

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

JUNE 2015

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

EXECUTIVE PROGRAMME

UPDATING SLIP

COST AND MANAGEMENT ACCOUNTING

MODULE – I – PAPER 1

<i>Examination Session</i>	<i>Question No.</i>	<i>Updating required in the answer</i>
(1)	(2)	(3)
All Previous Sessions	—	All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which is still in force.

(ii)

UPDATING SLIP

TAX LAWS AND PRACTICE

MODULE – I – PAPER 2

<i>Examination Session</i>	<i>Question No.</i>	<i>Updation required in the answer</i>
All Previous Sessions	—	<p>The Tax Laws 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 for December 2015 examination :</p> <ol style="list-style-type: none">1. For Direct taxes, Finance (No.2) Act, 2014 is applicable.2. Applicable Assessment year is 2015-16 (Previous Year 2014-15).3. Since, Wealth Tax Act, 1957 has been abolished w.e.f. A.Y 2016-17, the questions from the same will not be asked in examination from December 2015 session onwards.4. For Indirect Taxes, all changes made by the Finance Act, 2015 are also applicable.5. Students are also required to update themselves on all the relevant Notifications, Circulars, Clarifications, etc. issued by the CBDT, CBEC & Central Government, on or before six months prior to the date of Examination.

(iii)

UPDATING SLIP

COMPANY LAW

MODULE – I – PAPER 3

<i>Examination Session</i>	<i>Question No.</i>	<i>Updating required in the answer</i>
(1)	(2)	(3)
All Previous Sessions	—	<p>All answers are based on the notified provisions of Companies Act, 2013 and the provisions of Companies Act, 1956 which is still in force.</p> <p>SEBI (ICDR) Amendment Regulations. 2009 as amended from time to time.</p> <p>Answers pertaining to Corporate Governance to be updated according to New Revised Clause 49 of the Listing Agreement.</p>

(iv)

UPDATING SLIP

ECONOMIC AND COMMERCIAL LAWS

MODULE – I – PAPER 4

<i>Examination Session</i>	<i>Question No.</i>	<i>Updating required in the answer</i>
(1)	(2)	(3)
All Previous Sessions	—	Foreign Trade Policy 2015-20. Foreign Direct Investment Policy 2015.

EXECUTIVE PROGRAMME EXAMINATION

JUNE 2015

COST AND MANAGEMENT ACCOUNTING - SELECT SERIES

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

1. The establishment of budgets, standard costs and actual costs of operations, processes, activities or products and the analysis of variances, profitability or the social use of funds is known as —
 - (A) Costing
 - (B) Cost Accounting
 - (C) Cost Accountancy
 - (D) Financial Accounting.
2. Under which of the following inventory control techniques, two piles or bundles are maintained for each item of stock —
 - (A) Min-max plan
 - (B) Order cycling system
 - (C) Two-bin system
 - (D) ABC analysis.
3. Costs which are constant for a given level of output and then increase by a fixed amount at a higher level of output are called —
 - (A) Step costs
 - (B) Differential costs
 - (C) Committed costs
 - (D) Opportunity costs.
4. A store ledger is a record of receipts, issues and closing balances of material by entering —
 - (A) Quantity only
 - (B) Quantity and value
 - (C) Value only
 - (D) Quality only.
5. Interest on internally generated funds is an example of —
 - (A) Differential cost
 - (B) Joint cost

- (C) Common cost
(D) Imputed cost.

6. 'Contract costing' is used in which of the following —

- (A) Ship building
(B) Textile industry
(C) Paper manufacturing
(D) Nursing homes.

7. Amaze Ltd. manufactures ring binders which are embossed with customer's own logo. A customer has ordered a batch of 500 binders. The following information gives the cost for a typical batch of 100 binders :

Direct material	₹50
Direct labour	₹20
Machine set-up	₹5
Design and art work	₹15
Prime cost	<u>₹90</u>

Direct employees are paid on piece work basis. Amaze Ltd. absorbs production overheads @ 10% of direct wages. 5% is added to the total production cost of each batch to allow for selling and distribution expenses. Profit margin is 20% of sales value. Selling price of 500 binders will be —

- (A) ₹605
(B) ₹120.75
(C) ₹603.75
(D) ₹386.

8. Which of the following formula is used to calculate wage payment under Barth's scheme —

- (A) Hourly rate $\times \sqrt{\text{standard time} \times \text{actual time}}$
(B) Standard time \times
(C) Actual time $\times \sqrt{\text{standard time} \times \text{hourly rate}}$
(D) Actual time $\times \sqrt{\text{standard output} \times \text{hourly rate}}$

9. When the sales increase from ₹45,000 to ₹60,000, the profit increases by ₹5,000. P/V Ratio would be —

- (A) 20%

- (B) 30%
 (C) 33.33%
 (D) 66.67%.

10. The following data relates to two activity levels of production :

	<i>Level I</i>	<i>Level II</i>
No. of units :	4,000	5,500
Overheads (₹) :	2,80,000	3,50,000

Variable cost per unit would be —

- (A) ₹46.67
 (B) ₹133.33
 (C) ₹70
 (D) ₹64.
11. A product whose direct material costs and direct labour costs are ₹200 and ₹100 would consume 3 hours, 4 hours and 5 hours in department A, B and C respectively. Overheads absorption rate is – A : ₹4.5 per hour, B : ₹5 per hour and C : ₹10.5 per hour. The total cost of the product is —

- (A) ₹486
 (B) ₹386
 (C) ₹214
 (D) ₹500.

12. Given below are the costing records of a factory :

Cost of machine	₹1,00,000
Scrap value	₹5,000
Freight and installation charges	₹5,000
Repairs and maintenance cost	₹1,000 per month
Wages of operator	₹5,000 per month
Estimated life	10 years

Factory operates 2,000 hours per year.

Power : 10 units per hour @ 50 paise per unit.

The machine hour rate will be —

- (A) ₹27 per hour
 (B) ₹10.5 per hour
 (C) ₹56 per hour
 (D) ₹46 per hour.

13. Cost unit applicable to bicycle industry is —
- (A) Per part of bicycle
 - (B) Per bicycle
 - (C) Per thousand bicycles
 - (D) Per day.
14. In contract costing, if the amount of work certified is $\frac{1}{2}$ or more but not near to completion, profit to be transferred to the statement of profit and loss can be calculated using the formula —
- (A) $\frac{1}{2} \times \text{notional profit} \times \frac{\text{cash received}}{\text{work certified}}$
 - (B) $\frac{1}{3} \times \text{notional profit} \times \frac{\text{cash received}}{\text{work certified}}$
 - (B) $\frac{2}{3} \times \text{notional profit} \times \frac{\text{cash received}}{\text{work certified}}$
 - (D) $\text{Estimated profit} \times \frac{\text{work certified}}{\text{cash received}}$
15. Which of the following is not an objective of time-booking —
- (A) Apportionment of overheads against jobs
 - (B) Preparation of payrolls
 - (C) Ascertaining idle time for the purpose of control
 - (D) Calculation of labour cost of jobs done.
16. A worker is allowed 2 hours to produce 5 units of a product. Wages are paid to the worker @ 20 per hour. In a 48 hours week, the worker produced 150 units. The earnings of the worker as per Rowan plan will be —
- (A) ₹1,940
 - (B) ₹1,450
 - (C) ₹1,553
 - (D) ₹1,152.
17. Sunk costs are —
- (A) Opportunity costs
 - (B) Costs to be incurred in future
 - (C) Not relevant for decision making
 - (D) Controllable costs.

- 18.** Bill of material acts as an authorisation to the stores department in procuring the material and all the materials listed on the bill are sent to the —
- (A) Sales department
 - (B) Production department
 - (C) Accounts department
 - (D) Stores department.
- 19.** Which of the following method is based on the assumption that costliest materials are issued first and inventory is valued at the lowest possible price —
- (A) FIFO method
 - (B) LIFO method
 - (C) Highest-in-first-out method
 - (D) Weighted average method.
- 20.** The rate of change of labour force in an organisation during a specified period is called —
- (A) Labour efficiency
 - (B) Labour turnover
 - (C) Labour productivity
 - (D) Labour planning.
- 21.** Margin of safety can be calculated using the formula —
- (A) Total sales – Break-even sales
 - (B) Fixed cost ÷ P/V ratio
 - (C) P/V ratio ÷ Profit
 - (D) Fixed cost ÷ Contribution.
- 22.** Fixed cost is a cost —
- (A) Which remains fixed for each unit of output
 - (B) Which remains fixed in total during a given period despite changes in output
 - (C) Which is partly fixed and partly variable in relation to the output
 - (D) Which changes in total in proportion to the changes in output.
- 23.** For a product-X, following information is available :
- | | | |
|------------------------------|---|--------------|
| Maximum consumption per week | : | 300 units |
| Normal consumption per week | : | 200 units |
| Re-order period | : | 2 to 4 weeks |
- The re-order level will be —
- (A) 400 units
 - (B) 1,200 units

- (C) 600 units
(D) 800 units.
24. A company requires 1,500 units of an item per month. The cost of each unit is ₹30. The cost of placing an order is ₹200 and the material carrying charges work out to be 20% of the average material. The economic order quantity (EOQ) is —
- (A) 1,095 units
(B) 316 units
(C) 490 units
(D) 33 units.
25. A company manufactures several components in batches. The following data relates to one component :
- | | | |
|-----------------------------|---|--------------|
| Annual demand | : | 32,000 units |
| Set-up cost per batch | : | ₹120 |
| Annual rate of interest | : | 12% |
| Cost of production per unit | : | ₹16 |
- The economic batch quantity is —
- (A) 4,000 units
(B) 3,000 units
(C) 2,000 units
(D) 2,500 units.
26. A product is sold at ₹150 per unit and its variable cost is ₹70 per unit. The fixed expenses of the business are ₹8,000 per year. Break-even point (in units) is —
- (A) 200 units
(B) 50 units
(C) 115 units
(D) 100 units.
27. Following information is available regarding a product—X :
- 1st January, 2015 :
- | | | |
|-----------------|---|---------------|
| Opening balance | : | 50 units @ ₹4 |
|-----------------|---|---------------|
- Receipts :
- | | | |
|--------------------------------|---|-------------------|
| 5 th January, 2015 | : | 100 units @ ₹5 |
| 12 th January, 2015 | : | 200 units @ ₹5.50 |

Issues :

2nd January, 2015 : 30 units

18th January, 2015 : 170 units

The value of closing stock according to FIFO method is —

- (A) ₹660
- (B) ₹770
- (C) ₹825
- (D) ₹1,100.

- 28.** The budgeted fixed overheads for a budgeted production of 10,000 units is ₹20,000. For a certain period the actual production was 11,000 units and actual expenditure ₹24,000. The volume variance is —

- (A) ₹2,000(F)
- (B) ₹4,000(A)
- (C) ₹2,000(A)
- (D) ₹4,000(F).

- 29.** A document which sets out the responsibility of the persons engaged in the routine of and the procedures, forms and records required for budgetary control is called —

- (A) Budget centre
- (B) Budget report
- (C) Budget controller
- (D) Budget manual.

- 30.** A budget that gives a summary of all the functional budgets and budgeted statement of profit and loss is called —

- (A) Flexible budget
- (B) Master budget
- (C) Performance budget
- (D) Zero base budget.

- 31.** A company estimates its quarter wise sales (in units) for the next year as under:

Quarter	I	II	III	IV
Sales (units)	30,000	37,500	41,250	45,000

The opening stock of finished goods is 10,000 units and the company expects to maintain the closing stock of finished goods at 16,250 units at the end of the

year. The production pattern in each quarter is based on 80% of the sales of the current quarter and 20% of the sales of the next quarter. The production for quarter IV will be —

- (A) 36,000 units
- (B) 42,000 units
- (C) 48,250 units
- (D) 38,250 units.

32. Two workmen 'X' and 'Y' produce the same product using the same material. 'X' is paid bonus according to Halsey plan, while 'Y' is paid bonus according to Rowan plan. The time allowed to manufacture the product is 100 hours. 'X' takes 60 hours and 'Y' takes 80 hours to complete the product. The normal hourly rate of wages of workman 'X' is ₹24 per hour. The total earnings of both the workmen are same. The normal hourly rate of wages of workman 'Y' will be —

- (A) ₹25 per hour
- (B) ₹30 per hour
- (C) ₹20 per hour
- (D) ₹22.5 per hour.

33. Budget which remains unchanged regardless of the actual level of activity is known as —

- (A) Fixed budget
- (B) Functional budget
- (C) Flexible budget
- (D) Cash budget.

34. Estimated wages for January is ₹4,000 and for February ₹4,400. If the delay in payment of wages is 1/2 month, the amount of wages to be considered in cash budget for the month of February will be —

- (A) ₹4,000
- (B) ₹4,400
- (C) ₹4,600
- (D) ₹4,200.

35. Which of the following formula is used to calculate efficiency ratio —

(A) $\frac{\text{Standard Time}}{\text{Actual Time}} \times 100$

(B) $\frac{\text{Actual Time}}{\text{Standard Time}} \times 100$

(C) $\times 100$

(D) $\times 100.$

36. Crown Ltd. has forecast its sales for the next three months as follows :

April : 12,000 units, May : 15,000 units, June : 17,000 units. Opening stock as on 1st April is expected to be 3,500 units. Closing stock should be equal to 20% of the coming month's sales needs. The number of units required to be produced in May is —

- (A) 14,600 units
- (B) 11,500 units
- (C) 15,400 units
- (D) 13,600 units.

37. Profit-Volume ratio can be improved by —

- (A) Increasing selling price per unit
- (B) Reducing the direct and variable costs
- (C) Switching the production to products showing higher profit-volume ratio
- (D) All of the above.

38. Which of the following is the social purpose of cost audit —

- (A) Detection and correction of abnormal losses
- (B) Detection of errors and frauds
- (C) Determination of inventory valuation
- (D) Pinpointing areas of inefficiency and mismanagement for the benefit of shareholders and consumers.

39. The net profit of a company is ₹2,00,000, preference dividend ₹25,000 and taxes paid ₹15,000. Number of equity shares is 1,00,000. The earnings per share (EPS) is —

- (A) ₹1.5
- (B) ₹1.6
- (C) ₹2
- (D) ₹1.75.

40. The current ratio of Brave Ltd. is 2 : 1, while quick ratio is 1.8 : 1. If the current liabilities are ₹40,000, the value of stock will be —

- (A) ₹12,000

- (B) ₹6,500
(C) ₹8,000
(D) ₹10,000.
41. In an organisation, working capital is ₹1,00,000 and current ratio 3 : 1. The value of current assets is —
(A) ₹1,50,000
(B) ₹1,00,000
(C) ₹50,000
(D) ₹15,000.
42. In contract costing, which of the following provides safeguard against any fluctuation in the prices of material, labour, etc.
(A) Pricing clause
(B) Exclusion clause
(C) Arbitration clause
(D) Escalation clause.
43. Following information is available for ABC Constructions Ltd. :
- | | |
|-----------------------------|----------|
| Material issued to contract | ₹ 11,800 |
| Wages | ₹ 23,200 |
| Plant installed | ₹ 4,600 |
| Plant at site at the end | ₹ 3,800 |
| Work un-certified | ₹ 1,200 |
| Notional loss on contract | ₹ 1,960 |
- Work certified will be —
(A) ₹31,480
(B) ₹31,840
(C) ₹37,480
(D) ₹31,760.
44. An outcome of a production process considered as relatively less important as compared to the main product is called —
(A) By-product
(B) Co-product

- (C) Joint product
(d) Core product.
45. A transport company is running 4 buses between two cities, which are 60 Kms. apart. Seating capacity of each bus is 45 passengers. Actual passengers carried by each bus is 80% of seating capacity. All buses run on all days of the month. Each bus makes one round trip per day. Assuming 30 days in a month, the passenger Kms. are —
- (A) 5,62,500
(B) 5,18,400
(C) 6,40,000
(D) 2,59,200.
46. Working capital ratio is also known as —
- (A) Quick ratio
(B) Debt-equity ratio
(C) Current ratio
(D) Liquid ratio.
47. Credit sales of Jump Ltd. for the year is ₹12,00,000 and debtors at the end of year ₹2,40,000. Assuming 360 days in a year, average collection period will be—
- (A) 60 Days
(B) 72 Days
(C) 180 Days
(D) 80 Days.
48. For the financial year ended 31st March 2015, the figures extracted from the balance sheet of Excel Ltd. are as under :
- Opening stock ₹29,000
Closing stock ₹31,000
Purchases ₹2,42,000.
- The stock turnover ratio will be —
- (A) 12 Times
(B) 15 Times
(C) 9 Times
(D) 8 Times.

