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Theory Questions

Dear Students,

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1. Incorporation Of Company & Matters Incidental thereto

Q1. The paid-up share capital of Saras Private Limited is 1 crore, consisting of 8 lacs Equity Shares of 10 each, fully paid-up and 2 lacs Cumulative Preference Shares of 10 each, fully paid-up. Jeevan (JVN) Private Limited and Sudhir Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Saras Private Limited. Jeevan Private Limited and Sudhir Private Limited are the subsidiaries of Piyush Private Limited.

With reference to the provisions of the Companies Act, 2013 examine whether Saras Private Limited is a subsidiary of Piyush Private Limited? Would your answer be different if Piyush Private Limited has 8 out of 9 Directors on the Board of Saras Private Limited? **(RTP May 18, May 19) (Nov 17)**

Answer

As per section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the 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.

Provided that such class or classes of holding companies as may be prescribed shall not have layers of subsidiaries beyond such numbers as may be prescribed.

Explanation.—For the purposes of this clause,—

a) a company shall be deemed to be a subsidiary company of the holding company even if the control referred to in sub-clause (i) or sub-clause (ii) is of another subsidiary company of the holding company;
b) the composition of a company's Board of Directors shall be deemed to be controlled by another company if that other company by exercise of some power exercisable by it at its discretion can appoint or remove all or a majority of the directors;
c) the expression "company" includes anybody corporate;

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In the above case the paid up share capital of Saras Pvt. Ltd. is 1 crore consisting of 8 lac equity shares of 10 each and 2 lac cumulative preference share of 10 each. Jeevan. Pvt. Ltd. and Sudhir Pvt. Ltd. hold 3 lac and 50,000 equity shares in Saras Ltd. Both Jeevan Pvt. Ltd. and Sudhir Pvt. Ltd. are the subsidiaries of Piyush Pvt. Ltd. Assets held by the subsidiary are deemed to be the assets of the holding. So Piyush Pvt. Ltd. holds 3,50,000. However the total holding is less than half of the total voting power (total voting power being 8 lac equity shares as cumulative preference shares do not have any voting power).
Hence we can conclude that Saras Ltd. is not the subsidiary of Piyush Pvt. Ltd.
However, if Piyush Pvt. Ltd. has 8 out of 9 Directors on the Board of Saras Pvt. Ltd. it controls the composition of the Board of Directors. So Piyush Pvt. Ltd. will be treated as the holding company of Saras Pvt. Ltd.

Q2. MNO a One Person company (OPC) was incorporated during the year 2015-16 with an authorised capital of 45 lakhs (4.5 lakhs shares of 10 each). The capital was fully subscribed and paid up. Turnover of the company during 2015-16 and 2016-17 was 2 crores and 2.5 crores respectively. Promoter of the company seeks your advice in the following circumstances, whether MNO (OPC) can convert into any other kind of company during 2017-18. Please, advise with reference to relevant provisions of the Companies Act, 2013 in the below mentioned circumstances:
i. If promoter increases the paid up capital of the company by 10 lakhs during 2017-18
ii. If turnover of the company during 2017-18 was 3 crores. **(RTP May 19) (Nov 18)**

Answer

As per Companies (Incorporation) Rules, 2014, One Person Company (OPC) cannot convert voluntarily into any kind of company unless two years have expired from the date of incorporation. However if the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore the company must convert itself into a private or a public company.
In the above case MNO an OPC was incorporated in the year 2015-16. The paid up capital of the company is 45 lacs and turnover in the two years is 2 crores and 2.5 crores. During 2017 – 18 the company wants to convert into any other kind of company.
Thus as per the information above:

i. if the promotors increase the paid up capital of the company by 10.00 lakh during 2017-2018 the total paid up capital becomes 55 lakh (45+10= 55), MNO (OPC) must convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees.

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ii. if the turnover of MNO during 2017-18 was 3.00 crore, the average annual turnover of the company for the relevant period shall exceed 2 crore and in such a case the company must convert itself into any other kind of company.

Q3. Republic Limited was incorporated by furnishing false informations. As per the Companies Act, 2013, state the power of the Tribunal in this regard. **(RTP Nov 17)**

OR

Mahima Ltd. was incorporated by furnishing false informations. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard.

Answer

According to section 7of the Companies Act, 2013, if a company is incorporated by furnishing false or incorrect information or by suppressing any material fact or information in any of the documents or declaration filed or by any fraudulent action, the Tribunal may, on an application made to it,

a) pass such orders, as it may think fit, for regulation of the management of the company including changes, if any, in its memorandum and articles, in public interest or in the interest of the company and its members and creditors; or
b) direct that liability of the members shall be unlimited; or
c) direct removal of the name of the company from the register of companies; or
d) pass an order for the winding up of the company; or
e) pass such other orders as it may deem fit:

Provided that before making any order under this sub-section,—

i. the company shall be given a reasonable opportunity of being heard in the matter; and
ii. the Tribunal shall take into consideration the transactions entered into by the company, including the obligations, if any, contracted or payment of any liability.

Q4. Teresa Ltd. is a company registered in New York (U.S.A.). The company has no place of business established in India, but it is doing online business through data interchange in India. Explain with reference to relevant provisions of the Companies Act, 2013 whether Teresa Ltd. will be treated as Foreign Company. (**Nov 18)**

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Answer

According to section 2(42) of the Companies Act, 2013, foreign company means any company or body corporate incorporated outside India which,-

a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
b) conducts any business activity in India in any other manner.

As per the Rule given in the Companies (Specification of Definitions Details) Rules, 2014, the term "**electronic mode**", means carrying out electronically based, whether main server is installed in India or not, including, but not limited to-

i. Business to business and business to consumer transactions, data interchange and other digital supply transactions;
ii. Offering to accept deposits or inviting deposits or accepting deposits or subscriptions in securities, in India or from citizens of India;
iii. Financial settlements, web based marketing, advisory and transactional services, database services and products, supply chain management;
iv. Online services such as telemarketing, telecommuting, telemedicine, education and information research; and
v. All related data communication services, whether conducted by e-mail, mobile devices, social media, cloud computing, document management, voice or data transmission or otherwise;

In the above case Teresa Ltd. is a company registered in New York. The company has no place of business established in India but it is doing online business through data interchange in India. As the definition of foreign company includes any dealing which is done electronically even without an office in India the company shall be treated a s a foreign company
Thus Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013.

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Q5. MNP Private Ltd. is a company registered under the Companies Act, 2013 with a, Paid up Share Capital of 45 lakh and turnover of 3 crores. Explain the meaning of the "Small Company" and examine the following in accordance with the provisions of the Companies Act, 2013:
i. Whether the MNP Private Ltd. can avail the status of small company?
ii. What will be your answer if the turnover of the company is 1.50 crore? **(May 18)**

Answer

According to 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 50 lakh rupees or such higher amount as may be prescribed which shall not be more than 10 crore rupees; and
ii. turnover of which as per profit and loss account for the immediately preceding financial year does not exceed 2 crore rupees or such higher amount as may be prescribed which shall not be more than 100 crore rupees:

Nothing in this clause shall apply to—

A. a holding company or a subsidiary company;
B. a company registered under section 8; or
C. a company or body corporate governed by any special Act.

In the above case MNP Pvt. Ltd. is a company registered under the Act with a paid up capital of 45 lacs and turnover of 3 crores. to be declared a small company the company must fulfill both the conditions. MNP Pvt. Ltd. fulfills the condition of paid up capital however the turnover exceeds the limits.
Thus

i. The company shall not avail the status of a small company as it fulfills only one of the conditions.
ii. If the turnover of the company is 1.5 crores the company fulfills both the conditions and in such a case the company shall be regarded as a small company.

Q6. Naveen incorporated a "One Person Company" making his sister Navita as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company. Taking into considerations the provisions of the Companies Act, 2013 answer the questions given below.
A. If Navita is leaving India permanently, is it mandatory for her to withdraw her nomination in the said One Person Company?
B. If Navita maintained the status of Resident of India after her marriage, then can she continue her nomination in the said One Person Company? **(Nov 19)**

Answer

As per Rule 3 & 4 of the Companies (Incorporation) Rules, 2014 only a

i. Natural person
ii. Who is an Indian citizen and
iii. Resident of India

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shall be a member or nominee of OPC.
The term Resident of India means a person who has stayed in India for note less than 182 days in the immediately preceding financial year.
In the above case Naveen incorporated an OPC and his sister Navita was named as the nominee. Navita is leaving India permanently due to her marriage abroad. Due to this fact, she is withdrawing her consent of nomination in the said One Person Company as she is moving permanently she cannot continue as a nominee as she would no longer be a resident of India
Thus,

A. It is mandatory for Navita to withdraw her nomination
B. Navita can continue her nomination in the said OPC, if she maintained the status of Resident of India after her marriage by staying in India for a period of not less than 182 days during the immediately preceding financial year.

Q7. Alpha Ltd., a Section 8 company is planning to declare dividend in the Annual General Meeting for the Financial Year ended 31-03-2018. Mr. Chopra is holding 800 equity shares as on date. State whether the act of the company is according to the provisions of the Companies Act, 2013? **(May 18) (MTP Mar 19)**

Answer

According to Section 8 of the Companies Act, 2013, the companies having licence under Section 8 (Formation of companies with Charitable Objects, etc.) of the Act are prohibited from paying any dividend to its members. Their profits are intended to be applied only in promoting the objects of the company.
In the above case Alpha Ltd., a section 8 company was planning to declare dividend. As per the provisions of section 8 a company registered under this section is prohibited from declaring dividend.
Hence Alpha Ltd., which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Q8. A group of individuals intend to form a club namely 'Budding Pilots Flying Club' as limited liability company to impart class room teaching and aircraft flight training to trainee pilots. It was decided to form a limited liability company for charitable purpose under Section 8 of the Companies Act, 2013 for a period of ten years and thereafter the club will be dissolved and the surplus of assets over the liabilities, if any, will be distributed amongst the members as a usual procedure allowed under the Companies Act.
Examine the feasibility of the proposal and advise the promoters considering the provisions of the Companies Act, 2013. **(Nov 19)**

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Answer

According to section 8(1) of the Companies Act, 2013, where it is proved to the satisfaction of the Central Government that a person or an association of persons proposed to be registered under this Act as a limited company—

i. has in its objects the promotion of commerce, art, science, sports, education, research, social welfare, religion, charity, protection of environment or any such other object;
ii. intends to apply its profits, if any, or other income in promoting its objects; and
iii. intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of license, allow that person or association of persons to be registered as a limited liability company. The section further provides that if such a company winds up the assets remaining after paying off its liabilities shall be transferred to another section 8 company or may be sold off and the proceeds credited to Insolvency and Bankruptcy Fund.
In the instant case, a group of individuals decided to form a section 8 company for a period of 10 years after which they will dissolve it and the surplus shall be distributed amongst the members. As per the Act the surplus cannot be distributed amongst the members.
Therefore, the proposal is not feasible.

Q9. Alfa school started imparting education on 1.4.2010, with the sole objective of providing education to children of weaker society either free of cost or at a very nominal fee depending upon the financial condition of their parents. However, on 30th March 2018, it came to the knowledge of the Central Government that the said school was operating by violating the objects of its objective clause due to which it was granted the status of a section 8 company under the Companies Act, 2013. Describe what powers can be exercised by the Central Government against the Alfa School, in such a case? **(MTP Aug 18)**

OR

Mr. X, in association with his relative formed a company to promote education for the children of poor section. A licence was issued by the Central Government allowing the said company to be registered under section 8 of the Company. Government aids and lot of funds were contributed by public for the fulfilment of the benevolent object. However, on the compliant against the company, CG came to know about the manipulation of the funds in the company and so order to revoke the licence of the company. Further, directed for the amalgamation with another company registered under this section with an object to save girl child.
Examine the legal position as to the order passed by the Central government in the given situation in the light of the Companies Act, 2013. **(MTP Oct 18)**

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Answer

As per Section 8 of the Companies Act, 2013 companies which are registered under this section are incorporated to promote the charitable objects of commerce, art, science, education, sports etc. Such company intends to apply its profit in promoting its objects. Section 8 companies are registered by the Registrar only when a license is issued by the Central Government to them. If the company:

- contravenes any of the requirements of this section; or
- any of the conditions subject to which a licence is issued; or
- the affairs of the company are conducted fraudulently; or
- violative of the objects of the company; or
- prejudicial to public interest

the Central Government may revoke the license. On such revocation the company shall be directed to
1. convert its status and change its name to add the word "Limited" or "Private Limited"; or
2. if the Central Government is of the opinion it is essential in the public interest direct that the company be wound up under this Act or amalgamated with another company registered under this section.

No such order shall be made unless the company is given a reasonable opportunity of being heard.
In the above case Alfa School was registered as a section 8 company under the Act. The company was formed in 2010 with the objective to provide education to children of weaker society. The Central Government came to know the company was violating its objectives under which the license was granted. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, the Central Government may pass any of the above mentioned orders.

Q10. Yadav Dairy Products Private limited has registered its articles along with memorandum at the time of registration of company in December, 2014. Now directors of the company are of the view that provisions of articles regarding forfeiture of shares should not be changed except by a resolution of 90% majority. While as per section 14 of the Companies Act, 2013 articles may be changed by passing a special resolution only. Hence, one of the directors is of the view that they cannot make a provision against the Companies Act, 2013.
You are required to advise the company on this matter. **(RTP May 20)**

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Answer

As per section 5 of the Companies Act, 2013 the article may contain provisions for entrenchment to the effect that specified provisions of the articles may be altered only if more restrictive conditions than a special resolution, are met. The provisions for entrenchment shall be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company. Where the articles contain provisions for entrenchment, whether made on formation or by amendment, the company shall give notice to the Registrar of such provisions in the prescribed manner.

In the present case, Yadav Dairy Products Private Limited is a private company and wants to protect provisions of articles regarding forfeiture of shares. It means it wants to make entrenchment of articles, which is allowed. However the company will have to pass a resolution taking permission of all the members and it should also give notice to Register of Companies regarding entrenchment of articles.

Q11. Herry Limited is a company registered in Thailand. It has no place of business established in India, yet it is doing online business through telemarketing in India having its main server for online business outside India. State the status of the Company under the provisions of the Companies Act, 2013.
SKP Limited (Registered in India), a wholly owned subsidiary company of Herry Limited decided to follow different financial year for consolidation of its accounts outside India. State the procedure to be followed in this regard. **(Nov 19)**

Answer

According to section 2(42) of the Companies Act, 2013, "foreign company" means any company or body corporate incorporated outside India which –

a) has a place of business in India whether by itself or through an agent, physically or through electronic mode; and
b) conducts any business activity in India in any other manner.

