

GUIDELINE ANSWERS

EXECUTIVE PROGRAMME

(New Syllabus)

JUNE 2019

MODULE 1



**THE INSTITUTE OF
Company Secretaries of India**

भारतीय कम्पनी सचिव संस्थान

IN PURSUIT OF PROFESSIONAL EXCELLENCE

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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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EXECUTIVE PROGRAMME EXAMINATION

JUNE 2019

JURISPRUDENCE, INTERPRETATION & GENERAL LAWS

Time allowed : 3 hours

Maximum marks : 100

NOTE: Answer ALL Questions.

Question 1

- (a) Critically examine Roscoe Pound's theory of interests.
- (b) Explain the freedom of association under the Constitution of India. What reasonable restrictions have been imposed on this freedom under Article 19 of the Constitution of India ?
- (c) The 'Privileged Communications' are based on Public Policy and a witness cannot be compelled to answer the same during the evidence in the Court or before any other authority. Explain in brief.
- (d) Naveen takes property belonging to Ganesh out of Ganesh possession in good faith belonging at the time when he takes it that the property belongs to himself. Later on Naveen discovers his mistake, dishonestly misappropriates the property to his own use. Explain what offence he has done ? (5 marks each)

Answer 1(a)

Roscoe Pound a distinguished American legal scholar drew a similarity between the task of a lawyer and an engineer and gave his theory of social engineering. The goal of this theory was to build such a structure of society where the satisfaction of maximum of wants was achieved with the minimum of friction and waste. Such a society according to Roscoe Pound would be an 'efficient' society. Realisation of such a social structure would require balancing of competing interests. Roscoe Pound defined interests as claims or wants or desires which men assert de facto, and about which law must do something, if organised societies are to endure. For any legal order to be successful in structuring an efficient society, there has to be a recognition of certain interests- individual, public and social; a definition of the limits within which such interest will be legally recognized and given effect to and securing of those interests within the limits as defined.

According to Roscoe Pound, for determining the scope and the subject matter of the legal system, following five things are required to be done:

1. Preparation of an inventory of interests and their classification.
2. Selection of the interests which should be legally recognized.
3. Demarcation of the limits of securing the interest so selected.
4. Consideration of the means whereby laws might secure the interests when these have been acknowledged and delimited, and
5. Evolution of the principles of valuation of interests.

Roscoe Pound's classification of interests are as follows:

1. *Individual interest* : These are claims or demands determined from the standpoint of individual's life and concern. They are Interest of personality; Interest in domestic relations and Interest of substance.
2. *Public interest* : These interests are asserted by individual from the standpoint of political life. They are Interests of the state as a juristic person and Interests of the state as guardian of social interest.
3. *Social interests* : These are claims or demands thought of in terms of social life and generalized as claims of the social group. It is from the point of view of protecting the general interest of all members of the society.

Answer 1(b)

According to Article of 19(1) (c) of the Constitution of India, all citizens shall have the right to form associations or unions. The freedom of association includes freedom to hold meeting and to takeout processions without arms. Right to form associations for unions is also guaranteed so that people are free to have the members entertaining similar views. This right is also, however, subject to reasonable restrictions which the State may impose in the interests of:

- (i) The sovereignty and integrity of India, or
- (ii) Public order, or
- (iii) Morality.

A question not yet free from doubt is whether the fundamental right to form association conveys the freedom to deny to form an association. In the case of *Tikaramji v. Uttar Pradesh*, AIR 1956 SC 676, the Supreme Court observed that assuming the right to form an association "implies a right not to form an association, it does not follow that the negative right must also be regarded as a fundamental right".

Answer 1(c)

There are some facts of which evidence cannot be given though they are relevant, such as facts coming under Sections 122, 123, 126 and 127 of the Indian Evidence Act, 1872, where evidence is prohibited. They are also referred to as 'privileged communications'

A witness though compellable to give evidence is privileged in respect of particular matters within the limits of which he is not bound to answer questions while giving evidence. These are based on public policy and are (i) Evidence of a Judge or Magistrate in regard to certain matters(Section 121) (ii) Communications during marriage(Section 122) (iii) Affairs of State(Section 123) (iv) Official Communications(Section 124) (v) Source of Information of a Magistrate or Police officer or Revenue officer as to commission of an offence or crime(Section 125) (vi) In the case of Professional Communication between a client and his barrister, attorney or other professional or legal advisor (Sections 126 and 129). But this privilege is not absolute and the client is entitled to waive it.

Under Section 122 of the Act, communication between the husband and the wife during marriage is privileged and its disclosure cannot be enforced. This provision is based on the principle of domestic peace and confidence between the spouses.

Answer 1(d)

Section 403 and 404 of the Indian Penal Code, 1860 deals with Criminal Misappropriation of Property. According to Section 403 of the Indian Penal Code, 1860, whoever dishonestly misappropriates or converts to his own use any movable property, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.

In the present case Naveen takes property belonging to Ganesh out of Ganesh's possession, in good faith believing at the time when he takes it, that the property belongs to himself. Naveen is not guilty of theft; but if Naveen, after discovering his mistake, dishonestly appropriates the property to his own use, Naveen is guilty of an offence under this section.

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

Question 2

- (a) *Distinguish between cognizable and non-cognizable offence under the Criminal Procedure Code, 1973. (4 marks)*
- (b) *Distinguish between Arbitration and Conciliation under the Arbitration and Conciliation Act, 1996. (4 marks)*
- (c) *Distinguish between review and revision under the Civil Procedure Code 1908. (4 marks)*
- (d) *Explain provisions for contempt and caveat under Companies Act, 2013. (4 marks)*

OR (Alternate question to Q. No. 2)

Question 2A

- (i) *The Law of Limitation under the Limitation Act, 1963 bars the remedy but it does not extinguish the right. Explain in brief.*
- (ii) *Distinguish between executed and execution under Indian Stamp Act, 1889.*
- (iii) *Explain the powers of Special Courts for offences triable by it under Special Courts, Tribunal under Companies and other legislations.*
- (iv) *Explain the "Rule of Beneficial Construction". (4 marks each)*

Answer 2(a)

According to Section 2(c) of the Code of Criminal Procedure, 1973 "cognizable offence" means an offence for which, and "cognizable case" means a case in which, a police officer may, in accordance with the First Schedule or under any other law for the time being in force, arrest without warrant.

As per Section 2 (l) of the Code of Criminal Procedure, 1973 "non-cognizable offence"

means an offence for which, and “non-cognizable case” means a case in which, a police officer has no authority to arrest without warrant. Thus, a non-cognizable offence needs special authority to arrest by the police officer.

In order to be a cognizable case under Section 2(c) of the Code, it would be enough if one or more (not ordinarily all) of the offences are cognizable.

It may be observed from the First Schedule that non-cognizable offences are usually bailable while cognizable offences are generally non-bailable. Cognizable offences are generally more serious than non-cognizable offences.

Answer 2(b)

Arbitration is the means by which parties to a dispute get the same settled through the intervention of a third person (or more persons) but without recourse to a Court of Law. The settlement of dispute is arrived by the judgment of the third person (or more persons) who are called Arbitrators. The parties repose confidence in the judgement of the arbitrator and show their willingness to abide by his decision. The essence of arbitration is thus based upon the principle of keeping away the dispute from the ordinary Courts enabling the parties to substitute by a domestic tribunal.

Section 2(1)(a) of the Arbitration and Conciliation Act, 1996, defines the term “arbitration” as to mean any arbitration whether or not administered by a permanent arbitral institution.

Conciliation is an informal process in which the conciliator (the third party) tries to bring the disputants to agreement. He does this by lowering tensions, improving communications, interpreting issues, providing technical assistance, exploring potential solutions and bringing about a negotiated settlement. It can succeed only if the parties are willing to re-adjust.

Conciliation involves building a positive relationship between the parties to the dispute. Conciliation tries to individualize the optimal solution and direct parties towards a satisfactory common agreement.

The Arbitration and Conciliation Act, 1996(Part III containing Section 61 to 81) gives a formal recognition to conciliation in India.

Answer 2(c)

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

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

and the Court may make such order thereon as it thinks fit.

Whereas Section 115 of the Civil Procedure Code 1908 deals with revision. The High Court may call for the record of any case which has been decided by any Court subordinate to such High Court and in which no appeal lies thereto, and if such subordinate Court appears—

- (a) to have exercised a jurisdiction not vested in it by law, or
- (b) to have failed to exercise a jurisdiction so vested, or
- (c) to have acted in the exercise of its jurisdiction illegally or with material irregularity, the High Court may make such order as it thinks fit.

Provided that the High Court shall not vary or reverse any order made or any order deciding an issue in the course of a suit or proceeding except where the order, if it had been made in favour of the party applying for revision would have finally disposed of the suit or other proceedings.

Answer 2(d)

According to Section 425 of the Companies Act, 2013, the National Company Law Tribunal and the National Company Law Appellate Tribunal shall have the same jurisdiction, powers and authority in respect of contempt of themselves as the High Court has and may exercise, for this purpose, the powers under the provisions of the Contempt of Courts Act, 1971, which shall have the effect subject to modifications that (a) the reference therein to a High Court shall be construed as including a reference to the Tribunal and the Appellate Tribunal; and (b) the reference to Advocate-General in section 15 of the said Act shall be construed as a reference to such Law Officers as the Central Government may, specify in this behalf.

Rule 25 of the National Company Law Tribunal Rules, 2016 provides that any person may lodge a caveat in triplicate in any appeal or petition or application that may be instituted before this National Company Law Tribunal by paying the prescribed fee after forwarding a copy by registered post or serving the same on the expected petitioner or appellant and the caveat shall be in the form prescribed and contain such details and particulars or orders or directions, details of authority against whose orders or directions the appeal or petition or application is being instituted by the expected appellant or petitioner or applicant with full address for service on other side, so that the appeal or petition or application could be served before the appeal or petition or interim application is taken up. The caveat shall remain valid for a period of ninety days from the date of its filing.

Answer 2A(i)

The law relating to limitation is incorporated in the Limitation Act, 1963, which prescribes different periods of limitation for suits, petitions or applications.

In the case of *Bombay Dying & Mfg. Co. Ltd. v. State of Bombay*, AIR 1958 SC 328 the Supreme Court held that the Law of limitation bars the remedy in a Court of law only when the period of limitation has expired, but it does not extinguish the right that it cannot be enforced by judicial process. Thus if a claim is satisfied outside the Court of law after the expiry of period of limitation, that is not illegal.

Section 3 of the Limitation Act, 1963 provides that any suit, appeal or application if

made beyond the prescribed period of limitation, it is the duty of the Court not to proceed with such suits irrespective of the fact whether the plea of limitation has been set up in defence or not. The provisions of Section 3 are mandatory. The Court can suo motu take note of question of limitation. The question whether a suit is barred by limitation should be decided on the facts as they stood on the date of presentation of the plaint.

Answer 2A(ii)

Under Section 1(12) of the Indian Stamp Act, 1889 the words “executed” and “execution” (used with reference to instruments), mean “signed” and “signature” respectively.

Signature includes mark by an illiterate person [Section 3(52), General Clauses Act, 1897].

An instrument which is chargeable with stamp duty only on being “executed” is not liable to stamp duty until it is signed.

The Collector can receive the stamp duty without penalty and certify an instrument as duly stamped, as from the date of execution. (Sections 37 and 40 of the Indian Stamp Act, 1889)

Answer 2A(iii)

According to Section 436(1) of the Companies Act, 2013, notwithstanding anything contained in the Code of Criminal Procedure, 1973,—

- (a) all offences specified under Section 435(1) shall be triable only by the Special Court established for the area in which the registered office of the company in relation to which the offence is committed or where there are more Special Courts than one for such area, by such one of them as may be specified in this behalf by the High Court concerned;
- (b) where a person accused of, or suspected of the commission of, an offence under this Act is forwarded to a Magistrate under Section 167(2) or Section 167(2A) of the Code of Criminal Procedure, 1973, such Magistrate may authorise the detention of such person in such custody as he thinks fit for a period not exceeding fifteen days in the whole where such Magistrate is a Judicial Magistrate and seven days in the whole where such Magistrate is an Executive Magistrate. Where such Magistrate considers that the detention of such person upon or before the expiry of the period of detention is unnecessary, he shall order such person to be forwarded to the Special Court having jurisdiction.
- (c) the Special Court may exercise, in relation to the person forwarded to it under clause (b), the same power which a Magistrate having jurisdiction to try a case may exercise under section 167 of the Code of Criminal Procedure, 1973 in relation to an accused person who has been forwarded to him under that section; and
- (d) a Special Court may, upon perusal of the police report of the facts constituting an offence under this Act or upon a complaint in that behalf, take cognizance of that offence without the accused being committed to it for trial.

Section 436 (2) of the Act provides that when trying an offence under this Act, a

Special Court may also try an offence other than an offence under this Act with which the accused may, under the Code of Criminal Procedure, 1973 be charged at the same trial.

As per Section 436 (3) of the Act, notwithstanding anything contained in the Code of Criminal Procedure, 1973, the Special Court may, if it thinks fit, try in a summary way any offence under this Act which is punishable with imprisonment for a term not exceeding three years.

Answer 2A(iv)

Beneficial construction involves giving the widest meaning possible to the statutes. When there are two or more possible ways of interpreting a section or a word, the meaning which gives relief and protects the benefits which are purported to be given by the legislation, should be chosen. A beneficial statute has to be construed in its correct perspective so as to fructify the legislative intent. Beneficial construction to suppress the mischief and advance the remedy is generally preferred.

Beneficial Construction of statutes have enormously played an important role in the development and beneficial interpretation of socio – economic legislations and have always encouraged the Indian legislators to make more laws in favor of the people belonging to backward class of people in India.

Question 3

- (a) *Yash signed a deed of gift in favour of Raja. If Yash does not agree to its registration, will the gift deed be registered ? Explain, whether delay in registration of a gift deed will postpone its operation ?*
- (b) *Explain the provisions for appeal under the Right to Information Act, 2005.*
- (c) *The Civil Court has power to grant temporary injunction, but for obtaining the same the plaintiff is required to satisfy the Court. Explain in brief.*
- (d) *If any person dishonestly or fraudulently does any act under section 43 of Information Technology Act, 2000 without the permission of the owner or any other person, who is incharge of a computer, computer system network, he shall be punished. What is the punishment for this offence ? In brief, discuss the offences listed in The IT Act relating to computer and computer system network. (4 marks each)*

Answer 3(a)

Section 123 of the Transfer of Property Act, 1882 merely requires that donor should have signed the deed of gift. Hence a gift deed can be registered even if the donor does not agree to its registration (*Kalyan Sundaram Pillai v. Karuppa Moppanar*, AIR 1927 PC 42). Delay in registration of a gift does not postpone its operation.

The gift deed will be registered even if Yash (donor) does not agree to its registration.

Answer 3(b)

Any person who does not receive a decision within the specified time or is aggrieved by a decision of the Public Information Officer (PIO) may file an appeal under Section 19 of the Right to Information Act, 2005.

First Appeal : First appeal to the officer senior in rank to the PIO in the concerned Public Authority within 30 days from the expiry of the prescribed time limit or from the receipt of the decision (delay may be condoned by the Appellate Authority if sufficient cause is shown).

Second Appeal : Second appeal to the Central Information Commission or the State Information Commission as the case may be, within 90 days of the date on which the decision was given or should have been made by the First Appellate Authority (delay may be condoned by the Commission if sufficient cause is shown)

Answer 3(c)

The Court may grant temporary injunction to restrain any such act or make such other order for the purpose of staying and preventing the wasting, damaging, alienation or sale or removal or disposition of the property or dispossession of the plaintiff, or otherwise causing injury to the plaintiff in relation to any property in dispute in the suit; where it is proved by affidavit or otherwise:

- a. that any property in dispute in a suit is in danger of being wasted, damaged or alienated by any party to the suit, or wrongfully sold in execution of a decree, or
- b. that the defendant threatens, or intends to remove or dispose of his property with a view to defrauding his creditors, or
- c. that the defendant threatens to dispossess the plaintiff or otherwise cause injury to the plaintiff in relation to any property in dispute in the suit.

It would be necessary for the plaintiff to satisfy the Court that (i) substantial and irreparable harm or injury would be suffered by him if such temporary injunction (till the disposal of the suit) is not granted (ii) the balance of convenience lies in his/ her favour and (iii) that such loss or damage or harm cannot be compensated by damages.

Answer 3(d)

If any person, dishonestly or fraudulently, does any act referred to in Section 43 of the Information Technology Act, 2000, he shall be punishable with imprisonment for a term which may extend to three years or with fine which may extend to five lakh rupees or with both. (Section 66 of the Information Technology Act, 2000)

The offences listed in the Information Technology Act, 2000 are as follows:

- Dishonestly receiving stolen computer resource or communication device
- Identity theft
- Cheating by personation by using computer resource
- Violation of privacy
- Cyber terrorism
- Publishing or transmitting of material containing sexually explicit act, etc., in electronic form
- Publishing or transmitting of material depicting children in sexually explicit act, etc., in electronic form

- Misrepresentation
- Breach of confidentiality and privacy
- Disclosure of information in breach of lawful contract
- Publishing electronic signature Certificate false in certain particulars
- Publication for fraudulent purpose.

Question 4

- (a) *'Confession caused by inducement, threat or promise is irrelevant'. Explain briefly.*
- (b) *Discuss the vicarious or tortious liability of state for the act of his servant. Refer relevant Judgements.*
- (c) *Explain the rule of 'Ejusdem Generis' under the Interpretation of statute.*
- (d) *'Explain provisions of summary procedure' including leave to defend under Civil Procedure Code. (4 marks each)*

Answer 4(a)

According to Section 24 of the Indian Evidence Act, 1872 confession caused by inducement, threat or promise is irrelevant. To attract the prohibition contained in Section 24 of the Evidence Act the following six facts must be established:

1. that the statement in question is a confession;
2. that such confession has been made by an accused person;
3. that it has been made to a person in authority;
4. that the confession has been obtained by reason of any inducement, threat or promise proceeded from a person in authority;
5. such inducement, threat or promise, must have reference to the charge against the accused person;
6. the inducement, threat or promise must in the opinion of the Court be sufficient to give the accused person grounds, which would appear to him reasonable for supposing that by making it he would gain any advantage or avoid any evil of a temporal nature in reference to the proceedings against him.

To exclude the confession it is not always necessary to prove that it was the result of inducement, threat or promise. It is sufficient if a legitimate doubt is created in the mind of the Court or it appears to the Court that the confession was not voluntary. It is however for the accused to create this doubt and not for the prosecution to prove that it was voluntarily made. A confession if voluntary and truthfully made is an efficacious proof of guilt.

Answer 4(b)

When a case of Government liability in tort comes before the courts, the question is

whether the particular Government activity, which gave rise to the tort, was the sovereign function or non-sovereign function. If it is a sovereign function it could claim immunity from the tortious liability, otherwise not. Generally, the activities of commercial nature or those which can be carried out by the private individual are termed as non-sovereign functions.

The first important case involving the tortious liability of the State was raised in the pre-independence era *P. and O. Steam Navigation v. Secretary of State for India* (5 Bom HCR App 1). The question referred to the Supreme Court was whether the Secretary of State for India is liable for the damages caused by the negligence of the servants in the service of the Government. The Supreme Court answered the question in the affirmative. The Court pointed out the principle of law that the Secretary of State for India in Council is liable for the damages occasioned by the negligence of Government servants, if the negligence is such as would render an ordinary employer liable. According to the principle laid down in this case the Secretary of State can be liable only for acts of non-sovereign nature, liability will not accrue for sovereign acts. The Court admitted the distinction between the sovereign and non-sovereign functions of the government and said that here was a great and clear distinction between acts done in exercise of what are termed sovereign powers, and acts done in the conduct of undertakings which might be carried on by private individuals without having such powers delegated to them.

Answer 4(c)

"Ejusdem Generis" literally means "of the same kind or species". The *ejusdem generis* rule is that, where there are general words following particular and specific words, the general words following particular and specific words must be confined to things of the same kind as those specified, unless there is a clear manifestation of a contrary purpose. It is merely a rule of construction to aid the Courts to find out the true intention of the Legislature. To apply the rule the following conditions must exist:

- (1) The statute contains an enumeration by specific words,
- (2) The members of the enumeration constitute a class,
- (3) The class is not exhausted by the enumeration,
- (4) A general term follows the enumeration,
- (5) There is a distinct genus which comprises more than one species, and
- (6) There is no clearly manifested intent that the general term be given a broader meaning than the doctrine requires.

The rule of *ejusdem generis* must be applied with great caution because, it implies a departure from the natural meaning of words, in order to give them a meaning or supposed intention of the legislature.

