC shall be an Independent Director.

iii. Since NRC is constituted with non-executive directors and independent directors in majority, the minimum number of executive directors on NRC is NIL and the minimum number of independent directors of NRC is half i.e two (rounded off to the nearest number) where the total strength of NRC is three directors.

iv. The quorum for NRC is as specified by the Board. Where no quorum is specified in the Articles, all the members of NRC shall be quorum as per para 3.5 of SS-1. According to SEBI LODR Regulations, quorum for NRC meeting shall be either two members or one third of the members of the Committee, whichever is greater, including at least one Independent Director in attendance.

SEBI LODR Regulations stipulates at least 1 NRC meeting in a year.

PART-III

Question 6.

a) (i) Write a note on UDIN and eCSin.

(ii) Highlight the risk involved in the functioning of a mega professional firm.

(5 marks)

(b) CS Manish, a Company Secretary in practice is an expert in Goods and Service Tax. On being approached by a reputed University at Mumbai, Manish took up teaching assignment of indirect tax laws at University from 11 A.M. to 3 P.M. on every Tuesday and 2 P.M. to 5 P.M. on every Friday. Remuneration was contracted to be fixed for the assignment. The University was recognised by the Council of ICSI for imparting teaching. Has Manish committed professional misconduct in terms of provisions of the Company Secretaries Act, 1980?

(5 marks)

Answer 6(a)

(i). **UDIN:** The Unique Document Identification Number as governed by the UDIN Guidelines shall verify the authenticity of various documents signed or certified by Company secretaries in Practice. As per the UDIN Guidelines, a unique number for the identification of documents attested by Company Secretaries in Practice shall be generated at the time of signing the Certificate/ Report which shall mandatorily be mentioned in the Certificate/Report along with the CoP number.

eCSin: The Employee Company Secretary Identification Number as governed by the eCSin Guidelines shall enable the Institute to identify the appointments and cessations of Company Secretaries. eCSin is a system generated unique number for identification of the Company Secretaries employed in a particular company which shall be generated by the Company Secretary at the time of employment as a Company Secretary (KMP or otherwise), as well as at the time of demitting office in any manner.

Both the Guidelines have been made mandatory by the Council of ICSI w.e.f 1st October, 2019.

(ii). Risks involved in the functioning of a Mega Professional Firm are as follows:

- Lack of understanding and multiplicity of directions to the staff could be disastrous;
- More cost on infrastructure and technology;
- Dominance of senior partners over the younger partners;
- Defining exit route is difficult;
- Lack of transparency may lead to disputes;
- If crack develops in mutual faith and trust, difficult to cure;
- Communication gap between partners.

Answer 6(b)

Clause (10) of Part I of the First Schedule to Company Secretaries Act, 1980 stipulates that a Company Secretary in Practice shall be deemed to be guilty of professional misconduct, if "he engages in any business or occupation other than the profession of Company Secretary unless permitted by the Council so to engage."

Regulation 168(1) of the Company Secretaries Regulations, 1982 provides that the prior permission of the Council by a resolution is required for a Company Secretary to engage in any business or occupation other than the profession of Company Secretary. The Council has expressly permitted a PCS to take up following vocations:

- Authoring Books and Articles;
- Holding of Life Insurance Agency License for the limited purpose of getting renewal commission;
- Holding of public elective offices such as M.P., M.L.A., M.L.C. and others;
- Honorary office-bearership of charitable, educational or other non-commercial organisations.
- Acting as Justice of Peace, Special Executive Magistrate and the like;
- Teaching assignment under the Coaching section/department of the Institute and other Institutes such as the Institute of Cost & Works Accountants of India, the Institute of Chartered Accountants of India, Management Institutes, Universities and any college affiliated to a University and such other organization as may be recognised by the Council of the Institute from time to time, so long as the hours during which a member in practice is so engaged in teaching do not exceed average three hours in a day irrespective of the manner in which such assignment is described or the remuneration receivable (whether by way of fixed amount or on the basis of any time scale or in any other manner) by the member in practice for such assignment.

Here CS Manish, a Company Secretary in Practice, an expert in Goods & Service Tax on being approached by a reputed university at Mumbai, took up teaching assignment of indirect tax laws at the university from 11 A.M. to 3 P.M. on every Tuesday and 2 P.M. to 5 P.M. on every Friday which comes to seven hours for two days. The average hours per day exceed three hours. The fact that remuneration was contracted to be fixed for the assignment and that the university was recognised by the Council of ICSI for imparting teaching will not help CS Manish. In view of the above Manish has committed professional misconduct in terms of provisions of Company Secretaries Act, 1980.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE: 1. Answer ALL Questions.

2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.

PART - A

Question 1.

- (a) SPM Ltd. is engaged in the business of manufacturing of coins made of gold, silver and other precious metals. The company has not raised any money from the public. The company has recently imported the plating technology from Germany and it is desiring to enter into the business of manufacturing of ornaments, jewellery and souvenirs using the plating technology. However, the proposed business is not covered in the objects clause of Memorandum of Association (MOA) of the company. Advise the company the procedure to be followed by it for alteration of objects clause of MOA in accordance with the provisions of the Companies Act, 2013. (5 marks)
- (b) J is a B.Tech. in Computer Science from Indian Institute of Technology, Roorkee. J has invented a new procedure for making of battery having long life as compared to lithium battery available in the market. The invention has been patented by J. J has made an online application over the portal setup by the Government of India for initial funding under start-up. In the online application, J observed that there is a column for seed funding. Advise J on the meaning and importance of Seed Capital. (5 marks)
- (c) Agarwal Enterprises Ltd. (AEL) is a resident company in India for the last 15 years. The company is operating in various sectors e.g. power, infrastructure, ports, oil, telecommunications and IT etc. Now, the company is planning to make an investment of ₹ 10,000 crore in Australia based solar power projects through the joint venture in Australia. The latest audited financial statements of the company revealed the following data as on 31st March, 2023 : Paid up Share Capital : ₹ 2,000 crore Reserve & Surplus : ₹ 1,000 crore Long-term Borrowings : ₹ 1,500 crore Creditors : ₹ 300 crore Referring to the provisions of Foreign Exchange Management (Transfer or Issue of any Foreign Security) Regulations, 2004 and Notifications issued by the Reserve Bank of India, advise whether the company can make desired investment under the automatic route in the financial year 2023-24 (Assume USD 1 = ₹ 80). (5 marks)
- (d) Durgesh is working as a driver in a cab provider company. One day, a passenger advised him that he can own a car by availing financial assistance under Pradhan Mantri Mudra Yojna (PMMY). He seeks your advice regarding the procedure for availing the Transport Vehicle Loan for commercial use from MUDRA Bank. Advise Durgesh. (5 marks)

Answer 1(a)

The following is the procedure to be followed by SPM Ltd. for alteration of Object Clause of Memorandum of Association (MOA) in accordance with the provisions of Companies Act, 2013:

1. Issue not less than 7 days' notice and agenda of Board Meeting, or a shorter notice in case of urgent business, in writing to every director of the company at his address registered with the company and call a Board Meeting to consider the proposal of alteration of objects clause of Memorandum of Association of company [Section 173(3)].
2. Hold a meeting of Board of Directors –
 - a. To pass the Board Resolution for approving the proposed amendments to the objects clause of MOA of the company subject to the approval of shareholders in General meeting.
 - b. To delegate authority to any one director of the company to sign, certify and file the requisite forms with ROC and to do all such acts and deeds as may be necessary to give effect to the proposed alteration.
 - c. To fix day, date, time and venue for holding the general meeting of the Company for passing a special resolution as required by section 13.
 - d. To approve the draft notice of general meeting along with explanatory statement annexed to the notice as per requirement of the Section 102.
 - e. To authorize the Director or Company Secretary to sign and issue notice of the general meeting.
3. Send notice of the General meeting proposing the aforementioned special resolution to all the shareholders, directors, auditors and other persons entitled to receive it, by giving not less than clear 21 days' notice or shorter notice, if consent for shorter notice is given by at least 95% of members entitled to vote at such meeting, either in writing or through electronic mode in accordance with Section 101 of the Companies Act.
4. Hold a shareholders meeting on the date for the meeting and pass the Special Resolution for altering the object clause of Memorandum of Association by 3/4th majority in accordance with Section 114 (2) of the Companies Act, 2013. Special Resolution shall be passed by means of Postal ballot, if company has more than 200 members or the company has raised money from public through prospectus and still has any unutilized amount out of the money so raised.
5. Follow the procedure prescribed for preparing, signing and compiling of minutes of General Meeting.
6. After passing special resolution, file a certified copy of special resolution with the Registrar in form MGT-14 under Section 117 of the Companies Act, 2013 within 30 days of passing Special Resolution in general meeting along with the following attachments:
 - (a) Copy of Special Resolution passed along with explanatory statement;
 - (b) Notice for convening the General Meeting of the Company;
 - (c) Altered Memorandum of Association;
 - (d) Shorter Notice Consent Letters from the members in case the General Meeting was convened and held at a shorter notice;
 - (e) Any other attachment as may be considered as necessary in this regard.
7. The Registrar shall register the alteration of objects in Memorandum and certify the registration within a period of 30 days from the date of filing of the special resolution. [Section 13(9)]
8. Every Alteration made in the memorandum of the company shall be noted in every copy of the Memorandum of Association. [Section 15(1)]

Answer 1(b)

J is advised on the meaning and importance of Seed Capital as under:

Start-up business needs the nurturing of finance to explore and grow. The funding done at the nascent stage is called seed funding and the capital is known as a seed capital.

Technically, seed capital is the initial capital used at the time of starting the business. This capital can come from the founders, families or friends. It is required for the market research, product development, and other initial stage operations.

Seed funding permits exploration of the business idea and converting it into a viable product or service that further attracts venture capitalists. A business founder must be clear on how to utilise seed capital in the most optimum manner to ensure smooth transition to the advanced stage of the business.

Seed funding is a risky investment option, as most funding agencies would like to adopt a wait and watch approach to see whether the idea has a business potential. From the founder's point of view, the option of obtaining seed funding has to be carefully utilised as obtaining seed funding may result in dilution of ownership of the founder.

The paperwork involved in seed funding is relatively less and straightforward, compared to advanced rounds of funding. Even the legal fees required are also quite less. The interest rates too are usually lower and there are mostly no restrictions in the manner of business working as it is still in the nascent stage.

Financing is generally of two types i.e. (a) equity financing, or (b) debt-financing.

Answer 1(c)

In terms of Regulation 6 of the Notification No. FEMA 120/RB- 2004 dated July 7, 2004, as amended from time to time, an Indian Party has been permitted to make investment / undertake financial commitment (FC) in overseas Joint Ventures (JV) / Wholly Owned Subsidiaries (WOS), as per the ceiling prescribed by the Reserve Bank from time to time. With effect from July 03, 2014, any financial commitment upto USD 1 (one) billion shall only come under the automatic approval. The eligible limit of investment under the automatic route is 400% of the net worth of the Indian Party as per the last audited balance sheet. It has been decided that any financial commitment exceeding USD 1 (one) billion (or its equivalent) in financial year would require prior approval of the Reserve Bank even when the total FC of the Indian Party is within the eligible limit under the automatic route. (i.e., within 400% of the net worth as per the last audited balance sheet)

It may be noted that "net worth" shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013, means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the given case, Agarwal Enterprises Limited (AEL) is planning to make an investment of ₹10,000 crore which is equivalent to USD 1.25 billion (₹10,000/₹80).

The net worth of AEL is ₹ 2,000+ ₹ 1000 = Rs 3,000 crore.

The eligible limit of investment under the automatic route is 400% of the net worth i.e. ₹ 3000 × 400% = ₹ 12,000 crore which is equivalent to ₹12000/₹80 = USD 1.5 billion.

However, the proposed investment is exceeding the limit of USD 1 billion i.e. USD 1.25 billion. Therefore, the company cannot make investment under automatic route.

Alternate Answer

According to Foreign Exchange Management (Overseas Investment) Rules, 2022 read with Foreign Exchange Management (Overseas Investment) Regulations, 2022 & Foreign Exchange Management (Overseas Investment) Directions, 2022:

The total financial commitment made by an Indian entity in all the foreign entities taken together at the time of undertaking such commitment shall not exceed 400 percent of its net worth as on the date of the last audited balance sheet or as directed by the Reserve Bank, in consultation with Central Government from time to time.