49. Which of the following is a method used in analysing financial statements —
- (A) Variance analysis
 - (B) Trend analysis
 - (C) Break-even analysis
 - (D) Budget analysis.
50. In case of a financial enterprise, interest received on debentures held as investment is —
- (A) Financing activity
 - (B) Investing activity
 - (C) Operating activity
 - (D) None of the above.
51. Which of the following is not a method of segregating semi-variable costs into fixed and variable costs —
- (A) Least squares method
 - (B) High and low points method
 - (C) Standard cost method
 - (D) Comparison by level of activity method.
52. As per Accounting Standard - 3, cash equivalents include —
- (A) Treasury bills
 - (B) Commercial papers
 - (C) Money market funds
 - (D) All of the above.
53. Cash payments to and on behalf of employees is an example of cash flow from —
- (A) Operating activity
 - (B) Investing activity
 - (C) Financing activity
 - (D) None of the above.
54. The capacity variance is ₹52,000 (F), calender variance is ₹24,064 (A). The volume variance will be —
- (A) ₹27,936 (F)
 - (B) ₹76,064 (A)

(C) ₹27,936 (A)

(D) ₹76,064 (F).

55. Net profit before working capital changes of Super Ltd. is ₹4,35,000. Changes in working capital during the year are as follows :

<i>Particulars</i>	₹
Decrease in stock	2,58,000
Decrease in bills payable	8,400
Increase in bills receivable	38,800
Increase in prepaid expenses	2,500
Increase in outstanding expenses	7,800

Cash generated from operation for Super Ltd. will be —

(A) ₹2,18,900

(B) ₹7,45,500

(C) ₹6,51,100

(D) ₹2,34,500.

56. Which section of the Companies Act, 2013 deals with audit of cost accounting records —

(A) Section 158

(B) Section 148

(C) Section 168

(D) Section 139.

57. Selling price of a product is ₹550 per unit, variable cost ₹50 per unit and fixed cost 10,000. The number of units required to be sold to earn a profit of ₹10,000 will be —

(A) 400

(B) 40

(C) 36

(D) 220.

58. Make or buy decisions are made by comparing _____ cost with outside purchasing price.

(A) Fixed

(B) Variable

- (C) Sunk
(D) Joint.
59. Selling price of a product - X is ₹50 per unit, variable cost ₹20 per unit and 2 Kgs. of raw material is needed to produce a unit of product - X. The contribution per Kg. of raw material will be —
- (A) ₹30
(B) ₹15
(C) ₹60
(D) ₹50.
60. Material usage variance can be calculated using the formula —
- (A) (Standard quantity for actual output – Actual quantity) × Actual price
(B) (Standard quantity for actual output – Actual quantity) × Standard price
(C) (Standard price – Actual price) × Actual quantity
(D) (Standard price – Actual price) × Standard quantity.
61. Which of the following does not result into inflow of funds in case of fund flow statement —
- (A) Issue of equity share capital
(B) Premium received on issue of shares/debentures
(C) Sale of investments
(D) Cash received from debtors.
62. When is the following entry passed in non-integrated system —
Costing Profit and Loss A/c.....Dr.
 To Overheads Suspense A/c
- (A) Under absorption of overheads which is not yet adjusted
(B) Over absorption of overheads
(C) Overheads incurred and accrued
(D) Allocation of indirect labour.
63. In an organisation, provision for taxation as on 31st December, 2013 was ₹16,000 and on 31st December, 2014 ₹18,000. Provision for taxation of ₹19,000 was made during the year 2014. The tax paid during the year is —
- (A) ₹17,000
(B) ₹19,000

- (C) ₹2,000
(D) ₹16,000.
64. Which of the following statement is not true —
- (A) Fund flow statement is also known as statement of sources and application of funds
(B) Fund is equal to current assets *minus* current liabilities
(C) There is an inverse relationship between current assets and working capital
(D) Fund flow statement is prepared on accrual basis.
65. In a break-even chart, which of the following pair of lines make the angle of incidence —
- (A) Sales line and variable cost line
(B) Sales line and total cost line
(C) Sales line and fixed cost line
(D) Fixed cost line and total cost line.
66. In an organisation, current ratio is 2.5, liquid ratio 1.5, prepaid expenses nil and stock ₹4,000. The amount of current liabilities is —
- (A) ₹20,000
(B) ₹40,000
(C) ₹80,000
(D) ₹4,000.
67. A chemical is manufactured by combining two standard items Input-X (Standard price ₹60/kg) and Input-Y (₹45/kg) in the ratio 60%:40%. Ten percent of input is lost during processing. If during a month 1,200 Kgs. of chemical is produced incurring a total cost of ₹69,600, the total material cost variance will be —
- (A) ₹2,000(F)
(B) ₹2,400(A)
(C) ₹2,400(F)
(D) ₹3,000(A).
68. Which of the following is an objective to be achieved through Cost Accounting Standards —
- (A) To assist cost accountants in preparation of uniform cost statements
(B) To provide better guidelines on standard cost accounting practices
(C) To help Indian industry and the Government towards better cost management
(D) All of the above.

- 69.** Following information is available regarding an organisation :
- | | |
|---------------------------|-------------|
| Direct material purchased | : ₹1,50,000 |
| Direct material consumed | : ₹80,000 |
| Direct labour | : ₹50,000 |
| Direct expenses | : ₹30,000 |
| Manufacturing overheads | : ₹20,000 |
- The prime cost for the organisation is —
- (A) ₹1,60,000
(B) ₹2,90,000
(C) ₹2,30,000
(D) ₹1,80,000.
- 70.** No. of workers on the payroll :
- | | |
|-------------------------------|-------|
| At the beginning of the month | : 600 |
| At the end of the month | : 700 |
- During the month, 5 workers left, 20 workers were discharged and 75 workers were recruited. Of these, 10 workers were recruited in the vacancies of those leaving while the rest were engaged for an expansion scheme. The labour turnover rate according to replacement method will be —
- (A) 1.54%
(B) 6%
(C) 3%
(D) 1.82%.
- 71.** In case of rising prices, FIFO method will provide —
- (A) Lowest value of closing stock and profit
(B) Highest value of closing stock and profit
(C) Highest value of closing stock but lowest value of profit
(D) Lowest value of closing stock but highest value of profit.
- 72.** Standard hourly rate is ₹5 per hour and actual rate ₹4.50 per hour. The labour rate variance is 1,500(F). The actual labour hours worked is —
- (A) 1,500 Hours
(B) 7,500 Hours

- (C) 3,000 Hours
(D) 6,750 Hours.
73. If the sales of a product is ₹94,080 and the profit margin on cost 12%, the amount of profit will be —
- (A) ₹7,800
(B) ₹11,290
(C) ₹8,580
(D) ₹10,080.
74. If efficiency of a worker is above 100% then as per Merrick's differential piece rate system the worker will get —
- (A) Normal piece rate wages
(B) 110% of the normal piece rate wages
(C) 120% of the normal piece rate wages
(D) 150% of the normal piece rate wages.
75. Normal idle time is —
- (A) Treated as part of cost of production
(B) Not included as a part of cost of production
(C) Charged to costing profit and loss account
(D) Separately shown in financial statements.
76. Actual production during a month by worker-'X' is 1,000 units. If standard production per month per worker is 1,000 units and piece work rate is ₹5 per unit, the total monthly remuneration of worker 'X' under the Gantt's Task and Bonus Scheme will be —
- (A) ₹5,000
(B) ₹5,500
(C) ₹6,000
(D) ₹6,600.
77. Rent, rates and insurance of factory and office are examples of —
- (A) Direct expenses
(B) Indirect expenses
(C) Notional expenses
(D) Miscellaneous expenses.

78. The following information pertains to Expert Ltd. :

<i>Particulars</i>	<i>31.12.2013</i> (₹)	<i>31.12.2014</i> (₹)
Creditors	86,600	98,400
Outstanding expenses	85,000	1,15,000
Provision for tax	1,50,000	1,60,000
Debtors	2,68,000	2,54,000
Stock	1,40,000	1,75,000

Net profit before working capital changes is ₹5,56,000. The cash flow from operating activities will be —

- (A) ₹4,26,800
- (B) ₹5,76,800
- (C) ₹5,35,200
- (D) ₹4,16,800.

79. The following data is available for Akhil Ltd. for the year ended 31st March 2015:

Administrative overheads	:	₹2,50,000
Production overheads	:	₹2,74,200
Factory cost	:	₹3,42,800
Work-in-progress	:	₹74,000
Machine hour	:	4,000 hours

The absorption rate for production overheads is —

- (A) ₹68.55
- (B) ₹216.75
- (C) ₹235.25
- (D) ₹198.25

80. In activity based costing, an item for which cost measurement is required is called —

- (A) Cost driver
- (B) Cost object
- (C) Allocation
- (D) Cost pool.

81. Under activity based costing, 'material ordering' is considered as —
- (A) Unit level activity
 - (B) Batch level activity
 - (C) Product level activity
 - (D) Facility level activity.
82. Which of the following items are purely financial incomes —
- (A) Discount on issue of shares
 - (B) Interest on bank loan
 - (C) Transfer fees received
 - (D) Notional interest on capital employed.
83. The budgeted fixed overheads amounted to ₹75,000. The budgeted and actual production amounted to 15,000 units and 20,000 units respectively. This means that there will be an —
- (A) Under-absorption of ₹25,000
 - (B) Under-absorption of ₹18,750
 - (C) Over-absorption of ₹25,000
 - (D) Over-absorption of ₹18,750.
84. In Process-A, 100 units of raw material were introduced at a cost of ₹1,000. Manufacturing wages were ₹500 and general expenses ₹102. Out of the units introduced, 10% are normally lost in the course of manufacture and they have scrap value of ₹3 each. The output of Process-A was 75 units. The value of abnormal loss in Process-A is —
- (A) ₹45
 - (B) ₹168
 - (C) ₹262
 - (D) ₹270.
85. Which of the following is generally used as cost unit in cement industry —
- (A) Per tonne
 - (B) Per kilolitre
 - (C) Per kilogram
 - (D) Per gallon.
86. What will be the treatment of overtime premium in cost accounting, if it is due to circumstances beyond control —
- (A) Charged to general overheads
 - (B) Charged to the job directly

- (C) Charged to the concerned department
(D) Charged to costing profit and loss account.
- 87.** The objective of CAS-1 is —
(A) Collection, allocation, apportionment and absorption of overheads
(B) Determination of capacity
(C) Preparation of cost statement
(D) Determination of average/equalised transportation cost.
- 88.** The costing method in which fixed factory overheads are added to inventory is
(A) Activity based costing
(B) Marginal costing
(C) Direct costing
(D) Absorption costing.
- 89.** Which of the following is not an objective of management accounting —
(A) Formulation of plans and policy
(B) Assisting in decision making
(C) Preparation of financial statements
(D) Interpretation of financial documents.
- 90.** An input of 6,000 Kgs. of material is introduced into the process and the expected loss is 5%. If the actual output from the process is 4,500 Kgs., the abnormal loss is —
(A) 2,100 Kgs.
(B) 1,500 Kgs.
(C) 1,200 Kgs.
(D) 225 Kgs.
- 91.** A company has annual fixed cost of ₹1,68,000. In the year 2013-14, sales amounted to ₹ 6,00,000 as compared to ₹4,50,000 in the preceding year 2012-13. The profit in the year 2013-14 was ₹42,000 more than that in year 2012-13. The break- even sales of the company is —
(A) ₹6,00,000
(B) ₹6,20,000
(C) ₹5,60,000
(D) ₹4,08,000.
- 92.** In Rise Ltd., cash sales is 25% and credit sales 75%. Sales for November, 2014 is ₹15,00,000, December, 2014 ₹14,00,000, January, 2015 ₹16,00,000, February, 2015 ₹10,00,000 and March, 2015 ₹9,00,000. 60% of the credit sales are collected in the next month after sales, 30% in the second month and 10% in the third month. No bad debts are anticipated. The cash collected in the month of March, 2015 from debtors is —
(A) ₹14,60,000

- (B) ₹14,20,000
 (C) ₹12,20,000
 (D) ₹9,15,000.
- 93.** Volume variance is sub-divided into —
 (A) Efficiency variance and capacity variance
 (B) Efficiency variance, capacity variance and calendar variance
 (C) Expenditure variance and efficiency variance
 (D) Expenditure variance, capacity variance and calendar variance.
- 94.** A factor which limits the activities of an undertaking and which is taken into account while preparing budget is known as —
 (A) Budget manual
 (B) Budget controller
 (C) Budget key factor
 (D) Budget centre.
- 95.** Which of the following methods is used to account for the under-absorption and over-absorption of overheads —
 (A) Use of supplementary rates
 (B) Carrying forward of overheads
 (C) Writing-off to costing profit and loss account
 (D) All of the above.
- 96.** According to Chartered Institute of Management Accountants (CIMA), cost attribution to cost units on the basis of benefits received from indirect activities e.g. ordering, setting-up, assuring quality is known as —
 (A) Absorption costing
 (B) Marginal costing
 (C) Activity based costing
 (D) Job costing.
- 97.** On 31st March, 2015, profit as per financial accounts was ₹50,000. A comparison of cost and financial accounts revealed the following :
- | | | |
|--|---|--------|
| Works overheads over-absorbed | : | ₹8,500 |
| Excess depreciation charged
in cost accounts | : | ₹3,000 |
| Interest on investments included
in financial accounts only | : | ₹2,500 |

From the above information, the profit as per cost accounts will be —

- (A) ₹47,000
- (B) ₹36,000
- (C) ₹41,000
- (D) ₹53,000.

98. The standard hourly rate is ₹5 per hour and actual rate ₹4.50 per hour. If the labour rate variance is ₹1,500(F), the actual labour hours worked is —

- (A) 1,500 hours
- (B) 7,500 hours
- (C) 3,000 hours
- (D) 6,750 hours.

99. Net works cost	:	₹3,00,000
Administrative overheads	:	₹1,00,000
Opening stock of finished goods	:	nil
Closing stock of finished goods	:	₹20,000
Selling overheads	:	₹10,000

From the above information, the cost of sales will be —

- (A) ₹4,30,000
- (B) ₹3,90,000
- (C) ₹3,70,000
- (D) ₹4,10,000.

100. Sunny Ltd. makes product-A which sells at ₹80 per unit. Total fixed costs are ₹28,000 and marginal cost ₹42 per unit. The sales level (in units) that will provide a profit of ₹10,000 is —

- (A) 1,200 Units
- (B) 1,500 Units
- (C) 1,250 Units
- (D) 1,000 Units.