Answer 4(d)

Order 37 of the Civil Procedure Code provides for a summary procedure in respect of certain suits. The object is to prevent unreasonable obstruction by a defendant. A procedure by way of summary suit applies to suits upon bill of exchange, hundies or

promissory notes, when the plaintiff desires to proceed under the provisions of Order 37.

The rules for summary procedure are applicable to the High Courts, City Civil Courts and Small Courts and such other Courts.

Leave to defend

Order 37 Rule 3 of the Civil Procedure Code prescribe the mode of service of summons etc. and leave to defend. The defendant is not entitled to defend the suit unless he enters an appearance within 10 days from the service of summons.

Such leave to defend may be granted unconditional or upon such term as the Court or the Judge may think fit. However, such leave shall not be granted where:

- (1) the Court is satisfied that the facts disclosed by the defendant do not indicate that he has a substantial defence or that the defences are frivolous or veracious, and
- (2) the part of the amount claimed by the plaintiff and admitted by the defendant to be due from him is not deposited by him in the Court.

On the hearing of such summons for judgement, the plaintiff shall be entitled to judgement provided the defendant has not applied for leave to defend or if such application has been made and is refused or where the defendant is permitted to defend but he fails to give the required security within the prescribed time or to carry out such other precautions as may have been directed by the Court.

After decree, the Court may, under special circumstances set-aside the decree and if necessary stay or set aside execution, and may give leave to the defendant to appear and to defend the suit. (Order 37 Rule 4)

Question 5

- (a) *Discuss in brief the provisions for filing an appeal before the National Company Law Appellate Tribunal (NCLAT) under the Companies Act, 2013.*
- (b) *Article 14 of the Constitution of India says that state shall not deny to any person equality before the law or the equal protection of laws within the territory of India.*

Explain it. Refer the relevant Judgements.

(8 marks each)

Answer 5(a)

Section 421 of the Companies Act, 2013 deals with appeal from orders of National Company Law Tribunal and provides as under:

- (1) Any person aggrieved by an order of the National Company Law Tribunal may prefer an appeal to the National Company Law Appellate Tribunal.
- (2) No appeal shall lie to the National Company Law Appellate Tribunal from an order made by the National Company Law Tribunal with the consent of parties.
- (3) Every appeal shall be filed within a period of forty-five days from the date on

which a copy of the order of the National Company Law Tribunal is made available to the person aggrieved and shall be in such form, and accompanied by such fees, as may be prescribed:

Provided that the National Company Law Appellate Tribunal may entertain an appeal after the expiry of the said period of forty-five days from the date aforesaid, but within a further period not exceeding forty-five days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal within that period.

- (4) On the receipt of an appeal, the National Company Law Appellate Tribunal shall, after giving the parties to the appeal a reasonable opportunity of being heard, pass such orders thereon as it thinks fit, confirming, modifying or setting aside the order appealed against.
- (5) The National Company Law Appellate Tribunal shall send a copy of every order made by it to the National Company Law Tribunal and the parties to appeal.

Answer 5(b)

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

As is evident, Article 14 guarantees to every person the right to equality before the law or the equal protection of the laws. The expression ‘equality before the law’ which is borrowed from English Common Law is a declaration of equality of all persons within the territory of India, implying thereby the absence of any special privilege in favour of any individual. Every person, whatever be his rank or position is subject to the jurisdiction of the ordinary courts. The expression “the equal protection of the laws” directs that equal protection shall be secured to all persons within the territorial jurisdiction of the Union in the enjoyment of their rights and privileges without favouritism or discrimination. Article 14 applies to all persons and is not limited to citizens. A corporation, which is a juristic person, is also entitled to the benefit of this Article (*Chiranjit Lal Chowdhury v. Union of India*, AIR 1951 SC 41). The right to equality is also recognised as one of the basic features of the Constitution (*Indra Sawhney v. Union of India*, AIR 2000 SC 498).

A right conferred on persons that they shall not be denied equal protection of the laws does not mean the protection of the same laws for all. It is here that the doctrine of classification steps in and gives content and significance to the guarantee of the equal protection of the laws. To separate persons similarly situated from those who are not, legislative classification or distinction is made carefully between persons who are and who are not similarly situated. The Supreme Court in a number of cases has upheld the view that Article 14 does not rule out classification for purposes of legislation. Article 14 does not forbid classification or differentiation which rests upon reasonable grounds of distinction.

The Supreme Court in the case of *State of Bihar v. Bihar State ‘Plus-2’ Lecturers Associations*, (2008) 7 SCC 231 held that now it is well settled and cannot be disputed that Article 14 of the Constitution guarantees equality before the law and confers equal protection of laws. It prohibits the state from denying persons or class of persons equal

treatment; provided they are equals and are similarly situated. It however, does not forbid classification. In other words, what Article 14 prohibits is discrimination and not classification if otherwise such classification is legal, valid and reasonable.

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

Question 6

- (a) Explain in brief doctrine of 'Nemo Judex in Causa Sua'.
- (b) Explain the difference if any, in between 'Res Judicata' and 'Res Sub-Judice'.
- (c) What is the effect of acknowledgment on the period of limitation ? Discuss.
- (d) Explain the provisions for obtaining interim relief from Court, when there exists arbitration agreement among parties. (4 marks each)

OR (Alternate question to Q. No. 6)

Question 6A

- (i) Opinion of experts under section 45 of the Indian Evidence Act, 1872.
- (ii) A promissory note is executed by Suresh and Udit and stamp is afterwards affixed and cancelled by Suresh by again signing it. Explain whether the provisions of section 17 relating to time of stamping instruments have been complied with ?
- (iii) Explain the documents of which registration is optional under the Registration Act, 1908.
- (iv) Explain the basic features of Arbitral Award under the Arbitration and Conciliation Act, 1996. (4 marks each)

Answer 6(a)

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

Bias can be of the following three types:

- (1) *Pecuniary bias* : The judicial approach is unanimous on the point that any financial interest of the adjudicatory authority in the matter, howsoever small, would vitiate the adjudication. Thus a pecuniary interest, howsoever insufficient, will disqualify a person from acting as a Judge.
- (2) *Personal bias* : There are number of situations which may create a personal bias in the Judge's mind against one party in dispute before him. He may be friend of the party, or related to him through family, professional or business ties. The judge might also be hostile to one of the parties to a case. All these situations create bias either in favour of or against the party and will operate as a disqualification for a person to act as a Judge.

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

Answer 6(b)

The Rule of Res Sub Judice relates to a matter which is pending judicial enquiry while Res Judicata relates to a matter adjudicated upon or a matter on which judgement has been pronounced. Res Sub Judice bars the trial of a suit in which the matter directly or substantially is pending adjudication in a previous suit, whereas rule of res judicata bars the trial of a suit of an issue in which the matter directly and substantially in issue has already been adjudicated upon in a previous suit between the same parties under the same title.

Res Judicata arises out of considerations of public policy viz., that there should be an end to litigation on the same matter. Res-Judicata presumes conclusively the truth of the former decision and ousts the jurisdiction of the Court to try the case. It is however essential that the matter directly and substantially in issue must be the same as in the former suit and not matters collaterally or incidentally in issue.

Answer 6(c)

Section 18 of the Limitation Act, 1963 deals with the effect of acknowledgement of liability in respect of property or right on the period of limitation. The following requirements should be present for a valid acknowledgement as per Section 18:

- There must be an admission or acknowledgement
- Such acknowledgement must be in respect of any property or right
- It must be made before the expiry of period of limitation
- It must be in writing and signed by the party against whom such property or right is claimed.

If all the above requirements are satisfied, a fresh period of limitation shall be computed from the time when the acknowledgement was signed.

Answer 6(d)

Section 9 of the Arbitration and Conciliation Act, 1996 deals with interim measures etc. by Court.

Section 9(1) states that a party may, before, or during arbitral proceedings or at any time after making of the arbitral award but before it is enforced in accordance with Section 36 of the Act, apply to a court-

- i. for the appointment of a guardian for a minor or person of unsound mind for the purposes of arbitral proceedings; or

- ii. for an interim measure of protection in respect of any of the following matters, namely:-
 - a. the preservation, interim custody or sale of any goods which are the subject-matter of the arbitration agreement;
 - b. securing the amount in dispute in the arbitration;
 - c. the detention, preservation or inspection of any property or thing which is the subject-matter of the dispute in arbitration, or as to which any question may arise therein and authorising for any of the aforesaid purposes any person to enter upon any land or building in the possession of any part) or authorising any samples to be taken or any observation to be made, or experiment to be tried, which may be necessary or expedient for the purpose of obtaining full information or evidence;
 - d. interim injunction or the appointment of a receiver;
 - e. such other interim measure of protection as may appear to the Court to be just and convenient, and the Court shall have the same power for making orders as it has for the purpose of, and in relation to, any proceedings before it.

Further, Section 9(2) states that where, before the commencement of the arbitral proceedings, a Court passes an order for any interim measure of protection under sub-section (1), the arbitral proceedings shall be commenced within a period of ninety days from the date of such order or within such further time as the Court may determine.

Under Section 9 (3) once the arbitral tribunal has been constituted, the Court shall not entertain an application under sub-section (1), unless the Court finds that circumstances exist which may not render the remedy provided under Section 17 efficacious.

Answer 6A(i)

Section 45 of the Indian Evidence Act, 1872 deals with opinions of experts. It provides that when the Court has to form an opinion upon a point of foreign law or of science or art, or as to identity of handwriting or finger impressions, the opinions upon that point of persons specially skilled in such foreign law, science or art, or in questions as to identity of handwriting or finger impressions are relevant facts.

Such persons are called experts.

Illustrations

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

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

- (b) The question is, whether A, at the time of doing a certain act, was, by reason of unsoundness of mind, incapable of knowing the nature of the Act, or that he was doing what was either wrong or contrary to law.

The opinions of experts upon the question whether the symptoms exhibited by

A commonly show unsoundness of mind, and whether such unsoundness of mind usually renders persons incapable of knowing the nature of the acts which they do, or of knowing that what they do is either wrong or contrary to law, are relevant.

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

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

Answer 6A(ii)

Section 17 of the Indian Stamp Act, 1889 provides that all instruments chargeable with duty and executed by any person in India shall be stamped before or at the time of execution. The scope of Section 17 is restricted to only instruments executed in India. If the executant of a document has already completed the execution of the document and in the eye of law the document, could be said to have been executed, a subsequent stamping, (however close in time) could not render the document as one stamped at the time of execution.

Thus, where a promissory note is executed by 'A' and 'B' and a stamp is afterwards affixed and cancelled by 'A' by again signing it, the stamping has taken place subsequent to the execution and hence, the provisions of Section 17 are not complied with (*Rohini v. Fernandes*, AIR 1956 Bom 421).

A receipt stamped subsequent to its execution, but before being produced in the Court is not stamped in time and accordingly, not admissible in evidence.

In view of the above, the provisions of Section 17 relating to stamping instruments are not complied with.

Answer 6A(iii)

Section 18 of the Registration Act, 1908 specifies documents, registration of which is optional. It provides that any of the following documents may be registered under this Act, namely:

- a. Instruments (other than instruments of gift and wills) which purport or operate to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest whether vested or contingent, of value less than one hundred rupees, to or in immovable property;
- b. Instruments acknowledging the receipt or payment of any consideration on account of the creation, declaration, assignment; limitation or extinction of any such right, title or interest;
- c. Leases of immovable property for any term not exceeding one year and leases exempted under Section 17;
- d. Instruments transferring or assigning any decree or order of a court or any award when such decree or order or award purports or operates to create, declare, assign, limit or extinguish, whether in present or in future, any right, title or interest, whether vested or contingent of a value less than one hundred rupees, to or in immovable property;

- e. Instruments (other than wills) which purport or operate to create declare, assign, limit or extinguish any right, title or interest to or in movable property;
- f. Wills; and
- g. Other documents not required by Section 17 to be registered.

Answer 6A(iv)

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 detail of the ingredients of an arbitral award. However, taking into account other provisions of the Act, the following features are noticed:

1. 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.
2. The award is to be signed by the members of the arbitral tribunal.
3. The making of an award is a rational process which is accentuated by recording the reasons. The award should contain reasons.
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. 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.

COMPANY LAW

Time allowed : 3 hours

Maximum marks : 100

NOTE : 1. *Answer ALL Questions.*

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

PART I

Question 1

Comment on the following :

- (a) A private company and a banking company, can freely accept deposits.*
- (b) Every financial statement of the company must give true and fair view of the state of affairs of the company at the end of the financial year.*
- (c) The Articles of Association of a company cannot impose a blanket ban prohibiting transfer of shares in favour of a minor. Such a restriction is unreasonable and not sustainable.*
- (d) Every shareholder of a company is known as member while every member may not be known as shareholder. (5 marks each)*

Answer 1(a)

Rule 1(3) of the Companies (Acceptance of Deposits) Rule, 2014 made under Section 73 and 76 of the Companies Act, 2013 provide that the Companies (Acceptance of Deposits) Rule, 2014 shall apply to a company other than -

- (i) a banking company;
- (ii) a non-banking financial company as defined in the Reserve Bank of India Act, 1934 registered with the Reserve Bank of India;
- (iii) a housing finance company registered with the National Housing Bank established under the National Housing Bank Act, 1987; and
- (iv) a company specified by the Central Government under the proviso to sub-section (1) of section 73 of the Act.

Accordingly, the Companies (Acceptance of Deposits) Rules, 2014 is not applicable to banking company. Hence, a banking company can freely accept deposits.

A private company is allowed to accept deposits from its members subject to fulfillment of conditions provided under section 73(2)(a) to (e) of the Companies Act, 2013.

However, the Ministry of Corporate Affairs vide the notification dated 13th June

2017 provides that the section 73(2)(a) to (e) shall not apply to following classes of private companies,

- (A) which accepts from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account; or
- (B) which is a start-up, for five years from the date of its incorporation; or
- (C) which fulfills all of the following conditions, namely:-
 - (a) which is not an associate or a subsidiary company of any other company;
 - (b) if the borrowings of such a company from banks or financial institutions or anybody corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
 - (c) such a company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

The company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in Form DPT-3.

Answer 1(b)

As per provisions of sub-sections (1) and (2) of section 129 of the Companies Act 2013, every financial statement of 'the company must give true and fair view of the state of affairs of the company at the end of financial year. True and Fair view in respect of financial statement means-

- Financial statements and items contained should comply with accounting standards notified under section 133;
- Financial statement shall be in form or forms as provided for different class or classes of companies in Schedule III;
- Financial statement shall not be treated as not disclosing a true and fair view of the state of affairs of the company, merely by the reason of the fact that they do not disclose-
 - in the case of an insurance company, any matters which are not required to be disclosed by the Insurance Act, 1938, or the Insurance Regulatory and Development Authority Act, 1999;
 - in the case of a banking company, any matters which are not required to be disclosed by the Banking Regulation Act, 1949;
 - in the case of a company engaged in the generation or supply of electricity, any matters which are not required to be disclosed by the Electricity Act, 2003;
 - in the case of a company governed by any other law for the time being in force, any matters which are not required to be disclosed by that law

Answer 1(c)

The Articles of Association of a company cannot impose a blanket ban prohibiting transfer of shares in favor of a minor, as such a restriction is unreasonable and not

sustainable. Section 44 of the Companies Act, 2013 provides that shares in a company are movable property and are transferable in the manner provided by the Articles.

The expression “in the manner provided by the articles of association the company” can only be interpreted to mean the procedure to be opted for transfer and impose restrictions, which are meaningful and reasonable. In case, the restriction imposed on transfer to a minor is accepted, it would mean that the shares of a deceased member can never be inherited by the legal heir who might be a minor. This would lead to a highly unjust situation and cannot be accepted as tenable. Accordingly, if the shares can be transmitted in favour of a minor, there is no reason why the shares which are fully paid-up and in respect of which no financial liability devolves on the minor are to be held as not transferable merely because of the ban imposed in the Article of Association [*Saroj v. Britannia Industries Ltd.*, Appeal No.5/80 decided 14.12.81 by CLB].

Answer 1(d)

A company is composed of, members, though it has its own separate legal entity. The members of the company are the persons who, constitute the company as a corporate entity.

In the case of a company limited by shares, the shareholders are the members. The terms “members” and “shareholders” are usually used interchangeably being synonymous, as there can be no membership except through the medium of shareholding. Thus, generally speaking every shareholder is a member and every member is a shareholder. However, there may be exceptions to this statement, e.g., a person may be a holder of share(s) by transfer but will not become its member until the transfer is registered in the books of the company in his favor and his name is entered in the register of members. Similarly, a member who has transferred his shares, though he does not hold any shares yet he continues to be member of the company until the transfer is registered and his name is removed from the register of members maintained by the company under Section 88 of the Companies Act, 2013. A member is a person who has subscribed to the memorandum of association of the company. A shareholder is a person who owns the shares of the company. The bearer of a share warrant is not a member, but the bearer of a share warrant can be a shareholder.

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

Question 2

- (a) *“If a company does not receive minimum subscription, it should refund money received from applicants within such time as may be prescribed”. Explain the above statement with suitable comments. (3 marks)*
- (b) *What are the requirements as to the maintenance of Register of Postal Ballot ? (3 marks)*
- (c) *Explain whether a Floating charge attached to the company’s property generally remains dormant till it crystallizes or becomes fixed. (3 marks)*
- (d) *Who is a “related party” as defined in Section 2 (76) ? (3 marks)*
- (e) *State the time limit within which certificate of securities as provided in Companies Act, 2013 to be issued in case of :*
 - (i) *Any allotment of shares.*

(ii) Any allotment of debentures.

What is the punishment in case of default committed in the above cases ?

(3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Referring to the provisions of Companies Act, 2013 advise a public company which declared dividend on 30th September, 2018 as to the procedures to be followed in this regard for payment of dividend. Whether any intervening holidays in the month of October 2018 shall be taken into account in calculating the time limit ?
- (ii) Draft "A specimen of deed of Assignment of shares of a company".
- (iii) Who are all the persons required to obtain Digital Signature Certificates ?
- (iv) Explain whether the Corporate Social Responsibility (CSR) Committee is entrusted with any specific functions under the Companies Act, 2013 ?
- (v) XYZ Ltd. sold a mine, owned by it for ₹28.20 crore. A minority shareholder brought an action for damages against their directors and against the company itself stating that the real value of the mine was ₹100.00 crore. With reference to provisions of Companies Act, 2013 state whether the action for damages is maintainable ? (3 marks each)

Answer 2(a)

According to section 39 of the Companies Act, 2013 allotment of any securities of a company offered to the public for subscription shall be made only when the amount stated in the prospectus as the minimum amount has been subscribed and the sums payable on application for the amount so stated have been paid to and received by the company by cheque or other instrument.

The amount payable on application on every security shall not be less than five per cent of the nominal amount of the security or such other percentage or amount, as may be specified by the Securities and Exchange Board of India (SEBI) by making regulations in this behalf.

Refund of money

In cases where the stated minimum amount has not been subscribed and the sum payable on application is not received within a period of thirty days from the date of issue of the prospectus, or such other period as may be specified by SEBI, the amount received as above shall be returned. The application money shall be repaid within a period of fifteen days from the closure of the issue and if any such money is not so repaid within such period, the directors of the company who are officers in default shall jointly and severally be liable to repay that money with interest at the rate of fifteen percent per annum.

The application money to be refunded shall be credited only to the bank account from which the subscription was remitted.

Answer 2(b)

Section 110 of the Companies Act, 2013 and Rule 22(10) of the Companies

(Management and Administration) Rules, 2014 states that every company which is required to or which proposes to get any resolution passed through postal ballot should maintain a separate register for each postal ballot to record the assent or dissent received through postal ballot.

The scrutinizer shall maintain a register either manually or electronically to record their assent or dissent received, mentioning the particulars of name, address, folio number or client ID of the shareholder, number of shares held by them, nominal value of such shares, whether the shares have differential voting rights, if any, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.

Entries in the register should be made immediately after the opening of postal ballots. Separate folios should be maintained for each resolution passed through postal ballot. The register should be kept at the registered office of the company after the Scrutinizer has submitted his report.

The postal ballot and all other papers relating to postal ballot including voting by electronic means, shall be under the safe custody of the scrutinizer till the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve such ballot papers and other related papers or register safely.

Answer 2(c)

A floating charge attached to the company's property generally remains dormant till it crystallizes or becomes fixed. The company has a right to carry on its business with the help of assets over which a floating charge has been created till the happening of some event which determines this right. Crystallization is the process by which a floating charge converts into a fixed charge. A floating charge crystallises and the security becomes fixed in the following cases:

- (a) when the company goes into liquidation;
- (b) when the company ceases to carry on its business;
- (c) when the creditors or the debenture holders take steps to enforce their security e.g. by appointing receiver to take possession of the property charged;
- (d) on the happening of the event specified in the deed.

