

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

JUNE 2012

MODULE I



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

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ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

Phones: 41504444, 45341000; Fax: 011-24626727

E-mail: info@icsi.edu; Website: www.icsi.edu

These answers have been written by competent persons and the Institute hopes 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 well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

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(i)

NOTE : Guideline Answers of the last Six Sessions need to be updated in the light of changes & references given below :

EXECUTIVE PROGRAMME

UPDATING SLIP

TAX LAWS

MODULE – I – PAPER 3

<i>Examination Session</i>	<i>Question No.</i>	<i>Updating required in the answer</i>
June 2009 & December 2011	All questions	<p>The Income tax, Wealth tax, and Service Tax are subject to changes by the Annual Finance Acts. In order to update all the answers, the students are advised to refer to the latest law keeping in mind the following amendments/changes, for December 2012 examination.</p> <p>(i) All changes made by the Finance Act, 2011 relevant to Assessment Year 2012 - 13 or before for Direct Taxes and all changes made by the Finance Act, 2012 for Indirect Taxes.</p> <p>(ii) All the circulars, clarifications/ notifications issued by the CBDT/ CBEC/Central Government which became effective on or before six months prior to the date of the respective examination.</p> <p>(iii) The levy of Gift tax has been suspended w.e.f. 1st October, 1998 by insertion of clause (3) to Section 3 of Gift tax Act, 1958 by Finance (No. 2) Act, 1998. Therefore, Gift Tax Act has been excluded from the scope of examination unless otherwise informed.</p> <p>The questions based on case laws, in conflict with the latest law be treated as of academic interest only.</p>

EXECUTIVE PROGRAMME EXAMINATION

JUNE 2012

GENERAL AND COMMERCIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : *Answer SIX questions including Question No. 1 which is COMPULSORY.*

Question 1

- (a) What is the scope of Article 14 of the Constitution of India ? To what extent is it correct to say that Article 14 forbids class legislation, but does not forbid classification ? (8 marks)*
- (b) Discuss the fundamental duties imposed on citizens of India. (6 marks)*
- (c) What are the presumptions in the interpretation of statutes when the intention of the legislature is not clear ? (6 marks)*

Answer 1(a)

Article 14 of the Constitution says that “the State shall not deny to any person equality before the law or the equal protection of the laws within the territory of India”.

Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws within the territory of India. Article 14 applies to all persons and is not limited to citizens.

A right conferred on persons that they shall not be denied equal protection of the laws does not mean the protection of the same laws for all. It is here that the doctrine of classification steps in and gives content and significance to the guarantee of the equal protection of the laws.

Permissible classification must satisfy two conditions, namely; (i) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group; and (ii) the differentia must have a rational nexus with the object sought to be achieved by the statute in question.

The classification may be founded on different basis, such as, geographical, or according to objects or occupation or the like. What is necessary is that there must be a nexus between the basis of classification and the object of the Act under consideration.

The rules with respect to permissible classification as evolved in the various decisions have been summarised by the Supreme Court in *Ram Kishan Dalmiya v. Justice Tendulkar*, AIR 1958 SC 538, as follows:

- (i) Article 14 forbids class legislation, but does not forbid classification.
- (ii) Permissible classification must satisfy two conditions, namely, (a) it must be founded on an intelligible differentia which distinguishes persons or things that are grouped together from others left out of the group, and (b) the

differentia must have a relation to the object sought to be achieved by the statute in question.

- (iii) The classification may be founded on different basis, namely geographical, or according to objects or occupations or the like.
- (iv) In permissible classification, mathematical nicety and perfect equality are not required. Similarly, non identity of treatment is enough.
- (v) Even a single individual may be treated a class by himself on account of some special circumstances or reasons applicable to him and not applicable to others; a law may be constitutional even though it relates to a single individual who is in a class by himself.
- (vi) Article 14 condemns discrimination not only by substantive law but also by a law of procedure.
- (vii) There is always a presumption in favour of the constitutionality of an enactment and the burden is upon him who attacks it to show that there has been a clear transgression of the constitutional principles.

A remarkable example of the application of the principle of equality under the Constitution is the decision of the Supreme Court in *R. K. Garg v. Union of India*, AIR 1981 SC 2138. It should be mentioned that Article 14 invalidates discrimination not only in substantive law but also in procedure. Further, it applies to executive acts also.

In the recent past, Article 14 has acquired new dimensions. (See *Maneka Gandhi v. Union of India*, AIR 1978 SC 597; *Ramana Dayaram Shetty v. International Airport Authority*, AIR 1979 SC 1628; *Kasturi Lal v. State of J&K*, AIR 1980 SC 1992). Further, the decision of the Supreme Court in *Secy., State of Karnataka v. Umadevi*, (2006) 4 SCC 1, is also significant wherein the Supreme Court held that adherence to the rule of equality in public employment is a basic feature of our Constitution and since the rule of law is the core of our Constitution, a court would certainly be disabled from passing an order upholding the violation of Article 14.

Answer 1(b)

The 42nd Amendment made to the Constitution in 1976 introduced fundamental duties under Article 51A. The fundamental duties are imposed only on citizens. They owe these duties to the State. According to Article 51A of the Constitution, it shall be the duty of every citizen of India:-

- (a) to abide by the Constitution and respect its ideals and institutions, the National Flag and the National Anthem;
- (b) to cherish and follow the noble ideals which inspired our national struggle for freedom;
- (c) to uphold and protect the sovereignty, unity and integrity of India;
- (d) to defend the country and render national service when called upon to do so;

- (e) to promote harmony and the sprit of common brotherhood amongst all the people of India transcending religious, linguistic and regional or sectional diversities; to renounce practices derogatory to the dignity of women;
- (f) to value and preserve the rich heritage of our composite culture;
- (g) to protect and improve the natural environment including forests, lakes, rivers and wildlife, and to have compassion for living creatures;
- (h) to develop the scientific temper, humanism and the spirit of inquiry and reform;
- (i) to safeguard public property and to abjure violence;
- (j) to strive towards excellence in all spheres of individual and collective activity so that the nation constantly rises to higher levels of endeavour and achievement.

Fundamental Duties cannot be enforced by writs. They can be promoted only by constitutional methods.

Answer 1(c)

Where there is an ambiguity in a statute, its words are not clear and the intention of the legislature cannot be ascertained, there are certain presumptions which courts may adopt to know the exact meaning of the words and the intention of the legislature.

These are:

- (a) The words in a statute are used precisely and not loosely.
- (b) Vested rights, i.e., rights which a person possessed at the time the statute was passed, are not taken away without express words, or necessary implication or without compensation.
- (c) There is a very strong presumption that a statute creating a criminal offence does not intend to attach liability without a guilty intent.
- (d) The State is not affected by a statute unless it is expressly mentioned as being so affected.
- (e) A statute is not intended to be consistent with the principles of International Law. Although judges cannot declare a statute void as being repugnant to International Law, yet if two possible alternatives present themselves, the judges will choose that only which is not at variance with it.
- (f) The legislature knows the state of the law.
- (g) The legislature does not make any alteration in the existing law unless by express enactment.
- (h) The legislature knows the practice of the executive and the judiciary.
- (i) Legislature confers powers necessary to carry out duties imposed by it.
- (j) The legislature does not make mistake. The court will not even alter an

obvious one, unless it be to correct faulty language where the intention is not clear.

- (k) The law compels no man to do that which is futile or fruitless.

Question 2

- (a) *Mention the persons against whom specific performance of contract can not be enforced.* (6 marks)
- (b) *State the places where documents relating to immovable property may be presented for registration under the Registration Act, 1908.* (5 marks)
- (c) *What are the modes of cancellation of adhesive stamps ?* (5 marks)

Answer 2(a)

As per Section 16 of the Specific Relief Act, 1963 specific performance of a contract cannot be enforced in favour of a person—

- (a) who would not be entitled to recover compensation for its breach; or
- (b) who (i) has become incapable of performing, or (ii) violates any essential term of, the contract that on his part remains to be performed, or (iii) acts in fraud of the contract, or (iv) wilfully acts at variance with, or in subversion of, the relation intended to be established by the contract; or
- (c) who fails to aver and prove that he has performed or has always been ready and willing to perform the essential terms of the contract which are to be performed by him, other than terms the performance of which has been prevented or waived by the defendant.

The Explanation appended to the Section provides that (i) where a contract involves the payment of money, it is not essential for the plaintiff to actually tender to the defendant or to deposit in court any money except when so directed by the court; (ii) further, the plaintiff must aver performance of, or readiness and willingness to perform, the contract according to its true construction.

Section 17 sets out two more cases where specific performance cannot be enforced in favour of a vendor or lessor. According to this Section, a contract to sell or hire property cannot be specifically enforced in favour of a seller or lessor if he had no title to the property. A person who knows that he has no title to the property but still enters into a contract with regard to that property, he cannot have the remedy of specific performance. It is the duty of the vendor to make a reasonable, clear and marketable title about which there must not be any rational doubt.

Answer 2(b)

Section 28 of the Registration Act, 1908 provides that every document mentioned in Section 17(1) clauses (a),(b),(c),(d) and (e), section 17(2) in so far 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 relevant property is situated. Any other document may be presented for registration either in the office of the Sub-Registrar in whose sub-district the document was executed or in the office of any other Sub-

Registrar under the State Government at which all the persons executing and claiming under the document desire the same to be registered (Section 29). (All these documents relate to immovable property). Registration of a document elsewhere has been held to be void [*Harendra Lal Roy Chowdhuri v. Hari Dasi Debi*, (1914) ILR 41 Cal. 972, 988 (PC); Mulla, Registration Act (1998), page 167 and cases in footnote 2].

Answer 2(c)

Section 12(3) of the Indian Stamp Act, 1899 deals with the modes of cancellation of adhesive stamps. 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.

In *Mahadeo Koeri v. Sheoraj Ram Teli*, ILR 41 All 169; AIR 1919 All 196, it was held that a stamp may be treated as having been effectively cancelled by merely drawing a line across it.

But, in *Hafiz Allah Baksh v. Dost Mohammed*, AIR 1935 Lah. 716, it was held that if it is possible to use a stamp a second time, in spite of a line being drawn across it, there is no effectual cancellation.

In *Melaram v. Brij Lal*, AIR 1920 Lah. 374, it was held that a very effective method of cancellation is the drawing of diagonal lines right across the stamps with ends extending on to the paper of the document. A cross marked by an illiterate person indicating his acknowledgement, was held to be an effective cancellation of the stamp in *Kolai Sai v. Balai Hajam*, AIR 1925 Rang. 209. Accordingly, where the adhesive stamps on promissory note were cancelled by drawing lines on them in different directions and stretching beyond the edge of the stamp on the paper on which the promissory note was written, it was held that the stamp had been effectually cancelled. Where one of the four stamps used on an instrument had a single line drawn across the face of the stamp, the second had two parallel lines, the third three parallel lines and the fourth two lines crossing each other, it was held that the stamps must be regarded as having been cancelled in manner so that they could not be used again (In re Tata Iron Steel Company, AIR 1928 Bom. 80). Putting two lines crossing each other is effective (AIR 1961 Raj. 43).

Question 3

- (a) What are the grounds on which an arbitral award may be challenged before the court ? (6 marks)
- (b) Describe the exceptions to the rule of strict liability. (5 marks)
- (c) Explain the 'doctrine of sufficient cause' for condonation of delay as provided in section 5 of the Limitation Act, 1963. (5 marks)

Answer 3(a)

As per Section 34(2) of the Arbitration and Conciliation Act, 1996 an arbitral award may be challenged on the following grounds:

- (i) Incapacity of a party.

- (ii) Invalidity of the arbitration agreement.
- (iii) Party applying was not given proper notice of the appointment of Arbitrator or of the arbitral proceedings.
- (iv) Award not in accordance with the terms of submission to arbitration in regard to the dispute.
- (v) Arbitral Tribunal not properly constituted or the procedure adopted not in accordance with the agreement.
- (vi) The subject matter of dispute is not capable of settlement by arbitration under the law.
- (vii) Award is in conflict with the public policy.

Sub-section (3) of Section 34 of the Act prescribes the time limit for making an application for setting aside the arbitral award. As per this sub-section, an application cannot be made after three months have elapsed from the date on which the party making that application had received the arbitral award or if a request had been made under Section 33 from the date on which that request had been disposed of by the arbitral Tribunal. The period of three months could be extended to a maximum of 30 days by the Court if it is satisfied that the applicant was prevented by "sufficient cause" from making the application within the said period.

Answer 3(b)

Rule of Strict Liability

The rule of strict liability laid down in *Rylands v. Fletcher* (1868) L.R. 3 H.L. 330 means that a man acts at his peril and is the insurer of the safety of his neighbour against accidental harm. Such duty is absolute because it is independent of negligence on the part of the defendant or his servants.

Exceptions to the Rule of Strict Liability

The following exceptions to the rule of strict liability have been introduced in course of time, some of them being inherent in the judgment itself in *Rylands v. Fletcher* :

(i) *Damage due to Natural Use of the Land*

In *Rylands v. Fletcher* water collected in the reservoir in such large quantity, was held to be non-natural use of land. Keeping water for ordinary domestic purpose is 'natural use'. Things not essentially dangerous which is not unusual for a person to have on his own land, such as water pipe installations in buildings, the working of mines and minerals on land, the lighting of fire in a fire-place of a house, and necessary wiring for supplying electric light, fall under the category of "natural use" of land.

(ii) *Consent of the plaintiff*

Where the plaintiff has consented to the accumulation of the dangerous thing on the defendant's land, the liability under the rule in *Rylands v. Fletcher* does not arise. Such a consent is implied where the source of danger is for the 'common benefit' of both the plaintiff and the defendant.

(iii) *Act of Third Party*

If the harm has been caused due to the act of a stranger, who is neither defendant's servant nor agent nor the defendant has any control over him, the defendant will not be liable. Thus, in *Box v. Jubh* (1879) 4 Ex. D. 76, the overflow from the defendant's reservoir was caused by the blocking of a drain by stranger, the defendant was held not liable. But if the act of the stranger, is or can be foreseen by the defendant and the damage can be prevented, the defendant must, by due care prevent the damage. Failure on his part to avoid such damage will make him liable.

(iv) *Statutory Authority*

Sometimes, public bodies storing water, gas, electricity and the like are by statute, exempted from liability so long as they have taken reasonable care. This is based on the principle that they act in public interest.

Answer 3(c)

Doctrine of sufficient cause

Section 5 of the Limitation Act, 1963 allows the extension of prescribed period of limitation in certain cases on sufficient cause being shown for the delay. Section 5 provides that any appeal or any application, other than an application under any of the provisions of Order XXI of the Code of Civil Procedure, 1908, may be admitted after the prescribed period if the appellant or the applicant satisfies the court that he had sufficient cause for not preferring the appeal or making the application within such period.

It is clarified by the explanation appended to Section 5 that the fact that the appellant or applicant was misled by any order, practice or judgement of the High Court in ascertaining or computing the prescribed period may be a sufficient cause within the meaning of this Section. Thus, the Court may admit an application or appeal even after the expiry of the specified period of limitation if it is satisfied with the applicant or the appellant, as the case may be as to sufficient cause for not making it within time. The term sufficient cause has not been defined in the Limitation Act. It depends on the circumstances of each case.

The Section is not applicable to applications made under any of the provisions of Order XXI of the Code of Civil Procedure, 1908 and also to suits. It applies only to appeals or applications as specified therein. The reason for non-applicability of the Section to suits is that, the period of limitation allowed in most of the suits extends from 3 to 12 years whereas in appeals and application it does not exceed 6 months.

Question 4

Explain in brief any four of the following :

- (i) *'Cause of action' under the Code of Civil Procedure, 1908*
- (ii) *'Cyber Regulations Appellate Tribunal' under the Information Technology Act, 2000*

- (iii) *Salient features of the Right to information Act, 2005*
 - (iv) *'Expert opinion' under the Indian Evidence Act, 1872*
 - (v) *'Digital signature' under the Information Technology Act, 2000.*
- (4 marks each)

Answer 4(i)

Cause of action means every fact which, if traversed, would be necessary for the plaintiff to prove in order to support his right to the judgement of the Court. Thus, cause of action is a bundle of essential facts which the plaintiff has to prove in order to sustain his action. The cause of action must be antecedent to the institution of the suit. It consists of two factors (a) a right, and (b) an infringement for which relief is claimed.

Every breach of contract gives rise to a cause of action and a suit may be instituted to secure the proper relief in the place—

- (a) where the contract was made, or
- (b) where the breach has occurred, or
- (c) the place where money is payable.

The place of breach is the place where the contract had to be performed or completed.

Where the place of payment is not specified, it is to be ascertained with reference to the intention of the parties and the circumstances of each case.

Answer 4(ii)**Cyber Regulations Appellate Tribunal**

Chapter 10 of the Information Technology Act, 2000 provides for the establishment of one or more Cyber Regulations Appellate Tribunal and lays down various provisions regarding its jurisdiction, composition, powers and procedure. (Sections 48-62)

Any person aggrieved by an order of the Controller of Certifying Authorities or of the adjudicator can appeal to the Cyber Appellate Tribunal, within 45 days. (Section 57)

Each Cyber Appellate Tribunal is to consist of only one person (called the presiding officer). He must be a person who is, or has been or is qualified to be, a High Court Judge or a person who is, or has been a member of the Indian Legal Service and who has held a post in Grade I of the Service for at least 3 years.

The presiding officer holds office for 5 years or until he attains the age of 65 years, whichever is earlier.

Any person aggrieved by “any decision or order” of the Tribunal may appeal to the High Court, within 60 days. Jurisdiction of Civil Courts is barred, in respect of any matter which an adjudicating officer or the Cyber Appellate Tribunal has power to determine.

Answer 4(iii)

Following are the salient features of the Right to Information Act, 2005

- (i) The Right to Information (RTI) Act, 2005 extends to the whole of India except Jammu & Kashmir.
- (ii) It provides a very definite day for its commencement i.e. 120 days from enactment.
- (iii) It shall apply to Public Authorities.
- (iv) All citizens shall have the right to information, subject to provisions of the Act.
- (v) The Public Information Officers/Assistant Public Information Officers will be responsible to deal with the requests for information and also to assist persons seeking information.
- (vi) Fee will be payable by the applicant depending on the nature of information sought.
- (vii) Certain categories of information have been exempted from disclosure under Section 8 and 9 of the Act.
- (viii) Intelligence and security agencies specified in Schedule II to the Act have been exempted from the ambit of the Act, subject to certain conditions.

Answer 4(iv)

The general rule is that opinion of third parties are irrelevant. Ordinarily the court is not interested in anyone's opinion, however eminent he may be, but only in facts; and it is the court that forms its opinion on the proved facts. But there are exceptions to this rule which are set out in sections 45 to 51 of the Indian Evidence Act, 1872.

Section 45 of the Indian Evidence Act, 1872 deals with the opinion of experts. It says when the court has to form an opinion upon a point of foreign law, or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts. Such persons are called experts. An expert is one who has made a special study of the subject. The opinion given by such expert is admissible in a court of law.

Illustrations

- (a) The question is, whether the death of A was caused by poison.

The opinions of experts as to the symptoms produced by the poison by which A is supposed to have died, are relevant.

- (b) The question is, whether a certain document was written by A. Another document is produced which is proved or admitted to have been written by A.

The opinions of experts on the question whether the two documents were written by the same person or by different persons, are relevant. Similarly the opinions

of experts on typewritten documents as to whether a given document is typed on a particular typewriter is also relevant.

Answer 4(v)

Digital Signature

“Digital Signature” under Section 2(1)(p) of the Information Technology Act, 2000 means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of Section 3.

Section 3 deals with authentication of electronic records. This section provides the conditions subject to which an electronic record may be authenticated by means of affixing digital signature. The digital signature is treated in two distinct steps. First the electronic record is converted into a message digest by using a mathematical function known as “hash function” which digitally freezes the electronic record thus ensuring the integrity of the content of the intended communication contained in the electronic record.

Any tempering with the contents of the electronic record will immediately invalidate the digital signature. Secondly, the identity of the person affixing the digital signature is authenticated through the use of private key which is attached to the message digest and which can be verified by any person who has the public key corresponding to such private key. This will enable any person to verify whether the electronic record is retained intact or has been tampered with. It will also enable a person who has a public key to identify the originator of the electronic message.

Question 5

Distinguish between any four of the following :

- (i) *'Vested interest' and 'contingent interest'.*
- (ii) *'English mortgage' and 'mortgage by conditional sale'.*
- (iii) *'Actionable claim' and 'mere right to sue'.*
- (iv) *'Legal set-off' and 'equitable set-off'.*
- (v) *'Public key' and 'private key'.* *(4 marks each)*

Answer 5(i)

‘Vested interest’ and ‘contingent interest’

The following are the main points of distinctions:

- (a) When an interest is vested the transfer is complete. It creates an immediate proprietary interest in the property though the enjoyment may be postponed. A contingent interest on the other hand is dependent upon the fulfillment of some conditions which may or may not happen. In other words, in vested interest, the owner’s title is already perfect while in contingent interest the title is as yet imperfect but may become perfect on fulfillment of a stipulated condition.
- (b) A vested interest takes effect from the date of transfer, while a contingent

interest in order to become vested is conditioned by a contingency which may not occur.

- (c) A vested interest cannot be defeated by the death of the transferee before he obtains the possession. A contingent interest may fail in case of the death of the transferee before the fulfillment of condition.
- (d) A vested interest is logically transferable as well as heritable while a contingent interest cannot be inherited though it may be transferred coupled with limitation regarding fulfillment of a condition.

Answer 5(ii)

'English mortgage' and 'Mortgage by conditional sale'

An English mortgage looks like a mortgage by conditional sale but there are obvious differences between the two :

- (a) In English mortgage there is a personal liability undertaken by the mortgagor to pay the debt. In mortgage by conditional sale there is no personal covenant.
- (b) In English mortgage the ownership in the mortgaged property is absolutely transferred to the creditor (i.e., mortgagee) which however, may be divested on the repayment of the loan on the fixed day. In a mortgage by conditional sale, the mortgagee gets only a qualified ownership which may, however, ripen into an absolute ownership in default of payment of the mortgage money.

Answer 5(iii)

'Actionable claim' and 'mere right to sue'

There is a clear distinction between an actionable claim and a mere right to sue. An actionable claim is property and the assignee has a right to sue to enforce the claim. A right to recover an unascertained amount of damages resulting from breach of contract or tort is a mere right to sue. If, however, one has a right to recover an ascertained and definite debt, he may transfer it because it is an actionable claim. Thus, suppose A is indebted to B for ₹ 2000 and B transfers the right to recover the debt of C, the transfer is void. A beneficial interest in specific movable property is also an actionable claim. It has been held that the right to claim the benefit of an executory contract constitutes a beneficial interest in movable property [*Jaffer Meher Ali v. Budge Budge Jute Mills* (1906) ILR 33 Cal. 702.]

After breach of contract for the sale of goods nothing is left but a mere right to sue for damages which cannot be transferred. But before breach, the benefit of an executory contract for the sale of goods may generally be transferred and the buyer has right to sue for the goods.

Answer 5(iv)

'Legal set-off' and 'equitable set-off'

In India distinction between legal and equitable set-off is recognized. Order 8,

Rule 6, of the Code Civil Procedure, 1908 contains provisions as to legal set off. Accordingly, in legal set off, the defendant in a suit by way of counter-claim against the claim of the plaintiff, demand any ascertained sum of money legally recoverable by him from the plaintiff. But sometimes, the defendant is permitted to claim set off in respect of unascertained sum of money which can be considered as one transaction or where there is knowledge on both sides of an existing debt due to one party and a credit by the other party found on and trusting to such debt as a means of discharging it. It is equitable set off. The common law courts in England do not recognize equitable claims.

Answer 5(v)

'Public key' and 'private key'

According to Section 2(1)(zd) of the Information Technology Act, 2000, the term "public key" means "the key of a key pair, used to verify a digital signature and listed in the Digital Signature Certificate".

On the other hand the term "private key" as defined in Section 2(1)(zc) of the Information Technology Act, 2000, means "the key of a key pair used to create a digital signature".

Question 6

- (a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):*
- (i) *Any person in whose favour a decree has been passed is known as _____ .*
 - (ii) *A private person may arrest or cause to be arrested any person who is a _____.*
 - (iii) *A police officer may conduct investigation without a Magistrate's order in _____.*
 - (iv) *A Public Information Officer has to render information within _____ days under the Right to Information Act, 2005.*
 - (v) *A document executed by several persons at different times may be presented for registration and re-registration within _____ months from the date of each execution.*
 - (vi) *Verification of the electronic record is done by the use of a _____ of the subscriber under section 3(3) of the Information Technology Act, 2000. (1 mark each)*
- (b) *Write the most appropriate answer from the given options in respect of the following :*
- (i) *Every transfer of immovable property made with intent to defeat or delay the creditors of the transferor shall be —*
 - (a) *Voidable*

- (b) *Not voidable*
(c) *Void*
(d) *Illegal.*
- (ii) *The limitation period for money lent under an agreement that it shall be payable on demand is —*
(a) *3 years*
(b) *5 years*
(c) *15 years*
(d) *12 years.*
- (iii) *Third party appeal against "Public Information Officer's decision under the Right to- Information Act, 2005 must be filed before first appellate authority within —*
(a) *30 days*
(b) *90 days*
(c) *105 days*
(d) *None of the above.*
- (iv) *Immovable property under the law relating to transfer of property includes—*
(a) *Growing trees*
(b) *Growing crops*
(c) *Both (a) and (b)*
(d) *None of the above.*
- (v) *The duty of the Collector under section 31 of the Indian Stamp Act, 1899 is only to determine the stamp duty payable upon the instrument where he concludes that the instrument is not sufficiently stamped. He is not authorised to —*
(a) *Impound the instrument*
(b) *Impose any penalty*
(c) *Both (a) and (b)*
(d) *Either (a) or (b).*
- (vi) *Internal aids in interpretation of statutes include —*
(a) *Title*
(b) *Preamble*
(c) *Marginal notes*
(d) *All the above.* (1 mark each)
- (c) *Amit mortgages a house of the value of ₹ 25,000 to Bimal for ₹ 10,000. Bimal afterwards buys the house from Amit. Whether the stamp duty already paid is deductible from the stamp duty payable on ₹ 25,000 ? (4 marks)*

Answer 6(a)

- (i) Any person in whose favour a decree has been passed is known as **Decree holder** .
- (ii) A private person may arrest or cause to be arrested any person who is a **Proclaimed offender** .
- (iii) A police officer may conduct investigation without a Magistrate's order in **Cognizable offence** .
- (iv) A Public Information Officer has to render information within **30** days under the Right to Information Act, 2005.
- (v) A document executed by several persons at different times may be presented for registration and re-registration within **four** months from the date of each execution.
- (vi) Verification of the electronic record is done by the use of a **Public Key** of the subscriber under section 3(3) of the Information Technology Act, 2000.

Answer 6(b)(i)

- (a) Voidable

Answer 6(b)(ii)

- (a) 3 years

Answer 6(b)(iii)

- (a) 30 days

Answer 6(b)(iv)

- (a) Growing Trees

Answer 6(b)(v)

- (c) Both (a) and (b)

Answer 6(b)(vi)

- (d) All the above.

Answer 6(c)

When the mortgaged property is sold to the mortgagee alongwith other properties, the stamp duty already paid is to be deducted from the duty payable on the deed of sale. In order to entitle the mortgagee to a deduction of the stamp duties payable the entire property mortgaged should be transferred and not merely a portion of it. (In *re Mirabai*, in re. *Laxman and Ganpat*, ILR 29 Bom.203). Thus, in the present problem, stamp duty is payable on ₹ 25,000/- less the amount of stamp duty already paid for the mortgage.