According to Rule 2(1)(c)(iv) of the Companies (Registration of Foreign Companies) Rules, 2014, "electronic mode" means carrying out electronically based, whether main server is installed in India or not, including, but not limited to online services such as telemarketing, telecommuting, telemedicine, education and information research.
In the above case Herry Limited is a company registered in Thailand. It has no place of business established in India but is doing online business through telemarketing in India having its main server for online business outside India. As conducts business through electronic mode, Herry Limited will be treated as foreign company.
Where a company or body corporate, which is a holding company or a subsidiary or associate company of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the Central

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Government may, on an application made by that company or body corporate in such form and manner as may be prescribed, allow any period as its financial year, whether or not that period is a year.
Any application pending before the Tribunal as on the date of commencement of the Companies (Amendment) Act, 2019, shall be disposed of by the Tribunal in accordance with the provisions applicable to it before such commencement.
Also, a company or body corporate, existing on the commencement of this Act, shall, within a period of two years from such commencement, align its financial year as per the provisions of this clause.
SKP Limited is advised to follow the above procedure accordingly.
[Note: This answer is based on the assumption that Herry limited is a foreign Company registered outside India as inferred from part one of the question]

Q12. Explain the concept of "Dormant Company" as envisaged in the Companies Act, 2013. **(May 16)**

Answer

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

"Inactive company" means a company which has not been carrying on any business or operation, or has not made any significant accounting transaction during the last two financial years, or has not filed financial statements and annual returns during the last two financial years.
"Significant accounting transaction" means any transaction other than –

i. payment of fees by a company to the Registrar;
ii. payments made by it to fulfil the requirements of this Act or any other law;
iii. allotment of shares to fulfil the requirements of this Act; and
iv. payments for maintenance of its office and records.

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Q13. Give answer in the following cases as per the Companies Act, 2013

i. X Ltd., holds 20 lacs shares in ABZ Ltd. In 2017, ABZ Ltd. controls the composition of the Board of directors of X Ltd. and transfers certain shares to it. State whether such transfer of shares by ABZ Ltd. to X Ltd. is valid.

ii. In continuation of above facts, Mr. R, is a member of the ABZ Ltd. He met an accident. Mr. N (son of Mr. R), is one of the director of the X Ltd. He was also a nominee of shares held by Mr. R. Being a legal representative and nominee, Mr. N gets transferred the shares of Mr. R. State on the validity of the transfer of such shares to Mr. N of X Ltd. **(MTP Oct 84)**

Answers

As per section 2 (87) of the Companies Act 2013 "subsidiary company" or "subsidiary", in relation to any other company (that is to say the holding company), means a company in which the 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.

As per section 19 a company shall not, either by itself or through its nominees, hold any shares in its holding company. A holding company shall not allot or transfer its shares to any of its subsidiary companies. If such allotment or transfer is made it shall be void. However in the following cases the subsidiary can hold shares in its holding:

a) where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
b) where the subsidiary company holds such shares as a trustee; or
c) where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company.

In the above case ABZ Ltd. controls the composition of the Board of X Ltd.

i. As per the definition of subsidiary it fulfils one of the conditions. So ABZ Ltd. is the holding of X ltd. X Ltd. holds shares of ABZ Ltd. before becoming its subsidiary. Such transfer is valid as the company can hold the shares before becoming a subsidiary.
ii. R a member of ABZ ltd. He named his son Mr. N as his nominee. Mr. R met with an accident and the shares are transferred to Mr. N. Mr. N gets the shares transferred in his name. Such transfer is valid as the shares can be held as a legal representative.

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Q14. Mr. A and B are partners in a firm AB & Co. since the last 10 years. Now their business has crossed 20 crores and they want to form a private limited company to take over the firm's business and to expand it at large scale. They approached their auditor to assist to incorporate a company in the name of AB Trading Private Ltd. Explain in brief what documents are required to be filed with the Registrar of Companies? **(May 18)**

OR

State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies. **(May 16)**

Answers

As per section 3 of the Companies Act, 2013, a Private company may be formed for any lawful purpose with two or more persons by subscribing their names to a memorandum and complying with the requirements of this Act in respect of registration of company.

Document to be filed with the Registrar of Companies:

After getting the name approved, the following documents along with the application and prescribed fee, are to be filed with the Registrar: -

i. Memorandum of Association
ii. Articles of Association
iii. The agreement, if any, which the company proposed to enter into with any individual for appointment as its Managing or Whole Time Director or Manager.
iv. a declaration in the prescribed form by
    - an advocate, a chartered accountant, cost accountant or company secretary in practice, who is engaged in the formation of the company, and
    - by a person named in the articles as a director, manager or secretary of the company,

that all the requirements of this Act and the rules made thereunder in respect of registration and matters precedent or incidental thereto have been complied with;

v. a declaration from each of the subscribers to the memorandum and from persons named as the first directors, if any, in the articles that
    - he is not convicted of any offence in connection with the promotion, formation or management of any company, or
    - that he has not been found guilty of any fraud or misfeasance or of any breach of duty to any company under this Act or any previous company law during the preceding five years and

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- that all the documents filed with the Registrar for registration of the company contain information that is correct and complete and true to the best of his knowledge and belief;

vi. the particulars of name, including surname or family name, residential address, nationality and such other particulars of every subscriber to the memorandum along with proof of identity and in the case of a subscriber being a body corporate such particulars as specified.

vii. the particulars of the persons mentioned in the articles as the first directors of the company, their names, including surnames or family names, the Director Identification Number, residential address, nationality and such other particulars including proof of identity as prescribed; and

viii. the particulars of the interests of the persons mentioned in the articles as the first directors of the company in other firms or bodies corporate along with their consent to act as directors of the company

Q15. Red Limited was incorporated on 1st April, 2014 is facing severe effects of depression of the economy. Owing to its bad financial status most of the members have started withdrawing their holding from the company. The company had 250 members on 10th January, 2019. By 15th January, 2019, 244 members had withdrawn their holding. No new member has invested in the company after 15th February till date. Now, Mr. A, an existing member has approached you to advise him regarding his liabilities in such a situation. **(RTP Nov 19)**

Answer

According to section 3A of the Companies Act, 2013, if at any time the number of members of a company is reduced, in the case of a public company, below seven, 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 has knowledge of the fact that it is carrying on business with less than the minimum number, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued .

In the above case the number of members of a public company fell below 7 [250-244=6].

These members have continued beyond the specified limit of 6 months. The reduced members of the company during the period of 1 month shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor.

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Q16. Discuss the procedure to be followed by Board of a Company to convert a public company into a private limited company. **(May 18)**

Answer

Section 14 of the Companies Act, 2013 states that subject to the provisions of the Companies Act 2013 and the conditions contained in the Memorandum, a company may convert into a private company after fulfilling the following conditions:

i. Check that the Memorandum of Association does not contain any restrictive clause. If yes, alteration of the Memorandum will be necessary through a special resolution.
ii. Alteration of the Articles to incorporate the restrictions required under section 2 (68) by a special resolution
iii. Application to the Tribunal for approval of the change
iv. After the approval of the Tribunal, every alteration of the articles and a copy of the order of the Tribunal approving the alteration shall be filed with the Registrar, within a period of fifteen days, who shall register the same.
v. Any alteration of the articles registered as above shall be valid as if it were originally in the articles.

Q17. The Board of Directors of Sindhu Limited wants to make some changes and to alter some Clauses of the Articles of Association which are to be urgently carried out, which include the increase in Authorized Capital of the company, issue of shares, increase in borrowing limits and increase in the number of directors.
Discuss about the provisions of the Companies Act, 2013 to be followed for alteration of Articles of Association. **(RTP Nov 18) (May 18)**

Answer

Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The company has to fulfill the following conditions for such alteration:

1) The company may alter its articles by passing a special resolution. However increase in authorized capital can be done by an ordinary resolution.
2) For any alteration having the effect of conversion of a public company into a private company shall be valid only when approved by the Central Government (power delegated to regional director) on an application made in such form and manner as may be prescribed.
3) The company shall file within 15 days file with the registrar
    i. every alteration of the articles, and
    ii. a copy of the order of the Central Government
4) The Registrar shall register the change.
5) As per section 15 every alteration made in articles of a company shall be noted in every copy of the articles. If a company makes any default in complying with

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the stated provisions, the company and every officer who is in default shall be liable to a penalty of one thousand rupees for every copy of the articles issued without such alteration.

Q18.

XYZ Limited has its registered office at Mumbai in the state of Maharastra. For administrative conveniences, the company wants to shift its registered office from Mumbai to Pune. Discuss the formalities to be complied with by the company as per the provisions of the Companies Act, 2013. **(Nov 19)**

Answer

According to section 12 of the Companies Act, 2013, the registered office of the company shall be changed by a company, outside the local limits of any city, town or village where such office is situated or where it may be situated later by fulfilling the following conditions:

1) The company shall pass a special resolution in the general meeting.
2) The change shall be confirmed by the Regional Director.
3) The confirmation of change by the Regional Director shall be communicated to the company within 30 days from the date of receipt of application by the Regional Director
4) The company shall file the confirmation with the Registrar within a period of 60 days of the date of confirmation who shall register the same
5) Roc shall certify the registration within a period of 30 days from the date of filing of such confirmation.
6) The ROC shall issue a certificate which shall be conclusive evidence that all the requirements of this Act with respect to change of registered office have been complied with
7) The change shall take effect from the date of the certificate.

Q19.

The object clause of the Memorandum of Vardhman Industries Ltd., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real -estate business the management of the company has decided to take up the business of Food processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. State whether the company can make such change as per the provisions of the Companies Act, 2013? **(May 17)**

OR

Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy business. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State

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whether its object clause can be amended ? Mention briefly the procedure to be adopted for change in the object clause. **(May 16)**

Answer

As per section 13 of the Act, a company may alter its objects with the following conditions:

i. Holding a Board Meeting for the purpose of convening the meeting of members for approving the alteration in the objects clause by a special resolution.
ii. The company must pass a special resolution.
iii. The Registrar shall register any alteration of the memorandum with respect to the objects of the company and certify the registration within a period of 30 days from the date of filing of the special resolution.
iv. The change will be effective only when registered by the ROC.

Thus Vardhman Industries Ltd. can make the required changes in the object clause of its Memorandum of Association by fulfilling the conditions stated above.

Q20. Vintage security equipments limited is a manufacturer of CCTV cameras. It has raised 100 crores through public issue of its equity shares for starting one more unit of CCTV camera manufacturing. It has utilized 10 crores rupees and then it realized that its existing business has no potential for expansion because government has reduced customs duty on import of CCTV camera hence imported cameras from china are cheaper than its own manufacturing. Now it wants to utilize remaining amount in mobile app development business by adding a new object in its memorandum of association.
Does the Companies Act, 2013 allow such change of object. If not then what advise will you give to company. If yes, then give steps to be followed. **(RTP Nov 19)**

Answer

According to section 13 of the Companies Act, 2013 a company, which has raised money from public through prospectus and still has any unutilised amount out of the money so raised, can change its objects by:

i. passing of a special resolution.
ii. the details in respect of such resolution shall also be published in the newspapers (one in English and one in vernacular language) which is in circulation at the place where the registered office of the company is situated and shall also be placed on the website of the company, if any, indicating therein the justification for such change;
iii. the dissenting shareholders shall be given an opportunity to exit by the promoters and shareholders having control in accordance with SEBI regulations. Company will have to file copy of special resolution with ROC and he will

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certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

In the above case Vintage Security Limited was into manufacturing CCTV cameras. It had raised money from the public which was unutilized and the company wanted to change its object by adding mobile app development business. So the company can change its object clause by following the provisions specified above.

Q21. The persons (not being members) dealing with the company are always protected by the doctrine of Indoor management. Explain. Also, explain when doctrine of Constructive Notice will apply. **(Nov 18) (MTP May 20)**

Answer

According to the Doctrine of Indoor Management , persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies.
This doctrine was laid down in the Royal British Bank vs. Turquand. The directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority. However there are certain cases where the doctrine does not apply:
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Exceptions to Doctrine of Indoor Management (Applicability of doctrine of constructive notice)

i. Knowledge of irregularity:
In case an 'outsider' has actual knowledge of irregularity within the company, the benefit under the rule of indoor management would no longer be available. In fact, he/she may well be considered part of the irregularity.

ii. Negligence:
If, with a minimum of effort, the irregularities within a company could be discovered, the benefit of the rule of indoor management would not apply. The protection of the rule is also not available where the circumstances surrounding

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the contract are so suspicious as to invite inquiry, and the outsider dealing with the company does not make proper inquiry.

iii. Forgery:
The rule does not apply where a person relies upon a document that turns out to be forged since nothing can validate forgery. A company can never be held bound for forgeries committed by its officers.

Q22. The Secretary of a Company issued a share certificate to 'Prem' under the Company's seal with his own signature and the signature of a Director forged by him. 'Prem' borrowed money from 'Amar' on the strength of this certificate. 'Amar' wanted to realise the security and requested the company to register him as a holder of the shares. Explain whether 'Amar' will succeed in getting the share registered in his name. Explain with the help of the doctrine of 'Indoor management' in brief. **(RTP May 17)**

Answer

The doctrine of Indoor Management is laid down in the Royal British Bank vs. Turquand. The directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority. However, this doctrine is not applicable where the person dealing with the company has notice of irregularity or when an instrument purporting to be enacted on behalf of the company is a forgery.

In the above case the secretary of the company issued a share certificate to Prem under the seal of the company but the signature of the directors was forged. Prem borrowed money on the faith of the certificate from Amar and later Amar applied to the company to register the shares in his name. The doctrine of indoor management will not apply as the certificate is a forgery which does not give a good title to Prem and thereby to Amar.

Hence, Amar will not succeed in getting the share registered in his name.

Q23. The Articles of Association of XYZ Ltd. provides the Board of Directors has authority to issue bonds provided such issue is authorized by the shareholders by a necessary resolution in the general meeting of the company. The company was in dire need of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in general meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013. **(Nov 16)**

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Answer

According to the Doctrine of Indoor Management , persons dealing with the company need not inquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. This doctrine was laid down in the Royal British Bank vs. Turquand. The directors of RBB (Royal British Bank) gave a bond to one T (Turquand) without the required resolution being passed. The Articles empowered the directors to issue such bonds under the authority of a proper resolution. In fact no such resolution was passed. It was decided in the case that notwithstanding the non passing of the required resolution, T could sue on the bonds on the ground that he was entitled to assume that the resolution had been duly passed. Thus, the persons dealing with the company are entitled to assume that the acts of the directors or the officers of the company are validly performed, if they are within the scope of their apparent authority.

In the above case The AOA of XYZ Ltd. provides that the Board has the authority to issue bonds provided it is authorized by the shareholders. The company in need of funds issued bonds to X without passing the shareholders resolution. As far as the outsider X is concerned he is not under an obligation to check whether the company has passes the resolution or not he is only liable to check whether company can issue the bonds or not.

Hence X can recover the money from the company.

Q24. The directors of Smart Computers limited borrowed a sum of money from Mr. Tridev. The company's articles provided that the directors may borrow on bonds such sums as may, from time to time, be authorized by resolution passed at a general meeting of the company. The shareholders claimed that there had been no such resolution authorizing the loan, and therefore, it was taken without their authority. Hence, the company is not bound to repay the loan to Mr. Tridev, In the light of the contention of shareholders, decide whether the company is bound to pay the loan. **(Nov 19)**

Answer

According to the doctrine of indoor management, persons dealing with the company need not enquire whether internal proceedings relating to the contract are followed correctly, once they are satisfied that the transaction is in accordance with the memorandum and articles of association. Stakeholders need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. They are entitled to take it for granted that the company had gone through all these proceedings in a regular manner. The doctrine helps to protect external members from the company and states that the people are entitled to presume that internal proceedings are as per documents submitted with the Registrar of Companies. Thus,

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i. What happens internal to a company is not a matter of public knowledge. An outsider can only presume the intentions of a company, but not know the information he/she is not privy to.
ii. If not for the doctrine, the company could escape creditors by denying the authority of officials to act on its behalf.