In the aforesaid circumstances, the floating charge is said to become fixed or to have been crystallised. Until the charge crystallises or attaches or becomes fixed, the company can deal with the property so charged in any manner it likes. Once crystallized, the security cannot be sold, and the lender may take possession of it.

Answer 2(d)

According to Section 2(76) of the Companies Act 2013, "related party", with reference to a company, means—

- (i) a director or his relative;
- (ii) a key managerial personnel or his relative;
- (iii) a firm, in which a director, manager or his relative is a partner;

- (iv) a private company in which a director or manager or his relative is a member or director;
- (v) a public company in which a director or manager is a director and holds along with his relatives, more than two per cent (2%) of its paid-up share capital;
- (vi) any body corporate whose Board of Directors, managing director or manager is accustomed to act in accordance with the advice, directions or instructions of a director or manager;
- (vii) any person on whose advice, directions or instructions a director or manager is accustomed to act: Provided that nothing in sub-clauses (vi) and (vii) shall apply to the advice, directions or instructions given in a professional capacity;
- (viii) any body corporate which is—
 - a holding, subsidiary or an associate company of such company ;
 - a subsidiary of a holding company to which it is also a subsidiary;or
 - an investing company or the venturer of the company.

Explanation.—For the purpose of this clause, “the investing company or the venturer of a company” means a body corporate whose investment in the company would result in the company becoming an associate company of the body corporate
- (ix) such other person as may be prescribed;

Answer 2(e)

Under section 56(4) of the Companies Act, 2013, every company, unless prohibited by any provision of law or any order of any Court Tribunal or other authority must deliver the certificates of all securities allotted, transferred or transmitted :- .

- (i) Within a period of two months from the date of incorporation, in the case of subscribers to the Memorandum and within a period of two months from the date of allotment in the case of any allotment of any of its shares;
- (ii) Within a period of six months from the date of allotment in the case of any allotment of debenture

However, as per the proviso to sub section 4 of section 56, where the securities are dealt with in a depository, the company shall intimate the details of allotment of securities to depository immediately on allotment of such securities.

Where any default is made in complying with the above provisions, Section 56(6) states the company shall be punishable with fine which shall not be less than Rs. 25,000 but which may extend to Rs 5 Lakh and every officer of the company who is in default shall be punishable with fine Which shall not be less than Rs 10,000 but which may extend to Rs. 1, 00,000.

Answer 2A(i)

Section 123(4) of the Companies Act, 2013 provides that the amount of the dividend,

including interim dividend shall be deposited in a scheduled bank in a separate account within five days from the date of declaration of dividend.

However, in case of Government Company sub section 4 of Section 123 shall not apply in which the entire paid up share capital is held by the Central Government, or by any State Government or Governments or by the Central Government and one or more State Governments or by one or more Government Company.

Inferring from section 124(1) dividend must be paid to any shareholder entitled to the payment of the dividend, within 30 days from the date of declaration of dividend.

Secretarial Standard-3(SS-3) hereby clarifies that the Dividend shall be deposited in a separate bank account within five days from the date of declaration and shall be paid within 30 days of declaration. The intervening holidays, if any, falling during such period shall be included.

Therefore in the given illustration the dividend shall be deposited into a separate bank account of a scheduled bank on or before 05.10.2018 and the same must be paid to the registered shareholder or to his order or to his banker on or before 30.10.2018.

Answer 2A(ii)

SPECIMEN OF DEED OF ASSIGNMENT OF SHARES OF COMPANY

THIS ASSIGNMENT is made this -----day of -----between AB, son of ----- resident of ----- (hereinafter called "the Assignor") of the one part, and CD, son of --- resident of ----- (hereinafter called "the Assignee") of the other part.

THE DEED WITNESSES:

That in consideration of the sum of Rs.----- (Rupees -----) paid by the assignee to the assignor, the receipt whereof the assignor hereby acknowledges, the said AB hereby assigns, sells and transfers to the said CD ----- Equity Shares of Rs----- -- each, fully paid up ,bearing consecutive Nos-----to----- (inclusive), which stand in the name of the assignor in the Register of Members of ----- Co. Ltd. TO HOLD the same to the assignee absolutely, subject nevertheless to the conditions on which the assignor held the same up to date.

AND the assignee hereby agrees to take the said Equity Shares subject to such conditions.

IN WITNESS WHEREOF the assignor and the assignee do hereto affix their respective signatures on the day, month and the year stated above.

Witness :

Witness :

Assignor:

Assignee:

Answer 2A(iii)

The e-forms are required to be authenticated by the authorized signatories using Digital Signature Certificate (DSC) as defined under the Information Technology Act, 2000. A digital signature is the electronic signature duly issued by a certifying authority that shows the authority of the person signing the same. It is an electronic equivalent of a written signature. Every user who is required to sign an e-form for submission with MCA is required to obtain a Digital Signature Certificate. For MCA-21, the following four

types of users are identified as users of Digital Signatures and are required to obtain digital signature certificate:

1. MCA (Government) Employees.
2. Professionals (Company Secretaries, Chartered Accountants, Cost Accountants and Lawyers) who interact with MCA and companies in the context of Companies Act.
3. Authorized signatories of the Company including Managing Director, Directors, Manager or Secretary.
4. Representatives of Banks and Financial Institutions.

All companies (Public Company, Private Company, Company not having share capital, Company limited by share or guarantee, Unlimited Company) must comply with this requirement of registration of DSC by the director, manager and secretary. Foreign directors are required to obtain Digital Signature Certificate from an Indian Certifying Authority (List of Certifying Authorities is available on the MCA portal). The process of registration of DSC is same as applicable to others.

Answer 2A(iv)

Section 135 (3) of the Companies Act, 2013 read with Rules made thereunder provides that the following functions shall be carried out by a Corporate Social Responsibility (CSR) Committee:

- To formulate and recommend to the Board, a CSR Policy which would indicate the activities to be undertaken in areas or subject, specified in Schedule VII of the Act.
- To recommend the amount of the expenditure to be incurred on the activities undertaken in pursuance of the CSR policy.
- To institute a transparent monitoring mechanism for implementation of the CSR projects or programs or activities undertaken by the company.
- To monitor the CSR policy of the company time to time.

Answer 2A(v)

In the case of *Pavrides v. Jensen* (1956) Ch. 565, a minority shareholder brought an action for damages against three directors and against the company itself on the ground that they have been negligent in selling a mine owned by the company for £ 82,000, whereas its real value was about £ 10, 00,000. It was held that the action was not maintainable. The judge observed, "It was open to the company, on the resolution of a majority of the shareholders to sell the mine at a price decided by the company in that manner, and it was open to the company by a vote of majority to decide that if the directors by their negligence or error of judgement has sold the company's mine at an undervalue, proceedings should not be taken against the directors".

Applying the above interpretation, the action for damages under taken by the minority shareholders of XYZ Ltd. is not maintainable. Hence an action for damages neither against the company nor against the directors is valid.

Question 3

- (a) *With reference to the provisions of the Companies Act, 2013 and the rules*

framed there under, state the disqualifications for a Debenture Trustee. Explain whether the following persons can be appointed as Debenture Trustee ?

- (i) A relative of whole-time director of the company.*
 - (ii) A shareholder who has no beneficial interest.*
- (b) Vijay is an auditor of XYZ Ltd, a listed public company having paid-up share capital of ₹10 crore. Advise him as to whether he can render the following services, keeping in mind, the relevant provisions of Companies Act, 2013 ?*
- (i) Vijay wants to conduct internal audit of XYZ Ltd. He also wishes to provide actuarial services to XYZ Ltd.*
 - (ii) Vijay wishes to “design and implement one financial system” and offer management services to ABC Ltd, the holding company of XYZ Ltd.*
 - (iii) What will be your answer in the above two cases if services are provided to PQR Ltd, a subsidiary company of XYZ Ltd. ?*
- (c) A public limited company has only seven shareholders. Being all the shares paid in full, one such shareholder purchased all the shares of another shareholder in a private settlement between them reducing the no. of shareholders to six. The company continues to carry on its business thereafter. Discuss with reference to the Companies Act, 2013 the implications of this transaction on the functioning of the company. (5 marks each)*

Answer 3(a)

Section 71 of the Companies Act 2013, read along with rule 18(2) of the Companies (Share capital and Debentures) Rules, 2014 provides that a person shall not be appointed as a debenture trustee, if he

- (a) beneficially holds shares in the company;
- (b) is a promoter, director or key managerial personnel or any other officer or an employee of the company or its holding, subsidiary or associate company;
- (c) is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
- (d) is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
- (e) has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
- (f) has any pecuniary relationship with the company amounting to two per cent or more of its gross turnover or total income or fifty lakh rupees or such higher amount as may be prescribed, whichever is lower, during the two immediately preceding financial years or during the current financial year;
- (g) is relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

Accordingly, the explanations to the questions would be as under:

- (i) A relative of whole-time director of the company (KMP) cannot be appointed as debenture trustee.
- (ii) A shareholder who has no beneficial interest can be appointed as debenture trustee.

Answer 3(b)

Section 144 of the Companies Act, 2013 provides that an auditor shall provide to the company only such other services as are approved by the Board of Directors/ the audit committee, but which shall not include any of the following services (whether such services are rendered directly or indirectly to the company or its holding company or subsidiary company, namely:-

- (a) accounting and book keeping services;
- (b) internal audit;
- (c) design and implementation of any financial information system;
- (d) actuarial services;
- (e) investment advisory services;
- (f) investment banking services;
- (g) rendering of outsourced financial services;
- (h) management services; and
- (i) any other kind of services as may be prescribed.

Therefore based on the above mentioned provisions advice to Vijay will be as under:

- (i) Vijay cannot conduct internal audit of XYZ Ltd or carryout actuarial services to XYZ Ltd.
- (ii) Vijay cannot provide management services or implementation of financial system to ABC Ltd as such services to the holding company is also not allowed..
- (iii) Providing (i) and (ii) services above to PQR Ltd the subsidiary company of XYZ Ltd is also not allowed.

Answer 3(c)

Section 3A of the Companies Act, 2013 provides that if at any time the number of members of a company is reduced, in the case of a public company, below seven or in the case of a private company, below two, and the company carries on business for more than six months while the number of members is so reduced, every person who is a member of the company during the time that it so carries on business after those six months and is cognizant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued there for.

In view of the above provision, if the company continued to carry on the business with that reduced membership (i.e. 6) beyond six months period, only those members who are cognizant of the fact that it is carrying on business with less than seven members shall be severally liable for the payment of the whole of debts of the company contracted during that time, and may be severally sued therefor.

PART II**Question 4**

- (a) "A" Ltd., a public company wants to appoint Alternate Directors. Examine the

validity of acts of the company with reference to provisions of Companies Act, 2013 in following cases :

- (i) 'D' a director was absent for a period of two and half months. It is proposed to appoint an alternate director.
- (ii) 'E' a director was absent for 4 months. It is proposed to appoint 'F' as an alternate director in place of 'E'. 'F' is already acting as an alternate director in "A" Ltd. for a director 'G' who was absent for 5 months.
- (iii) Can the said appointment, if permitted, be passed by circular resolution ?
(1+2+2=5 marks)
- (b) Prepare an Agenda items for a Board Meeting with a minimum of any eight items to be discussed. (5 marks)
- (c) DEF Ltd. has made profit for last 3 consecutive financial years as under :

Year	₹ in Crore
2017—18	100
2016—17	150
2015—16	200

Considering the provisions of Companies Act 2013, state whether :

- (i) DEF Ltd. can contribute ₹33.75 crore directly to a political party by a bearer cheque ?
- (ii) What is the limit on the maximum amount that can be contributed by a company to a political party ?
- (iii) Would your answer be different, if DEF Ltd. is a "Government Company" and donation is given by an "account payee cheque" ? (1+2+2=5 marks)
- (d) Jolly Retails Ltd. issued a notice for the meeting of its Board of directors scheduled for on 5th June 2019 at its corporate office. One of the directors intimated that he would be participating in the meeting through video conferencing. The Secretary contended that the meeting cannot be participated through video conferencing and that the concerned director cannot insist that the company should provide video conferencing facilities for attending the board meeting. Is the contention of the Secretary tenable as per the provisions of the Companies Act, 2013 ? Discuss with relevant case laws, if any. (5 marks)

Answer 4(a)

- (i) Section 161(2) of the Companies Act 2013 empowers the Board, if so authorized by its articles or by a resolution passed by the company in general meeting, to appoint a director (termed as 'alternate director) to act in the absence of a original director during his absence for a period of not less than three months from India. Since as D is absent only for two and half months. Alternate director in place of D cannot be appointed.
- (ii) Section 161(2) of the Companies Act, 2013 states that in the conditions for appointment of an Alternate Director, the person to be appointed as the Alternate Director shall be the person other than the person holding any alternate directorship for any other Director in the company or holding directorship in the same

company. Therefore since F is acting as an alternate director for another director i.e. "G", he cannot be appointed again as alternate director for E in the same company.

- (iii) There is no specific provision in the Act which provides that the appointment of an Alternate Director shall be made at the meeting of the Board. In the absence of any such prohibition, an alternate director can be appointed by passing a resolution by circulation. Therefore in the given illustration, if permitted the alternate Director can be appointed by circular resolution.

Answer 4(b)

Agenda Items for meeting of the Board of Director of the Company Scheduled to be held on (day), (Date) at (Venue) at (Time) (meeting No.) 2019-20__ (Any 8 items)

<i>Item</i>	<i>Particulars</i>
1	To grant leave of absence, if any
2	Appointment of Chairman of the Meeting
3	To confirm minutes of last Board/ Committee Meeting held in financial year 2018-19.
4	To take note of Disclosure of Interest by Directors pursuant to Section 184 (1).
5	To take note of Declaration given by Independent Director to meets the criteria of Independence under section 149(7) of Companies Act, 2013
6	To consider and approve CSR policy (Name of the Policy)
7	To consider and approve appointment of the Company Secretary
8	To take note of Statement containing investor complaint under regulation 13(3) of SEBI (LODR) Regulations, 2015.
9	Noting of Compliance Report on corporate governance under regulation 27(2) of SEBI (LODR) Regulations, 2015.
10	Appointment Secretarial Auditor of the Company for the financial year 2019-20.
11	Appointment Internal Auditor of the Company for the financial year 2019-20.
12	To approve & consider Audited Financial Statements for the year ended 2018-19.
13	To take note of Statutory Auditors Report on the Financial Statements of the Company for the year ended 2018-19.
14	To take note any other item(s).

Answer 4(c)

- (i) (i) According to Section 182 of the Companies Act, 2013, a company, other than a government company and a company which has been in existence for less than three financial years, may contribute any amount directly to any political party, on obtaining approval from the Board of Directors in their meeting. Further the contribution under this section shall not be made except by an account

payee cheque drawn on a bank or an account payee bank draft or use of electronic clearing system through a bank account. Therefore as per above provision DEF Limited cannot contribute Rs.33.75 Crore directly to a political party through a bearer cheque.

- (ii) As per section 182 of the Companies Act, 2013, a company, other than a Government company and a company which has been in existence for less than three financial years, may contribute any amount directly or indirectly to any political party. Hence DEF Ltd can contribute any amount to a Political Party.
- (iii) According to Section 182 of the Companies Act, 2013 Government Company are not allowed to make contribution to the political party. Considering DEF Limited as a Government Company, it cannot make any contribution to a political party even by way of an account payee cheque.

Answer 4(d)

Section 173(2) of the Companies Act, 2013 states the participation of directors in a meeting of the Board may be either in person or through video conferencing or other audio visual means, as may be prescribed, which are capable of recording and recognizing the participation of the directors and of recording and storing the proceedings of such meetings along with date and time.

The second proviso of section sub section 2 of section 173 states that where there is quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means in such meeting on any matter specified under the first proviso. (Inserted by the Companies (Amendment) Act, 2017, w.e.f 7-5-2018)

Rule 4 of the Companies (Meeting of Board and its Powers) Rules, 2014, which states the matter not to be dealt with in a meeting through video conferencing or other audio visual means has been amended by the Companies (Amendment) Act, 2017, by the inclusion of the proviso that where there is a quorum in a meeting through physical presence of directors, any other director may participate through video conferencing or other audio visual means (inserted w.e.f. 7-5-2018). One of the matters specified in this rule is the approval of the prospectus.

In this case of *Achintya Kumar Barua vs. Ranjit Barthkur* ([2018] 91 taxmann.com 123 (NCL-AT)) the NCLAT has held that, even one of the director so desires, a company is bound to provide facilities to directors to participate in board meetings by video conferencing.

With the above amendment and the Tribunal decision, Jolly Retail Ltd. is bound to provide the necessary video conferencing facilities to the director.

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

Question 5

- (a) *Pluto Ltd. was incorporated on 10th June, 2013 in Delhi and is engaged in the business of providing specialized catering services for corporate events. The Board of directors proposed to venture into event management services, which requires the alteration of the object clause of the Memorandum of Association of the company. Draft the necessary resolution assuming relevant data.*

(4 marks)

- (b) State the situations under which a company is required to constitute the Audit Committee ? (4 marks)
- (c) 'T' Ltd. a listed company has ` 20 crore paid up share capital and has nine directors on its Board. Advise T Ltd. on the following matters :
- The number of independent directors it should appoint on its board.
 - How many independent directors should be appointed by T Ltd. in case it is an "unlisted public company" ?
 - Can T Ltd. appoint an independent director for second consecutive term of 6 years whose first term, as independent director in T Ltd. was for 4 years ?
 - T Ltd. wants to appoint another independent director for further period of 2 years. He has already completed 2 consecutive tenures of 4 years each as an independent director in T Ltd. ? (4 marks)
- (d) Referring to the provision of Companies Act, 2013 advise the directors of a company in the following matters :
- The company wishes to obtain approval of the financial statement in a meeting held through video conferencing.
 - Due to urgency, the company wants to get its prospectus approved in a meeting held through video conferencing. (4 marks)
- (e) 'S' is a member of Institute of a Company Secretaries of India. He has defaulted in payment of annual subscription and his name is removed from the Register of Members by ICSI on 31st December, 2018.
- Can he be appointed as "Company Secretary" by 'M' Ltd. with a paid up share capital of ₹10 crore on 1st January, 2019 ?
 - If M Ltd. has paid up share capital of ₹2 crore and it has appointed 'S' as a company secretary on part time basis, is it valid ? (4 marks)

OR (Alternate question to Q. No. 5)

Question 5A

- ABC Corporation Ltd. has no managerial person acting in professional capacity. During the current financial year the company sustained a loss. How can the company remunerate their non-professional managerial personnel in such a situation ? (4 marks)
- 'X' was appointed as an Additional director of Precious Ltd w.e.f. 21st November, 2018 in a casual vacancy caused by the unexpected death of "P" by way of a circular resolution passed by the Board of directors. With reference to the provisions of the Companies Act, 2013 advise the company on the validity of the appointment of 'X' and his continuation as Additional director. (4 marks)
- Enumerate the difficulties encountered in holding virtual meetings of Members. (4 marks)

- (iv) As a company secretary referring to the provisions of Companies Act, 2013 examine the validity of following propositions :
- (a) A company wishes to call its annual general meeting on a working day at 6.30 p.m.
- (b) Due to the availability of chairman, the AGM of the company can be held only on 15th August, 2018. All members are ready to give consent in writing in advance for the same.
- (c) Due to technical problem, company wants to hold its AGM at a city other than a city at which registered office of the company is situated.
(1+2+1=4 marks)
- (v) Prism Ltd. which has 50 preference shareholders called a preference shareholders meeting for amending the terms of these shares. 'A' was the only preference shareholder who attended the meeting. He, however held the proxies from all other preference shareholders. He took the chair, conducted the meeting and passed a resolution for amending the terms of the issue of these shares. Examine the validity of the meeting and the resolution passed. (4 marks)

Answer 5(a)

Shareholder's Resolution to be passed in the General Meeting of Pluto Ltd for Alteration of Object Clause in MOA:

RESOLVED THAT pursuant to the provisions of Section 13 and other applicable provisions, if any, of the Companies Act, 2013, and the Rules made there under, as amended from time to time, and subject to the consent of the members in General meeting and subject to the approval of the Registrar of Companies ("ROC") and/or of any other statutory or regulatory authority, as may be necessary, Clause III (Objects Clause) of the Memorandum of Association of the company, be and is hereby altered by inserting the following sub clause under Part- A of Clause III, after the existing sub-clause 2 and the remaining sub-clauses be re-numbered accordingly:

"To conduct the business, in and outside India, of event management service on variety of areas including corporate events (product launches, press conferences, corporate meetings and conferences), marketing programs (road shows, grand opening events), and special corporate hospitality events like concerts, award ceremonies, film premiers, launch/release parties, fashion shows, commercial events, private and personal events such as weddings, birthday celebrations and such other events of like nature."