Financial commitment by an Indian entity, exceeding USD 1 (one) billion (or its equivalent) in a financial year shall require prior approval of the Reserve Bank even when the total financial commitment of the Indian entity is within the eligible limit under the automatic route.

It may be noted that “net worth” shall have the same meaning as assigned to it in clause (57) of section 2 of the Companies Act, 2013, means the aggregate value of the paid-up share capital and all reserves created out of the profits, securities premium account and debit or credit balance of profit and loss account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation. In the given case, Agarwal Enterprises Limited (AEL) is planning to make an investment of ₹10,000 crore which is equivalent to USD 1.25 billion (₹10,000/₹80).

The net worth of AEL is ₹ 2,000+ ₹ 1000 = ₹ 3,000 crore.

The eligible limit of investment under the automatic route is 400% of the net worth i.e. ₹ 3000 × 400%= ₹ 12,000 crore which is equivalent to ₹12000/₹ 80 = USD 1.5 billion.

However, the proposed investment is exceeding the limit of USD 1 billion i.e. USD 1.25 billion. Therefore, the company cannot make investment under automatic route.

Answer 1(d)

Mudra loan is extended for a variety of purposes which result in income generation and employment creation. The loans are extended mainly for:

- Business loan for Vendors, Traders, Shopkeepers and other Service Sector activities;
- Working capital loan through MUDRA Cards;
- Equipment Finance for Micro Units;
- Transport Vehicle loans-for commercial use only;
- Loans for agri-allied non-farm income generating activities, e.g. pisciculture, bee keeping, poultry farming etc;
- Tractors, tillers as well as two wheelers used for commercial purposes only.

Once the beneficiary identifies an idea and comes up with a business plan, he is supposed to select the business category under which he wishes to avail the loan (Shishu, Kishor or Tarun).

Durgesh can contact the nearest public/ private sector bank where he can apply for business loan under Pradhan Mantri Mudra Yojna - (PMMY). The list of institutions partnering in the MUDRA initiative is available on the MUDRA portal. An application form under this scheme will be available with each of the above listed institutions. This application form has to be submitted along with the following documents for the approval of the loan:

- Proof of Identity (Self attested Voter ID/Driving License/PAN Card/ Aadhaar Card/Passport/any other Photo ID issued by Government)
- Proof of Residence (Recent Telephone Bill/Electricity Bill/Property Tax Receipt (not older than 2 months)/ Voter ID Card/Aadhaar Card/Passport/Domicile Certificate/ Certificate Issued by a local authority)
- Applicant's recent photograph (not older than 6 months)
- Quotation of Machinery/other items to be purchased
- Name of the Supplier/Details of Machinery/Price of Machinery
- Proof of Identity/Address of the Business Enterprise (relevant licenses & certificates)
- Proof of Category (SC/ST/OBC/Minority etc.)

Apart from the above-mentioned documents, individual banks could ask for other documents as needed. The Banks are not supposed to take any processing fee and are not supposed to ask for any collateral. The repayment period is also extended to 5 years. But it is also made clear that the applicant should not be a defaulter to any Bank or financial institution. MUDRA Bank is not a separate bank (like SBI etc). It

is a government financing scheme to provide business loan to new small businesses in India. MUDRA will be operating as a refinancing institution through State / Regional level intermediaries.

MUDRA's delivery channel is conceived to be through the route of refinance primarily to NBFCs / Micro Finance Institutions (MFIs), besides other intermediaries including Banks, Primary Lending Institutions etc. The rate of interest will be fixed by the institutions time to time based on guidelines from the RBI.

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

Question 2.

(a) A and B are the civil contractors having their own separate proprietorships. The State Government has issued the tender for construction of 10 kms. road. As per the terms of the tender, the bid can be submitted either by a partnership firm or a company only. A and B wish to form a partnership firm to become eligible for bidding in the aforesaid tender. Advise them the key ingredients of a Partnership Agreement.

(4 marks)

(b) Differentiate between 'Asset Finance Company' and 'Infrastructure Finance Company'.

(4 marks)

(c) Gupta Publishers Ltd. has been incorporated recently and the Articles of Association of the company contain the provisions for entrenchment under section 5(3) of the Companies Act, 2013. Elucidate the provisions of entrenchment under the Companies Act, 2013.

(d) Explain the Doctrine of Alter Ego.

(4 marks)

(e) A non-resident entity desires to set-up an equity based joint venture in India. However, there are certain restrictions under FDI Policy of Government of India. Describe the restrictions to a non-resident entity under FDI Policy of Government of India.

(4 marks)

OR (Alternate question to Q. No. 2)

Question 2A.

(i) Referring to the provisions of Companies Act, 2013, state the circumstances under which the Reserve Bank of India may cancel the certificate of registration granted to a Non-Banking Financial Company (NBFC).

(4 marks)

(ii) Explain any five benefits of forming a Special Purpose Vehicle (SPV).

(4 marks)

(iii) Explain the procedure for registration of Asset Reconstruction Company (ARC).

(4 marks)

(iv) ABC LLP has its registered office in Kanpur (U.P.). For better administrative convenience, the LLP wants to shift its registered office from Kanpur to NCT of Delhi. Advise the LLP regarding the various formalities which need to be complied with for shifting its registered office from Kanpur to NCT of Delhi under Limited Liability Partnership Act, 2008.

(4 marks)

(v) Explain the provisions contained in Section 129 of the Companies Act, 2013 and Companies (Accounts) Rules, 2014 relating to financial statements of Holding Company.

(4 marks)

Answer 2(a)

A and B are advised on the key ingredients of a Partnership Agreement as under:

1. Definitions and vital information

The partnership deed normally carries the name of the business, the address of its principal place of business and a short summary of the nature of business the partners intend to operate.

2. Investment

The deed gives important financial details of the partnership, such as the amount of capital to be invested by each partner, the Profit /Loss sharing of each partner, the salaries to be paid to each partner and the method of distributing the business income. The partnership deed also documents the accepted method of raising additional capital, if necessary, how loan funds may be raised and rate of interest if any, applicable on the loans.

3. Accounting

The partnership deed provides for the accepted method of accounting for the cash flow, profit and loss, assets and liabilities of the business, it also defines the fiscal year to be used in accounting statements and how these statements will be distributed among the partners and other shareholders.

4. Duties, powers and obligations of the partners

The duties, powers and obligations of each partner may also be spelt out in the Partnership Deed. The Deed may also provide designate a partner as the Managing Partner, who will be responsible for day-to-day management and conduct of the business.

5. Withdrawals

The document must also provide for actions to be taken in case of the voluntary withdrawal or death of a partner. In such a case, accounts will have to be drawn up to ascertain the assets, liabilities and the entitlement of each partner (including the outgoing partner).

6. Expulsion

If a partner is proving to be a hindrance or detriment to the business, or loses legal rights in a bankruptcy or other court action, the other partners must have a method of modifying the partnership rights of or expelling him.

7. Dissolution

The partnership deed should also describe the methods by which the partnership and business will be dissolved, if desired, and how the accounts among the partners would be settled at the termination of the business.

8. Arbitration

As in all business contracts a partnership deed must provide for the means of arbitration of disputes. The main goal of the deed is to avoid expensive litigation over details that have not been fully worked out in the signed agreement.

Answer 2(b)

- (i) **Asset Finance Company (AFC)** - An AFC is a company which is a financial institution carrying on as its principal business the financing of physical assets supporting productive/economic activity, such as automobiles, tractors, lathe machines, generator sets, earth moving and material handling equipment, moving on own power and general purpose industrial machines. Principal business for this purpose is defined as aggregate of financing real/physical assets supporting economic activity and income arising therefrom is not less than 60% of its total assets and total income respectively.
- (ii) **Infrastructure Finance Company (IFC)**- IFC is a non- banking finance company-
 - (a) which deploys at least 75 per cent of its total assets in infrastructure loans,
 - (b) has a minimum Net Owned Funds of 300 crore,
 - (c) has a minimum credit rating of 'A' or equivalent, and
 - (d) has a CRAR of 15% with Tier I capital at 10%.

Answer 2(c)

The Companies Act, 2013 recognizes an interesting concept of entrenchment. According to Section 5(3), 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 overall complied with.

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 Companies Act, 2013 (such as obtaining 100% consent). 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.

Further, Section 5(4) prescribed that the provisions for entrenchment referred to in section 5(3) shall only be made either on formation of a company, or 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.

As per Section 5(5), where the Articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in such form and manner as may be prescribed.

According to Rule 10 of the Companies (Incorporation) Rules, 2014, where the Articles contain the provisions for entrenchment, the company shall give notice to the Registrar of such provisions in 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.

Answer 2(d)

Doctrine of *Alter Ego*: It involves ignoring the status of shareholders, officers, and directors of a company in reference to their liability in their respective capacity so that they may be held personally liable for their actions when they have acted fraudulently or unjustly.

In *Lennards Carrying Co. Ltd v Asiatic Petroleum Co. Ltd [1915] AC 705*, the House of Lords stated that the default of the managing director who is the "directing mind and will" of the company, would be attributed to him and he be held for the wrong doing of the company.

Alternate Answer

This doctrine was explained in the case of *International Aircraft Trading vs. Manufacturers Trust Co.*

The term *Alter Ego* can be described as the part of someone's personality that is usually not seen by the others. A Company is deemed to be one and same as the owner of the company and *vis a vis* the principle of alter ego can only be applied in one direction that is to make company liable for an act committed by a person or group of persons who control the affairs of the company as they represent the alter ego of the company.

Directors and other persons who have control over the management of the company can be held liable for the acts committed by or on behalf of the company under the Doctrine of *Alter Ego*. Since the corporation does not have mind of its own; so, its active and directing will must be sought in the person who is really directing the mind and will of the corporation, the very ego and centre of the personality of the corporation.

Answer 2(e)

- A non-resident entity can invest in India, subject to the FDI Policy except in those sectors/activities which are prohibited. However, an entity of a country, which shares land border with India or where the beneficial owner of an investment into India is situated in or is a citizen of any such country, can invest only under the Government route. Further, a citizen of Pakistan or an entity incorporated in Pakistan can invest, only under the Government route, in sectors/activities other than defence, space, atomic energy and sectors/activities prohibited for foreign investment.
- A company, trust and partnership firm incorporated outside India and owned and controlled by NRIs can invest in India with the special dispensation as available to NRIs under the FDI Policy.
- Foreign Portfolio Investors (FPI) may make investments in the manner and subject to the terms and conditions specified in Schedule II of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.

- A Foreign Venture Capital Investor (FVCI) may make investments in the manner and subject to the terms and conditions specified in Schedule VII of Foreign Exchange Management (Non-Debt Instruments) Rules, 2019.
- NRIs resident in Nepal and Bhutan as well as citizens of Nepal and Bhutan are permitted to invest in the capital of Indian companies on repatriation basis, subject to the condition that the amount of consideration for such investment shall be paid only by way of inward remittance in free foreign exchange through normal banking channels.

Answer 2A. (i)

The Reserve Bank of India ("RBI or Bank") cancel a certificate of registration granted to a non-banking financial company if such company-

- Ceases to carry on the business of a non-banking financial institution in India; or
- has failed to comply with any condition subject to which the certificate of registration had been issued to it; or
- at any time fails to fulfil any of the conditions referred to in clauses (d) to (g) of sub-section (4); or
- fails-
 - to comply with any direction issued by the Bank; or
 - to maintain accounts in accordance with the requirements of any law or any direction or order issued by the Bank; or
 - to submit or offer for inspection its books of account and other relevant documents when so demanded by an inspecting authority of the Bank; or
 - has been prohibited from accepting deposit by an order made by the Bank and such order has been in force for a period of not less than three months:

Provided that before cancelling a certificate of registration on the ground that the non-banking financial company has failed to comply with the provisions of clause (ii) or has failed to fulfil any of the conditions referred to in clause (iii) the Bank, unless it is of the opinion that the delay in cancelling the certificate of registration shall be prejudicial to public interest or the interest of the depositors or the non-banking financial company, shall give an opportunity to such company on such term as the Bank may specify for taking necessary steps to comply with such provision or fulfilment of such condition. Provided further that before making any order of cancellation of certificate of registration, such company shall be given a reasonable opportunity of being heard.