Question 7

State, with reasons in brief, whether the following statements are true or false:

- (i) *The law of limitation is not unconstitutional.*

- (ii) 'Traffic' in human beings means to deal in men and women like goods, such as to sell or let out or otherwise dispose them off.
- (iii) The laws passed by Parliament in the national interest cease to have effect automatically after nine months.
- (iv) A trustee may sue for possession of specific movable property of which he is a trustee.
- (v) Where there is infringement of a legal right not resulting in harm, but plaintiff can still sue under the law relating to torts.
- (vi) The maximum period of limitation prescribed under the Limitation Act, 1963 is 30 years.
- (vii) Anil is tried for the murder of Sunil. The fact that before the death of Sunil, Anil procured poison similar to that which was administered to Sunil is not relevant.
- (viii) A search warrant can be issued in cases where the court has reason to believe that a person summoned to produce any document or other thing will not produce it. (2 marks each)

Answer 7

- (i) **True** : Since it applies to right of action in future. It is a shield and not a weapon of offence.
- (ii) **True** : The meaning is correct. Article 23 of the Constitution of India imposes a complete ban on traffic in human beings.
- (iii) **False** : The laws passed by Parliament in the national interest cease to have effect automatically after six months.
- (iv) **True** : As per Explanation 1 to Section 7 of the Specific Relief Act, 1963.
- (v) **True** : This is based upon the maxim *injuria sine damno*. It means injury without damage i.e., where there is no damage resulted yet it is an injury or wrong in tort. Under law of torts, if a person's legal rights are infringed upon, it is actionable, even if no damage has resulted to him.
- (vi) **True** : The maximum period of limitation prescribed under the Limitation Act, 1963 is 30 years and it is provided only for three kinds of suits.
- (vii) **False** : The fact is relevant. According to Section 8 of the Indian Evidence Act, 1872, any fact is relevant which shows or constitutes a motive or preparation for any fact in issue or relevant fact.
- (viii) **True** : According to Section 93 of the Code of Criminal Procedure, 1973, a search warrant can be issued where the Court has reason to believe that a person summoned to produce any document or other thing will not produce it.

Question 8

- (a) A transport company has its head office at Kolkata and branch offices at Allahabad, Lucknow and Puri. A dispute cropped up between Hassan and

the transport company in respect of a transaction through Allahabad office. Hassan files a suit in respect of this dispute against the company in a court at Puri. Is the court at Puri competent to decide this case ? Give reasons. (5 marks)

(b) Sohan is tried summarily by the Metropolitan Magistrate on the charge of committing theft and is sentenced to undergo imprisonment for a period of six months. Can Sohan challenge this decision ? If so, on what grounds? (5 marks)

(c) Shyam executes a sale deed of a house in favour of Krishna. The house is situated in Faridabad, but the transferor and the transferee want the sale deed to be registered at Gurgaon, which has also a District Court of Haryana State. Can they do so ? Give reasons. (6 marks)

Answer 8(a)

The problem is based on Explanation II appended to Section 20 of the Code of Civil Procedure, 1908. Section 20 lays down the provisions relating to jurisdiction of the civil courts. It provides that subject to the limitations provided by Section 15 to 19, any other suit may be instituted in any court in whose jurisdiction (a) the defendant, at the time of the commencement of the suit, actually and voluntarily resides or personally works for gain or carries on business; or (b) the cause of action arises wholly or in part.

Further, as per explanation II to section 20, a corporation is deemed to carry on business at its sole or principal office in India or, in respect of any cause of action arising at any place where it has also a subordinate office, at such place.

In the instant case, cause of action arose in Allahabad and not in Puri. The Court of Puri has no territorial jurisdiction to try this case. Hassan, therefore, can file a suit either in Kolkata where the principal office of the company is situated or in Allahabad where the cause of action has arisen.

Answer 8(b)

Sohan can challenge the decision of Metropolitan Magistrate on the basis of the provisions of Section 262 of the Code of Criminal Procedure, 1973. This Section envisages procedure for summary trial. Section 262(1) of the Code of Criminal Procedure, lays down that in all summary trials the summon case procedure should be followed irrespective of the nature of the case i.e., whether it is a summon case or a warrant case.

According to sub-section (2) of Section 262 of the Code of Criminal Procedure, 1973, no sentence of imprisonment for a term exceeding three months can be passed in any condition in summary trials. Thus, sentence of six months imprisonment could not have been legally awarded in the given case by the Metropolitan Magistrate.

Answer 8(c)

The problem in the instant case is based on section 28 of Registration Act, 1908. As per this section, every document mentioned in Section 17(1) clauses (a) (b) (c) (d) and (e), Section 17(2) in so far 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.

In the instant case, the property in question is situated in Faridabad district of Haryana State and not in Gurgaon which is a separate district of that State. Therefore the parties shall have to get the sale deed registered only in Faridabad and not in Gurgaon.

COMPANY ACCOUNTS COST AND MANAGEMENT ACCOUNTING

Time allowed : 3 hours

Maximum marks : 100

NOTE : All working notes should be shown distinctly.

PART A

(Answer Question No. 1 which is compulsory
and any two of the rest from this part)

Question 1

- (a) State, with reasons in brief, whether the following statements are true or false :
- (i) A company can issue debentures with voting rights.
 - (ii) The apportionment of profit or loss of the business between pre-incorporation and post-incorporation periods can be done on time basis only.
 - (iii) Contingent liability in respect of a transaction between holding and subsidiary companies must be shown by way of a footnote in the consolidated balance sheet.
 - (iv) Debentureholders are not the members of the company.
 - (v) No dividend is paid on calls-in-advance. (2 marks each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) Interest on debentures is a _____ against the profits of the company.
 - (ii) The market value of a share is the product of price-earnings ratio and _____ .
 - (iii) Partly paid-up preference shares cannot be _____ .
 - (iv) International Financial Reporting Standards are issued by _____ .
 - (v) Bonus shares are issued by a company free of charge to its existing shareholders on _____ basis. (1 mark each)
- (c) Write the most appropriate answer from the given options in respect of the following :
- (i) A company cannot issue redeemable preference shares for a period exceeding —
 - (a) 5 Years
 - (b) 10 Years
 - (c) 15 Years
 - (d) 20 Years.

- (ii) Which one of the following should be deducted from the share capital to find out paid-up share capital —
- Share forfeiture
 - Discount on issue of shares
 - Calls-in-arrears
 - Calls-in-advance.
- (iii) At the time of conversion of debentures redeemable at par into equity shares to be issued at discount, the amount to be credited in the equity share capital account shall be —
- Nominal value of debentures only
 - Nominal value of debentures plus discount on issue of shares
 - Nominal value of debentures minus discount on issue of shares
 - None of the above.
- (iv) In case a company intends to declare dividend @ 20%, it is required to transfer an amount to general reserve —
- Not less than 10% of current profit
 - Not less than 7½% of current profit
 - Not less than 5% of current profit
 - Not less than 2½% of current profit.
- (v) Accounting Standards —
- Harmonise accounting policies
 - Eliminate the non-comparability of financial statements
 - Improve the reliability of financial statements
 - All of the above.

(1 mark each)

Answer 1(a)(i)

False

The company can not issue debentures with voting rights. Debenture holders can not vote in the company's general meetings, but where there is a change in the rights attached to the debentures they can vote in that case.

Answer 1(a)(ii)

False

Time basis apportionment of expenses principle is based on the assumption that profits are carved by the business evenly throughout the year. But in reality, since no business can be expected to earn its profit evenly throughout the year, apportionment of profit or loss solely on the basis of time is not at all satisfactory. Therefore Apportionment of Profit and Loss of the business between pre incorporation and post incorporation should be done on equitable basis i.e. time basis or turnover basis depending on the nature of each particular item.

Answer 1(a)(iii)**False**

Contingent liabilities relate to the outsiders must be shown by way of a footnote in the consolidated balance sheet. But a Contingent Liability in respect of a transaction between holding and subsidiary companies will disappear from the footnote.

Answer 1(a)(iv)**True**

Debenture holders are long term loan providers. They are not owners and members of the company. Only the share holders are the members of the company.

Answer 1(a)(v)**True**

The dividend is paid on paid-up capital only. Such capital does not include money received on calls-in-advance.

Answer 1(b)

- (i) Interest on debentures is a **charge** against the profits of the company.
- (ii) The market value of share is the product of price earning ratio and **earning per share** .
- (iii) Partly paid-up preference shares cannot be **Redeemed**.
- (iv) International Financial Reporting Standards are issued by **International Accounting Standard Board/IASB** .
- (v) Bonus Shares are issued by a company free of charge to its existing shareholders on **Pro-rata** basis.

Answer 1(c)(i)

- (d) 20 Years

Answer 1(c)(ii)

- (c) Calls in Arrears

Answer 1(c)(iii)

- (b) Nominal Value of Debentures plus discount on issue of shares

Answer 1(c)(iv)

- (b) Not less than 7½ % of Current Profit

Answer 1(c)(v)

- (d) All of the above

W No - 2**Revaluation of Equipment**

Book Value of Equipment as on 01-04-2010	—	1,00,000
Revaluation @ 20% above the book value		20,000
Share of X Ltd. in Revaluation Profit (90%)		18,000
Minority's Share in Revaluation Profit		2,000
Depreciation Rate $(1,00,000 - 95,000)/1,00,000 =$		5%
Additional Depreciation on appreciated value (5% of ₹ 20,000)		1,000

W No - 3**Distribution of Post Acquisition profit between Holding Company and Minority Share Holder**

Profit of Y Limited as on 31-03-2011		20,000
Less : Profit as on 01-04-2011		8,000
Profit of the year 2010 - 2011		12,000
Less : Additional Depreciation		1,000
Profit after additional Depreciation		11,000
Share of X Limited i.e. 90%		9,900
Minority Share in Post Acquisition Profit		1,100

W No - 4**Calculation of Minority Shareholding**

Paid up value of shares held		10,000
Add : Share in Pre-acquisition Profit		800
Share in Profit on revaluation		2,000
Share in Post acquisition profit		1,100
Total		<u>13,900</u>

W No - 5**Cost of Control (Goodwill/Capital reserve)**

Cost of Investment in Y Limited		1,40,000
Less : Face Value of Shares		90,000
Share in Pre Acquisition Profit		7,200
Profit on Revaluation		18,000
Goodwill		<u>1,15,200</u>
		<u>24,800</u>

**Consolidated Balance Sheet of X Ltd. an its subsidiary Y Ltd.
on 31st March, 2011**

<i>Liabilities</i>	<i>Amount</i>	<i>Assets</i>	<i>₹</i>	<i>₹</i>
Share Capital Issued, subscribed, called up and paid up capital (40,000 equity shares of ₹ 10 each)	4,00,000	Equipment X Ltd Y Ltd	2,50,000 1,20,000 <u>3,70,000</u>	
		Less Depreciation on y Limited	<u>6,000</u>	3,64,000
Minority Interest (W No - 4)	13,900	Goodwill		24,800
Profit & Loss A/c	50,000	X Ltd.	8,10,000	
Share in Y Limited Profit	9,900	Y Ltd	<u>5,05,000</u>	13,15,000
External Liabilities				
X limited	7,50,000			
Y Limited	4,80,000			
	<u>12,30,000</u>			
	<u>17,03,800</u>			<u>17,03,800</u>

Answer 2(b)**Journal Entries in the books of A Limited**

	<i>₹</i>	<i>₹</i>
Bank A/c	Dr. 30,00,000	
To Equity share Application A/c (Being application money received on 30,000 shares)		30,00,000
Equity share Application A/c	Dr. 30,00,000	
To Equity share Capital A/c (Being equity shares allotted)		30,00,000
Underwriters Ltd. A/c	Dr. 20,00,000	
To Equity share Capital A/c (Being 20,000 shares allotted to underwriter against liability)		20,00,000
Underwriting Commission A/c	Dr. 2,50,000	
To Underwriters Ltd. A/c (Being Underwriting Commission due)		2,50,000
*Bank A/c	Dr. 20,00,000	
To Underwriters Ltd. A/c (Being amount received against liability)		20,00,000
*Underwriters Ltd. A/c	Dr. 2,50,000	
To Bank A/c		1,00,000
To Equity share Capital A/c (Being Underwriting Commission paid)		1,50,000

*Note : Following entries can be passed as alternate answers if commission amount is adjusted from the equity shares Liability:

Bank account	Dr.	₹ 18,50,000	
	To Underwriters Ltd, A/c		₹ 18,50,000
(Being ₹ 1,50,000/- is adjusted against Commission in Equity Shares)			
Underwriters Ltd. A/c	Dr.	₹ 1,00,000	
	To Bank A/c		₹ 1,00,000
(Being Commission of ₹ 1,00,000/- is paid in cash and ₹ 1,50,000/ is adjusted for the underwriting liability)			

Answer 2(c)

Buy back of shares refers to taking of shares back into company's possession and ownership. A company may purchase its own shares out of amount available in its free reserves or securities premium Account or proceeds of any share and other specified securities. The buy back is generally done when company has substantial cash reserves but its shares are quoted in market at a price which is lower than its real value. Section 77A of companies act has prescribed conditions for buy back as under

- (i) The buy back must be authorized by articles and special resolution must be passed in the general meeting of the company.
- (ii) The buy back process must be completed within one year of passing the special resolution.
- (iii) The buy back of shares must not exceed 25% of paid up capital and free reserve.
- (iv) Shares for buy back purposes must be fully paid and guidelines of SEBI with regard to buy back must be complied with.

Question 3

(a) Moon Ltd. was incorporated on 30th September, 2009 to takeover the business of Star Ltd. from 1st April, 2009. The financial accounts for the business for the year ended 31st March, 2010 disclosed the following information :

	₹
Sales from 1-04-2009 to 30-09-2009	1,20,00,000
Sales from 1-10-2009 to 31-03-2010	1,80,00,000
Cost of sales	1,95,00,000
Salaries	15,00,000
Other administrative expenses (rent and rates)	4,50,000
Selling expenses	3,00,000
Directors' remuneration	75,000
Depreciation of fixed assets	1,50,000
Interest on debentures	9,000

You are required to prepare the profit and loss account for the year ended 31st March, 2010 showing computation of profit between the periods prior to and after incorporation. (6 marks)

(b) The balance sheet of Do Well Ltd. as on 31st March, 2010 was as follows:

Liabilities	₹	Assets	₹
Share capital in ₹10 per share	2,00,000	Freehold property	1,00,000
Profit and loss account	1,20,000	Stock	1,20,000
6% Debentures	1,20,000	Debtors	80,000
Creditors	60,000	Balance at bank	2,20,000
Proposed dividend	20,000		
	<u>5,20,000</u>		<u>5,20,000</u>

At the annual general meeting held on 18th April, 2010 it was resolved:

- (i) To declare dividend of 10% for the accounting year ended on 31st March, 2010.
- (ii) To issue one bonus share for every 4 shares held out of profit and loss account.
- (iii) To give existing shareholders the option to purchase for cash one share for ₹15 for every 4 shares held prior to the bonus distribution. This option was accepted by all the shareholders. (On this no bonus share will be given).
- (iv) To redeem the debentures at a premium of 3%.

Assuming that the authorised share capital is enough and dividends have been paid in full, pass necessary journal entries and prepare the balance sheet after these transactions are completed. Ignore dividend distribution tax. (9 marks)

Answer 3(a)

Step 1 : Calculation of Time Ratio

$$\begin{aligned}
 \text{Time Ratio} &= \text{Pre incorporation period} : \text{post incorporation period} \\
 &= (01.04.2009 \text{ to } 30.09.2009) : (01.10.2009 \text{ to } 31.3.2010) \\
 &= 1:1
 \end{aligned}$$

Step 2 : Calculation of Sales Ratio

$$\begin{aligned}
 \text{Sales Ratio} &= \text{Pre incorporation period sales} : \text{Post incorporation period sales} \\
 &= 1,20,00,000 : 1,80,00,000 \\
 &= 2 : 3
 \end{aligned}$$

Step 3 : Calculation of Gross Profit

$$\begin{aligned}
 \text{Total Sales} &= ₹ 1,20,00,000 + 1,80,00,000 \\
 &= ₹ 3,00,00,000
 \end{aligned}$$

$$\begin{aligned}
 \text{Gross Profit} &= \text{Total sales} - \text{Cost of Sales} \\
 &= ₹ 3,00,00,000 - ₹ 1,95,00,000 \\
 &= ₹ 1,05,00,000
 \end{aligned}$$

Step 4**Profit and Loss A/c showing Pre Incorporation and Post Incorporation Profit**

Particulars	Basis	Amount		Particulars	Basis	Amount	
		Pre. Incorp ₹	Post Incorp ₹			Pre. Incorp ₹	Post Incorp ₹
To Salaries	Time	7,50,000	7,50,000	By GP	Sales	4,20,00,000	6,30,00,000
To other Adm Exp.	Time	2,25,000	2,25,000				
To Selling Exp.	Sales	1,20,000	1,80,000				
To Director's Post Remuneration Incorp			75,000				
To Depreciation	Time	75,000	75,000				
To Interest on Debenture	Post Incorp		9,000				
To Capital Reserve		3,030,000					
To Net Profit			49,86,000				
		42,00,000	63,00,000			402,00,000	63,00,000

Alternative Solution for Step 4

Particulars	Basis	Amount		Particulars	Basis	Amount	
		Pre. Incorp ₹	Post Incorp ₹			Pre. Incorp ₹	Post Incorp ₹
To Salaries	Time	7,50,000	7,50,000	By GP	Sales	42,00,000	63,00,000
To other Adm Exp.	Time	2,25,000	2,25,000				
To Selling Exp.	Sales	1,20,000	1,80,000				
To Director's Post Remuneration Incorp		37,500	37,500				
To Depreciation	Time	75,000	75,000				
To Interest on Debenture*	Time	4,500	4,500				
To Capital Reserve		29,88,000					
To Net Profit			50,38,000				
		42,00,000	63,00,000			42,00,000	63,00,000

It is assumed that

- The Directors fee of Old company is also included in the director fee and the old company is also having same No of directors at the same salary level.
- Old company was also having debentures of the same value.

Answer 3(b)

Date	Particulars		Amount (₹)	Amount (₹)
01.	Proposed Dividend A/c To Dividend Payable A/c (Being dividend declared)	Dr.	20,000	20,000
02.	Dividend Bank A/c To Bank A/c (Being amount transfer to dividend bank Account)	Dr.	20,000	20,000
03.	Dividend payable A/c To Dividend Bank A/c (Being dividend paid)	Dr.	20,000	20,000
04.	Profit and Loss A/c To Bonus to Shareholders A/c (Being bonus declared for shareholders)	Dr.	50,000	50,000
05.	Bonus to shareholders A/c To Equity Capital A/c (Being 5000 bonus shares allotted to shareholders)	Dr.	50,000	50,000
06.	Bank A/c To Equity Capital A/c To Security Premium A/c (Being 5000 equity shares issued at premium)	Dr.	75,000	50,000 25,000
07.	Securities premium A/c To Premium on Redemption of debentures A/c (Being Premium on Redemption of debentures provided)	Dr.	3,600	3,600
08.	6% Debentures A/c Premium on Redemption of Debentures A/c To Bank A/c (Being debentures redeemed)	Dr. Dr.	1,20,000 3,600	1,23,600

Note : In case of Entry No 2 & 3 one consolidated entry may be done

Dividend Payable A/c	Dr	20,000	
To Bank A/c			20,000
(Being Dividend Paid)			

Balance Sheet as on December 31st 2009

<i>Liabilities</i>	<i>Amount(₹)</i>	<i>Assets</i>	<i>Amount (₹)</i>
Share Capital ₹10 per share	3,00,000	Freehold Property	1,00,000
		Stock	1,20,000
Profit and Loss A/c	70,000	Debtors	80,000
		Balance at Bank	1,51,400
Securities Premium A/c	21,400		
Creditors	60,000		
Total	4,51,400	Total	4,51,400

Question 4

(a) Following was the balance sheet of Raman Ltd. as on 31st March, 2011:

<i>Liabilities</i>	<i>₹</i>	<i>Assets</i>	<i>₹</i>
4,000 Equity shares of ₹ 100 each	4,00,000	Building at cost	60,000
Reserve fund	1,00,000	Furniture	5,000
Profit and loss account (including ₹ 3,00,000 before tax for 2010-11)	4,00,000	Stock (market value)	4,00,000
Depreciation fund :		5% Investments (at cost)	3,00,000
Building	15,000	Debtors	3,00,000
Investment	30,000	Bank	35,000
6% Debentures	1,00,000		
Creditors	45,000		
Provision for doubtful debts	10,000		
	<u>11,00,000</u>		<u>11,00,000</u>

The present value of building is worth ₹ 1,10,000.

Public companies doing similar business show a profit earning capacity of 12% on capital employed on the business. The real value of goodwill may be taken at ₹ 2,00,000. You are required to calculate the yield value of the shares of the company assuming that the tax rate is 35%.

(9 marks)

(b) A company issued 12% debentures of the face value of ₹ 2,00,000 at 10% discount on 1st January, 2010. Debenture interest after deducting tax at source @ 10% was payable on 30th June and 31st December every year. All the debentures were to be redeemed after the expiry of 5 years period at 5% premium.

Pass the necessary journal entries.

(6 marks)

Answer 4(a)**Step 1 : Capital Employed**

<i>Present value of Assets :</i>		₹
Goodwill		2,00,000
Building		1,10,000
Furniture		5,000
Stock		4,00,000
Debtors		3,00,000
Bank		<u>35,000</u>
		10,50,000
<i>Less : Present value of Liabilities</i>		
Creditors	45,000	
Provision for D.Debts	10,000	
Provision for taxation	1,05,000	<u>1,60,000</u>
		<u>8,90,000</u>

Step 2 : Calculation of Profit for Equity Shareholders

	₹
Profit*	3,15,000
<i>Less : Income from investments</i>	15,000
<i>Less : Income tax @35% of 3,00,000</i>	<u>1,05,000</u>
	1,95,000
<i>Add : Debenture Interest**</i>	<u>6,000</u>
	<u>2,01,000</u>

Step 3 : Value Per Share

Actual rate of earning = Profit Earned/ Capital Employed X 100

$$= ₹ 2,01,000 / ₹ 8,90,000 \times 100$$

$$= 22.58\%$$

Value per share = Actual rate of Earning / Normal rate of earning x 100

$$= (22.58/12) \times 100$$

$$= ₹ 188.20$$

* Since investment is stated at cost, It is assumed that Interest Income on Investment has been accrued but not due in books so while calculating the Profit for calculation of return on capital employed, it will not be deducted from Profit.

** Tax effect on debenture Interest has been ignored.

Answer 4(b)

<i>S.No.</i>	<i>Date</i>	<i>Particulars</i>	<i>Amount Dr.</i>	<i>Amount Cr.</i>
1	1.1.2010	Bank A/c Debenture discount A/c Loss on Issue of Debentures A/c To 12% Debentures A/c. To Premium on Redemption of Debenture A/c (For issue of debentures at discount redeemable at Premium)	Dr. 1,80,000 Dr. 20,000 Dr. 10,000	2,00,000 10,000
2	30.6.2010	Debentures Interest A/c To Debentures holders A/c To Tax deducted at Source A/c (Being TDS deducted and debenture interest is recognised)	Dr. 12,000	10,800 1,200
3	30.06.2010	Debenture Holders A/c Tax Deducted at Source A/c To Bank A/c (Being TDS and Interest Paid)	Dr. 10,800 Dr. 1,200	12,000
4	31.12.2010	Debentures Interest A/c To Debentures holders A/c To Tax deducted at Source (Being TDS deducted and debenture interest is recognised)	Dr. 12,000	10,800 1,200
5	31.12.2010	Debenture Holders A/c Tax Deducted at Source A/c To Bank A/c (Being TDS and Interest Paid)	Dr. 10,800 Dr. 1,200	12,000
6	31.12.2010	Profit & Loss A/c To Loss on issue of Debentures A/c (Being proportionate Loss on issue of debenture written off (i.e. 30,000 x 1/5)	Dr. 6,000	6,000
7	31.12.2010	Profit & Loss A/c To Debentures Interest A/c (Being transfer of debenture interest to P&L A/c)	Dr. 24,000	24,000

Entries no.2,3,4,5,6,7 to be repeated every year till 31.12.2014. In 2014 following extra entries to be passed.

	<i>Date</i>	<i>Particulars</i>		<i>Amount Dr.</i>	<i>Amount Cr.</i>
8	31-12-2014	Debentures A/c	Dr.	2,00,000	
		Premium on Redemption of debetures A/c	Dr.	10,000	
		To Debentureholder A/C (Being redemption of Debentures)			2,10,000
9	31-12-2014	Debenture Holders A/C	Dr.	2,10,000	
		To Bank A/C (Being Payment to Debenture holders)			2,10,000

PART B

(Answer Question No. 5 which is compulsory and any two of the rest from this part.)

Question 5

- (a) *State, with reasons in brief, whether the following statements are true or false :*
- Issue of shares against the purchase of fixed assets is considered under financing activities in cash flow statement.*
 - In cost plus contracts, the contractor runs a risk of incurring loss.*
 - ABC analysis is based on the principle of management by exception.*
 - A firm with a very high current ratio and very low liquid ratio has very low level of inventory.*
 - When a factory operates at full capacity, fixed cost also becomes relevant for make or buy decisions. (2 marks each)*
- (b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
- Variable cost per unit does not remain _____ .*
 - Quantitative records of receipts, issue and balance items of material in stores are entered in _____ .*
 - Abnormal losses on account of idle time should be written off by being directly debited to _____ .*
 - Two important opposing factors in fixing the economic order quantity are _____ and carrying cost.*
 - Zero base budgeting overcomes the weaknesses of _____ . (1 mark each)*
- (c) *Write the most appropriate answer from the given options in respect of the following :*
- The annual demand is 1,000 units. The unit price is ₹ 10 per unit. The carrying cost of inventory is 10% and the ordering cost is ₹ 5 per order. The economic order lot to be ordered is —*
- (a) 100 units

- (b) 800 units
 - (c) 200 units
 - (d) 400 units.
- (ii) The nature of ratio analysis is —
- (a) Quantitative analysis
 - (b) Qualitative analysis
 - (c) Both quantitative and qualitative analysis
 - (d) None of the above.
- (iii) When prices fluctuate widely, the method that will smooth out the effect of fluctuations is —
- (a) FIFO
 - (b) LIFO
 - (c) Simple average
 - (d) Weighted average.
- (iv) When the amount of overheads absorbed is less than the amount of overheads incurred, it is called —
- (a) Under-absorption of overheads
 - (b) Over-absorption of overheads
 - (c) Proper absorption of overheads
 - (d) Normal absorption of overheads.
- (v) Product cost under marginal costing include —
- (a) Prime cost only
 - (b) Prime cost and fixed overheads
 - (c) Prime cost and variable overheads
 - (d) Material cost and variable overheads. (1 mark each)

Answer 5(a)(i)**False**

Since cash flow statement ignores non-cash transactions as it does not take into consideration transactions which do not affect the cash, issue of shares against the purchase of fixed assets is not considered in cash flow statement at all.

Answer 5(a)(ii)**False**

Since the contractor is assured of a fixed percentage of profits there is no risk of incurring any loss on the contract.

Answer 5(a)(iii)**True**

Since the management time is saved since attention need be paid only to some

of the items rather than all the items as would be the case if the ABC system was not in operation, it is based on the principle of management by exception.

Answer 5(a)(iv)

False

A firm with a very high current ratio and a very low liquid ratio indicates a high level of investment in such inventories with are mostly un-salable

Answer 5(a)(v)

True

A factory operates at full capacity, the decision to make further is very likely to cause expansion in installed capacity as such fixed cost becomes relevant cost for arriving at make or buy decision

Answer 5(b)

- (i) Variable cost per unit does not remain **variable** .
- (ii) Quantitative records of receipts, issue and balance items of material in stores are enter in **bin-card**.
- (iii) Abnormal Losses on account of idle time should be written off by being directly debited to **Costing Profit and Loss Account** .
- (iv) Two important opposing factors in fixing the economic order quantity are **Ordering cost** and Carrying Cost.
- (v) Zero Base Budgeting overcomes the weaknesses of **Conventional or Traditional budgeting**.