"RESOLVER FURTHER that any director of the company, be and is hereby severally authorized to file, sign, verify and execute all such e-forms, or documents, as may be required and do all such acts, deeds, matters and things as may be necessary and incidental for giving effect to this resolution."

Answer 5(b)

Section 177(1) of the Companies Act, 2013 read with Rule 6 of the Companies (Meeting of the Board and its Powers) Rules, 2014, provides that the Board of directors of the following companies are required to constitute an Audit Committee of the Board -

- (i) Every listed public companies;

- (ii) All public companies with a paid up share capital of 10 crore rupees or more;
- (iii) All public companies having turnover of 100 crore rupees or more;
- (iv) All public companies, having in aggregate, outstanding loans or borrowings or debentures or deposits exceeding 50 crore rupees or more.

The paid up share capital or turnover or outstanding loans or borrowings or debentures or deposits, as the case may be, as existing on the date of last audited financial statements shall be taken into account for the purpose.

Answer 5(c)

- (i) As per Section 149(4) of the Companies Act 2013, every listed public company is mandatorily required to have at least one-third of the total number of directors as independent directors. T Ltd should appoint 1/3 of its total Directors as an Independent Director and accordingly has to appoint $(1/3 \times 9 = 3)$ 3 independent directors.
- (ii) As per Rule 4 of the Companies (Appointment and Qualification of Directors) Rules, 2014 unlisted public companies having paid up share capital of ten crore rupees or more shall have at least two independent. Hence, Two independent directors have to be appointed by T Ltd as it is an unlisted company and its paid up share capital is more than Rs.10 crores.
- (iii) Section 149(10) of the Companies Act,2013 states that subject to the provisions of Section 152, an independent director can be appointed for a term of up to five consecutive years on the Board. It has been clarified that as such while appointment of an Independent Director for a term of less than 5 years would be permissible, appointment for any term (whether for 5 years or less) is to be treated as a one term under section 149(10) of the Act. Therefore T Ltd cannot appoint an Independent Director for term of a six years in the second consecutive term.
- (iv) Section 149(11) of the Act, no person can hold office of Independent Director(ID) for more than two consecutive term's such a person shall have to demit office after two consecutive terms, even if the total number of years of his appointment in such two consecutive terms is less than 10 years. It is clarified by the Ministry that appointment for any term (whether 5 years or less) is to be treated as one term under section 149(10) of the Companies Act, 2013. Further, under section 149(11) of the Companies Act,2013 no person can hold office of independent director for more than two consecutive term's such a person shall have to demit office after two consecutive terms, he shall be eligible for appointment only after the expiry of the requisite cooling -off period of 3 years. Therefore T Ltd cannot appoint an independent Director who has already completed two consecutive terms for 4 years for another period of two years.

Answer 5(d)

Rule 4 of the Companies (Meetings of Board and its Powers) Rules, 2014 provides that the following matters, which 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, if any, to be approved by the Board under sub-section (1) of Section 134 of the Act; and
- (v) the approval of the matter relating to amalgamation, merger, demerger, acquisition and takeover.

Accordingly, the company cannot obtain approval of the financial statements from directors in a meeting held through video conferencing (ii) the company cannot get its prospectus approved in a meeting held through video conferencing.

Answer 5(e)

Section 2(24) of the Companies Act, 2013 defines "company secretary" or "secretary" means a company secretary as defined in clause (c) of sub-section (1) of section 2 of the Company Secretaries Act, 1980 who is appointed by a company to perform the functions of a company secretary under this Act.

According to clause (c) of Sub-section (1) of section 2 of the Company Secretaries Act, 1980, a company secretary means a person who is a member of the Institute of Company Secretaries of India.

Therefore, 'Company Secretary' means a person who is a member of the Institute of Company Secretaries of India (ICSI) and who is appointed by a company to perform the function of a company secretary. The functions of company secretary have been detailed in section 205 of the Companies Act, 2013.

- (i) No, S cannot be appointed as a company secretary as his name is removed from the register of members by ICSI on 31.12.2018 itself.
- (ii) There is no mandatory requirement to appoint company secretary for a company having paid up share capital of less than five crore rupees. No, S cannot be appointed as a company secretary of M Ltd. even if the paid up capital of the company is Rs. 2 crores as his name is removed from the register of members by ICSI. Therefore, appointment of S as Company Secretary is not valid.

Answer 5A(i)

The ABC Corporation Ltd. can remunerate their non-professional managerial personnel according to the following provisions of Section 197 of the Companies Act, 2013 read with Schedule V of the Act, which provides as under:

- (a) If in any financial year, a company has no profits or its profits are inadequate, the company shall not pay by way of remuneration any sum exclusive of sitting fees to its directors including any managing or whole-time director or manager except in accordance with the provisions of Schedule V.
- (b) In cases where Schedule V is applicable on grounds of no profits or inadequate profits, any provision relating to the remuneration of any director which purports to increase or has the effect of increasing the amount thereof, whether the

provision be contained in Company's memorandum or articles, or in an agreement entered into by it, or in any resolution passed by the company in general meeting or its Board, shall not have any effect unless such increase is in accordance with the conditions specified in that schedule.

In case a company has inadequate profits/no profits in any financial year, no amount shall be payable by way of remuneration except if these provisions are followed:

Where the effective capital is	Limit of Yearly remuneration payable shall not exceed
Negative or less than Rs.5 crore	Rs.60 lakhs
Rs.5 crores or above but less than Rs.100 crores	Rs.84 lakhs
Rs.100 crore and above but less than Rs.500 crore	Rs.120 lakhs
Rs.250 crores and above	Rs. 120 lakhs plus 0.01% of the effective capital in excess of Rs. 250 crore

Provided that the remuneration in excess of above limits may be paid if the resolution passed by the shareholders is a special resolution.

Answer 5A(ii)

Section 161(4) of the Companies Act, 2013 states that if the office of any director appointed by the company in general meeting is vacated before his term of office expires in the normal course, the resulting casual vacancy may, in default of and subject to any regulations in the articles of the company, be filled by the Board of directors at a meeting of the Board which shall be subsequently approved by members in the immediate next general meeting.

Provided that any person so appointed shall hold office only up to the date up to which the director in whose place he is appointed would have held office if it had not been vacated.

Section 161 does not authorize the Board to appoint an additional director to fill the casual vacancy

- If appointment of X is made as an additional director, then, such appointment cannot amount to filling a casual vacancy.
- If X is appointed to fill a casual vacancy, then he shall not be an additional director.

It is thus clear that the appointment of X as an additional director to fill the casual vacancy is not valid. However, X can be treated as additional director and his office as additional director will be valid upto the date of ensuing AGM. In this regard, the text of the resolution dealing with casual vacancy will be void but will be valid to the extent of additional director.

Further X has been appointed to fill the casual vacancy by passing a circular resolution. Since the appointment of a director filling a casual vacancy requires passing of resolution

in a board meeting, the appointment of X is in contravention of section 161, and is therefore, invalid.

Answer 5A(iii)

Following are the main difficulties encountered in holding virtual meetings of members:

- Security of the systems used.
- Streaming with quality without interruption.
- Providing with secure login and shareholder authentication for attendance with ease of access for shareholders. and remote voting.
- Combined registration, voting and reporting software.
- Customized instant results screen and detailed audit reporting.
- Data security of logins and Passwords.
- Allowing the shareholders, the choice of device.
- The technology used must give all shareholders a reasonable Opportunity to participate.
- The technology must be secure and must provide reasonable measures for verifying/ validating those allowed to attend and vote at the meeting.
- The Company must provide a digital record of the meeting.

Answer 5A(iv)

According to section 96(2) of the Companies Act 2013, every annual general meeting can be called during business hours, that is, between 9.00a.m. to 6.00p.m. on any day that is not a National Holiday. It should be held either at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. The Central Government is empowered to exempt any company from these provisions, subject to such conditions as it may impose.

Annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

In case of Government Company, the Central Government may approve such other place for holding AGM, if the place is other than the registered office.

In case of Section 8 Company, the time, date and place of each AGM are decided upon before-hand by the Board having regard to the directions if any, given in this regard by such company in the general meeting.

In view of the above provisions of the Companies Act, 2013:

- (a) Annual General Meeting can be held only between 9:00 a.m. to 6:00 p.m, unless exempted by the Central Government.
- (b) AGM cannot be held on a National Holiday, unless exempted by the Central Government, even though the company has consent in writing in advance to conduct AGM on 15th August, 2018.
- (c) AGM can be held only at the city of registered office, unless exempted. As per

the proviso to Section 96(2), in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance.

Answer 5A(v)

Under section 103 (1) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of a public company, five members personally present shall be the quorum for a meeting of the company, if the number of members as on the date of meeting is not more than one thousand.

The case given in the question corresponds to the decision in *Sharp vs. Dawes* wherein it was held that “the word meeting prima facie means coming together of more than one person.” In this given case, only one shareholder was present and it was held that the meeting was not validly held.

Further in *East Vs. Bennet Brothers Ltd.* (1911) it has been held that in case of a meeting of a particular class of members if all the shares of that particular class are held by one person, then that one person shall form the quorum.

In the given case, therefore, the applicable quorum will be 5 members and since all the shares are not held by one person but there are 50 members, no quorum is therefore present. The meeting and the resolution passed there shall not be valid. Proxy shall not be counted for quorum.

PART III

Question 6

- (a) *Ragini, a practicing company secretary expressed her opinion on a report given to a business firm called “Quick March Consultants”. Ragini has an interest in the same to be extent of 12% of shares in the firm. Is she guilty of professional misconduct ?*
- (b) *How would you substantiate the view that the members of the Institute of Company Secretaries of India (ICSI) are subject to disciplinary mechanism ?*
(5 marks each)

Answer 6(a)

Clause 4 of Part I of the Second Schedule to the Companies Secretaries Act, 1980 deals with professional misconduct in relation to Company Secretaries in Practice. A company secretary in practice shall be deemed to be guilty of professional misconduct, if he—

“expresses his opinion on any report or statement given to any business enterprise in which he, his firm or a partner in his firm has a substantial interest;”

This clause ensures that a professional has to be independent, while expressing any opinion. He should not have any substantial interest in the business enterprise to which the report or statement pertains. That would create a conflict with his duty. Expressing opinion or giving report with appropriate disclosures about his interest in the report was permitted earlier. However under the new clause there is a total ban on expressing opinion or giving any report about any business enterprise in which he, his

firm or a partner in his firm has a substantial interest. "Substantial Interest" used in this clause is not limited to financial interest only.

In this connection it may be stated that the Council of the ICSI pursuant to Regulation 168 of the Company Secretaries Regulations, 1982 passed a resolution in which 'Substantial Interest' has been defined to mean an interest to the extent of 25%. The same guideline is relevant under the above clause also.

Based on the above regulation, Ragini who holds only 12% of shares in the business firm Quick March Consultants would not be guilty of Professional mis-conduct.

Answer 6(b)

The members of the Institute of Company Secretaries of India are subject to disciplinary mechanism under First and Second Schedule of the Company Secretaries Act as amended from time to time

Where a member is guilty of any professional or other misconduct mentioned in the First Schedule, the matter shall be placed before the Board of Discipline.

Where a member is guilty of any professional or other misconduct mentioned in the Second Schedule or in both the Schedules, the matter shall be placed before the Disciplinary Committee.

Where the Board of Discipline is of the opinion that a member is guilty of a professional or other misconduct mentioned in the First Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:—

- (a) reprimand the member;
- (b) remove the name of the member from the Register up to a period of three months;
- (c) impose such fine as it may think fit which may extend to rupees one lakh.

Where the Disciplinary Committee is of the opinion that a member is guilty of a professional or other misconduct mentioned in the Second Schedule or both the First Schedule and the Second Schedule, it shall afford to the member an opportunity of being heard before making any order against him and may thereafter take any one or more of the following actions, namely:

- (a) reprimand the member;
- (b) remove the name of the member from the Register permanently or for such period, as it thinks fit;
- (c) impose such fine as it may think fit, which may extend to rupees five lakhs.

SETTING UP OF BUSINESS ENTITIES AND CLOSURE

Time allowed : 3 hours

Maximum marks : 100

NOTE : Answer ALL Questions.

PART A

Question 1

(a) ABC Private Ltd., a 'start-up' company, received an amount of ₹25 lakh in a single tranche from an investor by way of a Note, convertible into equity shares (convertible after 3 years but within 5 years from the date of issue). CFO of the Company was of the view that the said amount is not a deposit. In the light of the statutory provisions, explain whether the view of the CFO is correct ?

(5 marks)

(b) Actavis Ireland Ltd. a pharma firm incorporated in Ireland :

(i) has a share transfer office in Kanpur

(ii) Directors of the company frequently stayed in a hotel in Noida and Mumbai for looking after matters of business, the company does not have any physical office or property in India

As a practising Company Secretary, advise under the provisions of the Companies Act, 2013, whether the company will be treated as having place of business in India ?

(5 marks)

(c) The majority of the shareholders of Kasi Textiles Private Ltd., passed a special resolution to alter its Articles of Association and gave the directors a power to require any shareholder who is doing competing business with that of the company's business to transfer his shares. Swaroop, who is carrying on a competing business, challenged the validity of the alteration. Decide whether Swaroop will succeed in the light of the provisions of the Companies Act, 2013 and decided case law.

(5 marks)

(d) The paid up share capital of PKA India Pvt. Ltd. is ₹20 crore, consisting of 150 lakh fully paid up Equity Shares of ₹10 each, and 50 lakh fully paid up Cumulative Preference Shares of ₹10 each. PKA India Capital Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. are holding 55 lakh and 25 lakh Equity Shares respectively in PKA India Pvt. Ltd.

PKA India Capital Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. are subsidiaries of Lord Krishna Pvt. Ltd. Referring to the provisions of the Companies Act, 2013 examine whether PKA India Pvt. Ltd. is a subsidiary of Lord Krishna Pvt. Ltd. ? Would your answer be different if Lord Krishna Pvt. Ltd. has five out of total seven directors on the Board of Directors of PKA India Pvt. Ltd. ?

(5 marks)

Answer 1(a)

Yes, the view of the CFO is correct.

As per the provisions of Companies (Acceptance of Deposit) Rules, 2014, an amount of Rs. 25 lakhs or more received by a Start-up company, by way of a convertible note (convertible into equity shares or repayable within a period not exceeding five years from the date of issue) in a single tranche, from a person shall not be treated as a deposit.

Further, as per the exemption notification dated June 05, 2015, issued by the Ministry of Corporate Affairs, the provisions of clauses (a) to (e) of Section 73 of the Act shall not apply to a start-up company for five years from the date of incorporation.

In view of the said provision, the view of the CFO that the amount of Rs. 25 lakh received from an investor, by way of Note convertible into equity after 3 years but before 5 years is not a deposit, is correct.

Answer 1(b)

As per Section 2(42) of the Companies Act, 2013, 'Foreign Company' means any company or body 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

As per Section 386(c) of the Companies Act, 2013, for the purpose of Chapter XXII, which provides the provision for foreign companies, states that the expression "place of business" includes a share transfer or registration office.

The similar was held in the case of *Tovarishestvo Manufacture Liudivg Rabenek, Re* (1944). In the case, the court was of the opinion that where representative of a Company incorporated outside the country, frequently stayed in a hotel in England for looking after the matter of the business, then it would be assumed that the company had a place of business in England. In certain other cases also, it was held that mere holding of property cannot tantamount to having a place of business in India.

Accordingly, applying the above proposition in the given case, it would be advisable to the Actavis Ireland Ltd., a Pharma Firm, incorporated in Ireland, that it has —

- i. A share transfer office in Kanpur which constitutes a place of business in India and
- ii. Its Directors frequently stayed in a hotel in Noida and Mumbai for looking after matter of business. Though the Company does not have any physical office or property in India, it would be treated as having a place of business in India.

Answer 1(c)

The alternation of Articles of Association is valid. A change in Articles made bona-fide for the benefit of the Company as a whole is justified. In this case, the directors were empowered to change the Articles of Association to ask a shareholder to transfer

his shares in case he was found to be carrying on a business in competition with that of the Company. It is possible for a person to take advantage in a competing business, of facts known to him or which he may know because of his shareholding in the Company. Such a member must be eliminated from the group of membership in the interests of the Company as a Company and therefore an alteration of Articles to this effect is valid. The facts of the given problem are similar to the facts of a decided English case of *Sidebottom Vs Kershaw* in which Court held that alteration was valid in as much as it was made bode fide and in the interest of the Company as a whole.

Hence, in the given case, Mr. Swaroop will not succeed.

Answer 1(d)

As per Section 2(87) of the Companies Act, 2013, subsidiary company means a company in which the other company (“Holding Company”): —

- i. Controls the composition of the Board of Directors; or
- ii. Exercises or controls more than one-half of the total voting power either at its own or together with one or more of its subsidiary companies.

The meaning of phrase “*total voting power*” has been defined under Section 2(89) of the Companies Act, 2013, which states that total voting power in relation to any matter means the total number of votes which may be cast in regard to that matter on a poll at a meeting of a company if all the members thereof or their proxies having a right to vote on that matter are present at the meeting and cast their votes.

The total equity share capital of PKA India Pvt. Ltd. is Rs. 1500 Lakhs and in absence of any specific condition in the problem, it may be presumed that the all equity share of PKA India Pvt. Ltd. is carrying equal voting rights.

The PKA India Capital Pvt. Ltd. holds Rs. 550 Lakhs in PKA India Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. holds Rs. 250 Lakhs in PKA India Pvt. Ltd. And PKA India Capital Pvt. Ltd. and PKA India Tele Services Pvt. Ltd. both are subsidiaries of Lord Krishna Ltd

From the above, it is clear that PKA India Capital Pvt. and PKA India Tele Services Pvt. Ltd. collectively holds 800 lakhs equity share capital in PKA India Pvt. Ltd, and both of them are subsidiaries of Lord Krishna Ltd.

Thus, in view of Section 2(87)(ii) of the Companies Act, 2013, it can be said that Lord Krishna Ltd exercises or controls more than half of the total voting power in PKA India Pvt. Ltd together its subsidiaries viz. PKA India Capital Pvt. and PKA India Tele Services Pvt. Ltd. Accordingly, PKA India Pvt. Ltd shall become an indirect subsidiary of Lord Krishna Ltd.

Even if Lord Krishna Ltd would have right to appoint five directors out of total seven directors in PKA India Pvt. Ltd even then Answer would remain same for the question of Lord Krishna Ltd.'

However, under this circumstance, PKA India Pvt. Ltd., becomes direct subsidiary of Lord Krishna Ltd., as per the provisions of Section 2(87)(1) of the Companies Act, 2013 i.e. through controlling the composition of Board of Directors.

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

- (a) Ragavi and her six more relatives & friends want to incorporate a Nidhi Company. They seek your advice on the following issues with respect to the formation of company :
- (i) Whether Nidhi Company can be formed as a private company ? Is there any specific law for the Nidhi Companies ?
 - (ii) Whether the approval of Reserve Bank of India (RBI) is required ?
 - (iii) Whether Nidhi is allowed to raise funds through issue of equity shares and preference shares ?
 - (iv) Whether Nidhi is allowed to carry on business other than the business of borrowing or lending in its own name ?

As a practising Company Secretary, advise with reference to the provisions of the Companies Act, 2013. (4 marks)

- (b) Divyesh Digital Networks LLP wants to expand its business through investment in an overseas Joint Ventures (JV) or/and Wholly Owned Subsidiaries (WOS). The partners of the firm seek your advice about the various sources/modes of funding through which overseas investment can be made. Advise them in light of the provisions of Foreign Exchange Management Act, 1999. (4 marks)
- (c) Moorthy wants to form a society to promote the 'Beti Bachao, Beti Padoo Movement' of Government of India. He seeks your advice on the following :
- (i) The purposes for which a society can be formed under the Societies Registration Act, 1860;
 - (ii) Whether the foreigners and other registered societies can be members of a society ? (4 marks)
- (d) 'Every equity based joint venture gives birth to a new entity'. Discuss in brief the different types of entities which are permitted by Government of India to form a joint venture entity. (4 marks)
- (e) Paramvir & Associates, a firm of Practising Professionals consists of three partners Ashok, Paramvir and Vir having one third share each in the firm. According to Ashok and Paramvir, the activities of Vir are not in the interest of the firm and thus want to expel Vir from the firm. Advise Ashok and Paramvir whether they can do so quoting the relevant provisions of the Indian Partnership Act, 1932. (4 marks)

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

Comment on the following :

- (i) A Company under Section 8 can be registered as a Small Company under the provisions of the Companies Act, 2013.