ANSWER KEY
COST AND MANAGEMENT ACCOUNTING - SELECT SERIES

Qno	Ans	Qno	Ans	Qno	Ans
1	B	35	B	69	A
2	C	36	C	70	A
3	A	37	D	71	B
4	B	38	D	72	C
5	D	39	B	73	D
6	A	40	C	74	C
7	C	41	A	75	A
8	A	42	D	76	C
9	C	43	#	77	B
10	A	44	A	78	A
11	B	45	B	79	A
12	D	46	C	80	B
13	B	47	B	81	B
14	C	48	D	82	C
15	B	49	B	83	C
16	D	50	C	84	C
17	C	51	C	85	A
18	B	52	D	86	D
19	C	53	A	87	C
20	B	54	A	88	D
21	A	55	C	89	C
22	B	56	B	90	C
23	B	57	B	91	A
24	A	58	B	92	D
25	C	59	B	93	B
26	D	60	B	94	C
27	C	61	D	95	D
28	A	62	A	96	C
29	D	63	A	97	B
30	B	64	C	98	C
31	C	65	B	99	B
32	C	66	D	100	D
33	A	67	C		
34	D	68	D		

In Q.No. 43, none of the option is correct. However, the correct answer is ₹32,640.

Note : The inconsistency or ambiguity in the Question(s), if any, is/are taken care of while evaluating the answer sheets.

TAX LAWS AND PRACTICE - SELECT SERIES

Time allowed : 3 hours

Maximum marks : 100

Total number of Questions : 100

Note : All references to sections mentioned in Part-A of the question paper relate to the Income-tax Act, 1961 and relevant Assessment Year 2015 - 16 unless stated otherwise.

PART A

1. Which of the following assessee is not liable to pay advance tax under section 207 during the financial year 2014 - 15 —
 - (A) A senior citizen having income chargeable under the head 'profits and gains of business or profession'
 - (B) A senior citizen not having income chargeable under the head 'profits and gains of business or profession'
 - (C) A super senior citizen having income chargeable under the head 'profits and gains of business or profession'
 - (D) A resident individual not being senior citizen having income chargeable under the head 'profits and gains of business or profession'.
2. The total income of Atul, a resident individual, is 2,65,000. The rebate allowable under section 87A would be —
 - (A) ₹2,000
 - (B) Nil
 - (C) ₹1,500
 - (D) ₹1,545.
3. Under the Income-tax Act, 1961, LLP is chargeable to tax @ —
 - (A) 30% plus cess and SHEC or AMT @ 18.5% plus cess and SHEC
 - (B) 30% plus cess and SHEC or AMT @ 18.5%
 - (C) 30% plus cess and SHEC or MAT @ 18.5% plus cess and SHEC
 - (D) 30% plus cess and SHEC or MAT @ 18.5%.
4. The year in which the income is earned is known as —
 - (A) Previous year
 - (B) Financial year
 - (C) Both (A) and (B)
 - (D) None of the above.

5. For the previous year 2014 - 15, taxable income of A Ltd., a domestic company is ₹10,86,920. Its tax liability would be —
- (A) ₹2,47,822
(B) ₹4,47,811
(C) ₹3,32,770
(D) ₹3,35,860.
6. Which of the following is not a requisite for charging income-tax on capital gains—
- (A) The transfer must have been effected in the relevant assessment year
(B) There must be a gain arising on transfer of capital asset
(C) Capital gains should not be exempt under section 54
(D) Capital gains should not be exempt under section 54EC.
7. In order to enjoy exemption under section 54EC, the resultant long-term capital gains should be invested in specified bonds within a period of _____ from the date of transfer.
- (A) 36 Months
(B) 4 Months
(C) 6 Months
(D) 12 Months.
8. Which of the following is not correct about the approved superannuation fund —
- (A) Employees' contribution qualifies for deduction under section 80C
(B) Any amount contributed by the employer is exempt from tax
(C) Interest on accumulated balance is exempt from income-tax
(D) Under some circumstances, payments from the fund are chargeable to income-tax.
9. Ashraf is an employee of Moon Public School. His daughter, Zara, is studying in the said school at a concessional fees of ₹600 per month (Actual fee : ₹4,000 per month). The amount taxable in the hands of Ashraf will be —
- (A) ₹48,000
(B) ₹7,200
(C) Nil
(D) ₹40,800.
10. Ashok took an interest-free loan of ₹15,000 from B Ltd. (the employer). Assuming that the market rate of interest on similar loan is 10%, the taxable value of the perquisite in the hands of Ashok will be —
- (A) ₹150

- (B) ₹1,500
(C) Nil
(D) None of the above.
11. During the previous year 2014-15, Barun received a watch worth ₹20,000 from his employer. The taxable value of the watch will be —
(A) ₹15,000
(B) ₹20,000
(C) Nil
(D) None of the above.
12. Shyam transferred 2,000 shares of X Ltd. to Ms. Babita without any consideration. Later, Shyam and Ms. Babita got married to each other. The dividend income from the shares transferred would be —
(A) Taxable in the hands of Shyam both before and after marriage
(B) Taxable in the hands of Shyam before marriage but not after marriage
(C) Taxable in the hands of Shyam after marriage but not before marriage
(D) Never taxable in the hands of Shyam.
13. Arjun has a salary income of ₹4,60,000. He also received an interest of ₹18,000 on his fixed deposit (after deducting TDS @10%) and ₹2,000 on his savings account with SBI. He deposited ₹50,000 in PPF account. The net income-tax liability of Arjun for the assessment year 2015-6 is —
(A) ₹16,480
(B) ₹15,330
(C) ₹16,270
(D) None of the above.
14. Deduction under section 80CCG is available to an eligible resident individual whose gross total income does not exceed —
(A) ₹10,00,000
(B) ₹12,00,000
(C) ₹5,00,000
(D) No such limit.
15. Sahil works in a technology company. On 1st January, 2013, he took a loan of ₹2,40,000 from his company for the education of his daughter. During the year 2014-15, he paid an interest of ₹26,000 towards the said loan and repaid principal component of ₹10,000. The deduction that he can claim under section 80E would be —
(A) Nil
(B) ₹24,000

- (C) ₹46,000
(D) ₹10,000.
16. Under the Income-tax Act, 1961, which of the following can claim deduction for any sum contributed during the previous year to a political party or electoral trust—
- (A) Local authority
(B) Individual
(C) Artificial juridical person
(D) None of the above.
17. Under the Income-tax Act, 1961, interest on capital received by a partner from a partnership firm is chargeable under the head —
- (A) Profits and gains of business or profession
(B) Income from other sources
(C) Capital gains
(D) None of the above.
18. Zen Ltd. made a payment of ₹11,00,000 to Amar, a resident transport contractor who has intimated his PAN details. The tax to be deducted at source under section 194C will be —
- (A) ₹10,000
(B) ₹200
(C) Nil
(D) ₹11,000.
19. 'Income' under section 2(24) includes —
- (i) The profits and gains of a banking business carried on by a co-operative society with its members.
(ii) Any advance money forfeited in the course of negotiations for transfer of capital asset.
- Choose the correct option with reference to the above statements —
- (A) Both (i) and (ii)
(B) Only (i)
(C) Only (ii)
(D) Neither (i) nor (ii).

20. Interest payable under section 234C is computed at —
- (A) Compound interest @ 1% per month
 - (B) Simple interest @ 1% per annum
 - (C) Compound interest @ 1% per annum
 - (D) Simple interest @ 1% per month.
21. Deduction in respect of donations to National Defence Fund is allowed under section —
- (A) 80G
 - (B) 80CCG
 - (C) 80C
 - (D) None of the above.
22. Interest for default in payment of installment(s) of advance tax is levied under section —
- (A) 234A
 - (B) 234B
 - (C) 234C
 - (D) 234D.
23. Raman purchased a residential house property in Ahmedabad on loan for which he paid an interest of ₹50,000 during the previous year. He is working in Delhi and getting an HRA of ₹4,000 per month. He can claim exemption/deduction for —
- (A) Only HRA
 - (B) Only interest paid
 - (C) Either interest paid or HRA but not both
 - (D) Both HRA and interest paid.
24. The Income-tax Act, 1961 empowers the Central Government to enter into double taxation avoidance agreements with other countries under section —
- (A) 87
 - (B) 88
 - (C) 90
 - (D) None of the above.
25. Maximum penalty leviable for concealment of wealth under Wealth-tax Act, 1957 is —
- (A) 100% of tax avoided
 - (B) 300% of tax avoided

- (C) 500% of tax avoided
(D) None of the above.
26. Rahul has purchased an aircraft for 120 lakh. He has taken loan of ₹20 lakh to purchase the same. He does not own any other asset. The wealth-tax on the above asset will be —
(A) ₹70,000
(B) ₹90,000
(C) ₹1,00,000
(D) None of the above.
27. Lalit, a resident individual of 81 years works as a consultant. If his taxable income is 5,20,000, the tax payable by him would be —
(A) ₹22,660
(B) Nil
(C) ₹2,060
(D) ₹12,460.
28. An Indian repatriate came to India on 1st October, 2014. Out of the balance in his non-resident external account (NREA) of ₹20 lakh, he purchased a car for ₹15 lakh. What would be tax treatment under the Wealth-tax Act, 1957 —
(A) Both car and balance in NREA will be exempt
(B) Both car and balance in NREA will be taxable
(C) Only car will be taxable
(D) Car will be exempt but balance in NREA will be taxable.
29. Wealth-tax return is to be filed in —
(A) Form BA
(B) Form BB
(C) Form AB
(D) Form AA.
30. According to Wealth-tax Rules, 1957, the notice of demand for recovery of wealth-tax shall be in —
(A) Form C
(B) Form BB
(C) Form A
(D) Form B.
31. Sarath has received a sum of ₹3,40,000 as interest on enhanced compensation

for compulsory acquisition of land by State Government in May, 2014. Of this, only ₹12,000 pertains to the current year and the rest pertains to earlier years. The amount chargeable to tax for the assessment year 2015-16 would be —

- (A) ₹12,000
 - (B) ₹6,000
 - (C) ₹3,40,000
 - (D) ₹1,70,000.
32. Which of the following double taxation avoidance agreement (DTAA) emphasises on residence principle —
- (A) UN Model
 - (B) US Model
 - (C) OECD Model
 - (D) Andean Model.
33. Under section 208, it is obligatory for an assessee to pay advance tax where the tax payable is —
- (A) ₹10,000 or more
 - (B) ₹20,000 or more
 - (C) ₹5,000 or more
 - (D) ₹8,000 or more.
34. Which of the following cannot claim deduction for the loan taken to purchase a house property —
- (A) Karta, in respect of property purchased by HUF
 - (B) An individual, in respect of property purchased by him
 - (C) Partner, in respect of property purchased by the firm
 - (D) Spouse of an individual, in respect of property purchased jointly by the individual and his/her spouse.
35. Rohit owns a house property in Delhi which he wants to give on rent. He seeks your help to determine the reasonable expected rent when monthly municipal value is ₹20,000, fair rent ₹25,000 and standard rent ₹22,000. The reasonable expected rent will be computed with reference to following amount per month —
- (A) ₹22,000
 - (B) ₹20,000
 - (C) ₹25,000
 - (D) None of the above.

36. Under the Income-tax Act, 1961, dividend derived from the shares held as stock-in-trade are taxable under the head —
- (A) Income from other sources
 - (B) Income from profits and gains of business or profession
 - (C) Capital gains
 - (D) Either capital gains or income from profits and gains of business or profession.
37. Under the Income-tax Act, 1961, 'notional profit' from speculative business is —
- (A) Taxable under the head 'income from profits and gains of business and profession
 - (B) Taxable under the head 'income from other sources
 - (C) Taxable either as income from other sources or as income from profits and gains of business and profession
 - (D) Not taxable.
38. A person carrying specified profession will have to maintain books of account prescribed by Rule 6F of the Income-tax Rules, 1962, if gross receipts are more than ₹1,50,000 for —
- (A) All preceding 5 years
 - (B) Any of the preceding 5 years
 - (C) All preceding 3 years
 - (D) Any of the preceding 3 years.
39. If a block of assets ceases to exist on the last day of the previous year, depreciation admissible for the block of assets will be —
- (A) Nil
 - (B) 50% of the value of the block of assets on the first day of the previous year
 - (C) The total value of the block of assets on the first day of the previous year
 - (D) 50% of the value of the block of assets on the last day of the previous year.
40. Under section 40A(3) which of the following payment for an expenditure incurred would not be admissible as deduction from business income —
- (A) ₹15,000 paid in cash to a transporter
 - (B) ₹15,000 paid in cash to a dealer in the morning and ₹10,000 paid in cash to the same dealer in the evening
 - (C) ₹40,000 sent through NEFT to the bank account of the dealer for goods purchased
 - (D) ₹19,000 paid through bearer cheque to the dealer for goods purchased.

41. If an individual, having a sales turnover of ₹60 lakh files his return of income for the assessment year 2015-16 after the due date, showing unabsorbed business loss of ₹23,000 and unabsorbed depreciation of ₹45,000, he can carry forward to the subsequent assessment years —
- (A) Both unabsorbed business loss of ₹23,000 and unabsorbed depreciation of ₹45,000
 - (B) Only unabsorbed business loss of ₹23,000
 - (C) Only unabsorbed depreciation of ₹45,000
 - (D) Neither unabsorbed business loss of ₹23,000 nor unabsorbed depreciation of ₹45,000.
42. Sameer sold goods worth ₹50,000 at credit on 1st April, 2011. However, he has written off ₹10,000 of it as bad debts and claimed deduction for the same during the year 2013-14. On 4th April, 2014, the defaulting debtor made payment of ₹45,000. The taxable amount of bad debts recovered for the year 2014-15 would be —
- (A) ₹5,000
 - (B) ₹50,000
 - (C) ₹45,000
 - (D) ₹10,000.
43. Under the Income-tax Act, 1961, which of the following outlays incurred by Sun Ltd. during the previous year ended 31st March, 2015 will not be admissible as deduction while computing its business income —
- (A) Contribution to a political party in cash
 - (B) Interest on loan taken for payment of income-tax
 - (C) Capital expenditure on advertisement
 - (D) All of the above.
44. Which of the following business commenced during August, 2014 will not be eligible for deduction under section 35AD —
- (A) Setting-up and operating a cold chain facility
 - (B) A production unit of fertilizer in India
 - (C) Operating of a 1 star hotel in a village
 - (D) Building a hospital of 200 beds.
45. Provisions of section 115JC are not at all applicable to —
- (A) LLPs
 - (B) Companies

- (C) Partnership firms
(D) Individuals.
46. Paresh, a software engineer at ABC Ltd. left India on 10th August, 2014 for the treatment of his wife. For income-tax purpose, his residential status for the assessment year 2015-16 will be —
- (A) Resident
(B) Non-resident
(C) Not ordinarily resident
(D) Cannot be determined from the given information.
47. A non-professional firm M/s Bright has book profits of ₹9,36,000. The admissible remuneration to working partners for income-tax purpose shall be —
- (A) ₹6,51,600
(B) ₹6,81,600
(C) ₹2,70,000
(D) None of the above.
48. MAT credit in respect of excess taxes paid under section 115JB can be carried forward for —
- (A) 7 Assessment years
(B) 10 Financial years
(C) 10 Assessment years
(D) 7 Financial years.
49. Provisions of section 44AD for computation of presumptive income are not applicable to —
- (A) Limited liability partnership
(B) Partnership firm
(C) Resident Hindu Undivided Family
(D) Resident individual.
50. A partnership firm whose sales turnover is ₹90 lakh has derived income from an industrial undertaking entitled to deduction under section 80-IB. The due date for filing the return of income for the assessment year 2015-16 will be —
- (A) 31st July, 2015
(B) 30th September, 2015
(C) 31st October, 2015
(D) None of the above.