Answer 5(c)(i)

- (a) 100 units

Answer 5(c)(ii)

- (a) Quantitative Analysis

Answer 5(c)(iii)

- (d) Weighted Average

Answer 5(c)(iv)

- (a) Under-absorption of overheads

Answer 5(c)(v)

- (c) Prime cost and variable overheads

Question 6

- (a) A company manufacturers 5,000 units of a product per month. The cost of placing an order is ₹ 100. The purchase price of the raw material is

₹ 10 per kg. The re-order period is 4 to 8 weeks. The consumption of raw materials varies from 100 kg. to 450 kg. per week. The average weekly consumption being 275 kg. The carrying cost of inventory is 20% per annum. Assuming 52 weeks in a year, you are required to calculate —

- (i) Re-order quantity;
- (ii) Maximum level;
- (iii) Minimum level; and
- (iv) Average level. (6 marks)

(b) The following are the particulars relating to a contract which has begun on 1st April, 2010 :

	₹
Contract price	5,00,000
Machinery	30,000
Material	1,70,600
Wages	1,48,750
Direct expenses	6,330
Outstanding wages	5,380
Uncertified work	9,000
Overheads	8,240
Material returned	1,600
Machinery as on 31st March, 2011	22,000
Material in hand on 31st March, 2011	3,700
Value of work certified	3,90,000
Cash received	3,51,000

Prepare the contract account for the financial year 2010-11 showing the amount of profit that may be taken to the credit of profit and loss account for the year. (6 marks)

(c) "Normal labour turnover is advantageous and excessive labour turnover is not desirable." Comment. (3 marks)

Answer 6(a)

$$(i) \text{ Reorder Quantity (ROQ)} = \sqrt{\frac{2 \times \text{Annual Req} \times \text{Ordering Cost}}{\text{Carrying Cost}}}$$

$$\text{Annual Req} = \text{Weekly Req} \times 52 = 275 \times 52 = 14300$$

$$\text{Ordering Cost} = 100$$

$$\text{Carrying Cost} = 20\%$$

$$= 20\% \times 10$$

$$= 2$$

$$\text{ROQ} = \sqrt{\frac{2 \times 14300 \times 100}{2}}$$

$$= 1,196$$

- (ii) Reorder Level (ROL) = Maximum Usage X Max reorder Period
 Reorder Period : 4 to 8 Weeks
 Maximum Reorder Period = 8 Weeks
 Consumption = 100 Kg to 450 Kg
 Maximum Consumption = 450 Kg
 Reorder Level = $450 \times 8 = 3,600$ Kg
 Maximum Level = $ROL + ROQ - (\text{Minimum usage} \times \text{Minimum Reorder period})$
 $= 3,600 + 1,196 - (100 \times 4)$
 $= 4,796 - 400$
 $= 4,396$ Kg
- (iii) Minimum level = $ROL - (\text{Normal usage} \times \text{Normal Reorder period})$
 Normal Usage = $(\text{Max Usage} + \text{Minimum Usage})/2$
 $= (450 + 100)/2$
 $= 275$
 Normal Reorder Period = $(\text{Max Period} + \text{Minimum Period})/2$
 $= (4+8)/2$
 $= 6$
 Minimum Level = $3600 - (275 \times 6)$
 $= 1950$ Kg
- (iv) Average level = $(\text{Maximum level} + \text{Minimum level})/2$
 $= (4396 + 1950)/2$
 $= 3173$ Kg
- Or = Minimum Stock Level + $\frac{1}{2}$ of 1196 = 2548 kg.

Answer 6(b)**Contract A/c**

<i>Particulars</i>	<i>Amt ₹</i>	<i>Particulars</i>	<i>Amt ₹</i>
To Materials	1,70,600	By Materials returned	1,600
To wages 1,48,750		By Materials on hand	3,700
Add :Outstanding 5,380	1,54,130		
To Direct Expenses	6,330	By work in Progress A/c:	
To overheads	8,240	Certified 3,90,000	
To Depreciation on machinery	8,000	Uncertified <u>9,000</u>	3,99,000
To Balance c/d	57,000		
	<u>4,04,300</u>		<u>4,04,300</u>
To Profit & Loss A/c*	34,200	By Balance b/d	57,000
To Reserve Work in Progress A/c	22,800		
	<u>57,000.00</u>		<u>57,000</u>

Contract Value = 5,00,000

Work Certified = 3,90,000

Completion % = 78% i.e. $\left(\frac{3,90,000 \times 100}{5,00,000} \right)$

As work complete is 78%, so 2/3 profit will be transferred to P & L Account

$$\begin{aligned} \text{Profit to be transferred to P \& L A/c} &= \frac{2}{3} \times \frac{\text{Profit} \times \text{Cash Received}}{\text{Work Certified}} \\ &= \frac{2}{3} \times \frac{57,000 \times 3,51,000}{3,90,000} \\ &= 34,200 \end{aligned}$$

Answer 6(c)

Normal Labour turnover is advantageous because it allows injection of Fresh Blood into the firm. But excessive Labour turnover is not desirable because it shows that Labour Force is not contented. Therefore, every effort should be made to remove the avoidable causes which give rise to excessive Labour turnover.

The following steps may be taken to reduce the Labour turnover :-

1. A suitable personnel Policy should be framed for employing the right man for the right job and giving a fair and equal treatment to all workers.
2. Good working conditions which may be conducive to health and efficiency should be provided.
3. Fair rates of pay and allowances and other monetary benefits (i.e. fringe benefits) should be introduced..
4. Distinction should be made between efficient and inefficient workers by introducing incentive plans whereby efficient workers may be rewarded more as compared to inefficient workers.
5. Maximum non-monetary benefits should be introduced.
6. An employee suggestion box scheme should be introduced whereby workers who suggest improvements in the method of production should be suitably rewarded.
7. Man management relationship should be improved by encouraging labour participation in the management

In addition to the above steps, the personnel department should prepare periodical reports on the labour turnover listing out the various reasons due to which workers have left the organisation. The report should be sent to the management with the necessary recommendations so that corrective measures may be taken to reduce labour turnover.

Question 7

(a) Surya Ltd. provides you the following information for the year ended 31st March, 2011 :

- (i) Sales for the year amounted to ₹ 1,20,00,000, the company sells goods for cash only.

- (ii) Cost of goods sold was 60% of sales. Closing inventory was higher than opening inventory by ₹ 53,750. Trade creditors on 31st March, 2011 exceeds those on 31st March, 2010 by ₹ 28,750.
- (iii) Net profit before tax was ₹ 17,25,000. Tax paid amounted to ₹ 8,75,000. Depreciation on fixed assets for the year was ₹ 3,93,750. Whereas other expenses totalled ₹ 26,81,250. Outstanding expenses on 31st March, 2010 and on 31st March, 2011 totalled to ₹ 1,02,500 and ₹ 1,13,750 respectively.
- (iv) New machinery and furniture costing ₹ 12,84,375 in all were purchased.
- (v) A rights issue was made of 2,500 equity shares of ₹ 250 each at a premium of ₹ 75. The entire money was received with applications.
- (vi) Dividends and dividend distribution tax totaling ₹ 5,08,750 were paid.
- (vii) Cash in hand and at bank as on 31st March, 2010 totalled ₹ 2,67,250.

Prepare cash flow statement as per Accounting Standard – 3 (Revised).
(9 marks)

- (b) Metro Service Ltd. is operating at 70% capacity and presents the following information :

Break-even point : ₹ 200 crore

P/V ratio : 40%

Margin of safety : ₹ 50 crore.

Metro management has decided to increase production to 95% capacity level with the following modifications —

- Selling price will be reduced by 8%.
- The variable cost will be reduced to 55% on sales.
- The fixed cost will increase by ₹ 27 crore including depreciation on additions, but excluding interest on additional capital.
- Additional capital of ₹ 50 crore will be needed for capital expenditure and working capital.

You are required to calculate —

- (i) Sales required to earn ₹ 7 crore over and above the present profit and also to meet 20% interest on additional capital;
- (ii) Revised break-even point;
- (iii) Revised P/V ratio; and
- (iv) Revised margin of safety. (6 marks)

Answer 7(a)

**Cash Flow Statement
For the year ending 31.3.2011**

(A) Cash Flow from Operating Activities		
Net Profit before Tax -	17,25,000	
Add : Depreciation	3,93,750	
Operating Profit before working Capital changes	21,18,750	
Less : Increase in Inventory	53,750	
Add : Increase in Trade Creditors	28,750	
Add : Increase in outstanding expenses	11,250	
Cash generated from operations	21,05,000	
Tax paid	8,75,000	
Net Cash from operating activities		12,30,000
(B) Cash Flow from Investing Activities		
Purchase of Fixed Assets	(12,84,375)	
Net cash flow from Investing Activities		(12,84,375)
(C) Cash flow from Financing Activities		
Proceeds from issue of share capital	8,12,500	
Dividend Corporate Dividend Tax Paid	(5,08,750)	
Net Cash flow from Financing Activities		3,03,750
Net Increases in Cash & Cash equivalent (A + B + C)		2,49,375
Add : Cash & Cash equivalents as on 31.3.2010 (opening balance)		2,67,250
Cash & Cash equivalents as on 31.3.3011 (closing balance)		5,16,625

Answer 7(b)

$$\begin{aligned}
 \text{Total Sales} &= \text{Break Even Sales} + \text{Margin of Safety} \\
 &= ₹ 200 \text{ Crores} + ₹ 50 \text{ Crores} \\
 &= ₹ 250 \text{ Crores} \\
 \text{P/V Ratio} &= 40\% \text{ (given) } (100 - \text{PV Ratio}) \\
 \text{Variable Cost} &= 60\% \text{ of Sales} \\
 &= ₹ 250 \text{ Crores} \times 60\% = ₹ 150 \text{ Crores}
 \end{aligned}$$

Fixed cost = Break Even Sales X P/V Ratio

$$= ₹ 200 Crores \times 40\% = ₹ 80 Crores$$

Total Cost = Variable Cost + Fixed Cost

$$= ₹ 150 Crore + ₹ 80 Crores$$

$$= ₹ 230 Crores$$

Profit = Total Sales – Total Cost

$$= ₹ 250 Crores – ₹ 230 Crores$$

$$= ₹ 20 Crores$$

Answer 7(b)(i)

Sales Required to earn 7 Crore over and above the present Profit and also to meet 20% interest on capital/Sales=(Fixed Cost+ Desired Profit)/PV ratio

Presuming that the present selling Prices – ₹ 100.00

$$\text{Reduction in Selling price} = 8\%$$

$$\text{Revised Selling Price will be } (100-8) = ₹ 92.00$$

$$\text{Reduced Variable Cost} = 55\% \text{ of Sales}$$

$$\text{New Variable cost} = 92 \times 55\% = ₹ 50.60$$

$$\text{Contribution per unit} = 41.40$$

$$\text{New P/V Ratio} = (41.40 / 92) \times 100$$

$$= 45\%$$

$$\text{Earlier Fixed Cost} = 80 \text{ Crore}$$

$$\text{Increase in Fixed Cost} = 27 \text{ Crore}$$

$$\text{Revised Fixed Cost} = 107 \text{ Crore}$$

$$\text{Additional Capital infused} = 50 \text{ Crore}$$

$$\text{Interest desired} = 20\%$$

$$= ₹ 10 \text{ Crore}$$

Desired sales to earn 7 Crore profit over and above present profit and fixed cost and 20% Interest on capital

$$= \frac{(100 + 20 + 7 + 10)}{45\%}$$

$$= ₹ 320 \text{ Crore}$$

Answer 7(b)(ii)

Revised BEP (assuming Interest on capital as a part of fixed cost = Fixed Cost/PV ratio)

$$= (107 + 10) / 45\%$$

$$= ₹ 260 \text{ Crore}$$

Alternatively BEP may be calculated without considering interest on capital as an element of fixed cost.

Answer 7(b)(iii)

Revised PV Ratio as calculated above i.e. 45%

Answer 7(b)(iv)

Revised Margin of Safety = Profit/PV Ratio

$$= (20+7)/45\%$$

$$= ₹ 60 \text{ Crore}$$

Question 8

(a) From the following particulars, prepare the balance sheet of Dhan Dhanya Ltd. :

Current ratio	2
Working capital	₹ 4,00,000
Capital block (employed) to current assets	3:2
Fixed assets to turnover	1:3
Cash sales/credit sales	1:2
Debentures/share capital	1:2
Stock velocity	2 months
Creditors velocity	2 months
Debtors velocity	3 months
Gross profit ratio	25% (to sales)
Net profit	10% of turnover
Reserve	2.5% of turnover

(9 marks)

(b) Flexible budgets are more realistic and useful than fixed budgets. Do you agree ? Explain. (3 marks)

(c) "Budget is an aid to management and not a substitute for management". Comment. (3 marks)

Answer 8(a)**A Balance Sheet of Dhan Dhanya Ltd.**

	₹		₹
Share Capital	6,00,000	Fixed assets	8,00,000
Reserves	60,000	Current Assets:	
Profit & Loss A/c	2,40,000	Debtors	4,00,000
Debentures	3,00,000	Stock	3,00,000
Sundry Creditors	3,00,000	Cash	1,00,000
Other current liabilities	1,00,000		
	16,00,000		16,00,000

Working Notes

- (i) Working Capital = Current Assets- Current Liabilities
 Current Ratio = Current Assets/Current Liability
 Working Capital = ₹ 400000
 Current Ratio = 2 : 1
 Let Current Liability = X
 Current Ratio = $\frac{\text{Current Assets (CA)}}{\text{Current Liabilities (CL)}}$
 $2 = \text{CA}/X$
 $\text{CA} = 2X$
 Working Capital = CA-CL
 $4,00,000 = 2X-X$
 $4,00,000 = X$
 So, Current Assets = $2 \times 4,00,000$
 = 8,00,000
- (ii) Capital Block to Current assets = 3:2
 Current Assets = 8,00,000
 or Capital Block = ₹ 8,00,000 x 3/2 = ₹ 12,00,000
 Total Liabilities = CL + Capital Block = 4,00,000 + 12,00,000
 = 16,00,000
 Total Assets = Total Liabilities = 16,00,000
 Current Assets = 8,00,000
 Fixed Assets = Total Assets - Current Assets = 16,00,000-8,00,000
 = 8,00,000
 Fixed Assets Turnover Ratio = 3
 Sales/Fixed Assets = 3
 Sales = 3 x Fixed Assets
 = 3 x 8,00,000
 = 24,00,000
 Cash Sales (1/3) = ₹ 8,00,000
 Credit Sales (2/3) = ₹ 16,00,000
- (iii) Debtors velocity = 3 months
 Debtors = ₹ 16,00,000 x 3 / 12 = ₹ 4,00,000
- (iv) Gross Profit = 25/100 x Sales i.e. 25% of ₹ 24,00,000 = ₹ 6,00,000
 Therefore Cost of goods sold = ₹ 24,00,000 - ₹ 6,00,000 = ₹ 18,00,000
- (v) Stock Turnover = 2 months
 Therefore Stock = ₹ 18,00,000 x 2/12 = ₹ 3,00,000

(vi) Creditors Velocity = 2 months

assumed that cost of goods sold represents the amount of Purchase

$$\text{Creditors} = ₹ 18,00,000 \times 2/12 = ₹ 3,00,000$$

(vii) Cash Balance = Current Assets -(Stock + Debtors)

$$= ₹ 8,00,000 - ₹ (3,00,000, + 4,00,000)$$

$$= ₹ 1,00,000$$

(viii) Reserves = 2.5% of Turnover i.e. 2.5% of ₹ 24,00,000 = ₹ 60,000

(ix) Profit = 10% Turnover i.e. 10% of 24,00,000 = ₹ 2,40,000

(x) Capital Block = ₹ 12,00,000

$$\text{Reserves \& Profit} = ₹ 3,00,000 \text{ (i.e. } 60,000 + 2,40,000)$$

$$\text{Debentures and Share Capital} = ₹ 9,00,000 \text{ (i.e. } ₹ 12,00,000 - ₹ 3,00,000)$$

$$\text{Therefore Share Capital (2/3)} = ₹ 6,00,000$$

$$\text{Debentures (1/3)} = ₹ 3,00,000$$

Answer 8(b)

A Fixed budget is prepared keeping in mind the level of output. It is defined as a budget which is designed to remain unchanged irrespective of the level of activity attained. Fixed Budget is prepared on the assumption that output and sales can be accurately estimated.

Flexible budget on the other hand is one which is designed in relation to the level of activity attained. Flexible budgeting has been developed with the objective of changing the budget figures to correspond with the actual output achieved. Flexible budgets are prepared in those companies where it is extremely difficult to forecast output and sales with accuracy.

The main distinction between the two are as follows:-

- (1) Fixed budget assumes static business conditions whereas flexible budget is based on the assumption of changing business condition.
- (2) Fixed budget is prepared for only one level of activity but flexible budget may be prepared for different capacity levels or any level of activity.
- (3) Fixed budget figures are not changed when actual level of activity changes. But in flexible budgets, the figures are adjusted according to the actual level of activity attained.
- (4) When actual level of activity differs from budgeted level of activity, then in fixed budgets meaningful comparison between actual and budget figures is not possible. But in flexible budgets such comparison are quite realistic.
- (5) Fixed Budget has limited use for planning purpose than the flexible budget.
- (6) Flexible budget is more useful for control purpose than the fixed budget.

Answer 8(c)

Budgeting control has become an essential tool of management for controlling costs and maximising profits. It may be taken as one of the supreme examples of rationality in management. It is very useful management tool for comparing the current performance with pre-planned performances with a view to attain equilibrium between ends and means, output and efforts.

It corrects the deviation from preplanned path through the media of reservation, research, planning, control and decision making and thus helps in performance of future activities in an orderly way. It uncovers uneconomics in operation, weakness in the organisation structure and minimize wasteful spending. It brings efficiency and economy in the working of the business enterprises. It helps in establishing divisional and departmental responsibility. It helps in co-ordinating the various divisions of a business, namely the production, marketing, financial and administrative divisions. It helps management in obtaining the most profitable combination of different factors of production. It acts as a safety signal for management. It guards against undue optimism leading to over-expansion because the targets are fixed after cool and careful thought.

After taking into consideration the above said discussion it can easily said that the budget does not take place of management, rather it is a tool of management. The budget should be regarded not as a master but as a servant, it is an aid to management not a substitute for management.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : All references to sections mentioned in Part - A of the Question Paper relate to the Income-tax Act, 1961 and the relevant Assessment Year 2012-13 unless stated otherwise.

PART A

(Answer Question No. 1 which is COMPULSORY and ANY THREE of the rest from this part)

Question 1

- (a) Write the most appropriate answer from the given options in respect of the following having regard to the provisions of the relevant direct tax laws :
- (i) Anand is entitled to get a pension of ₹600 per month from a private company. He gets three-fifth of the pension commuted and received ₹ 36,000. He did not receive gratuity. The taxable portion of commuted value of pension is —
- (a) ₹ 16,000
(b) ₹ 6,000
(c) ₹ 18,000
(d) ₹ 12,000.
- (ii) Income earned and received outside India but later on remitted to India, is taxable in the case of —
- (a) All the assessees
(b) Resident and ordinarily resident in India
(c) Non-resident
(d) None of the above.
- (iii) Which one of the following is not an 'asset' under section 2(ea) of the Wealth-tax Act, 1957 —
- (a) Motor car
(b) Boat and aircraft
(c) Guest house
(d) Balance in bank account.
- (iv) On 30th December, 2011, Raju gets by gift a commercial flat from the elder brother of his father-in-law (stamp duty value is ₹ 25,00,000). The amount chargeable to tax in the hands of Raju is —
- (a) ₹ 25,00,000
(b) ₹ 24,50,000

- (c) ₹20,00,000
 (d) Nil.
- (v) Short-term capital loss can be set-off from —
 (a) Short-term capital gains
 (b) Long-term capital gains
 (c) Both short-term and long-term capital gains
 (d) Any income of the previous year. (1 mark each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :
- (i) The maximum amount of deduction in respect of rent paid under section 80GG is _____.
- (ii) The maximum amount which can be paid without deduction of tax at source from winnings from lotteries is _____.
- (iii) One is required to obtain a Permanent Account Number (PAN) whose total sales turnover or gross receipts are or is likely to exceed _____ in any previous year.
- (iv) Leave encashment received while in service is _____.
- (v) Net wealth computed under the Wealth-tax Act, 1957 shall be rounded off to the multiple of _____. (1 mark each)
- (c) Sanjeev owns a house property. Following are the details about the property:
- Municipal value of house : ₹ 72,000 per annum.
 Fair rent of house : ₹ 66,000 per annum.
 Standard rent of house : ₹ 60,000 per annum.
- The house was let out at ₹ 6,000 per month but was sold on 1st January, 2012.
- Find out income from house property for the assessment year 2012-13.
 (5 marks)

Answer 1(a)(i)

- (b) ₹ 6,000

Answer 1(a)(ii)

- (d) None of the above

Answer 1(a)(iii)

- (d) Balance in bank account

Answer 1(a)(iv)

- (a) ₹ 25,00,000

Answer 1(a)(v)

- (c) Both short-term and long-term capital gains

Answer 1(b)

- (i) The maximum amount of deduction in respect of rent paid under section 80GG is **₹2,000** per month .
- (ii) The maximum amount which can be paid without deduction of tax at source from winnings from lotteries is **₹10,000**.
- (iii) One is required to obtain a Permanent Account Number (PAN) whose total sales turnover or gross receipts are or is likely to exceed **₹ 5,00,000** in any previous year.
- (iv) Leave encashment received while in service is **Taxable** .
- (v) Net wealth computed under the Wealth-tax Act, 1957 shall be rounded off to the multiple of **₹ 100** .

Answer 1(c)

**Computation of Income from House Property
For the Assessment Year 2012-13**

<i>Gross Annual Value Shall be higher of Expected Rent or Actual Rent Received</i>	₹	₹
(i) <i>Expected rent</i> shall be higher of Municipal Value or fair Rent whichever is higher but limited to standard rent Municipal Value (72,000 x 9/12) = 54,000		
Fair Rent for 9 months (66,000 x 9/12) = 49,500		
Standard Rent for 9 months (60,000 x 9/12) = 45,000		
Therefore Expected Rent shall be Rs.45,000	45,000	
(ii) <i>Actual Rent Received</i> (6,000 x 9)	54,000	
Gross Annual Value		54,000
Less : Standard Deduction @ 30%		16,200
Income from House Property		<u>37,800</u>

Question 2

- (a) *State, with reasons in brief, whether the following statements are true or false :*
- (i) *Loss on account of owning and maintaining race horses can be carried forward upto 8 years.*
- (ii) *All incomes that accrue to a minor child will be included in the total income of parent whose total income is greater.*

- (iii) Family pension is taxable as income from other sources.
 (iv) Every person is liable to pay advance tax.
 (v) When the prize is given partly in cash and partly in kind, income-tax will be deducted from cash only. (1 mark each)

(b) Savita submits the following information regarding her salary income :

Basic salary	... ₹ 11,000 per month
City compensatory allowance	... ₹ 150 per month
Children education allowance	... ₹ 400 per month (for 3 children)
Reimbursement of medical expenses	... ₹ 25,000

She was entitled to house rent allowance of ₹ 6,000 per month from 1st April, 2011 to 31st August, 2011. However, she was paying a rent of ₹7,000 per month for a house in New Delhi. With effect from 1st September, 2011, she was provided with an accommodation by the company for which the company was paying a rent of ₹ 5,000 per month.

Compute her gross salary for the assessment year 2012-13. (5 marks)

(c) For the previous year 2011-12, gross total income of Gopal is ₹ 12,50,700. During the previous year he has made the following payments :

	₹
(i) Contribution to recognised provident fund	18,000
(ii) Donation to Rajiv Gandhi Foundation	50,000
(iii) Donation to Prime Minister Drought Relief Fund	30,000
(iv) Donation to Prime Minister National Relief Fund	20,000
(v) Donation to a government hospital for family planning	1,00,000
(vi) Financial assistance to poor students	50,000
(vii) Medical insurance premium	20,000

Compute total income of Gopal for the assessment year 2012-13.

(5 marks)

Answer 2(a)(i)

False, loss on account of owning and maintaining race horses can be carried forward up to four years under section 74A.

Answer 2(a)(ii)

False, as per Section 64(1A) the clubbing provision is not applicable in following cases: (a) Disability of minor as specified under section 80U (b) Income earned on account of manual work done (c) Income from his skill, talent or specialized knowledge.

Answer 2(a)(iii)

True, payments received by the legal heirs of deceased employees by way of family pension are chargeable under the head Income from other Sources.

Answer 2(a)(iv)

False, advance tax shall be payable during a financial year, only when the amount of such advance tax payable by the assessee during that year is Rs.10,000 or more.

Answer 2(a)(v)

False, the provisions of TDS are applicable on prizes received in cash or in kind. Payer shall ensure that tax is collected from the payee where the prize in cash is not sufficient to meet the liability of TDS.

Answer 2(b)

**Computation of Gross Salary of Savita
for the Assessment Year 2012-13**

		₹
Basic Salary (11,000 x 12)		1,32,000
City Compensatory allowance (150 x 12)		1,800
Children Education Allowance (400 x 12)	4,800	
Less : Exempt 100 p.m. upto 2,400 2 children (200 x 12)	2,400	2,400
Reimbursement of Medical Expenses	25,000	
Less : Exempt	15,000	10,000
House Rent Allowance (6,000 x 5)	30,000	
Less : Exempt (See Note 1)	27,500	2,500
Rent free accommodation (See Note 2)		11,918
Gross Salary		1,60,618

Note :

(i) HRA shall be exempt to the minimum of the following:

(a) HRA received	30,000
(b) Actual rent – 10% of salary [7,000 x 5 – (10% of 55,000)]	29,500
(c) 50% of ₹ 55,000 (as he resides In Delhi)	27,500

Therefore, House rent allowance of ₹ 27,500 shall be exempt.

(ii) Value of Rent free Accommodation:

Least of following shall be taxable

(a) Actual amount of Rent paid by Employer (5,000 x 7)	35,000
(b) 15% of salary (79,450)	11,918

Therefore, value for rent free accommodation shall be ₹ 11,918.

Salary for the purpose of rent free accommodation is 11,350 (₹ 11,000 + ₹ 150 + ₹ 200) x 7 = ₹ 79,450.

Answer 2(c)

**Computation of Total Income of Gopal
for the Assessment Year 2012-13**

	₹	₹
Gross Total Income		12,50,700
Less : Deduction under chapter VI-A		
Deduction under section 80-C (RPF)	18,000	
Deduction under section 80-D (Medical Insurance Premium)	15,000	
Deduction under section 80-G (Donation)	1,60,000	1,93,000
Total Income		<u>10,57,700</u>

Working Notes:

(i) *Calculation of Deduction under Section 80G*

(A) Donations to which qualifying limit does not apply

(a) Allowed 100%

PMNRF (20,000 x 100%) 20,000

(b) Allowed 50%

PMDRF (30,000 x 50%) 15,000

RGF (50,000 x 50%) 25,000 40,000

(B) Donations which are subject to qualifying limit

(a) Donation to Government for Family Planning

(100% of ₹ 1,00,000) 1,00,000

Within 10% of adjusted total Income

(10% of 12,17,700) i.e ₹ 1,21,770

Total Donation Allowed **1,60,000**

Adjusted total income : (Gross Total Income – Deductions under chapter VI-A except under section 80G) i.e 12,50,700 - 18,000 - 15,000 = 12,17,700.