- (ii) *Choice of business locations outside India involves consideration of many factors.*
- (iii) *The promoters can avail numerous benefits by incorporating a Special Purpose Vehicle.*
- (iv) *Requirement of Capital affects the choice of suitable form of a business organization.*
- (v) *The Financial Statements of Limited Liability partnership are not mandatorily required to be audited by a Chartered Accountant. (4 marks each)*

Answer 2(a)

- i. No, as per rule 4 of the Nidhi Rules, 2014, a Nidhi Company to be incorporated under the Companies Act, 2013 shall be a public company and shall have a minimum paid up equity share capital of five lakh rupees and these Nidhi Companies are required to comply with two set of norms, one as a Public Limited Company under the provisions of Companies Act, 2013 and another under the Nidhi Rules, 2014.
- ii. No, RBI approval is not necessary to register the Nidhi Company, as RBI has specifically exempted this category of NBFC in India.
- iii. As per rule 6 of the Nidhi Rules, 2014, no Nidhi Company shall issue preference shares, debentures or any other debt instrument by any name or in any form whatsoever.
- iv. As per rule 6 of the Nidhi Rules, 2014, no Nidhi Company shall carry on any business other than the business of borrowing or lending in its own name

Answer 2(b)

An Indian Party has been permitted to make investment/undertake financial commitment in overseas JV/WOS as per the ceiling prescribed by Reserve Bank of India from time to time. This is contained in Notification No. FEMA 120/RB-2004 dated July 7, 2004.

Divyesh Digital Networks, LLP can invest in an overseas JV/WOS out of one or more of the following sources:

- i. Drawal of foreign exchange from an AD Bank in India; capitalization of exports
- ii. Swap of Shares
- iii. Proceeds of External Commercial Borrowings (ECBs)/ Foreign Currency Convertible Bonds (FCCBs)
- iv. Balances held in EEFC account of the India Party
- v. In exchange of ADRs/GDRs issued in accordance with the Scheme for issue of Foreign Currency Convertible Bonds and Ordinary Shares (through Depository Receipt Mechanism) Scheme, 1993, and the guidelines issued there under from time to time by the Government of India.
- vi. Proceeds of foreign currency funds raised through ADR/GDR issues.

In respect of (v) and (vi) above, the limit of financial commitment vis-à-vis the net worth will not apply. However, all investments (or financial commitment) made in the

financial sector will be subject to compliance with Regulation 7 of the Notification *ibid*, irrespective of the method of funding.

Further, General permission has been granted to persons resident in India for purchase/acquisition of securities in the following manner:

- (i) Out of funds held in RFC Account;
- (ii) As bonus shares on existing holding of foreign currency shares.

Answer 2(c)

Moorthy, who intends to promote Society for 'Beti Bachao, Beti Padoo Movement' of Government of India, can be advised as under:

- (i) As per Section 20 of the Societies Registration Act, 1860, Societies can be formed for the following purposes —
 - a. Charitable purposes,
 - b. The Military orphan funds or societies established at the several presidencies of India,
 - c. Societies established for the promotion of science, literature or the fine arts for instruction, the diffusion of useful knowledge,
 - d. The diffusion of political education,
 - e. The foundation or maintenance of libraries or reading rooms for general use among the members or open to the public,
 - f. Public museums and galleries of paintings and other works of art, collections of natural history, mechanical and philosophical inventions, instruments or designs.

Besides these purposes, the respective State Governments may provide for any other objects by their legislations.

- (ii) Yes, a Society can be created by a minimum 7 or more persons. Apart from persons from India, Companies, Foreigners as well as other Registered Societies can also be Members of the Society and subscribe to the Bye-laws of the Society.

Answer 2(d)

Every equity based joint venture gives birth to a new entity. Government of India permits certain type of entities. Different types of entities that can be formed are summed up below:

- (1) *Company* — A limited liability company is the most preferred structure for joint venture entities in India. Government also encourages investment being in the form of equity capital of a company incorporated in India. Companies in India are mainly of two types — private limited and public limited. After the coming into force of Companies Amendment Act, 2015 there is no minimum share capital prescribed either for private limited company or public limited company.

The shareholders may be foreign citizens or foreign companies. Companies Act 2013 makes it mandatory that at least one director of every company is resident of India.

- (2) *Limited Liability Partnership (LLP) Firm* — LLP Firm structure is regulated in India by The Limited Liability Partnership Act, 2008. Foreign investment in LLP Firms was not permitted before November 2015. Government of India has now allowed foreign investments in LLP firms subject to certain restrictions. LLP Firms are partnership firms with limited liability of partners. An LLP Firm combines the convenience of a partnership firm with the limited liability feature earlier found only in a company. An LLP Firm needs minimum two partners, It also requires minimum two Designated Partners out of which at least one should be resident of India. The two partners can also be appointed as Designated Partners. There is no requirement of minimum capital contribution to incorporate an LLP Firm.
- (3) *Venture Capital Fund* — A duly registered Foreign Venture Capital Investor is allowed to contribute up to 100% in Indian Venture Capital Undertakings /Venture Capital Funds /other companies.
- (4) *Trusts* — A foreign company is not allowed to use Trust as a form of a joint venture entity in India. Investment Vehicle — SEBI has introduced regulations for some funds like Real Estate Investments Trusts, Infrastructure Investment Funds, Alternative Investment Funds. Such funds are now permitted to receive foreign investment from a person resident outside India.
- (5) *Other Entities* — Foreign companies are not allowed to use any structures other than those mentioned above for the purpose of equity based Joint venture entities.

To sum up, it can be concluded that the most acceptable and convenient forms of equity based joint venture in India are a limited liability company and a limited liability Partnership Firm (LLP).

Answer 2(e)

Section 33 of the India Partnership Act, 1932, lays down certain conditions for expulsion for Partners of the Firm. In view of this, Ashok and Paramvir cannot expel Vir from their Firm without satisfying certain conditions. The essential conditions before expulsion to be satisfied are:

- (i) The power of expulsion must have existed in a contract between the partners,
- (ii) The power has been exercised by a majority of the partners, and
- (iii) It has been exercised in good faith.

The test of good faith includes:

- (a) That the expulsion must be in the interest of the partnership,
- (b) That the partner to be expelled is served with a notice, and
- (c) That the partner has been given an opportunity of being heard.

Accordingly, if Ashok and Paramvir must satisfy the above conditions and follow the procedures, then only they may expel Vir from the Firm.

Answer 2A(i)

As per Section 2(85) of the Companies Act, 2013 small company means a company, other than a public company,

- i. Paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than ten crore rupees; and
- ii. Turnover of which for the immediately preceding financial year does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than one hundred crore rupees.

Further proviso to Section 2(85) of the Companies Act, 2013 provides that nothing in Section 2(85) shall apply to —

- a. A holding company or a subsidiary company; or
- b. A company registered under section 8; or
- c. A company or body corporate governed by any special Act.

Accordingly, as per the above provisions, a Company registered under Section 8 cannot be treated as Small Company or a Company under Section 8 cannot be registered as Small Company.

Answer 2A(ii)

Following factors to be considered before choosing a business location outside India:

Geographical Location of the business

- Infrastructure (ports, airports, storage, specific storage types — such as cold-storage, secure storage).
- Access (transportation of goods, materials and personnel).
- Relevance to supply-chain: raw material sourcing, processing, dispatch of finished produce).
- Availability of talent pool for productions (labour), services and management.

Economic aspects

- Ease of doing business: entering, establishing, restructuring and closing the business, visa availability.
- Cost of doing business: return on investment computations vis-a-vis comparable locations.
- Laws relating to labour.
- Laws relating to taxation : Investment allowances, subsidies, distribution of profits, repatriation of profits, withholding taxes, existence of double-taxation avoidance agreements, information sharing requirements such as FATCA, TRC, etc.

Political Aspects

- Friendly country, MFN status.
- Long-standing and established legislative precedents with companies going through regulatory recourse.
- Their relations with nearby countries and neighbors and your country.

Social Aspects

- Trade bodies, interaction between commercial entities of both nations.
- Expatriate-friendliness of the nation for relocating key employee personnel.

Technological aspects

- Intellectual property protection: create, maintain and extract IP at the location or provision thereof from another location to the nation with free entry and egress.
- Power, communication, telecom — availability, quality and cost Issues like infrastructure, geography, time zone, political considerations/conditions, safety of investments, economic policy and stability of the country, culture and language have a critical bearing on the strategy for globalization. Value systems and institutions are also becoming increasingly important from a long term perspective, in order to have the support of stakeholders. Ultimately, any chosen business strategy has to be executed within the parameters of legal and regulatory compliances. At the same time it is necessary to factor in global tax costs and plan to the possible extent within the framework of law.

Answer 2A(iii)

Following are benefits of incorporating a Special Purpose Vehicle:

- a. *Ownership of Assets* - An SPV allows the ownership of a single asset often by multiple parties and allows for ease of transfer between parties.
- b. *Minimum Statutory Requirement* — Depending on the choice of jurisdiction, it is relatively cheap and easy to set up an SPV.
- c. *Clarity of Documentation* — It is easy to limit certain activities or to prohibit unauthorized transactions within the SPV documentation.
- d. *Tax Benefits* - SPVs are often used to make a transaction tax efficient by choosing the most favorable tax residence for the vehicle. SPVs are method of financial engineering schemes which have as their main goal, the avoidance of tax. Some countries have different tax rates for capital gains and gains from property sales
- e. *Legal Protection* — By structuring the SPV appropriately, the sponsor may limit legal liability in the event that the underlying project fails.
- f. *Accounting Reasons* -Debts raised through SPV are not reflected in the balance sheet of the sponsor. It reflects a pleasant picture and enhances the debt raising ability of the sponsor. Losses incurred by SPV are not shown in the balance

sheet of the sponsor, so it helps to maintain the healthy picture of the sponsor in the eyes of its stakeholders.

- g. The key advantage is that it helps in separating the risk and freeing up the capital. As a result, the SPV and the sponsoring company are protected against risks like insolvency, which may arise during the course of operation.
- h. The SPV also allows securitization of assets without disturbing the managerial relationship. Under the arrangement, any predictable income stream generated by secured assets can be securitized.

Answer 2A(iv)

Capital is one of the most crucial factors affecting the choice of a particular form of ownership of an organization. Requirement of capital is closely related to the type of business and scale of operations. Enterprises requiring heavy investment (like iron and steel plants, large scale infrastructure projects, etc.) should be organized as companies. Depending on the capital required, they can be set up as public companies and in some cases, may be in the form of listed companies by raising money from the public and being listed on the stock exchanges.

Enterprises requiring small investment (like retail business stores, personal service enterprises, etc.) can be best organized as sole proprietorships or even as Partnerships. Apart from the initial capital required to start a business, the future capital requirements—to meet modification, expansion, and diversification plans — also affect the choice of form of organization.

In sole proprietorship, the owner may raise additional capital by borrowing, by purchasing on credit, and by investing additional amounts himself. Banks and suppliers, however, will look closely at the proprietor's individual financial resources before sanctioning any loans or advances.

Partnerships can often raise funds with greater ease, since the resources and credit of all partners are combined in a single enterprise. Companies are usually best able to attract capital because investors are assured that their liability will be limited, their operations are in public domain in a transparent manner, easily accessible and the ownership can be transferred to other investors.

Answer 2A(v)

The Financial statements of Limited Liability Partnership are not mandatorily required to be audited by Chartered Accountant.

The Statement is incorrect, because as per Rule 24 of LLP Rules, the LLPs whose annual turnover exceeds Rs. 40 lakhs or whose Capital Contribution exceeds Rs. 25 Lakhs are required to get their accounts audited by a qualified Chartered Accountant mandatorily for each financial year.

PART B

Question 3

- (a) *Rajkumar is running a business of handicraft in Jaipur. He has explored some opportunities for handicraft products abroad and he wants to encash the huge*

demand outside India for such products. He seeks your advice whether he would be required to get himself registered with Directorate General of Foreign Trade (DGFT) for exporting goods, if yes what are all the documents required for such registration ? And also enlighten him the features/benefits available from such Registration. (5 marks)

(b) Govind, has newly started a ready to eat food products Manufacturing Company, he seeks your advice for the selection of a trade mark for his products. Brief him with example on the following Categories of Trade marks referring to the provisions of the Trade Marks Act, 1999 :

- (i) Generic marks*
- (ii) Descriptive marks*
- (iii) Arbitrary marks*
- (iv) Suggestive marks and*
- (v) Invented/Coined marks*

Also suggest him which Category or Categories are Strong Marks and which are weak with respect to protection of Trade mark rights. (5 marks)

(c) Satvik is running a dyeing factory seeks your guidance in knowing various responsibilities imposed upon his business and to be complied under the Water (Prevention and Control of Pollution) Act, 1974. (5 marks)

(d) Harischander wants to start a manufacturing business but he is not able to decide on the form of business (Type of Business Entity). He seeks your advice about the legal implications and requirements for the various business forms in India on the basis of the following parameters :

- (i) Registration*
- (ii) Member's liability*
- (iii) No. of members required*
- (iv) Taxation*
- (v) Legal Status (5 marks)*

Answer 3(a)

Yes, Rajkumar can export the Handicraft goods by registering himself for obtaining Importer Exporter Code (IEC Code).

Rajkumar have to arrange for following documents for obtaining IEC Code Registration through online. For making online application the following documents are required:

- Personal Pan Card Copy.
- Bank Certificate/ Pre-printed cancelled cheque, Personal Aadhar Card or Voter ID or Passport Copy.
- Address Proof of the firm

Any of the Following Documents: Sale deed, Rent agreement, Lease Deed, Electricity Bill, Telephone Land Line Bill, Mobile Postpaid Bill, MOU, Partnership Deed, Other acceptable documents (for Proprietorship only): Aadhar Card, Passport, Voter Id.

In case the address proof is not in the name of the applicant firm, a No Objection Certificate (NOC) by the firm premises owner in favour of the firm along with the address proof is to be submitted as a single PDF document.

Following are the benefits or features, Rajkumar will derive from IEC Registration:

International Exposure : IEC Code helps you to grow your business from local market to international market and expand your product or service across the global.

Government Benefits : Government of India always promote the export activity in India so through IEC Code Registration you can avail all the export scheme benefits from DGFT, Customs and Export Promotion Council.

No Renewals : IEC Code issued by the DGFT for the lifetime validity so you have not required to renew every year. Further, it is just a one-time cost of the registration.

Individual Person : IEC Code can be obtained by the individual person also. They are not required to register as a legal entity.

Answer 3(b)

- i. Generic marks means using the name of the product for the particular product, like “Salt” for salt.
- ii. Descriptive marks mean the mark describing the characteristic of the products, like using the mark “Fair” for the fairness creams. To qualify as a descriptive mark, it should evolve from what the brand represents to who the brand represents.
- iii. Arbitrary marks means mark which exist in popular vocabulary, but have no logical relationship to the goods or services for which they are used, like “Blackberry” for phones.
- iv. Suggestive marks mean the mark suggesting the characteristic of the products, like “Habitat” for home furnishings products. The term “suggestive” means that the customer must use the imagination to find out what services or goods the company offers.
- v. The invented/ coined marks means coining a new word which has no dictionary meaning, like “Adidas”.

The strongest marks, and thus the easiest to protect, are invented or arbitrary marks.

The weaker marks are descriptive or suggestive marks which are very hard to protect. The weakest marks are generic marks which can never function as trademarks.

Answer 3(c)

Section 25 in specific along with other relevant sections of Water (Prevention and Control of Pollution) Act, 1974 provides certain responsibilities for the person establishing or taking any steps to establish any industry, operation or process, or any treatment and disposal system or any extension or addition thereto, which is likely to discharge sewage or trade effluent into a stream or well or sewer or on land. In short, it provides certain process for carrying certain types of industrial activities or running an Industrial unit, which involves discharging the trade effluent into a stream or well or sewer or on land.

In this context, Satvik should be made to understand the following responsibilities/duties:

- Obtain “Consent to Establish”.
- Obtain “Consent to Operate”.
- Apply for renewal of the “Consent to Operate” before the expiry of validity period.
- Consent to be deemed as granted automatically and unconditionally after four months from the date of application already given or refused before this period.
- Refusal of “Consent” to be recorded in writing.
- Pay Water Cess as indicated in the assessment order.
- Affix water meters of the prescribed standards.
- Provide access to State Pollution Control Board (SPCB).
- Pay interest in case of delay in paying the Water Cess.
- Pay penalty for non-payment of Cess.
- Industry is entitled to 25% rebate if meeting certain conditions.

Answer 3(d)

Following are the Business Form-wise Features/Benefits or Drawbacks for the Parameters required by Harishchander:

Parameters	Entity Types			
	Proprietorship	Partnership	Limited Liability Partnership (LLP)	Limited Liability Company
Registration	No formal registration required	Registration is optional	Has to be registered with the Ministry of Corporate Affairs under the LLP Act 2008	Has to be registered with the Ministry of Corporate Affairs under the Companies Act 2013
Member Liability	Unlimited liability	Unlimited liability	Limited liability to the extent of contribution towards to the LLP	Limited Liability to the extent of share capital
Number of Members Required	Can only have one person	Minimum of two persons required to start a Partnership	Minimum of two persons required to start a LLP	Minimum of one person required to start a One Person Company(OPC) and two persons to start a Private Limited Company
Taxation	Taxed as individual, based on total income of proprietor	Partnership profits are taxed as per the slabs provided under	LLP profits are taxed as per the slabs provided under Income Tax Act,	Profits of Private Limited Company are taxed as per the slabs provided under Income Tax Act,

	Income Tax Act, 1961 plus surcharge and cess as applicable	1961 plus surcharge and cess as applicable	1961 plus surcharge and cess as applicable	1961 plus surcharge and cess as applicable
Legal Status	Not recognized as a separate entity and promoter is personally responsible for all liabilities	Not recognized as a separate entity and promoters are personally responsible for all liabilities	Is a separate legal entity. The promoters of the LLP are not personally liable towards the LLP	Is a separate legal entity. The promoters of the company are not personally liable towards the company

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

Question 4

- (a) *Abishek has recently been appointed as Finance and Legal Compliance officer of a Charitable Organisation — doing palliative care services to aged persons, seeks to receive foreign funds, has approached you to find out the eligibility criteria for obtaining registration. Brief him the provision of the Foreign Contribution (Regulation) Act, 2010 on eligibility criteria for registration.*
- (b) *List out the grounds under which the Insurance Regulatory and Development Authority of India (IRDAI) is compulsorily required to cancel the Certificate of Registration granted for Insurer/Insurance business.*
- (c) *Srivastva is the owner of a unit manufacturing Beedi in Jabalpur. 22 persons are employed in the unit. Of these 22 employees, one is a graduate for supervising the work and another apprentice learning work. The remaining 20 are employed not on the time wage system, but on the piece work system. Is the unit, a 'factory' within the meaning of the term under the Factories Act, 1948 ?*
- (d) *In the light of the provision of Copyright Act, 1970, in the following cases who are the owners of the copyrights :*
- (i) *Musical Sound Recordings*
 - (ii) *Works by Journalists*
- (e) *Bermuda Sports Manufacturing Unit, a Micro and Small Enterprise, seek registration under Single Point Registration Scheme of NSIC. State the various benefits/facilities available to the registered units. (3 marks each)*

OR (Alternate question to Q. No. 4)

Question 4A

Write short notes on :

- (i) *Public Liability Insurance*
- (ii) *Industrial Entrepreneurs Memorandum (IEM)*
- (iii) *Enforcement of Trade mark rights*
- (iv) *Labour Welfare Fund for social assistance to workers*
- (v) *Arbitral Award for industrial disputes* (3 marks each)

Answer 4(a)

As per Section 12 (4) of The Foreign Contribution (Regulation) Act, 2010, the FCRA application is to be made in the prescribed format and the following criteria need to be checked before providing registration.

- (i) The 'person' or 'entity' making an application for registration or grant of prior permission-
 - Is not fictitious or benami;
 - Has not been prosecuted or convicted for indulging in activities aimed at conversion through inducement or force, either directly or indirectly, from one religious faith to another;
 - Has not been prosecuted or convicted for creating communal tension or disharmony in any specified district or any other part of the country;
 - Has not been found guilty of diversion or mis-utilisation of its funds;
 - Is not engaged or likely to engage in propagation of sedition or advocate violent methods to achieve its ends;
 - Is not likely to use the foreign contribution for personal gains or divert it for undesirable purposes;
 - Has not contravened any of the provisions of this Act;
 - Has not been prohibited from accepting foreign contribution;
 - The person being an individual, such individual has neither been convicted under any law for the time being in force nor is any prosecution for any offence pending against him.
 - The person being other than an individual, any of its directors or office bearers has neither been convicted under any law for the time being in force nor is any prosecution for any offence pending against him.
- (ii) The acceptance of foreign contribution by the entity / person is not likely to affect prejudicially
 - The sovereignty and integrity of India;
 - The security, strategic, scientific or economic interest of the State;
 - The public interest;
 - Freedom or fairness of election to any Legislature;
 - Friendly relation with any foreign State;
 - Harmony between religious, racial, social, linguistic, regional groups, castes or communities.
- (iii) The acceptance of foreign contribution
 - Shall not lead to incitement of an offence;

- Shall not endanger the life or physical safety of any person.