51. An individual having income from proprietary business is required to file the return of income in —
- (A) ITR-2
 - (B) ITR-3
 - (C) ITR-3A
 - (D) ITR-4.
52. Which of the following additional incomes will not be treated as agricultural income under the Income-tax Act, 1961 —
- (A) Additional income from selling ginned cotton as compared to unginned cotton
 - (B) Additional income from selling dried- up coffee as compared to raw coffee
 - (C) Additional income from selling cured tobacco as compared to green tobacco leaves
 - (D) Additional income from selling dried- up tea leaves as compared to raw tea leaves.
53. In terms of section 2(42A), listed securities are treated as long-term capital asset, if they are held for a period of more than —
- (A) 12 Months
 - (B) 36 Months
 - (C) 24 Months
 - (D) 48 Months.
54. Yash owns a house built on land area of 420 sq. meters. The value of the house is ₹35,00,000. Under the Wealth-tax Act, 1957, assuming that it is an 'asset' as per section 2(ea), the house would be —
- (A) Exempt under section 5(1)(i)
 - (B) Exempt under section 5(1)(iii)
 - (C) Exempt under section 5(1)(iv)
 - (D) Exempt under section 5(vi).
55. Vaibhav, deriving business income, owns a car whose WDV as on 1st April, 2013 was ₹3,00,000. This is the only asset in the block of assets with rate of 15%. It is estimated that one-third of the total usage of the car is for personal use in both years. The WDV of the block of assets as on 31st March, 2015 would be —
- (A) 2,16,750
 - (B) 2,43,000
 - (C) 2,55,000
 - (D) None of the above.

56. For claiming exemption under section 54G, an assessee has to invest the resultant capital gains within a specified period. Which of the following is not eligible for such investment —
- (A) Furniture
 - (B) Land
 - (C) Building
 - (D) Plant or machinery.
57. Long-term capital gains on zero coupon bonds are chargeable to tax —
- (A) @ 20% computed after indexation of such bonds
 - (B) @ 10% computed without indexation of such bonds
 - (C) Higher of (A) or (B)
 - (D) Lower of (A) or (B).
58. Section 50C makes special provision for determining the full value of consideration in cases of transfer of —
- (A) Plant and machinery
 - (B) Land or building
 - (C) All movable property other than plant & machinery and computers
 - (D) Computers.
59. Which of the following income will be taxable as income from other sources —
- (A) Purchase of house from husband for inadequate consideration
 - (B) Purchase of painting from registered dealer at invoice value less than fair market value
 - (C) Cash gift from a non-resident friend on marriage anniversary
 - (D) All of the above.
60. Hemant holds 100 shares of Gold Ltd., a domestic company. He has been paid dividend of ₹10,000 during the year 2014-15. Dividend distribution tax payable under section 115-O will be —
- (A) ₹1,765, payable by Gold Ltd.
 - (B) ₹1,765, payable by Hemant
 - (C) ₹1,545, payable by Gold Ltd.
 - (D) ₹1,000, payable by Hemant.
61. During the year 2014-15, Basu won ₹4,00,000 from a motor car rally out of

which he deposited ₹1,50,000 in his PPF account. He does not have any other income. Net tax payable by Basu for assessment year 2015-16 will be —

- (A) ₹1,23,600
 - (B) ₹15,450
 - (C) Nil
 - (D) None of the above.
62. Loss from the activity of owning and maintaining race horses could be set-off—
- (A) Against income under any of the five heads of income
 - (B) Only against income under the head 'income from other sources'
 - (C) Only against income under the head 'profits and gains of business or profession'
 - (D) Only against income from same activity.
63. An HUF, not subject to tax audit in the earlier year, paying fees of 35,000 to a Practising Company Secretary shall —
- (A) Not deduct TDS
 - (B) Deduct TDS @10%
 - (C) Deduct TDS @20%
 - (D) Deduct TDS @10.3%.
64. John, engaged in fertiliser trade, received rent by sub-letting a building. This will be taxable under the head —
- (A) Income from house property
 - (B) Income from capital gains
 - (C) Income from profits and gains of business and profession
 - (D) Income from other sources.
65. Under section 115E, the tax rate applicable for long-term capital gains referred to therein, for a resident as envisaged by section 115C, is —
- (A) 5%
 - (B) 10%
 - (C) 15%
 - (D) 20%.
66. The time-limit for revision by Commissioner of Income-tax (CIT) under section 264 is —
- (A) 3 Months

- (B) 6 Months
 - (C) One year
 - (D) Two years.
67. As per transfer pricing provisions, an advance pricing agreement (APA) is valid for —
- (A) Such period as specified in the APA, but not exceeding 3 consecutive years
 - (B) Such period as specified in the APA, but not exceeding 5 consecutive years
 - (C) 2 Years
 - (D) None of the above.
68. Under the Wealth-tax Act, 1957, clubbing provisions relating to wealth-tax are contained in —
- (A) Section 3
 - (B) Section 4
 - (C) Section 5
 - (D) Section 6.
69. Rules for valuation of assets under the Wealth-tax Act, 1957 are stated in—
- (A) Schedule II to the Act
 - (B) Schedule III to the Act
 - (C) Wealth-tax Rules
 - (D) None of the above.
70. In order to be entitled to concessional rate of tax for dividend received from a foreign company, the Indian company should have the following minimum shareholding in such foreign company —
- (A) 10%
 - (b) 25%
 - (C) 26%
 - (d) 51%.

PART B

71. Declared Services are —
- (A) Chargeable to service tax
 - (B) Not chargeable to service tax

- (C) Exempt from service tax
 - (D) Mentioned under negative list of services.
72. Negative list of services is contained in the Finance Act, 1994 under —
- (A) Section 66B
 - (B) Section 66C
 - (C) Section 66D
 - (D) None of the above.
73. The main rule of the Place of Provision of Services Rules, 2012 is —
- (A) Rule 4
 - (B) Rule 2
 - (C) Rule 3
 - (D) Rule 14.
74. Services by the Reserve Bank of India are not chargeable to service tax because—
- (A) They are covered in negative list
 - (B) They are covered in mega exemption notification
 - (C) Definition of 'service' excludes the same
 - (D) None of the above.
75. Services rendered to World Health Organisation (WHO) are not chargeable to service tax because —
- (A) They are covered in negative list
 - (B) They are covered in mega exemption notification
 - (C) Definition of 'service' excludes the same
 - (D) None of the above.
76. For certain services under service tax, a specified percentage of discount allowed is known as —
- (A) Rebate
 - (B) Abatement
 - (C) Exemption
 - (D) Deduction.
77. Which of the following services provided to an individual is not covered under mega exemption notification —
- (A) Legal services provided by an individual as an advocate
 - (B) Services provided by an individual as a Company Secretary in practice

- (C) Legal services provided by a partnership firm of advocates
(D) Services provided by an Arbitral Tribunal.
78. Rounding-off of service tax should be done to the nearest —
(A) Rupee
(B) Ten rupees
(C) Hundred rupees
(D) Fifty rupees.
79. The Superintendent of central excise is bound to grant a certificate of service tax registration within —
(A) 3 Days from the date of receipt of the application
(B) 7 Days from the date of receipt of the application
(C) 10 Days from the date of receipt of the application
(D) One month from the date of receipt of the application.
80. A small scale service provider shall make an application for service tax registration when the aggregate value of taxable services provided in a financial year exceeds—
(A) Seven lakh rupees
(B) Eight lakh rupees
(C) Nine lakh rupees
(D) Ten lakh rupees.
81. Which of the following service is not notified as continuous supply of service—
(A) Telecommunication service
(B) Commercial or industrial construction service
(C) Construction of residential complex
(D) Aircraft carrier service.
82. If Prem has paid ₹15 lakh as service tax in the year 2013-14, the due date for the payment of service tax for the quarter ended 31st March, 2015 will be —
(A) 31st March, 2015
(B) 5th April, 2015
(C) 6th April, 2015
(D) None of the above.
83. Access Ltd. was required to pay service tax by 5th October, 2014, but made

the payment on 1st April, 2015. The company paid service tax of 32 lakh in the financial year 2013-14. Interest on delayed payment would be calculated @ —

- (A) 18% per annum
 - (B) 15% per annum
 - (C) 24% per annum
 - (D) Any rate not below 10% and not exceeding 16% per annum.
84. There was a delay of 22 days in the filing of service tax return by a partnership firm. The penalty or late fee payable for such delayed filing is —
- (A) 500
 - (B) 20 per day
 - (C) 1,000
 - (D) 2,000.
85. There was a delay of 10 days in payment of service tax of ₹5 lakh by Vijay, an assessee. The penalty payable for delayed payment is —
- (A) ₹1,613
 - (B) ₹1,000
 - (C) ₹3,226
 - (D) None of the above.
86. Any person who is liable to pay service tax or required to take registration, fails to take registration shall be liable to pay a penalty which may extend to —
- (A) ₹1,00,000
 - (B) ₹50,000
 - (C) ₹20,000
 - (D) ₹10,000.
87. An application for service tax registration should be submitted in —
- (A) Form ST-1
 - (B) Form ST-2
 - (C) Form ST-3
 - (D) Form ST-4.
88. The application for registration shall be made within a period of _____ of commencement of business/service by an input service provider —
- (A) 20 Days

- (B) 30 Days
 - (C) 90 Days
 - (D) None of the above.
89. The gross amount charged by a service provider on 12th February, 2015 for rendering taxable service is ₹1,57,304. The value of taxable services would be—
- (A) ₹1,57,304
 - (B) ₹1,57,000
 - (C) ₹1,40,000
 - (D) None of the above.
90. India follows which approach for levying service tax at present —
- (A) Selective approach
 - (B) Comprehensive approach
 - (C) Hybrid approach
 - (D) As per the directions of Central Board of Excise & Customs (CBEC).
91. Which of the following is not eligible for input tax credit —
- (A) Purchases made in the course of inter- State trade
 - (B) Purchases for zero rated intra-State sales
 - (C) Purchases for intra-State trade
 - (D) Purchases for execution of intra-State works contract.
92. Under _____ method of VAT levy in India, the rate of tax is applied to the difference between the value of output and the cost of input —
- (A) Invoice
 - (B) Addition
 - (C) Subtraction
 - (D) Tax credit.
93. Under VAT levy, in respect of local purchases of business inputs, a dealer pays —
- (A) Output tax
 - (B) Input tax
 - (C) Last point tax
 - (D) First point tax.

94. Which of the following is true with regard to conducting VAT audit —
- (A) Only Practising Company Secretaries can do VAT audit
 - (B) Only non-Practising Company Secretaries can do VAT audit
 - (C) Practising Company Secretaries can also do VAT audit
 - (D) Non-Practising Company Secretaries can also do VAT audit.
95. VAT is —
- (A) First point tax
 - (B) Last point tax
 - (C) Single point tax
 - (D) Multi-point tax.
96. Which of the following is not a rate of VAT as per the White Paper on VAT —
- (A) 0%
 - (B) 4%
 - (C) 10%
 - (D) 20%.
97. Which of the following is a method of computation of VAT —
- (A) Gross product method
 - (B) Income method
 - (C) Consumption method
 - (D) Tax credit method.
98. VAT was first introduced at international level in —
- (A) India
 - (B) USA
 - (C) France
 - (D) UK.
99. Ms. Vivitha, a registered dealer in Tamil Nadu, bought 10 units of raw material-A from another registered dealer in the same State for a sum of ₹73,500 inclusive of 5% VAT. She sold the same to a consumer in Tamil Nadu at a profit of 30% on selling price. Net VAT liability payable to the State Government is —
- (A) ₹1,000
 - (B) ₹2,050

- (C) ₹4,550
 - (D) None of the above.
100. The correctness of self-assessment under VAT is checked through a system of —
- (A) Departmental audit
 - (B) Internal audit
 - (C) Secretarial audit
 - (D) Statutory audit.

ANSWER KEY
TAX LAWS AND PRACTICE - SELECT SERIES

Qno	Ans	Qno	Ans	Qno	Ans
Q1	B	Q35	A	Q69	B
Q2	C	Q36	A	Q70	C
Q3	A	Q37	D	Q71	A
Q4	C	Q38	C	Q72	C
Q5	D	Q39	A	Q73	C
Q6	A	Q40	B	Q74	A
Q7	C	Q41	C	Q75	B
Q8	B	Q42	A	Q76	B
Q9	D	Q43	D	Q77	B
Q10	C	Q44	C	Q78	A
Q11	A	Q45	B	Q79	B
Q12	D	Q46	A	Q80	C
Q13	D	Q47	A	Q81	B,C,D
Q14	B	Q48	C	Q82	A
Q15	A	Q49	A	Q83	A
Q16	B	Q50	B	Q84	C
Q17	A	Q51	D	Q85	A, D
Q18	C	Q52	A	Q86	D
Q19	A	Q53	A	Q87	A
Q20	D	Q54	D	Q88	B
Q21	A	Q55	B	Q89	C
Q22	C	Q56	A	Q90	B
Q23	D	Q57	D	Q91	A
Q24	C	Q58	B	Q92	C
Q25	C	Q59	C	Q93	B
Q26	A	Q60	##	Q94	C
Q27	#	Q61	C	Q95	D
Q28	A	Q62	D	Q96	C
Q29	B	Q63	A	Q97	D
Q30	A	Q64	D	Q98	C
Q31	D	Q65	###	Q99	D
Q32	C	Q66	C	Q100	A
Q33	A	Q67	B		
Q34	C	Q68	B		

In Q27, none of the option is correct, the correct answer is ₹4,120.

In Q60, none of the option is correct, the correct answer is Rs. 1999.40 payable by Gold Ltd.

In Q65, none of the option is correct. However, the sections (as mentioned in the Question) applies to 'non resident' and accordingly the answer is 10%.

Note : The inconsistency or ambiguity in the Question(s), if any, is/are taken care of while evaluating the answer sheets.

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

- NOTE :**
- 1. Answer ALL Questions.*
 - 2. All references to sections relate to the Companies Act, 2013 unless stated otherwise.*

Question 1

Comment on the following :

- (a) In no circumstances a company can issue redeemable preference shares with a redemption period beyond 20 years.*
 - (b) Powers of the directors of a company are co-extensive with those of the company.*
 - (c) One person company shall be formed only as a company limited by shares.*
 - (d) The gap between two annual general meetings can never exceed 15 months.*
- (5 marks each)*

Answer 1(a)

According to Section 55(2) of the Companies Act, 2013 read with Rule 9 of the Companies (Share Capital and Debentures) Rules, 2014 a company limited by shares may, if so authorised by its articles, issue preference shares which are liable to be redeemed within a period of not exceeding 20 years from the date of their issue.

It is further provided that a company may issue a redeemable preference shares with a redemption period beyond 20 years. According to the Section 55(2) of the Companies Act, 2013 read with Rule 10 of the Companies (Share Capital and Debentures) Rules, 2014, a company engaged in the setting up and dealing with of infrastructural projects may issue preference shares for a period exceeding 20 years but not exceeding 30 years, subject to the redemption of a minimum 10% of such preference shares per year from the 21st year onwards or earlier, on proportionate basis, at the option of the preference shareholders.

Answer 1(b)

According to Section 179 (1) of the Companies Act, 2013, Board of Directors of a company shall be entitled to exercise all such powers, and to do all such acts and things, as the company is authorised to exercise and do.

In exercising such power or doing such act or thing, the Board shall be subject to the provisions contained in that behalf in this Act, or in the memorandum or articles, or in any regulations not inconsistent therewith and duly made there under, including regulations made by the company in general meeting. [First Proviso]

The Board shall not exercise any power or do any act or thing which is directed or required, whether under this Act or by the memorandum or articles of the company or otherwise, to be exercised or done by the company in general meeting. [Second Proviso]

Hence, the Directors shall exercise their powers bona fide and in interest of the company. The directors while exercising their powers do not act as agents for the majority or even all the members and so the members cannot by resolution passed by a majority or even unanimously supersede the director's powers or instruct them how they shall exercise their powers. A company is an entity distinct from its shareholders and its directors. Some of its powers may, according to its articles, be exercised by directors; certain other powers may be reserved for the shareholders in general meeting. The powers of management are vested in the directors. They and they alone can exercise these powers.

Therefore, from the provisions of Section 179 and the exposition of the law stated above, it is clear that subject to the restrictions contained in the Act, Memorandum and Articles, the powers of directors are co-extensive with those of the company itself.