Answer 2A. (ii)

The following are the benefits of Special Purpose Vehicle (SPV):

1. **Ownership of Assets** - An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
2. **Minimum Statutory Requirement**-Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.
3. **Clarity of documentation**-It is easy to limit certain activities or to prohibit unauthorised transactions within the SPV documentation.
4. **Tax benefits**-SPVs are often used to make a transaction tax efficient by choosing the most favourable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales.
5. **Legal protection** - By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.
6. **Accounting Reasons**- Debts raised through SPV are not reflected in the balance sheet of the sponsor. It reflects a pleasant picture and enhances the debt raising ability of the sponsor. Losses incurred by SPV are not shown in the balance sheet of the sponsor, so it helps to maintain the healthy picture of the sponsor in the eyes of its stakeholders.
7. The key advantage is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.
8. The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

Answer 2A. (iii)

The procedure for registration of Asset Reconstruction Company (ARC) is given below:

- Firstly, a company has to be incorporated under the Companies Act, 2013. The company may be a private company or a public company.
- Secondly, after incorporation, the company has to register itself with the Reserve Bank of India (RBI). Asset Reconstruction Companies are governed by the Asset Reconstruction Companies (Reserve Bank) Guidelines and Directions, 2003 issued by the Reserve Bank of India as amended from time to time.
- Every ARC shall apply for registration in the form of application hosted on the RBI website and obtain a certificate of registration from the Bank as provided under Section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002 (SARFAESI Act).
- The ARC seeking registration from the RBI shall submit their application in the format as specified, duly filled in with all the relevant annexures/ supporting documents to the Chief General Manager-in- Charge, Department of Regulation, Central Office, Reserve Bank of India;
- An ARC, which has obtained a certificate of registration issued by the Bank under Section 3 of the SARFAESI Act, can undertake both securitization and asset reconstruction activities.
- An ARC shall commence business within six months from the date of grant of Certificate of Registration by RBI. However, on the application by the ARC, RBI may grant extension for further period not exceeding 12 months from the date of grant of Certificate of Registration.
- Provisions of section 45 -1A, 45-IB and 45-IC of Reserve Bank of India Act, 1934 shall not apply to non-banking financial company, which is an ARC registered with the Bank under Section 3 of the SARFAESI Act.

Answer 2A. (iv)

Procedure for Changing the registered office from Kanpur (Uttar Pradesh) to NCT of Delhi

The limited liability partnership (LLP) may change its registered office from one place to another by following the procedure as laid down in the limited liability partnership agreement. Where the limited liability partnership agreement does not provide for such procedure, consent of all partners shall be required for changing the place of registered office of limited liability partnership to another place.

The following formalities are required to be complied by the LLP firm to change its registered office from one State to another State:

1. Pass resolution for change of address.
2. Consent of secured creditors is required.
3. Publish a general notice, not less than 21 days before filing any notice with Registrar, in a daily newspaper published in English and in the principal language of the district in which the registered office of the LLP is situated and circulated in that district giving notice of change of registered office.
4. Notice of change of place of registered office shall be given to Registrar in Form- 15 within 30 days of publishing of general notice as prescribed under Rule 17 of the Limited Liability Partnership Rules, 2009 along with the prescribed fees.
5. Where there is any conviction, ruling, order or judgment of any Court, tribunal or other authority against the limited liability partnership, the particulars of such prosecutions initiated against or show cause notices received by the limited liability partnership for the alleged offences under the Limited Liability Partnership Act, 2008 shall be stated in the notice of change of place of registered office to be filed with the Registrar.
6. Where the change in place of registered office is from one state to another state, the limited liability partnership shall file the notice in Form 15 with the Registrar from where the limited liability partnership proposes to shift its registered office with a copy thereof for the information to the Registrar under whose jurisdiction the registered office is proposed to be shifted.
7. The LLP Form 3 is required to be filed for "Information with regard to limited liability partnership agreement and changes" along with the supplementary agreement as attachment.

Accordingly, ABC LLP is advised to follow the abovementioned procedure.

Answer 2A. (v)

The provisions relating to financial statements of Holding Company as contained in Section 129 of the Companies Act, 2013 and the Companies (Accounts) Rules, 2014 are given below:

Where a company has one or more subsidiaries, it shall prepare a consolidated financial statement of the company and of all the subsidiaries in the same form and manner as that of its own which shall also be laid before the annual general meeting of the company along with the laying of its financial statement.

The company shall also attach along with its financial statement, a separate statement containing the salient features of the financial statement of its subsidiary or subsidiaries in such form may be prescribed. The statement containing the salient feature of the financial statement of a company's subsidiary or subsidiaries, associate company or companies and joint venture or ventures shall be in Form AOC-1.

Provided that the Central Government may provide for the consolidation of accounts of companies in such manner as may be prescribed.

The provisions of the Companies Act, 2013 applicable to the preparation, adoption and audit of the financial statements of a holding company shall, mutatis mutandis, apply to the consolidated financial statements.

PART B**Question 3.**

- (a) *ABC Pvt. Ltd. is engaged in the business of manufacturing of machinery parts. The company has the following investment in fixed assets:*
- | | |
|----------------------------------------------------------------------------------------------------|-------------------|
| <i>Plant and Machinery</i> | <i>₹115 lakh</i> |
| <i>(including second hand machinery of ₹ 25 Lakh and pollution control equipment of ₹ 20 lakh)</i> | |
| <i>Land and Building</i> | <i>₹ 100 lakh</i> |
| <i>Turnover</i> | <i>₹ 600 lakh</i> |
| <i>(including export turnover of ₹ 150 lakh)</i> | |
- Explain with details whether ABC Pvt. Ltd. comes under Micro or Small or Medium Enterprise category as per the new definition of MSME vide Press Release dated 13th May, 2020 of Ministry of Finance.*
- (5 marks)*
- (b) *A factory is having 400 employed persons and covered under the Payment of Wages Act, 1936. It wants to fix the wage period as one and half month and make the payment of wages within 10 days after the last day of the wage period. Is it permitted under the Payment of Wages Act, 1936?*
- (5 marks)*
- (c) *In the following cases who are the owners of the copyrights, in terms of the provisions of Copyright Act, 1957: (1) Musical sound recordings (2) Works by journalists during their employment (3) Painting or portrait drawn at the instance of any person (4) Drafting of examination question papers (5) Book written by a teacher being an employee in a college.*
- (5 marks)*
- (d) *Sukhdev Industry Ltd., situated in the vicinity of Tajmahal, Agra (U.P.), is causing air, water and noise pollution. The people living in the area have made a written complaint to the Central Government against the company for issuing the necessary directions. State the different directions that can be issued by the Central Government to Sukhdev Industry Ltd. under the Environment Protection Act, 1986.*

(5 marks)

Answer 3(a)

An enterprise shall be classified as a micro, small or medium enterprise on the basis of the following criteria, namely: --

- (i) a Micro enterprise, where the investment in plant and machinery or equipment does not exceed one crore rupees and turnover does not exceed five crore rupees;

- (ii) a Small enterprise, where the investment in plant and machinery or equipment does not exceed ten crore rupees and turnover does not exceed fifty crore rupees; and
- (iii) a Medium enterprise, where the investment in plant and machinery or equipment does not exceed fifty crore rupees and turnover does not exceed two hundred and fifty crore rupee.

MSME includes all establishment engaged either in manufacturing or rendering services but it does not include those enterprises which are engaged only in trading activities. The expression "plant and machinery or equipment" of the enterprise, shall have the same meaning as assigned to the plant and machinery in the Income Tax Rules, 1962 framed under the Income Tax Act, 1961 and shall include all tangible assets (other than land and building, furniture and fittings).

The purchase (invoice) value of a plant and machinery or equipment, whether purchased first hand or second hand, shall be taken into account excluding Goods and Services Tax (GST), on self-disclosure basis, if the enterprise is a new one without any ITR.

The cost of certain items specified in the Explanation I to sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, shall be excluded from the calculation of the amount of investment in plant and machinery i.e. in calculating the investment in plant and machinery, the cost of pollution control, research and development, industrial safety devices and such other items as may be specified, by notification, shall be excluded.

Exports of goods or services or both, shall be excluded while calculating the turnover of any enterprise whether micro, small or medium, for the purposes of classification.

In the given situation, the investment in plant and machinery or equipment is ₹ 95 lakh (₹ 115 lakh - ₹ 20 lakh) and the turnover is ₹ 450 lakh (₹ 600 lakh - ₹ 150 lakh). Therefore, ABC Pvt. Ltd. comes under the category of Micro Enterprise as per the new definition of MSME.

Answer 3(b)

As per Section 4 of the Payment of Wages Act, 1936, every person responsible for the payment of wages shall fix wage- periods in respect of which such wages shall be payable. No wage-period shall exceed one month.

Further, Section 5 specifies the time of payment of wages. The wages of every person employed upon or in any railway, factory or industrial or other establishment upon or in which less than one thousand persons are employed, shall be paid before the expiry of the seventh day after the last day of the wage period in respect of which the wages are payable.

As per above mentioned provisions, the factory cannot fix the wage period as one and half month as it cannot exceed one month and cannot pay the wages within 10 days after the last day of the wage period.

Answer 3(c)

Section 17 of the Copyright Act, 1957 laid down the provisions of the ownership of the copyright. As per Section 17 and other relevant sections of Copyright Act, 1957, following would be the owners of the copyrights:

- (1) **In musical sound recordings:** lyricist, composer, singer, musician and the person or company who produced the answers to be sound recording.
- (2) **In works by journalists during their employment:** In the absence of any agreement to the contrary, the proprietor.
- (3) **In painting or portrait drawn at the instance of any person:** In the absence of any agreement to the contrary, the person at whose instance the work is produced.
- (4) **In drafting of examination question papers:** Rights vests in the paper setter where no contract to the contrary exists. The paper setter in such case is the author and owner and not the authority for whom the question papers are set.
- (5) **In book written by a teacher being an employee in a college:** Teacher is the author and owner of the copyright and not the college because teacher is employed to teach and not to write the books.

Answer 3(d)

Under Environment Protection Act, 1986, one is necessitated to comply with the directions issued by the Central Government. The directions that can be issued by the Central Government to Sukhdev Industry Ltd. may include :

- (1) Closure, prohibition or regulation of any industry;
- (2) Stoppage or regulation of the supply of electricity, water or any other service;
- (3) Prevent discharges or emissions excess of the prescribed standards;
- (4) Furnish information of any accidental or unforeseen event;
- (5) Allow entry and inspection to ascertain compliance;
- (6) Allow samples to be taken;
- (7) Submit an "Environmental Statement every year to the State Pollution Control Board (SPCB);
- (8) Obtain prior "Environmental Clearances" from Ministry of Environment, Forest and Climate Change (MoEFCC), in case of a new project or for modernization/ expansion of the existing project.

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

(a) Write down the objectives for the establishment of a National Green Tribunal.

(3 marks)

(b) Explain the benefits extended to Micro & Small Enterprises (MSEs) for having valid NSIC registration.

(3 marks)

(c) Amit has designed a teacup having a hollow receptacle for holding tea and a handle to hold the cup. Can Amit register it under the Designs Act, 2000? Would your answer be different if the teacup has a fancy shape or ornamentation on it?

(3 marks)

(d) Santhi was employed in a factory since 2008 when the total employees in the factory were 54. She resigned from that employment on 31st March, 2023 after 15 years of continuous service. The factory owner denied to pay the amount of gratuity to Santhi stating that on the date of her retirement, the number of employees in the factory had come down to 8, hence the provisions of Gratuity Act, 1972 would not be applicable. Referring to the provisions of Gratuity Act, 1972, advise whether Santhi will succeed in her claim?

(3 marks)

(e) Write down the duties of the employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013.

(3 marks)

OR (Alternate question to Q. No. 4)**Question 4A.**

(i) Sunil is operating the construction material business in Noida. National Green Tribunal (NGT) has awarded a penalty of ` 1 crore to Sunil for non-compliance of its order. Aggrieved by the order of NGT, Sunil looks for your advice to seek the review of decision of NGT. Advise Sunil in this regard.

(3 marks)

(ii) LK Ltd. is in the healthcare sector. The company has launched a product named "Ram Baan" to cure the disease of cancer. The company desires to register the product logo under the Trade Marks Act, 1999. Describe the points to be considered by the company while adopting a trademark.

(3 marks)

(iii) M Ltd. has a textile plant situated in Bhiwandi, Maharashtra. Mudit is the head of the plant, who possesses Master Degree in Mechanical Engineering from a reputed Institute. Mudit is appointed as the occupier of the plant under the Factories Act, 1948. What are the measures Mudit has to adopt for health of workers employed in the manufacturing process which generates dust, fume and other impurities ?