In the given question, Mr. Tridev being a person external to the company, need not enquire whether the necessary meeting was convened and held properly or whether necessary resolution was passed properly. Even if the shareholders claim that no resolution authorizing the loan was passed, the company is bound to pay the loan to Mr. Tridev.
Thus the company is bound to pay the loan.

Q25. As at 31st March, 2018, the paid up share capital of S Ltd. is 1,00,00,000 divided into 10,00,000 equity shares of 10 each. Of this, H Ltd. is holding 6,00,000 equity shares and 4,00,000 equity shares are held by others. Simultaneously, S Ltd. is holding 5% equity shares of H Ltd. out of which 1% shares are held as a legal representative of a deceased member of H Ltd. On the basis of the given information, examine and answer the following queries with reference to the provisions of the Companies Act, 2013:

i. Can S Ltd. make further investment in equity shares of H Ltd. during 2018-19?
ii. Can S Ltd. exercise voting rights at Annual general meeting of H Ltd.?
iii. Can H Ltd. allot or transfer some of its shares to S Ltd.? **(Nov 19)**

Answer

As per section 19 of the Companies Act, 2013 a company shall not either directly or through its nominees hold any shares in its holding company. A holding company shall not allot or transfer its shares to its subsidiary company. Such allotment or transfer shall be void. However a subsidiary company can hold shares in its holding in the following cases:

i. Where subsidiary holds shares as legal representatives of a deceased member of the holding company.
ii. Where subsidiary holds such shares as a trustee.
iii. Where the subsidiary is a shareholder even before it becomes a subsidiary of the holding company.

Such subsidiary company shall have a right to vote at the meeting of the holding company only in respect of shares held as a legal representative or as a trustee.
In the above case H Ltd. holds 6,00,000 shares out of 10,00,000 of S ltd. As it holds more than half of the voting power H Ltd. is the holding of S Ltd. S Ltd. is holding 5% shares of H Ltd. of which 1% are held as a legal representative of the deceased member. As S Ltd. is not a subsidiary of H Ltd. it cannot purchase further shares of H Ltd. for

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the shares that it is already holding he will get a right to vote on the shares held as legal representative but not on the other shares. Even the holding company, H Ltd. cannot transfer or allot any shares to its subsidiary, S Ltd.

Thus

i. S Ltd. cannot make further investment in H Ltd.
ii. S Ltd. can exercise voting rights for the shares held as a legal representative. So it can vote on the 1% shares held as legal representative.
iii. H Ltd. cannot allot any shares to S Ltd.

Q26. S Ltd. is a company in which H Ltd. is holding 60% of its paid up share capital. One of the shareholders of H Ltd. made a charitable trust and donated his 10% shares in H Ltd. and 50 crores to the trust. He appoints S Ltd. as the trustee. All the assets of the trust are held in the name of S Ltd. Can a subsidiary hold shares in its holding company in this way? **(RTP Nov 19)**

Answer

According to section 19 of the Companies Act, 2013 a company shall not hold any shares in its holding company either by itself or through its nominees. Also, holding company shall not allot or transfer its shares to any of its subsidiary companies and any such allotment or transfer of shares of a company to its subsidiary company shall be void.

However the subsidiary can hold the shares of the holding in the following cases:

i. where the subsidiary company holds such shares as the legal representative of a deceased member of the holding company; or
ii. where the subsidiary company holds such shares as a trustee; or
iii. where the subsidiary company is a shareholder even before it became a subsidiary company of the holding company but in this case it will not have a right to vote in the meeting of holding company.

In the given case one of the shareholders of holding company has transferred his shares in the holding company to a trust where the shares will be held by subsidiary company. A subsidiary cannot hold shares in the holding. However the shares in this case are held by the subsidiary as a trustee.

Therefore, in the given situation S Ltd. can hold shares in H Ltd.

Q27. Ashok, a director of Gama Electricals Ltd. gave in writing to the company that the notice for any general meeting and of the Board of Directors' meeting be sent to him only by registered post at his residential address at Kanpur for which he deposited sufficient money. The company sent notice to him by ordinary mail under certificate of posting. Ashok did not receive this notice and could not attend the meeting and contended that the notice was improper.

Decide:

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i. Whether the contention of Ashok is valid.
ii. Will your answer be the same if Ashok remains in U.S.A. for one month during the notice of the meeting and the meeting held? **(Nov 19)**

Answer

According to section 20 of the Companies Act, 2013, a document may be served on Registrar or any member by sending it to him by post or by registered post or by speed post or by courier or by delivering at his office or address, or by such electronic or other mode as may be prescribed.
Provided that a member may request for delivery of any document through a particular mode, for which he shall pay such fees as may be determined by the company in its annual general meeting.
In the above case Ashok the director gave in writing to the company to send notice of general and Board meeting to him only by registered post and at his residential address at Kanpur. He had deposited money with the company for the charge for sending notice. The company sent him notice by ordinary mail which did not reach Ashok. As the member had specified a particular mode and paid for it the notice must have been in the specified mode.
Thus

i. The contention of Ashok shall be tenable, for the reason that the notice was not properly served.
ii. If he is outside India the company is bound to serve a valid notice to Ashok by registered post at his residential address at Kanpur and not outside India.

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2.Prospectus & Allotment of Securities

Q1. The Board of Directors of Chandra Ltd. proposes to issue the prospectus inviting offers from the public for subscribing the shares of the Company. State the reports which shall be included in the prospectus for the purposes of providing financial information under the provisions of the Companies Act, 2013. **(Nov 19)**

Answer

As per section 26(1) of the Companies Act, 2013, every prospectus issued by or on behalf of a public company either with reference to its formation or subsequently, or by or on behalf of any person who is or has been engaged or interested in the formation of a public company, shall be dated and signed and shall state such information and set out such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government.
Until the Securities and Exchange Board specifies the information and reports on financial information under this sub-section, the regulations made by the Securities and Exchange Board under the Securities and Exchange Board of India Act, 1992, in respect of such financial information or reports on financial information shall apply.
Prospectus issued must make a declaration about the compliance of the provisions of this Act and a statement to the effect that nothing in the prospectus is contrary to the provisions of this Act, the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 and the rules and regulations made thereunder.
Accordingly, the Board of Directors of Chandra Ltd. who proposes to issue the prospectus shall provide such reports on financial information as may be specified by the Securities and Exchange Board in consultation with the Central Government in compliance with the above stated provision and make a declaration about the compliance of the above stated provisions.

Q2. A company issued a prospectus. All the statements contained therein were literally true. It also stated that the company had paid dividends for a number of years, but did not disclose the fact that the dividends were not paid out of trading profits, but out of capital profits. An allottee of shares wants to avoid the contract on the ground that the prospectus was false in material particulars. Discuss can he do so?

(RTP May 18, May 17)

Answer

A prospectus is misstated when:

- It is untrue or misleading in form or context in which it is included; or
- Where any inclusion or omission of any matter is likely to mislead

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It could either be by commission or by omission or by both. Mis-statement shall be punishable both as a civil liability u/s 35 and criminal liability u/s 34.

In the above case the company issued a prospectus. All the statements were true and the company also stated that the company was paying dividend since a number of years. However the company failed to mention that the dividend was paid out of capital profits and not out of trading profits. The non disclosure of the fact that dividends were paid out of capital profits is a concealment of material fact as a company is normally required to distribute dividend only from trading or revenue profits.

Thus, the allottee can avoid the contract of allotment of shares on the grounds of mis-statement in the prospectus.

Q3. Prakhar Ltd. intends to raise share capital by issuing Equity Shares in different stages over a certain period of time. However, the company does not wish to issue prospectus each and every time of issue of shares. Considering the provisions of the Companies Act, 2013, discuss what formalities Prakhar Ltd. should follow to avoid repeated issuance of prospectus? **(RTP Nov 18)**

OR

What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act,2013. **(Nov 18)**

OR

When is a company required to issue a 'shelf prospectus' under the provisions of the Companies Act, 2013? Explain the law relating to issuing and filing of such prospectus. **(Nov 16)**

Answer

"Shelf prospectus" means a prospectus in respect of which the securities or class of securities included therein are issued for subscription in one or more issues over a certain period without the issue of a further prospectus.

According to Section 31 of the Company Act, 2013:

1) The Securities and Exchange Board may specify the class or classes of companies, which can issue its securities by issuing a shelf prospectus.
2) The company shall file the shelf prospectus with the Registrar at the stage of the first offer of securities.
3) The prospectus shall specify the period of validity which shall be one year from the date of opening of the first offer of securities.
4) No further prospectus has to be issued for any subsequent offer during the period of validity of the prospectus.

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5) The company shall be required to file an information memorandum containing all material facts relating to
    - new charges created,
    - changes in the financial position of the company

as have occurred between the first offer of securities or the previous offer of securities and the succeeding offer of securities with the Registrar prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

6) Where an information memorandum is filed such memorandum together with the shelf prospectus shall be deemed to be a prospectus.
7) If the company has received applications for the allotment of securities along with advance payments of subscription the company shall intimate the changes to such applicants. If the applicant desires to withdraw their application, the company shall refund all the monies received as subscription within fifteen days.

Q4. Param Ltd. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained a false statement. Mr. Prakash purchased some partly paid shares of the company in good faith from the Stock Exchange. Subsequently, the company was wound up and the name of Mr. Prakash was included in the list of contributories. Decide:
i. Whether Mr. Prakash is liable to pay the unpaid amount?
ii. Can Mr. Prakash sue the directors of the company to recover damages?

(RTP Nov 17)

OR

P Ltd. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained a false statement. Mr. X purchased some partly paid shares of the company in good faith from the Stock Exchange. Subsequently, the company was wound up and the name of Mr. X was included in the list of contributories. Decide:
i. Whether Mr. X is liable to pay the unpaid amount?
ii. Can Mr. X sue the directors of the company to recover damages? **(May 1 6)**

Answer

A prospectus is mis-stated when:

- It is untrue or misleading in form or context in which it is included; or
- Where any inclusion or omission of any matter is likely to mislead

It could either be by commission or by omission or by both. If the prospectus is mis-stated the allottee may avoid the contract. In case of misstatement the company, and every director, promoter, expert and every other person who has authorized the issue of the prospectus shall be liable to the allottee for damages for the misstatement.

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However this right is available only when the shares are purchased o the faith of the prospectus which is mi-stated. The court in the case of Peak V. Gurney held that this right is not available when the shares are purchased from the open market.

In the above case Param Ltd. issued a prospectus. The prospectus contained a false statement. Mr. prakash purchased partly paid up shares from the open market. As the shares were purchased from the open market Mr. Prakash shall not have any rights on the company on the grounds of misstatement. Mr. prakash was listed as a contributory on the winding up of the company.

Thus even though he purchased the shares in good faith he purchased it from the open market

i. Prakash is liable to pay the unpaid amount on the shares as he had not purchased the shares on the faith of the prospectus but from the open market.

ii. Mr. Prakash cannot sue the directors to recover damages for the misstatement in the prospectus.

Q5. Sudarshan Exports Ltd. was dealing in export of rubber to specified foreign countries. The company was willing to purchase rubber trees in A.P. State. The prospectus issued by the company contained some important extracts of the expert report and number of trees in A.P. State. The report was found untrue. Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Will Mr. Alok have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. **(RTP May 20)**

Answer

Under section 35 of the Companies Act 2013, where a person has subscribed for securities of a company acting on any statement included in the prospectus which is misleading and has sustained any loss or damage as a consequence thereof, the company and every person including an expert shall, be liable to pay compensation to the person who has sustained such loss or damage.

In the present case, Mr. Alok purchased the shares of Sudarshan Exports Ltd. on the basis of the expert report published in the prospectus. Mr. Alok can claim compensation for any loss or damage that he might have sustained from the purchase of shares, which has not been mentioned in the given case.

Hence, Mr. Alok will have remedy against the company.

Circumstances when an expert is not liable:

An expert will not be liable for any mis-statements in the prospectus under the following situations:

i. Under section 26, that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or

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ii. Under section 35 , that the prospectus was issued without his knowledge / consent and that on becoming aware of it, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent;

iii. An expert will not be liable in respect of any statement not made by him in the capacity of an expert and included in the prospectus as such;

iv. that, as regards every misleading statement purported to be made by an expert or contained in what purports to be a copy of or an extract from a report or valuation of an expert, it was a correct and fair representation of the statement, or a correct copy of, or a correct and fair extract from, the report or valuation; and he had reasonable ground to believe and did up to the time of the issue of the prospectus believe, that the person making the statement was competent to make it and that the said person had given the consent required by section 26(5) to the issue of the prospectus and had not withdrawn that consent before delivery of a copy of the prospectus for registration or, to the defendant's knowledge, before allotment thereunder.

Q6. With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. Damu received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. Damu bought 4,000 shares through the stock exchange at a higher price which later on fell sharply. Damu sold these shares at a heavy loss. Mr. Damu claims damages from the company for the loss suffered on the ground that the prospectus issued by the company contained a false statement. Referring to the provision of the Companies Act, 2013 examine whether Damu's claims for damages is justified? **(May 17)**

Answer

A prospectus is a document inviting offers from the public. If the prospectus contained any misstatement the prospectus shall mislead the investors. A prospectus is mis-stated when:

- It is untrue or misleading in form or context in which it is included; or
- Where any inclusion or omission of any matter is likely to mislead

It could either be by commission or by omission or by both. If the prospectus is mis-stated the allottee may avoid the contract. In case of misstatement the company, and every director, promoter, expert and every other person who has authorized the issue of the prospectus shall be liable to the allottee for damages for the misstatement.
However this right is available only when the shares are purchased o the faith of the prospectus which is mi-stated. The court in the case of Peak V. Gurney held that this right is not available when the shares are purchased from the open market.
In the above case the company issued a prospectus which contained some false statement. Mr. Damu received a copy of the prospectus but did not apply for the shares.

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Later Damu purchased shares from the stock exchange and suffered loss. Damu purchased the shares from the open market and not on the faith of the prospectus containing the false statement, so he will have no remedies against the company. Thus Mr. Damu cannot bring any action for deceit against the directors and his action is not justified.

Q7. ACE Builders Ltd. issued a prospectus which contained mis-statement about the prospects of the Company from a project to be undertaken with intent to defraud the applicants for securities. Discuss the provisions of law relating to criminal liability for misstatement in the prospectus under the Section 34 of the Companies Act, 2013.

(Nov 18)

Answer

As per section 34 if a prospectus is issued, circulated or distributed is mis-stated then every person who authorizes the issue of such prospectus shall be liable

As per section 447 any person who is found to be guilty of fraud

- involving an amount of at least ten lakh rupees or 1% of the turnover of the company, whichever is lower shall be punishable with imprisonment for a term which shall not be less than six months but which may extend to ten years and shall also be liable to fine which shall not be less than the amount involved in the fraud, but which may extend to three times the amount involved in the fraud:
- where the fraud in question involves public interest, the term of imprisonment shall not be less than three years.
- where the fraud involves an amount less than ten lakh rupees or 1% of the turnover of the company, whichever is lower, and does not involve public interest, any person guilty of such fraud shall be punishable with imprisonment for a term which may extend to five years or with fine which may extend to twenty lakh rupees or with both.