To be eligible for registration, the entity should be registered as a Society or Trust or a Section 8 Company. It should have been in existence for at least three years and has undertaken reasonable activity in the chosen field. It should have spent at least Ten Lakh Rupees over the last three years on its aims and objects (excluding administrative expenditure). To substantiate this, it must submit Statements of Income and Expenditure, duly audited by a Chartered Accountant for the last three years.

Answer 4(b)

The Insurance Regulatory and Development Authority of India (IRDAI), in case of repeated defaults on the grounds for suspension of a certificate of registration, may impose a penalty in the form of cancellation of the certificate. As per Section 3(4) of the Insurance Act, 1938, the Authority is compulsorily required to cancel the registration of an insurer either wholly or in so far as it relates to a particular class of insurance business, as the case may be:

- If the insurer fails to comply with the provisions relating to deposits; or
- If the insurer fails, at any time, to comply with the provisions relating to the excess of the value of his assets over the amount of his liabilities; or
- If the insurer is in liquidation or is adjudged an insolvent; or
- If the business or a class of the business of the insurer has been transferred to any person or has been transferred to or amalgamated with the business of any other insurer; or
- If the whole of the deposit made in respect of the insurance business has been returned to the insurer;
- If, in case of an insurer, the standing contract is cancelled or is suspended and continues to be suspended for a period of six months, or
- If the Central Government of India so directs.
- If the insurer makes default in complying with, or acts in contravention of any requirement of this Act or of any rule or any regulation or order made or, any direction issued there under, or
- If the Authority has reason to believe that any claim upon the insurer arising in India under any policy of insurance remains unpaid for three months after final judgment in regular course of law, or
- If the insurer carries on any business other than insurance business or any prescribed business, or
- If the insurer makes a default in complying with any direction issued or order made, as the case may be, by the Authority under the Insurance Regulatory and Development Authority Act, 1999, or
- If the insurer makes a default in complying with, or acts in contravention of, any requirement of the Companies Act, 2013 or the Life Insurance Corporation Act, 1956 or the General Insurance Business (Nationalization) Act, 1972 or the Foreign Exchange Regulation Act, 1999.

Answer 4(c)

According to Section 2(m) of the Factories Act, 1948, a 'factory' means "any premises including the precincts thereof:-

- (i) whereon ten or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on with the aid of power, or is ordinarily so carried on; or
- (ii) whereon twenty or more workers are working, or were working on any day of the preceding twelve months, and in any part of which a manufacturing process is being carried on without the aid of power, or is ordinarily so carried on; but this does not include a Mine subject to the operation of the Mines Act, 1952, or a mobile unit belonging to the armed forces of the union, a railway running shed or a hotel, restaurant or eating place."

For computing number of workers, all the workers in different groups in a day shall be taken into account. Therefore, in the given case as per Section 2(m) of the Factories Act, the unit of Mr. Srivastava is a factory within the meaning of the definition.

Answer 4(d)

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

- In Musical Sound Recordings - Lyricist, composer, singer, musician and the person or company who produced the sound recording
- In works by journalists during their employment: in the absence of any agreement to the contrary, the proprietor

Answer 4(e)

The units registered under Single Point Registration Scheme of NSIC are eligible to get the benefits under "Public Procurement Policy for Micro & Small Enterprises (MSEs) Order 2012" as notified by the Government of India, Ministry of Micro, Small & Medium Enterprises, New Delhi vide Gazette Notification dated 23.03.2012.

1. Issue of the Tender Sets free of cost
2. Exemption from payment of Earnest Money Deposit (EMD)
3. In tender participating MSEs quoting price within price band of L1+15 per cent shall also be allowed to supply a portion upto 20% of requirement by bringing down their price to L1 Price where L1 is non MSEs
4. Every Central Ministry/Department/PSU shall set an annual goal of minimum 20 per cent of the total annual purchases of the products or services produced or rendered by MSEs. Out of annual requirement of 20% procurement from MSEs, 4% is earmarked for units owned by Schedule Caste/Schedule Tribes (as per PPP Order dated 23.03.2012 overall procurement goal shall be mandatory with effect from 01/04/2015)
5. In addition to the above, 358 items are also reserved for exclusive purchase from SSI Sector.

Answer 4A(i)

Public Liability Insurance Act, 1991 deals with providing the compensation for damages to victims of an accident of handling any hazardous substance or it is also called, to save the owner of production/storage of hazardous substance from hefty penalties. This is done by providing compulsory insurance for third party liability. As from the name of the act, it is Public Liability.

The owner is put on anvil to provide the compensation/relief, when death or injury to any person (please note-other than a workman) or damage to any property has resulted from an accident of hazardous substance.

Actually the owner shall buy one or more insurance policies before he/she starts handling any hazardous substance. When any accidents come to the knowledge of the Collector, then he/she is required to verify the occurrence of the accident and order for relief as he/she deems fit.

Answer 4A(ii)

All industrial undertakings exempt from the requirements of industrial licensing, including existing units undertaking substantial expansion, are required to file information in the prescribed form for Industrial Entrepreneurs Memorandum (IEM), i.e. "Form IEM", with the Secretariat of Industrial Assistance (SIA), Department of Industrial Policy and Promotion (DIPP), Government of India, and obtain an acknowledgement. No further approval is required.

It is to be noted that this form can also be filed online now a days.

Industrial Entrepreneurs Memorandum (IEM) is an application for acknowledgment of unit.

Answer 4A(iii)

Trademarks can be protected under the statutory laws, one is under the Trademarks Act and second one is under the common law, i.e., under the remedy of passing off. If a person is using a similar mark for similar or related goods or services or is using a well-known mark, the other person can file a suit against that person for violation of the Intellectual Protection (IP) rights irrespective of the fact whether the trademark is registered or not.

The relief which a court may usually grant in a suit for infringement or passing off includes permanent and interim injunction, damages or account of profits, delivery of the infringing goods for destruction and cost of the legal proceedings.

Answer 4A(iv)

To extend a measure of social assistance to workers in the unorganized sector, the concept of 'Labour Welfare Fund' was evolved and five welfare funds were set up under the Ministry of Labour and Employment. These funds are aimed to provide housing, medical care, educational and recreational facilities to workers employed in beedi industry, certain non-coal mines and cine workers. Such funds are financed out of the proceeds of cess levied under respective Cess/Fund Acts. The various legislation enacted in this regard include:-

- The Mica Mines Labour Welfare Fund Act, 1946.

- The Limestone and Dolomite Mines Labour Welfare Fund Act, 1972.
- The Iron Ore Mines, Manganese Ore Mines & Chrome Ore Mines Labour Welfare Fund Act, 1976.
- The Beedi Workers Welfare Fund Act, 1976.
- The Cine Workers Welfare Fund Act, 1981.

Answer 4A(v)

Arbitration award implies the final decision or settlement or decree, with reference to an Industrial Dispute.

Whether the dispute is before Labour Court or Industrial Tribunal or National Tribunal the parties can go to arbitration by the written agreement. The arbitrators conduct the investigation into the disputed matters and give arbitration award.

Every Arbitration award shall be in writing and signed by the Arbitrator(s) and every award of a Labour Court or Tribunal or National Tribunal shall be in writing, signed by its presiding officer and published in such manner as the Central Government thinks fit. The award published shall be final and enforceable on the expiry of thirty days from the date of its publication.

PART–C

Question 5

- (a) *Glory Technology LLP is not carrying on any business for a period of two years desirous of striking off its name from the register of Limited Liability Partnership maintained by Registrar of Companies. Whether LLP is allowed to do so ? Examine. (3 marks)*
- (b) *Cute Garments Ltd., has recently obtained the status of dormant company. The Board of Directors seeks your advice about the required compliances in respect of the following :*
- (i) *Minimum number of Directors*
 - (ii) *Requirement of Return filing*
 - (iii) *Meeting of Board of Directors (3 marks)*
- (c) *Comment on the following :*
- (i) *The term 'Winding up' and 'Dissolution' can be used inter-changeably to denote cessation of existence of a legal entity.*
 - (ii) *Situations under which a company cannot apply for Strike off.*
 - (iii) *Time limit and extension of period in Corporate Insolvency Resolution Process under Insolvency and Bankruptcy Code, 2016. (3 marks each)*

Answer 5(a)

Yes, as per the provisions of Rule 37 of Limited Liability Partnership Act, 2009, in

case of an existing LLP which is not carrying on any business or operation for a period of one year or more, it can make an application in Form 24 to the Registrar, with the consent of all partners of the Limited Liability Partnership for striking off its name from the register. Similarly, where the Registrar has reasonable cause to believe that a Limited Liability Partnership is not carrying on business or operation, in accordance with the provisions of this Act for a period of two years or more, the name of Limited Liability Partnership may be struck off from the register of Limited Liability Partnership maintained by Registrar of Companies by taking Suo Moto action for striking off the name of LLP. However, before striking off the name of the LLP, the Registrar shall give reasonable opportunity of being heard.

Answer 5(b)

In view of the provisions of Section 455 of Companies Act, 2013 read with Rule 3 to 8 of Companies (Miscellaneous) Rules, 2014, the Directors of Cute Garments Ltd., are required to carry out following compliances in respect of:

(i) *Minimum Number of Directors*

A Dormant Company shall have such minimum number of Directors as required depending on the type of Company. Since Cute Garments Ltd is a Public Limited company, it needs to have at least 3 Directors.

(ii) *Requirements of Return Filing*

In order to retain the status of the dormant company, such a company is required to file 'Return of Dormant Company' in Form MSC – 3 annually, inter-alia indicating financial position duly Certified by Chartered Accountant in Practice along with such annual fees as prescribed under the Rules.

(iii) *Meeting of the Board of Directors*

A Dormant company is required to conduct at least one meeting of the Board of Directors in each half of a calendar year. Further, the gap between the two meetings should not be less than 90 days.

Answer 5(c)(i)

Many times, the terms 'winding up' and 'dissolution' are used interchangeably. This is not correct. There are certain vital differences in these two terms which are given below:

1. Winding up is the first stage of ending the legal existence of the entity. In this stage, the assets of the entity are realized, its liabilities are paid off and surplus, if any, is distributed amongst the contributories whereas dissolution is the final stage after completion of winding up process and by act of law, the legal existence of the entity comes to an end.
2. The winding up process is handled by a liquidator / insolvency professional. The dissolution can happen only by way of an order passed by the adjudicating authority.
3. Creditors can prove their claims during winding up but not on dissolution since the entity no longer exists.

4. Winding up need not result in dissolution in all cases. A company which is in winding up can be taken over / amalgamated by any other entity / company which will result in the company coming out of winding up process and being handed over to the shareholders. This is not possible in case of dissolution.

Answer 5(c)(ii)

Section 249 (1) of Companies Act, 2013 imposes the restrictions on making an application for Strike Off. As per this section, the Company shall not make any application for the strike off of the Company if at any time in the previous three month the company has undertaken any of the following activities:

- i. Has Changed its name or
- ii. Has Shifted its registered office from one State to another;
- iii. Has made a disposal for value of property or rights held by it, immediately before cessation of trade or otherwise carrying on of business, for the purpose of disposal for gain in the normal course of trading or otherwise carrying on of business;
- iv. Has engaged in any other activity except the one which is necessary or expedient for the purpose of making an application under that section, or deciding whether to do so or concluding the affairs of the company, or complying with any statutory requirement;
- v. Has made an application to the Tribunal for the sanctioning of a Compromise or Arrangement and the matter has not been finally concluded; or
- vi. Is being wound up under Chapter XX, whether voluntarily or by the Tribunal or under the IBC, 2016.

Answer 5(c)(iii)

Corporate insolvency resolution process shall be completed within a period of 180 days from the date of admission of the application by the Adjudicating Authority to initiate such process.

However, resolution process can be extended beyond such period, if Committee of the Creditors feels that extension of the time is required to bring the appropriate Resolution to the Corporate Debtor. The Committee may do so by passing resolution with a majority of 75% of voting shares.

The Adjudicating Authority on application after the approval of the Committee of Creditors may extend the period by 90 days and the extension will not be granted more than once.

Question 6

- (a) *Elaborate on 'Waterfall Arrangement' under the Insolvency and Bankruptcy Code, 2016.*
- (b) *RoC can Strike off the name of a company on Suo Moto basis only after following certain procedures — Comment. (5 marks each)*

Answer 6(a)

Section 53 of the Insolvency and Bankruptcy Code (IBC) provides for the manner of distribution of assets in case of liquidation and order of priority of distribution. It is pertinent to note that this order of priority is notwithstanding anything contrary which is contained in any other Central or State law. This order of priority is also known as the “waterfall arrangement” since each category of persons comes in priority after the previous one.

Notwithstanding anything to the contrary contained in any law enacted by the Parliament or any State Legislature for the time being in force, the proceeds from the sale of the liquidation assets shall be distributed in the following order of priority and within such period and in such manner as may be specified:

- (a) Insolvency resolution process costs and liquidation costs paid in full.
- (b) Following debts shall rank equally between and among the following:
 - i. Workmen’s dues for the period of 24 months preceding the liquidation commencement date,
 - ii. Debts owed to secured creditor in the event such secured creditor has relinquished security under section 52,
- (c) Wages and any unpaid dues owed to employees other than workmen for the period of 12 months preceding the liquidation commencement date,
- (d) Financial debts owed to unsecured creditors,
- (e) Following dues shall rank equally between and among the following:
 - i. Any amount due to the Central / State Government including amount to be received on account of Consolidated Fund of India and Consolidated Fund of a State, if any, in respect of whole or any part of the period of two years preceding the liquidation commencement date,
 - ii. Debts owed to a secured creditor for any amount unpaid following enforcement of security interest.
- (f) Any remaining debts and dues,
- (g) Preference shareholders, if any; and
- (h) Equity shareholders or partners, as the case may be.

Any contractual arrangements between recipients above with equal ranking, if disrupting the order of priority shall be disregarded by the liquidator.

The fees payable to the liquidator shall be deducted proportionately from proceeds payable to each class of recipients and proceeds to the relevant recipient shall be distributed after such deduction.

Answer 6(b)

ROC can strike off the name of the company on Suo Moto basis only after following certain procedures, which are mentioned as below:

1. *Service of Notice* : The registrar is required to send a notice in Form STK 1 to

the company and all the directors of the company by registered post with acknowledgement due or by speed post.

2. *Reply to Notice* : A representation should be given within a period of thirty days from the date of the notice by the Company and all its directors.
3. *Consideration of the representation made* : After the ROC has considered the representation made by the company and its directors, if the ROC is not satisfied with the representation, it may proceed to strike off the name of company.
4. *Publication of Notice* : The notice for removal of the name of the company should be in form STK 5 for the information of the general public and should be:
 - a. Placed on the official website of the Ministry of Corporate Affairs on a separate link established on such website in this regard;
 - b. Published in the Official Gazette;
 - c. Published in Form No. STK 5A in English language in a leading English newspaper and at least once in vernacular language in a leading vernacular language newspaper, both having wide circulation in the State in which the registered office of the company is situated.
5. *Intimation to regulatory authorities* : Intimation about the proposed action of removal or striking off the names of company should be sent to the Income-tax authorities, Central Excise Authorities and Service-Tax authorities having jurisdiction over such a company.
6. *Striking off / Removal of the name of the company* : After expiry of thirty days from the date of publication of the notice in the newspaper, official gazette and intimation to regulatory authorities the ROC can proceed to strike off or remove the name of the company from the Register of companies.
7. *Notice of dissolution of the company* : After the expiry of the time mentioned in the notice, the ROC can strike off the name of the company from the Register. The notice of striking off the name of the company from the register of companies and its dissolution should be published in the Official Gazette in Form STK 7.

TAX LAWS

Time allowed : 3 hours

Maximum marks : 100

- NOTE :**
1. Answer ALL Questions.
 2. All the references to sections in Part-I of the Question Paper relate to the Income Tax Act, 1961 and relevant Assessment Year 2019-20, unless stated otherwise.
 3. Working notes should form part of the answer.
 4. Wherever necessary, suitable assumption can be made and the same be stated clearly in the answer.

PART I

Question 1

- (a) Ramamoorthy, an employee of M/s. Gopalkrishan & Co. of Chennai receives following payments during the previous year ended March 31, 2019.

Particulars	(₹)	(₹)
Basic Salary		40,000
Dearness Pay		3,000
Leave Salary		5,400
Professional tax paid by the employer	1,000	
Fair rent of the flat provided by the employer	6,000	
Rent paid for furniture	1,000	
Rent recovered by the employer	3,000	
Contribution to Statutory Provident Fund	4,000	
Employer's Contribution to Statutory Provident Fund	4,000	
Donation to a local temple	50,000	

Compute his taxable income for the assessment year 2019-2020.

(4 marks)

- (b) M & Sons., a Hindu Undivided Family (HUF), had purchased a land for INR 1,50,000 in 2002-03. In the previous year (PY) 2006-07, a partition takes place and the coparcener, B, gets this plot valued at INR 200,000. In PY 2007-08 he incurs expenses of INR 2,50,000 on the plot towards fencing of the plot of land. B then sells this plot at INR 15,00,000/- in PY 2018-19. You are required to compute the capital gains for Assessment Year (AY) 2019-20.

Cost Inflation Index (CII) 2002-03-105, 2007-08-129 & 2019-20-280. (4 marks)

- (c) A domestic company purchased its own unlisted shares on 20th August 2018 for a total consideration of INR-30,00,000 which was paid on the same day. The company has issued the same share 2 years ago for ₹15,00,000. Compute the tax liability of the company if the tax on buy-back was deposited by the company to the credit of Central Government on 15th February 2019. (4 marks)

(d) Discuss giving reason regarding admissibility or otherwise of the following expenditures while computing income under the head Income from Business or Profession :

- (i) Expenses incurred in connection with a branch, the business of which was discontinued during the previous year.
- (ii) Penalty paid to customs authorities for importing prohibited goods which gave a huge profit to the business.
- (iii) Interest paid on an amount borrowed to acquire a plant for business use upto the date on which the plant is put to use.
- (iv) Rent paid on daughter of the assessee for her building used as office premises of the business. The building was actually gifted to her by the assessee (father) at the time of her marriage.

(You need not rewrite the statements. Write only admissible / Not admissible with reasons) (4 marks)

(e) Manish Garg a non-resident during AY 2018-19 came back to India on 16th July, 2018 for settling in India permanently. Now, for the Financial Year 2018-19 his status is resident and ordinary resident of India for tax purposes. He has reported his income from various sources as under the Financial Year 2018-19.

Salary received and earned in USA from 1-4-2018 to 15-7-2018 (Gross)	₹ 12,60,000
Salary earned and received in India (computed)	8,47,000
Dividend from Indian Company received in India	12,000
Rent received in USA for a property situated in USA	4,50,000

Calculate his gross taxable income for the assessment year 2019-20.

Which disclosures he is required to give in out of above given information's in the return form for A.Y. 2019-20. (4 marks)

Answer 1(a)

**Computation of Taxable Income of Mr. Ramamoorthy
for the Assessment Year 2019-20**

Particulars	Amounts (₹)
Basic Salary	40,000
Dearness Pay	3,000
Leave Salary	5,400
Professional Tax paid by the employer	1,000
Valuation of Perquisites of house provided by the employer:	5,260
15% of Salary (₹ 40,000 + ₹3,000 + ₹5,400) = ₹7,260	
Add : Furniture Rent paid by employer ₹1000	
Less : Rent Recovered by the employer (₹3000)	
(₹7260 + ₹1000 - ₹3000) = ₹5,260	

Gross Salary	54,660
Less : Standard Deduction u/s 16(ia)	(40,000)
Less : Professional Tax u/s 16(iii)	(1,000)
Taxable Salary	13,660
Less : Deduction u/s 80C	(4,000)
Total Taxable Income	9,660

Note:

1. Donation paid to local temple is not allowed under section 80G of the Income Tax Act, 1961 assuming the temple is not Registered u/s 80G of the Income Tax Act, 1961.
2. Assuming that the dearness pay forms a part of Salary for the purpose of computation of superannuation or retirement benefits.

Alternatively Dearness allowance can also be assumed not forming part of retirement benefits, then in such a case, It will not be included in valuation of Rent Free Accommodation. In such a case Perquisite of Rent Free Accommodation shall be 15% of (₹40,000 + ₹5,400) = ₹6810 + 1,000 - 3,000 = ₹4,810. Gross salary will be = ₹54,210, Taxable salary will be = ₹13,210, Taxable Income = ₹9,210.