(3 marks)

(iv) Daadi ke Achaar Pvt. Ltd. is producing the pickles of all varieties. A few of the workers in the company are in the age group of 15 to 18. The company seeks your advice on the provisions regarding working

hours and period of work under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986. Advise the company.

(3 marks)

- (v) *What conditions are required to be satisfied by the White Category of industries to be eligible for pollution license exemption?*

Answer 4(a)

The Preamble of the National Green Tribunal Act, 2010 states the object for the establishment of a National Green Tribunal (herein referred as NGT) for the effective and expeditious disposal of cases relating to environmental protection and conservation of forests and other natural resources including enforcement of any legal right relating to environment and giving relief and compensation for damages to persons and property and for matters connected therewith or incidental thereto.

- It aims the effective and speedy disposal of the cases relating to environment protection and conservation of forests and other natural resources. All the previous pending cases will also be heard by the Tribunal.
- It aims at enforcing all the legal rights relating to the environment.
- It also accounts for providing compensation and relief to effected people for damage of property.

Answer 4(b)

The following benefits are extended to Micro & Small Enterprises (MSEs) having valid NSIC registration:

1. Issue of the Tender Sets free of cost.
2. Exemption from payment of Earnest Money Deposit (EMD).
3. In tender participating MSEs quoting price within price band of L1+15 per cent shall also be allowed to supply a portion upto 25% of requirement by bringing down their price to L1 Price where L1 is non MSEs.
4. Consortia facility for Tender Marketing.

Every Central Ministries/Departments/PSUs shall set an annual goal of minimum 25 per cent of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 25% procurement from MSES, 4% is earmarked for units owned by Schedule Caste /Schedule Tribes and 3% is earmarked for the units owned by Women entrepreneurs. Single Point Registration Scheme (SPRS) registered units are integral part of the supply chain to Government.

In addition to the above, 358 items are also reserved for exclusive purchase from MSE Sector.

Answer 4(c)

The Designs Act, 2000 excludes from its purview the functioning features of an article and grants protection only to those which have an aesthetic appeal. For example, the design of a teacup must have a hollow receptacle for holding tea and a handle to hold the cup. These are functional features that cannot be a registered. But a fancy shape or ornamentation on it would be registrable. Similarly, a table, for example, would have a flat surface on which other objects can be placed. This is its functional element. But its shape, colour or the way it is supported by legs or otherwise, are all elements of design or artistic elements and therefore, registrable if unique and novel.

In view of the above, Amit cannot register the design of the teacup under the Designs Act, 2000 whereas fancy shape or ornamentation on it is registrable.

Answer 4(d)

The Payment of Gratuity Act, 1972 provides for a scheme of compulsory payment of gratuity to employees engaged in factories, mines, oilfields, plantations, ports, railway companies, shops or other establishments on the termination of his employment after he has rendered continuous service for not less than five years on his superannuation or on his retirement or resignation or on his death or disablement due to accident or disease.

The Payment of Gratuity Act, 1972, shall apply to: -

- every factory, mine, oil-field, plantation, port and railway company;
- every shop or establishment within the meaning of any law for the time being in force in relation to shops and establishments in a State, in which ten or more persons are employed or were employed on any day of the preceding twelve months;

- such other establishments or class of establishments in which ten or more employees are employed or were employed on any day of the preceding twelve months as the Central government may, by notification, specify in this behalf.

A shop or establishment once covered shall continue to be governed by the Act notwithstanding that the number of persons employed therein at any time after it has become so applicable falls below ten.

In light of the above-mentioned provisions, Santhi will succeed in her claim irrespective of the fact whether the number of required employees/workers falls below ten.

Answer 4(e)

Duties of the employer under the Sexual Harassment of Women at Workplace (Prevention, Prohibition and Redressal) Act, 2013

Every employer shall-

- provide a safe working environment at the workplace which shall include safety from the persons coming into contact at the workplace;
- display at any conspicuous place in the workplace, the penal consequences of sexual harassments; and the order constituting, the Internal Committee;
- organise workshops and awareness programmes at regular intervals for sensitising the employees with the provisions of the Act and orientation programmes for the members of the Internal Committee in the manner as may be prescribed;
- provide necessary facilities to the Internal Committee or the Local Committee, as the case may be, for dealing with the complaint and conducting an inquiry;
- assist in securing the attendance of respondent and witnesses before the Internal Committee or the Local Committee, as the case may be;
- make available such information to the Internal Committee or the Local Committee, as the case be, as it may require having regard to the complaint made;
- provide assistance to the woman if she so chooses to file a complaint in relation to the offence under the Indian Penal Code or any other law for the time being in force;
- cause to initiate action, under the Indian Penal Code or any other law for the time being in force, against the perpetrator, or if the aggrieved woman so desires, where the perpetrator is not an employee, in the workplace at which the incident of sexual harassment took place;
- treat sexual harassment as a misconduct under the service rules and initiate action for such misconduct;
- monitor the timely submission of reports by the internal Committee.

Answer 4A. (i)

If a person is not satisfied with the orders of the tribunal, he can seek the review of the decision of National Green Tribunal (NGT) under rule 22 of the National Green Tribunal (Practices and Procedure) Rules, 2011 (NGT Rules). No application for review shall be entertained unless it is filed within thirty days from the date of receipt of copy of the order sought to be reviewed. In case if such person is not satisfied with the decision of the tribunal, he can file an appeal to the Supreme Court of India. However, the appeal has to be filed within ninety days of the orders passed by NGT.

Accordingly, Sunil can seek the review of the decision of NGT. In case if Sunil is not satisfied with the decision of the tribunal, he can file an appeal to the Supreme Court of India.

Answer 4A. (ii)

Any Start-up needs to be cautious in selecting its trade name, brands, logos, packaging for products, domain names and any other mark which it proposes to use. It must do a proper due diligence before adopting a trademark. The trademarks can be broadly classified into five categories. The categories are Generic, Descriptive, Suggestive, Arbitrary and Invented/Coined.

1. Generic marks mean using the name of the product for the product, like "Salt" for salt.

2. Descriptive marks mean the mark describing the characteristic of the products, like using the mark "Fair" for the fairness creams.
3. Suggestive marks mean the mark suggesting the characteristic of the products, like "Habitat" for home furnishings products.
4. Arbitrary marks mean mark which exist in popular vocabulary, but have no logical relationship to the goods or services for which they are used, like "Blackberry" for phones.
5. The invented/ coined marks mean coining a new word which has no dictionary meaning, like "Adidas". The strongest marks, and thus the easiest to protect, are invented or arbitrary marks. The weaker marks are descriptive or suggestive marks which are very hard to protect. The weakest marks are generic marks which can never function as trademarks.

India follows the NICE Classification of Goods and Services for the purpose of registration of trademarks. The NICE Classification groups products into 45 classes (classes 1-34 include goods and classes 35-45 include services). The NICE Classification is recognized in majority of the countries and makes applying for trademarks internationally a streamlined process.

Every Start-up, seeking to trademark a good or service, has to choose from the appropriate classes, out of the 45 classes. While adopting any mark, the Start-up should also keep in mind and ensure that the mark is not being used by any other person in India or abroad, especially if the mark is well known. It is important to note that India recognizes the concept of the "Well-known Trademark" and the principle of "Trans-border Reputation".

Accordingly, LK Ltd. may consider above mentioned points while adopting a trademark.

Answer 4A. (iii)

Mudit has to adopt the following measures in the manufacturing process which generates lot of dust, fume and other impurities to ensure health and safety of the workers:

- (1) Effective measures should be taken to prevent the inhalation and accumulation of dust, fumes etc. in the work-rooms.
- (2) Wherever necessary, an exhaust appliance should be fitted, as far as possible, to the point of origin of dust, fumes or other impurities. Such point shall also be enclosed as far as possible.
- (3) In case stationary internal combustion engine is operated in factory, exhaust should be connected into the open air.
- (4) In cases of other internal combustion engine is operated in factory, effective measures should be taken to prevent the accumulation of fumes therefrom.
- (5) Precautions against dangerous fumes, gases, etc. should be taken and it must ensure that:
 - a. person shall not be allowed to enter any chamber, tank, vat, pit, pipe, flue or other confined space in any factory in which any gas, fume vapour or dust is likely to be present to such an extent as to involve risk to persons being overcome thereby, unless it is provided with a manhole of adequate size or other effective means of egress.
 - b. person shall not be allowed to enter any confined space, until all practicable measures have been taken to remove any gas, fume, vapour or dust, which may be present so as to bring its level within the permissible limits and to prevent any ingress of such gas, fume, vapour or dust and unless--
 - a certificate in writing has been given by a competent person, based on a test carried out by himself that the space is reasonably free from dangerous gas, fume, vapour or dust; or
 - such person is wearing suitable breathing apparatus and a belt securely attached to a rope the free end of which is held by a person outside the confined space.

Answer 4A. (iv)

Section 7 of the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986, provides that no adolescent shall be required or permitted to work in any establishment in excess of such number of hours, as may be prescribed for such establishment or class overall of establishments.

The period of work on each day shall be so fixed that no period shall exceed three hours and that no adolescent shall work for more than three hours before he has had an interval for rest for at least one hour. The period of work of an adolescent shall be so arranged that inclusive of his interval for rest, it shall not be spread over more than six hours, including the time spent in waiting for work on any day.

This section also stipulates that:

- No adolescent shall be permitted or required to work between 7 p.m. and 8 a.m.
- No adolescent shall be required or permitted to work overtime.
- No adolescent shall be required or permitted to work in any establishment on any day on which he has already been working in another establishment.

Accordingly, the Company is advised to consider the above-mentioned provisions regarding working hours and period of work under the Child and Adolescent Labour (Prohibition and Regulation) Act, 1986.

Answer 4A. (v)

The White Category of industries has to satisfy the following conditions to be eligible for this pollution license exemption-

1. The industry is being established in the locality demarcated for them;
2. Their investment on plant and machinery as specified from time to time;
3. There will not be any discharge of trade effluent from the industry into stream or well or sewer or onto land and/or that industry will not discharge any air pollution including noise into the atmosphere;
4. The industry will not discharge any toxic/hazardous wastes and will not handle any toxic/hazardous chemicals.

PART – C

Question 5.

(a) Differentiate between 'Defunct Company' and 'Vanishing Company'.

(b) What do you mean by Pre-packaged Insolvency Resolution Process (PPIRP)? What is the eligibility and time-limit for completion of PPIRP?

(c) What is the procedure to be followed by a Dormant Company for obtaining the status of an Active Company?

(d) Dev has been appointed as the Interim Resolution Professional (IRP) in respect of Corporate Insolvency Resolution Process (CIRP) admitted by Adjudicating Authority against Supriya Ltd. Dev seeks your advice on the contents of Public Announcement under Insolvency & Bankruptcy Code, 2016, Advise Dev.

(e) What do you mean by an 'Inactive Company'?

(3 marks each)

Answer 5(a)

Defunct company-A company which has failed to commence business operations within one year from the date of registration without any proper reason, which is beyond the control of the company or where a company has no assets or liabilities. Again, if a company is not filling its balance sheet for many years, then also it will be termed as a defunct company.

Vanishing Company - A company, registered under the Companies Act, 2013 or previous company law or any other law for the time being in force and listed with Stock Exchange which has failed to file its returns with the Registrar of Companies and Stock Exchange for a consecutive period of two years, and is not maintaining its registered office at the address notified with the Registrar of Companies or Stock Exchange and none of its directors are traceable.

Answer 5(b)

Pre-Packaged Insolvency Resolution Process (PPIRP) is introduced in the Insolvency and Bankruptcy Code, 2016, by way of Chapter III-A consisting of section 54A to 54 P w.e.f. 4th April, 2021. This is a new opportunity for micro, small or medium enterprise to come out of Covid Pandemic and resolve their

insolvency as "One time settlement with creditors" with the approval of Adjudicating Authority while corporate debtor (CD) is run by existing promoters.

Eligibility:

When a corporate debtor classified as a micro, small or medium enterprise under sub-section (1) of section 7 of the Micro, Small and Medium Enterprises Development Act, 2006, commits minimum default of Rs 10 lakhs, it can opt for PPIRP. The Central Government can increase minimum default limit to Rs 1 crore.

Time-limit for completion of PPIRP:

- PPIRP shall be completed within 120 (one hundred and twenty) days from the pre-packaged insolvency commencement date (PPICD).
- Resolution Professional (RP) shall submit approved resolution plan to the Adjudicating Authority within 90 days of PPICD.
- If committee of creditors (CoC) does not approve resolution plan within 90 days, RP shall submit an application with the Adjudicating Authority for termination of PPIRP.