However a person shall not be liable under section 34 if

i. he proves that such statement or omission was immaterial or
ii. that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.

Q8. An allottee of shares in a Company brought action against a Director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. Is the Director liable under the circumstances? Decide referring to the provisions of the Companies Act, 2013.

(MT May 20)

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Answer

Section 34 of time Companies Act, 2013 imposes a criminal punishment on every person who authorises the issue of such prospectus. Section 35 more particularly includes a director of the company in the imposition of liability for such misstatements. However a director will not incur any liability for misstatements in a prospectus are as under:

- No criminal liability under section 34 shall apply to a person if he proves that such statement or omission was immaterial or that he had reasonable grounds to believe, and did up to the time of issue of the prospectus believe, that the statement was true or the inclusion or omission was necessary.
- No civil liability for any misstatement under section 35 shall apply to a person if he proves that:

a) Having consented to become a director of the company, he withdrew his consent before the issue of the prospectus, and that it was issued without his authority or consent; or

b) The prospectus was issued without his knowledge or consent, and that on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.

In the present case action was brought against the director in respect of false statements in prospectus. The director contended that the statements were prepared by the promoters and he has relied on them. As the director cannot hide behind the excuse that he had relied on the promoters for making correct statements in the prospectus, he will be liable for misstatements in the prospectus.
Thus the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013.

Q9. Kapoor Builders Limited decides to pay 2.5% of the value of debentures as underwriting commission to the underwriters but the Articles of the company authorize only 2.0 percent underwriting commission on debentures. The company further decides to pay the underwriting commission in the form of flats. Examine the validity of the above arrangements under the provisions of the Companies Act,2013. **(RTP May 18)**

Answer

As per Section 40 of the Companies Act 2013, a company may pay commission to underwriters for subscription or procurement of subscription of its securities. The payment of commission shall be subject to the conditions prescribed under Companies (Prospectus and Allotment of Securities) Rules, 2014. The Rules are as under:

a) The payment of such commission shall be authorized in the company's articles of association;

b) The commission may be paid out of proceeds of the issue or the profit of the company or both;

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c) The rate of commission shall not exceed,

- in case of shares 5% of the price at which the shares are issued or a rate authorised by the articles, whichever is less, and
- in case of debentures, shall not exceed 2.5 % of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

In the above case Kapoor Builders Ltd. decides to pay commission to its underwriters @2.5% of the value of debentures. The articles of the company specify that the commission shall be paid @2% of the value of debentures. As given under the Rules the commission cannot exceed the rate given in the Rules or the rate specified in the articles whichever is lower. The rate specified in the articles is lower so the company cannot pay commission at the rate exceeding the rate specified in the articles. Further the Act and Rules do not impose any restriction on the mode of payment so the payment may be in kind. However such payment shall be made only out of the proceeds of the issue or profits of the company.

Thus the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid. Further the company may pay the underwriting commission in the form of flats however the value of flats should not exceed the total amount of commission payable.

Q10.Modem Jewellery Ltd. decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters, but the Articles of the company authorize only 4% underwriting commission on shares. Examine the validity of the above decision under the provision of the Companies Act, 2013. **(Nov 19)**

Answer

Section 40(6) of the Companies Act, 2013 provides that a company may pay commission to any person in connection with the subscription to its securities subject to such conditions as may be prescribed. Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014 states that the rate of commission paid or agreed to be paid shall not exceed, in case of shares, 5% of the price at which the shares are issued or a rate authorised by the articles, whichever is less.
In the instant case, the article of Modern Jewellery Ltd. specifies that the company can pay 4% commission to the underwriters. The company decides to pay 5% of the issue price gap of shares as underwriting commission to the underwriters. As the rate of commission cannot exceed 5% of the price at which the shares are issued or the rate authorized whichever is lower the commission cannot exceed 4%.
Hence, the company can only pay a maximum of 4% underwriting commission on shares.

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Q11. TDL Ltd., a public company is planning to bring a public issue of equity shares in June, 2018. The company has appointed underwriters for getting its shares subscribed. As a Chartered Accountant of the company appraise the Board of TDL Ltd. about the provisions of payment of underwriter's commission as per Companies Act, 2013. **(May 18)**

Answer

As per section 40 of the Companies Act, 2013 a company may pay commission to the underwriters in connection with the subscription of its securities. As per Companies (Prospectus and Allotment of Securities) Rules, 2014:

1. The payment of such commission shall be authorized in the company's articles of association;
2. The commission may be paid out of proceeds of the issue or the profit of the company or both;
3. The rate of commission shall not exceed,
   - in case of shares, 5% of the price at which the shares are issued or the rate authorised by the articles, whichever is less, and
   - in case of debentures, 2.5% of the price at which the debentures are issued, or as specified in the company's articles, whichever is less .
4. The prospectus of the company shall disclose the following particulars –
   - the name of the underwriters;
   - the rate and amount of the commission payable to the underwriter; and
   - the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
5. No commission shall be paid on securities which are not offered to the public for subscription.
6. A copy of the contract for the payment of commission must be delivered to the Registrar at the time of delivery of the prospectus for registration.

Q12. Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013

The Board of Directors of Reckless Investments Ltd. have allotted shares to the investors of the company without issuing a prospectus with the concerned Registrar of Companies. Explain the remedy available to the investors in this regard. **(MTP Aug18)**

Answer

According to Section 23 of the Companies Act, 2013, a public company can issue securities to the public only by issuing a prospectus. Section 26 lays down the that a copy of the prospectus must be filed with the Registrar before its issue. If the company fails to issue prospectus the allotment shall be irregular and shall be void. Further if the

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company fails to issue and file the prospectus with the Registrar the company shall be punishable with a fine which shall not be less than 50,000 but may extend to 3 lacs and every person who is knowingly a party to the issue of such prospectus shall be punishable with imprisonment for a term which may extend to 3 years or with fine which shall not be less than 50,000 but which may extend to 3 lacs or both.

In the above case the Board of Directors of Reckless Investments ltd. have allotted the shares without filing a copy of the prospectus with the Registrar. As the allotment is against the provisions of section 26 it is irregular.

Thus the allotment is void and the investor shall get a refund of the money received.

Q13. State in what way does the Companies Act, 2013 regulate and restrict the following in respect of a company going for public issue of shares:
i. Minimum Subscription, and
ii. Application Money payable on shares being issued **(MTP Oct 18)**

Answer

Minimum subscription:

As per section 39 of the Companies Act, 2013 a company shall not make an allotment of its securities unless it

a) receives the minimum subscription stated in the prospectus as the minimum subscription; and
b) the sums payable on application for such amount has been paid to and received by the company.

The following are the rules relating to minimum subscription and minimum application money as stated under section 39:

1. The amount payable on application on each security shall not be less than 5% of the nominal amount of such security or such amount as SEBI may prescribe by making any regulations in this behalf.
2. If the stated minimum amount is not received by the company within 30 days of the date of issue of the prospectus or such time as prescribed by SEBI, the company will be required to refund the application money. As per the Companies (Prospectus and Allotment of Securities) Rules, 2014 the money shall be refunded within 15 days from the closure of the issue.
3. In case of any default under sub-section, the company and its officer who is in default shall be liable to a penalty, for each default, of one thousand rupees for each day during which such default continues or one lakh rupees, whichever is less.

Application money payable on shares being issued:

As per section 40 of the Companies Act, 2013 all moneys received on application from the public for subscription shall be kept in a separate bank account maintained with a scheduled bank. This money shall be utilized by the company for

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adjustment against allotment of securities where the securities have been permitted to be dealt with in the stock exchange or stock exchanges specified in the prospectus.

Q14. MPN Limited allotted shares to the public without issuing a prospectus. Discuss the validity of such allotment and list out any five circumstances when allotment can be deemed to be irregular. **(Nov18)**

Answer

According to section 23 (1) of the Companies Act, 2013, a public company may issue securities to public by issuing a prospectus. As MPN Ltd. allotted the shares to the public without issuing a prospectus the allotment is not in accordance with the provisions of the Act and so it is irregular.
Thus, shares allotted to the public without issuing a prospectus by MNP Limited are not valid.

Circumstances of Irregular allotment: As the Act does not provide any case of irregular allotment, allotment shall be considered as irregular if it does not comply with the provisions of the Act relating to allotment. An allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 and 40. The following are the cases of irregular allotment:

i. Where a company does not issue a prospectus in a public issue as required by section 23; or
ii. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26, or the information given is misleading, faulty and incorrect; or
iii. Where the prospectus has not been filed with the Registrar for registration under section 26;
iv. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
v. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf;
vi. Approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

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Q15. Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013. **(Nov 19)**

Answer

The Companies Act, 2013 does not specifically provide for the term "Irregular Allotment" of securities. Hence, we have to examine the requirements of a proper issue of securities and consider the consequences of non- fulfillment of those requirements. An allotment of shares is deemed to be irregular when it has been made by a company in violation of Sections 23, 26, 39 or 40. Irregular allotment therefore arises in the following instances:

1. Where a company does not issue a prospectus in a public issue as required by section 23; or
2. Where the prospectus issued by the company does not include any of the matters required to be included therein under section 26 (1), or the information given is misleading, faulty and incorrect; or
3. Where the prospectus has not been filed with the Registrar for registration under section 26 (4); or
4. The minimum subscription as specified in the prospectus has not been received in terms of section 39; or
5. The minimum amount receivable on application is less than 5% of the nominal value of the securities offered or lower than the amount prescribed by SEBI in this behalf; or
6. In case of a public issue, approval for listing has not been obtained from one or more of the recognized stock exchanges under section 40 of the Companies Act, 2013.

Q16. Discuss the provisions relating to private placement of shares under the Companies Act, 2013. **(Nov 18)**

Answer

A company may, subject to the provisions of section 42, make a private placement of securities.

1. The private placement shall be made only to a select group of persons who have been identified by the Board. The number of such identified person shall not exceed 50 or such higher number as may be prescribed [excluding the qualified institutional buyers and employees of the company being offered securities under a scheme of employees stock option in terms of the provisions of section 62], in a financial year.
2. A company making private placement shall issue private placement offer and application to identified persons.

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3. The private placement offer and application shall not carry any right of renunciation.
4. Every identified person willing to subscribe shall apply in the private placement and application issued to such person alongwith subscription money paid either by cheque or demand draft or other banking channel and not by cash:
5. The money received on application under this section shall be kept in a separate bank account in a scheduled bank and shall not be utilised for any purpose other than—
    i. for adjustment against allotment of securities; or
    ii. for the repayment of monies where the company is unable to allot securities.
6. The company shall not utilise monies raised through private placement unless allotment is made and the return of allotment is filed with the Registrar.
7. The company shall not make a fresh offer unless the allotments with respect to any offer or invitation made earlier have been completed or that offer or invitation has been withdrawn or abandoned by the company.
8. The company shall allot the securities within 60 days from the date of receipt of the application money for such securities. If the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within 15 days from the expiry of sixty days. If the company fails to repay the application money within 15 days it shall be liable to repay that money with interest at the rate of 12% p.a. from the expiry of the sixtieth day.
9. The company may make more than one issue subject to the maximum number of identified persons.
10. The company issuing securities under this section shall not release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an issue.
11. The company shall file with the Registrar a return of allotment within 15 days from the date of the allotment including a complete list of all allottees, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.
12. If a company defaults in filing the return of allotment within the period prescribed the company, its promoters and directors shall be liable to a penalty for each default of 1000 rupees for each day during which such default continues but not exceeding 25 lakh rupees.
13. If a company makes an offer or accepts monies in contravention of this section, the company, its promoters and directors shall be liable for a penalty which may extend to the amount raised through the private placement or 2 crore rupees, whichever is lower, and the company shall also refund all monies with interest to subscribers within a period of thirty days of the order imposing the penalty.
14. If the company makes an offer is made to more than 50 persons it shall be deemed to be a public offer and all the provisions of this Act and the Securities

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Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be applicable.

"Private placement" means any offer or invitation to subscribe or issue of securities to a select group of persons by a company (other than by way of public offer) through private placement offer-cum-application, which satisfies the conditions specified in this section.

"Qualified institutional buyer" means the qualified institutional buyer as defined in the Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) Regulations, 2009, as amended from time to time, made under the Securities and Exchange Board of India Act, 1992.

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3.Share Capital & Debentures

Q1. Growmore Limited's share capital is divided into different classes. Now, Growmore Limited intends to vary the rights attached to a particular class of shares. Explain the provisions of the Companies Act, 2013 to Growmore Limited as to obtaining consent from the shareholders in relation to variation of rights.

(RTP Nov18)

OR

Rishi Limited's share capital is divided into different classes. Now, Rishi Limited intends to vary the rights attached to a particular class of shares. Advice Rishi Limited as to obtaining consent from the shareholders in relation to variation of rights.

(RTP Nov 17)

Answer

As per section 48 of the Companies Act, 2013 where the share capital of the company is divided into different class, the rights attached to one class may be varied if the following conditions are fulfilled:

1. if authorised in the memorandum or articles of the company or in the absence of such authorization such variation is not prohibited by the terms of issue of the shares of that class:
2. consent in writing of the holders of not less than three-fourths of the issued shares of that class or by means of a special resolution passed at a separate meeting of the holders of the issued shares of that class,
3. if variation by one class of shareholders affects the rights of any other class of shareholders, the consent of three-fourths of such other class of shareholders shall also be obtained.
4. If holders of not less than 10% of the issued shares of a class did not consent to such variation or vote in favour of the special resolution they may within 21 days from the date of consent or resolution apply to the Tribunal to have the variation cancelled. Where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal.

Q2. Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. **(May 18)**

Answer

As per Rule 4 of the Companies (Share capital and Debenture) Rules, 2014 a company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, after complying with the following conditions:

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1. the articles of association of the company authorizes the issue of shares with differential rights;
2. the issue of shares is authorized by an ordinary resolution passed at a general meeting of the shareholders.

   Provided that where the equity shares of a company are listed on a recognized stock exchange, the issue of such shares shall be approved by the shareholders through postal ballot;
3. the shares with differential rights shall not exceed 26% of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
4. the voting power in respect of shares with differential rights of the company shall not exceed 74% of the total voting power including voting power in respect of equity shares with differential rights issued at any point of ti
5. the company has not defaulted in filing financial statements and annual returns for three financial years immediately preceding the financial year in which it is decided to issue such shares;
6. the company has no subsisting default in the
   - payment of a declared dividend to its shareholders or
   - repayment of its matured deposits or
   - redemption of its preference shares or debentures that have become due for redemption or
   - payment of interest on such deposits or debentures or payment of dividend;
7. the company has not defaulted in
   - payment of the dividend on preference shares or
   - repayment of any term loan from a public financial institution or State level financial institution or scheduled Bank that has become repayable or interest payable thereon or
   - dues with respect to statutory payments relating to its employees to any authority or
   - default in crediting the amount in Investor Education and Protection Fund to the Central Government;

     Provided that a company may issue equity shares with differential rights upon expiry of five years from the end of the financial Year in which such default was made good.
8. the company has not been penalized by Court or Tribunal during the last three years of any offence under the
   - Reserve Bank of India Act, 1934,
   - the Securities and Exchange Board of India Act, 1992,
   - the Securities Contracts Regulation Act, 1956,
   - the Foreign Exchange Management Act, 1999 or

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- any other special Act, under which such companies being r regulators.by Seectoral

9. The company shall not convert its existing equity share capital with voting rights into equity share capital carrying differential voting rights and vice–versa.
10. The holders of the equity shares with differential rights shall enjoy all other rights such as bonus shares, rights shares etc., which the holders of equity shares are entitled to, subject to the differential rights with which such shares have been issued.
11. The Register of Members maintained under section 88 shall contain all the relevant particulars of the shares so issued along with details of the shareholders.