Answer 1(c)

One Person Company is a type of private company. According to Section 2(62) of the Companies Act, 2013, "One Person Company" means a company which has only one person as a member. According to Section 3 (1) (c) of the Companies Act, 2013, only one person is required to subscribe to the memorandum of association of One Person Company. Section 3(2) of the Act states that one person company formed may be either:

- a company limited by shares
- a company limited by guarantee;
- an unlimited liability company.

Hence One Person Company is the private company which may be formed as a company limited by shares or guarantee or unlimited company.

Answer 1(d)

According to section 96(1) of the Companies Act, 2013 gap of not more than 15 months shall elapse between the date of one Annual General Meetings (AGM) of the company and that of the next year.

According to third Proviso to Section 96(1), the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

It has been further elaborated that the company may apply to the Registrar for extension for holding AGM, justifying it as a special reason. The Registrar may, after considering it as a special reason, extend the time within which an AGM shall be held which shall be a period not exceeding three months.

Accordingly, the gap between the two AGMs shall not elapse a period of 15 months unless the Registrar of Companies for special reason has extended the time for holding the AGM. Such extension cannot be more than 3 months.

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

Distinguish between the following :

- (a) 'Independent director' and 'non-executive director'.
- (b) 'Inspection' and 'investigation'.
- (c) 'Limited liability partnership' and 'body corporate'.
- (d) 'ESOP' and 'sweat equity shares'. (4 marks each)

OR (Alternate question to Q.No. 2)**Question 2A**

- (i) *To consider a body corporate as a foreign company, a place of business in India is to be established. State the activities that do not constitute carrying of business in India.*
- (ii) *Masons (Pvt.) Ltd. is a private limited company as per the articles of association of the company. However, a public company acquired shares in Masons (Pvt.) Ltd. thereby making the company, Masons (Pvt.) Ltd., a subsidiary of that public company. State the impact of such acquisition of shares by a public company on Masons (Pvt.) Ltd.*
- (iii) *"Financial statements shall be signed only by the Chairperson of the company." Explain.*
- (iv) *Alok, the Managing Director of Yellow Ltd., borrowed a large sum of money and misappropriated the same. Later, when the lender demanded his money, the company refused to repay, contending that the money borrowed by Managing Director was misappropriated by him and the company is not liable for repayment. Decide, giving reasons, whether the lender would succeed in recovering the money from the company. (4 marks each)*

Answer 2(a)

Non-Executive Director of a company simply means a person not holding a position as an executive in the company. They do not get involved in the day-to-day running of the business. Such a director may or may not be an independent director.

An independent director, on the other hand, is one who fulfills the criteria laid down under section 149 (6) of the Companies Act, 2013 read with Rule 5 of the Companies (Appointment and Qualification of Directors), Rules, 2014. All non-executive directors need not be independent directors, but all independent directors are non-executive directors.

Answer 2(b)**Inspection and Investigation**

Section 206 of the Companies Act, 2013 deals with inspection of documents and books and papers of any company. The section empowers the Registrar or Inspectors appointed by the Central Government to conduct inspection in order to ascertain that all the transactions have been validly entered into and recorded in appropriate books and

those applicable laws, rules and procedures have been compiled by the company. Inspection is intended to be a routine not an adhoc or special affair.

Investigation within the meaning of the relevant provisions of the Act, is a form of probe; deeper probe; into the affairs of a company. It is a fact finding exercise. The main object of investigation is to collect evidence and to see if any illegal acts or offences are disclosed and then decide the action to be taken. The said expression also includes investigation of all its business affairs-profits and losses, assets including goodwill, contracts and transactions, investments and other property interests and control of subsidiary companies too.

Answer 2(c)

Limited Liability Partnership (LLP) and Body Corporate

1. LLP is an alternative form of corporate business, not being a company, that gives the benefits of limited liability of a company and the flexibility of a partnership. LLP is covered under the Limited Liability Partnership Act, 2008 while term “Body Corporate” as defined under section 2(11) of Companies Act, 2013 includes a Company incorporated outside India but does not include:
 - (i) a co-operative society registered under any law relating to co-operative societies; and
 - (ii) any other body corporate (not being a company as defined in this Act), which the Central Government may, by notification, specify in this behalf;
2. A body corporate may be a company incorporated by one person as One Person Company. LLP can't be incorporated by one person.
3. A LLP may be a body corporate but the vice-versa may not be true.
4. LLP will have lesser compliance requirements as compared to a company.

Answer 2(d)

According to section 2(37) of the Companies Act, 2013 “employees’ stock option” means the option given to the directors, officers or employees of a company or of its holding company or subsidiary company or companies, if any, which gives such directors, officers or employees, the benefit or right to purchase, or to subscribe for, the shares of the company at a future date at a pre-determined price;

Under Section 2(88) of the Companies Act 2013, sweat equity shares means such equity shares as are issued by a company to its directors or employees at a discount or for consideration, other than cash, for providing their know-how or making available rights in the nature of intellectual property rights or value additions, by whatever name called. Section 54 of the Act provides that a company may issue sweat equity shares of a class of shares already issued, if the conditions thereunder are satisfied.

Answer 2A(i)

According to section 2(42) of the Act a “foreign company” means any company or body corporate incorporated outside India which —

- (a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and

(b) conducts any business activity in India in any other manner.

It may be noted that in case of *P.J. Johnson v. Astrofiel Armadorn* (1989) 3 Comp LJ 1, it was held that the following activities inter-alia, do not constitute carrying on business:

- 1 Carrying small transactions
- 2 Operating bank accounts
- 3 Transferring of shares or other securities
- 4 Procuring orders
- 5 Creating or financing of debts, charges etc., on property
- 6 Securing or collecting debts or enforcing claims to property of any kind.

However, the term “Business activities” is not defined under the Companies Act, 2013 and rules made thereunder.

Answer 2A(ii)

In accordance with the provisions of the Companies Act, 2013, as contained in Section 2(71), a company which is a subsidiary of a company not being a private company, shall be deemed to be a public company for the purpose of this Act even where such subsidiary company continues to be a private company by its Articles. Thus, it has been clearly provided that a subsidiary of public company shall be deemed to be a public company even if it continues to be a private company in its Articles.

Therefore, applying the above provisions it can be concluded that Masons Pvt. limited is a public company even through it is a private company by its Articles.

Answer 2A(iii)

According to section 134 of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board at least by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director and the Chief Executive Officer, if he is a director in the company, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of a One Person Company, only by one director, for submission to the auditor for his report thereon.

Therefore the financial statements are to be signed accordingly.

Answer 2A(iv)

The problem as asked in the question is based on the decision given in the case of *V.K.R.S.T. Firm vs. Oriental Investment Trust Ltd.* AIR 1944 Mad 532. In this case, under the authority of the company, the Managing Director borrowed large sums of money and misappropriated it. The company was held liable stating that where the borrowing is within the powers of the company, the lender will not be prejudiced simply because its officer has applied the loan to unauthorized activities provided the lender had no knowledge of the intended misuse.

Therefore, applying the above decision in the given case asked in the question, the lender is not aware of the end use and hence loan is recoverable from the company. The lender thus will succeed in this case and recover the money from the company.

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

Question 3

- (a) *Mahesh is a creditor of an unlimited company. The company was wound-up. Mahesh, therefore, wants to sue the members of the company to recover the dues. Advise Mahesh regarding the remedy available to him.*
- (b) *An employee of a company purchased certain shares of his company through a member of a stock exchange and lodged with the company an application for transfer of shares in his (employee's) name. The company refused to execute the transfer on the suspicion that the employee, if admitted as a member of the company, will create nuisance in general meetings and seek access to the records of the company. Decide giving reasons —*
 - (i) *Whether the company's contention shall be tenable; and*
 - (ii) *What is the remedy available to the employee in the given case ?*
- (c) *In what way does the Companies Act, 2013 regulate the payment made by companies towards contribution to political parties for political purposes ? Explain.*
- (d) *Explain the meaning of the term 'key managerial personnel' in relation to a company as introduced by the Companies Act, 2013 and also state the manner in which they are appointed. (4 marks each)*

OR (Alternate question to Q.No. 3)

Question 3A

- (i) *In what way does the Companies Act, 2013 and Rules made thereunder regulate the appointment of woman director in a company ? Explain.*
- (ii) *Referring to the provisions of the Companies Act, 2013, state the conditions required to be fulfilled before a company can issue bonus shares to shareholders of the company.*
- (iii) *The Board of directors of Vedic Ltd. desirous of transacting certain matters through video conferencing, seek your advice on the matters which cannot be dealt with through video conferencing. Advise the Board.*
- (iv) *A petition signed by 100 members of a company has been moved to Company Law Board (CLB) for prevention of mismanagement. Later on, half of the members (signatories) withdrew their consent after filing the petition. Examine whether the remaining applicants (petitioners/signatories) to the petition would be successful in their complaint to CLB. (4 marks each)*

Answer 3(a)

In accordance with the Section 2(92) of the Companies Act, 2013, "Unlimited Company" means a company not having any limit on the liability of its members. Thus, the maximum

liability of the member of such a company, in the event of its being wound up, might stretch up to the full extent of their assets to meet the obligations of the company by contributing to its assets. However, the members of an unlimited company are not liable directly to the creditors of the company, as in the case of partners of a firm. The liability of the members is only towards the company and in the event of the company being wound up only the Liquidator can ask the members to contribute to the assets of the company which shall be used in the discharge of the debts of the company.

Accordingly, Mr. Mahesh cannot directly sue the members of the company for recovery of his dues. He can file his claim to the Liquidator of the company.

Answer 3(b)

The securities or other interest of any member in a public company are freely transferable. According to Section 58(4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60 days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer appeal to the Tribunal.

Refusal to register share transfer on suspicion that the employee if admitted as a member will attend general meetings of the company and may create nuisance by raising irrelevant issues and also obtain access to the records to the company as a shareholder is not a valid reason. (Appeal to the CLB No. 27, of 1975 dated 17th August, 1976, *Shri Nirmal Kumar v. Jaipur Metal and Electrical Limited*).

Since the company in question is a public company, refusal to register share transfer on suspicion that the employee, in the given case, if admitted as a member will attend general meetings of the company and may create nuisance in general meeting and seek access to the records to the company as a shareholder is not a valid reason for refusal to register the transfer of shares.

Hence:

- (i) taking into account the above, the refusal by the company to register the transfer shares in the name of the employee is not tenable.
- (ii) Employee in this case can go for appeal to the Tribunal against the company's refusal.

Answer 3(c)

Section 182 of the Companies Act, 2013 provides for prohibitions and restrictions on the political contributions. A company other than

- Government company or
- The company which has been in existence less than three financial years,

may contribute any amount directly or indirectly to any political party.

Further, the aggregate amount of contribution by a company in any financial year to political parties shall not exceed seven and half per cent (7.5%) of the average net profits during three immediately preceding financial years.

The contribution must be authorized by the Board in its meeting by resolution and such resolution deemed to be the justification in law for such contribution.

The company is required to disclose in its profit and loss account any amount or amount contributed by it to any political, party during the financial year and the particular of total, amount contributed and the name of political party to whom the contribution so made.

Where a company makes any contribution in contravention of the provisions of this section, the company shall be punishable with fine which may extend to five times the amount so contributed and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months and with fine which may extend to five times the amount so contributed.

Answer 3(d)

As per Section 2(51) of the Companies Act, 2013 “Key Managerial Personnel” in relation to a company means:

- (a) The Chief Executive Officer or the Managing Director or the Manager;
- (b) The Company Secretary;
- (c) The Whole-time Director;
- (d) The Chief Financial Officer; and
- (e) Such other officer as may be prescribed.

According to section 203 of Act read with Rule 8 of Companies (Appointment and Remuneration of Managerial Personnel) Rules, 2014 every listed company and every other public company having paid-up share capital of ten crore rupees or more shall have whole-time key managerial personnel.

According to Section 178(2) of the Companies Act, 2013, the Nomination and Remuneration Committee shall formulate the criteria for determining qualifications, positive attributes and independence of a director and recommend to the Board a policy, relating to the remuneration for the directors, key managerial personnel and other employees.

According to Section 203(2) of the Companies Act, 2013, Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

Every whole-time key managerial personnel of a company shall be appointed by means of a resolution of the Board containing the terms and conditions of the appointment including the remuneration.

Answer 3A(i)

The Second Proviso to Section 149 of the Companies Act, 2013 provides that such class or classes of companies as may be prescribed in Companies (Appointment and Qualification) Rules, 2014, shall have at least one women director on the Board of the company.

Rule 3 of Companies (Appointment & Qualification Rules, 2014) prescribes the following classes of companies shall appoint at least one women director:

- (i) Every listed company
- (ii) Every other public company having:
 - (a) Paid-up share capital of Rs. 100 crore or more; or
 - (b) Turnover of Rs. 300 crore or more.

A company which has been incorporated under the Act and is covered under provisions of Second Proviso to sub-section (1) of Section 149 shall comply with such provisions within a period of 6 months from the date of its incorporation.

Provided further that any intermittent vacancy of a woman director shall be filled-up by the Board at the earliest but not later than immediate next Board meeting or three months from the date of such vacancy whichever is later.

Explanation.- For the purposes of this rule, it is hereby clarified that the paid up share capital or turnover, as the case may be, as on the last date of latest audited financial statements shall be taken into account.

Answer 3A(ii)

A company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

- (i) its free reserves;
- (ii) the securities premium account; or
- (iii) the capital redemption reserve account:

It has been further provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

According to Section 63(2) of the Companies Act, 2013 no company shall capitalise its profits or reserves for the purpose of issuing fully paid-up bonus shares under sub-section (1), unless—

- (a) it is authorised by its articles;
- (b) it has, on the recommendation of the Board, been authorised in the general meeting of the company;
- (c) it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
- (d) it has not defaulted in respect of the payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
- (e) the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
- (f) it complies with such conditions as may be prescribed.

According to Section 63(3), the bonus shares shall not be issued in lieu of dividend.

Thus, a public unlisted company or a private company planning to go for bonus issue has to follow the above mentioned conditions.

Answer 3A(iii)

As per section 173 (2) and Rule 4 of Companies (Meetings of Board and its Powers) Rules, 2014 following matters shall not be dealt with in any meeting held through video conferencing or other audio visual means.-

- (i) the approval of the annual financial statements;
- (ii) the approval of the Board's report;
- (iii) the approval of the prospectus;
- (iv) the Audit Committee Meetings for consideration of financial statement including consolidated financial statement; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Answer 3A(iv)

The petition for relief against mismanagement does not cease to be maintainable merely because some members withdrew their consent after its presentation.

Once the consent has been given by the requisite number of members by signing the application, the application may be made by one or more of them on behalf and for the benefit of one of them. It has been held by the Supreme Court in *Rajahmundry Electric Supply Corporation Ltd. v. A Nageswara Rao and others* AIR 1956 SC 213, that if some of the consenting members have, subsequent to the presentation of the application, withdrawn their consent, it would not affect the right of the applicant to proceed with the application.

Obtaining of consent is a condition precedent to the making of the application and hence a consent obtained subsequent to the application is ineffective. [*Makhan Lal Jain v. The Amrit Banaspati Co. Ltd.*, I.L.R. (1954) I All. 131.]

Therefore, in the given case the withdrawal of consent by some of the members shall not affect the success of the remaining applicants.