Answer 5(c)

In accordance with the provisions of Section 455 read with Rule 8 of the Companies (Miscellaneous) Rules, 2014, the dormant company shall follow the below procedure for obtaining status of an active company on its own:

- a) An application for obtaining the status of an active company is required to be made in Form MSC-4 along with fees as provided in the Companies (Registration Offices and Fees) Rules, 2014 which should be accompanied by a return in Form MSC-3 in respect of the financial year in which the application for obtaining the status of an active company is being filed.
- b) The ROC after considering the application filed for obtaining the status of the active company from dormant company shall issue a certificate in Form MSC-5 allowing the status of an active company to the applicant.

The ROC shall in the following cases change the status of the dormant company to active company:

- i. Where a dormant company does or omits to do any act mentioned in the grounds in the application made for obtaining status of a dormant company and such act or omission affects its status of dormant company, the directors of such a company are required to file an application within seven days from such event for obtaining the status of an active company.
- ii. Where the ROC has reasonable cause to believe that any company registered as 'dormant company' under his jurisdiction has been functioning in any manner, directly or indirectly affecting the status of dormant company, the ROC can initiate the proceedings for enquiry under section 206 of the Companies Act, 2013 and if, after giving a reasonable opportunity of being heard to the company in this regard, it is found that the company has actually been active, the ROC may remove the name of such company from Register of dormant companies and treat it as an active company.

Answer 5(d)

Section 15 of the Insolvency and Bankruptcy Code, 2016, makes it a mandatory for Interim Resolution Professional (IRS) to make the public announcement of the Corporate Insolvency Resolution Process admitted by Adjudicating Authority which has contain the following information, namely; -

- (a) name and address of the corporate debtor under the corporate insolvency resolution process;
- (b) name of the authority with which the corporate debtor is incorporated or registered;
- (c) the last date for submission of claims, as may be specified;
- (d) details of the interim resolution professional who shall be vested with the management of the corporate debtor and be responsible for receiving claims;
- (e) penalties for false or misleading claims; and

(f) the date on which the corporate insolvency resolution process shall close, which shall be the one hundred and eightieth day from the date of the admission of the application under sections 7, 9 or section 10, as the case may be.

Accordingly, Dev is advised to refer above mentioned provisions with respect to the contents of Public Announcement under Insolvency and Bankruptcy Code, 2016.

Answer 5(e)

The definition of an Inactive Company can be found in the explanation to sub-section (1) of Section 455 of the Companies Act, 2013. It reads as under:

'Inactive Company' means a company which:

- (a) has not been carrying on any business or operation; or
- (b) has not made any significant accounting transaction during last two financial years; or
- (c) has not filed financial statements and annual returns during the last two financial years.

Section 455(1) provides that where a company is formed and registered under the Companies Act, 2013 for a future project or to hold an asset or intellectual property and has no significant accounting transaction, such a company or an inactive company may make an application to the Registrar in such manner as may be prescribed for obtaining the status of a dormant Company.

Question 6.

(a) BBIL is an unlisted public company. The company is in insurance business. BBIL has incurred huge losses and applied for striking off its name after making due payments to all the creditors. The Registrar of Companies requires No Objection Certificate (NOC) from the appropriate regulatory authorities. Whether the NOC is required? Explain.

(b) Effective Green Energy Ltd. was incorporated on 22nd May, 2020. Due to the restrictions imposed to combat COVID-19 pandemic and consequent slowdown in the economy, the company could not start any business. The Registrar of Companies (RoC) removed the name of the company from the Register of Companies without giving a prior notice to the company. The company desires to challenge the action of the RoC. Referring to the provisions of the Companies Act, 2013, examine whether the action of the RoC is tenable?

(5 marks each)

Answer 6(a)

As per Rule 4 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, No Objection Certificate (NOC) from appropriate Regulatory Authority concerned is required in case a company is regulated under a special Act which shall be attached to the application in Form No. STK-2. The said NOC is required in case of the following companies:

- i. Companies which have conducted or conducting non-banking financial and investment activities as referred to in the Reserve Bank of India Act, 1934 or rules and regulations thereunder;
- ii. Housing finance companies as referred to in the Housing Finance Companies (National Housing Bank) Directions, 2010 issued under the National Housing Bank Act, 1987;
- iii. Insurance companies as referred to in the Insurance Act, 1938 or rules and regulations thereunder;
- iv. Companies in the business of capital market intermediaries as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- v. Companies engaged in collective investment schemes as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- vi. Asset management companies as referred to in the Securities and Exchange Board of India Act, 1992 or rules and regulations thereunder;
- vii. Any other company which is regulated under any other law for the time being in force.

Accordingly, BBIL is required NOC from the appropriate regulatory authority under Insurance Act, 1938 i.e. Insurance Regulatory and Development Authority of India (IRDAI).

Answer 6(b)

Removal of name of the company by the Registrar of Companies

Subject to the provisions of Section 248(1) of the Companies Act, 2013 read with Rule 3 of the Companies (Removal of Names of Companies from the Register of Companies) Rules, 2016, in the following cases, the Registrar can *suo moto* remove the name of the company from the Register:

- (a) a company has failed to commence its business within one year of its incorporation or;
- (b) a company is not carrying on any business or operation for a period of two immediately preceding financial years and has not made any application within such period for obtaining the status of a dormant company under section 455 of the Companies Act, 2013; or
- (c) the subscribers to the memorandum have not paid the subscription which they had undertaken to pay at the time of incorporation of a company and a declaration to this effect has not filed within 180 days of its incorporation under section 10A(i); or
- (d) the company is not carrying on any business or operations as revealed after the physical verification carried out under section 12(9) of the Act.

Before removal of the name of the company from the Register, the ROC is required to send a notice in Form STK 1 to the company and all the directors of the company, of his intention to remove the name of the company from the register of companies. Such a notice should contain the reasons for which the name of the company is to be removed from the Register of Companies. Such a notice should be sent to all the directors of the company at the addresses available on record, by registered post with acknowledgement due or by speed post. On receipt of such a notice, the company and all the directors of the company are required to send their representations along with copies of the relevant documents, if any, explaining the reasons as to why the name of the company should not be removed from the Register of Companies. Such representations should be given within a period of thirty days from the date of the notice.

In the given case, RoC has removed the name of Effective Green Energy Ltd. from the Register of Companies without giving prior notice to the Company. Therefore, the action of the RoC is not tenable.

Tax Laws

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All questions in Part-I relate to the Income Tax Act, 1961 and Assessment Year 2023-24, unless stated otherwise.

PART—I

1. Deva being a person of Indian origin came to India on 5th June, 2022 and remained in India till 31st March, 2023. His income in India from business up to 31st March, 2023 is ₹ 17 lakh and his income in Australia for the same period is ₹ 20 lakh. He visited India every year for 100 days stay for the last 10 years. What is his residential status for the assessment year 2023-24?

- (A) Resident and Ordinarily Resident
- (B) Non-Resident
- (C) Deemed Resident
- (D) Resident but Not Ordinarily Resident

2. Santhanam is employed as General Manager of Great Ltd. The employer gave motor car for official use of employee being self-driven by him. Entire expenses were met by employee amounting to ₹ 27,500. The car was used exclusively for official purpose and the engine capacity was more than 1.6 litres. How much is the perquisite value in respect of car given to the employee?

- (A) ₹ 10,800
- (B) ₹ 18,000
- (C) ₹ 27,500
- (D) Nil

3. X & Co. acquired a know-how on 10th November, 2022 for ₹ 5 lakh. How much is the amount of depreciation allowable under section 32 of the Income Tax Act, 1961 for the assessment year 2023-24?

- (A) ₹ 50,000
- (B) ₹ 62,500
- (C) ₹ 1,25,000
- (D) ₹ 75,000

4. Rakesh sold his residential building for ₹ 300 lakh and the indexed cost of acquisition of the building was ₹120 lakh. He acquired a residential building for ₹ 110 lakh at Pune and another residential building at Jaipur for ₹ 90 lakh subsequently. How much is the amount eligible for exemption under section 54 of the Income Tax Act, 1961?

- (A) ₹ 110 lakh
- (B) ₹ 90 lakh
- (C) ₹ 180 lakh
- (D) ₹ 200 lakh

5. Govind, a resident individual has following incomes : Salary ₹ 5,60,000; Loss from house property (let out) ₹ 60,000; Loss from house property (self-occupied) ₹ 1,80,000; and long-term capital gain on sale of vacant land ₹ 8,00,000. How much is the total income of Govind for the assessment year 2023-24?

- (A) ₹ 13, 60,000

(B) ₹ 12, 10,000

(C) ₹ 11, 60,000

(D) ₹ 11, 20,000

6. Ravi is employed in A Zone Ltd as Marketing Manager at Chennai during the financial year 2022-23. His basic pay and DA (eligible for retirement benefits) amounts to ₹ 15, 40,000. He received ₹ 3 lakh as house rent allowance and paid actual rent of ₹ 30,000 per month during the year 2022-23. How much of house rent allowance is eligible for exemption under section 10(13A) of the Income Tax Act, 1961?

(A) ₹ 7, 70,000

(B) ₹ 3, 00,000

(C) ₹ 2, 06,000

(D) ₹ 3, 08,000

7. Naveen is employed in a company. He wants to know which of the following perquisite a tax-free perquisite is:

(i) Subsidized lunch;

(ii) Personal accident insurance

(iii) Interest-free loan from employer ₹ 18,000

(iv) Reimbursement of medical expenditure ₹ 25,000

(A) (i) and (iv)

(B) (i) and (iii)

(C) (i), (ii) and (iii)

(D) (i), (ii), (iii) and (iv)

8. Venkat and Co. engaged in trading activity gave ₹ 1 lakh as donation to Deference Research and Development Organisation. How much of the amount given as donation is eligible for deduction while computing its income under the head "Profits and gains of Business or Profession"?

(A) Nil

(B) ₹ 50,000

(C) ₹ 1, 00,000

(D) ₹ 1, 50,000

9. Swamy aged 83 has total income of ₹ 9, 80,000 for the assessment year 2023-24. He has opted for section 115BAC of the Income Tax Act, 1961. How much is his income tax liability for the assessment year 2023-24?

(A) ₹ 1, 12,840

(B) ₹ 1, 10,240

(C) ₹ 78,000

(D) ₹ 74,880

10. Anish is employed in Global Ltd. Which of the following allowances are eligible for exemption for the assessment year 2023-24 when he has opted for section 115BAC of the Income Tax Act, 1961?

(i) House Rent allowance

(ii) Transport allowance

(iii) Conveyance allowance

(iv) Children education allowance

(A) (i) and (ii)

(B) (iii)

(C) (ii) and (iv)

(D) (i), (ii) and (iii)

11. Karthik acquired an electric motor car on 23rd April, 2022 for ₹ 18 lakh for which he availed loan of ₹ 14 lakh from State Bank of India. Interest on loan for the year ended 31st March, 2023 was ₹ 1, 90,000. How much of interest on loan is eligible for deduction for the assessment year 2023-24?

(A) ₹ 50,000

(B) ₹ 1, 00,000

(C) ₹ 1, 50,000

(D) ₹ 1, 90,000

12. Mishra Enterprises a partnership firm paid ₹ 40,000 by way of interest on loan taken from one of the friends of a partner. No tax was deducted at source for the interest payment. How much of interest expenditure is liable for disallowance for non-deduction of tax at source?

(A) ₹ 40,000

(B) ₹ 20,000

(C) ₹ 12,000

(D) Nil

13. What is the monetary limit of turnover or gross receipt for the purpose of applying Principles for Determination of Place of Effective Management (POEM) provisions?

(A) ₹ 10 crore

(B) ₹ 25 crore

(C) ₹ 50 crore

(D) ₹ 100 crore

14. Naresh a resident individual gives you the following information of his investments:

(i) Life insurance premium of his parent paid ₹ 40,000;

(ii) Tax Saver Deposit in his own name ₹ 30,000;

(iii) Deposit in Public Provident Fund in own name ₹ 20,000;

(iv) 5 year time deposit in post office ₹ 22,000;

(v) Tuition fees for his son studying Armenia ₹ 1, 10,000.

How much is the amount eligible for deduction under section 80C of the Income Tax Act, 1961?