Q3. PQR Ltd. had issued 10000 shares of 10 each, on which company called up 7.50 per share. However, Mr. C, a shareholder of PQR Ltd., deposited in advance the remaining amount due on his shares without any calls made by PQR Ltd. Referring to the provisions of the Companies Act, 2013, state the rights and liabilities of Mr. C, which will arise by the payment of calls made in advance. **(Nov 18)**

Answer

Section 50 of the Companies Act, 2013 states that a company may accept that part of the unpaid capital which has not been called up if authorised by its articles. When a company receives payment in advance of calls, the rights and liabilities of the shareholder will be as follows:

1. The shareholder is not entitled to voting rights in respect of the moneys so paid by him until the same is called up.
2. The shareholder's liability to the company in respect of the call for which the amount is paid is extinguished.
3. The shareholder is entitled to claim interest on the amount of the call to the extent payable according to the articles of association. If there are no profits, it must be paid out of capital, because shareholder becomes the creditor of the company in respect of this amount.
4. The amount received in advance of calls is not refundable.
5. In the event of winding up the shareholder ranks after the creditors, but must be paid his amount with interest, if any before the other shareholders are paid off.
6. The power to receive the payment in advance of calls must be exercised in the general interest and for the benefit of the company.

In the above case PQR Ltd. issued shares of 10 each, 7.50 called up. A shareholder C deposited the remaining amount in advance though the call was not made by the company. The company can accept this calls in advance provided it was authorized by the articles and C shall get all the rights stated above.

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Q4. A Limited has an Authorized Capital of 10,00,000 equity shares of the face value of 100/- each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the share market and requested the Company to reduce the face value of each share to 10/- and increase the number of shares to 1,00,00,000. Examine whether the request of the shareholders is possible and if so, how the company can alter its share capital as per the provisions of the Companies Act, 2013. **(Nov 17)**

Answer

As per section 61 of the Companies Act, 2013, a limited company having share capital may alter its memorandum so as to

- divide all or any of its share capital of a larger amount than its existing shares or
- sub-divide the whole or any part of its shares of smaller amount than is fixed by the memorandum

However the proportion between the amount paid and the amount, if any, unpaid on each reduced share shall be the same as it was before such division or sub-division. For such alteration the company

i. must be authorized by its articles
ii. must pass an ordinary resolution in the general meeting.
iii. shall alter its memorandum.
iv. shall file a copy of the altered memorandum with the Registrar.

In the given instance, shareholders of A Limited in the Annual General Meeting, requested the company to reduce the face value of each shares from 100 to 10 per share and increase in the number of shares, then is fixed by the memorandum from 10 lacs to 1 crore. According to the provision of the Act it is possible for the company to sub-divide the shares provided it is authorised by its articles.

Q5. X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018 only. Mr. Kavi has given an application to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Examine the validity of application of Mr. Kavi under the provisions of the Companies Act, 2013. Would your answer differ if Mr. Kavi is a shareholder of X Ltd.? **(Nov 19)**

Answer

According to section 62 of the Companies Act, 2013, where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares shall be offered to persons who, at the date of the offer, are holders of equity shares of the company. such shares shall be offered in proportion

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to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions:-

i. the offer shall be made by notice specifying the number of shares offered and limiting a time not being less than fifteen days and not exceeding thirty days from the date of the offer within which the offer, if not accepted, shall be deemed to have been declined;

ii. unless the articles of the company otherwise provide, the offer shall be deemed to include a right to renounce the shares offered in favour of any other person and the notice referred to in clause (i) shall contain a statement of this right;

iii. after the expiry of the time specified in the notice aforesaid, or on receipt of earlier intimation from the person to whom such notice is given that he declines to accept the shares offered, the Board of Directors may dispose of them in such manner which is not dis-advantageous to the shareholders and the company.

In the instant case, X Ltd. issued a notice on 1st Feb, 2018 to its existing shares holders offering to purchase one extra share for every five shares held by them. The last date to accept the offer was 15th Feb, 2018. Mr. Kavi applied to renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. As nothing is specified related to the Articles of the company, it is assumed offer shall be deemed to include a right of renunciation.

Hence, Mr. Kavi can renounce the shares offered to him in favour of Mr. Ravi, who is not a shareholder of the company. Further even if Mr. Ravi is a shareholder of X Ltd. then also it does not affect the right of renunciation of shares of Mr. Kavi to Mr. Ravi.

Q6. Rashi Computers Limited was incorporated in the year 2018 having paid up share capital of 10 crores. Now the company wants to convert its share capital into stock. Can the company do so? State also whether the company may create stock as its capital at the time of incorporation. **(Nov 19)**

Answer

According to section 61 of the Companies Act, 2013, a limited company having a share capital may, if so authorised by its articles, alter its memorandum in its general meeting to convert all or any of its fully paid-up shares into stock, and reconvert that stock into fully paid-up shares of any denomination. However a company cannot create stock as its capital at the time of incorporation as the memorandum shall specify the number of shares. So a company cannot be incorporated with stock.

In the above case Rashi Computers Ltd. incorporated in the year 2018 having paid up share capital of 10 Crores can convert its share capital into stock by provision under section 61 of the Act. However the company cannot create stock as its capital at the time of incorporation.

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Q7. Mr. Nilesh has transferred 1000 shares of Perfect Ltd. to Ms. Mukta. The company has refused to register transfer of shares and does not even send a notice of refusal to Mr. Nilesh or Ms. Mukta respectively within the prescribed period. Discuss as per the provisions of the Companies Act, 2013, whether aggrieved party has any right(s) against the company for such refusal? **(RTP May18) (MTP Mar 19)**

OR

Poorva Limited refuses to register transfer of shares made by Mr. Akbar to Mr. Amar. The company does not even send a notice of refusal to Mr. Akbar or Mr. Amar respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013. **(RTP Nov17)**

OR

Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him? **(May 18)**

Answer

As per Section 58 of the Companies Act, 2013 where a company refuses to register the transfer of shares the company shall inform the transferor and transferee of such refusal. In case of a public company if the company without any sufficient cause refuses to register the transfer of securities within a period of 30 days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of 60days of such refusal or where no intimation has been received from the company, within 90 days of the delivery of the instrument of transfer, appeal to the Tribunal.

In the above case Mr. Nilesh holding shares of Perfect Ltd. made an application to the company for transfer to Ms. Mukta. The company refused to register transfer but did not inform Mr. Nilesh or Ms. Mukta of such refusal. If the company fails to inform the refusal of transfer Ms. Mukta may appeal to the tribunal.

Thus Ms. Mukta may appeal to the Tribunal within 90 days from the delivery of the transfer instrument with the company.

Q8. Mr. A was having 500 equity shares of Open Sky Aircrafts Limited. Mr. B acquired these shares of the company from Mr. A but the signature of Mr. A, the transferor on the transfer deed was forged. The company registered the shares in the name of Mr. B by issuing share certificate. Mr. B sold 100 equity shares to Mr. C on the basis of share certificate issued by Open Sky Aircrafts Ltd. Mr. B and Mr. C are not having the knowledge of forgery. State the rights of Mr. A, Mr. B and Mr. C under the Companies Act, 2013. **(Nov 19)**

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Answer

According to Section 46(1) of the Companies Act, 2013, a share certificate once issued under the common seal, if any, of the company or signed by two directors or by a director and the Company Secretary, wherever the company has appointed a Company Secretary, specifying the shares held by any person, shall be prima facie evidence of the title of the person to such shares. Therefore, in the normal course the person named in the share certificate is for all practical purposes the legal owner of the shares therein and the company cannot deny his title to the shares. However the person who acquires the shares by a forged signature has a right to claim damages from the person who filed the forged transfer deed with the company.

In the above case Mr. A was the owner of the shares. A transfer deed was filed with the company for transfer of the shares to B but the signature of A was forged. B transferred the shares to C. As the forged transfer deed is a nullity B does not get the ownership of the shares and so he cannot transfer ownership to C.

Thus the company is bound to restore the name of A and to pay him any dividends which he ought to have received. B and C can recover damages from A as he seems to be the perpetrator of the forger.

Q9. Distinguish between transfer and transmission of shares. **(May 18)**

Answer

The following are the differences between transfer and transmission:

Transfer	Transmission
It is effected by a Voluntary/Deliberate act of the parties by way of a contract.	It takes place by a operation of law. E.g. Due to death, insolvency or lunacy of a member.
It takes place for consideration	No consideration is involved.
The transferor has to execute a valid instrument.	There is no prescribed instrument of transfer
As soon as, the transfer is complete, the liability of the transferor ceases.	Shares continue to be subject to the original liabilities.

Q10. Kavish Ltd., desirous of buying back of all its equity shares from the existing shareholders of the company, seeks your advice. Examining the provisions of the Companies Act, 2013 discuss whether the above buy back of equity shares by the company is possible. Also, state the sources out of which buy-back of shares can be financed? **(RTP May 18)**

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Answer

As per section 68 of the Companies Act, 2013 a company may buy back its equity shares provided the buy back does not exceed 25% of its paid up equity share capital. The sources for such buy back is:

1. Free reserves or
2. Security Premium account or
3. Proceeds of the issue of any shares or other specified securities

However, no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

In the above case Kavish Ltd wants to buy back all of its equity shares. The company u/s 68 is given the power to buy back its shares provided the buy back does not exceed 25% of its paid up equity share capital.
Thus Kavish Ltd. cannot buy back all of its equity shares.

Q11. Heavy Metals Limited wants to provide financial assistance to its employees, to enable them to subscribe for certain number of fully paid shares. Considering the provision of the Companies Act, 2013, what advice would you give to the company in this regard? **(RTP Nov 18)**

Answer

Under section 67 of the Companies Act, 2013 a public company shall not directly or indirectly give any loan or any guarantee or provide any security for purchase or subscription of its shares or the shares of its holding.
However the company may give loan

i. to their employees other than its directors or key managerial personnel, for an amount not exceeding their salary or wages for a period of six months
ii. to purchase or subscribe for fully paid-up shares in the company or its holding company to be held by them by way of beneficial ownership.

The company shall make a disclosure in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates in its Board's Report.

In the above case Heavy Metals Ltd. wants to provide financial assistance to its employees to subscribe for its fully paid up shares. The company can provide this assistance to its employees provided the employees are not any key managerial personnel and the shares to be subscribed are fully paid up shares.

Q12. OLAF Limited, a subsidiary of PQR Limited, decides to give a loan of Rs. 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of OLAF Limited, drawing salary of Rs. 30,000 per month, to buy 500 partly paid-up

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Equity Shares of Rs. 1000 each in OLAF Limited. Examine the validity of company's decision under the provisions of the Companies Act, 2013.

(MTP Aug 18) (RTP May 20)

Answer

As per section 67 of the Companies Act, 2013 a company may give loan to its employees to purchase its shares if:

a. The loan is given to any employee other than a key managerial personnel.
b. The amount of such loan shall not exceed an amount equal to six months' salary of the employee.
c. The shares to be subscribed must be fully paid shares

As per section 2 (51) of the Companies Act, 2013 a "Key Managerial Personnel " (KMP) includes the Chief Executive, Company Secretary, Whole Time Director, Chief Financial Officer, such other officer, not more than one level below the directors who is in whole-time employment, designated as key managerial personnel by the Board and such other officer as may be prescribed.

In the given case OLAF Ltd. a subsidiary of PQR Ltd. decides to give a loan of 4,00,000 to the HR Manager to buy 500 partly paid shares of the company. the salary of the manager was 30,000 per month. As per the Act a loan can be given to an employee who is not a KMP. Since the HR Manager was not a KMP the company could give him the loan. However the loan amount exceeded his 6 months salary and was given to purchase partly paid up shares of the company. this is not in accordance with the provisions of the Act.

Thus the decision of OLAF Ltd. is invalid due to two reasons; the loan amount exceeds his 6 months salary and the loan is given to purchase partly paid up shares of the company.

Q13. Large Limited has a paid-up equity capital and free reserves to the extent of 50,00,000. The company is planning to buy-back shares to the extent of 4,50,000. The company approaches you for advice with regard to the following

i. Is special resolution required to be passed?

ii. What is the time limit for completion of buy-back?

iii. What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?? **(RTP Nov 18)**

OR

Xgen Limited has a paid-up equity capital and free reserves to the extent of 50,00,000. The company is planning to buy-back shares to the extent of 4,50,000. The company approaches you for advice with regard to the following

i. Is special resolution required to be passed?

ii. What is the time limit for completion of buy-back?

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iii. What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back? **(May 18)**

Answer

As per section 68 of the Companies Act, 2013 the conditions for buy back of securities by a company are:

1. The buy-back is authorized by its articles;
2. A special resolution has been passed at a general meeting of the company authorizing the buy-back. However the company need not pass a special resolution if:
   a. the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
   b. such buy-back has been authorised by the Board by means of a resolution passed at its meeting;
3. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back is not more than twice the paid up capital and its free reserves. However, Central Government may prescribe higher ratio of the debt for a class or classes of companies.
4. Every buy-back shall be completed within a period of one year from the date of passing of the special resolution or the resolution passed by the Board

In the above case Large Ltd. having paid up equity and free reserves of 50,00,000 proposes to buy back its shares to the extent of 4,50,000. The total buy back is less than 10% of the total paid up capital and free reserves (50,00,000x10/100= 5,00,000). As the buy back is less than 10% the company can buy back by passing a Board resolution. Thus,

a. Special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves of the company. However the buy back must be authorized by the Board by means of a resolution passed at its meeting.
b. Time limit for completion of buy back will be- within a period of one year from the date of passing of the resolution by the Board.
c. The ratio of the aggregate debts (secured and unsecured) owed by the company after buy back should not be more than twice the paid up capital and its free reserves.

Q14. XYZ Company Ltd, at general meeting of members of the company pass an ordinary resolution to buy-back 30% of its equity share capital. The Articles of the company empower the company for buy-back of equity shares. The company further decides that the payment for buy-back be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013,

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and stating the sources through which the buy-back of companies own shares be executed. Examine:
i. Whether company's proposal is in order?
ii. Would your answer be still the same in case the company instead of 30% decide to buy-back only 20% of its equity share capital? **(Nov 16)**

Answer

Under section 68 of the Companies Act, 2013 a company can purchase its own shares or other specified securities subject to fulfilment of prescribed conditions and subject to defined limits and procedures.

1. A company can purchase its own shares or other specified securities out of:
   a. its free reserves; or
   b. the securities premium account; or
   c. the proceeds of the issue of any shares or other specified securities.

   However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.
2. The buy-back is authorised by its articles;
3. A special resolution authorising the buy-back is passed at a general meeting of the company. the company need not pass a special resolution if:
   a. the buy-back does not exceed 10% of the total paid-up equity capital and free reserves of the company and
   b. such buy-back has been authorized by the Board by means of a resolution passed at its meeting,
4. The buy-back should not exceed 25% of the aggregate of the paid-up capital and free reserves of the company.