Answer 1(b)**Computation of Capital Gains for AY 2019-20**

<i>Particulars</i>	<i>Amounts (₹)</i>
Period of Holding 2002-03 to 2018-19 i.e. Long Term Capital Gain	
Full Value of Consideration	15,00,000
Less : Indexed Cost of Acquisition (Note 1)	(4,00,000)
Less : Indexed Cost of Improvement (Note 2)	(5,42,636)
Long Term Capital Gains	5,57,364

Note:

- (1) The cost of acquisition for the land, in case of partition of HUF would be the cost of the previous owner. Indexed Cost of Acquisition is (₹1,50,000/105)*280 = ₹4,00,000. Indexation is done from the previous year of acquisition by HUF i.e. PY 2002-2003.

(As decided in the case of *CITV Manjula J. Shah* - [2013] 355 ITR 474). If this case is not followed then Indexation shall be done from PY in which asset was held by the assessee i.e. PY 2006-2007

- (2) Indexed Cost of Improvement is (₹2,50,000/129)*280 = ₹5,42,636

Answer 1(c)

Net amount paid by the company on buy-back = ₹30,00,000 - ₹15,00,000 = ₹15,00,000

Tax Payable on the buy-back u/s 115QA of the Income Tax Act, 1961 @ 20% + Surcharge @ 12% + Cess @ 4% along with interest @ 1% if the tax is not deposited within 14 days from the date of payment of buy-back consideration.

Total tax payable [₹15,00,000 * 20% + Surcharge @ 12% + Cess @ 4%] = ₹3,49,440.

Since, there is delay in payment of tax for a period of 6 month, interest will be chargeable u/s 115QB of the Income Tax Act, 1961 @ 1% for 6 month i.e. ₹20,966 [6% of ₹3,49,440].

Therefore Total amount payable by the company ₹3,70,406 [i.e. ₹3,49,440 + ₹20,966]

Answer 1(d)

- (i) *Admissible* – Expenses incurred in connection with a branch, the business of which was discontinued during the previous year, is admissible while computing income under the head Income from business or profession as the discontinuance of a branch is not discontinuance of whole business.
- (ii) *Not Admissible* – Penalty paid to customs authorities for importing prohibited goods is an illegal activity and therefore not admissible while computing income under the head Income from business or profession.
- (iii) *Not Admissible* – Interest paid on an amount borrowed to acquire a plant for business use upto the date on which the plant is put to use is capital in nature and shall be capitalized by adding with the cost of the plant and therefore not admissible while computing income under the head Income from business or profession.
- (iv) *Admissible* – The building is owned by the daughter of the assessee and used for the business of the assessee. Therefore the rent paid to daughter of the assessee for her building used as office premises is allowed upto the reasonable limit (Not exceeding market rent).

Answer 1(e)

Mr. Manish Garg is resident and ordinary resident during the previous year 2018-19. Now, Gross taxable income of Mr. Manish is as follows:

<i>Particulars</i>	<i>Amounts (₹)</i>
Salary received and earned in USA from 01.04.2018 to 15.07.2018 (taxable)	12,60,000
Salary earned and received in India (taxable)	8,47,000
Dividend from an Indian Company shares received in India [exempt u/s 10(34)]	Nil
Rent received in USA for a property situated in USA	₹4,50,000
Less : Standard Deduction @ 30%	(₹1,35,000)
Income from House Property (Taxable)	3,15,000
Gross taxable Income	24,22,000

Mr. Manish Garg would be eligible for double taxation relief under DTA agreement with USA.

Mr. Manish Garg has to e-file his return of Income for the AY 2019-20 with compulsory reporting of all his foreign assets and liabilities in the return form.

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

Question 2

- (a) Y acquired a house from his father by way of gift on 5th May 2005. On this day its Fair Market Value (FMV) was ₹4,20,000. His father had purchased the house in the year 2002-03 for ₹2,50,000. Y introduced the house as his capital contribution on 5th May, 2018 to a partnership firm in which he became a partner on that date.

The fair market value of the house on 5th May, 2018 was ₹20,00,000, but it was taken in the books of accounts of the firm at ₹16,00,000. Compute the amount of capital gain taxable in the hands of Y, if any, for the AY 2019-20. Cost Inflation Index (CII) for the year 2002-03—105, 2018-19—280. (3 marks)

- (b) "The income earned by an assessee in a previous year is assessable for tax in the assessment year. There is no exception to it". Comment. (3 marks)
- (c) When will you consider a foreign company as a resident company in India ? (3 marks)
- (d) A gifted debentures of Ria Ltd., to a girl B in March, 2015. Later, B married to A's son C in March, 2017. B received interest of ₹1,40,000 from the debentures in the Previous Year 2018-19. The Assessing Officer (AO) added the interest income of B with the income of A under the provisions of Section 64(1) (vi). Comment on the action of the AO. (3 marks)
- (e) Amrita, a resident aged 25 years, manufactures tea leaves from the tea plants, grown by her in India. Manufactured tea is sold in India for ₹40 Lakh. The cost of growing tea plant was ₹15 Lakh and the cost of manufacturing tea leaves was ₹10 Lakh.

Compute her tax liability for the assessment year 2019-20. (3 marks)

OR (Alternate question to Q. No. 2)

Question 2A

- (i) Indicate three situations where the Return of Income has to be compulsorily filed under section 139(1) of the Income Tax Act, 1961. (3 marks)
- (ii) Shobhit Goel, aged 32 years, furnishes the following details of his total income for the Assessment Year 2019-20 :

Income from Salaries (after allowing eligible standard deduction)	27,88,000
Income from house property (Computed)	15,80,000
Interest income from FDRs'	7,22,000

He has not claimed any deduction under chapter VIA. You are required to compute the tax liability of Mr. Shobhit Goel as per the provisions of Income Tax Act, 1961. (3 marks)

- (iii) *Shashi Bhushan has submitted details of the following income/loss as computed below, for the previous year 2018-19 :*

<i>Loss from let out house property</i>	<i>2,50,000</i>
<i>Loss from non-speculation business</i>	<i>3,20,000</i>
<i>Income from speculation business</i>	<i>12,45,000</i>
<i>Loss from specified business covered u/s 35 AD</i>	<i>4,10,000</i>
<i>Winnings from lotteries (Gross)</i>	<i>1,50,000</i>
<i>Winnings from bettings</i>	<i>90,000</i>
<i>Loss from card games</i>	<i>3,40,000</i>

You are required to compute the total income of the assessee for the assessment year 2019-20, showing clearly the manner of set-off and the items eligible for carry forward. (3 marks)

- (iv) *State whether quoting of PAN in the following transaction is mandatory or not, as per the provisions of Income Tax Act, 1961 for A.Y. 2019-20 :*

- (1) *A makes payment to Hotel Radisson Ahmedabad of ₹50,000 against the bill raised by the Hotel.*
- (2) *Asbhishek, in a single transaction makes contract of ₹1,20,000 for sale/purchase of securities (other than shares) as defined in section 2(h) of the Securities Contracts (Regulation) Act, 1956.*
- (3) *Payment to Mutual Funds of ₹70,000 for purchase of its units.*

Your answers must be supported with reasons. (3 marks)

- (v) *Briefly mention the concept of Self-Assessment tax u/s 140A of the Income Tax Act 1961 and its components. (3 marks)*

Answer 2(a)

Section 45(3) of the Income tax Act, 1961: The profits or gains arising from the transfer of a capital asset by a person to a firm or other association of persons or body of individuals (not being a company or a co-operative society) in which he is or becomes a partner or member, by way of capital contribution or otherwise, shall be chargeable to tax as his income of the previous year in which such transfer takes place and, for the purposes of section 48, the amount recorded in the books of account of the firm, association or body as the value of the capital asset shall be deemed to be the full value of the consideration received or accruing as a result of the transfer of the capital asset.

Further, if an asset is acquired as gift and subsequently transferred, period of holding will include the holding period of previous owner [Section 2(42A)] and Cost of acquisition of current owner will be cost of acquisition of previous owner [(Section 49(1))].

Computation of Capital Gains

<i>Particulars</i>	<i>Amounts (₹)</i>
Consideration (Value recorded in the books of accounts of the firm)	16,00,000
Less : Indexed cost of acquisition ₹250000*280/105	(6,66,667)
Period of Holding : 2002-03 to 2018-2019	
Long Term Capital Gains	9,33,333

Indexation is done from the previous year of acquisition by Father i.e. PY 2002-2003
(As decided in the case of *CIT V Manjula J. Shah* - [2013] 355 ITR 474).

If this case is not followed then Indexation shall be done from PY in which asset was held by the assessee i.e. PY 2005-06

Answer 2(b)

The Statement is incorrect. In the following situation, the Income of previous year of an assessee is taxed in the previous year itself:

- 1) Income of Non-Resident from Shipping Business u/s 172 of the Income Tax Act, 1961.
- 2) Income of persons leaving India either permanently or for long duration u/s 174 of the Income Tax Act, 1961.
- 3) Income of bodies formed for short duration u/s 174A of the Income Tax Act, 1961.
- 4) Income of person trying to alienate his assets with a view to avoid tax u/s 175 of the Income Tax Act, 1961.
- 5) Income of discontinued business u/s 176 of the Income Tax Act, 1961.

Answer 2(c)

With effect from Assessment Year 2017-18, a Foreign Company is treated as resident company in India for tax purposes u/s 6(3) of the Income Tax Act, 1961, if its Place of Effective Management 'POEM' at any time during the previous year is in India; and

Explanation : For the purposes of this clause "place of effective management" means a place where key management and commercial decisions that are necessary for the conduct of business of an entity, as a whole are, in substance made.

As per CBDT Circular No. 8/2017, dated 23 February 2017, POEM guidelines issued by CBDT vide circular no 6/2017 dated 24th January, 2017 shall not apply to companies whose turnover or gross receipts are ? 50 crores or less in a financial year.

Answer 2(d)

Section 64(1) (vi) of the Income Tax Act, 1961 : In computing the total income of any individual, there shall be included all such income as arises directly or indirectly to

the son's wife, of such individual, from assets transferred directly or indirectly on or after the 1st day of June, 1973, to the son's wife by such individual otherwise than for adequate consideration.

However, for applying the clubbing provisions, the relationship (i.e. Father in Law and Daughter in Law) should subsist both at the time of transfer of assets and at the time of accrual of Income.

Therefore the action of the Assessing Officer 'AO' adding the B's interest income from debentures with the income of A is not in accordance with the provision of Section 64(1)(vi) as the relationship i.e. daughter in law and father in law does not subsist at the time of transfer of debentures to B by A.

Answer 2(e)

Computation of Tax Liability of Ms. Amrita for the AY 2019-20

In case where the assessee himself grows tea leaves and manufactures tea in India, 40% of Profit on sale of tea is taxable as business income under the head "Profit and Gains from business and profession" and the balance 60% is agriculture income, which is exempt from tax.

Profits from manufacture and sale of Tea = ₹40 Lakhs – ₹15 Lakhs – ₹10 Lakhs = ₹15 Lakhs.

Agriculture Income = 60% of ₹15 Lakhs = ₹9 Lakhs

Business Income = 40% of ₹15 Lakhs = ₹6 Lakhs

The tax liability of Ms. Amrita has to be computed applying the concept of partial integration, since her total income comprises of both agricultural income and non-agricultural income and her agricultural income exceeds ₹5000 p.a. and her non-agricultural income exceeds the basic exemption limit i.e. ₹2,50,000 (applicable in her case).

Accordingly, her tax liability would be computed in the following manner:

<i>Particulars</i>	<i>Amounts (₹)</i>
A) Tax on Total Income of ₹15,00,000 being agricultural income and non-agricultural income	2,62,500
B) Less : Tax on agricultural income and basic exemption limit i.e. ₹11,50,000 [₹9,00,000 plus ₹ 2,50,000]	1,57,500
C) Tax Payable (excluding cess) A-B	1,05,000
Add : Health and Education Cess @4%	4,200
Total Tax Liability	1,09,200

Answer 2A(i)

Following are the three situations where Return of Income has to be compulsorily filed under section 139(1) of the Income Tax Act, 1961:

- i. Companies and Firms (whether having profit or loss or nil income);
- ii. a person, being a resident other than not ordinarily resident, who holds, as beneficial owner or otherwise, any asset (including any financial interest in any entity) located outside India or has signing authority in any account located outside India, or is a beneficiary of any asset (including any financial interest in any entity) whether or not having income chargeable to tax;
- iii. Individuals, HUFs, AOPs or BOI and artificial juridical persons whose total income before giving effect to the provisions of section 10(38) and Chapter VI-A exceeds the maximum amount not chargeable to tax.

Answer 2A(ii)

**Computation of Tax Liability of Mr. Shobhit Goel for the
Assessment Year 2019-20**

<i>Particulars</i>	<i>Amounts (₹)</i>
Income from Salary (after allowing eligible standard deduction)	27,88,000
Income from House Property (computed)	15,80,000
Interest Income from FDR's (Other Sources)	7,22,000
Total Taxable Income	50,90,000
Computation of Tax Liability	
(A) Tax payable including surcharge on Total Income of ₹50,90,000	
Upto ₹2,50,000	Nil
₹2,50,000 – ₹5,00,000 @ 5%	12,500
₹5,00,000 – ₹10,00,000 @ 20%	1,00,000
₹10,00,000 – ₹50,90,000 @ 30%	12,27,000
Total Tax	13,39,500
Add : Surcharge @ 10%, since total income exceeds ₹50 lakhs but does not exceeds ₹1 crores	1,33,950
Total tax including surcharge	14,73,450
(B) Tax Payable on Total Income of ₹50,00,000 (₹12,500 plus ₹1,00,000 plus ₹12,00,000 (being 30% of ₹40,00,000)	13,12,500
(C) Excess tax payable (A-B)	1,60,950
(D) Marginal Relief (₹160950 - ₹90000 being the amount of Income in excess of ₹50,00,000)	70,950

Tax Payable A-D (₹14,73,450 – ₹70,950)	14,02,500
Add : Health and Education Cess @ 4%	56,100
Total Tax Liability	14,58,600
Tax Liability (Rounded Off)	14,58,600

Note : TDS Credit of 10% of ₹ 7,22,000 i.e. ₹ 72,200 u/s 194A shall also be allowed from Tax liability and balance shall be payable by the assessee.

Answer 2A(iii)

Computation of Total Income of Mr. Shashi Bhushan for the Assessment Year 2019-20

Particulars	Amounts (₹)	Amounts (₹)
Profit and Gains from business or profession		
Income from speculation business	12,45,000	
Less: Set off of loss from non-speculation business	(3,20,000)	
	9,25,000	
Less: Set-off of loss from house property, restricted to ₹2,00,000	(2,00,000)	7,25,000
Income from Other Sources		
Winning from lotteries (Gross)	1,50,000	
Winning from battings	90,000	2,40,000
Gross Total Income		9,65,000
Less : Deduction under chapter VI-A		Nil
Total Taxable Income		965000

Losses to be carried forward to AY 2020-21

Loss from House Property (₹2,50,000 – ₹2,00,000)	
Loss from house property can be set-off against any other head of income to the extent of ₹2,00,000 only. Balance loss not set-off can be carried forward to the next year for set-off against income from house property of that year.	50,000
Loss from specified business covered by section 35AD	4,10,000
Loss from specified business under section 35AD can be set-off only against profits of any other specified business. If loss cannot be so set-off, the same has to	

be carried forward to the subsequent year for set-off against income from specified business, if any, in that year. Since, the return has been filed before the due date; such loss can be carried forward.

Loss from card games : Loss from card games can neither be set-off against any other income, nor can it be carried forward. —

Answer 2A(iv)

- (1) *PAN not required to be quoted* : Mr. A is not required to quote his PAN while making payment of ₹50,000 in cash to a hotel Radisson Ahmedabad since such payment does not exceeds ₹50,000.
- (2) *PAN is mandatorily required to be quoted* : Mr. Abhishek is required to quote his PAN while making contract of ₹1,20,000 for sale / purchase of securities (other than shares) as defined in section 2(h) of the Securities Contract (Regulation) Act, 1956, since the amount of the transaction exceeds ₹1,00,000.
- (3) *PAN is required to be quoted* : PAN is mandatorily required to be quoted while making payment of ₹70,000 to Mutual Funds for purchase of its units, since payment exceeds ₹50,000.

Answer 2A(v)

Self Assessment Tax u/s 140A of the Income Tax Act, 1961 : Where any tax is payable on the basis of any return required to be furnished under section 139 of the Income tax Act, 1961, after taking into account:

- (1) the amount of tax, if any, already paid under any provision of this Act;
- (2) any tax deducted or collected at source;
- (3) any relief of tax or deduction of tax claimed under section 90 or section 91 on account of tax paid in a country outside India;
- (4) any relief of tax claimed under section 90A on account of tax paid in any specified territory outside India referred to in that section; and
- (5) any tax credit claimed to be set off in accordance with the provisions of section 115JAA or section 115JD,

the assessee shall be liable to pay such tax together with interest and fee payable under any provision of this Act for any delay in furnishing the return or any default or delay in payment of advance tax, before furnishing the return and the return shall be accompanied by proof of payment of such tax interest and fee.

Where the amount paid by the assessee under this sub-section falls short of the aggregate of the tax interest and fee as aforesaid, the amount so paid shall first be adjusted towards the fee payable and thereafter towards the interest payable as aforesaid and the balance, if any, shall be adjusted towards the tax payable.

Question 3

- (a) Nisha, a resident of India owns a house property at Karnal in Haryana. The municipal value of the property is ₹7,50,000, fair rent of the property is ₹6,30,000 and standard rent is ₹7,20,000 per annum.

The property was let out for ₹75,000 per month for the period April, 2018 to December, 2018.

Thereafter the tenant vacated the property and Nisha used the house for self residence. Rent for the months of November and December, 2018 could not be realized from the tenant. The tenancy was bonafide but the defaulting tenant was in occupation of another property of the assessee, paying rent regularly.

She paid municipal tax @ 12% during the year and paid interest of ₹35,000 during the year for amount borrowed towards repairs of the house property.

You are required to compute her income from "House Property" for the A. Y. 2019-20. (5 marks)

- (b) (i) The Assessing officer has the power to make an assessment to the best of his judgment, in certain situations. What are they ? (3 marks)
- (ii) Explain the quantum of late fees under section 234 F for delay in furnishing return of income within the prescribed time limit under section 139(1) for A.Y. 2019-20. (2 marks)
- (c) (i) Discuss whether the following payments are subject to Tax Deducted at Source (TDS). If so, find out the amount of tax to be deducted at source :
- (1) Payment of ₹4,00,000 to a resident catering contractor. PAN is intimated. (1 mark)
- (2) LIC of India makes a payment of ₹6,00,000 as rent to the Central Government for a building in which one of its branches is situated. PAN is intimated. (1 mark)
- (3) Payment of winning from lottery ₹2,00,000 to K who has not furnished PAN. (1 mark)
- (ii) Who is liable to pay advance tax ? Who are exempted from payment of advance tax ? (2 marks)

Answer 3(a)**Computation of Income from House Property of Ms. Nisha for AY 2019-20**

Particulars	Amount (₹)	Amount (₹)
Computation of Gross Annual Value		
Expected Rent for the whole Year = Higher of Municipal Value of ₹7,50,000 and Fair Rent of ₹6,30,000, but restricted to Standard Rent of ₹7,20,000	7,20,000	

Actual rent received for the let-out period = ₹75,000*9 (unrealized rent is not deductible from actual rent in this case since the defaulting tenant is in occupation of another property of the assessee, and hence, one of the condition laid out in Rule 4 has not been fulfilled)	6,75,000	
Gross Annual Value "GAV" is the higher of Expected Rent for the whole year and Actual rent received/receivable for the let-out period		7,20,000
Gross Annual Value (GAV)		7,20,000
Less : Municipal Taxes (paid by the owner during the previous year) = 12% of ₹7,50,000		(90,000)
Net Annual Value (NAV)		6,30,000
Less : Deduction u/s 24		
(a) 30% of NAV = 30% of ₹6,30,000	(1,89,000)	
(b) Interest on amount borrowed for repairs	(35,000)	(2,24,000)
Income from House Property		4,06,000

Answer 3(b)(i)

As per section 144 of the Income Tax Act, 1961, the Assessing Officer, after taking into account all relevant material which he has gathered, and after giving the assessee an opportunity of being heard, makes the assessment of the total income or loss to the best of his judgment and determine the sum payable by the assessee on the basis of such assessment in the following cases:

- Where any person fails to make the return required under section 139(1) and has not made a return or a revised return under section 139(4) or 139(5), or
- When a person fails to comply with all the terms of a notice issued under section 142(1) or fails to comply with a direction issued under section 142(2A) for getting the accounts audited, or
- If any person having made a return, fails to comply with all the terms of a notice issued under section 143(2).