(A) ₹ 1, 12,000

(B) ₹ 1, 50,000

(C) ₹ 82,000

(D) ₹ 72,000

15. Hari (age 40 years) a resident individual has gross total income of ₹ 11, 20,000 before deduction under Chapter VI-A. He has deposited ₹ 1, 40,000 in PPF account and paid health insurance premium of ₹ 30,000 for himself and wife. How much is his income tax liability for the assessment year 2023-24 on the assumption that he has opted for section 115BAC of the Income Tax Act, 1961?

- (A) ₹ 1, 10,760
- (B) ₹ 1, 02,960
- (C) ₹ 73,320
- (D) ₹ 70,200

16. On 10th April, 2022, Gokani a practicing Company Secretary gave ₹10 lakh as gift to his wife Chandra a homemaker. On 20th August, 2022 Chandra commenced business of beauty parlour by name "Flair Lady". For the year ended 31st March, 2023 her net income from business was ₹ 2, 30,000. How much of the income of Chandra is includible in the hands of Gokani ?

- (A) ₹ 2, 30,000
- (B) ₹ 1, 30,000
- (C) ₹ 10, 00,000
- (D) Nil

17. A charitable trust registered under section 12AA has voluntary contribution of ₹ 46 lakh. It paid rent of ₹ 40,000 per month for 7 months day cash. It incurred ₹ 35 lakh by way of expenditure (other than rent) for pursuing the objects of the trust. How much is the total income of the trust liable to tax?

- (A) ₹ 1, 30,000
- (B) ₹ 2, 14,000
- (C) ₹ 4, 10,000
- (D) ₹ 8, 20,000

18. Trivedi employed in Max Ltd made a premature withdrawal of ₹ 1, 60,000 from his Recognized Provident Fund (RPF) account on 18th March, 2023. How much would be the amount of tax deductible at source in respect of such withdrawal?

- (A) Nil
- (B) ₹ 8,000
- (C) ₹ 16,000
- (D) ₹ 32,000

19. Allen & Co. Ltd. used to deduct tax at source promptly and remit the same within time. For the quarter ended December, 2022 what is the due date for filing statement of tax deducted in respect of salaries and other payments made to residents in India without payment of late fee ?

- (A) 31st January, 2023
- (B) 31st December, 2022
- (C) 31st March, 2023
- (D) 15th January, 2023

20. Which of the following does not form part of the canons of taxation?

- (A) Canon of convenience
- (B) Canon of equity
- (C) Canon of certainty
- (D) Canon of simplicity

21. URG & Co. is engaged in construction and sale of residential apartments. It sold 4 identical apartments in December, 2022 for ₹ 110 lakh and the guideline value of the apartments as per stamp valuation authority was ₹ 120 lakh. How much would be added to its income under section 43CA of the Income Tax Act, 1961?

- (A) Nil
- (B) ₹ 10 lakh
- (C) ₹ 5 lakh
- (D) ₹ 20 lakh

22. ABC Co-operative society has total income (computed) of ₹ 3 lakh for the previous year ended 31st March, 2023. It has opted for section 115BAD of the Income Tax Act, 1961. How much is the income tax liability (rounding off) of the co-operative society for the assessment year 2023-24?

- (A) ₹ 68,640
- (B) ₹ 76,880
- (C) ₹ 75,500
- (D) ₹ 62,640

23. More (P) Ltd. is engaged in manufacture of garments. Its turnover always exceeded ₹ 10 crore. It has not maintained books of account for the financial year 2022-23. During survey under section 133A of the Income Tax Act, 1961, it was found that it has not maintained books of account. How much would be the penalty leviable for failure to maintain books of account?

- (A) ₹ 10,000
- (B) ₹ 25,000
- (C) ₹ 1, 00,000
- (D) ₹ 5, 00,000

24. The scrutiny assessment of M Co. Ltd. was completed on 18th October, 2022 and the assessee has preferred appeal before CIT (Appeals). The Commissioner wants to invoke section 264 of the Income Tax Act, 1961, on suo moto basis. What is the time limit within which he can pass the revision order?

- (A) On or before 31st March, 2023
- (B) On or before 31st December, 2022
- (C) On or before 17th October, 2023
- (D) On or before 31st March, 2024

25. Mini Ltd. filed its return of income before the due date specified in section 139(1) of the Income Tax Act, 1961. The return was found to be defective by processing unit of Income Tax department. A notice was given for rectifying the defect on 1st June, 2023. What is the time limit within which the defect has to be rectified by the assessee ?

- (A) Within 6 months from the date of intimation of such defect
- (B) Within 3 months from the date of intimation of such defect
- (C) Within 1 month from the date of notice
- (D) Within 15 days from the date of intimation of such defect

26. Chola & Co. is a partnership firm engaged in trade of textile goods. Which of the following payments is liable for disallowance under section 40A (3) of the Income Tax Act, 1961?

- (i) Debit card payment
- (ii) NEFT payment
- (iii) UPI payment
- (iv) Bearer cheque payment
- (v) Net banking

- (A) (i) and (iv)
- (B) (ii), (iv) and (v)
- (C) (i) and (iii)
- (D) (iv)

27. Raj sold a vacant land for ₹ 8 lakh to Mukesh on 5th December, 2022. The guideline value of the land was ₹ 9, 60,000. Raj and Mukesh are not relatives. What is the tax implication of the transaction in the case of Raj and Mukesh under the Income Tax Act, 1961?

- (A) ₹ 9,60,000 will be taken as deemed sale consideration in the hands of Raj and ₹ 1,60,000 is taxable under section 56(2) of the Income Tax Act, 1961 in the hands of Mukesh
- (B) ₹ 9, 60,000 will be taken as deemed sale consideration in the hands of Raj. ₹ 1, 10,000 is taxable under section 56(2) of the Income Tax Act, 1961 in the hands of Mukesh
- (C) No amount will be taken as deemed sale consideration in the hands of Raj but ₹ 1,60,000 is taxable under section 56(2) of the Income Tax Act, 1961 in the hands of Mukesh
- (D) No tax implication in the hands of both Raj and Mukesh

28. Divya earned dividend income from a company in UK ₹ 5, 00,000. She also earned agriculture income from a land in Karnataka ₹ 2, 40,000 and short-term capital gain on sale of shares ₹ 80,000. Her residential status for the assessment year 2023-24 is resident and not ordinarily resident. How much is her total income?

- (A) ₹ 8, 20,000
- (B) ₹ 7, 40,000
- (C) ₹ 5, 80,000
- (D) ₹ 80,000

29. Assessment of Vinayak Ltd. was made on 25th September, 2022 under section 143(2) of the Income Tax Act, 1961 for the assessment year 2021-22. The assessee got the assessment order on the same date. The assessee wants to prefer appeal before Commissioner (Appeals). What is the time limit within which it must file the appeal before CIT (Appeals)?

- (A) On or before 31st October, 2022
- (B) On or before 25th October, 2022
- (C) On or before 31st March, 2023
- (D) On or before 31st December, 2022

30. KSR & Co., a practicing Company Secretary firm at Pune. It rendered professional service to Bond Ltd and raised a bill of ₹ 2, 36,000 mentioning GST @ 18% separately in the bill raised. How much must be the tax deductible at source in respect of such payment?

- (A) ₹ 23,600
- (B) ₹ 20,000
- (C) ₹ 4,720
- (D) ₹ 4,000

31. What is the holding period in the case of land and building for the purpose of classifying the same as long-term capital asset?

- (A) 12 months
- (B) 24 months
- (C) 36 months

(D) None of the above

32. Bansal employed in a private company as general manager with salary income (computed) ₹ 18, 60,000. He paid ₹ 1,00,000 to Universal College for doing research in social science which is approved by the prescribed authority for the purpose of section 35(1) (iii) of the Income Tax Act, 1961. His son was admitted in the same college for pursuing a degree course. How much of the donation given by Bansal is eligible for deduction while computing his total income for the assessment year 2023-24?

(A) Nil

(B) ₹ 50,000 under section 80G of the Income Tax Act, 1961

(C) ₹ 1, 00,000 under section 80GGA of the Income Tax Act, 1961

(D) ₹ 1,50,000 under section 35(1) of the Income Tax Act, 1961

33. Sankar let out a property on rent up to 30th June, 2019 and thereafter sold the property. The tenant has not paid rent for 12 months prior to 30th June, 2019. In January, 2023 based on court decree Sankar received ₹ 3, 40,000 from the tenant by way of rent. He does not own any other house property. He incurred ₹ 70,000 towards advocate fee. How much of the amount received by Sankar is liable to tax?

(A) ₹ 3, 40,000

(B) ₹ 2, 70,000

(C) ₹ 2, 38,000

(D) ₹ 1, 90,000

34. ABC (P) Ltd. filed its return of income for the assessment year 2022-23 on 15th November, 2022 declaring total income of ₹ 2, 10,000. What is the time limit for issue of notice for scrutiny assessment under section 143(2) of the Income Tax Act, 1961?

(A) 31st December, 2022

(B) 31st March, 2023

(C) 30th June, 2023

(D) 30th September, 2023

35. Preeti employed in a public sector bank parked her savings in listed equity shares of Indian companies besides borrowing for the purpose of investment in those shares. For the year ended 31st March, 2023 she has received dividend of ₹ 4 lakh (gross) and interest payable on borrowing for the same period amounts to ₹ 1,70,000. How much of dividend is to be included in the total income of Preeti ?

(A) ₹ 4, 00,000

(B) ₹ 2, 30,000

(C) ₹ 3, 00,000

(D) ₹ 3, 20,000

36. Chetan Co. (P) Ltd. commenced a new unit for manufacture of its products. The amount of preliminary expenses eligible for deduction was computed @ ₹ 7 lakh. In how many instalments the eligible preliminary expenditure would be amortized?

(A) 3 years

(B) 5 years

(C) 7 years

(D) 8 years

37. Marvel (P) Ltd. filed its return for the assessment year 2022-23 on 20th December, 2022 declaring total income of ₹ 4, 70,000. How much it should pay by way of fee for the delayed filing of ITR under section 234F of the Income Tax Act, 1961?

- (A) ₹ 1,000
- (B) ₹ 5,000
- (C) ₹ 10,000
- (D) ₹ 500 per day

38. Menon is engaged in growing and manufacturing rubber in Kerala. His gross income from the activity is ₹ 8, 40,000. How much his income to be considered for the purposes of income tax?

- (A) ₹ 2, 94,000
- (B) ₹ 2, 10,000
- (C) ₹ 3, 36,000
- (D) ₹ 5, 46,000

39. Siddarth (age 50 years) paid ₹ 20,000 through credit card towards health insurance of himself and his wife. He incurred ₹ 70,000 towards medical expenditure for his mother who is not covered by health insurance policy. He paid ₹ 23,000 towards health insurance of his father by account payee cheque. Both the parents are senior citizens and dependent on Siddarth. How much is the amount eligible for deduction under section 80D of the Income Tax Act, 1961?

- (A) ₹ 93,000
- (B) ₹ 73,000
- (C) ₹ 70,000
- (D) ₹ 43,000

40. Pankaj received on the occasion of marriage

(i) Cash gift of ₹ 1, 05,000 each from his maternal and paternal uncle; and

(ii) ₹ 1, 80,000 by way of gift from office colleagues (none of them are his relatives). He also received a vacant site (guideline value) ₹ 70,000 from his grandfather on his birthday being 22nd October, 2022. How much of gift is liable to tax as income?

- (A) Nil
- (B) ₹ 4, 60,000
- (C) ₹ 1, 80,000
- (D) ₹ 2, 50,000

41. Rainbow (P) Ltd. is engaged in manufacturing of pesticides was incorporated on 01.03.2020. It has opted for section 115BAB of the Income Tax Act, 1961. Its total income for the previous year 2022-23 was ₹ 12 crore. What is the rate of surcharge applicable for the assessment year 2023-24?

- (A) 7%
- (B) 12%
- (C) 5%
- (D) 10%

42. X & Co. a partnership firm who has adjusted total income of ₹ 28 lakh computed as per section 115JC of the Income Tax Act, 1961. How much is the tax payable under section 115JC of the Income Tax Act, 1961?

(A) ₹ 8, 73,600

(B) ₹ 5, 38,720

(C) ₹ 5, 18,000

(D) ₹ 93,600

43. Yadav & Co. is engaged in wholesale trade. 98% of all receipts and expenses are through net banking. The assessee wants to know the turnover limit up to which its books of account need not to be audited under section 44AB of the Income Tax Act, 1961 and is eligible to admit the income as per books of account ?