In the above case XYZ company Ltd. wants to buy back 30% of its equity share capital out of the proceeds of the earlier issue of equity shares. The articles of the company authorise such buy back. Further the company passes an ordinary resolution for such buy back. The decision of the company for such buy back is not in accordance with the proposal of the Act as it crosses the limit specified, is made out of the earlier issue of the same shares or specified securities and the company does not pass a special resolution for the buy back..

Thus on the basis of the above discussion

i. The company's proposal for buy-back is not in order as it has passed only an ordinary resolution., the buy back exceeds the limit specified and payment of buy back out of the proceeds of an earlier equity issue.
ii. The answer to the second part shall also be the same since the irregularity and contravention will not be affected by the fact that the proposed buy back will be 20% of its equity.

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Q15. XYZ unlisted company passed a special resolution in a general meeting on January 5th 2019 to buy back 30% of its own equity shares. The Articles of Association empowers the company to buy back its own shares. Earlier the company has also passed a special resolution to buy back its own shares on January 15th 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. In the light of the provisions of the Companies Act, 2013,

i. Decide, whether the company's proposal is in order.
ii. What will be your answer if buy back offer date is revised from January 5th 2019 to January 25th 2019 and percentage of buyback is reduced from 30% to 25% keeping the source of purchase as above? **(Nov 19)**

Answer

As per section 68 of the Companies Act, 2013 a company may buy back its equity shares provided the buy back does not exceed 25% of its paid up equity share capital. The sources for such buy back is:

a) Free reserves or
b) Security Premium account or
c) Proceeds of the issue of any shares or other specified securities

However, no buy back of shares or any specified securities can be made out of the proceeds of an earlier issue of the same kind of shares or same kind of specified securities.

The Act further states that no offer of buy back or other specified securities shall be made within a period within a period of one year from the date of closure of the preceding offer of buy back.

In the instant case the articles of XYZ unlisted company authorizes the company to buy back. The company passed a special resolution in a general meeting on January 5th 2019 to buy back 30% of its own equity shares. The company had earlier also passed a special resolution to buy back its own shares on January 15th 2018. The company further decided that the payment for buyback be made out of the proceeds of the company's earlier issue of equity share. The company’s proposal is not in order due to the following reasons:

i. Though a special resolution is passed the proposal to buy back 30% of its own equity shares exceeds the limit of 25% specified.
ii. The resolution passed on 5th January 2019 not valid as no offer of buy-back, shall be made within a period of one year from the date of the closure of the preceding offer of buy-back, if any and the previous offer was made on 15th Jan 20018.

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iii. The company further decided that the payment for buy back be made out of the proceeds of the company's earlier issue of equity share. This is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Thus, the proposal of the company is not in order. Even if the buy back offer date is revised from 5th January 2019 to January 25th 2019 and percentage of buy back is reduced from 30% to 25% keeping the source of purchase as above, then also the company's proposal is not in order as buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

Q16. Which fund may be utilized by a public limited company for purchasing (buy back) its own shares? Also explain the provisions of the Companies Act, 2013 regarding the circumstances in which a company is prohibited to buy back its own shares. **(Nov 19)**

Answer

Section 68 of the Companies Act, 2013 states that a company may purchase its own securities out of:

i. its free reserves; or
ii. the securities premium account; or
iii. the proceeds of the issue of any shares or other specified securities.

However, buy-back of any kind of shares or other specified securities cannot be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities.

As per section 70

1. a company cannot directly or indirectly purchase its own shares or other specified securities-
   a. through any subsidiary company including its own subsidiary companies; or
   b. through any investment company or group of investment companies; or
   c. if a default is made by the company in repayment of deposits or interest payment thereon, redemption of debentures or preference shares or payment of dividend to any shareholder or repayment of any term loan or interest payable thereon, to any financial institutions or banking company; But where the default is remedied and a period of three years has lapsed after such default ceased to subsist, then such buy-back is not prohibited.
2. A company shall not directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of

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Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements).

Q17. Earth Ltd., a Public Company offer the new shares (further issue of shares) to persons other than the existing shareholders of the Company. Explain the conditions when shares can be issued to persons other than existing shareholders. Discuss whether these shares can be offered to the Preference Shareholders? **(RTP Nov 18)**

Answer

As per Section 62 of the Companies Act, 2013 if, at any time, the company brings a further issue of its shares such shares must be offered to the existing equity shareholders of the company as at the date of the offer. Such offer shall be made in proportion to the capital paid up on the shares held by them. However these shares can be offered to any other person in the following cases:

a) to employees under a scheme of employees' stock option subject to a special resolution passed by the company and subject to such conditions as may be prescribed.
b) to any persons, if it is authorized by a special resolution, either for cash or for a consideration other than cash, if the price of such shares is determined by the valuation report of a registered valuer.

As section 62 clearly states that the offer must be made to the existing equity shareholders but it can also be issued to other persons hence these shares can be issued to any persons who may be preference shareholders as well provided such issue is authorized by a special resolution of the company and are issued on such conditions as may be prescribed.

Thus, Earth Ltd. may offer the shares to any person other than existing shareholders including the preference shareholders if the company has passed a special resolution.

Q18. Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of 200 crores. Within this small time of 4 months it has earned huge profits and has topped the charts for its high employee friendly environment. The company wants to issue sweat equity to its employees. A friend of the CEO of the company has told him that they cannot issue sweat equity shares as 2 years have not elapsed since the time company has commenced its business. The CEO of the company has approached you to advise them about the essential conditions to fulfilled before the issue of sweat equity shares especially since their company is just a few months old. **(RTP May 19) (MTP Mar 19)**

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Answer

According to section 54 of the Companies Act, 2013, a company may issue sweat equity shares of a class of shares already issued, if the following conditions are fulfilled:

1. the issue is authorised by a special resolution passed by the company;
2. the resolution specifies
   - ✓ the number of shares,
   - ✓ the current market price,
   - ✓ consideration, if any, and
   - ✓ the class or classes of directors or employees to whom such equity shares are to be issued;
3. where the equity shares of the company are listed on a recognised stock exchange, the sweat equity shares are issued in accordance with the regulations made by the Securities and Exchange Board in this behalf and if they are not so listed, the sweat equity shares are issued in accordance with such rules as prescribed under Rule 8 of the Companies (Share and Debentures) Rules, 2014,
4. The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares and the holders of such shares shall rank pari passu with other equity shareholders.

In the above case Data Ltd. whose shares were listed on a stock exchange had earned huge profits in just 4 months of incorporation so it wanted to offer equity shares to its employees. As the Act does not lay down any time limit for the issue of such shares the company may issue such shares.
Thus, Data ltd. may issue the shares provided it fulfils all the other requirements of the Act regarding such issue.

Q19. Walnut Limited has an authorized share capital of 1,00,000 equity shares of 100 per share and an amount of 3 crores in its Share Premium Account as on 31-3-2018. The Board of Directors seeks your advice about the application of share premium account for its business purposes. Please give your advice. **(RTP May**

Answer

According to section 52 of the Companies Act, 2013, where a company issues shares at a premium, whether for cash or otherwise, a sum equal to the aggregate amount of the premium received on those shares shall be transferred to "securities premium account". This account can be utilized only for the purposes specifies u/s 52 and any other use shall amount to reduction of capital. The securities premium account may be applied by the company—

a. towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
b. in writing off the preliminary expenses of the company;

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c. in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
d. in providing for the premium payable on the redemption of any redeemable preference shares or of any debentures of the company; or
e. for the purchase of its own shares or other securities under section 68

In case of:
i. unlisted public companies
ii. private companies
iii. listed companies so far as they do not contradict or conflict with any other regulation framed in this regard by SEBI

and whose financial statement comply with the accounting standards prescribed for such class of companies u/s 133 shall utilize it for
a) towards the issue of unissued shares of the company to the members of the company as fully paid bonus shares;
b) in writing off the expenses of, or the commission paid or discount allowed on, any issue of shares or debentures of the company;
c) for the purchase of its own shares or other securities under section 68

Q20. Misha India Ltd. owed to Sunil 1,000. On becoming this debt payable, the company offered Sunil 10 shares of 100 each in full settlement of the debt. The said shares were fully paid and were allotted to Sunil.
Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013 **(RTP May18) (MTP Aug 18)**

Answer

Under section 62 of the Companies Act, 2013 where at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, either for cash or for a consideration other than cash, such share may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by the valuation report of a registered valuer subject to such conditions as may be prescribed.

In the present case, Misha India Ltd owed money to Sunil a sum of 1,000. The company offered shares to Sunil for payment of the debt. The company is empowered to allot shares in settlement of a debt provided the company passes a special resolution authorizing such issue. Further the issue is for consideration other than cash the shares must be valued by a registered valuer.

Thus, misha Ltd. can allot the shares to Sunil in full settlement of the debt provided it had passed a special resolution and the shares are valued by a registered valuer.

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Q21. ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

	Amount
Equity Share Capital (3.00 lakhs equity shares of 10 each)	30.00 lakhs
Free Reserves	5.00 lakhs
Securities Premium Account	3.00 lakhs
Capital Redemption Reserve Account	4.00 lakhs
Revaluation Reserve Account	3.00 lakhs

Directors of the company seeks your advice in following cases:

i. Whether company can give bonus shares in the ratio of 1:3?

ii. What if company decide to give bonus shares in the ratio of 1:2? **(Nov 18)**

Answer

As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members out of—

i. its free reserves;

ii. the securities premium account; or

iii. the capital redemption reserve account:

Issue of bonus shares shall not be made by capitalising reserves created by the revaluation of assets.

In the given case, ABC Ltd. has issued 3,00,000 equity shares of 10 easch. The company proposes to issue bonus shares. The total amount of fund available for such issue is 12 lakhs (i.e. 5.00+3.00+4.00). So the company can issue bonus shares upto the value of 12 lakhs.

i. For issue of bonus shares in the ratio of 1:3 the total fund required shall be 10 lakhs (1/3 of 30.00 lakh) which is well within the limit of available amount of ` 12 lakhs. So, ABC Limited can go ahead with the bonus issue in the ratio of 1:3.

ii. In case ABC Limited intends to issue bonus shares in the ratio of 1:2, there will be a requirement of 15 lakhs (½ x 30.00 lakh). Here in this case, the company cannot go ahead with the issue of bonus shares in the ratio of 1:2, since the requirement of 15 Lakhs is exceeding the available eligible amount of 12 lakhs.

Q22. MN Ltd. is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2017 shows the following position:

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Authorized Share Capital (25,00,000 equity shares of 10/- each)	2,50,00,000
Issued, Subscribed & Paid up capital (10,00,000 equity shares of face value of 10/- each, fully paid up)	1,00,00,000
Free Reserves	3,00,00,000

The Board of Directors are proposing to declare a bonus issue of 1share for every 2 shares held by the existing shareholders. The Board wants to know the conditions and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Advise. **(Nov17)**

Answer

As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members out of—

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

Issue of bonus shares shall not be made by capitalising reserves created by the revaluation of assets.
For such capitalization of profits the company:

i. must be authorised by its Articles;
ii. has, on the recommendation of the Board, been authorised in the general meeting of the company;
iii. it has not defaulted in payment of interest or principal in respect of fixed deposits or debt securities issued by it;
iv. has not defaulted in respect of payment of statutory dues of the employees, such as, contribution to provident fund, gratuity and bonus;
v. the partly paid-up shares, if any outstanding on the date of allotment, are made fully paid-up;
vi. complies with such conditions as may be prescribed
vii. bonus shares cannot be issued in lieu of dividend

In the above case, the Board of Directors of MN Ltd. propose to declare 1 bonus share for every 2 shares. The total number of shares is 25,00,000, so the total number of bonus shares shall be12,50,000 (1/2 of 25,00,000). The total funds required for this issue is 1,25,00,000. The total funds available with the company for such issue is 4,00,00,000 (1,00,00,000 + 3,00,00,000). Hence the company has sufficient funds for the issue of such bonus shares.

i. Thus MN Ltd. can issue 1 bonus share for every 2 shares after complying with the above provisions.

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Q23. A company cannot issue shares at a discount as per Section 53 of the Companies Act, 2013". Explain the exception to this provision, if any, with reference to Companies Act, 2013. **(Nov 18)**

Answer

Under section 53 of the Companies Act, 2013

i. a company cannot issue shares at a discount except by way of sweat equity
ii. any share issued by a company at a discount price shall be void.

However in the following cases a company may issue shares at a discount in the following cases:

i. issue of sweat equity shares u/s 54 if:
   - ✓ the articles of the company authorise
   - ✓ the shares belong to a class of shares already issued
   - ✓ the company has passed a special resolution
   - ✓ the resolution the resolution specifies the number of shares, the current market price, consideration, if any, and the class or classes of directors or employees to whom such equity shares are to be issued
   - ✓ if the shares are listed the issue must comply with the regulations issued by SEBI
ii. A company may issue shares at a discount to its creditors when its debt is converted into shares in pursuance of any statutory resolution plan or debt restructuring scheme in accordance with any guidelines or directions or regulations specified by the Reserve Bank of India under the Reserve Bank of India Act, 1934 or the Banking (Regulation) Act, 1949

Q24. Shyam Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Jaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached XYZ Ltd. for subscribing to the shares of the Company for expansion purposes. Can Shyam Dairy Ltd. issue shares only to XYZ Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions. **(Nov 17)**

Answer

According to Section 62 of the Companies Act, 2013 if at any time, a company having a share capital proposes to increase its subscribed capital by the issue of further shares, such shares should be offered to the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares. If the existing shareholders refuse to take up the shares the Board may dispose the shares in any manner they deem fit which is not disadvantageous to the shareholders or the company.

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In the above case Shyam Dairy Ltd. wanted to set up a new unit and was in need of capital for the same. The existing shareholders refused to take up the shares due to paucity of funds. The company approached XYZ Ltd. to subscribe for the shares of the company. As the members had refused to take up the shares of the company the Board may offer the shares to any person if it is not disadvantageous to the shareholders or the company.

Thus,Shyam Dairy Ltd. may offer the shares to XYZ Ltd.

Q25. ABC Company Ltd. is holding 46% of total equity shares in SVS Company Ltd. The Board of Directors of SVS Company Ltd. (incorporated on January 1st, 2014) decided to raise the share capital by issuing further Equity shares. The Board of Directors resolved not to offer any shares to ABC Company Ltd. on the ground that it was already holding a high percentage of the total number of shares already issued, in SVS Company Ltd. The Articles of Association of SVS Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1st 2014 new shares were offered to all the shareholders except ABC Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SVS Company Limited of not offering any further shares to ABC Company Limited. **(May 17)**

Answer

As per section 62 of the Companies Act, 2013 if, at any time, a company brings a further issue of its shares such shares must be offered to the existing equity shareholders of the company in proportion to the capital paid up on those shares. The company cannot ignore a section of the existing shareholders and the offer of shares must be made to every existing equity shareholder in proportion to their holdings.

In the above, case SVS Company Ltd. brings a further issue of its shares. The company makes the offer to the existing shareholders except one of the equity shareholder ABC Company Ltd. The reason for not offering the shares to ABC Company Ltd. was that ABC Company Ltd. was already holding a high percentage of shares in SVS Company Ltd. (46%). The company cannot exclude any existing shareholder and make the offer to the rest.