Question 3

(a) *Kundan sold his properties during the year 2011-12 as under :*

(i) *Household TV and refrigerator, costing ₹ 56,000 purchased in January, 2004, sold in February, 2012 for ₹ 70,000.*

(ii) *A car sold on 1st December, 2011 for ₹ 2,00,000 which was purchased by him in January, 2009 for ₹ 3,00,000 and its written down value on 1st April, 2011 was ₹ 1,72,000. The car is used for business purposes.*

- (iii) Agricultural land was sold for ₹ 9,50,000 on 1st February, 2012 and its purchase price in 1982-83 was ₹ 1,00,000. He purchased new land for his own cultivation for ₹ 2,50,000 in May, 2012.
- (iv) Gold ornaments acquired in July, 2008 for ₹ 2,00,000 were sold for ₹ 2,40,000 in June, 2011.
- (v) Let out residential house at Indore was inherited by him in 1975. Sale price on 30th November, 2011 : ₹ 16,00,000; fair market value on 1st April, 1981 : ₹ 2,00,000; cost of improvement during 1989-90 : ₹ 40,000; and expenses on transfer : ₹ 60,000.

Compute his total capital gains for the assessment year 2012-13.

Cost inflation indices :

1981-82	...	100
1982-83	...	109
1989-90	...	172
2003-04	...	463
2008-09	...	582
2010-11	...	711
2011-12	...	785

(7 marks)

- (b) Kailash furnishes the following particulars of income and losses for the assessment year 2012-13 :

	₹
Short-term capital loss on sale of shares	3,25,200
Income from card games (gross)	99,800
Loss from betting	1,02,500
Income from lotteries (gross)	3,87,500
Expenses on lottery ticket purchased	7,500
Long-term capital gains	97,800
Long-term capital loss of assessment year 2010-11	1,12,500
Short-term capital loss of assessment year 2011-12	97,800

Set-off various losses from other income and compute gross total income. Find out the amount which can be carried forward. (5 marks)

- (c) What is meant by 'block of assets' ? Explain. (3 marks)

Answer 3(a)

Computation of Capital Gains

	₹	₹
(i) Household TV and refrigerator are personal effects and hence not capital assets		---
(ii) Car		
Sale consideration	2,00,000	
Less : Written down value	<u>1,72,000</u>	
Short-term capital gain	28,000	28,000

(iii) <i>Agricultural land</i>		
Sale Consideration	9,50,000	
Less : Indexed cost of acquisition		
	$\left(\frac{1,00,000 \times 785}{109} \right)$	7,20,183
		<u>2,29,817</u>
Less : Exempt under Section 54B Agriculture land purchased for ₹2,50,000 but limited to Capital gain	2,29,817	NIL
	<u>2,29,817</u>	
(iv) <i>Gold ornaments</i>		
Sale consideration	2,40,000	
Less : Cost of acquisition	<u>2,00,000</u>	
Short-term capital gain		40,000
(v) <i>Residential House</i>		
Sale consideration	16,00,000	
Less : Expenses on transfer	60,000	
Less : Indexed Cost of Acquisition		
	$\left(\frac{2,00,000 \times 785}{100} \right)$	15,70,000
Less : Indexed Cost of Improvement		
	$\left(\frac{40,000 \times 785}{172} \right)$	<u>1,82,558</u>
Long Term Capital Gain	<u>(2,12,558)</u>	
Long-term Capital gain (loss)	2,12,558	
Short-term Capital Gains	68,000	

Answer 3(b)**Computation of Gross Total Income of Kailash
for the Assessment Year 2012-13**

	₹	₹
<i>Income from Capital gains</i>		
— Short-term Capital loss	3,25,200	
Less : B/F short-term capital loss of Assessment Year 2011-12	<u>97,800</u>	Nil
(The amount of ₹ 4,23,000 shall be carried forward to next assessment year)		
— Long-term Capital Gains	97,800	
Less : B/F Long-term Capital Loss	<u>1,12,500</u>	Nil

Income from other sources

— Income from lotteries	3,87,500	
— Income from Card Games	99,800	
— Loss from betting (not allowed for set-off)	—	<u>4,87,300</u>
Gross Total Income		<u>4,87,300</u>

Note :

- (i) Long-term capital loss can be set-off from long-term capital gain only. Hence the remaining unadjusted Loss of Assessment Year 2010-11 of ₹ 14,700 (1,12,500–97,800) has to be carried forward to the next assessment year.
- (ii) Loss from betting can neither be set-off against any other Income nor it can be carried forward to subsequent year.
- (iii) Expenses on lottery tickets are not are allowed as deduction.

Answer 3(c)**Block of Assets**

As per section 2(11), Block of assets means a group of assets falling within a class of assets comprising, (a) tangible assets being buildings, machinery, plant or furniture; (b) intangible assets, being know-how, patents, copyrights, trademarks, licenses, in respect of which the same percentage of depreciation is prescribed.

Each class of assets other than intangible assets may have different blocks or groups on which separate rates of depreciation are prescribed and for each such rate, separate block will be formed.

Question 4

- (a) From the following information, compute the net wealth and tax liability of Lalit for the assessment year 2012-13 who is a citizen and resident and ordinarily resident in India :

	₹
<i>Residential house in Delhi</i>	50,00,000
<i>Residential house situated outside India</i>	25,00,000
<i>Maruti Esteem car for personal use</i>	6,00,000
<i>Personal jewellery in India</i>	10,00,000
<i>Personal jewellery outside India</i>	5,00,000
<i>Bank loan taken to purchase residential house in Delhi</i>	12,50,000
<i>Cash in hand</i>	75,000
<i>Bank balance</i>	2,50,000
<i>Farm house, which is outside 9 kms. of the municipal limits</i>	15,00,000
<i>Urban land on which construction is not allowed</i>	13,00,000
<i>Equity shares of AB Associates</i>	3,50,000
<i>Income-tax liability</i>	50,000

(6 marks)

- (b) An HUF has estimated the following income for the financial year 2011-12 :

	₹
Rent from house property	1,80,000
Income form cloth business (taxable)	4,85,500
Interest from savings bank account	9,800
Dividend on shares of Reliance Industries Ltd.	6,500

Income of one of the member Kamlesh is taxable. Another member of the family Saraswati is disabled and the family spent on her medical treatment ₹20,000. A donation of ₹10,600 is also given by the family to National Children's Fund.

Determine the amount payable as advance tax on prescribed dates during the financial year 2011-12. (5 marks)

- (c) Write short notes on any two of the following :
- Persons exempted from wealth-tax
 - Methods of accounting
 - Belated return of income under section 139(4) of the Income-tax Act, 1961. (2 marks each)

Answer 4(a)

Computation of Net wealth for the Assessment Year 2012-13

	₹
Residential house in Delhi (Not an asset)	---
Residential house outside India	25,00,000
Maruti Esteem for personal use	6,00,000
Personal jewellery	10,00,000
Personal Jewellery Outside India	5,00,000
Cash in hand (exceeding ₹ 50,000)	25,000
Bank Balance (not an asset)	---
Farm House	15,00,000
Urban Land (construction not allowed)	---
Equity Shares (not an asset)	---
Net Wealth	<u>61,25,000</u>
Wealth Tax Liability	
On First ₹ 30,00,000	Nil
On ₹ 31,25,000 @ 1%	<u>31,250</u>
Tax Payable	<u>31,250</u>

Answer 4(b)**Computation of Total Income for the Financial Year 2011-12**

	₹	₹
<i>Income from House Property:</i>		
Rent Received	1,80,000	
Less : 30% as Standard Deduction	54,000	1,26,000
	<u> </u>	
<i>Income from Business & Profession</i>		
Income from Cloth Business		4,85,500
<i>Income from other source</i>		
Bank Interest		9,800
Dividend (Exempt)		<u> </u>
Gross Total Income		6,21,300
Less : Deduction under section 80DD	50,000	
Deduction under Section 80G (Donation) 10,600 x 50%	5,300	55,300
	<u> </u>	
Total Income		<u>5,66,000</u>

Computation of Tax (As per Tax Rates for 2012-13)

Tax on First	₹ 1,80,000		Nil
Tax on Next	₹ 3,20,000	10%	32,000
Tax as Balance	₹ 66,000	20%	13,200
			<u>45,200</u>
Tax payable			45,200
Add : Education Cess 3%			1,356
Total Tax Payable			<u>46,556</u>

Advance Tax Instalments:

15th September 2011 or before 30% of ₹ 46,556 =	13,967
15th December 2011 or before 30% of ₹ 46,556 =	13,967
15th March 2012 or before 40% of ₹ 46,556 =	18,622
	<u>46,556</u>

Answer 4(c)(i)**Persons exempted from wealth-tax**

According to Section 45 of Wealth Tax Act, 1957, Wealth Tax shall not levy in respect of the net wealth of the following:

- (i) Any company registered under Section 25 of the Companies Act, 1956.
- (ii) Any Social Club
- (iii) Any Co-operative Society
- (iv) Any political party and
- (v) Any mutual fund within the meaning of Section 10(23D) of the Income-tax Act.

Answer 4(c)(ii)**Methods of Accounting**

Income under the head Profits and gains of business or profession and income under the head Income from other sources are to be computed in accordance with the method of accounting regularly employed by the assessee. However, the method of accounting is irrelevant for computing the income under head salaries, income from house property or capital gain. In these cases, the Income Tax Act has specifically provided the basis for taxability of such income for example salary is taxable on due basis or receipt basis whichever is earlier. Similarly, capital gains are taxable in the year in which capital asset is transferred subject to certain exception.

Answer 4(c)(iii)**Belated return of income under Section 139(4)**

Any person who has not furnished a return within the time allowed to him under sub-section (1), or within the time allowed under a notice issued under sub-section (1) of section 142, may furnish the return for any previous year at any time before the expiry of one year from the end of the relevant assessment year or before the completion of the assessment, whichever is earlier.

Question 5

(a) *Ashok, a resident and ordinarily resident in India, furnishes the following particulars of his income for the previous year 2011-12. Compute his gross total income for the assessment year 2012-13 :*

- (i) *He took a house on the rent of ₹ 2,500 per month and let it out again for ₹ 3,200 per month.*
- (ii) *He received from his own house, rent of ₹ 600 per month.*
- (iii) *Dividend from an Indian company ₹5,000.*
- (iv) *Income from cloth business ₹18,500.*
- (v) *Income from gambling ₹12,800.*
- (vi) *Agricultural income in Pakistan which was not brought in India ₹24,500.*
- (vii) *Income from agricultural land situated in Mandsaur (Madhya Pradesh) ₹47,500.*
- (viii) *Share in profit of a firm ₹6,500.*
- (ix) *Dividend from a co-operative society ₹3,000.*
- (x) *Income from unexplained sources ₹10,000. (9 marks)*

(b) *Write short notes on any two of the following :*

- (i) *Scientific research expenditure*
- (ii) *Capital assets*
- (iii) *Agricultural income. (3 marks each)*

Answer 5(a)**Computation of Gross Total Income
for the Assessment Year 2012-13**

	₹	₹
<i>Income from House Property</i>		
Rent Received	7,200	
Less : Standard Deduction @30%	<u>2,160</u>	5,040
<i>Income from Business & Profession</i>		
Income from Cloth Business		18,500
Share in Profit of a firm		Exempt
<i>Income from other sources</i>		
Income from Subletting	38,400	
Less: Rent paid	<u>30,000</u>	8,400
Dividend from an Indian Company		Exempt
Income from Gambling		12,800
Agricultural Income in Pakistan		24,500
Agricultural Income in Mandsaur (MP)		Exempt
Dividend from a co-operative society		3,000
Income from Unexplained Sources	<u>10,000</u>	<u>58,700</u>
Gross Total Income		<u>82,240</u>

Answer 5(b)(i)**Scientific Research Expenditure**

Section 35 of the Act provides tax incentives for scientific research expenditure. Where the assessee himself carries on scientific research and incurs revenue & capital expenditure, deduction is allowed for such expenditure only if the research relates to his business. Further, expenditure incurred during 3 years prior to commencement of business shall be deemed to be the expenditure of the year in which business commenced.

Where the assessee does not himself carry on scientific research but makes contribution to an approved scientific research association, university, college or approved institutions to be used for scientific research, related or unrelated to the business of assessee, deduction shall be allowed to the extent of 175% of the sum paid.

(Where any sum is paid to a National Laboratory, approved for this purpose by the ICAR or ICMR or CSIR, etc. or to any university, or to I.I.T. (Indian Institute of technology), a weighted deduction of 175% or 200% of the sum paid shall be allowed as deduction.)

Answer 5(b)(ii)**Capital Assets**

Section 2(14) of the Income-tax Act defines the term “Capital Asset” to mean:

Property of any kind held by an assessee whether or not connected with his business or profession, but does not include:

- (i) Any stock-in-trade, consumable stores, or raw materials, held for the purposes of business or profession;
- (ii) Personal effects (excluding jewellery, archaeological collections, drawings, paintings, sculptures or any work art).
- (iii) Agricultural land in India, provided it is not situated in any area within the territorial jurisdiction of municipality or a cantonment board, having a population of 10,000 or more or in any notified area within 8 kilometers from a municipality stated above.
- (iv) 6½% Gold Bond, 1977 or 7% Gold Bonds, 1980 or National Defence Gold Bonds, 1980 issued by the Central Government.
- (v) Special Bearer Bonds, 1991 issued by Central Government.
- (vi) Gold Deposit Bonds issued under Gold Deposit Scheme, 1999.

Answer 5(b)(iii)**Agricultural Income**

Agricultural Income means:

- (a) Any rent or revenue derived from land, situated in India and is used for agricultural purposes;
- (b) Any income derived from such land by agricultural operations including processing of the agricultural produce;
- (c) Income attributable to a farm house subject to certain conditions.

Question 6

- (a) *X and Y are two partners (1:2) of XY Enterprise, a firm engaged in manufacturing chemicals. The profit and loss account of the firm for the year ended on 31st March, 2012 is as follows :*

	₹		₹
<i>Cost of goods sold</i>	<i>43,00,000</i>	<i>Sales</i>	<i>63,00,000</i>
<i>Salary to staff</i>	<i>8,89,800</i>	<i>Long-term capital gains</i>	<i>40,000</i>
<i>Depreciation</i>	<i>80,000</i>	<i>Other business receipts</i>	<i>31,000</i>
<i>Remuneration to Partners :</i>			
<i>X</i>	<i>3,00,000</i>		
<i>Y</i>	<i><u>2,40,000</u></i>	<i>5,40,000</i>	

Interest on capital to partners @18%

X	36,000	
Y	25,200	61,200
Other expenses	3,70,000	
Net Profit	1,30,000	
	<u>63,71,000</u>	<u>63,71,000</u>

Other information :

- The firm completed all legal formalities to get the status of a 'firm'.
- The firm has given donation of ₹ 80,000 to a notified public charitable trust which is included in other expenses.
- Salary and interest is paid to partners as per the partnership deed.
- Depreciation allowable under section 32 is ₹ 78,000.
- Income and investment of X and Y are as follows :

	X	Y
	(₹)	(₹)
Interest on company deposits	64,000	50,800
Dividend from foreign companies	7,000	11,000
Long-term capital gains	80,000	20,000
Short-term capital gains	3,000	(-) 6,000
Winnings from lotteries (gross)	4,000	10,000
Contribution towards home loan account of the National Housing Bank	40,000	60,000

Find out the net income and tax liability of the firm and partners for the assessment year 2012-13. (9 marks)

- Distinguish between any two the following :
 - 'Firm' and 'association of persons'.
 - Scope of total income of 'resident and ordinary resident' and 'non-resident'.
 - Taxation of voluntary contribution received by a 'charitable trust' and 'corpus donations'. (3 marks each)

Answer 6(a)

**Computation of Net Income and Tax liability of the firm
for the Assessment Year 2012-13**

	₹	₹
Income of firm		
<i>Business Income</i>		
Book Profit (Refer W. N. No. 1)	7,32,400	
Less : Allowable Remuneration (Refer W. N. No. 2)	<u>5,29,440</u>	2,02,960
<i>Capital Gains</i>		
Long Term Capital Gain		<u>40,000</u>
Gross Total Income		2,42,960

<i>Less :</i>	Deduction under section 80G : 50% of 20,296 (Limited to 10% of adjusted total Income of 2,02,960 exclusive of Long-term Capital Gain)		10,148
	Total Income		2,32,812
			or 2,32,810
	Tax Liability: on LTCG of ₹ 40,000 @ 20%		8,000
	On other income 1,92,810 @ 30%		57,843
			65,843
<i>Add :</i>	Education cess & SHEC @3%		1,975
	Tax (rounded off)		67,820
	Income of X and Y	X	Y
	<i>Income from Business</i>		
	Remuneration from firm	2,94,133	2,35,307
	Interest from firm to the extent allowed as deduction	24,000	16,800
	<i>Capital Gain</i>		
	LTCG	80,000	20,000
	STCG	3,000	(6,000)
	<i>Income from other sources</i>		
	Interest from company deposits	64,000	50,800
	Dividend From foreign companies	7,000	11,000
	Winning from lotteries (fully taxable)	4,000	10,000
	Gross total Income	4,76,133	3,37,907
	<i>Less :</i> Deduction 80C	40,000	60,000
	Total Income	<u>4,36,133</u>	<u>2,77,907</u>
	Tax liability of X		
	Tax on LTCG of ₹ 80,000 @20%		16,000
	Tax on Lottery income ₹ 4,000 @ 30%		1,200
	Tax on other income of ₹ 3,52,130		17,213
			34,413
<i>Add :</i>	Education cess & SHEC @3%		1,032
	Tax (rounded off)		<u>35,450</u>
	Tax liability of Y		
	Tax on LTCG of ₹ 14,000 @20%		2,800
	Tax on Lottery income of ₹ 10,000 @ 30%		3,000
	Tax on other income of ₹ 2,53,910		7,391
			13,191
<i>Add :</i>	education cess & SHEC@3%		396
	Tax (rounded off)		<u>13,590</u>

*Working Notes***1. Computation of Book Profit**

Net profit as per profit and loss a/c		1,30,000
<i>Add</i> : Inadmissible expenses		
Donation	80,000	
Depreciation	80,000	
Remuneration to partners	5,40,000	
Interest on capital in excess of 12%	20,400	7,20,400
		<u>8,50,400</u>
<i>Less</i> : depreciation u/s 32	78,000	
Long-term capital gain	40,000	1,18,000
Book Profit		<u>7,32,400</u>

2. Remuneration allowable

First 3,00,000@90%	2,70,000
On the balance ₹ 4,32,400@ 60%	2,59,440
	<u>5,29,440</u>
Remuneration to be distributed amongst partners	
in the ratio of 300000:240000 i.e.,5:4	
X	2,94,133
Y	2,35,307

Answer 6(b)(i)

A firm refers to a partnership firm. Partnership has been defined under the Partnership Act, 1932 as "relationship between persons who have agreed to share the profits of a business carried on by all or any of them acting for all". Persons who have entered into partnership with one another are individually called partners and collectively a firm and the name under which their business is carried on, is called the firm's name.

An association of persons (AOP) implies a voluntary getting together for a common design or particular venture to engage in an income producing activities.

Answer 6(b)(ii)

The following incomes from whatever source derived form part of Total Income in case of resident in India/ordinarily resident in India:

- any income which is received or is deemed to be received in India in the relevant previous year by or on behalf of such person;
- any income which accrues or arises or is deemed to accrue or arise in India during the relevant previous year;
- any income which accrues or arises outside India during the relevant previous year.

The following incomes from whatever source derived form part of Total Income in case of non-resident in India:

- (a) any income which is received or is deemed to be received in India during the relevant previous year by or on behalf of such person;
- (b) any income which accrues or arises or is deemed to accrue or arise to him in India during the relevant previous year.

Answer 6(b)(iii)

Voluntary contribution received with a specific direction that they shall form part of the corpus of the trust or institutions are fully exempt under section 11. While, Voluntary contributions not being contributions made with a specific direction that they shall form part of the corpus of the trust/institution are covered under u/s 12 and shall be deemed to be income derived from property held under trust.

Corpus donations cannot be treated as income in view of the exception under section 12, so that such corpus donations need not be applied for the objects as required for other donations. It is not unusual for trusts to receive such donations for specified purposes.

PART B

Question 7

Attempt any four of the following :

- (i) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*
 - (a) *The service tax is administered and collected by _____.*
 - (b) *Where service is received from outside India, such service shall be taxable in the hands of _____.*
 - (c) *Service tax is not payable in the year of commencement of business if the aggregate value of taxable service does not exceed _____.*
 - (d) *If a new taxable service has to be included in the service tax registration certificate, the service provider has to apply for amendment within _____.*
 - (e) *According to the Finance Act, 1994 all services received and consumed on the territory of _____ are not taxable. (1 mark each)*
- (ii) *An individual furnished following particulars relating to services rendered by him during half yearly period ended on 30th September, 2011 :*
 - *Total bill raised for ₹ 9,75,000 out of which ₹ 1,00,000 exempted from service tax and ₹ 1,15,000 not paid till 30th September, 2011.*
 - *An advance of ₹ 7,00,000 received from a client on 20th September, 2011 to which service to be provided after 30th September, 2011.*

You are required to compute tax liability of the service provider.
(5 marks)
- (iii) *Discuss briefly the procedure for registration under the service tax. What is the amount of penalty for non-registration ?*
(5 marks)

- (iv) Name the person who is to apply for registration and pay service tax in the following cases :
- Service is provided by an insurance agent.
 - Goods transport agency provides taxable service to a specified consignee/consignor.
 - Service is provided by a distributor to asset management company or mutual fund.
 - Service is provided by any person from a country other than India.
 - Sponsorship of an event. (5 marks)
- (v) State, with reasons in brief, whether the following are liable to service tax:
- Services rendered to associated enterprise.
 - Services rendered by a sub-contractor.
 - Services provided to a developer of a special economic zone.
 - Services rendered to the Reserve Bank of India.
 - Services provided to a diplomatic mission for their personal use.

Answer 7(i)

- The service tax is administered and collected by **Central Board of Excise and Customs**.
- Where service is received from outside India, such service shall be taxable in the hands of **Recipient of Service**.
- Service tax is not payable in the year of commencement of business if the aggregate value of taxable service does not exceed **₹10,00,000**.
- If a new taxable service has to be included in the service tax registration certificate, the service provider has to apply for amendment within **30 Days or Assistant Commissioner/Deputy Commissioner***.
- According to the Finance Act, 1994 all services received and consumed on the territory of **Jammu & Kashmir** are not taxable.

***Note :** Two versions of questions have been printed with the Word “within” or “with”, therefore shall be answer can be “30 Days” or “Assistant Commissioner/Deputy Commissioner” respectively.

Answer 7(ii)**Computation of Service Tax Liability**

	₹
Total Bill for the Service	9,75,000
Less : Value of Exempted Service	1,00,000
Amount of Taxable Service Received	<u>8,75,000</u>
Add : Amount received in Advance	7,00,000
Taxable Value of Service	<u>15,75,000</u>

Service Tax @ 10%	1,57,500
Add : Education Cess 3%	4,725
Total Service Tax Payable	<u>1,62,225</u>

Answer 7(iii)**Procedure for registration for service tax provider**

Sections 69 of the Finance Act, read with Rule 4 of the Service Tax Rules make provisions relating to registration. It is mandatory for every person liable to pay service tax to get registered with Superintendent of Central Excise by making an application in Form ST-1. This is to be made within a period of 30 days from the date on which the service tax is leviable.

However, where a person commences the business of providing a taxable service after such service becomes taxable, he shall make an application for registration within a period of 30 days from the date of such commencement.

Consequences of Non-registration

According to section 77, a person who is liable to pay service tax or is required to take registration, fails to take registration in accordance with the provisions of Section 69 or rules made thereunder shall be liable to pay a penalty which may extend to 10,000 rupees or two hundred rupees for every day during which failure continues, whichever is higher.

Answer 7(iv)

Person who is to apply for registration and pay service tax

- Insurer
- Person making payment of freight
- Asset management company or mutual fund
- Recipient of service in India
- Body corporate or a firm receiving sponsorship services i.e. service recipient.

Answer 7(v)

- Services rendered to associated enterprises* : In transactions between associated enterprises value of taxable service shall include any amount credited or debited, as case may be, to any account, whether called 'suspense account' of a person liable to pay service tax.
- Services rendered by a sub-contractor* : Services provided by a sub-contractor is subject to service tax.
- Services provided to a developer of a special economic zone* : Such services are not subject to service tax.
- Services rendered to Reserve Bank of India* : Services provided to RBI is subject to Service Tax. However, services provided to RBI (where service tax is payable by the recipient of service under reverse charge basis) is not taxable.

- (e) *Services provided to a diplomatic mission for their personal use* : All taxable services provided to diplomatic mission agents or career consular officers posted in foreign diplomatic missions or consular posts in India for their personal use are exempted.

PART C

Question 8

Attempt any four of the following :

- (i) State, with reasons in brief, whether the following statements are true or false :

- (a) Value added tax (VAT) is a multi-point tax.
 (b) Input VAT credit is available on inter-State purchases.
 (c) Haryana was the first State to implement VAT in India.
 (d) Zero-rating is advantageous to the dealer compared to exempting of sale transactions.
 (e) Stock/consignment transfers are exempt from VAT. (1 mark each)

- (ii) Porwal Traders have provided the following information relating to purchase and sales for the month of July, 2011 :

Purchases :

Product "A" total cost ₹ 1,80,000, rate of VAT 4%.

Product "B" total cost ₹ 2,60,500, rate of VAT 12.5%.

Sales :

Product "A" total sales ₹ 2,40,000, rate of VAT 4%.

Product "B" total sales ₹ 2,10,000, rate of VAT 12.5%.

On the basis of above information, compute eligible input tax credit and value added tax payable for the month. (5 marks)

- (iii) What are the major deficiencies of VAT system in India ? (5 marks)

- (iv) Ramesh, a trader sells entire raw material to a manufacturer of finished products in the same State. He buys his stock in trade from other States as well as from the local markets. Following transactions took place during the financial year 2011-12 :

	₹
Cost of materials purchased from other States including central sales tax @2%	3,06,000
Cost of local materials including VAT	6,75,000
Other expenditure includes storage, transport, interest, loading and unloading and profit earned by him	2,62,500

Calculate VAT and invoice value charged by him to the manufacturer. Assume the rate of VAT @ 12.50%. (5 marks)

- (v) Distinguish between 'zero rating' and 'exempted transaction'.

(5 marks)

Answer 8(i)

- (a) **True** : VAT is a state multi-point tax on value additions.
- (b) **False** : Input VAT credit is generally given for the entire VAT within the state on purchases of taxable goods meant for resale/manufacture of taxable goods.
- (c) **True** : Haryana was the first state to implement VAT in India.
- (d) **True** : Zero rating is advantages to the dealer compared to 'exempting' of sale transactions. In an exempted transaction, the tax paid on input lapses, but under zero rating, it is eligible for refund.
- (e) **True** : Stock/consignment transfers are exempt from VAT as these were never under the purview of State Tax Acts.

Answer 8(ii)

**Calculation of Input VAT credit and VAT payable
for the month of July 2011**

	₹
VAT payable on sale of :	
Product A 2,40,000 x 4%	9,600
Product B 2,10,000 x 12.5%	<u>26,250</u>
Total VAT payable for the month	35,850
<i>Less: Input Tax Credit (eligible) on Purchase:</i>	
Product A ₹ 1,80,000 x 4%	7,200
Product B ₹ 2,60,500 x 12.5%	<u>32,563</u>
	<u>39,763</u>
Net VAT Payable	Nil

Balance of Input Tax Credit available $(39,763 - 35,850) = 3,913$ can be carried forward to the next month and utilised against future sales.

Answer 8(iii)**Major deficiencies of VAT system in India**

The design of VAT that has been adopted by the states in India meets several of the criteria of a good VAT but is deficient in some crucial aspects. Some of these are given below:

- It does not cover goods as well as services.
- As per the scheme of the state, VATs was expected to be fairly comprehensive as exemptions were supposed to be few. However, under continuous pressure from various quarters the number of commodities which are now being exempted from VAT in various states is not that small.
- The other deficiency of the design of VAT is the one embedded in the structure of the rates.

- The general VAT rate of 12.5% per cent is unduly high. This is supposed to be revenue neutral rate, though it is difficult to see how a uniform rate could be revenue neutral for all states.
- Classification of goods under different lists is, in many instances, arbitrary and leaves wide room of doubts and disputes as to whether a particular item comes within the lower rate category or not.
- So long as the Central VAT is not integrated with the State VAT, it will be difficult to put the purchases from other states at par with the state purchases. In other words, the advantage of neutrality will be confined only for purchases within the state.