(A) ₹ 10 crore

(B) ₹ 5 crore

(C) ₹ 2 crore

(D) ₹ 1 crore

44. CVR & Co. has speculation business loss of ₹ 12, 40,000 for the assessment year 2023- 24. For how many assessment years such loss from speculation business is eligible for carry forward?

(A) 8 subsequent assessment years

(B) 4 subsequent assessment years

(C) 2 subsequent assessment years

(D) Not eligible for carry forward and set off

45. Laxmi received 30,000 per month by way of family pension (consequent to demise of her husband, who died in April, 2019). She has opted for section 115BAC of the Income Tax Act, 1961 for the assessment year 2023-24. How much of her family pension is includible in her total income?

(A) ₹ 3, 60,000

(B) ₹ 3, 10,000

(C) ₹ 3, 25,000

(D) ₹ 3, 45,000

46. Dave & Co. made a turnover of ₹ 160 lakh during the financial year 2022-23. It received ₹ 90 lakh by way of RTGS and net banking. The balance of sale proceeds was realized in cash before 31st March, 2023. Dave & Co. wants to admit income under section 44AD of the Income Tax Act, 1961. How much is the presumptive income of Dave and Co. for the assessment year 2022-23?

(A) ₹ 9, 60,000

(B) ₹ 12, 80,000

(C) ₹ 11, 00,000

(D) ₹ 11, 90,000

47. Raghu retired on 31st October, 2022 after rendering service for 32 years in a listed company. He received ₹ 23, 00,000 as gratuity at the time of retirement and is covered by Payment of Gratuity Act, 1972. What is the monetary limit for availing exemption in respect of gratuity under the Income Tax Act, 1961?

(A) ₹ 10, 00,000

(B) ₹ 20, 00,000

(C) ₹ 23, 00,000

(D) ₹ 5, 00,000

48. Crow Ltd is engaged in export of articles and things eligible for deduction under section 10AA of the Income Tax Act, 1961. The previous year 2022-23 is the 7th year of its operations. It exported for ₹ 20 crore and did domestic turnover of ₹ 5 crore during the year. Its profit of the unit in SEZ is ₹ 4 crore. How much is the amount eligible for exemption under section 10AA on the assumption that it is a unit satisfying all other legal conditions?

- (A) ₹ 4 crore
- (B) ₹ 3.20 crore
- (C) ₹ 1.60 crore
- (D) ₹ 0.80 crore

49. Which of the following is a capital receipt?

- (A) GST collected from taxable supply of goods
- (B) Royalty received for use of know-how
- (C) Gift received from employer on the occasion of birthday ₹ 60,000
- (D) Premature termination of agency contract

50. Which of the following criteria would make a foreign company to have its active business outside India?

- (i) Passive income is not more than 50% of its total income
 - (ii) Less than 50% of its total assets are situated in India
 - (iii) Less than 50% of the total employees are resident in India and
 - (iv) Less than 50% payroll expenses incurred on employees situated in India (A) (i) and (ii)
- (B) (i) and (iii)
 - (C) (i), (iii) and (iv)
 - (D) All the above

PART—II

51. Which of the following is covered by the term “exempt supply” under section 2(47) of the CGST Act, 2017?

- (A) Supply attracting ‘nil’ rate of tax
- (B) Supply exempt under section 11
- (C) Non-taxable supply
- (D) All the above

52. Madan provided legal service as advocate to MNO & Co. which fell under reverse charge basis. The services were rendered on 10th June, 2022 and Madan issued invoice on 2nd July, 2022. The cheque dated 5th July, 2022 was honoured by debit to bank account of MNO & Co. on 15th July, 2022. The receipt was recorded in the books of Madan on 10th July, 2022. What is the time of supply under Reverse Charge Mechanism (RCM) in this case?

- (A) 10th June, 2022
- (B) 18th September, 2022
- (C) 15th July, 2022
- (D) 10th July, 2022

53. Ram gave a land located in Industrial area to ABC & Co. for a lease term of 5 years for a rental of ₹ 2 lakh per month on 1st April, 2022. Ram is employed in a Nationalised Bank. What would you call the lease of land by Ram to ABC & Co.?

(A) Exempted supply

(B) Zero rated supply

(C) Nil rated supply

(D) Supply of service liable to tax

54. Park Ltd. sent its moulds, dies, jigs and fixtures on 1st June, 2019 to job worker for use in the job work given by it. The cost of moulds, dies, jigs and fixtures was ₹ 3 lakh and GST paid thereon was ₹ 36,000. The job worker has not returned the moulds and dies, jigs and fixtures till 31st March, 2023. How much would be taken as deemed supply by Park Ltd. to the job worker?

(A) Nil

(B) ₹ 1, 20,000

(C) ₹ 80,000

(D) ₹ 36,000

55. Boom Ltd purchased goods from Zoom Ltd. for ₹ 20 lakh at various points of time in the month of June, 2022. Zoom Ltd. gave tax invoice for ₹ 14 lakh in the same month. For the balance amount tax invoice was received by Boom Ltd. on 20th January, 2023. What is the maximum time limit for Boom Ltd. to claim ITC in respect of purchases made from Zoom Ltd?

(A) 31st July, 2022

(B) 31st January, 2023

(C) 31st March, 2023

(D) 20th January, 2024

56. How much a male passenger residing abroad for the last 3 years could bring gold jewellery under duty-free baggage allowance under the Customs Act, 1962?

(A) 20 grams

(B) 20 grams with a value cap of ₹ 50,000

(C) 40 grams

(D) 40 grams with a value cap of ₹ 1, 00,000

57. Which of the following will be treated as inter-state supply?

(i) Supplier in Delhi and supplies made to USA

(ii) Goods imported by a company in Mumbai from Belgium

(iii) Supply of goods by a supplier in Kerala to Chandigarh (Union Territory) (iv) Supplies received in Domestic Tariff Area from a SEZ unit located in Kandla

(A) (i) and (ii)

(B) (iii) and (iv)

(C) (i), (ii) and (iv)

(D) All the above

58. Manish of Mumbai is engaged in both taxable supply of goods and exempt supplies. When should Manish seek registration under GST?

(A) When taxable supply exceeds ₹ 40 lakh

(B) When both taxable and exempt supply together exceeds ₹ 40 lakh

(C) When exempt supply exceeds ₹ 40 lakh

(D) When taxable supply exceeds ₹ 20 lakh

59. X & Co. supplied goods of Y Ltd. as per the contract for the goods to be supplied. The goods were removed from the warehouse of X & Co. on 20th September, 2022 and were delivered to Y Ltd. on 1st October, 2022. The invoice was issued on 10th October 2022 and the payment was credited to the bank account of X & Co. on 20th October, 2022. What is the time of supply?

(A) 20th September, 2022

(B) 1st October, 2022

(C) 10th October, 2022

(D) 20th October, 2022

60. Ram & Co. sends goods to job worker on 10th August, 2021 and the value of supply was ₹ 4 lakh plus GST @ 5% thereon. The job worker returned the goods after completing the job work on 5th October, 2022 with value of supply being ₹ 5 lakh excluding GST @ 5%. How much would be the GST for the goods returned by the job worker in October, 2022?

(A) Nil

(B) ₹ 20,000

(C) ₹ 25,000

(D) ₹ 5,000

61. Mahesh Electronics Ltd. engaged in manufacture of electronic products, gifted one laptop to Suresh, CFO of the company, free of cost on the occasion of Diwali. The regular sale price of laptop was ₹ 72,000 and the cost of laptop was ₹ 54,000. Assume the rate of GST as 5%. How much is the GST payable in respect of such gift?

(A) ₹200

(B) ₹ 3,600

(C) ₹ 2,700

(D) ₹ 1,100

62. Maurya Traders engaged in wholesale trade, made inter-state supply of ₹ 8,00,000 (without GST) in October, 2022. The rate of GST applicable is 12%. It has input tax credit viz. in ITGST ₹ 40,000; SGST ₹ 60,000; and CGST ₹ 20,000. After adjustment of ITC, how much would be available in the credit ledger of Maurya Traders?

(A) SGST ₹ 4,000 and CGST ₹ 20,000

(B) SGST ₹ 24,000

(C) SGST ₹ 60,000 and CGST Nil

(D) ITGST ₹ 24,000

63. Shishir a practicing company secretary was asked to handle legal work pertaining to incorporation of LMN (P) Ltd. He incurred registration fee ₹ 20,000 and name approval fee ₹ 1,000 paid to ROC. He recovered the above said amounts and his fee of ₹ 10,000. Determine the value of supply treating Shishir as pure agent.

(A) ₹ 31,000

(B) ₹ 21,000

(C) ₹ 10,000

(D) ₹ 10,500

64. James Co. Ltd., Cochin solicited the catering services of Jindal Caterers of Mumbai for the silver jubilee celebrations organized at Delhi. Jindal Caterers having branch in Chennai and Bengaluru deputed those staff for supply of service. Where does the place of supply happen in this case?

- (A) Delhi
- (B) Mumbai
- (C) Chennai and Bengaluru
- (D) Cochin

65. Invent & Co. participated in an exhibition at Pragati Maidan, Delhi to show case its products. It applied for registration as casual taxable person. For how many maximum days it will be granted registration as casual taxable person? (A) 30 days

- (B) 45 days
- (C) 60 days
- (D) 90 days

66. Which of the following goods is not liable for reverse charge mechanism for the recipient?

- (A) Raw cotton
- (B) Silk yarn
- (C) Tobacco leaves
- (D) Garments

67. Mantri & Co. applied for refund of GST on 22nd December, 2022 and an order for refund under section 54 was issued on 27th December, 2022. What is the time limit within which the fund is to be issued without interest?

- (A) 15 days from the date of receipt of application
- (B) 30 days from the date of order passed under section 54
- (C) 60 days from the date of receipt of application
- (D) 90 days from the end of the month in which the order under section 54 was passed

68. BMC Enterprises made supply of goods to LPT & Co. for ₹ 6,00,000. Tax levied by municipal authorities on such sale ₹ 30,000. CGST and SGST chargeable on supply was 6% each. Packing charges not included in the price mentioned above amounted to ₹ 20,000. BMC enterprise received a subsidy of ₹ 60,000 from the Government which is not considered in the price mentioned above. Discount offered @ 2% on the invoice. Determine the value of supply.

- (A) ₹ 7,10,000
- (B) ₹ 6,95,800
- (C) ₹ 6,72,000
- (D) ₹ 6,38,000

69. When a tax invoice is not required to be issued?

- (A) Value of supply is less than ₹ 200
- (B) Recipient of supply is unregistered
- (C) The recipient of supply does not require an invoice
- (D) All the above

70. A registered dealer under GST obtained supply of goods from another registered dealer. He has:

- (i) Invoice issued by supplier of goods
- (ii) Invoice issued by unregistered supplier of goods for which he paid tax under reverse charge
- (iii) Debit note issued by a supplier and
- (iv) Revised invoice. Which of the above documents is required for claiming ITC?

- (A) (i) and (ii)
- (B) (iii) and (iv)
- (C) (i) and (iv)
- (D) All the above

71. Gautam & Co. has ₹ 2, 15,000 in electronic credit ledger as on 1st January, 2023. For the month of January, 2023 it has input credit of ₹ 60,000 and output tax for supplies of ₹ 1,20,000. In the assessment order passed on 15th January, 2023 it has to pay penalty of ₹ 40,000, interest of ₹ ₹ 30,000 and fee of ₹ 5,000. After adjustment of eligible items how much would be available in its electronic credit ledger?

- (A) ₹ 1, 55,000
- (B) ₹ 1, 15,000
- (C) ₹ 85,000
- (D) ₹ 80,000

72. PQR Agency of Delhi is engaged in supply of services in relation to booking of tickets for travel by air. During the month of December, 2022, it had booked tickets for domestic travel aggregating to basic fare of ₹ 42 lakh. How much is the value of supply of PQR Agency for the month of December, 2022?

- (A) 2% of basic fare being ₹ 84,000
- (B) 5% of basic fare being ₹ 2, 10,000
- (C) 10% of basic fare being ₹ 4, 20,000
- (D) Actual service charges received

73. Sakura & Co. is engaged in trade who commenced business on 10th October, 2021. Its turnover exceeded the threshold limit on 10th March, 2022 and it applied for registration on 20th April, 2022. The registration was granted on 25th April, 2022. What is the effective date of registration?