Question 4

- (a) *Vir is a director in DJA Ltd. (the company). The company holds 75% shares of MRN Ltd. Vir wants to inspect the books of MRN Ltd. Examining the provisions of the Companies Act, 2013 advise whether Vir, the director of DJA Ltd. can be allowed to inspect the books of MRN Ltd. (4 marks)*
- (b) *Explain the provisions of the Companies Act, 2013 relating to 'secretarial audit'. State whether 'secretarial audit' is mandatory for all companies. (4 marks)*
- (c) *PQR Ltd. is an unlisted company and has 400 shareholders in all. The shareholders of the company propose voting by electronic mode. Chairman of the company rejected the shareholders' proposal. Explaining the provisions of the Companies*

Act, 2013, examine the validity of rejection of the shareholders' proposal by the Chairman.
(4 marks)

- (d) *Board of directors of Joy Ltd., by a resolution passed at its meeting, decide to provide a loan of ₹50 crore to Happy Ltd. The paid-up share capital of Joy Ltd. on the date of resolution was ₹100 crore and the aggregate balance in the free reserves and securities premium account stood at ₹40 crore. Examining the provisions of the Companies Act, 2013, decide whether the Board's resolution to provide a loan of ₹50 crore to Happy Ltd. is valid ?*
(4 marks)

Answer 4(a)

In accordance with the provisions of the Companies Act, 2013, as contained in Section 128(3), any director can inspect the books of accounts and other books and papers of the company during business hours. The expression 'Books and Papers' has been defined in Section 2(12) which includes accounts, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form. The company is, therefore, required to make available the aforesaid books and papers for inspection by any directors. Such inspection may be done by any type of director-nominee, independent, promoter or whole time.

However, according to the proviso to sub-section (3) of the section, the inspection in respect of any subsidiary of the company shall be done any person authorised in this behalf by a resolution of the Board of Directors.

In the present case Vir, may inspect the books of MRN Ltd, only when he is authorised by the Board of the DJA Ltd, in this context.

Answer 4(b)

Section 204 of the Companies Act, 2013 mandates every listed company and such other classes of prescribed companies to annex a Secretarial Audit Report, given by a Company Secretary in Practice with its Board's report.

As per Rule 9 of Companies (Appointment & Remuneration of Managerial Personnel) Rules, the other class of companies shall be as under:

- (a) Every public company having a paid-up share capital of Rs. fifty (50) crore or more; or
- (b) Every public company having a turnover of Rs. two hundred fifty (250) crore or more.

It shall be the duty of the company to give all assistance and facilities to the company secretary in practice for auditing the secretarial and related records of the company.

Answer 4(c)

In accordance with the provisions of the Companies Act, 2013, as contained in Section 108, and Rule 20 of Companies (Management & Administration) Rules, 2014, every listed company or a company having one thousand or more shareholders may provide to its members facility to exercise their right to vote at general meetings by electronic means. A member may exercise his right to vote at any general meeting by electronic means and company may pass any resolution by electronic voting system.

Applying, the above provisions in the given case, it can be concluded that since the company is having only 400 shareholders i.e. less than the required number of shareholders, it is not mandatory to hold electronic voting. Moreover, the company is an unlisted company therefore, electronic voting is not mandatory for unlisted company.

Therefore, Chairperson's rejection of the shareholders' proposal to allow electronic voting is valid.

Answer 4(d)

In accordance with the section 186 of the Companies Act, 2013 no company shall, directly or indirectly:

1. Give any loan to any person or other body corporate;
2. Give any guarantee, or provide security, in connection with a loan to any other person body corporate or person; and
3. Acquire, by way of subscription, purchase or otherwise the securities of any other body corporate;

Exceeding 60% of its paid-up share capital, free reserves and securities premium account or 100% of its free reserves and securities premium account, whichever is more unless the same is previously authorised by a special resolution passed in the company's general meeting.

No loan or investment shall be made or guarantee or security given by the company unless the resolution sanctioning it is passed at a meeting of the Board with the consent of all directors present at the meeting.

Accordingly, in the given case, the company can grant a loan of Rs. 50 crore, since the company can grant a loan up to Rs. 84 crore (i.e. 60% of Rs. 100 crore + Rs. 40 crore i.e. = Rs. 84 or Rs. 40 crore whichever is more) without the approval of the general meeting by a special resolution and the Board meeting with the consent of all the directors present.

Only Board's resolution to provide a loan of Rs. 50 crore to Happy limited without the approval of general meeting by a special resolution is valid.

Question 5

(a) *Explain the provisions of the Companies Act, 2013 relating to the constitution of an audit committee. What role does the audit committee play in the management of a company ?* (4 marks)

(b) *Based on the information given in the memorandum of association, Smart Ltd. was incorporated and the certificate of incorporation was issued by the Registrar of Companies, New Delhi. The memorandum of association was duly signed, except that X, Y and Z signed it on behalf of five minors.*

Examine the validity of the certificate of incorporation issued by the Registrar of Companies. (4 marks)

(c) *DEF Ltd., a company listed at Bombay Stock Exchange, failed to file its report*

on the annual general meeting for the financial year ended 31st March, 2013 with the Registrar of Companies, Mumbai. The company further abstained from filing the said report for another two years, viz. financial years ended 31st March, 2014 and 2015 respectively. Examining the provisions of the Companies Act, 2013, state whether the default committed by the company amounts to an offence. If so, to what extent it is possible to get the offence(s) compounded. (4 marks)

- (d) Answer the following by explaining the provisions of the Companies Act, 2013 relating to 'internal audit' :
- (i) Whether a private company is mandatorily required to appoint an internal auditor ?
 - (ii) Who may be appointed as an internal auditor ? Whether a Practising Company Secretary (PCS) can be appointed as an internal auditor ? (2 marks each)

Answer 5(a)

Constitution of audit committee

In accordance with the provisions of the Companies Act, 2013, as contained under Section 177 read with Rule 6 of Companies (Meetings of Board and its Powers) Rules, 2014, the Board of Directors of

- every listed company and
- public companies having paid up share capital of ten crore or more;
- public companies having turnover of one hundred crore rupees or more;
- public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding fifty crore rupees or more

shall constitute an Audit Committee. The Committee shall consist of a minimum of 3 directors with independent directors forming a majority.

Provided that majority of members of Audit Committee including the Chairperson shall be persons with ability to read and understand, the financial statement.

Role of audit committee

Sub-section 4 of the section provides that the audit committee shall act in accordance with the terms of references specified in writing by the Board which shall specifically include:

- (i) the recommendation for appointment, remuneration and terms of appointment of auditors of the company;
- (ii) review and monitor the auditor's independence and performance, and effectiveness of audit process;
- (iii) examination of the financial statement and the auditors' report thereon;
- (iv) approval or any subsequent modification of transactions of the company with related parties;

- (v) scrutiny of inter-corporate loans and investments;
- (vi) valuation of undertakings or assets of the company, wherever it is necessary;
- (vii) evaluation of internal financial controls and risk management systems;
- (viii) monitoring the end use of funds raised through public offers and related matters.

The audit committee has the power to investigate any of the above matters referred to it by the Board.

The audit committee may call for the auditors for commenting on the internal controls systems, the scope of audit, including the observations of the auditors and review of the financial statements.

The audit committee, shall oversee the vigil mechanism, wherever so constituted.

Answer 5(b)

Once the required documents have been delivered to the Registrar of Companies and the necessary fee paid, the Registrar, after satisfying himself, issues a certificate of incorporation. Certificate of incorporation constitutes the birth certificate of the company.

A certificate of incorporate given by the Registrar in respect of any association shall be conclusive evidence that all the requirements of the Act have been complied with in respect of registration and matters precedent and incidental thereto, and that the association is a company authorized to be registered and duly registered under the Act. The certificate of incorporation is conclusive evidence that everything is in order as regards registration and that the company has come into existence from the earliest moment of the day of incorporation stated therein with rights and liabilities of a natural person, competent to enter into contracts [*Jubilee Cotton Mills Ltd. v. Lewis (1924) A.C.*]. The validity of the registration cannot be questioned after the issue of the certificate.

Hence, Certificate of Incorporation issued by the Registrar of Companies, New Delhi in the given case is quite valid and cannot be challenged.

Answer 5(c)

According to section 121 of the Companies Act, 2013 every listed public company shall prepare in the a report on each annual general meeting including the confirmation to the effect that the meeting was convened, held and conducted as per the provisions of this Act and the rules made thereunder.

The company is required to file with the Registrar a copy of the report within thirty days of the conclusion of the annual general meeting with the prescribed fees or with such additional fees within a period of 270 days from the date by which it should have been filed in accordance with section 403 of the said Act.

If the company fails to file the report before the expiry of the period specified under section 403 with additional fee, the company shall be punishable with fine which shall not be less than one lakh rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to one lakh rupees.

Accordingly company has made default for the financial years ending 31st March,

2014 and 2015 only, in compliance of above provisions. The company may submit application with Regional Director or any officer authorised by the central government for compounding of the offence Any offence punishable with fine only and where the maximum amount of fine which may be imposed for such offence does not exceed Rs. five lakhs may be compounded by the Regional Director or any officer authorised by the central government under section 441.

Answer 5(d)

Section 138 of the Companies Act, 2013 provides that such class or classes of companies as may be prescribed shall be required to appoint an internal auditor, who shall either be a chartered accountant or a cost accountant, or such other professional as may be decided by the Board of Directors to conduct internal audit of the functions and activities of the company.

According to Rule 13(1)(c) of the Companies (Accounts) Rules, 2014, every private company which satisfy either of the following conditions should mandatorily appoint an internal auditor:

1. A company having turnover of Rs. two hundred crore or more during the preceding financial year; or
2. A company having outstanding loan or borrowing from banks or public financial institutions exceeding Rs. one hundred crore or more at any point of time during the preceding financial year.
 - (i) Therefore, a private company falling under any of the above criteria shall have to appoint an internal auditor.
 - (ii) The company's Board is free to appoint any practicing chartered accountant or cost accountant or any other professional to whom it deems fit to be appointed as an internal auditor.

Accordingly, where the Board decides a Practising Company Secretary may be appointed as an internal auditor.

Question 6

- (a) *Brave Ltd. is listed at Bombay Stock Exchange and has a net worth of over 600 crore. The company has constituted a corporate social responsibility (CSR) committee with Jay and Vijay as its members. Both Jay and Vijay are directors of the company, Jay being an independent director.*

Explaining the provisions of the Companies Act, 2013 relating to 'corporate social responsibility', examine whether the company has complied with the provisions of the Act in this regard.

- (b) *The Board of directors of Charming Ltd. seek your advice on the matters to be included in the directors' responsibility statement forming part of the company's annual report to shareholders. As the Company Secretary of Charming Ltd., advise the Board.*
- (c) *What transactions are considered as 'related party transactions' under the provisions of the Companies Act, 2013 ? Explain.*

- (d) *Due to inadequacy of profits, the Board of directors of Rise Ltd. decided not to recommend any dividend for the financial year ended 31st March, 2015.*

Certain shareholders of the company complained to the Company Law Board/ Tribunal regarding mismanagement of the affairs of the company, since the Board of the company did not recommend any dividend. Explaining the provisions of the Companies Act, 2013, examine whether the contention of the shareholders is tenable. (4 marks each)

Answer 6(a)

In accordance with the section 135 of the Companies Act, 2013, every company having net worth of Rs. five hundred (500) crore or more, or turnover of Rs. one thousand (1,000) crore or more or a net profit of Rs. five (5) crore or more during any financial year shall constitute a Corporate Social Responsibility Committee of the Board consisting of three or more directors, out of which at least one director shall be an independent director.

Since the company in question has a net worth of Rs. 600 crore which is more than the required sum of Rs. 500 crore, the company has to comply with the provisions of the Companies Act, 2013, presently, company has only two directors, accordingly there is a need to reconstitute the CSR Committee of Brave Ltd.

Answer 6(b)

Section 134(3)(c) of the Companies Act, 2013 provides that there shall be attached to statements laid before a company in general meeting, a report by its Board of Directors, which shall include-Directors' Responsibility Statement.

As per section 134(5) the Directors' Responsibility Statement shall state:

1. That in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
2. That the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
3. That the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and deterring fraud and other irregularities;
4. That directors had prepared the annual accounts on a going concern basis; and
5. That the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively;
6. That the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Answer 6(c)

In accordance with the provisions of the Companies Act, 2013, as contained under Section 188 (1) except with the consent of the Board of Directors given by a resolution at a meeting of the Board and subject to such conditions as may be prescribed, no company shall enter into any contract or arrangement with a related party with respect to :

1. Sale, purchase or supply of any goods or materials.
2. Selling or otherwise disposing of, or buying, property of any kind.
3. Leasing of property of any kind.
4. Availing or rendering of any services.
5. Appointment of any agent for purchase or sale of goods, materials, services, or property.
6. Such related party's appointment to any officer or place of profit in the company, its subsidiary company or associate company; and
7. Underwriting the subscription of any securities or derivatives thereof, of the company.

Provided that no contract or arrangement, in the case of a company having a paid-up share capital of not less than such amount, or transactions not exceeding such sums, as may be prescribed, shall be entered into except with the prior approval of the company by a special resolution.

(Note : Student preparing for December, 2015 examinations may note that as per Companies (Amendment) Act, 2015 dated 25th May, 2015, the contract or arrangement shall be entered by prior approval of members through **ordinary** resolution.)

Answer 6(d)

Section 241 of the Companies Act, 2013 (Sec. 398 of the Companies Act, 1956) provides for relief in cases of mismanagement. For a petition under this section to succeed, it must be established that the affairs of the company are being conducted in a manner prejudicial to the interest of the company or public interest or that, by reason of any change in the management or control of the company, it is likely that the affairs of the company will be conducted in that manner. If the court (CLB/Tribunal) is convinced, it may with a view to bringing to an end of preventing the matter complained or apprehended, make such order as it thinks fit.

It was held in the case of *Indowind Energy Ltd. v. ICICI Bank Ltd.* [2010] 153 Com Cases 394 (CLB) that non-declaration of dividend would not amount to oppression and mismanagement.

Therefore, applying the above facts and precedent in the given case, it can be concluded that the non-payment of dividend does not amount to mismanagement and hence the contention of the shareholders shall not be tenable.

ECONOMIC AND COMMERCIAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE : *Answer ALL Questions.*

PART A

Question 1

- (a) What are the basic rights of consumers that are sought to be promoted and protected under the Consumer Protection Act, 1986 ?*
- (b) Define 'foreign contribution' under the Foreign Contribution (Regulation) Act, 2010.*
- (c) What is an 'arbitral award' under the Arbitration and Conciliation Act, 1996 ? Explain.*
- (d) Write a note on 'mode of cancellation of adhesive stamps' under the Indian Stamp Act, 1899.*
- (e) What are the basic principles of general agreement on trade in services (GATS)? (5 marks each)*

Answer 1(a)

The basic rights of consumers that are sought to be promoted and protected are as under:

- the right to be protected against marketing of goods and services which are hazardous to life and property;
- the right to be informed about the quality, quantity, potency, purity, standard and price of goods, or services so as to protect the consumer against unfair trade practices;
- the right to be assured, wherever possible, access to variety of goods and services at competitive prices;
- the right to be heard and to be assured that consumers interests will receive due consideration at appropriate forums;
- the right to seek redressal against unfair trade practices or restrictive trade practices or unscrupulous exploitation of consumers; and
- right to consumer education.

Answer 1(b)

As per Section 2(1)(h) of the Foreign Contribution (Regulation) Act, 2010, foreign contribution means the donation, delivery or transfer made by any foreign source,—

- (i) of any article, not being an article given to a person as a gift for his personal use, if the market value, in India, of such article, on the date of such gift, is not more than such sum as may be specified from time to time, by the Central Government by the rules made by it in this behalf;
- (ii) of any currency, whether Indian or foreign;
- (iii) of any security as defined in clause (h) of section 2 of the Securities Contracts (Regulation) Act, 1956 and includes any foreign security as defined in clause (o) of section 2 of the Foreign Exchange Management Act, 1999.

Explanation 1.— A donation, delivery or transfer of any article, currency or foreign security referred to in this clause by any person who has received it from any foreign source, either directly or through one or more persons, shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 2.— The interest accrued on the foreign contribution deposited in any bank referred to in subsection (1) of section 17 or any other income derived from the foreign contribution or interest thereon shall also be deemed to be foreign contribution within the meaning of this clause.