Answer 8(iv)**Calculation of VAT and Invoice Value**

	₹
Cost of material imported from other state	3,00,000
CST on above @ 2%	6,000
Cost of local material excluding VAT (₹ 6,75,000 x 100 ÷ 112.5)	6,00,000
Other expenditure and profit margin	2,62,500
Total	11,68,500
Add : VAT @ 12.5%	1,46,063
Invoice Value	13,14,563

VAT Payable = VAT Liability minus Input Tax Credit i.e. ₹ 71,063 (₹ 1,46,063 – ₹ 75,000)

Answer 8(v)

Zero rating means that the tax payable on sale of commodity is fixed at 0%. Though apparently it looks similar to an exempted transaction. There is a significant difference between the two. In an exempted transaction the tax paid on input lapses i.e., it cannot be set-off. While in Zero rated sales, prior stage tax is set-off against the 0% tax paid, and effectively the entire tax paid on purchase is eligible for refund. Thus zero rating is advantages to dealer compared to exempted transactions. Generally export sales are zero rated and thereby exporters are granted refund of taxes paid by them on inputs. Exporters gain significantly due to zero rating.

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

JUNE 2012

MODULE II



**THE INSTITUTE OF
Company Secretaries of India**
IN PURSUIT OF PROFESSIONAL EXCELLENCE
Statutory body under an Act of Parliament

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

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ICSI House, 22, Institutional Area, Lodi Road, New Delhi 110 003

Phones : 41504444, 45341000; Fax: 011-24626727

E-mail : info@icsi.edu; Website : www.icsi.edu

These answers have been written by competent persons and the Institute hopes 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 well versed with the amendments in the Laws/Rules made upto **six** months prior to the date of examination.

C O N T E N T S

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(i)

NOTE : Guideline Answers of the last Four Sessions need to be updated in the light of changes and references given below :

EXECUTIVE PROGRAMME

UPDATING SLIP

COMPANY LAW

MODULE – II – PAPER 1

<i>Examination Session</i>	<i>Question No.</i>	<i>Updation required in the answer</i>
June 2010 to Dec. 2011	—	<p>The Ministry of Corporate Affairs has issued a number of circulars and notifications during the years 2010, 2011 and 2012. These are placed at the website of Ministry at the following address :</p> <p>http : //www.mca.gov.in/Ministry/Companies_act.html.</p> <p>Students are advised to go through each and every circular and notification to update themselves.</p>

(ii)

NOTE : Guideline Answers of the last Six Sessions need to be updated in the light of changes and references given below :

UPDATING SLIP

ECONOMIC AND LABOUR LAWS

MODULE – II – PAPER 2

<i>Examination Session</i>	<i>Question No.</i>	<i>Updation required in the answer</i>
June 2009 to Dec. 2011		<ul style="list-style-type: none">— Foreign Trade Policy 2009-14.— FDI Policy issued by DIPP effective from October, 2011.— Competition Act, 2002 as amended in 2009 and 2011.— National Green Tribunal Act, 2010.— Legal Metrology Act, 2009 and Rules made thereunder.— Foreign Contribution (Regulation) Act, 2010.

EXECUTIVE PROGRAMME

JUNE 2012

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. Answer **SIX** questions including Question No. 1 which is **COMPULSORY**.

2. All references to sections relate to the Companies Act, 1956 unless stated otherwise.

Question 1

Comment on any four of the following :

- (i) It is not obligatory for every company to preserve its books of account.*
- (ii) A shareholder who holds 99% of the share capital of a company can be held liable for the acts of the company.*
- (iii) The court of law will not interfere with the internal management of companies acting within their powers.*
- (iv) It is always mandatory for an unlimited company to have share capital.*
- (v) A person may inspect and obtain copies of the profit and loss account of any private company. (5 marks each)*

Answer 1(i)

As per Section 209(1) of the Companies Act, every company is required to keep books with respect to Receipts & Expenditures, all sales and purchase of goods, all assets and liabilities of the company. Further in case of companies engaged in production, processing, manufacturing or mining activities, prescribed particulars relating to utilization of material or labour is also required, in addition to above, to be maintained. These books of account along with vouchers, records and papers relating to any entry in the books should be preserved for at least 8 years. If the company has not been in existence for 8 years than it has to preserve the books relating to transactions are affected there for the whole period of existence, where a company has a branch office then the books of account can be kept at such branch also but a proper summarized return at the interval of at least 3 months have to be sent by the branch at Registered Office or other place where company's books are maintained. Penalty on non-compliance with above provision is imprisonment up to 6 months or fine up to ₹10,000/- or both to the person in default. Hence it is incorrect to say that it is not obligatory for every company to preserve its books of accounts.

Answer 1(ii)

A company, on its incorporation, is vested with a corporate personality quite distinct from the individuals who are its members. Being a separate legal entity it bears its own name and acts under a corporate name. It has a seal of its own. Its assets are separate and distinct from those of its members. It is also a different 'person' from the members who compose it. As such it is capable of

owning property, incurring debts, borrowing money, having a bank account, employing people, entering into contracts and suing or being sued in the same manner as an individual. Its members are its owners but they can be its creditors simultaneously as it has a separate legal entity. In this context, a shareholder cannot be held liable for the acts of the company even if he holds virtually the entire share capital. Further, the shareholders are not the agents of the company and so they cannot bind it by their acts. The case of *Salomon v. Salomon and Co. Ltd.* (1897) A.C. 22, has clearly established the principle that once a company has been validly constituted under the Companies Act, 1956 it becomes a legal person distinct from its members and for this purpose it is immaterial whether any member has a large or small proportion of the shares, and whether he holds those shares beneficially or as a mere trustee. Hence shareholders can not be held liable for the acts of the company.

Answer 1(iii)

The general principle of company law is that every member holds equal rights with other members of the company in the same class. In case of difference(s) amongst the members the issue is decided by the vote of majority. Since the majority of the members are in the advantageous position to run the company according to their command, the minorities of shareholders are often oppressed. The company law provided for adequate protection for the minority shareholders when their rights are trampled by the majority. But the protection for the minority is not generally available when the majority does anything in the exercise of the powers for internal administration of the company. The court will not usually intervene at the instance of shareholders in matter of internal administration and will not interfere with the management of company by its director so long they are acting within the powers conferred on them under the articles of the company. In other words articles are the protective shield for the majority of shareholder who compose the Board of directors for carrying out their object at the cost of minority of shareholders.

The basic principle of non-interference with the internal management of company by the court is laid down in a case of *Foss v. Harbottle* [1843] 2 Hare 461 which says that no action can be brought by a member against the directors in respect of a wrong alleged to be committed to a company. The company itself is the proper party of such an action.

In this case the minority shareholders alleged that the company had a claim in damages against some of the directors by reason of the fraudulent acts of those directors, but at the general meeting, the majority resolved that no action should be taken against them. Two of the minority shareholders took legal proceedings against the directors and others to compel them to make good the losses to the company. The court dismissed the action on the ground that, as the acts of the directors were capable of confirmation by the majority of members, the court should not interfere. it was thus left to the majority to decide what was for the benefit of the company. This rule has been applied in several cases later, vide *MacDougall v. Gardiner* [1875] 1 Ch 13.

But there are certain exception to this general rule which were discussed in Andhra High Court in *Avanthi Explosives P. Ltd. v. Principal Subordinate Judge*, ... on 9 April, 1985, 1987 62 CompCas 301: extract of this case are -

“It may be that, in view of the elaborate provisions contained in the 1956 Act in regard to the management and the conduct of a company's affairs including important internal matters of administration, the court's interference by civil court has become more limited, but the power has not at all been taken away. Every suit for redress of individual wrongs cannot be considered as merely concerned with matters of internal management. [*M. P. Menon J. in R. Prakasam v. Sree Narayana Dharma Paripalana Yogam* (1980) 50 Comp Cas 611 (Ker)].

However, the following exceptions to the rule in *Foss v. Harbottle* [1843] 2 Hare 461, are admitted as pointed out by *Jenkins L. J. in Edwards v. Halliwell* [1950] 1 all ER 1064 (CA), namely, the majority cannot confirm -

- (1) An act which is ultra vires in the company or illegal act;
- (2) An act which constitutes a fraud against the minority and the wrongdoers are themselves in control of the company; or
- (3) A resolution which requires a qualified majority but has been passed by a simple majority;
- (4) Breach of duty by directors and majority shareholders to the detriment of the company;
- (5) Oppression and mismanagement under section 397 and 398 of companies act against minority.
- (6) When individual membership rights are invaded by the majority of shareholders like right to vote, right to stand as director of company at an election etc.

The exceptions to the rule are not limited to those covered above. Further exceptions may be admitted where the rules of justice require that an exception to the rule should be made.

Answer 1(iv)

As per Section 12(2)(c) of the Companies Act 1956 an unlimited company is a company which is not having any limit on the liability of its members. Hence the maximum liability of the members of such company at the time of wind up may extend up to their assets to meet the obligation of the company.

An unlimited company may or may not have share capital. In accordance with section 27 of the Companies Act 1956 the articles of an unlimited company must state the number of members with which it is to be registered and if company has share capital the amount of share capital with which the company is to be registered. Hence it is not mandatory for an unlimited company to have share capital.

Answer 1(v)

As per proviso to section 220 (1)(a) of the Companies Act in case of private company, copies of balance sheet and profit and loss account shall be filed with the Registrar separately. It is further provided that in case of a private company which is not a subsidiary of a public company and other specified companies, if the Central Government directs that it is not in the public interest that any person other than a member of the company shall be entitled to inspect, or obtain copies

of, the profit and loss account of the company, no person other than a member of the company concerned shall be entitled to inspect, or obtain copies of, the profit and loss account of that company under section 610 of Companies Act.

If default is made in complying with the requirements of Sub-sections (1) and (2), the company, and every officer of the company who is in default, shall be liable to the like punishment as is provided by Section 162 for a default in complying with the provisions of Section 159, Section 160 or Section 161.

Question 2

- (a) *The Board of directors of Grow More Ltd., a public company, has duly delegated its power to approve the annual accounts of the company for the year 2011-12 to a committee of directors. The said committee considered the annual accounts and approved the same before the accounts were handed over to the statutory auditor of the company. Will you accept such approval of annual accounts ?* (5 marks)
- (b) *Ajay Ltd. borrowed ₹100 crore from Prem, without the authority conferred on it by the articles of association. Later, the money borrowed by Ajay Ltd. was used by its Board of directors to pay off lawful debts of the company. In this scenario, Prem, the lender seeks your advice for recovery of his money. Advise him.* (5 marks)
- (c) *Write the most appropriate answer from the given options in respect of the following :*
- (i) *Which of the following is not classified as shareholders' meeting —*
- Statutory meeting*
 - Extraordinary general meeting*
 - Annual general meeting*
 - None of the above.*
- (ii) *Who among the following can be a member of a company in India*
- Partnership firm*
 - Minor child*
 - Pawnee*
 - Foreigner.*
- (iii) *Section 433 lays down the grounds on which a company may be wound-up —*
- Compulsory winding-up*
 - Members' voluntary winding-up*
 - Creditors' voluntary winding-up*
 - By the court.*
- (iv) *The Central Government has been empowered to conduct investigation into the affairs of the company —*
- On the report of Registrar of Companies*

- (b) *On the application of members*
 - (c) *On passing of the special resolution or order of the court*
 - (d) *All of the above.*
- (v) *For ensuring that the affairs of the company have not been conducted in a prejudicial manner in a scheme of compromise and arrangement, the court is bound to seek a report from —*
- (a) *Board of directors*
 - (b) *Shareholders*
 - (c) *Central Government*
 - (d) *None of the above.*
- (vi) *A company doing the principal business of acquiring, holding and dealing in shares and securities is called —*
- (a) *Finance company*
 - (b) *Banking company*
 - (c) *Investment company*
 - (d) *None of the above.*

(1 mark each)

Answer 2(a)

The Department of Company Affairs (Now Ministry of Corporate Affairs) has clarified that in the absence of any specific provision in Section 215, the power of the directors to approve the annual accounts cannot be delegated to a committee of directors or some of the directors. It, inter alia, states that the approval of annual accounts which are to be ultimately placed before the shareholders of the company is not to be treated as a routine or part of day-to-day work. Hence the Board of directors must themselves consider the annual accounts and approve them before the accounts are handed over to the statutory auditor of the company. Hence such approval cannot be accepted. In view of above the annual accounts of Grow More Ltd. should have been approved by the Board of directors and can not be delegated to committee.

However the Audit Committee should review the half yearly and annual financial statements before submission to the Board and also ensure compliance of internal control system. Further the recommendations of the Audit Committee on any matter relating to financial management including the audit report shall be binding on the Board. If Board does not accept such recommendations of Audit Committee, it shall record the reason therefore and communicate such reasons to the shareholders.

Answer 2(b)

In *Sinclair v. Brougham* (1914) A C 398., it was held that if a company is not authorised to borrow any money and if money in fact is borrowed, no claim can be maintained by the lender against the company on the footing either of debt or of money had and received.

Further, in *T.R. Pratt (Bombay) Ltd. v. E.D. Sassoon And Co. Ltd. And Anr.* AIR 1936 Bom 62, it was held that “the principles laid down and the opinions

pronounced in *Sinclair v. Brougham* (1914) A C 398 are all based on the central fact that the borrowing by the society itself was ultra vires. In my opinion the contention of the liquidator in this connection is wrong. According to the general principles of law, when an agent borrows money for a principal, without the authority of the principal, but if the principal takes the benefit of the money so borrowed or when the money so borrowed has gone into the coffers of the principal, the law implies a promise to repay.

The lender has not advanced the money as a gift but has given them as a loan, and the principal having received the benefit of the money, the law implies a promise to repay. There appears to be nothing in law which makes this principle inapplicable to the case of a joint stock company when the borrowing power of the company itself is unlimited. The position, in my opinion, would be that the principal (the company) through its agents (the directors or the managing agents) had borrowed money which the principal had not authorised the agents to borrow. However, the money having been borrowed and used for the benefit of the principal, either in paying its debts or for its legitimate business, I do not think the company can repudiate its liability to repay on the ground that the agents had no authority from the company to borrow. In my opinion, when these facts are established, a claim on the footing of money had and received would be maintainable.”

Hence though the borrowing by Ajay Ltd. is ultra vires, the company is liable to repay that amount. It is advised to Prem to sue for recovery of money.

Answer 2(c)(i)

- (d) None of the above

Answer 2(c)(ii)

- (d) Foreigner

Answer 2(c)(iii)

- (d) By the Court

Answer 2(c)(iv)

- (d) All of the above

Answer 2(c)(v)

- (d) None of the above

Answer 2(c)(vi)

- (c) Investment Company

Question 3

(a) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s) :*

- (i) *The burden of proof in a suit by an allottee that he has been misled by the misstatement in the prospectus lies on the _____.*

- (ii) A public company can be converted into a private company only with the approval of _____.
- (iii) A _____ number is allotted at the time of registration of the charge by a company.
- (iv) An expelled member of a multi-State co-operative society shall not be eligible for re-admission as a member for a period of _____ from the date of such expulsion.
- (v) _____ is an agent of depository and is registered as such under the Securities and Exchange Board of India Act, 1992 to render depository services.
- (vi) If the articles of association of a company provide for share qualification, each director must obtain the said qualification shares within _____ after his appointment as director.
- (vii) A Company Secretary in practice shall be entitled to issue and/or sign compliance certificate and/or annual return for not more than 80 companies in aggregate in a _____ year.
- (viii) The person appointed to audit the accounts of the branch office of a company shall submit his report to _____. (1 mark each)
- (b) State, with reasons in brief, whether the following statements are true or false :
- (i) All companies in India either issue a prospectus or file a statement in lieu of prospectus.
- (ii) Company law in India has been modelled on the US law.
- (iii) The memorandum of association contains the rules and regulations relating to the internal management of a company.
- (iv) The promoters of a company are not only agents but also trustees for the company promoted.
- (v) The change of name of a company may affect the rights and obligations of the company.
- (vi) A company can ratify a pre-incorporation contract.
- (vii) A charge created always requires registration under the Transfer of Property Act, 1882.
- (viii) Every company in India shall have at least three directors on its Board of directors. (1 mark each)

Answer 3(a)

- (i) The burden of proof in a suit by an allottee that he has been misled by the misstatement in the prospectus lies on the **Allottee**.
- (ii) A public company can be converted into a private company only with the approval of **Central Government**.
- (iii) A **Charge Identification** number is allotted at the time of registration of the charge by a company.

- (iv) An expelled member of a multi-State co-operative society shall not be eligible for re-admission as a member for a period of **One Year** from the date of such expulsion.
- (v) **Depository Participant** is an agent of depository and is registered as such under the Securities and Exchange Board of India Act, 1992 to render depository services.
- (vi) If the articles of association of a company provide for share qualification, each director must obtain the said qualification shares within **Two Months** after his appointment as director.
- (vii) A Company Secretary in practice shall be entitled to issue and/or sign compliance certificate and/or annual return for not more than 80 companies in aggregate in a **Calendar** year.
- (viii) The person appointed to audit the accounts of the branch office of a company shall submit his report to **Statutory Auditor**.

Answer 3(b)(i)**False**

All public companies either issue prospectus or file a statement in lieu of prospectus. A private company as such does not produce either document.

Answer 3(b)(ii)**False**

Company Law in India has been modelled on the English (British) Law.

Answer 3(b)(iii)**False**

Memorandum of Association defines the aims and scope of the company while it is the Article of Association of Company which contains the rules and regulations relating to internal management of company.

Answer 3(b)(iv)**False**

The promoters of company are neither agents nor trustees for the company promoted because it is not in existence. However, the promoters occupy a fiduciary position in relating to the said company.

Answer 3(b)(v)**False**

The change of name of a company will not affect any rights and obligations of the company, or legal proceedings commenced under the old name.

Answer 3(b)(vi)**False**

A company cannot ratify a pre-incorporation contract. However, it is open for the company to enter into a new contract after its incorporation to give effect to a contract made before its formation.

Answer 3(b)(vii)**False**

A charge created by operation of law does not require registration under the Transfer of Property Act 1882. However, a charge created by act of parties requires registration.

Answer 3(b)(viii)**False**

As per Section 252 of the Companies Act, 1956, every public company shall have at least three directors whereas every other company shall have at least two directors.

Question 4

- (a) *“Outsiders are bound to know the external position of a company, but not bound to know its indoor management.” Discuss. (8 marks)*
- (b) *Absolute Power Ltd. desires to commence a business specifically mentioned in its objects clause in the memorandum of association under ‘other objects’. Enumerate action to be taken by the directors before commencing the new business under ‘other objects’. (8 marks)*

Answer 4(a)

The statement “outsiders are bound to know the external position of the company, but not bound to know its indoor management” is correct.

If the internal formalities have not been complied with, the contract shall be binding on the company and it shall be liable to the outsiders. This rule is known as doctrine of indoor management.

This rule was first laid down in the case of *Royal British Bank v Turquand*. In this case the directors of a banking company were authorized by the articles to borrow on bonds such sums of money as should from time to time, by resolution of the company in general meeting, be authorized to borrow. The directors gave a bond to Turquand without the authority of any such resolution. It was held that Turquand could sue the company on the strength of the bond, as he was entitled to assume that the necessary resolution had been passed. In this case Lord Hatherly observed that “ Outsiders are bound to know the external position of the company, but are not bound to know its Indoor Management”.

This rule was enunciated by the Court to mitigate the rigors of the Doctrine of Constructive Notice. Its importance arises in situations in which the third party's

dealings are with some officer or agent other than the Board. The rule protects the interest of the third party who transacts with the Company in good faith and to whom the Company is indebted. The rule enunciated in the decision is often referred to as "Turquand's rule" and "indoor management rule".

The gist of the rule is that persons dealing with limited liability companies are not bound to enquire into their indoor management and will not be affected by irregularities of which they had no notice. But following are the Exceptions to the Doctrine of Indoor Management :

1. Forgery and incompetent acts
2. Third party having knowledge of irregularity
3. No knowledge of memorandum and articles
4. Negligence before dealing with the officer of the company
5. This doctrine is not applicable where a precondition is required to be fulfilled before company itself can exercise a particular power
6. This doctrine is not applicable where the question is in regard to the very existence of an agency.

If we analyze the cases it is revealed that the Turquand rule did not operate in a completely unrestricted manner. Firstly, it is inherent in the rule that if the transaction in question could not in the circumstances have been validly entered into by the company, then the third party could not enforce it. Secondly, the rule only protected 'outsiders', that is persons dealing 'externally' with the company; directors, obviously, were the very people who would be expected to know if internal procedures had been duly followed. Thirdly, actual notice of the failure to comply fully with internal procedures precluded reliance upon the rule. Fourthly, an outsider could not rely upon Turquand's Case where the nature of the transaction was suspicious; for example, where the company's borrowing powers were exercised for purposes which were wholly unconnected with the company's business and of no benefit to the company.

Answer 4(b)

As per Section 13 of the Companies Act, 1956 the Object Clause of a company is required to be divided into the following categories:—

1. (i) main objects;
(ii) objects incidental or ancillary to the attainment of the main objects;
and
2. Other objects.

Absolute Powers Ltd. is required to follow the given procedure for starting new business activities covered under the other object clauses (section 149):

1. To commence any objects listed in other objects, the company is required to pass special resolution u/s 189. For the purpose of obtaining

approval by way of special resolution, the following steps have to be taken by the company:—

- (i) hold a Board meeting to consider and approving the matter/proposal for carrying specified business activities.
 - (ii) the Board shall also fix the date, time and place for holding a general meeting, approve the notice of the general meeting and explanatory statement and authorise to any director or secretary for issuance of notice to the members as per the requirement of the Act.
 - (iii) pass special resolution for the proposal to start the new business.
2. In case, the special resolution could not be passed at the general meeting, the company is required to approve the proposal by passing an ordinary resolution and is required to make an application to the Central Government requesting for according permission to the commencement of new business.
 3. File a declaration in e-Form 20A electronically and a stamped copy be submitted simultaneously to the Registrar of Companies on the stamp paper to the effect that the provisions of section 149(2A) sub-clause (i) have been complied with.
 4. File e-Form 23 as desired by section 192 with the certified copy of the special resolution with explanatory statement.
 5. Pay the filing fees on e-Form 20A and 23 as per Schedule X of the Act.

Question 5

- (a) *“In addition to authentication of e-forms by authorised signatories using digital signatures, some e-forms are required to be pre-certified.” Discuss identifying the e-forms which require pre-certification. (4 marks)*
- (b) *Write a short note on ‘appointment of cost auditor’. (4 marks)*
- (c) *What do you mean by ‘striking off the name of company’ under section 560 ? (4 marks)*
- (d) *Two or more Hindu joint families decided to form partnership and carry out a non- banking business. Total number of major members in the partnership is 25 and 4 are minors. Does it contravene provisions of the section 11? Explain. (4 marks)*

Answer 5(a)

Apart from authentication of e-forms by authorized signatories using digital signatures, some e-forms are also required to be pre-certified by practising professionals. Pre-certification of certain e-forms by is mandatory requirement.

Pre-certification means certification of correctness of any document by a professional before the same is filed with the Registrar. This pre-certification is to be carried out, inter alia, by CS/CA/ICWA (in whole – time in practice). Since there is no scope to modify the wordings of the certification of the e-forms, any qualification

that a practising professionals may intend to specify while certifying the e-forms, may be done by way of a letter addressed to concerned Registrar of Companies signed, scanned and attached to the relevant e-form as optional attachment.

It is duty of the professional to check thoroughly the correctness of the contents of the forms before certifying it as correct. The members in practice are, accordingly, expected to exercise due care and skill while performing the duty of certification.

Some of the e-forms requiring Pre-certification are:

1. Form No. 2
2. Form No. 3
3. Form No. 5
4. Form No. 10
5. Form No. 17
6. Form No. 18
7. Form No. 23
8. Form No. 23AC
9. Form No. 23ACA
10. Form No. 24AB
11. Form No. 25C
12. Form No. 32
13. e-form of application for approval for declaration of dividend out of reserves. [Pursuant to Section 205A (3)].
14. Form 1 relating to statement of amounts credited to Investor Education and Protection Fund.

Answer 5(b)

Appointment of Cost auditor

- (a) The company required to get its cost records audited under section 233B(1) of the Companies Act, 1956 shall appoint a cost auditor who is a cost accountant as defined in section 2 (1)(b) of the Cost and Works Accountants Act, 1959 and who holds a valid certificate of practice under sub-section(1) of section 6 of that Act and includes a firm of cost accountants.
- (b) The Audit Committee of the Board shall be the first point of reference regarding the appointment of cost auditors.
- (c) The Audit Committee shall ensure that the cost auditor is free from any disqualifications as specified under the Companies Act, 1956.
- (d) While a cost auditor shall have prime responsibility to ensure that he does

not violate the limits specified under section 224(1-B) of the Companies Act, 1956, the Audit Committee shall also be responsible for such compliance by the cost auditor.

- (e) The Audit Committee shall obtain a certificate from the cost auditor certifying his/its independence and arm's length relationship with the company.
- (f) The company shall e-file its application with the Central Government in the prescribed Form 23C within ninety days from the date of commencement of each financial year, along with the prescribed fee and other documents i.e. certified copy of the Board Resolution proposing appointment of the cost auditor; and copy of the certificate obtained from the cost auditor regarding compliance of section 224(1B) of the Companies Act, 1956.
- (g) On filing the application, the same shall be deemed to be approved by the Central Government, unless contrary is heard within thirty days from the date of filing such application.
- (h) If within thirty days from the date of filing such application, the Central Government directs the company to re-submit the said application with such additional information or explanation, as may be specified in that direction, the period of thirty days for deemed approval of the Central Government shall be counted from the date of re-submission by the company.
- (i) After expiry of thirty days, as the case may be, the company shall issue formal letter of appointment to the cost auditor, as approved by the Board.
- (j) Within thirty days of receipt of formal letter of appointment from the company, the cost auditor shall inform the Central Government in the prescribed form, along with a copy of such appointment. An e-form for the same is being developed and will be notified shortly.
- (k) In those companies where constitution of an Audit Committee of the Board is not required by law, the words "Audit Committee" shall stand substituted by the words "Board of Directors".

Answer 5(c)

A company registered under the Act cannot be removed from the Register of companies maintained by the Registrar nor can the Certificate of Incorporation be cancelled unless the company is dissolved by the process of law, either as a result of its winding up or its amalgamation with another company. However the Companies Act provides a short cut to the dissolution, namely striking it off from the Register of Companies by the Registrar of Companies under section 560, in case the company is defunct company.

The term striking off implies removal. As per section 560 of the Companies Act 1956, in case the Registrar has reasonable cause to believe that company is not carrying on any business or not in operation or not functioning. In these cases Registrar can, on his own exercise the power conferred upon him by section 560 and remove the name of company from the Register of Companies by following the prescribed procedure.

Despite the striking off the liability, if any, of every director, manager or other officer who was exercising any power of management and of every member of the company, shall continue and may be enforced as if the company had not been dissolved.

Answer 5(d)

As per section 11 of the Companies Act, 1956, no company, association or partnership consisting of more than ten persons shall be formed for the purpose of carrying on the business of banking, unless it is registered as a company under this Act, or is formed in pursuance of some other Indian Law. For non-banking business the limit is twenty as per section 11(2).

Further, as per Sub-section (3) of section 11, this section shall not apply to a joint family as such carrying on a business. In case, a business is carried on by two or more joint families, in computing the number of persons for the purposes of sub-sections (1) and (2), minor members of such families shall be excluded.

Hence in given case, total number of major members is 25 and 4 are minors. If we ignore number of minor i.e. 4, the number of major members i.e. 25 is exceeding the limit as specified under section 11 above i.e. 20. Therefore, the partnership is an illegal association unless it gets registered.