- (A) 10th October, 2021
- (B) 10th March, 2022
- (C) 20th April, 2022
- (D) 25th April, 2022

74. When is the raising of e-invoice mandatory in the case of registered person?

- (A) When the turnover is more than ₹ 50 crore for any financial year (F.Y.) 2017-18 onwards
- (B) When the turnover is more than ₹ 10 crore for any financial year (F.Y.) 2017-18 onwards
- (C) When the turnover exceeded ₹ 10 crore during the financial year
- (D) The turnover exceeded ₹ 5 crore during the financial year

75. Ashok enterprises consisted of 4 partners with equal share. 2 partners retired from the firm on 10th December, 2022. Within how many days the change in constitution is to be intimated by filing application electronically in GSTR 14?

- (A) Within one month from the end of the month in which the change in constitution has taken place
- (B) Within 15 days from the end of the month in which the change in constitution has taken place

(C) Within 15 days from the date of change in constitution has taken place

(D) within 7 days from the end of the month in which the change in constitution has taken place

76. Moon Ltd purchased cotton from agriculturists in respect of which it has to pay GST under reverse charge mechanism. It received the goods on 15th April, 2022. The payment was made to the supplier of goods on 5th May, 2022 which was debited in the bank account as reflected in the bank statement of Moon Ltd on 12th May, 2022. What is the time of supply in this case?

(A) 15th April, 2022

(B) 5th May, 2022

(C) 12th May, 2022

(D) 14th May, 2022

77. M & Co. purchased raw material 500 kgs @ ₹ 60 per kg plus GST @ 12% thereon. It manufactured a product which is exempt from GST. How much M & Co. can claim ITC in respect of raw materials so purchased?

(A) Nil

(B) ₹ 3,600

(C) ₹ 1,800

(D) ₹ 2,400

78. A person registered under GST made supply of goods during the financial year 2022-23. He wants to know the maximum period within which the recipient must make payment failing which the input tax credit would be denied to him?

(A) 30 days from the date of issue of invoice by the supplier

(B) 60 days from the date of issue of invoice by the supplier

(C) 90 days from the date of issue of invoice by the supplier

(D) 180 days from the date of issue of invoice by the supplier

79. Manju & Co. applied for registration under GST on 20th September, 2022. The proper officer called for some particulars stated in the application for registration. Those clarifications sought by the officer was given on 10th October, 2022. What is the time limit within which the officer must approve the grant of registration?

(A) Within 30 working days from the date of application

(B) Within 30 working days from the date of receipt of such clarification

(C) Within 7 working days from the date of application

(D) Within 7 working days from the date of receipt of clarification

80. Which of the following is a supply liable for GST?

(i) Supply between two non-taxable parties

(ii) Gift by employer to employee value above ₹ 50,000

(iii) Gift of motor car by relative to another relative

(iv) Disposal of machines (on which GST paid and input availed) upon closure of business

(A) (i) and (iv)

(B) (ii) and (iv)

(C) (i), (ii) and (iv)

(D) (i) and (iii)

81. FG Co. Ltd. imported goods and paid customs duty earlier. In which of the following situation it can seek refund of import duty paid by it?

(A) When the goods are defective

(B) When the goods are destroyed in the presence of proper officer

(C) The goods are exported back

(D) All the above

82. Madan (P) Ltd. has annual taxable turnover which always exceeded ₹ 500 lakh. How many digits of HSN code to be mentioned in the tax invoice?

(A) 4 digits when it is B2B

(B) 4 digits when it is B2C

(C) 6 digits when it is B2B

(D) 6 digits when for both B2B and B2C

83. Good stay is a three-star hotel. It provides both accommodation and boarding facility combined together for a rent to its guests. What would you call the provision of accommodation and boarding facility?

(A) Mixed supply

(B) Composite supply

(C) Separate supply

(D) Exempted supply

84. Verma is a retail trader of textile goods at Puducherry. His turnover was ₹ 90 lakh for the financial year 2022-23. He has opted for composition scheme under GST. How much is the amount of tax payable by him?

(A) CGST ₹ 45,000 and UTGST ₹ 45,000

(B) UTGST ₹ 90,000

(C) IGST ₹ 45,000 and SGST ₹ 45,000

(D) CGST ₹ 45,000 and SGST ₹ 45,000

85. Rosy & Co. became liable to pay GST from 1st October, 2022 and obtained registration on 25th October, 2022. From which date it is eligible to take ITC in respect of raw materials/finished goods and capital work in progress held by it?

(A) As on 31st October, 2022

(B) As on 25th October, 2022

(C) As on 1st October, 2022

(D) As on 30th September, 2022

86. Priya Co. Ltd. imported goods from a foreign country and the goods were kept in the private warehouse licensed under section 58 of the Customs Act, 1962. What is the time period to keep the goods in warehouse without payment of duty?

(A) 5 years

(B) 3 years

(C) 1 year

(D) 6 months

87. Mega Ltd, of Mumbai solicited the services of Jai & Co. of Delhi being the interior decorators for the new office building located at Chennai. The branch of Jai & Co., Kolkata deputed the staff for executing the work. Where does the place of supply remain in respect of the transaction?

- (A) Mumbai
- (B) Delhi
- (C) Chennai
- (D) Kolkata

88. Leather & Co. of Kanpur commenced business on 10th August, 2022 applied for registration on 20th August, 2022 voluntarily. The supply is liable for GST @ 12%. For the month of August, 2022 its taxable outward supply was ₹ 8 lakh. How much is the GST payable for August, 2022 on the assumption that it has ITC of ₹ 40,000 for the same month?

- (A) ₹ 96,000
- (B) ₹ 56,000
- (C) ₹ 40,000
- (D) Nil

89. Vineet acquired a machinery for ₹ 5 lakh on 1st July, 2021 and used it for manufacture of goods being exempt supply. GST paid on machinery was @ 18%. The goods so manufactured became taxable from 1st January, 2023. How much could be claimed as ITC by Vineet in respect of machinery when used for manufacture of taxable goods?

- (A) Nil
- (B) ₹ 45,000
- (C) ₹ 63,000
- (D) ₹ 90,000

90. The drawback allowed for goods if returned after using of goods more than 12 months but less than 15 months is:

- (A) 76%
- (B) 75%
- (C) 60%
- (D) 65%

91. Rajini & Co. is engaged in supply of taxable goods. It issued a credit note to Laxman & Co. on 05th June, 2022 in respect of supply made in April, 2022. What is the maximum time limit to declare the details of credit note in the GST return?

- (A) 31st March, 2023
- (B) 30th September, 2023
- (C) Date of furnishing annual return or 30th September, 2023 whichever is earlier?
- (D) 30th June, 2022

92. Ramesh purchased a plant and machinery before commencement of business for ₹ 5 lakh on which GST payable was @ 12% being ₹ 60,000. He commenced business 2 months later. How much is eligible for input tax credit in respect of plant and machinery so acquired before commencement of business?

- (A) Nil
- (B) ₹ 60,000

(C) ₹ 30,000

(D) ₹ 15,000

93. Which country is the first to introduce goods and services tax?

(A) France

(B) USA

(C) UK

(D) Brazil

94. Which of the following product is 'nil' rated in GST?

(A) Tobacco

(B) High Speed Diesel

(C) Petroleum crude

(D) Electricity

95. Ravi Associates a practicing Company Secretary rendered service to Solomon Ltd. in April, 2022. The service was completed on 25th April, 2022. What is the maximum time limit for issuing tax invoice for supply of service by Ravi Associates?

(A) 30th April, 2022

(B) 10th May, 2022

(C) 25th May, 2022

(D) 31st May, 2022

96. Advance Ruling under GST can be sought for:

(A) Determination of time and value of supply of goods or services or both

(B) Classification of any goods or services or both

(C) Admissibility of input tax credit or tax paid or deemed to have been paid

(D) All of the above

97. What is the rate of tax under GST applicable for gold jewellery ?

(A) 1%

(B) 3%

(C) 5%

(D) 12%

98. Mani & Co. a registered dealer under GST supplied goods to Rupesh (P) Ltd being a developer of SEZ. The supply made by Mani & Co. to Rupesh (P) Ltd shall be called as :

(A) Exempt supply

(B) Zero rated supply

(C) Nil rated supply

(D) Non-GST supply

99. MC (P) Ltd. acquired 4 motor cars meant for directors use and for use of the company. The GST paid thereon amounts to ₹ 6, 20, 000. How much of the GST paid is eligible for input tax credit?

(A) ₹ 6, 20,000

(B) ₹ 3, 10,000

(C) ₹ 62,000

(D) Nil

100. Mayur Hotel in Jaipur opted for composition scheme under GST for the financial year 2022-23. Its turnover for the year was ₹ 120 lakh. How much is the amount of GST payable by Mayur Hotel?

(A) CGST ₹ 60,000 and SGST ₹ 60,000

(B) CGST ₹ 1, 20,000 and SGST ₹ 1, 20,000

(C) CGST ₹ 3, 00,000 and SGST ₹ 3, 00,000

(D) CGST ₹ 7, 20,000 and SGST ₹ 7, 20,000

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Set A	
Question	Answer
Part I	
1	D
2	D
3	B
4	C
5	C
6	C
7	C/D
8	A/C
9	D
10	B
11	C
12	A/C
13	C
14	D
15	B
16	A/D*

17	A/C
18	C
19	A
20	D
21	A
22	C
23	B
24	*
25	D
26	D
27	A
28	C/D
29	B
30	A/B
31	B
32	C
33	C
34	C
35	D
36	B
37	A
38	A
39	C
40	A
41	D
42	B

43	A
44	B
45	A
46	C
47	B
48	C
49	D
50	D
PART II	
51	D
52	C*
53	D
54	A
55	*
56	B
57	D
58	B
59	A
60	C
61	B
62	B
63	C
64	A
65	D
66	D
67	C

68	D
69	D
70	D*
71	A
72	B
73	D
74	B
75	C
76	A
77	A
78	D
79	D
80	B
81	D
82	D
83	B
84	D
85	D
86	C
87	C
88	B
89	C
90	D
91	C*
92	A*
93	A

94	D
95	C
96	D
97	B
98	B
99	D
100	C

Set A

Q.7	Correct Option is C. Further option D may also be considered as correct if reimbursement of medical expenditure at specified hospitals e.g. government hospitals.
Q.8	There is a typo error in the question paper written as "Deference" instead of "Defence". Option C is correct assuming it is an approved scientific research organisation under section 35 of the Income tax Act, 1961. Option A is correct assuming it is not an approved scientific research organisation under section 35 of the Income tax Act, 1961.
Q.12	Option C is correct assuming payment is made to Resident. Further option A is also considered as correct assuming payment is made to non-resident without deduction of Tax. In such case 100% of the amount is disallowed.
Q.16	Correct Option is A i.e. Rs. 230000. Section 64(1)(iv). However, Option D may also be considered as correct assuming the gifted has not invested in the business as the question does not specifically mentioned.
Q.17	There is a typo error in the question mentioning "day cash" instead of "in cash". Assuming the rent is paid in cash, Correct Option is C i.e. Rs. 410000 (being 85% of 4600000)-3500000. Disallowance of rent paid in cash disallowed as per section 40A(3). However, assuming the rent is paid in any mode otherwise than in cash, correct option is A i.e. Rs. 130000 (being 85% of 4600000)-3500000-(40000*7).
Q.24	None of the options are correct as revision is not possible u / s 264 as assessee has filed an appeal before Commissioner (Appeals)
Q.28	Correct Option is D. However, Option C may also be considered as correct if assuming dividend income from a foreign company is received in India and therefore included in total income.
Q.30	Question is not specifically mentioned whether bill value of Rs. 236000 is inclusive of GST or Exclusive of GST. Option B is correct assuming bill value is inclusive of GST. Option A is correct assuming bill value is exclusive of GST.
Q.52	Option C is Correct, as per Section 12(3) & 13(3), the time of supply will be 60 days from date of invoice or the date on which amount debited from bank account of recipient; whichever is earlier.

Q.55	All options are wrong: As per Section 16(4), Input Tax Credit can not be availed after 30th November following end of Financial Year to which such invoice /debit note pertains or furnishing annual return, earlier.
Q.70	None of the Options are appropriate
Q.91	All options are wrong: As per Section 34(2), Any registered person who issues a credit note in relation to a supply of goods or services or both shall declare the details of such credit note in the return for the month during which such credit note has been issued but not later than 30 th November following the end of F/Y in which such supply was made, or the date of furnishing of the relevant annual return, whichever is earlier,
Q.92	Correct Option is A; Tax Credit is not allowed on expenses made before commencement of business
Q.84	Correct option is D, as puducherry is not a union territory under GST laws.