Thus, SVS Company Ltd.'s decision not to offer any further shares to ABC Company Ltd. on the ground that ABC Company Ltd. already held a high percentage of shareholding in SVS Company Ltd., is not valid.

Q26. Explain the conditions and the manner in which a company may issue Global Depository Receipts in a foreign country. **(Nov 18)**

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Answer

As per section 2(44) "Global Depository Receipt" means any instrument in the form of a depository receipt, by whatever name called, created by a foreign depository outside India and authorised by a company making an issue of such depository receipts;
As per section 41 read with Companies (Issue of Global Depository Receipts) Rules, 2014 a company may issue depository receipts in any foreign country by fulfilling the following conditions:

1. The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.
2. The company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting.
3. The depository receipts shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of a domestic custodian bank.
4. The company shall ensure that all the applicable provisions of the Scheme and the rules or regulations or guidelines issued by the Reserve Bank of India are complied with before and after the issue of depository receipts.
5. The company shall appoint a merchant banker or a practicing chartered accountant or a practising cost accountant or a practicing company secretary to oversee all the compliances relating to issue of depository receipts. The compliance report shall be placed at the meeting of the Board of Directors of the company or of the committee of the Board of directors authorised by the Board in this regard to be held immediately after closure of all formalities of the issue of depository receipts:

Manner for issue of depository receipts.–

1. The depository receipts can be issued by way of public offering or private placement or in any other manner prevalent abroad and may be listed or traded in an overseas listing or trading platform.
2. The depository receipts may be issued against issue of new shares or may be sponsored against shares held by shareholders of the company in accordance with such conditions as the Central Government or Reserve Bank of India may prescribe or specify.
3. The underlying shares shall be allotted in the name of the overseas as depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.

Q27. Write short notes on the following in respect of the provisions of the Companies Act, 2013 creation of debenture redemption reserve account. **(MTP Aug 18)**

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Answer

According to section 71 of the Companies Act, 2013, where debentures are issued by a company under this section, the company shall create a debenture redemption reserve account out of the profits of the company available for payment of dividend and the amount credited to such account shall not be utilised by the company except for the redemption of debentures.

Q28. What are the provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee' by a company? **(Nov 16)(MTP Aug 18)**

Answer

Where a company issues secured debentures the company shall not make such an issue without appointing a debenture trustee. Under section 71 of the Companies Act, 2013, a company shall not issue a prospectus or make an offer or invitation to the public or to its members exceeding five hundred for the subscription of its debentures, unless the company has, before such issue or offer, appointed one or more debenture trustees and the conditions governing the appointment of such trustees shall be such as may be prescribed. A debenture trustee shall take steps to protect the interests of the debenture holders and redress their grievances in accordance with the prescribed rules. As per Companies (Share Capital and Debentures) Rules, 2014 before the appointment of debenture trustee or trustees, a written consent shall be obtained from such debenture trustee or trustees proposed to be appointed and a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures.

i. As per the Rules a person shall not be appointed as a debenture trustee, if he – Beneficially holds shares in the company;
ii. 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;
iii. Is beneficially entitled to moneys which are to be paid by the company otherwise than as remuneration payable to the debenture trustee;
iv. Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
v. Has furnished any guarantee in respect of the principal debts secured by the debentures or interest thereon;
vi. 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;
vii. Is a relative of any promoter or any person who is in the employment of the company as a director or key managerial personnel.

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Q29. What do you mean by 'Pari Passu' clause in a debenture? State the particulars that are required to be filed with the Registrar of Companies in case such debentures are secured by way of a charge on certain immovable assets of the Company. **(Nov 17)**

Answer

The term "pari passu" means equal ranking. Pari Passu clause in a debenture means that all the debentures of that particular series are to be paid rateably. If the security is insufficient to satisfy the whole debts secured by the series of debentures, the amounts of debentures will abate proportionately. If this clause is not included, the debentures will rank in priority for payment in accordance with the date of issue, and if they are all issued on the same date they will be payable according to their numerical order.
A company, however, cannot issue a new series of debentures so as to rank 'pari passu' with any prior series unless the power to do so is expressly reserved and contained in the document of offer.

Q30. State the differences between the debenture and shares. **(Nov 18)**

Answer

Following are the differences between shares and debentures:

Shares	**Debentures**
Shares are a part of capital of the company	Debentures Constitute a loan
The shareholders are the owners of the company	Denture holders are creditors.
Shareholders generally enjoy voting right.	Debenture holders do not have any voting right.
Dividend is paid to shareholders only out of profits of the company.	Interest on debenture is payable even if there are no profits.
Shares do not carry any such charge.	Debentures generally have charge on the assets of the company.
The dividend may vary from year to year.	The rate of interest is fixed in the case of debenture.
Dividend on shares do not get preference over interest	Fixed amount of interest on debenture gets priority over dividend on shares.

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4.Acceptance of Deposits by Companies

Q1. Define the term 'deposit' under the provisions of the Companies Act, 2013 and comment with relevant provisions that the following amount received by a company will be considered as deposit or not;

i. 5,00,000 raised by Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on a recognised stock exchange as per applicable regulations made by Securities and Exchange Board of India.
ii. 2,00,000 received from Mr. T, an employee of the company who is drawing annual salary of 1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit.
iii. Amount of 3,00,000 received by a private company from a relative of a Director, declared by the depositor as out of gift received from his mother.

(Nov19) (MTP May 20)

Answer

According to section 2 (31) of the Companies Act, 2013, the term 'deposit' includes any receipt of money by way of deposit or loan or in any other form, by a company, but does not include such categories of amount as prescribed in the Rule 2 (1) (c) of the Companies (Acceptance of deposit) Rules, 2014, in consultation with the Reserve bank of India.

i. In the first case, where 5,00,000 raised by the Rishi Ltd. through issue of non-convertible debenture not constituting a charge on the assets of the company and listed on recognised stock exchange as per the applicable regulations made by the SEBI, will not be considered as deposit in terms of sub-clause (ixa) of the said rule.
ii. In the second case, 2,00,000 was received from Mr. T, an employee of the company drawing annual salary of1,50,000 under a contract of employment with the company in the nature of non-interest bearing security deposit. This amount received by company from employee, Mr. T will be considered as deposit in terms of sub-clause (x) of the said rule, as amount received is more than his annual salary under a contract of employment with the company in the nature of non-interest bearing security deposit.
iii. In the third case, amount of 3,00,000 received by a private company from a relative of a Director, declaring details of the amounts so deposited as out of gift received from his mother. This amount received by the private Company will not be considered as deposit in terms of sub-clause (viii) of the said rule. Here as per the requirement, the relative of the director of the private company, from whom

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money is received, furnished the declaration in writing to the effect that the amount is given out of gift received from his mother and not being given out of funds acquired by him by borrowing or accepting loans or deposits from others.

Q2. Ashish Ltd. having a net-worth of 80 crores and turnover of 30 crores wants to accept deposits from public other than its members. Referring to the provisions of the Companies Act, 2013, state the conditions and the procedures to be followed by Ashish Ltd. for accepting deposits from public other than its members. **(RTP May19) (Nov 17)**

Answer

According to section 76 of the Companies Act, 2013, a public company, having

- ✓ net worth of not less than 100 crore rupees or
- ✓ turnover of not less than 500 crore rupees,

and which has obtained the prior consent by a special resolution and filed it with the Registrar of Companies before making any invitation to the Public for acceptance of deposit can accept deposits from persons other than its members.
However, an eligible company, which is accepting deposits within the limits specified under 180 (1) (c) may accept deposits by means of an ordinary resolution.
The company must comply with the provision of section 73 and the Rules laid down by the Central Government in consultation with the Reserve Bank of India.

As per section 73 read along with Companies (Acceptance of Deposits) Rules, 2014, for accepting the deposits the company has to fulfill the following conditions:

a) issue a circular to its members including therein a statement showing
    - the financial position of the company,
    - the credit rating obtained,
    - the total number of depositors and
    - the amount due towards deposits in respect of any previous deposits accepted by the company and
    - such other particulars in such form and in such manner as may be prescribed;

b) file a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
c) depositing, on or before 30th April each year, a sum not less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;
d) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the

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company made good the default and a period of five years had lapsed since the date of making good the default; and

e) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ''unsecured deposits'' and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. The security shall be created within 30 days from the date of acceptance of the deposits.

f) The company shall obtain a rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency and the rating shall be obtained for every year during the tenure of deposits.

In the above case Ashish Ltd. has a net worth of 80 crores and turnover of 30 crores As both the turnover and net worth is less than the prescribed limits it cannot accept deposit from public other than its members. If it fulfills the eligibility it can accept deposits from the public after fulfilling the conditions specified.

Q3. State the procedure to be followed by companies to accept deposits from its members according to the Companies Act, 2013. What are the exemptions available to the Private Limited Companies? **(Nov 18)**

Answer

As per section 73(2) of the Companies Act, 2013, a company may by passing a resolution at the meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members subject to the fulfillment of the following conditions:

a) issue a circular to its members including therein a statement showing
   - the financial position of the company,
   - the credit rating obtained,
   - the total number of depositors and
   - the amount due towards deposits in respect of any previous deposits accepted by the company and
   - such other particulars in such form and in such manner as may be prescribed;

b) file a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;

c) depositing, on or before 30th April each year, a sum not less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account. This account shall be used only for repayment of deposits.

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d) certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; and

e) providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ‘‘unsecured deposits’’ and shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. The security shall be created within 30 days from the date of acceptance of the deposits.

Every deposit accepted by a company shall be repaid with interest in accordance with the terms and conditions of the agreement. Where a company fails to repay the deposit or part thereof or any interest thereon, the depositor concerned may apply to the Tribunal for an order directing the company to pay the sum due or for any loss or damage incurred by him as a result of such non-payment and for such other orders as the Tribunal may deem fit.

Exemptions to Private Limited Companies
In case of private company points (a) to (d) above shall not apply to if it-

A. accepts from its members monies not exceeding 100% of aggregate of the paid up share capital, free reserves, and securities premium accounts, or
B. which is a start-up, for five years from the date of its incorporation; or
C. which fulfils all of the following conditions, namely:-
    i. It is not an associate or a subsidiary company of any other company;
    ii. if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
    iii. such 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.

Q4. Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013 **(May 18)**

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Answer

1. Every company accepting deposits shall not issue a circular or advertisement inviting secured deposits unless the company has appointed one or more trustees for depositors for creating security for the deposits.
2. A written consent shall be obtained from the trustee for depositors before their appointment. This shall be stated in the circular.
3. The company shall execute a deposit trust deed in DPT-2 at least seven days before issuing the circular or circular in the form of advertisement.
4. A person shall not be appointed as a depositor if:
    i. is a director, key managerial personnel or any other officer or an employee of the company or of its holding, subsidiary or associate company or a depositor in the company;
    ii. is related to any person specified in clause (a)
    iii. is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
    iv. has any material pecuniary relationship with the company;
    v. has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
5. The trustee shall not be removed from office after the issue of circular or advertisement and before the expiry of his term except with the consent of all the directors present at a meeting of the board. In case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Q5. Referring to the provisions of the Companies Act, 2013, examine the validity of the following:
ABC Limited having a net worth of 120 crore rupees wants to accept deposit from its members. They have approached you to advise them regarding that if they fall within the category of eligible company, what special care has to be taken while accepting such deposit from members. **(MTP Mar 19)**

Answer

As per section 76 read with Companies (Acceptance of Deposits) Rules, 2014 an "Eligible company" means a public company having a

- ✓ net worth of not less than 100 crore rupees or
- ✓ turnover of not less than 500 crore rupees

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and which has obtained the prior consent by a special resolution and filed it with the Registrar of Companies before making any invitation to the Public for acceptance of deposit can accept deposits from persons other than its members.
However, an eligible company, which is accepting deposits within the limits specified under 180 (1) (c) may accept deposits by means of an ordinary resolution.
The eligible company shall not accept or renew deposits (amount of deposit to be accepted and the deposits outstanding) exceeding 10% of the aggregate of paid up capital, free reserves and securities premium from its members.
In the above case ABC Limited is a public company having a net worth of 120 crore. As per the definition of an eligible company if the company fulfils any one of the condition it shall be and eligible company. Such company can accept deposits from its members as well as persons other than its members.

Thus, ABC Ltd. is an eligible company and while accepting deposits from its members it must ensure that acceptance deposits from members does not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

Q6. State, with reasons, whether the following statements are True or False?

i. ABC Private Limited may accept the deposits from its members to the extent of 50.00 Lakh, if the aggregate of its paid-up capital; free reserves and security premium account is 50.00 Lakh.
ii. A Government Company, which is eligible to accept deposits under Section 76 of the Companies Act, 2013 cannot accept deposits from public exceeding 25% of the aggregate of its paid- up capital, free reserves and security premium account. **(Nov 19)**

Answer

1. As per the provisions of Section 73(2) of the Companies Act, 2013 read with Rule 3 of the Companies (Acceptance of Deposits) Rules, 2014, a company shall accept any deposit from its members, together with the amount of other deposits outstanding as on the date of acceptance of such deposits not exceeding 35% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company. Provided that a private company may accept from its members monies not exceeding one hundred per cent of aggregate of the paid up share capital, free reserves and securities premium account and such company shall file the details of monies so accepted to the Registrar in such manner as may be specified.
   Therefore, the given statement of eligibility of ABC Private Ltd. to accept deposits from its members to the extent of 50.00 lakh is True.

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2. A Government company is not eligible to accept or renew deposits under section 76, if the amount of such deposits together with the amount of other deposits outstanding as on the date of acceptance or renewal exceeds 35% of the aggregate of its Paid-up share capital, free Reserves and securities premium account of the company.

Therefore, the given statement prescribing the limit of 25% to accept deposits is False.

Q7. Atul Ltd. has passed a resolution in its general meeting regarding accepting deposits from its members. Can this company accept deposits from its members under the Companies Act, 2013? If yes, state the conditions to be fulfilled regarding this.

(May 16)

Answer

According to Section 73 of the Companies Act, 2013 a company may accept deposits from its members. The company must pass a resolution at the general meeting for such acceptance and must accept it subject to the Rules as may be prescribed in consultation with the Reserve Bank of India and subject to the fulfillment of the following conditions :-

1. issue a circular to its members including therein a statement showing
   - ✓ the financial position of the company,
   - ✓ the credit rating obtained,
   - ✓ the total number of depositors and
   - ✓ the amount due towards deposits in respect of any previous deposits accepted by the company and
   - ✓ such other particulars in such form and in such manner as may be prescribed;
2. file a copy of the circular along with such statement with the Registrar within 30 days before the date of issue of the circular;
3. depositing, on or before 30th April each year, a sum not less than 20% of the amount of its deposits maturing during the following financial year and kept in a scheduled bank in a separate bank account to be called deposit repayment reserve account;
4. certifying that the company has not committed any default in the repayment of deposits accepted either before or after the commencement of this Act or payment of interest on such deposits and where a default had occurred, the company made good the default and a period of five years had lapsed since the date of making good the default; and
5. providing security, if any for the due repayment of the amount of deposit or the interest thereon including the creation of such charge on the property or assets of the company. Where a company does not secure the deposits or secures such deposits partially, then, the deposits shall be termed as ‘‘unsecured deposits’’ and

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shall be so quoted in every circular, form, advertisement or in any document related to invitation or acceptance of deposits. The security shall be created within 30 days from the date of acceptance of the deposits.