Question 6

- (a) *Enumerate the circumstances under which the Central Government can order special audit.* (5 marks)
- (b) *“Approval of the government is not always required under section 269 for appointment of a whole-time director by a company having a paid-up share capital of ₹ 5 crore.” Discuss.* (5 marks)
- (c) *State the provisions of the Companies Act, 1956 relating to loans to directors.* (6 marks)

Answer 6(a)

As per Section 233A of the Companies Act, Central Government can appoint the auditor to conduct special audit if :

- (i) It believes that affairs of company are not being managed as per sound business principles or prudent practices.
- (ii) A company is being managed in such manner which can cause damage to trade, industry or business;
- (iii) Company is in the position of insolvency or incurring continued losses.

This special audit report shall be submitted to Central Government and this report shall include all matters required to be included in auditors report under section 227 also any other matters as directed by Central Government in this regard. If the Government does not take any action on the report within 4 months from the date of receipt, it shall send to the company, a copy of report with its comments for circulation among the members of the company.

The expenses of the special audit shall be paid by the company as an arrear of land revenue as determined by the Central Government. Central Government may

also order any person to furnish any specified information to the special auditor. Failure to comply with the such order will render the person punishable with fine up to ₹ 5000.

Answer 6(b)

As per Section 269 of the Companies Act, which provides that no appointment of a person as a managing director (or whole-time director or manager) in a public company or a private company which is a subsidiary of a public company shall be made except with the approval of the Central Government. However, approval of the Government is not necessary if the appointment is made in accordance with the conditions specified in Parts I and II of Schedule XIII (the said parts being subject to the provisions of Part III of the said schedule) and a return in the prescribed form viz. e-Form 25C is filed with Registrar within 90 days from the date of such appointment.

Part I of Schedule XIII in its clauses (a) to (e) contains five conditions which must be satisfied in order to avoid the approval of the Central Government under section 269 for the appointment of a managing or whole-time director.

Part II contains provisions on remuneration of managing director or whole time director or manager.

Part III of Schedule XIII stipulates, in its two paragraphs, two requirements, which must be complied with in relation to the appointment of a managing/whole-time director. These are as follows:

1. The appointment and remuneration referred to in Parts I and II of this Schedule shall be subject to approval by a resolution of the shareholders in general meeting
2. The auditor or the secretary of the company or where the company has not appointed a secretary, a secretary in whole-time practice shall certify that the requirements of this Schedule have been complied with and such certificate shall be incorporated in the return filed with the Registrar under sub-section (2) of section 269

Answer 6(c)

According to Section 295(1) of the Companies Act, 1956, no company, shall without obtaining the previous approval of the Central Government directly or indirectly make any loan to or give any guarantee or provide any security in connection with the loan made by any person to or to any other person by :

- (i) any director of the lending company or of a company which is its holding company or any partner or relative of any such director;
- (ii) any firm in which any such director or relative is a partner;
- (iii) any private company of which any such director is a director or member;
- (iv) any body corporate at a general meeting of which not less than twenty

five per cent of the total voting power may be exercised or controlled by any such director, or by two or more directors together; or

- (v) any body corporate, the Board of directors, managing director, or manager whereof is accustomed to act in accordance with the directions or instructions of the board, or of any director or directors, of the lending company.

The provisions of Sub-section (2) do not apply to :

- (i) any loan made by a private company;
- (ii) any loan made by a banking company;
- (iii) any loan made by a holding company to its subsidiary company;
- (iv) any guarantee given or security provided by a holding company in respect of any loan made its subsidiary company.

Any contravention of Section 295 shall be punishable either with fine, which may extend to ₹50,000/- or with simple imprisonment for a term which may extend to six months.

Question 7

Distinguish between any four of the following :

- (i) 'Statutory books' and 'statistical books'.
- (ii) 'Limited liability partnership (LLP)' and 'partnership'.
- (iii) 'Motion' and 'resolution'.
- (iv) 'Capital reserve' and 'reserve capital'.
- (v) 'Special resolution' and 'resolution requiring special notice'. (4 marks each)

Answer 7(i)

'Statutory books' and 'statistical books'

According to section 163 of Companies act every company incorporated under the Companies Act 1956 must maintain certain books and register , returns and documents at its registered office. These books are known as statutory books. These books are kept for maintaining a record of its different activities in order to safeguard the interest of the shareholders and creditors.

Some of these books are required to be kept open by company for inspection by director members, creditors etc. Some of Statutory books are Register of postal ballot, Register of Deposits, Directors share holding etc.

Statistical books are maintained in company to keep complete records of the numerous details connected with the business operations. The keeping of such books has become a necessity although there is no legal compulsion for the same. The following are some important statistical books : (a) Share Application and Allotment Book; (b) Share Call Book; (c) Share Certificate Book; (d) Share transfer book; (e) Debenture Interest Book; (f) Director's Attendance Book; (g) Agenda Book etc.

Answer 7(ii)**'Limited liability partnership (LLP)' and 'partnership'**

The principle points of difference between a company and a partnership are as follows :

- (a) LLP is a separate legal entity and therefore, can be sued or it can sue others without involving the partners. A partnership firm is not distinct from the several persons who compose it.
- (b) The partners of a LLP would have limited liability i.e. they would not be liable beyond the money contributed by them. Whereas, partners of a firm would have unlimited liability.
- (c) The retirement or death of a partner would not dissolve the LLP. On the other hand, the death or retirement of a partner would dissolve the partnership firm.
- (d) In a partnership, the property of the firm is the property of the individuals comprising it. In a LLP, it belongs to the LLP and not to the individuals comprising it.
- (e) Whereas a partnership can be formed either orally or by a deed of agreement whether registered or not, LLP is formed by an incorporation document and an LLP agreement, thus, giving it a legality.

Answer 7(iii)**'Motion' and 'resolution'**

Motion and resolution are used synonymously but in legal sense there is difference between two.

Motion is a proposal submitted for a discussion and a decision adopted by means of a resolution. A motion becomes a resolution only after the requisite majority of members have adopted it. A motion should be in writing and signed by the mover and put to the vote at the meeting by the chairman. In case of company meetings, only such motions are proposed as are covered by the agenda. However, certain motion may arise out of the discussion and the standing orders of various bodies allow such motions to be discussed at the meeting without proper notice in writing. It is a common practice in company meetings that a motion is proposed by one member and the same is seconded by another. But unless the articles of association otherwise provide, no seconding is necessary for taking up a motion.

Resolution - Decision of a company are made by resolutions passed by the prescribed majority of the members present at the meetings. Resolutions are of three kinds- (a) Ordinary (b) Special (c) Resolution requiring special notice

As per section 189 of the Companies Act- a resolution which requires a simple majority of the members entitled to vote and voting in person or where proxies are allowed, by proxy is called an ordinary resolution. The draft of a proposed ordinary resolution need not be set out in the notice convening the meeting. If any special business has to be transacted through then the notice must state it as special business and proposed resolution is set out in the notice.

A resolution is said to be special resolution if notice of the intention to move it as a special resolution is given specifically and is passed by three-fourth majority of the votes.

Answer 7(iv)

‘Capital reserve’ and ‘reserve capital’

Capital Reserves : is created out of profits or earnings which are not ordinarily distributed among shareholders of the company as opposed to revenue reserve which is free for distribution to members. Statutory Capital Reserves are the “Securities premium account” and “ the capital redemption reserve account”. Non Statutory Capital Reserve may arise in many ways e.g. where a fund is set aside out of the profits to replace assets which are wearing out, such as heavy machinery or where reserve is created out of profits made on sale or revaluation of assets. Reserve created out of revaluation of assets is also known as capital reserve.

Reserve Capital : As per Section 99 of Companies Act a company may determine by a special resolution that any portion of its share capital which has not been already called up shall not be capable of being called-up except in the event of winding up of the company. Such type of share capital is known as reserve capital.

Such type of capital cannot be converted into ordinary capital without the permission of the court and it cannot be dealt with by the directors in any other way. The creation of reserve capital is helpful to creditors because this is the amount which can be made available to them in case of need at the time of company's winding up. No accounting entries are required for the creation of reserve capital. Only a note regarding reserve capital may be given in the Balance sheet.

Answer 7(v)

‘Special resolution’ and ‘resolution requiring special notice’

Special Resolution – As per section 189(2) of the Companies Act 1956 a resolution is said to be a special resolution if notice of the intention to move it as a special resolution is given specifically and it is passed by three-fourths majority of the votes. The validity of a resolution passed at a meeting depends on the: (a) a notice conveying the meeting had been given on proper authority and in accordance with the law; (b) quorum was present; (c) proper person was in the chair etc.

Resolution requiring special notice

According to Section 190 of the Act, where by any provision in this Act or in the articles, special notice is required of any resolution, notice of the intention to move the resolution shall be given to the company not less than fourteen days before the meeting at which it is to be moved, exclusive of the day on which the notice is served or deemed to be served and the day of the meeting. On receipt of such a notice, the company must give to its members, notice of the resolution in the manner in which it gives notice of the meeting. In case it is not practicable, the company must give a minimum of seven days notice to members through an advertisement in a newspaper having an appropriate circulation or in any other mode allowed by the articles.

Question 8

- (a) *The Board of directors of Nav Avtar Ltd. passed a resolution for issue of rights shares. However, certain shareholders of the company raised an objection as to whether the company needed additional capital. Discuss the validity of the counter-move taken by the shareholders and resolution passed by the Board. (4 marks)*
- (b) *The Board of directors of Zest Ltd. appoints Pavan as a director under section 260 by passing a resolution by circulation. The appointee now seeks your advice about the tenure of his appointment. Advise him. (4 marks)*
- (c) *Yash, a member of Omar Ltd., appoints Jolly to attend a general meeting of the company. At the meeting, voting takes place by show of hands. However, Jolly does not know whether he (as a proxy) can vote by show of hands at the meeting. Advise. (4 marks)*
- (d) *The Board of directors of Aakash Ltd., a listed company, at its meeting held on 1st April, 2011 announced a proposal for issue of bonus shares to all equity shareholders of the company at 1:1 ratio. On 1st May, 2011, the directors at another meeting passed a resolution to reverse the proposal of bonus issue announced on 1st April, 2011. Discuss the validity of the proposal and the reversal. (4 marks)*

Answer 8(a)

In the case of *Arjun Tukaram Shetgaonkar v. Urmila Vaikunth Desai* (2001) 105 Com Cases 722, a shareholder had questioned a resolution of the Board of Directors to increase the share capital of the company. The shareholder had the right to do so because his shareholding was going to be reduced percentage wise. In *Needle Industries (India) Ltd. v. Needle Industries Newey (India) Holding Ltd.* (1981) 51 Com Cases 743 at 816. AIR 1981 SC 1298. The Court pointed out: that the directors of a company must exercise their powers for the benefit of the company. The directors are in a fiduciary position and if they does not exercise powers for the benefit of the company but simply and solely for personal interest and benefits to the detriment of the company, the court will interfere and prevent the directors from doing so. Thus the counter move taken by the shareholders is valid

Answer 8(b)

As per Section 260 of the Companies Act, if the articles of association of a company empower its Board of directors to appoint additional directors, the Board may exercise such power. Such additional director shall hold office only up to the date of the next annual general meeting of the company. If the annual general meeting of a company is not held or cannot be held the person appointed as additional director vacates his office on the last day on which annual general meeting should have been held in terms of Section 166 of the Act. He cannot continue in office thereafter on the ground that the meeting was not or could not be called within the time prescribed in the Section. The expression "upto date of the annual general meeting" means upto the date when the next annual general meeting ought to be held at the latest.

Answer 8(c)

A member may either vote personally or by proxy. Proviso to Section 176(1) allows for the articles of a company to provide for voting by proxy on a show of hands. So unless the articles otherwise provide, a proxy shall not be entitled to vote except on a poll. A proxy has no right to speak at a meeting though; he can demand a poll and vote. In a voting on a show of hands, proxies cannot be counted unless articles make express provision the. However, a poll can be demanded without going through the formality of a show of hands. In view of the above jolly as a proxy can vote by show of hands at the meeting if article of the company provide for the same.

Answer 8(d)

As per SEBI (Issue of Capital and Disclosure requirements) Regulation, 2009 an issuer company announcing a bonus issue after the approval of its Board of directors and not requiring shareholders' approval for making the bonus issue—shall implement the bonus issue within fifteen days from the date of approval of the issue by its board of directors, where the issuer company is required to take shareholders' approval for making the bonus issue. It shall be implemented within two months from the date of the meeting of its Board of directors wherein the decision to announce the bonus issue was taken subject to shareholders' approval. Once the decision to make a bonus issue is announced, the issue cannot be withdrawn.

However in view of the above, the proposal to announce the bonus issue made by the Board of directors is valid but the reversal is not valid. Further the proposal to issue bonus shares may be approved or reversed by the shareholders in general meeting.

ECONOMIC AND LABOUR LAWS

Time allowed : 3 hours

Maximum marks : 100

PART A

(Answer Question No.1 which is compulsory
and any three of the rest from this part.)

Question 1

With reference to the relevant legal enactments, write short notes on any five of the following :

- (i) Deficiency in service
- (ii) Hazardous substance
- (iii) Predatory pricing
- (iv) Functions of Central Pollution Control Board
- (v) Term of patent
- (vi) Salient features of the Legal Metrology Act, 2009
- (vii) Current account transactions. (3 marks each)

Answer 1(i)

Deficiency in service

As per Section 2(1) (g) of Consumer Protection Act, 1986 Deficiency means any fault, imperfection, shortcoming or inadequacy in the quality, nature and manner of performance which is required to be maintained by or under any law for the time being in force or has been undertaken to be performed by a person in pursuance of a contract or otherwise in relation to any service.

Failure to maintain the quality of performance required by the law or failure to provide services as per warranties given, by the provider of the service would amount to 'deficiency in service'.

Answer 1(ii)

Hazardous substance

Clause (f) Section 2 of the National Green Tribunal Act, 2010 defines "hazardous substance" as to means any substance or preparation which is defined as hazardous substance in the Environment (Protection) Act, 1986, and exceeding such quantity as specified or may be specified by the Central Government under the Public Liability Insurance Act, 1991.

The term Hazardous Substance under Section 2(e) of the Environment (Protection) Act, 1986 means any substance or preparation which, by reason of its chemical or physico-chemical properties or handling is liable to cause harm to human beings, other living creatures, micro-organism, property or the environment.

Answer 1(iii)

Predatory Pricing

The term "predatory price" has been defined under Section 4 of the Competition

Act, 2002 as the sale of goods or provision of services, at a price which is below the cost, as may be determined by regulations, of production of goods or provision of services, with a view to reduce competition or eliminate the competitors. Thus, the two conditions precedent to bring a case within the ambit of predatory pricing are:

- (i) Selling goods or provision of service at a price which is below its cost of production; and
- (ii) That practice is resorted to eliminate the competitors or to reduce competition.

Answer 1(iv)

Alternative Answer 1

Functions of the Central Board under Air (Prevention and Control of Pollution) Act, 1981

In terms of Section 16 of the Air (Prevention and Control of Pollution) Act, 1981, the main functions of the Central Board are to improve the quality of the air and to prevent, control or abate air pollution in the country. In particular and without prejudice to the generality of the above functions, the Central Board may:

- (a) advise the Central Government on any matter concerning the improvement of the quality of air and prevention, control or abatement of air pollution;
- (b) plan and cause to be executed a nation-wide programme for the prevention, control or abatement of air pollution;
- (c) co-ordinate the activities of the State Boards and resolve disputes among them;
- (d) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of air pollution and prevention, control or abatement of air pollution.
- (dd) perform such of the function of any State Board as may be specified in an order made under Sub-section (2) of Section 18.
- (e) plan and organize the training of persons engaged or to be engaged in programmes for the prevention, control and abatement of air pollution on such terms and conditions as the Central Board may specify;
- (f) organise through mass media, a comprehensive programme regarding the prevention, control or abatement of air pollution;
- (g) collect, compile and publish technical and statistical data relating to air pollution and the measures devised for its effective prevention, control and abatement and prepare manuals, codes or guides relating to prevention, control or abatement of air pollution;
- (h) lay down standards for the quality of air;
- (i) collect and disseminate information in respect of matters relating to air pollution;
- (j) perform such other functions as may be prescribed.

Alternative Answer 2**Functions of Central Board under Water (Prevention and Control of Pollution) Act, 1974**

Section 16 of the Water (Prevention and Control of Pollution) Act, 1974 specifically deals with functions of the Central Board. It empowers the Central Board to promote cleanliness of streams and wells in different areas of the States. Besides, the Central Board may perform all or any of the following functions, namely:

- (a) advise the Central Government on any matter concerning the prevention and control of water pollution;
- (b) co-ordinate the activities of the State Boards and resolve disputes among them;
- (c) provide technical assistance and guidance to the State Boards, carry out and sponsor investigations and research relating to problems of water pollution and prevention, control or abatement of water pollution;
- (d) plan and organise the training of persons engaged or to be engaged in programmes for the prevention, control or abatement of water pollution on such terms and conditions as the Central Board may specify;
- (e) organise through mass media a comprehensive programme regarding the prevention and control of water pollution;
- (f) collect, compile and publish technical and statistical data relating to water pollution and the measures devised for its effective prevention and control and prepare manuals, course or guides relating to retreatment and disposal of sewage and the trade effluents and disseminate information connected therewith;
- (g) lay down, modify or annul, in consultation with the State Government concerned, the standards for a stream or a well. However different standards may be laid down for the same stream or well or for different streams or wells having regard to the quality of water, flow characteristic of stream or well and the nature of the use of water in such stream or well or streams or wells;
- (h) plan and cause to be executed a nation-wide programme for prevention, control or abatement of water pollution;
- (i) perform such other functions as may be prescribed.

Answer 1(v)**Term of Patent**

Section 53 of the Patents Act, 1970 provides that the term of every patent granted after the commencement of the Patents (Amendment) Act, 2002 and the term of every patent which has not expired and has not ceased to have effect, on the date of such commencement, shall be twenty years from the date of filing of application for the patent.

Explanation to Section 53(1) clarifies that the term of patent in case of international applications filed under the Paris Convention Treaty (PCT) designating India, shall be twenty years from the international filing date accorded under the Patent Cooperation Treaty.

A patent shall cease to have effect on the expiration of the period prescribed for the payment of any renewal fee, if that fee is not paid within the prescribed period or within such extended period as may be prescribed. Further on cessation of the patent right due to non-payment of renewal fee or on expiry of the term of patent, the subject matter covered by the said patent shall not be entitled to any protection.

Answer 1(vi)

Salient features of the Legal Metrology Act, 2009

- It intend to establish and enforce standards of weights and measures, regulate trade and commerce in weights, measures and other goods which are sold or distributed by weight, measure or number and for matters connected therewith or incidental thereto.
- It provides that every unit of weight or measure shall be in accordance with metric system based on the international system of unit.
- It empowers the Central Government to appoint Director, Controller and Legal Metrology Officers.
- It contains provisions for declarations on pre-packaged commodities.
- It deals with offences and penalties for use of non-standard Weight or measure.
- The Act contains provision for compounding of offences.
- It empowers the Central Government as well as State Government to make rules, by notification, for carrying out the provisions of the Act.

Answer 1(vii)

Current Account Transaction

As per Section 2(j) of the Foreign Exchange Management Act, 1999 Current Account Transaction means a transaction other than a capital account transaction and includes payments due in connection with foreign trade, other current business, services and short term banking and credit facilities in the ordinary course of business; payments due as interest on loan and as net income from investments; remittances for living expenses of parents, spouse and children residing abroad and expenses in connection with foreign travel, education and medical care of parents, spouse and children.

Central Government has been vested with powers in consultation with Reserve Bank to impose reasonable restrictions on current account transactions. The Central Government has framed Foreign Exchange Management (Current Account Transactions) Rules, 2000 dealing with various aspects of current account transactions.

Question 2

State, with reasons in brief, whether the following statements are true or false. Attempt any five :

- (i) The Competition Act, 2002 prohibits dominance as well as abuse of dominant position.*
- (ii) The property confiscated for money laundering vests with the central government.*
- (iii) Mens rea is an ingredient of the offence punishable under the Essential Commodities Act, 1955.*
- (iv) Foreign direct investment is permitted in infrastructure companies in securities market (stock exchanges, depositories, and clearing corporations).*
- (v) The redressal forums constituted under the Consumer Protection Act, 1986 are quasi-judicial in nature and scope.*
- (vi) Registration of a trade mark under the Trade Marks Act, 1999 is a prima facie evidence of the validity of registration in all legal proceedings.*

(3 marks each)

Answer 2(i)**False**

Dominance refers to a position of strength which enables an enterprise to operate independently of competitive forces or to affect its competitors or consumers or the market in its favour.

Abuse of dominant position impedes fair competition between firms, exploits consumers and makes it difficult for the other players to compete with the dominant undertaking on merit. Abuse of dominant position includes, imposing unfair conditions or price; predatory pricing; limiting production/market or technical development; creating barriers to entry; denying market access and using dominant position in one market to gain advantages in another market.

Section 4 of the Competition Act, 2002 does not prohibit dominance, but abuse of dominance.

Answer 2(ii)**True**

Section 9 of the Prevention of Money Laundering Act, 2002 provides that an order of confiscation made, in respect of any property of a person, vests in the Central Government, all the rights and title in such property free from all encumbrances. The Adjudicating Authority after giving an opportunity of being heard to any other person interested in the property attached or seized is of the opinion that any encumbrances on the property or lease hold interest has been created with a view to defeat the provisions of the Act, it may, by order declare such encumbrances or lease hold interest to be void and thereupon the property shall vest in the Central Government free from such encumbrances or lease hold.

Answer 2(iii)**True**

In the case of *Nathulal v. State of Madhya Pradesh* (AIR 1966 S.C. 43) it was held by the Supreme Court that mens rea or guilty mind is an ingredient of the offence punishable under Section 7 of the Essential Commodities Act, 1955 i.e., an intentional contravention of an order made under Section 3 of the Act, is an essential ingredient of an offence under Section 7. It was observed by the Supreme Court in this case that mens rea is an essential ingredient of any criminal offence. The nature of mens rea that would be implied in a Statute creating an offence depends on the object of the Act and the provisions thereof.

Answer 2(iv)**True**

Foreign Direct Investment is permitted through Government approval in Infrastructure Companies in Securities markets, namely, Stock Exchanges, Depositories and Clearing Corporations, in compliance with SEBI Regulation. Foreign Direct Investment limit of 26% through approval route is permitted and FII limit 23% of paid-up capital is permitted.

Answer 2(v)**True**

The District Forum, State Commission and the National Commission as quasi judicial machineries and as Authorities respectively. They have been vested with the powers of a civil court under the Code of Civil Procedure, 1908 while trying a suit in respect of the matters like, summoning and enforcing attendance of any defendant or witness and examining the witness on oath; the discovery and production of any document or other material object producible as evidence; the reception of evidence on affidavits etc.

Answer 2(vi)**True**

Section 31 of the Trade Marks Act, 1999 deals with registration of a trade mark to be prima facie evidence of validity. It stipulates that in all legal proceedings relating to trade mark registered under the Act, the original registration and all subsequent assignments and transmission thereof shall be prima facie evidence of its validity.

Question 3

(a) Distinguish between any two of the following :

- (i) 'Political party' and 'an organisation of political nature'.
- (ii) 'Seizure of an essential commodity' and 'confiscation of an essential commodity'.
- (iii) 'Contract of service' and 'contract for service'.

- (iv) 'Infringement of trade mark' and 'passing off'. (5 marks each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- (i) The process of money laundering can be classified into _____ layering and integration.
 - (ii) The registration of trade mark requires to be renewed for successive periods of _____ .
 - (iii) The compulsory licence in respect of a patent is granted after the expiration of _____ from the date of grant of a patent subject to certain conditions.
 - (iv) Foreign contribution means any donation, delivery or transfer made by _____ .
 - (v) The total surface area of the package where the information is required to be given is called _____ . (1 mark each)

Answer 3(a)(i)

As per Section 2(1)(n) of the Foreign Contribution (Regulation) Act, 2010 Political party means an association or body of individual citizens of India—

- to be registered with the Election Commission of India as a political party under section 29A of the Representation of the People Act, 1951; or
- which has set up candidates for election to any Legislature, but is not so registered or deemed to be registered under the Election Symbols (Reservation and Allotment) Order, 1968;

Section 5(1) of the Foreign Contribution (Regulation) Act, 2010 provides that the Central Government may, having regard to the activities of the organisation or the ideology propagated by the organisation or the programme of the organisation or the association of the organisations with the activities of any political party, by an order published in the Official Gazette, specify such organisation as an organisation of a political nature not being a political party, referred to in clause (f) of sub-section (1) of section 3. Further, the Central Government may, frame the guidelines specifying the ground or grounds on which an organisation shall be specified as an organisation of a political nature.

Section 3 of Foreign Contribution (Regulation) Act, 2010 prohibits acceptance of foreign contribution by political party and organisation of political nature as may be specified under Section 5 of the Act, by Central Government.

Answer 3(a)(ii)

The Essential Commodities Act, 1955 envisages two independent proceedings against a person charged with contravention of the provisions of the Act. Under Section 6A, the Collector can confiscate the seized commodity and under Section 7, the contravention would be punishable. Confiscation of essential commodities is a sharp weapon which the Act has provided to the Central Government under Section 6A of the Act.

Section 6A provides that where any essential commodity is seized in pursuance of an order made under Section 3, a report of such seizure shall be made, without any unreasonable delay, to the collector of the district or the Presidency town in which such essential commodity is seized. The Collector at his discretion, may direct for the production of the seized commodity before him and if he is satisfied that there has been contravention of the order he may pass order for confiscation of (a) the essential commodity so seized, (b) any package, covering or receptacle in which such essential commodity is found, and (c) any animal, vehicle, vessel or other conveyance used in carrying such essential commodity.

The Act uses the expressions 'confiscation' and 'seizure' in Section 6A and under this section a commodity which has been seized in pursuance of an order under Section 3 can be confiscated under the circumstances mentioned in Section 6A. In the context of the Essential Commodities Act, it could be seen that an essential commodity which has been seized, could be confiscated. Therefore, confiscation is an action posterior to the seizure of the essential commodity. A commodity that has not been seized cannot be confiscated. Seizure itself does not imply confiscation. The seizure should have been made by virtue of an order passed under Section 3 of the Act.

Answer 3(a)(iii)

The Supreme Court in the case of *Indian Merchants Association v. V P Santha*, (CA No. 688 of 1993 decided on 13th November 1995) observed that a contract for service implies a contract whereby one party undertakes to render services e.g. professional or technical services to or for another in the performance of which he is not subject to detailed direction and control but exercises professional or technical skill and uses his own knowledge and discretion. A contract of service on the other hand implies relationship of master and servant and involves an obligation to obey orders in the work to be performed and as to its mode and manner of performance. The Parliamentary draftsman was well aware of this well-accepted distinction between 'contract of service' and 'contract for services' and had deliberately chosen the expression 'contract of service' instead of the expression 'contract for service' in the exclusionary part of the definition of 'service', this being the reason being that an employer could not be regarded as a consumer in respect of the services rendered by his employee in pursuance of contract of employment. By affixing the adjective 'personal' to the word 'service' the nature of the contracts which were excluded were not altered. The adjective only emphasised that what was sought to be excluded was personal service only. The expression contract of personal service in the exclusionary part of Section 2(1)(o) of the Consumer Protection Act, 1986 must, therefore, be construed as excluding the services rendered by an employee to his employer under the contract of personal service free from the ambit of the expression service.

Answer 3(a)(iv)

Section 29 of the Trade Marks Act, 1999 dealing with infringement of trade marks, explicitly enumerates the grounds which constitute infringement of a trademark. This section lays down that when a registered trade mark is used by

a person who is not entitled to use such a trade mark under the law, it constitutes infringement. This section clearly states that a registered trade mark is infringed, if —

- (a) the mark is identical and is used in respect of similar goods or services;
or
- (b) the mark is similar to the registered trade mark and there is an identity or similarity of the goods or services covered by the trade mark; or
- (c) the trade mark is identical and is used in relation to identical goods or services;

and that such use is likely to cause confusion on the part of the public or is likely to be taken to have an association with the registered trade mark.