Explanation 3.— Any amount received, by any person from any foreign source in India, by way of fee (including fees charged by an educational institution in India from foreign student) or towards cost in lieu of goods or services rendered by such person in the ordinary course of his business, trade or commerce whether within India or outside India or any contribution received from an agent of a foreign source towards such fee or cost shall be excluded from the definition of foreign contribution within the meaning of this clause.

Answer 1(c)

As per Section 2(1)(c) of the Arbitration and Conciliation Act, 1996 “arbitral award” includes an interim award.

The definition does not give much details of the ingredients of an arbitral award. However, taking into account other provisions of the Act, the following features are noticed:

1. An arbitration agreement is required to be in writing. Similarly, a reference to arbitration and award is also required to be made in writing. The arbitral award is required to be made on stamp paper of prescribed value (as applicable at the place of making the award) and in writing. An oral decision is not an award under the law.
2. The award is to be signed by the members of the arbitral tribunal. However, the signature of majority of the members of the tribunal is sufficient if the reason for any omitted signature is stated.
3. The making of an award is a rational process which is accentuated by recording

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

- (a) Where the arbitration agreement expressly provides that no reasons are to be given, or
- (b) Where the award has been made under Section 30 of the Act i.e. where the parties settled the dispute and the arbitral tribunal has recorded the settlement in the form of an arbitral award on agreed terms.

The formulation of reasons is a powerful discipline and it may lead the arbitrator to change his initial view on the matter. Recording of reasons involves analysis of the dispute to reach a logical conclusion. Award can be divided into four parts i.e. general, findings of fact, submissions of the parties and conclusions of the tribunal. The tribunal should explain its view of the evidence and reasons of its conclusions. The preamble of the award may contain reference to the arbitration agreement, constitution of the tribunal, procedure adopted by the tribunal etc. and the second part of the award may contain points at issue, argument for the claimant, argument for the respondent and findings of the tribunal. The points at issue may be divided into two heads i.e. issue of fact and issue of law.

4. The award should be dated i.e. the date of making of the award should be mentioned in the award.
5. Place of arbitration is important for the determination of rules applicable to substance of dispute, and recourse against the award. The arbitral tribunal is under obligation to state the place of arbitration as determined in accordance with Section 20. Place of arbitration refers to the jurisdiction of the Court of a particular city or State.
6. The arbitral tribunal may include in the sum for which award is made, interest upto the date of award and also a direction regarding future interest.
7. The award may also include decisions and directions of the arbitrator regarding the cost of the arbitration.
8. After the award is made, a signed copy should be delivered to each party for appropriate action like implementation or recourse against arbitral award.

Answer 1(d)

Mode of Cancellation of Adhesive Stamps

- (a) Section 12(3) of the Indian Stamp Act, 1899 deals with the mode of cancellation of stamp. It provides that the cancellation of an adhesive stamp may be done by the person concerned by writing on or across the stamp his name or initials, or the name or initials of his firm with the true date of his so writing, or in any other effectual manner. Sub-section (3) merely lays down as a guidance one of the ways in which an adhesive stamp can be cancelled.
- (b) 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. Again, the question whether an adhesive stamp has been cancelled in an effectual manner has to be determined with reference to the facts and circumstances of each case.

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).

- (c) However, putting a date across the stamp by a third party on a date subsequent to the date on which the bill had been drawn, was held to be not proper cancellation in *Daya Ram v. Chandu Lal*, AIR 1925 Bom. 520 Cf. *Rohini v. Fernandes*, AIR 1956 Bom. 421, 423. Similarly, crossing by drawing lines and signing on the adjacent stamp was held to be not a cancellation of the first stamp in *U. Kyaw v. Hari Dutt*, AIR 1934 Rang. 364. Cross is a good way of cancellation. (AIR 1976 Cal. 99).
- (d) Where it is alleged that the cancellation was made at later stage than that of execution, the burden of proving it, lies on the party who so alleges. Where an instrument *prima facie* appears to be duly stamped and cancelled by the drawer at the date of execution, the burden of proving the contrary lies on the party who avers that the cancellation was not effected at the time of execution. In the absence of evidence to the contrary, it may be inferred that the stamp was duly affixed and cancelled.

Answer 1(e)

Basic Principles of GATS are as follows:

- All services are covered by GATS
- Most-favoured-nation treatment applies to all services, except the one-off temporary exemptions
- National treatment applies in the areas where commitments are made
- Transparency in regulations, inquiry points
- Regulations have to be objective and reasonable
- International payments: normally unrestricted

- Individual countries' commitments: negotiated and bound
- Progressive liberalization: through further negotiations.

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

Question 2

- (a) What do you mean by 'immovable property' under the Transfer of Property Act, 1882 ? (3 marks)
- (b) "An agreement to do an act impossible in itself is void." Explain. (3 marks)
- (c) What is the 'doctrine of election' as enunciated under the Transfer of Property Act, 1882 ? (3 marks)
- (d) What is meant by 'person of Indian origin' ? (3 marks)
- (e) What amounts to an 'inherently deceptive mark' under the Trade Marks Act, 1999 ? (3 marks)

OR (Alternate question to Q.No. 2)

Question 2A

- (i) Mention the main flaws in a contract. (3 marks)
- (ii) What amounts to 'defect in goods' under the Consumer Protection Act, 1986 ? (3 marks)
- (iii) What is meant by an 'industrial property' under the intellectual property rights (IPRs) ? (3 marks)
- (iv) What is market development assistance (MDA) scheme ? (3 marks)
- (v) What is meant by foreign currency convertible bond (FCCB) ? (3 marks)

Answer 2(a)

"Immoveable property" means land, benefits to arise out of land, and things attached to the earth, or permanently fastened to anything attached to the earth.

"Attached to the earth" means (a) rooted in the earth, as in the case of trees and shrubs; (b) embedded in the earth, as in the case of walls or buildings; or (c) attached to what is so embedded for the permanent beneficial enjoyment of that to which it is attached (S. 3 Para 6 of the Act).

Things rooted in the earth : Trees and Shrubs are immoveable property according to this definition subject to the exception as to standing timber.

Things embedded in the earth : A house being embedded in the earth is immoveable property and this is so even if it is sold for enjoyment as a house with an option to pull it down. The mode of annexation and object of annexation are the two tests to determine whether it is immoveable property or not.

Attached to what is so...: The attachment must be as the Section says for the permanent beneficial enjoyment of that to which it is attached e.g. the doors, windows of

a house or moveable parts of fixed machinery. But the attachment must be intended to be permanent.

Answer 2(b)

As per Section 56(1) of the Indian Contract Act, 1872 an agreement to do an act impossible in itself is void.

A contract which is entered into to perform something that is clearly impossible is void. For instance, A agrees with B to discover treasure by magic. The agreement is void by virtue of Section 56 para 1 which lays down the principle that an agreement to do an act impossible in itself is void.

Sometimes subsequent impossibility (i.e. where the impossibility supervenes after the contract has been made) renders the performance of a contract unlawful and stands discharged; as for example, where a singer contracts to sing and becomes too ill to do so, the contract becomes void. In this connection, para 2 of Section 56 provides that a contract to do an act, which after the contract is made, becomes impossible or by reason of some event which the promisor could not prevent, unlawful, becomes void when the act becomes impossible or unlawful.

If the impossibility is not obvious and the promisor alone knows of the impossibility or illegally then existing or the promisor might have known as such after using reasonable diligence, such promisor is bound to compensate the promisee for any loss he may suffer through the non-performance of the promise in spite of the agreement being void ab-initio (Section 56, para 3).

Answer 2(c)

Section 35 of the Transfer of Property Act deals with what is called doctrine of election. Suppose, a property is given to you and in the same deed of gift you are asked to transfer something belonging to you to another person. If you want to take the property you should transfer your property to someone else, otherwise you cannot take the property which is transferred to you by some one. Election may be defined as “the choosing between two rights where there is a clear intention that both were not intended to be enjoyed”.

The foundation of doctrine of election is that a person taking the benefit of an instrument must also bear the burden, and he must not take under and against the same instrument. It is, therefore, a branch of a general rule that no one may approbate and reprobate [*Copper v. Copper* (1874) H.L. 53].

However doctrine of election could not be applied to deprive a person of his statutory right to appear invoking extraordinary jurisdiction of the Supreme Court under Article 136, [*PR Deshpande v. MB Haribatti* (1995 (2) Scale 804 SC)].

Answer 2(d)

As per Foreign Direct Investment (FDI) Policy ‘Person of Indian Origin’ (PIO) means a citizen of any country other than Bangladesh or Pakistan, if

- (i) he at any time held Indian Passport;

- (ii) he or either of his parents or any of his grandparents was a citizen of India by virtue of the Constitution of India or the Citizenship Act, 1955; or
- (iii) the person is a spouse of an Indian citizen or a person referred to in sub clause (i) or (ii).

Answer 2(e)

As per Section 2(1)(h) of the Trade Mark Act, 1999, a mark shall be deceptively similar to another mark if it is so nearly resembles that other mark as to likely to deceive or cause confusion.

The terms similarity of trademarks is to be construed as “deceptively similar” which expression has been defined “as so nearly resembling that other mark as to be likely to deceive or cause confusion”.

Section 9 of the Trade Marks Act, 1999 deals with absolute grounds for refusal of registration of a trade mark. Section 9(1) of the Act prohibits registration of a trademark— if trademarks which are devoid of any distinctive character; that is to say, not capable of distinguishing the goods or services of one person from those of another person. Further, Section 9(2) prohibits registration of a trademark – if the mark is of such nature as to deceive the public or cause confusion.

An objection under Section 9(2)(a) of the Trade Marks Act, 1999 to the registration of a mark will only be raised if there is any real potential for deception of the public. Section 9(2)(a) is primarily concerned with the deceptive nature of the mark by reason of something inherent in the mark itself or in its use, such as to nature, quality or geographical origin of the goods or services. The mark may be in the nature of misrepresentation as to the characteristics of the goods or services or to the effect that they were made in a specified geographical region or place when in fact not so made.

Deceptive use may also arise where the mark contains misleading indication (such as the use of the word “registered” when the mark is not registered) or marks which are used in a fraudulent trade.

Objections under Section 9 of the Trade Marks Act, 1999 at first examination stage should be taken where there is prima facie misrepresentation as to “nature or quality of goods/services, geographical origin” etc. It is not necessary to raise an objection to the mark where there is no realistic possibility of deception.

In the case of *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—

- The nature of the marks i.e. whether the marks are word marks or labels marks or composite marks i.e. both words and label works.
- The degree of resemblance between the marks, phonetically similar and hence similar in idea.
- The nature of the goods in respect of which they are used as trade marks.

- The similarity in nature, character and performance of the goods of the rival traders
- Class of purchasers who are likely to buy the goods bearing the marks they require, on their education and intelligence and a degree of care they are likely to exercise in purchasing and /or using the goods.
- The mode of purchasing the goods or placing orders for the goods.
- Any other surrounding circumstances which may be relevant in the extant of dissimilarity between the competing marks.

Weightage to be given to each of the aforesaid factors depending upon facts of each case and the same weightage cannot be given to each factor in every case.

Answer 2(A)(i)

There may be the circumstances under which a contract made under these rules may still be bad, because there is a flaw, vice or error somewhere. As a result of such a flaw, the apparent agreement is not a real agreement.

The chief flaws in contract are:

- (i) Incapacity
- (ii) Mistake
- (iii) Misrepresentation
- (iv) Fraud
- (v) Undue Influence
- (vi) Coercion
- (vii) Illegality
- (viii) Impossibility.

Answer 2(A)(ii)

As per Section 2(1)(f) of the Consumer Protection Act, 1986 defect means any fault, imperfection or shortcoming in the quality, quantity, potency, purity or standard which is required to be maintained by or under any law for the time being in force or under any contract, express or implied, or as is claimed by the trader in any manner whatsoever in relation to any goods.

It is clear from the above definition that non-fulfilment of any of the standards or requirements laid down under any law for the time being in force or as claimed by the trader in relation to any goods fall under the ambit of defect.

Answer 2(A)(iii)

The expression 'Industrial Property' is sometimes misunderstood as relating to movable or immovable property used for industrial production. However, industrial property is a kind of intellectual property and relates to creation of human mind, e.g., inventions and

industrial designs. Simply stated, inventions are new solutions to technological problems, and industrial designs are aesthetic creations determining the appearance of industrial products. In addition, industrial property includes trademarks, service marks, commercial names and designations, including indications of source and appellations of origin, and the protection against unfair competition.

The term 'Industrial Property' may not appear entirely logical in the sense that the inventions are only concerned with the industry. In other words, the inventions are exploited in industrial plants while the trademarks, service marks, trade names and service names are concerned with both the commerce as well as industry. Notwithstanding the lack of logic, this term has acquired a meaning which clearly covers inventions as well as other marks. The Paris Convention also recognised industrial property to cover patent, trademark, service mark, trade names, utility models, industrial designs, indication of source and appellations of origin and the repression of unfair competition.

Hence, industrial property right is a collective name for rights referring to the commercial or industrial activities of a person. These activities may include the activities of industrial or commercial interests. They may be called inventions, creations, new products, processes of manufacture, new designs or model and a distinctive mark for goods etc.

Answer 2(A)(iv)

Market Development Assistance (MDA)

Under MDA Scheme, financial assistance is provided for a range of export promotion activities implemented by Export Promotion Councils and Trade Promotion Organizations on the basis of approved annual action plans. The scheme is administered by Department of Commerce. Assistance includes, amongst others, participation in:

- Trade Fairs and Buyer Seller meets abroad or in India, and Export promotions seminars.
- Financial assistance with travel grant is available to exporters traveling to focus areas, viz., Latin America, Africa, CIS region, ASEAN countries, Australia and New Zealand. In other areas, financial assistance without travel grant is available.

MDA assistance is available for exports having an annual export turnover as prescribed in MDA guidelines.

Answer 2(A)(v)

'Foreign Currency Convertible Bonds' (FCCB) means a bond issued by an Indian company expressed in foreign currency, the principal and interest of which is payable in foreign currency. FCCBs are issued in accordance with the Foreign Currency Convertible Bonds and ordinary shares (through depository receipt mechanism) Scheme 1993 and subscribed by a non-resident entity in foreign currency and convertible into ordinary shares of the issuing company in any manner, either in whole, or in part.

Indian companies can raise foreign currency resources abroad through the issue of FCCB/DR (ADRs/GDRs), in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993 and guidelines issued by the Government of India there under from time to time.

Question 3

- (a) *Ms. Neelam, daughter of Ashok, was travelling by train. She fell down from the running train while she was passing through the inter-connecting passage between two compartments and died as a result of crush injuries on her head.*

Ashok claimed compensation from the Railways for deficiency in service. The Railways contended that the redressal agencies under the Consumer Protection Act, 1986 had no jurisdiction to consider a complaint of this nature. They also contended that all the coaches of the train had been thoroughly checked at the starting point of the train and no defect was reported.

Will Ashok succeed in getting compensation ? Give reasons and refer to decided case law, if any. (5 marks)

- (b) *Distinguish between 'copyright' and 'international copyright'. (5 marks)*

- (c) *What is meant by 'geographical indication' in relation to goods under the Geographical Indications of Goods (Registration and Protection) Act, 1999 ? What are the benefits of registration under this Act ? (5 marks)*

Answer 3(a)

Yes, Ashok will succeed. In *Union of India v. Nathmal Hansaria* [First Appeal No. 692 of 1993 decided on 24.1.1997 (NCDRC)] the National Commission held that the death of the passenger could not be described as resulting from railway accident but an accidental death caused by the absence of safety devices in the vestibule passage way. The deceased passenger was a consumer and awarded compensation to the parents of deceased.

Answer 3(b)

Copyright is a right given by the law to creators of literary, dramatic, musical and artistic works and producers of cinematograph films and sound recordings. In fact, it is a bundle of rights including, inter alia, rights of reproduction, communication to the public, adaptation and translation of the work. There could be slight variations in the composition of the rights depending on the work.