Further, As per sec 145 of the Income Tax Act, 1961, where the Assessing Officer is not satisfied about the correctness or completeness of the accounts of the assessee, or where the method of accounting provided in sub-section (1) has not been regularly followed by the assessee, or income has not been computed in accordance with the standards notified under sub-section (2), the Assessing Officer may make an assessment in the manner provided in section 144.

Answer 3(b)(ii)

Quantum of late fee for delay in furnishing return of Income

Late fee under section 234F is attracted where a person, who is required to furnish a return of income under section 139 of the Income Tax Act, 1961, fails to do so within the time limit prescribed under section 139(1).

If the return is furnished on or before the 31st December of the assessment year – ₹5000

In any other case – ₹10000

However, if the total income of the person does not exceed ₹5 lakhs, the fee shall not exceed ₹1000.

Answer 3(c)(i)

- (1) Payment made to resident catering contractor is subject to TDS u/s 194C @ 1%/2% if PAN is intimated. Total TDS amount is ₹4,000 i.e. 1% of ₹4,00,000. (if contractor is Individual/HUF) otherwise 2% of ₹4,00,000 i.e. ₹8,000.
- (2) Payment of Rent made to Central Government for building in which one of its branches is situated would not subject to TDS liability.
- (3) Payment of lottery winning ₹2,00,000 is subject to TDS @ 30%. i.e. ₹60,000 (30% of ₹2,00,000). Failure to furnish PAN has no significance.

Answer 3(c)(ii)

A per Section 208 of the Income tax Act, 1961, advance tax shall be payable during a financial year in every case where the amount of such tax payable by the assessee during that year, as computed in accordance with the provisions of this Chapter, is ₹10,000 or more.

Exemption from payment of Advance Tax: The provisions of advance tax liability shall not apply to an individual resident in India, who does not have any income chargeable under the head "Profits and gains of business or profession"; and is of the age of sixty years or more at any time during the previous year.

PART II

Question 4

- (a) *Mention any four products which are kept outside the preview of Goods and Services Tax. Are they exempt from any tax ?* (4 marks)
- (b) *Determine the place of supply of goods/services in the following cases as per the provisions of the Integrated Goods and Services Tax (IGST) Act, 2017 :*
 - (i) *X Ltd., of Mumbai assembles its machinery for Z of Chennai at Bengaluru.*
 - (ii) *JJ Paints Ltd., exported paints to London from Ahmadabad.*
 - (iii) *HRD Ltd., Hyderabad provides training and performance appraisal services at Varanasi to the employees of KK Ltd., an unregistered entity located in Patna.*
 - (iv) *Y of Rajasthan sells car to ABC Ltd. at Surat of Gujarat.* (1 mark each)
- (c) *SS Ltd., a registered person under GST, is manufacturing taxable goods. The*

company supplies following information relating to GST paid on purchases made and input services availed in July, 2018 :

	GST Paid ₹
Trucks used to bring raw materials	1,40,000
Raw materials purchased (to be received in August, 2018)	2,10,000
Inputs are to be received in four lots. The second lot was received during this month	1,00,000
GST paid on six capital goods (out of the six, the invoice of one item was missing on which a GST of ₹60,000 was paid)	3,80,000

Calculate the amount of input tax credit available to SS Ltd., for the month of July, 2018. Assume that all the conditions for availing ITC are satisfied.

(4 marks)

(d) Whether the supplier in the following cases is eligible for composition scheme :

(i) X is an interior decorator and is registered in Punjab. His gross receipts in the preceding financial year amounted to ₹60 Lakh. (2 marks)

(ii) A registered dealer in Haryana supplies goods to its neighbouring states along with intrastate supplies. His total turnover in the current financial year is not likely to exceed ₹40 Lakh. His aggregate turnover in the preceding financial year was ₹45 Lakh. (2 marks)

(e) Mention due date and the purpose behind filing GSTR-2, GSTR-3, GSTR-4 and GSTR-10. (4 marks)

Answer 4(a)

The following items have been kept outside the purview of Goods and Services Tax:

1. Alcoholic liquor for human consumption
2. Petroleum crude*
3. Motor spirit (petrol)*
4. Aviation Turbine Fuel*
5. High speed diesel*
6. Natural gas*
7. Electricity
8. Immovable Property

*GST to be notified on recommendation of GST Council.

No, they are not exempt but taxable under the respective laws of the Centre and States other than GST.

Answer 4(b)**Place of Supply of goods/ services**

- (i) As per section 10(1)(d) of IGST Act, 2017 where the goods are assembled or installed at site, the place of supply shall be the place of such installation or assembly.

In this case, as the machinery is assembled at Bengaluru, therefore, the place of supply is Bengaluru.

- (ii) As per section 11(b) of IGST Act, 2017 the place of supply of exported goods from India shall be the location outside India.

In the present case, as JJ Paints Ltd., exported paints to London, therefore, the place of supply is London.

- (iii) As per section 12(5) of IGST Act, 2017 the place of supply of services in relation to training and performance appraisal to a person other than a registered person, shall be the location where the services are actually performed.

In the present case, as training and performance appraisal service is provided at Varanasi, therefore, the place of supply is Varanasi.

- (iv) As per section 10(1)(a) of IGST Act, 2017 the place of supply of goods, where the supply involves movement of goods, whether by the supplier or the recipient or by any other person, the place of supply of such goods shall be the location of the goods at the time at which the movement of goods terminates for delivery to the recipient.

In the present case as the goods are delivered at Surat, therefore, the place of supply is Surat.

Answer 4(c)**Calculation of Input Tax Credit (ITC) available to SS Ltd. for July' 2018**

<i>Particulars</i>	<i>Amount (₹)</i>
Input tax paid on trucks used for transportation of goods is allowable	1,40,000
Input tax paid on purchase of raw material – ITC allowed only on the receipt of goods- cannot be availed now	-
Input tax paid for four lots. Now second lot was received - other two lots are yet to be received- ITC allowed only after receiving all lots	-
GST paid on six capital goods- ITC cannot be claimed on missing invoice.	3,20,000
Hence, ₹3,80,000 – ₹60,000 allowable	
Total ITC available	4,60,000

Answer 4(d)

- (i) A registered person whose turnover in the preceding financial year does not exceed ₹ 1 Crore is eligible to pay tax under composition levy in terms of Section 10(1) of the CGST Act, 2017. But the benefit of composition levy scheme is available only to restaurant service providers.

In the present case, X is not eligible for composition scheme because he is providing the service of interior decoration which is outside the purview of composition levy. The quantum of turnover of preceding financial year is irrelevant in the present case.

- (ii) A person making inter-state supply of goods cannot opt for composition scheme. Turnover of current as well as preceding financial year is irrelevant for the supplier of goods making supply to other states. Therefore, Y cannot opt for composition scheme.

Answer 4(e)

<i>Return</i>	<i>Purpose</i>	<i>Due Date</i>
GSTR-2	Monthly inward taxable supplies	Within 11th to 15th of following month
GSTR-3	Monthly Return by a registered person	20th of the following month
GSTR-4	Quarterly Return to be furnished by a registered person under composition scheme	18th of the month following end of quarter
GSTR-10	Final Return	Within three months of the date of cancellation/ order of cancellation, whichever is later

Note: These are the due dates as per the provisions of relevant sections of CGST Act, 2017. In practical life, to remove difficulties, some due dates have been modified and some returns are deferred.

Question 5

- (a) Explain briefly safeguard duty levied under Customs Act, 1962.
- (b) What are the provisions of interest on delayed refunds under CGST Act 2017 ?
- (c) State the persons who are not liable for registration as per provisions of Section 23 of Central Goods and Services Act, 2017.
- (d) Write a short note on social welfare surcharge under Customs Act 1962.
- (e) Distinguish between Basic custom duty and Additional custom duty or Countervailing duty. (3 marks each)

Answer 5(a)

As per the provisions of Section 8B of Customs Tariff Act, 1975 if the Central

Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantities and under such conditions so as to cause or threatening to cause serious injury to domestic industry, then, it may, by notification in the Official Gazette, impose a safeguard duty on that article. However, the safeguard duty shall not be imposed in some of the cases.

Safeguard duty can be imposed only for a limited period, by way of a notification, after an enquiry.

Safeguard duty can be imposed provisionally for a maximum period of 200 days pending final determination of injury.

If no duty has been imposed within 200 days of provisional levy or it was determined that there was no serious injury to domestic industry, then the amount collected provisionally is refundable.

The safeguard duty is imposed initially for a period of 4 years and is extendable upto 10 years.

Answer 5(b)

Section 56 of the CGST Act, 2017 states that if any tax ordered to be refunded under section 54 is not refunded within sixty days from the date of receipt of application interest at such rate not exceeding six per cent as may be specified in the notification issued by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application under the said sub-section till the date of refund of such tax.

Where any claim of refund arises from an order passed by an Adjudicating Authority or Appellate Authority or Appellate Tribunal or Court which has attained finality and the same is not refunded within sixty days from the date of receipt of application filed consequent to such order, interest at such rate not exceeding nine per cent as may be notified by the Government on the recommendations of the Council shall be payable in respect of such refund from the date immediately after the expiry of sixty days from the date of receipt of application till the date of refund. Where any order of refund is made by an Appellate Authority, Appellate Tribunal or any Court against an order of the Proper officer under sub-section (5) of section 54, the order passed by the Appellate Authority, Appellate Tribunal or by the Court shall be deemed to be an order passed under the said sub-section (5).

Answer 5(c)

As per the provisions of Section 23(1) of the CGST Act, 2017 the following persons shall not be liable to registration, namely:—

- (a) any person engaged exclusively in business of supplying goods or services or both that are not liable to tax or wholly exempt from tax under this Act or under the IGST Act;
- (b) an agriculturist, to the extent of supply of produce out of cultivation of land.

Section 23(2) of the CGST Act, 2017 states that the Government may, on the

recommendations of the Council, by notification, specify the category of persons who may be exempted from obtaining registration under this Act.

Notifications have also been issued in exercise of the powers conferred by section 23(2) of CGST Act, 2017.

Answer 5(d)

Section 110 of the Finance Act, 2018 introduced social welfare surcharge w.e.f. 02.02.2018. It is levied on the goods specified in the first schedule to the Customs Tariff Act, 1975 for the purpose of Union Government. It is levied @10% on the aggregate of the duties collected by the Central Government under Section 12 of the Customs Act, 1962. However, it is not applicable on safeguard duty, anti-dumping duty, IGST, GST compensation cess and countervailing duty.

Answer 5(e)

Difference between Basic custom duty and Additional custom duty or Countervailing duty

Basic Custom duty

- It is levied under section 12 of Customs Act, 1962, and specified under section 2 of Customs Tariff Act, 1975.
- The Basic Custom duty is levied on Imported Goods at rate specified in First Schedule of Customs Tariff Act, 1975.
- Whereas, Basic Custom duty on Exported Goods is levied at rate specified in Second Schedule of Customs Tariff Act, 1975.
- Such duty is levied either on the basis of:
 - (a) Transaction value u/s 14(1) or
 - (b) Tariff value determined u/s 14(2) of the Custom Act, 1962

On the other hand, additional or countervailing duty (CVD) is levied u/s 3(1) of the Customs Tariff Act, 1975 and is equal to excise duty on like goods manufactured in India. After introduction of GST in India, Central Excise duties have been subsumed for goods covered under GST. IGST is levied on imported goods (if the imported goods covered under GST). Therefore, CVD is not applicable, in case of imported goods covered under GST.

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

Question 6

- (a) A, a supplier of goods, pays GST under regular scheme. He is not eligible for any threshold exemption. He has made the following outward/inward taxable supplies in a tax period :

Sr. No.	Particulars	Amount (₹)
1.	Interstate supply of goods	10,00,000

2.	Intrastate supply of goods	2,00,000
3.	Intrastate purchase of goods	5,00,000

Mr. A has the following ITC's with him at the beginning of the tax period :

	Amount (₹)
CGST	20,000
SGST	20,000
IGST	25,000

Note :

- (1) Rate of CGST, SGST & IGST is 9%, 9% and 18% respectively.
- (2) Both inward and outward supplies are exclusive of taxes, wherever applicable.
- (3) All the conditions necessary for availing ITC have been fulfilled.

Compute the NET GST payable by Mr. A during the tax period. Make suitable assumptions as required. (5 marks)

- (b) PQ Ltd. a manufacturer of taxable goods provides the following information regarding inward supplies for the month of September, 2018 :

Sr. No.	Items	GST Paid (₹)
1.	Input A (one invoice on which GST payable was ₹20,000 is missing)	2,00,000
2.	Input B (input is to be received in three installments last installment to be received in November 2018)	4,00,000
3.	Capital goods (invoice value being ₹2,00,000 inclusive of GST but only ₹1,80,000 has been debited to asset a/c)	20,000
4.	Input services (one invoice dated 22-01-2018 on which GST payable was ₹40,000 has been received in Sept. 2018 whereas annual return for the financial year 2017-18 was filed on 25th October 2018)	1,50,000

Compute the Input Tax Credit (ITC) available to PQ Ltd. for the month of September, 2018.

Note :

- (i) All the conditions necessary for availing the ITC have been fulfilled.
- (ii) PQ Ltd. is not eligible for any threshold exemption. (5 marks)

- (c) Discuss valuation rules under section 14 of the Customs Act, 1962. In this context discuss method of valuation on the basis of identical goods and similar goods. (5 marks)

OR (Alternate question to Q. No. 6)**Question 6A**

- (i) Compute the amount of Input Tax Credit available to GK Ltd. in respect of the following items procured by it in April, 2018 :

	GST Paid ₹
Pollution control equipments used in the factory	1,64,000
Goods purchased for providing services during warranty period	9,000
Goods destroyed by fire	15,000
Goods given as gift to regular customers	8,000
Inputs used for quality control check	16,000
Membership of a club	15,000
Rent-a-cab services for employee to pick up and drop to home	50,000
	(5 marks)

- (ii) UPS Ltd. of Hyderabad supplied a power generator to TK Tyres Ltd., of Tamil Nadu and charged the following amounts to the supply :

	₹
Price of generator before taxes and cash discount	9,00,000
Other charges not included in the above price :	
Packing charges	15,000
Designing charges for the generator	18,000
Freight	12,000
Transit insurance	12,000

Following additional information are also furnished :

(a) Rate of GST – 18%

(b) A cash discount @ 3% on price is given to the customer at the time of supply and the same is also recorded in the invoice.

Calculate the value of supply and the GST payable. (5 marks)

- (iii) ABC Ltd. India imported a machine from Smith Corporation USA for inhouse use in the factory. The price of the machine as per the original agreement was 15,000 USD and the machine was shipped on 1st Jan. 2018. While the machine was in transit, ABC Ltd. India persuaded the exporter to grant a discount of 10% on the original price and the agreement was finalized on 20th Jan. 2018. The machine reached Chennai port on 15th Feb., 2018. The assessing authorities calculated the assessable value on the basis of original price. ABC Ltd., approach you for suitable advice.

Do you agree with the action of assessing authorities ? Give reference of decided court case, if any. (5 marks)

Answer 6(a)**Computation of GST payable by Mr. A on outward supplies**

<i>S. No.</i>	<i>Particulars</i>	<i>GST (₹)</i>	
1	Inter-state supply of goods IGST @ 18% on ₹10,00,000		1,80,000
2	Intra-state supply of goods		
	CGST @ 9% on ₹2,00,000	18,000	
	SGST @ 9% on ₹2,00,000	18,000	36,000
Total GST payable			2,16,000

Computation of total input tax credit (ITC)

<i>Particulars</i>	<i>CGST @ 9%</i> ₹	<i>SGST @ 9%</i> ₹	<i>IGST @ 18%</i> ₹
Opening ITC	20,000	20,000	25,000
ITC on intra-state purchase of goods ₹5,00,000	45,000	45,000	-
Total ITC	65,000	65,000	25,000

Computation of GST payable from cash ledger

<i>Particulars</i>	<i>CGST (₹)</i>	<i>SGST (₹)</i>	<i>IGST (₹)</i>
GST Payable	18,000	18,000	1,80,000
Less: ITC	65,000	65,000	25,000
	47,000 (Surplus)	47,000 (Surplus)	1,55,000
			CGST (-) 47,000
			SGST (-) 47,000
			Net IGST Payable = ₹61,000

Answer 6(b)**Computation of ITC available to PQ Ltd. for the month of September' 2018**

<i>S. No.</i>	<i>Inward supplies</i>	<i>ITC (₹)</i>
1.	<i>Input A</i> : ITC cannot be taken on missing invoice. The registered person should be in possession of invoice to claim ITC [Section 16(2)(a) of CGST Act, 2017]	1,80,000
2.	<i>Input B</i> : When inputs are received in installments, ITC can be availed only on receipt of last installment [first proviso to Section 16(2) of CGST Act, 2017]	Nil
3.	<i>Capital Goods</i> : Input tax paid on capital goods can be availed as ITC if depreciation has not been claimed on such tax component [Section 16(3) of CGST Act, 2017]	20,000
4.	<i>Input services</i> : ITC on invoice dated 22/01/2018 received in September 2018 can be claimed since the annual return for the financial year 2017-18 was filed on 25th October, 2018 i.e. after the due date of filing of return of September, 2018 i.e. 20th October, 2018 [Section 16(4) of CGST Act, 2017]	1,50,000
Total		3,50,000

Answer 6(c)

The value which is calculated for determination of customs duty as per section 14 of Customs Act, 1962 is known as customs value or assessable value. While deciding the assessable value following points are kept in mind:

- (i) The price should be normal price at which such goods are ordinarily offered for sale.
- (ii) Price should be in the course of international trade.
- (iii) Buyer and Seller should not be related parties.
- (iv) Price should be the sole consideration for sale.
- (v) In case of imports rate of exchange will be as notified by CBIC as on the date when the Bill of Entry is presented and in the case of exports the rate on the date of clearance order by the competent authority.

As per Rule 10 price paid or payable for delivery in the case of imports i.e. C.I.F. value is taken as transaction value and in the case of exports F.O.B. value is taken as assessable value. Freight is taken either actual or 20% of F.O.B. whichever is less and insurance to be taken is either actual or 1.125% of F.O.B. whichever is less.

Transaction value is calculated by value of identical goods and also by value of similar goods, if required. Identical goods as per Rule 4 are such goods which are

basically of the same quality as the goods being valued. If there are more than one identical goods the lowest will be taken for assessment purposes. On the other hand, similar goods mean not identical but of the same characteristics produced by the same Country. Rule 5 is applicable for valuation on the basis of similar goods.

Answer 6A(i)

Computation of Input Tax Credit (ITC)

<i>Particulars</i>	<i>ITC (₹)</i>
Pollution control equipment procurement	
Allowed as per section 2(19), 16(1) & not restricted u/s 17(5)	1,64,000
Goods purchased for providing services during warranty period	
Allowed u/s 16(1) & not restricted u/s 17(5)	9,000
Goods destroyed by fire (not eligible)	
Restricted u/s 17(5)(h)	-
Goods given as gift to regular customers (not eligible)	
Restricted u/s 17(5)(h)	-
Inputs used for quality control check	
Allowed u/s 16(1) & not restricted u/s 17(5)	16,000
Membership of a club (not eligible)	
Restricted u/s 17(5)(b)(ii)	-
Rent-a-cab services for employee (not eligible)	
Restricted u/s 17(5)(b)(iii)	-
Total ITC available	1,89,000

Answer 6A(ii)

Computation of Value of Supply

<i>Particulars</i>	<i>Amount (₹)</i>
Price of generator	9,00,000
Add: Packaging charges [Note 1]	15,000
Designing charges [Note 1]	18,000
Freight [Note 1]	12,000
Transit insurance [Note 1]	12,000
	9,57,000

Less : Cash Discount @3% on price of ₹900000 [900000*3/100] [Note 2]	(27,000)
Value of supply	9,30,000
IGST@ 18% [930000*18/100]	1,67,400

Notes:

1. Incidental expenses like packing, designing, freight and insurance are the inclusions for the computation of value of supply.
2. Discount given before or at the time of supply and recorded in invoice is not to be included while computing the value of supply.

Answer 6A(iii)

The action of the assessing authorities is factually wrong as the transaction value is considered at the time and place of importation as was also decided in the case of *Gujarat Heavy Chemical vs. Commissioner of Customs, 2004* where it was contended that the import is complete when the goods reaches the Indian territory.

Since the price was mutually revised between ABC Ltd. and Smith Corporation, while the goods were in transit, therefore revised price should be considered for arriving at the assessable value.