Passing off means, the infringement of trademark, done in such a manner where the mark is not only deceptively similar to the trademark of other company but is also creating confusion for the customers. There is no specific description to this definition in the Trademark Act. The definition is based on the meaning from common law, drawn by the Courts.

In *Mahendra and Mahendra Paper Mills Ltd. v. Mahindra and Mahindra Ltd.* [AIR 2002 SC117] Supreme Court broadly stated, in an action for passing – off on the basis of unregistered trade mark, generally for deciding the question of deceptive similarity, the following factors are to be considered :

- nature of the marks;
- the degree of resemblance between the marks;
- any other surrounding circumstances which may be relevant in the extant of dissimilarity between the competing marks.

Answer 3(b)

- (i) The process of money laundering can be classified into **Placement** layering and integration.
- (ii) The registration of trade mark requires to be renewed for successive periods of **10 years**.
- (iii) The compulsory licence in respect of a patent is granted after the expiration of **3 years** from the date of grant of a patent subject to certain conditions.
- (iv) Foreign contribution means any donation, delivery or transfer made by **Foreign source**.
- (v) The total surface area of the package where the information is required to be given is called **Principal Display Panel** .

Question 4

(a) *With reference to the relevant provisions of the Foreign Exchange Management Act, 1999 and the rules and regulations made thereunder, advise on the following :*

- (i) *Anand desires to donate US \$10,000 to Rotary International, an NGO in Chicago, USA.*

- (ii) *Atul Ltd., an Indian company intends to export its software of the value of ₹ 15,000.*
- (iii) *Suresh desires to pay US \$10,000 through international credit card being the remittance out of lottery earnings.*
- (iv) *Super Green Tea Ltd. intends to send its tea bags of the value of ₹ 50,000 as gift to its foreign customers.*
- (v) *Aadarsh Education Society, engaged in education sector, intends to make investment in the education sector in a joint venture in USA.*
(1 mark each)
- (b) *Ramesh took out four life insurance policies with double accident benefits, premium payable Half-yearly. When the third premium fell due, the general agent of the Life Insurance Corporation (LIC) met Ramesh and took a bearer cheque towards the premium payable by him in respect of the policies. Although the cheque was encashed immediately, yet the payment of premium was not deposited with the LIC for another three months. In the meantime, Ramesh met with a fatal accident and died. Ramesh's wife filed claim for the payment of the sum assured. Will she succeed ? Give reasons.*
(5 marks)
- (c) *Mention the powers of the central government to protect and improve the quality of environment under the Environment (Protection) Act, 1986.*
(5 marks)

Answer 4(a)(i)

As per Rule 5 read with Schedule III of Foreign Exchange Management (Current Account Transactions) Rules, 2000 requires prior approval of the Reserve Bank of India for donation exceeding US\$ 5,000 per remitter/donor per annum.

In the present case, Anand can donate US \$ 10, 000 to Rotary International, an NGO in Chicago, USA with prior approval of the Reserve Bank of India

Answer 4(a)(ii)

Regulation 3 of Foreign Exchange Management (Export of Goods and Services) Regulations, 2000 requires every exporter of goods or software in physical form or through any other form to furnish to the specified authority a declaration in specified form. However, Regulation 4 permit export of software, if it is accompanied by a declaration by the exporter that they are not more than twenty five thousand US \$ in value. Therefore, Atul Limited can export its software of the value ₹15,000.

Answer 4(a)(iii)

Rule 3 read with Schedule I of Foreign Exchange Management (Current Account Transactions) Rules, 2000 prohibits the drawal of foreign exchange for the purposes of Remittance out of lottery winnings.

Therefore, Suresh can not remit the amount.

Answer 4(a)(iv)

Regulation 4 of Foreign Exchange Management (Export of Goods and Services)

Regulations, 2000 permits export of goods by way of gift of goods, if it is accompanied by a declaration by the exporter that they are not more than five lakh rupees in value.

Hence, Super Green Tea Limited can send its tea bags as gift to its foreign customers accompanied by a declaration.

Answer 4(a)(v)

Registered Societies engaged in educational sector are allowed make investment in the same sector(s) in a Joint Venture or Wholly Owned Subsidiary outside India, with the prior approval of the Reserve Bank of India. Societies after satisfying the eligibility criteria as prescribed, may submit the application/s in Form ODI-Part I, through their Authorised Dealer to RBI.

Adarsh Education Society can make investment in education sector in a joint venture in USA with the prior approval of the Reserve Bank of India and subject to the fulfillment of eligibility criteria.

Answer 4(b)

Ramesh's wife not succeed

The fact of the present case is similar to the case of *Harshad J. Shah v. Life Insurance Corporation of India* [1997(3) SCALE 423 (SC)]. In this case Supreme Court held that the agent had no express authority to receive the premium on behalf of the Corporation. In his letter of appointment there was a condition expressly prohibiting him from collecting the premium. Nor could it be said that he had an implied authority to collect the premium, as regulation 8(4) expressly prohibited the agents from collecting premiums. Therefore, no case had been set up by the complainant before the State Commission that the Corporation by its conduct had induced the policyholders, including the insured, to believe that the agents were authorised to receive premiums on behalf of the Corporation. Nor was there any material on record that lent support to this contention. In the facts of this case there was no room to invoke the doctrine of apparent authority underlying Section 237 of the Indian Contract Act.

Answer 4(c)

The Central Government has been granted general powers under Section 3 of the Environment Protection Act, 1986 to take all such measures as it deems necessary, for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution. Such measure include with respect to all or any of the following matters:

- (i) coordinating the actions of various State Governments, officers and authorities under this Act or rules made thereunder or under any other law concerning environmental pollution;
- (ii) planning and execution of a nation-wide programme for the prevention, control and abatement of environmental pollution;
- (iii) laying down standards for the quality of environment;

- (iv) laying down standards for emission or discharge of environmental pollutants;
- (v) restricting the carrying on of industries, operations or processes in certain areas or permitting them to be carried out subject to certain safeguards;
- (vi) laying down procedures and safeguards for the prevention of accidents which may cause environmental pollution and remedial measures for such accidents;
- (vii) laying down procedures and safeguards for the handling of hazardous substances;
- (viii) examining manufacturing processes, materials and substances as are likely to cause environmental pollution;
- (ix) carrying out and sponsoring investigations and research relating to problems of environmental pollution;
- (x) inspecting any premises, plant, equipment, machinery, manufacturing process, materials, etc. and issuing directions to any person officer or authority etc. to take steps for the prevention, control and abatement of environmental pollution;
- (xi) establishing or recognising environmental laboratories;
- (xii) collecting and disseminating information relating to environmental pollution;
- (xiii) preparing manuals, codes, guides etc. to prevent control and abate environmental pollution;
- (xiv) such other matters as the Central Government deems necessary or expedient for the purpose of securing the effective implementation of the provisions of the Act.

Question 5

- (a) *Explain the powers of the Controller in respect of an application for a patent which has substantial risk of infringement. (5 marks)*
- (b) *Ajay Ltd. is engaged in the manufacture and sale of industrial alcohol. In the course of manufacture of industrial alcohol, the industrial unit discharged noxious and polluted trade effluents into a nearby river through a drain, which is a stream within the meaning of the Water (Prevention and Control of Pollution) Act, 1974. The company and the industrial unit, had applied for the grant of requisite consent to discharge the trade effluents into the stream but the consent was withheld as it did not make good the inadequacies and defects pointed out by the State Pollution Control Board. Are the managing director and other members of the Board of directors liable to be proceeded against under the Water (Prevention and Control of Pollution) Act, 1974 in the absence of prosecution of the company owning the industrial unit ? Give reasons and refer to decided case law, if any. (5 marks)*
- (c) *Discuss the provisions of the Copyright Act, 1957 relating to infringement of a copyright. (5 marks)*

Answer 5(a)

Section 19 of the Patents Act, 1970 provides that if in consequence of the investigations it appears to the Controller that an invention in respect of which an application for a patent has been made cannot be performed without substantial risk of infringement of a claim of any other patent, he may direct that a reference to that other patent, be inserted in the applicant's complete specification by way of notice to the public within such time as may be prescribed, unless :

- (a) The applicant shows to the satisfaction of the Controller that there are reasonable grounds for contesting the validity of the said claim of the other patent; or
- (b) The complete specification is amended to the satisfaction of the Controller.

The reference shall be inserted in the following form, namely:

“Reference has been directed, in pursuance of Section 19(2) of the Patents Act, 1970 to Patent No...” .

Where after a reference to another patent has been inserted in a complete specification in pursuance of a direction under Section 19(1):

- (a) That other patent is revoked or otherwise ceases to be in force; or
- (b) The specification of that other patent is amended by the deletion of the relevant claim; or
- (c) It is found, in proceedings before the court or the Controller, that the relevant claim of that other patent is invalid or is not infringed by any working of the applicant's invention, the Controller may, on the application of the applicant delete the reference to that other patent.

Answer 5(b)

The fact of the present case is similar to the case of *U.P. Pollution Control Board v. Modi Distillery* (August 6, 1987) 8 Ind. Jud. Reports (SC) 375.

On the question whether the chairman, vice-chairman, managing director and other members of the Board of directors were liable to be proceeded against under Section 47 of the Water (Prevention and Control of Pollution) Act, 1974 in the absence of a prosecution of the company owning the industrial unit, the Supreme Court held that it is quite clear that the company did not have proper arrangement for treatment of the highly polluted trade effluents discharged by it and although the appellant Board repeatedly required the company to obtain the consent of the Board, the company was intentionally and deliberately avoiding compliance of the requirements of Sections 25(1) and 26 of the Water (Prevention and Control of Pollution) Act, 1974. The contravention of these provisions is an offence punishable under Section 44. The chairman, vice-chairman, managing director and members of the Board of directors of Modi Industries were in charge of and responsible for the conduct of the business of the company and were therefore deemed to be guilty of the offence and liable to be proceeded against and punished under Section 47 of the Act. It would be travesty of justice if the big business house of Modi Industries Ltd. is allowed to defeat the prosecution launched and avoid facing trial on a technical flaw which is not incurable for their alleged deliberate and willful breach of the provisions

contained in Sections 25(1) and 26 made punishable under Section 44 read with Section 47 of the Water (Prevention and Control of Pollution) Act, 1974.

Answer 5(c)

Section 51 of the Copyright Act, 1957 contemplates situation in which a copyright shall be deemed to be infringed. This Section says that a copyright is infringed when any person without a licence granted by the owner of the copyright or the Registrar of Copyright or in contravention of the conditions of a licence so granted or of any condition imposed by a competent authority does

- (1) Anything for which the exclusive right is conferred upon the owner of the copyright, or
- (2) Permits for profit any place to be used for the communication of the work to public where such a communication constitutes an infringement of the copyright in the work, unless he was not aware and had no reasonable ground for believing that such communication would be an infringement of copyright.
- (3) When any person (i) makes for sale or hire or lets for hire or by way of trade display or offers for sale or hire, or (ii) distributes either for the purpose of trade or to such an extent as to affect prejudicially the owner of the copyright, or (iii) by way of trade, exhibits in public, or (iv) imports into India any infringing copies of the work.

However, import of one copy of any work is allowed for private and domestic use of the importer. Explanation to Section 51 clarifies that the reproduction of literary, dramatic musical or artistic work in the form of cinematograph film shall be deemed to be an infringing copy.

PART B

(Answer ANY TWO questions from this part.)

Question 6

Write notes on any four of the following :

- (i) *The theory of notional extension of employment under the Workmen's Compensation Act, 1923.*
- (ii) *Protection of gratuity under the Payment of Gratuity Act, 1972.*
- (iii) *Employees' Pension Scheme under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952.*
- (iv) *Purposes for which ESI fund may be expended under the Employees' State Insurance Act, 1948.*
- (v) *Certification of standing orders under the Industrial Employment (Standing Orders) Act, 1946.* *(5 marks each)*

Answer 6(i)

Theory of Notional Extension of employment

To make the employer liable it is necessary that the injury caused by an accident must have arisen in the course of employment. It means that the accident must take place at a time and place when the workman was doing his master's job.

It is well settled that the concept of "duty" is not limited to the period of time the workman actually commenced his work and the time he downs his tools. It extends further in point of time as well as place. But there must be nexus between the time and place of the accident and the employment. If the presence of the workman concerned at the particular point was so related to the employment as to lead to the conclusion that he was acting within the scope of employment that would be sufficient to deem the accident as having occurred in the course of employment [*Weaver v. Tradegar Iron and Coal Co. Ltd.*, (1940) 3 All, ER 15].

It is known as doctrine of notional extension of employment; whether employment extends to the extent of accident depends upon each individual case.

A workman while returning home after duty was murdered within the premises of the employer. It was held that there was casual and proximate connection between the accident and the employment. Since the workman was on spot only for his employment his wife is entitled for compensation [*Naima Bibi v. Lodhne Colliery (1920) Ltd.*, 1977 Lab. I.C. NOC 14]. If an employee in the course of his employment has to be in a particular place by reason where he has to face a peril which causes the accident then the casual connection is established between the accident and the employment (*TNCS Corporation v. Poonamalai*, 1994 II LLN 950).

Answer 6(ii)

Protection of Gratuity

Payment of gratuity is a piece of social welfare legislation and deals with matters relating to payment of gratuity which like pension, provident fund etc. is a retrieval benefit.

Gratuity has been exempted from attachment in execution of any decree or order of any Civil, Revenue or Criminal Court. This relief is aimed at providing payment of gratuity to the person or persons entitled thereto without being affected by any decree/order of attachment by any court stated above.

Answer 6(iii)

Employees' Pension Scheme

Under Section 6A, Government has introduced a new pension scheme titled Employees' Pension Scheme, 1995 w.e.f. 16.11.1995, in place of Family Pension Scheme, 1971.

The Employees' Pension Scheme is compulsory for all the persons who were members of the Family Pension Scheme, 1971. It is also compulsory for the persons who became members of the Provident Fund from 16.11.1995 i.e. the date of introduction of the Scheme. The PF subscribers who were not members of the Family Pension Scheme, have an option to join this Pension Scheme. The Scheme came into operation w.e.f. 16.11.1995, but the employees, including those covered under the Voluntary Retirement Scheme have an option to join the scheme w.e.f. 1.4.1993.

Minimum 10 years contributory service is required for entitlement to pension. Normal superannuation pension is payable on attaining the age of 58 years. Pension

on a discounted rate is also payable on attaining the age of 50 years. Where pensionable service is less than 10 years, the member has an option to remain covered for pensionary benefits till 58 years of age or claim return of contribution/ withdrawal benefits.

The Scheme provides for payment of monthly pension in the following contingencies (a) Superannuation on attaining the age of 58 years; (b) Retirement; (c) Permanent total disablement; (d) Death during service; (e) Death after retirement/ superannuation/permanent total disablement; (f) Children Pension; and (g) Orphan pension.

The amount of monthly pension will vary from member to member depending upon his pensionable salary and pensionable service.

The formula for calculation of monthly members pension is as under:

$$\text{Members Pension} = \frac{\text{*Pensionable Salary} \times (\text{Pensionable Service} + 2)}{70}$$

A separate formula for pension has been prescribed for the members of the ceased Family Pension Scheme, 1971.

The scheme has been amended making dependent parents eligible for pension. Further disabled children are also made eligible for life long pension. The employees have an option to accept the admissible pension or reduced pension with return of capital. In the case of employee opting for 10% less pension than the actual entitlement, the scheme provides for return of capital equivalent to 100 times of the original pension in the event of death of the pensioner.

Under the Scheme, neither the employer nor the employee is required to make any additional contribution. A Pension Fund has been set up from 16.11.95, and the employers' share of PF contribution representing 8.33% of the wage is being diverted to the said Fund. All accumulations of the ceased Family Pension Fund have been merged in the Pension Fund. The Central Government is also contributing to the Pension Fund at the rate of 1.16% of the wage of the employees.

Answer 6(iv)

Purposes for which the ESI Fund may be Expended

Section 28 of the E.S.I. Act provides that Fund shall be expended only for the following purposes:

- (i) payment of benefits and provisions of medical treatment and attendance to insured persons and, where the medical benefit is extended to their families, in accordance with the provisions of this Act and defraying the charge, and costs in connection therewith;
- (ii) payment of fees and allowances to members of the Corporation, the Standing Committee and Medical Benefit Council, the Regional Boards, Local Committees and Regional and Local Medical Benefit Councils;
- (iii) payment of salaries, leave and joining time allowances, travelling and

compensatory allowances, gratuities and compassionate allowances, pensions, contributions to provident or other benefit fund of officers and servants of the Corporation and meeting the expenditure in respect of officers and other services set up for the purpose of giving effect to the provisions of this Act;

- (iv) establishment and maintenance of hospitals, dispensaries and other institutions and the provisions of medical and other ancillary services for the benefit of insured persons and where the medical benefit is extended to their families, their families;
- (v) payment of contribution to any State Government, local authority or any private body or individual towards the cost of medical treatment and attendance provided to insured persons and where the medical benefit is extended to their families, their families including the cost of any building and equipment, in accordance with any agreement entered into by the Corporation;
- (vi) defraying the cost (including all expenses) of auditing the accounts of the Corporation and of the valuation of the assets and liabilities;
- (vii) defraying the cost (including all expenses) of Employees Insurance Courts set up under this Act;
- (viii) payment of any sums under any contract entered into for the purposes of this Act by the Corporation or the Standing Committee or by any officer duly authorised by the Corporation or the Standing Committee in that behalf;
- (ix) payment of sums under any decree, order or award, of any court or tribunal against the Corporation or any of its officers or servants for any act done in execution of his duty or under a compromise or settlement of any suit or any other legal proceedings or claims instituted or made against the Corporation;
- (x) defraying the cost and other charges of instituting or defending any civil or criminal proceedings arising out of any action taken under this Act;
- (xi) defraying expenditure within the limits prescribed, on measure for the improvement of the health and welfare of insured persons and for the rehabilitation and re-employment of insured persons who have been disabled or injured; and
- (xii) such other purposes as may be authorised by the Corporation with the previous approval of the Central Government.

Answer 6(v)

Certification of Standing Orders

Standing Orders as per section 2(g) of the Industrial Employment (Standing Orders) Act, 1946 means rules relating to matters set out in the Schedule to the Act.

Submission of draft Standing Orders by employers to the certifying officer

Section 3 of the Industrial Employment (Standing Orders) Act, 1946 provides that within six months from the date on which this Act becomes applicable to an industrial establishment, the employer of that establishment shall submit to the Certifying Officer five copies of the draft Standing Orders proposed by him for adoption in that establishment.

Such draft Standing Orders shall be in conformity with the Model Standing Orders if any, and, shall contain every matter set out in the Schedule which may be applicable to the industrial establishment.

The draft Standing Orders shall be accompanied by a statement containing prescribed particulars of the workmen employed in the industrial establishment including the name of the trade union, if any, to which they belong.

If the industrial establishments are of similar nature, a group of employers owning those industrial establishments may submit a joint draft of Standing Orders subject to such conditions as may be prescribed.

Conditions for certification of Standing Orders: According to Section 4 of the Act, Standing Orders shall be certifiable if-

- (a) provision is made therein for every matter stated in the Schedule to the Act which is applicable to industrial establishments; and
- (b) the Standing Orders are otherwise in conformity with the provisions of the Act.

It is further provided in Section 4 that it shall be the function of the Certifying Officer or appellate authority to adjudicate upon the fairness or reasonableness of the provisions of the Standing Orders.

The Act has imposed a duty on the Certifying Officer, to consider the reasonableness and fairness of the Standing Orders before certifying the same. The Certifying Officer is under a legal duty to consider that the Standing Orders are in conformity with the Act. If the Certifying Officer finds that some provisions, as proposed by the employer relate to matters which are not included in the Schedule, or if he finds some provisions are unreasonable he must refuse to certify the same.

Question 7

(a) *Distinguish between any two of the following :*

- (i) *'Lay-off' and 'retrenchment' under the Industrial Disputes Act, 1947.*
- (ii) *'Principal employer' and 'immediate employer' under the Employees' State Insurance Act, 1948.*
- (iii) *'Minimum wages' and 'fixation of the minimum rates of wages' under the Minimum Wages Act, 1948. (5 marks each)*

(b) *Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):*

- (i) *As per the provisions of the Payment of Bonus Act, 1965, an employee*

is entitled to bonus provided he has worked for not less than _____ in that year.

- (ii) The industrial dispute is a dispute relating to employment or non-employment or terms of employment or _____ of any person.
 - (iii) Adolescent means a person who has completed _____ of age but not completed his 18th year.
 - (iv) The employer is liable to pay the amount of gratuity within _____ days of its becoming payable to the employee.
 - (v) A period of service shall be deemed to be continuous which has not been interrupted by a period of absence exceeding _____ days. (1 marks each)
- (c) Write the most appropriate answer from the given options in respect of the following :
- (i) Which of the following is not a type of 'bonus' under the Payment of Bonus Act, 1965 —
 - (a) Profit based bonus
 - (b) Customary bonus
 - (c) Attendance bonus
 - (d) Voluntary bonus.
 - (ii) Under the Employees' Provident Funds and Miscellaneous Provisions Act, 1952, what percentage of the basic wage, dearness allowance and retaining allowance of an employee is paid or contributed by the employer—
 - (a) 8%
 - (b) 10%
 - (c) 12%
 - (d) 13%.
 - (iii) Which of the following injuries does not come under the term 'personal injury' under the Workmen's Compensation Act, 1923 —
 - (a) Nervous shock
 - (b) Mental strain
 - (c) Loss of money
 - (d) Breakdown.
 - (iv) Which of the following is considered an 'industry' under the Industrial Disputes Act, 1947 —
 - (a) Posts and Telegraph Department
 - (b) Central Institute of Fisheries
 - (c) Construction and maintenance of National and State highways
 - (d) Dock Labour Board.

- (v) *Under the Industrial Employment (Standing Orders) Act, 1946, which of the following documents must a 'standing order' be in conformity with—*
- (a) *Standard Standing Orders*
 - (b) *Model Standing Orders*
 - (c) *Uniform Standing Orders*
 - (d) *Formal Standing orders.*
- (1 mark each)

Answer 7(a)(i)**Lay off & Retrenchment**

- In lay-off, the employer refuses to give employment due to certain specified reasons, but retrenchment is the termination by the employer, of the service of the workman, for any reason, whatsoever, otherwise than as a punishment inflicted by way of disciplinary action.
- Lay-off is the result of trade reasons but in the case of retrenchment the services of workmen are terminated on account of surplus labour.
- In a lock-out, there is no question of any wages or compensation being paid unless the lock-out is held to be unjustified. In retrenchment either on account of surplus labour or closure, workmen are paid the prescribed compensation.

Answer 7(a)(ii)**Principal Employer & Immediate Employer**

“Principal Employer” as per Section 2(17) of the E.S.I. Act, 1948 means the following:

- (i) in a factory, owner or occupier of the factory and includes the managing agent of such owner or occupier, the legal representative of a deceased owner or occupier and where a person has been named as the manager of the factory under the Factories Act, 1948, the person so named;
- (ii) in any establishment under the control of any department of any Government in India, the authority appointed by such Government in this behalf or where no authority is so appointed the head of the Department.
- (ii) in any other establishment, any person responsible for the supervision and control of the establishment.

According to Section 2(13A) of the E.S.I. Act, 1948 “immediate employer” means a person, in relation to employees employed by or through him, who has undertaken the execution on the premises of a factory or an establishment to which this Act applies or under the supervision of principal employer or his agent, of the whole or any part of any work which is ordinarily part of the work of the factory or establishment of the principal employer or is preliminary to the work carried on, in or incidental to the purpose of any such factory or establishment, and includes a person by whom the services of an employee who has entered into a contract of service with him are temporarily lent or let on hire to the principal employer and includes a contractor.

Answer 7(a)(iii)**Minimum Wages & Fixation of Minimum Wages**

The Minimum Wages Act, 1948 does not define minimum wages. The minimum wage by any way is the starting point. It is the lowest limit or the floor below which no worker should be paid. It should be fixed solely on the requirements of the worker and his family, and in fixing the minimum wage no regard should be had to the capacity of the industry to pay, because the industry which cannot pay the minimum wages should better not exist at all.

Minimum wage does not mean wage just sufficient for bare physical existence. The principle governing fixation of minimum wages is based on ethical considerations and not on any economic ground. The minimum wage has no reference either to the value of the work done by the worker or to the capacity of the industry to pay. It is a bed rock minimum which must be paid in any case to the worker and if a particular industry is unable to pay it, it must shut down.

In fixing minimum rates of wages in respect of any scheduled employment for the first time or in revising minimum rates of wages so fixed, the appropriate Government shall follow either of the two methods specified under Section 5 of the Minimum Wages Act, 1948. These are as follows:

Method One – Appointment of Committee

This method is known as the 'Committee Method'. The appropriate Government may appoint as many committees and sub-committees as it considers necessary to hold enquiries and advise it in respect of such fixation or revision as the case may be. After considering the advice of the committee or committees, the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall come into force on the expiry of three months from the date of the issue of notification unless the notification otherwise provides. [Section 5(1)(a)]

Method Two – Notification of Proposal in the Official Gazette

The method is known as the 'Notification Method'. While fixing minimum wages under Section 5(1)(b), the appropriate Government shall by notification, in the Official Gazette publish its proposals for the information of persons likely to be affected thereby and specify a date not less than 2 months from the date of notification, on which the proposals will be taken into consideration. [Section 5(1)(b)]

After considering the advice of the committee or committees (i.e. method one) or all representations received by it before the date specified in the notification (i.e. method two), the appropriate Government shall, by notification in the Official Gazette fix or revise the minimum rates of wages in respect of each scheduled employment. The fixation or revision shall shall come into force on the expiry of three months from the date of its issue, unless the notification otherwise provides.

Answer 7(b)

- (i) As per the provisions of the Payment of Bonus Act, 1965, an employee is entitled to bonus provided he has worked for not less than **30 days** in that year.

- (ii) The industrial dispute is a dispute relating to employment or non-employment or terms of employment or **Conditions of Labour** of any person.
- (iii) Adolescent means a person who has completed **15th year** of age but not completed his 18th year.
- (iv) The employer is liable to pay the amount of gratuity within **30** days of its becoming payable to the employee.
- (v) A period of service shall be deemed to be continuous which has not been interrupted by a period of absence exceeding **14** days.

Answer 7(c)(i)

- (b) Customary bonus

Answer 7(c)(ii)

- (c) 12%

Answer 7(c)(iii)

- (c) Loss of money

Answer 7(c)(iv)

- (d) Dock Labour Board

Answer 7(c)(v)

- (b) Model Standing Orders

Question 8

Attempt any five of the following stating relevant legal provisions and decided case law, if any :

- (i) *A copy of the 'memorandum of settlement' was not dispatched by the Conciliation Officer to the appropriate government. Will the settlement be treated as invalid ?*
- (ii) *A dispute arose about the payment of subsistence allowance to a suspended employee. He claimed the allowance as per the rates prescribed by the law of the particular State. The employer wanted to pay as per the rate specified in the Industrial Employment (Standing Orders) Act, 1946. Will the employee succeed ?*
- (iii) *Naresh was working in Navodaya School continuously for 30 years. The school has been employing 30 teachers. On attaining the age of superannuation, he retired from service. The management declined to pay gratuity to Naresh. He preferred a claim for the payment of gratuity before the authority concerned under the Payment of Gratuity Act, 1972. Will he succeed ?*
- (iv) *Hotel Harsha Ltd. has engaged an electrician to attend to electrical repairs required in the hotel. There is an agreement between the hotel and the electrician that he will be required to attend to repair work whenever required*

on call. The electrician is paid a consolidated sum of ₹10,000 per month for the services rendered by him, Can the electrician be called an employee of the hotel under the provisions of the Factories Act, 1948 ?