Copyright ensures certain minimum safeguards of the rights of authors over their creations, thereby protecting and rewarding creativity. Creativity being the keystone of progress, no civilized society can afford to ignore the basic requirement of encouraging the same. Economic and social development of a society is dependent on creativity. The protection provided by copyright to the efforts of writers, artists, designers, dramatists, musicians, architects and producers of sound recordings, cinematograph films and computer software, creates an atmosphere conducive to creativity, which induces them to create more and motivates others to create.

The Copyright Act applies only to works first published in India, irrespective of the nationality of the author. However Section 40 of the Copyright Act empowers the Government of India to extend the benefits of all or any of the provisions of the Act to works first published in any foreign country. The benefits granted to foreign works will not extend beyond what is available to the works in the home country and that too on a

reciprocal basis i.e. the foreign country must grant similar protection to works entitled to copyright under the Act. The term of Copyright in India to the foreign work, will not exceed that conferred by the foreign country.

Government of India has passed the International Copyright Order, 1958. According to this order any work first published in any country which is a member of the Berne Convention or the Universal Copyright Convention will be accorded the same treatment as if it was first published in India.

Answer 3(c)

As per Section 2(e) of the Geographical Indication of Goods (Registration and Protection) Act, 1999, geographical indication in relation to goods means an indication which identifies such goods as agricultural goods, natural goods or manufactured goods as originating, or manufactured in the territory of a country, or a region or locality in that territory, where a given quality, reputation or other characteristic of such goods is essentially attributable to its geographical origin and in case where such goods are manufactured goods one of the activities of either the production or of processing or preparation of the goods concerned takes place in such territory, region or locality, as the case may be.

It may be noted that any name which is not the name of a country, region or locality of that country shall also be considered as the geographical indication if it relates to a specific geographical area and is used upon or in relation to particular goods originating from that country, region or locality, as the case may be.

Benefit of registration of geographical indications

- It confers legal protection to Geographical Indications in India
- Prevents unauthorised use of a Registered Geographical Indication by others
- It provides legal protection to Indian Geographical Indications which in turn boost exports.
- It promotes economic prosperity of producers of goods produced in a geographical territory

Question 4

- (a) *“The problem of money laundering is no longer restricted to the geo-political boundaries of any country. It is a menace that cannot be contained by any nation alone.” Discuss this statement in the context of impact of money laundering on development, various global initiatives on the prevention of money laundering and the enactment of the Prevention of Money Laundering Act, 2002. (8 marks)*
- (b) *“The Competition Act, 2002 does not prohibit dominance but the abuse of dominant position.” Discuss. (7 marks)*

Answer 4(a)

Prevention of Money Laundering – Global Initiatives

Since money laundering is an international phenomenon, transnational co-operation

is of critical importance in the fight against this menace. A number of initiatives have been taken to deal with the problem at international level. In this context, the United Nations or the Bank for International Settlements, took some initiatives in 1980s to address the problem of money laundering. However, with the creation of the Financial Action Task Force (FATF) in 1989, regional groupings, such as the European Union, Council of Europe, and organisation of American States also established anti- money laundering standards for their member countries.

The major international agreements addressing money laundering include the United Nations Convention against Illicit Trafficking in Drugs and Psychotropic Substances (the Vienna Convention) and Council of Europe Convention on Laundering, Search, Seizure and Confiscation of the Proceeds of Crime. The role of financial institutions in preventing and detecting money laundering has also been the subject of pronouncements by the Basle Committee on Banking Regulation Supervisory Practices, the European Union and the International Organization of Securities Commissions.

The Vienna Convention

The first major initiative in the prevention of money laundering was the United Nations Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances in December 1988 (popularly known as Vienna Convention). This convention laid the groundwork for efforts to combat money laundering by obliging the member states to criminalize the laundering of money from drug trafficking. It promotes international cooperation in investigations and makes extradition between member states applicable to money laundering.

The convention also establishes the principle that domestic bank secrecy provisions should not interfere with international criminal investigations.

Council of Europe Convention

The Council of Europe Convention on Laundering, Search, Seizure and Confiscation of Proceeds of Crime, 1990 establishes a common policy on money laundering. It sets out a common definition of money laundering and common measures for dealing with it. The Convention lays down the principles for international cooperation among the member states, which may also include states outside the Council of Europe. This convention came into force in September 1993. One of the purposes of the convention is to facilitate international cooperation as regards investigative assistance, search, seizure and confiscation of the proceeds of all types of criminality, particularly serious crimes, such as, drug offences, arms dealing, terrorist offences etc. and other offences which generate large profits.

European Union Money Laundering Directive

In response to the new opportunities for money laundering opened up by the liberalization of capital movements and cross-border financial services in the European Union, the Council of the European Communities in June, 1991 issued a directive on the Prevention of Use of the Financial System for the Purpose of Money Laundering. The directive requires member states to outlaw money laundering. The member states have been put under obligation to require financial institutions to establish and maintain internal systems to prevent laundering, to obtain the identification of customers with whom they enter into transaction of more than a particular amount and to keep proper records for at

least five years. The financial institutions are also required to report suspicious transactions and ensure that such reporting does not result in liability for the institution or its employees.

Basle Committee's Statement of Principles

In December 1988 the Basle Committee on Banking Regulation Supervisory Practices issued a statement of principles to be complied by the international banks of member states. These principles include identifying customers, avoiding suspicious transactions, and cooperating with law enforcement agencies. The statement aims at encouraging the banking sector to adopt common position in order to ensure that banks are not used to hide or launder funds acquired through criminal activities.

Resolution of the International Organization of Securities Commissions

The International Organization of Securities Commissions (IOSCO) adopted, in October 1992, a resolution encouraging its members to take necessary steps to combat money laundering in securities and futures markets.

The Financial Action Task Force (FATF)

The Financial Action Task Force (FATF) is an inter-governmental body established in 1989 by the Ministers of its Member jurisdictions. The objectives of the FATF are to set standards and promote effective implementation of legal, regulatory and operational measures for combating money laundering, terrorist financing and other related threats to the integrity of the international financial system. The FATF is therefore a “policy-making body” which works to generate the necessary political will to bring about national legislative and regulatory reforms in these areas.

Answer 4(b)

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.

Dominance is not considered bad per se but its abuse is. Abuse is stated to occur when an enterprise or a group of enterprises uses its dominant position in the relevant market in an exclusionary or/ and an exploitative manner.

Competition Act, 2002 gives an exhaustive list of practices that shall constitute abuse of dominant position and, therefore, are prohibited. Such practices shall constitute abuse only when adopted by an enterprise enjoying dominant position in the relevant market in India.

Abuse of dominance is judged in terms of the specified types of acts committed by a dominant enterprise. Such acts are prohibited under the law. Section 4 of the Competition Act, 2002 expressly prohibits any enterprise or group from abusing its dominant position, meaning thereby a position of strength, enjoyed by an enterprise or group, in the relevant market, in India, which enables it to–

- (i) operate independently of competitive forces prevailing in the relevant market; or
- (ii) affect its competitors or consumers or the relevant market in its favour”.

PART B**Question 5**

- (a) *Arun bequeaths certain property to Varun requesting him to distribute it amongst such members of Chandan's family as Varun should think most deserving. Does it create a trust ? Give reasons. (3 marks)*
- (b) *What are the provisions of the Legal Metrology Act, 2009 relating to declarations on pre-packaged commodities ? (3 marks)*
- (c) *What is meant by 'day of acceptance' under the Micro, Small and Medium Enterprises Development Act, 2006 ? (3 marks)*
- (d) *What is meant by 'compulsory insurance' under the Public Liability Insurance Act, 1991 ? (3 marks)*
- (e) *What is the objective of the National Green Tribunal Act, 2010 ? (3 marks)*

Answer 5(a)

For creating a trust the author of the trust should indicate with reasonable certainty the following:

- (1) Certainty in words:
- (2) Certainty in the object of the trust :
- (3) Certainty in the subject-matter of the trust :

If the trust instrument is lacking in first and third certainties, no trust is created but if the second certainty is absent, resulting trust will be created in favour of the author of the trust.

In the present case, Arun bequeaths certain property to Varun, requesting him to distribute it amongst such members of Chandan family as Varun should think most deserving.

This does not create a trust, for the beneficiaries are not indicated with reasonable certainty.

Answer 5(b)

Section 18 of the Legal Metrology Act, 2009 states that no person shall manufacture, pack, sell, import, distribute, deliver, offer, expose or possess for sale any pre-packaged commodity unless such package is in such standard quantities or number and bears thereon such declarations and particulars in such manner as may be prescribed. Any advertisement mentioning the retail sale price of a pre-packaged commodity shall contain a declaration as to the net quantity or number of the commodity contained in the package in such form and manner as may be prescribed.

Answer 5(c)

Explanation to Section 2(b) (i) of the MSME Act, 2006 defines "the day of acceptance" as to mean the day of the actual delivery of goods or the rendering of

services; or where any objection is made in writing by the buyer regarding acceptance of goods or services within fifteen days from the day of the delivery of goods or the rendering of services, the day on which such objection is removed by the supplier.

Answer 5(d)

Section 4 Public Liability Insurance Act, 1991 deals with compulsory insurance. It requires the owner to take out one or more insurance policies, before starting the handling of hazardous substance. Such insurance policy should provide for contract of insurance, whereby he is insured against liability to give relief under Section 3(1) of the Act. The amount of insurance policy should not be less than the amount of paid up capital of the undertaking handling any hazardous substance and more than the amount, not exceeding rupees fifty crore, as may be prescribed.

Answer 5(e)

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

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

Question 6

- (a) *“Mens rea is an essential ingredient of an offence punishable under the Essential Commodities Act, 1955.” Discuss with case law.* (5 marks)
- (b) *State the provisions of the Societies Registration Act, 1860 relating to ‘suits by and against society’.* (5 marks)
- (c) *What are the general powers of the Central Government for protecting and improving the quality of the environment and for preventing, controlling and abating environmental pollution under the Environment (Protection) Act, 1986 ?* (5 marks)

OR (Alternate question to Q.No. 6)

Question 6A

- (i) *“An enterprise which is engaged in hazardous or inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding areas owes an absolute and non-delegatable duty to the community.” Comment.* (5 marks)
- (ii) *Discuss the powers of the Central Government to control production, supply and distribution of essential commodities under the Essential Commodities Act, 1955.* (5 marks)
- (iii) *What are the powers of the Central Government to provide relief to an industrial undertaking, the management or control of which has been taken over by it*

without investigation under the Industries (Development and Regulation) Act, 1951 ?
(5 marks)

Answer 6(a)

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, is an essential ingredient of an offence under Section 7. In other words, if the dealer did believe bona fide that he could store the foodgrains for instance, without infringing any order under Section 3, there could be no contravention under Section 7.

It was observed by the Supreme Court in this case that *mens rea* is an essential ingredient of any criminal offence. *Mens rea* by necessary implication may be excluded from a statute only where it is absolutely clear that the implementation of the object of the Statute would otherwise be defeated. 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.

In the case of *Hariprasad Rao v. State* (AIR 1951 SC 264), it was observed that unless a Statute either clearly or by necessary implication rules out *mens rea* as a constituent part of a crime, an accused cannot be found guilty of an offence against the criminal law unless he has got a guilty mind. Therefore, *mens rea* is an essential ingredient of an offence under Section 7 of the Act.

Answer 6(b)

Section 6 of the Societies Registration Act, 1860 deals with suits by and against societies.

Section 6 provides that every society registered under this Act may sue or be sued in the name of President, Chairman, or Principal Secretary, or trustees, as shall be determined by the rules and regulations of the society and, in default of such determination, in the name of such person as shall be appointed by the governing body for the occasion: provided that it shall be competent for any person having a claim, or demand against the society, to sue the President or Chairman, or Principal Secretary or the trustees thereof, if on application the governing body some other officer or person be not nominated to be the defendant.

Answer 6(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 (different standards may be laid down for different sources of 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.
- (xv) The Central Government is also empowered under Section 3(3) to constitute by order one or more authorities for exercising and performing such powers and functions of the Central Government as may be specified in the order.

Answer 6A(i)

Supreme Court in the case of *M.C. Mehta and Another v. Union of India and others* [(1987) 1 Comp. LJ 99 (SC)] ruled that an application for compensation in a pollution case can be maintained under Article 32 of the Constitution, for, such application is for the protection of the fundamental rights of the people and the Court has all incidental and ancillary powers including the power to forge new remedies and fashion new strategies designed to enforce fundamental rights. On the question of liability of an enterprise engaged in hazardous activities, the Supreme Court laid down for the first time a far-reaching ruling, that an enterprise which is engaged in hazardous or inherently dangerous activity and an industry which poses a potential threat to the health and safety of the persons working in the factory and of those residing in the surrounding area owes an absolute and non-delegatable duty to the community to ensure that no harm results to any one on account of an hazardous or inherently dangerous nature of the activity which it has undertaken. The Court further reiterated that the rule in *Rylands v. Fletcher* [(1861-73)]

All.E.R. 146 HLJ] of strict liability would apply in India but without any exceptions whatsoever recognised in England. The Court also ruled that the measure of compensation must be correlated to the magnitude and capacity of the enterprise because such compensation must have a deterrent effect.

Answer 6A(ii)

The Central Government having been vested with power under Section 3(1) of the Essential Commodities Act, 1955 to issue order in the following circumstances providing for regulating or prohibiting the production, supply and distribution of essential commodities and trade and commerce therein:

- (i) when it is necessary or expedient for maintaining or increasing supplies of any essential commodity;
- (ii) for securing the equitable distribution and availability of essential commodities at fair price; or
- (iii) for securing any essential commodity for the defence of India or the efficient conduct of military operations.

Section 3(3) of the Act vests powers in Central Government to deal with the pricing of the essential commodities particularly when the commodities are being sold to Central/ State Government in compliance of order under clause (f) of Sub-section (2) of Section 3. In such a case, the price shall be paid as provided hereunder:

- (a) the agreed price, where the price can be agreed upon consistently with the controlled price fixed under this section;
- (b) controlled price: where no such agreement can be reached, the price calculated with reference to controlled price;
- (c) the price calculated at the market rate prevailing in the locality on the date of sale, where neither clause (a) nor clause (b) applies.

Section 3(3A)(i) of the Essential Commodities Act, 1955 is in the nature of an emergency provision and can be resorted to meet a situation arising at a particular locality. It empowers the Central Government to direct the price at which the foodstuffs in any locality will be sold to general public. This direction will be issued only when the Central Government is of the opinion that takings such step is necessary for controlling price rise or preventing the hoarding of any foodstuff in any locality.

The Central Government has been vested with necessary powers under Sub-section (4) of Section 3 to authorise any person (known as authorised controller) when it is considered necessary for maintaining or increasing the production and supply of essential commodities.

Answer 6A(iii)

Section 18FB of the Industries Development and Regulation Act, 1951 contains provisions empowering the Central Government to make certain declarations in relation to an industrial undertaking, the management or control of which has been taken over without investigation.

In this context and with a view to prevent fall in the volume of production of any scheduled industry, the Government may declare, by notified order, that

- (1) all or any of the enactments mentioned in the Third Schedule to the Act shall not apply or shall apply with such adaptations whether by way of modification, addition or omission to such industrial undertakings as may be specified in the notified order. Or
- (2) the operation of all or any of the contracts, assurances, properties, agreements, settlements, awards, standing orders or other instruments in force (to which such industrial undertaking or the company owning such industrial undertaking is a party which may be applicable to such industrial undertaking or company) immediately before the date of issue of such notified order shall remain suspended or that all or any of the rights, privileges, obligations and liabilities accruing or arising there under before the said date, shall remain suspended or shall be enforceable by such adaptation and in such manner as may be specified in the notified order.