- (v) *Visual Electronics Ltd. sells household consumer durables such as TV, washing machines, electric stoves, etc., of various manufacturers in its sales outlet. While delivering these items to the homes of the customers, it deutes its employees to install and explain the salient features of these items. It pays its employees an additional amount of defray for the actual travelling expenses. The Employees' State Insurance Corporation demanded contribution on this additional payment including travelling expenses under the head 'wages'. Is the demand of Employees' State Insurance Corporation justified?*
- (vi) *Vaibhav Rice Mills is employing 15 persons in its factory for its regular operation. During inspection, the Provident Fund Inspector found that whenever the goods arrived and also whenever the goods were sent out of the factory premises, a few casual labourers were engaged for loading and unloading purposes. The Provident Fund. Inspector demanded the employer to comply with the provisions of the Employees' Provident Funds and Miscellaneous Provisions Act, 1952 on the ground that the total number of employees (including casual labourers) exceeded 20. Is the Provident Fund Inspector justified ?*
- (vii) *Azad Ltd. implemented a scheme of re-organisation of the business: It resulted in the surplus of 10 employees. The company dispensed with their services. The employees union challenged it that it was not a ground for the retrenchment of the employees. Will the union succeed ?*

(4 marks each)

Answer 8(i)

The settlement will be treated as invalid. It is a mandatory requirement under Section 12 of the Industrial Disputes Act, 1947 envisaging duties of conciliation officers.

Section 12(3) of the of the Industrial Disputes Act, 1947 states that if a settlement of the dispute or of any of the matters in dispute is arrived at in the course of the conciliation proceedings, the conciliation officer shall send a report thereof to the appropriate Government or an officer authorised in this behalf by the appropriate Government together with a memorandum of the settlement signed by the parties to the dispute.

It is also provided under Rule 58(3) of the Industrial Disputes (Central) Rules, 1957 that:

Where a settlement is arrived at in the course of conciliation preceding the Conciliation Officer shall send a report thereof to the Central Government together with a copy of the memorandum of settlement signed by the parties to the dispute.

Rule 58(4) provide where a settlement is arrived at between an employer and his workmen otherwise than in the course of conciliation proceeding before a Board or a Conciliation Officer, the parties to the settlement shall jointly send a copy thereof to the Central Government, the Chief Labour Commissioner (Central), New

Delhi, and the Regional Labour Commissioner (Central) and to the Assistant Labour Commissioner (Central) concerned.

Answer 8(ii)

The employee will succeed.

Section 10-A of the Industrial Employment (Standing Orders) Act, 1946 stipulating provisions for Payment of subsistence allowance *inter-alia* provides that where provisions relating to payment of subsistence allowance under any other law for the time being in force in any State are more beneficial than the provisions of this section, the provisions of such other law shall be applicable to the payment of subsistence allowance in that State.

Answer 8(iii)

Teacher was not considered to be an employee under the Payment of Gratuity Act, 1972. The teachers are clearly not intended to be covered by the definition of 'employee'. (*Ahmedabad Private Primary Teachers' Association v. Administrative Officer*, AIR 2004 SC 1426.)

Now the controversy has been set at rest. The definition of "employee" under section 2 (e) of the Act has been amended by the Payment of Gratuity (Amendment) Act, 2009 to cover the teachers in educational institutions retrospectively with effect from 3rd April, 1997. The amendment made to the definition of "employee" has been introduced in pursuance to the judgment of the Supreme Court in the above mentioned case.

In the light of the above, Naresh will succeed.

Answer 8(iv)

The electrician cannot be called the employee of the hotel. In *Chintaman Rao v. State of M.P.*, AIR 1958 SC 388, it was observed that the word 'employment' includes three things in its concept, viz.,

Employer : The employer is one who employs i.e., one who engages the services of other persons;

Employee : the employee is one who works for another for hire; and

The contract of employment : The employment is the result of contract of service between the employer and the employee whereunder the employee agrees to serve the employer subject to his control and supervision.

The *prima facie* test for determination of the relationship between the employer and employee is the existence of the right of the employer to supervise and control the work done by the employee not only in the matter of directing what work the employee is to do but also the manner in which he shall do his work

In the given problem, the electrician has been hired for the services on a consolidated amount of ₹ 10,000 per month. It is agreement for services and not agreement of service. The electrician is required to work as and when required and there is no control or supervision as to the manner in which he has to do the work. He is an independent contractor.

Answer 8(v)

The demand of ESI Corporation is not justified. Travelling allowance paid to employees is to defray special expenses entitled on him by nature of his employment. It does not form part of wages as defined under Section 2(22) of the E.S.I. Act. Therefore, employer is not liable to pay contribution on travelling allowance. [S.Ganesan v. The Regional Director, ESI Corporation, Madras, 2004 Lab.I.C 1147]

Answer 8(vi)

The PF inspector is not justified. Persons employed for a short duration or on account of some urgent necessity or abnormal contingency, which was not a regular features of the business of the establishment cannot be considered as employees for the purpose of determining the employment strength in relation to applicability of Section 1(3) (b). In the case of *R.P.F. Commr., A.P. v. T.S. Hariharan*, A.I.R (1971) SC 1519, the Supreme Court held that casual workers are not covered under Section 1(3)(b).

Answer 8(vii)

In *Parry & Co. Ltd. v. P.C. Pal*, (1970) II LLJ 429, the Supreme Court observed that the management has a right to determine the volume of its labour force consistent with its business or anticipated business and its organisation. If for instance a scheme of reorganisation of the business of the employer results in surplusage of employees, no employer is expected to carry the burden of such economic dead weight and retrenchment has to be accepted as inevitable, however, unfortunate it be. The fact that the implementation of a reorganisation scheme adopted by an employer for reasons of economy and convenience would lead to the discharge of some of the employees, will have no material bearing on the question as to whether the reorganisation has been adopted by the employer bona fide or not. The retrenchment should be bona fide and there should be no victimisation or unfair labour practice on the part of the employer.

In the light of the decision cited above, the union will not succeed.

SECURITIES LAWS AND COMPLIANCES

Time allowed : 3 hours

Maximum marks : 100

PART A

(Answer Question No. 1 which is COMPULSORY
and any three of the rest from this part)

Question 1

- (a) State, with reasons in brief, whether the following statements are true or false :
- (i) The securities market works in a vacuum.
 - (ii) Venture capital pools are similar to hedge funds.
 - (iii) Demutualisation aims to convert a stock exchange from 'not for profit' to 'for profit' company.
 - (iv) Credit rating establishes a link between risk and return.
 - (v) A director nominated by an institution as its representative on the Board of directors is eligible to participate in ESOS. (2 marks each)
- (b) Re-write the following sentences after filling-in the blank spaces with appropriate word(s)/figure(s):
- (i) The market wherein companies mobilise resources through issue of securities is called _____ .
 - (ii) Commercial bills are _____ accepted by buyers for goods or services obtained by them on credit.
 - (iii) A listed company is required to appoint a _____ to liaise with SEBI and stock exchanges.
 - (iv) In order to strengthen know your client (KYC) norms in the cash market and to generate a reliable audit trail, _____ was made mandatory for all transactions in cash market.
 - (v) Revised carry forward system is introduced in place of _____ .
- (1 mark each)

Answer 1(a)

- (i) **False.** The Securities market provides a market place for purchase and sale of securities and thereby ensures transferability of securities and is under defined regulatory framework.
- (ii) **True.** Venture capital pools are similar to hedge funds or private equity. They attract the same class of investors. However, Venture Capital funds invest in the start up or early stages of a company.
- (iii) **True.** The process of demutualization is to convert the traditional "not for-profit" stock exchanges into a "for profit" company and this process is to transform the legal structure from a mutual form to a business corporation form.

- (iv) **True.** An investor or any other interested person uses the credit rating to assess the risk-level and compares the offered rate of return with his expected rate of return.
- (v) **True.** A director nominated by an institution as its representative on the Board of Directors of the company is eligible to participate in the ESOS of the company subject to certain condition prescribed by SEBI.

Answer 1(b)

- (i) The market wherein companies mobilize resources through issue of securities is called **Primary Market**.
- (ii) Commercial bills are **Negotiable Instruments** accepted by buyers for goods or services obtained by them on credit.
- (iii) A listed company is required to appoint a **Compliance Officer** to liaise with SEBI and Stock Exchanges.
- (iv) In order to strengthen Know Your Client (KYC) norms in the cash market and to generate a reliable audit trails, **PAN** was made mandatory for all transaction in cash market.
- (v) Revised carry forward system is introduced in place of **Badla**.

Question 2

(a) Write short notes on any two of the following :

(i) Spot delivery contract

(ii) 'Futures' and 'options'

(iii) Depository participants.

(3 marks each)

(b) Expand the following abbreviations :

(i) STP

(ii) QIBs

(iii) UIN

(iv) IPA

(v) TFTS

(vi) NSDL.

(3 marks)

(c) Explain any three of the following financial instruments :

(i) Commercial paper

(ii) Secured premium notes

(iii) Naked debentures

(iv) Dual convertible bonds.

(2 marks each)

Answer 2(a)(i)**Spot Delivery Contract**

Spot delivery contract means a contract which provides for—

- (a) actual delivery of securities and the payment of a price therefore either on the same day as the date of the contract or on the next day, the actual period taken for the dispatch of the securities or the remittance of money therefore through the post being excluded from the computation of the period aforesaid if the parties to the contract do not reside in the same town or locality;
- (b) transfer of the securities by the depository from the account of a beneficial owner to the account of another beneficial owner when such securities are dealt with by a depository.

Answer 2(a)(ii)**'Futures' and 'Options'**

Futures : A contract obliging one signatory to buy and another to sell a standard quality of a financial instrument on a pre-determined price. Futures may be commodity futures or security futures.

Options : A contract which gives the holder the right to purchase (call) or sell (put) the underlying futures contract or security at a specified price within a specified period of time. Options may be Put or Call options.

Answer 2(a)(iii)**Depository Participants**

SEBI regulations provide various categories of market participants who are eligible to become depository participants. Depository Participant act as an agent of the depository and its role and functions includes opening and maintaining of demat account of the investor; processing Dematerialization and Rematerialization of securities; to make debit/credit in the demat accounts of the investors/his clients as per instructions given by the account holder; providing statements of accounts to the investors; and facilitating pledge or hypothecation of securities held in demat account.

Answer 2(b)

- (i) STP - Straight Through Processing
- (ii) QIBs - Qualified Institutional Buyers
- (iii) UIN - Unique Identification Number
- (iv) IPA - Issuing and Paying Agent
- (v) TFTS - Trade For Trade Settlement
- (vi) NSDL - National Securities Depository Limited

Answer 2(c)(i)**Commercial Paper**

Commercial Paper (CP) is an unsecured money market instrument issued in the form of a promissory note. CP is a privately placed instrument. It enables highly rated corporate borrowers to diversify their sources of short-term borrowings and provides an additional instrument to investors.

Answer 2(c)(ii)**Secured Premium Notes**

Secured Premium Note (SPN) is an instrument, which is secured by a mortgage of immovable property of the company and which is issued at its face value and does not carry any interest and is redeemed at premium in one or more tranches. There can be attached various rights and entitlements with a SPN such as detachable warrant, conversion option, buy back put and call option etc.

Answer 2(c)(iii)**Naked debentures**

Naked Debentures do not carry any charge on the assets of the company. The holders of such debentures do not therefore have the right to attach particular property by way of security as to repayment of principal or interest.

Answer 2(c)(iv)**Dual Convertible Bond**

A dual convertible bond is convertible into either equity shares or fixed interest rate debentures/preference shares at the option of the lender. Depending on the prospects of the project during the conversion period, the lender may exercise either of the options.

Question 3

- (a) *Explain the implications of stamp duty on buy-back of shares by a company from shareholders.* (4 marks)
- (b) *"Securities market enhances the pace of economic growth." Discuss.* (5 marks)
- (c) *Explain any three of the following terms associated with the capital market:*
- (i) *Incubators*
 - (ii) *Private equity players*
 - (iii) *Trade to trade*
 - (iv) *Dematerialisation.* (2 marks each)

Answer 3(a)

Transfer of shares do attract stamp duty vide schedule 1, entry 62 of Indian Stamp act 1899. In case of buy back, shares have to be extinguished with in

7 days from the last date of completion of buy back. Hence, no registration of such shares takes place in the name of the company. The names of members/holders will be struck off. Therefore, buy back can not be construed as transfer and stamp duty would not be payable neither in physical form nor in electronic form.

Answer 3(b)

A well functioning Securities Market is conducive to sustained economic growth. The securities market fosters economic growth to the extent that it-(a) augments the quantities of real savings and capital formation from any given level of national income, (b) increases net capital inflow from abroad, (c) raises the productivity of investment by improving allocation of investible funds, and (d) reduces the cost of capital.

The Securities Market provides a bridge between ultimate savers and ultimate investors and creates the opportunity to put the savings at the disposal of enterprising, thus promising to raise the total level of investment and growth.

Answer 3(c)(i)**Incubators**

An incubator is a hardcore technocrat who works with an entrepreneur to develop a business idea, and prepares a company for subsequent rounds of growth & funding. E-Ventures, Infinity are examples of incubators in India.

Answer 3(c)(ii)**Private Equity Players**

They are established investment bankers. They typically invest into proven/established businesses. They have “financial partners” approach.

Answer 3(c)(iii)**Trade to Trade**

In Trade to trade settlement, selling/buying of shares in that scrip result into giving/taking delivery of shares at the gross level and no intra day settlement/netting off/ square off facility is permitted. The scrips which form part of ‘Z group’ are compulsorily settled on a trade to trade settlement basis. In addition to that surveillance department of Stock Exchange(s) transfer various scrips from time to time on a trade to trade basis to contain the excessive volatility and/or abnormal volumes in the scrip.

Answer 3(c)(iv)**Dematerialization**

Dematerialization is the process by which shares are issued to public in electronic form or the physical/paper form are cancelled and credit in the form of electronic balances are maintained at the depository.

Question 4

- (a) *Explain briefly the code of conduct for merchant bankers prescribed under SEBI Regulations.* (5 marks)
- (b) *"Reserve Bank of India is the main regulator of money market in India." Comment.* (5 marks)
- (c) *Discuss the accounting policies and standards which are to be mandatorily followed by the asset management companies.* (5 marks)

Answer 4(a)

Every Merchant banker is required to abide by code of conduct as per SEBI (Merchant Bankers) Regulations, 1992.

Accordingly they should observe high standards of integrity and fairness in all its dealings with its clients; fulfill its obligations in a prompt ethical & professional manner; exercise due diligence, ensure proper care and exercise independent professional judgment; avoid any conflict of interest and make adequate disclosures; not indulge in unfair competition nor they wean away client of any other Merchant Banker on assurance of higher premium; not make any exaggerated statement, whether oral or written, to the client which would misrepresent the services that the merchant banker is capable of performing for any client or has rendered to any client; endeavour to ensure that all professional dealings are effected in a prompt and efficient manner; not divulge to other clients, press or any other party any confidential information about its client, which has come to its knowledge, without taking prior permission of its client; not make untrue statement or suppress any material fact in any documents, reports or information furnished to Board or to public or to stock exchange; should not be a party to or instrument for - (a) to creation of false market (b) price rigging or manipulation or (c) passing of price sensitive information in respect of securities which are listed and proposed to be listed in any stock exchange to any person or intermediary in the securities market.

Answer 4(b)

Government Securities and Treasury-Bills are securities issued by Reserve Bank of India on behalf of the Government of India to meet the latter's borrowing for financing fiscal deficit. Apart from functioning as a merchant banker to the government, the central bank also regulates the money market and issues guidelines to govern the money market operations. The money market is the major mechanism through which the Reserve Bank influences liquidity and the general level of interest rates. The Bank's interventions to influence liquidity serve as a signaling-device for other segments of the financial system.

Answer 4(c)

The AMC shall follow the accounting policies and standards as specified in Mutual Fund Regulations to provide appropriate details of the scheme-wise disposition of the assets of the fund at the relevant accounting date and the performance during that period together with information regarding distribution or accumulation of income accruing to the unit holder in a fair and true manner. The relevant standards

are Accounting Standard (AS) 10 regarding Accounting for Fixed Assets; AS 29 on Provisions, Contingent Liabilities and Contingent Assets; AS 19 on Leases; AS,9 on Revenue Recognition.

Question 5

(a) Distinguish between any three of the following :

- (i) 'Capital market' and 'money market'.
- (ii) 'Pass through certificates' and 'participation certificates'.
- (iii) 'Fixed coupon rate' and 'floating coupon rate'.
- (iv) 'Open ended schemes' and 'close ended schemes'. (3 marks each)

(b) State any six important clauses of listing agreement. (6 marks)

Answer 5(a)(i)

'Capital Market' and 'Money Market'

Capital Market : The Capital Market is a market for financial investments that are direct or indirect claims to capital. It is wider than the Securities Market and embraces all form of lending and borrowing. The Capital Market comprises the complex of institutions and mechanisms through which intermediate term funds and long-term funds are pooled and made available to business, government and individuals. The Capital Market also encompasses the process by which securities already outstanding are transferred.

Money Market : The money market refers to the market where borrowers and lenders exchange short-term funds to solve their liquidity needs. Money market instruments are generally financial claims that have low default risk, maturities under one year and high marketability.

Answer 5(a)(ii)

'Pass Through Certificates' and 'Participation Certificates'

Pass through Certificates : When mortgages are pooled together and undivided interests in the pool are sold, pass-through securities are created. The pass-through securities promise that the cash flow from the underlying mortgages would be passed through to the holders of the securities in the form of monthly payments of interest and principal.

Participation Certificates : These are strictly inter-bank instruments confined to the Scheduled Commercial Banks. This instrument is a money market instrument with a tenure not exceeding 90 days. The interests on such participation certificate are determined by the two contracting banks.

Answer 5(a)(iii)

'Fixed Coupon Rate' and 'Floating Coupon Rate'

Fixed Coupon Rate : Government Securities may be issued for a notified amount at a fixed coupon. Most State Development Loans or State Government Securities are issued on this basis.

Floating Coupon Rate : Floating coupon rate simply means that the rate of interest is variable. The interest rate payable for the next period is set with reference to a benchmark market rate agreed upon by both the lender and borrower.

Answer 5(a)(iv)

‘Open Ended Schemes’ and ‘Close Ended Schemes’

<i>Open Ended Schemes</i>	<i>Close Ended Schemes</i>
1. Fixed Corpus : Variable corpus due to on going purchase and redemption.	No new units can be offered beyond the limit.
2. No listing on exchange transactions done directly with the fund.	Listed on stock exchange for buying and selling or dealings.
3. Only NAV is available as one price.	Two values are available viz.: NAV and the market trading price.
4. Highly liquid.	Mostly liquid.

Answer 5(b)

Clauses of Listing Agreement

- (i) *Clause – 13.* Notification of any attachment or prohibiting orders against transfer of securities.
- (ii) *Clause – 16.* At least once in a year the books should be closed. Gap between two book closures and/or record dates would be at least 30 days.
- (iii) *Clause – 19.* Convening of Board Meeting for decision on Dividend, Bonus, Rights, convertible debentures, buy-back of securities.
- (iv) *Clause – 31.* To forward the Stock Exchange 6 copies of Annual Reports, notices, resolutions and circulars relating to new issue of capital, including notices under sections 391 or 394 read with section 391 of the Companies Act, 1956. Copies of all proceedings of EGMs/AGMs along with notices and explanatory statements etc.
- (v) *Clause – 32.* Preparation of cash flow statement in accordance with AS-3 of ICAI & related party transactions.
- (vi) *Clause– 35.* Shareholding pattern containing details of promoters’ holdings and non-promoter holdings.
- (vii) *Clause – 41.* Preparation and submission of quarterly financial statements.
- (viii) *Clause–47.* Appointment of Company Secretary as Compliance Officer and Certification regarding Securities Transfer.
- (ix) *Clause – 49.* Compliances with the Corporate Governance norms regarding Composition of Board of Directors and Audit Committee, Mandatory review of certain information by Audit Committee, Disclosures, CEO/CFO Certifications, Compliance Certificate from Practicing Company Secretary or company’s auditor and Report on Corporate Governance etc.

- (x) Clause – 50. Adoption of Accounting Standards as per norms stipulated by ICAI.

PART B

(Answer ANY TWO questions from this part.)

Question 6

- (a) *Discuss briefly the following methods of raising funds from the primary capital market:*
- (i) *Public issue*
 - (ii) *Rights issue*
 - (iii) *Preferential issue*
 - (iv) *Private placement*
 - (v) *Qualified institutional placement (QIP). (3 marks each)*
- (b) *Discuss how the debt market and its instruments help the companies in raising funds. (5 marks)*

Answer 6(a)(i)

Public issue

When an issue/offer of securities is made to new investors for becoming part of shareholders' family of the issuer it is called a public issue. Public issue can be further classified into Initial public offer (IPO) and Further public offer (FPO).

Answer 6(a)(ii)

Rights issue

When an issue of securities is made by an issuer to its shareholders existing as on a particular date fixed by the issuer (i.e. record date), it is called a rights issue. The rights are offered in a particular ratio to the number of securities held as on the record date.

Answer 6(a)(iii)

Preferential issue

Preferential issue means issuance of equity shares to promoter group or selected investors. It covers allotment of fully convertible debentures, partly convertible debentures or any other financial instruments that could be converted into equity shares at a later date. The investors could be institutional investors, private equity investors, high net-worth individuals, or companies.

Answer 6(a)(iv)

Private placement

When an issuer makes an issue of securities to a select group of persons not exceeding 49, and which is neither a rights issue nor a public issue, it is called a private placement. Private placement of shares or convertible securities by listed issuer can be either preferential allotment or Qualified Institutional Placement (QIP).

Answer 6(a)(v)**Qualified Institutional Placement (QIP)**

"Qualified Institutional Placement" means allotment of eligible securities by a listed issuer to qualified institutional buyers on private placement basis in terms of ICDR Regulations. QIP is different from offer of securities to Qualified Institutional Buyers in an IPO. QIP is required to be made on the basis of a placement document which contains all material information including those specified in ICDR Regulations.

Answer 6(b)

The debt market in India comprises mainly of two segments viz., the Government Securities Market consisting of Instruments like Central and State Governments securities, Zero Coupon Bonds (ZCBs), Floating Rate Bonds (FRBs), T-bills and the Corporate Securities Market consisting of FI bonds, PSU Bonds and Debentures/ Corporate bonds. Investors in debt market are the entities who invest in such fixed income instruments. The investors in such instruments are generally Banks, Financial Institutions, Mutual Funds, Insurance Companies, Provident Funds etc. Debt markets are markets for the issuance, trading and settlement in fixed income securities of various types and features. Fixed Income Securities can be issued by almost any legal entity like central and state governments, public bodies, statutory corporations, banks and institutions and corporate bodies. Thus this helps the companies to raise funds like Corporate Debentures, Fixed Income Products and Interest Rate Bonds etc.

Question 7

- (a) Explain the concept of ASBA in an IPO. (5 marks)
- (b) What do you understand by external commercial borrowings (ECBs) ? Discuss the types of ECBs under the automatic route. (5 marks)
- (c) List out some common grievances of investors. (5 marks)
- (d) What are the criteria for compulsory delisting by stock exchanges ? (5 marks)

Answer 7(a)

ASBA is an application for subscribing to an issue, containing an authorization to block the application money in a bank account. In all public issues and rights issues, where not more than one payment option is given, the issuer shall provide the facility of ASBA in accordance with the procedure and eligibility criteria specified by SEBI. However in case of qualified institutional buyers and non-institutional investors the issuer shall accept bids using ASBA facility only. ASBA process is applicable to all book-built public issues which provide for not more than one payment option.

Answer 7(b)

External Commercial Borrowings (ECB) refer to commercial loans in the form of bank loans, buyers' credit, suppliers' credit, securitized instruments (e.g. floating rate notes and fixed rate bonds, non-convertible, optionally convertible or partially

convertible preference shares) availed of from non-resident lenders with a minimum average maturity of 3 years. ECB for investment in real sector-industrial sector, infrastructure sector-in India, and specified service sectors are under Automatic Route, i.e. do not require Reserve Bank / Government of India approval.

Answer 7(c)

Various common grievances of investors in India are as follows:

1. In case of any Public Issue, interest on delayed refund, allotment advice, share certificates and revalidations in case shares are held in physical mode.
2. Grievance relating to share or debentures in unlisted companies.
3. Grievance relating to Deposits in collective investment schemes like plantations etc. and Units of Mutual Funds; Fixed Deposits in Banks And Finance Companies and manufacturing companies.

Answer 7(d)

Criteria for Compulsory Delisting

A recognized stock exchange may, by order, delist equity shares of a company on any grounds prescribed in the rules made under section 21A of the Securities Contracts (Regulation) Act, 1956 (42 of 1956). However, no order shall be made under this sub-regulation unless the company concerned has been given a reasonable opportunity of being heard.

Question 8

Write notes on any five of the following :

- (i) *Promoters' contribution*
- (ii) *Ombudsman*
- (iii) *Investor Education and Protection Fund (IEPF)*
- (iv) *Basis of allotment*
- (v) *Overseas custodian bank*
- (vi) *Indian depository receipts (IDRs).* *(4 marks each)*

Answer 8(i)

Promoter's contribution

The promoters of the issuer should contribute in the public issue as follows:

- (i) in case of an initial public offer, not less than twenty percent of the post issue capital;
- (ii) in case of a further public offer, either to the extent of twenty percent of the proposed issue size or to the extent of twenty per cent. of the post-issue capital;
- (iii) in case of a composite issue, either to the extent of twenty percent of

the proposed issue size or to the extent of twenty percent of the post-issue capital excluding the rights issue component.

Answer 8(ii)**Ombudsman**

“Ombudsman” means any person appointed under regulation 3 of SEBI (Ombudsman) regulations, 2003 and unless the context otherwise requires, includes stipendiary Ombudsman. Regulation 2(n) of the Regulations defines stipendiary Ombudsman.

An Ombudsman has crucial role to play in redressal of investors’ grievances. Any person who has a grievance against a listed company or an intermediary relating to any of the matters specified in SEBI (Ombudsman) Regulations may himself or through his authorized representative or any investors association recognized by SEBI, make a complaint to the Ombudsman within whose jurisdiction the registered or corporate office of such listed company or intermediary is located.

Answer 8(iii)**Investor Education and Protection Fund (IEPF)**

Investor Education and Protection Fund (IEPF) has been established under Section 205C of The Companies Act, 1956. The IEPF stipulate the activities related to investor education awareness and protection for which the financial sanction can be provided under IEPF.

Activities stipulated under IEPF Rules:

- Education Programme through media;
- Organizing seminars and symposia;
- Proposals for registration of Voluntary Associations or Institution or other organizations engaged in Investor Education and Protection activities;
- Proposals for projects for Investors’ Education and Protection including research activities and proposals for financing such projects;
- Coordinating with institutions engaged in Investor Education, awareness and protection activities.

Answer 8(iv)**Basis of Allotment**

In a public issue of securities, the Executive Director/Managing Director of the Designated Stock Exchange along with the post issue Lead Merchant Banker and the Registrars to the Issue shall be responsible to ensure that the basis of allotment is finalized in a fair and proper manner in accordance with the Regulations. However in case of book building portion of a book built public issue, SEBI (ICDR) Regulations, shall be applicable.

Answer 8(v)**Overseas Custodian Bank**

Overseas Custodian Bank means a banking company which is established in a country outside India and has a place of business in India and acts as custodian for the equity shares of issuing company against which IDRs are proposed to be issued by having a custodial arrangement or agreement with the Domestic Depository or by establishing a place of business in India.

Answer 8(vi)**Indian Depository Receipts (IDRs)**

An IDR is an instrument-

- denominated in Indian Rupees
- in the form of a depository receipt
- created by a Domestic Depository (custodian of securities registered with the Securities and Exchange Board of India)
- against the underlying equity of issuing foreign company.

IDRs are issued by 'Issuing Company' which means a company incorporated outside India, making an issue of IDRs through a domestic depository.