Hence Atul Ltd., can accept deposits from its members by following the above procedure.

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5.Registration of Charges

Q1. Mr Akshat entered into an agreement for purchasing a commercial property in Delhi belonging to NRT Ltd. At the time of registration, Mr Akshat comes to know that the title deed of the company is not free and the company expresses its inability to get the title deed transferred in the name of Mr Akshat saying that he ought to have had the knowledge of charge created on the property of the company. Examine with the help of 'Notice of a charge', whether the contention of NRT LTD. is correct?

(RTP May 18 May 17)(MTP May 20)

Answer

According to section 80 of the Companies Act, 2013, where any charge on any property or assets of a company or any of its undertakings is registered any person acquiring such property, assets, undertakings or part thereof or any share or interest therein shall be deemed to have notice of the charge from the date of such registration. In the above case NRT Ltd. had a property in Delhi which was charged and the charge is registered. Mr. Akshat entered into a contract to purchase this property. At the time of registration Mr. Akshat comes to know about the charge and the company expresses its inability to transfer the title deeds in the name of Akshat. As per the Act, Mr. Akshat must have knowledge of the charge on the assets of the company.
Thus, the contention of NRT Ltd. is correct and Akshat must have known about the charge.

Q2. What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept?, **(Nov 18)**

Answer

Registration of charge:
According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge to register the particulars of charge with the Registrar within 30 days. The charge whether created within or outside India must be registered. Further the charge may be created on its property or assets or any of its undertaking. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge allow the registration of the same

i. In case of charge created before the commencement of Companies (Amendment) Ordinance, 2019 within a period of 300 days of such creation. If the company fails to register within 300 days within 6 months from the date of commencement Companies (Amendment) Ordinance, 2019 with additional fees.

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ii. In case of charge created after the commencement of Companies (Amendment) Ordinance, 2019within a period of 60 days from the date of creation of the charge. If the fails to register within 60 days within a further period of 60 days after the payment of advalorem fees.

Q3. Explain the term 'charge'. State the circumstances under which necessity to create a charge arises. What is the time limit for registration of charge with the registrar?

(May 18)

Answer

According to section 2(16) of the Companies Act, 2013 "charge" has been defined as an interest or lien created on the property or assets of a company or any of its undertakings or both as security and includes a mortgage.

Necessity for creation of charge:

Generally, companies depend on share capital and borrowed capital for funding their projects. When the company raises money through borrowings, they may issue debentures or by obtaining loans from banks/ financial institutions. These banks/ financial institutions need a surety regarding the repayment of their funds. Thus, they create a mortgage or hypothecation on the assets of the company for safe and secured lending of the funds. This creation of right on the assets and properties of the borrower companies, is known as a charge on assets.

Once charge is registered and filed, it becomes information in public domain as to how much company has borrowed against its assets and from whom.

Time limit for registration of charge with the registrar:

According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge to register the particulars of charge with the Registrar within 30 days. The charge whether created within or outside India must be registered. Further the charge may be created on its property or assets or any of its undertaking. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge allow the registration of the same

i. In case of charge created before the commencement of Companies (Amendment) Ordinance, 2019 within a period of 300 days of such creation. If the company fails to register within 300 days within 6 months from the date of commencement Companies (Amendment) Ordinance, 2019 with additional fees.

ii. In case of charge created after the commencement of Companies (Amendment) Ordinance, 2019within a period of 60 days from the date of creation of the charge. If the fails to register within 60 days within a further period of 60 days after the payment of advalorem fees.

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Q4. Mind Limited realised on 2nd May, 2018 that particulars of charge created on 12th March, 2018 in favour of a Bank were not filed with Registrar of Companies for Registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2018 instead of 12th March, 2018? Examine with reference to the relevant provisions of the Companies Act, 2013. **(Nov 16) (MTP Aug 18)**

Answer

According to section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge to register the particulars of charge with the Registrar within 30 days. The charge whether created within or outside India must be registered. Further the charge may be created on its property or assets or any of its undertaking. The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge allow the registration of the same

i. In case of charge created before the commencement of Companies (Amendment) Ordinance, 2019 within a period of 300 days of such creation. If the company fails to register within 300 days within 6 months from the date of commencement Companies (Amendment) Ordinance, 2019 with additional fees.
ii. In case of charge created after the commencement of Companies (Amendment) Ordinance, 2019within a period of 60 days from the date of creation of the charge. If the fails to register within 60 days within a further period of 60 days after the payment of advalorem fees.

In the above case the company created a charge on 12th Mar, 2018 which was not registered till 2nd May, 2018. As the time period for registration of charge has already lapsed, the company may apply for extension of time to the Registrar.

Thus Mind Ltd. must apply to the Registrar for extension of time to register thee charge. There would be no change in the situation if the charge was created on 12th Feb, 2018.

Q5. Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges. **(MTP Aug 18)**

Answer

The Central Government on being satisfied that—

a) the omission to file with the Registrar the particulars of any charge created by a company or any charge subject to which any property has been acquired by a company or any modification of such charge; or
b) the omission to register any charge within the time required under this Chapter or the omission to give intimation to the Registrar of the payment or the satisfaction of a charge, within the time required under this Chapter; or

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c) the omission or mis-statement of any particular with respect to any such charge or modification or with respect to any memorandum of satisfaction or other entry

was accidental or due to inadvertence or some other sufficient cause or it is not of a nature to prejudice the position of creditors or shareholders of the company; or

d) on any other grounds, it is just and equitable to grant relief,

it may on the application of the company or any person interested and on such terms and conditions as it may seem to the Central Government just and expedient, direct that the time for the filing of the particulars or for the registration of the charge or for the giving of intimation of payment or satisfaction shall be extended or, as the case may require, that the omission or mis-statement shall be rectified.
Where the Central Government extends the time for the registration of a charge, the order shall not prejudice any rights acquired in respect of the property concerned before the charge is actually registered.

Condonation of delay and rectification of register of charges.

1. According to **Rule 12 of the Companies (Registration of Charges) Rules, 2014** *:* Where the instrument creating or modifying a charge is not filed within a period of 300 days from the date of its creation (including acquisition of a property subject to a charge) or modification and where the satisfaction of the charge is not filed within 30 days from the date on which such payment of satisfaction, the Registrar shall not register the same unless the delay is condoned by the Central Government.
2. The application for condonation of delay and for such other matters covered above shall be filed with the Central Government along with the fee.
3. The order passed by the Central Government shall be required to be filed with the Registrar along with the fee as per the conditions stipulated in the said order.

Q6. DN Limited hypothecated its plant to a Nationalised Bank and availed a term loan. The Company registered the charge with the Registrar of Companies. The Company settled the term loan in full, The Company requested the Bank to issue a letter confirming the settlement of the term loan. The Bank did not respond to the request. State the relevant provisions of the Companies Act, 2013 to register the satisfaction of charge in the above circumstance. State the time frame up to which the Registrar of Companies may allow the Company to intimate satisfaction of charges. **(Nov 19)**

Answer

Section 82 of the Companies Act, 2013, requires a company to give intimation of payment or satisfaction in full of any charge earlier registered, to the Registrar in the prescribed form. The intimation needs to be given within a period of 30 days from the date of such payment or satisfaction.

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However the Registrar may, on an application by the company or the charge holder, allow such intimation of payment or satisfaction to be made within a period of 300 days of such payment or satisfaction on payment of prescribed additional fees.

Q7. What are the powers of Registrar to make entries of satisfaction and release of charges in absence of intimation from company. Discuss as per the provisions of the Companies Act, 2013. **(MTP Oct 18, Mar 19)**

Answer

As per section 83 of the Companies Act, 2013 read with Companies (Registration of Charges) Rules, 2014 if the registrar has not received any intimation of satisfaction and release of charge the registrar has the power to make entries of satisfaction and release of charges.

1. The Registrar may, on evidence being given to his satisfaction with respect to any registered charge,—
    a. that the debt for which the charge was given has been paid or satisfied in whole or in part; or
    b. that part of the property or undertaking charged has been released from the charge or has ceased to form part of the company's property or undertaking,

enter in the register of charges a memorandum of satisfaction in whole or in part, or of the fact that part of the property or undertaking has been released from the charge or has ceased to form part of the company's property or undertaking.

2. The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under section 81.
3. The company shall within a period of thirty days from the date of the payment or satisfaction in full of any charge registered, give intimation of the same to the Registrar along with the fee.
4. Where the Registrar enters a memorandum of satisfaction of charge in full he shall issue a certificate of registration of satisfaction of charge.

Q8. Answer the following in the light of the companies Act, 2013-
MNC Limited realised on 2nd May, 2019 that particulars of charge created on 12th March, 2019 in favour of a Bank were not registered with the Registrar of Companies. What procedure should the company follow to get the charge registered? Would the procedure be different if the company realised its mistake of not registering the charge on 7th June, 2019 instead of 2nd May, 2019? Explain with reference to the relevant provisions of the Companies Act, 2013. **(MTP May 20)**

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Answer

As per section 77 of the Companies Act, 2013 a charge created after 02-11-2018 (i.e. the date of commencement of the Companies (Amendment) Second Ordinance, 2019) shall be registered within 30 days of creation of charge. The company shall send the particulars of the charge together with the instrument, if any, by which the charge is created or evidenced, or a copy thereof, duly verified by a certificate to the Registrar. If the charge is not registered within 30 days the Registrar is empowered to extend the period of 30 days by another 30 days (i.e. sixty days from the date of creation) on payment of prescribed additional fee. Further if the charge is not registered within the extended 30 days the company shall be given another opportunity for registration of charge by granting a further period of sixty days on payment of advalorem fees.

In the above case MNC Limited created a charge on 12th March . on 2nd May the company realised that the charge was not registered. The company must immediately file the particulars of charge with the Registrar through making an application that it had sufficient cause for not filing the particulars of charge within 30 days of its creation.

If the company realises its mistake of not registering the charge on 7th June, 2019, a period of sixty days has already expired from the date of creation of charge. The company is required to make an application to the Registrar in this respect giving sufficient cause for non-registration of charge along with advalorem fee.

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6.Management & Administration

Q1. M/s. Tulip Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.
i. Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
ii. Does Mr. Rich, holding 400 shares of total worth 4000 only, has the right to inspect the Register of Members? **(RTP Nov 18)**

Answer

As per section 94 of the Companies Act, 2013, the registers of members as prepared u/s 88 shall be kept at the registered office of the company. Such Registers may be kept at any other place in India if

i. Approved by a special resolution
ii. in which more than one-tenth of the total number of members entered in the register of members reside and
iii. the Registrar has been given a copy of the proposed special resolution in advance.

The section further states that a member, debenture holder and other security holders or beneficial owners shall have a right to inspect the Registers during the business hours without the payment of any fees.
In the above case M/s Tulip Ltd. had its registered office in Mumbai and the register of members of the company was kept at its registered office. A group of members desired that the Registers be kept in Kolkata. Further such Registers can be inspected by a member during the business hours irrespective of his shareholding in the company.
Thus

i. Tulip Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions if more than one-tenth of the total number of members entered in the register of members reside in Kolkata.
ii. Mr. Rich, who is a shareholder of the company, has a right to inspect the Register of Members during business hours without payment of any fees.

Q2. Due to heavy rains and floods Chennai Handloom Limited was unable to convene annual general meeting upto 30th September, 2017. The company has not filed the annual financial statements or the annual return as the directors of the company are of the view that since the annual general meeting did not take place, the period of 60 days for filing of annual return is not applicable and thus, there is no contravention of

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Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct. **(Nov 18)**

OR

Bazaar Limited called its AGM in order to lay down the financial statements for Shareholders' approval. Due to want of Quorum, the meeting was cancelled. The directors did not file the annual returns with the Registrar. The directors were of the idea that the time for filing of returns within 60 days from the date of AGM would not apply, as AGM was cancelled. Has the company contravened the provisions of Companies Act, 2013? If the company has contravened the provisions of the Act, how will it be penalized? **(May 18)**

Answer

As per the provisions of Section 92 of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within 60 days from the date on which the annual general meeting is held. If no annual general meeting is held in any year, it shall be filed within 60 days from the date on which the annual general meeting should have been held, together with the statement specifying the reasons for not holding the annual general meeting with such fees or additional fees as specified.

In the above case the company could not hold its annual returns on the grounds that the company had not held its meeting and so it was not required to file. As per the Act even if the company does not hold the meeting it shall file with the Registrar a copy of the annual return along with a statement specifying the reasons for not holding the annual general meeting within 60 days from the date on which the annual general meeting should have been held.

Hence, the contention of directors is not correct.

Q3.Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
Mr. Bheem is holding 500 shares (of ZYZ Limited) of total worth Rs. 5000 only. Advise, whether he has the right to inspect the Register of Members? **(MTP Mar 19)**

Answer

As per section 94(2) of the Companies Act, the registers and their indices, except when they are closed under the provisions of this Act, and the copies of all the returns shall be open for inspection by any member, debenture-holder, other security holder or beneficial owner, during business hours without payment of any fees and by any other person on payment of such fees as may be prescribed. The right to inspect the register by a member is available irrespective of the number f shares held by him.
In the above case Mr. Bheem holding 500 shares of the company has a right to inspect the Register of Members during business hours without payment of any fees, as per the provisions of this section

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Q4. As per the provisions of the Companies Act, 2013, every company is required to file with the Registrar of Companies, the Annual Return as prescribed in section 92, in Form MGT -7. Explain the particulars required to be contained in it. **(May 18)**

Answer

As per section 92 read along with Companies (Management and Administration) Rules, 2014 every company is required to file with the Registrar of Companies, the annual return in Form MGT – 7.
The particulars contained in an annual return, to be filed by every company are as follows–

i. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies.
ii. Its shares, debentures and other securities and shareholding pattern
iii. Its members and debenture-holders along with the changes therein since the close of the previous financial year
iv. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year.
v. Meetings of members or a class thereof, Board and its various committees along with attendance details
vi. Remuneration of directors and key managerial personnel
vii. Penalty or punishment imposed on the company, its directors or officers and details of compounding of offences and appeals made against such penalty or punishment. as may be prescribed.
viii. Matters relating to certification of compliances, disclosures
ix. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and % of share holding held by them.
x. Such other matters as may be prescribed.

Q5. M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata want to keep the register of members at Kolkata.

i. Explain with provisions of Companies Act, 2013, whether the company can keep the Registers and Returns at Kolkata.
ii. Does Mr. Ranjit, Director (but not a shareholder) of the company have the right to inspect the Register of Members? **(May 18)**

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Answer

As per section 94 of the Companies Act, 2013, the registers of members as prepared u/s 88 shall be kept at the registered office of the company. Such Registers may be kept at any other place in India if

i. Approved by a special resolution
ii. in which more than one-tenth of the total number of members entered in the register of members reside and
iii. the Registrar has been given a copy of the proposed special resolution in advance.

The section further states that a member, debenture holder and other security holders or beneficial owners shall have a right to inspect the Registers during the business hours without the payment of any fees. Any other person may also inspect such registers on the payment of the fees.

In the above case M/s Techno Ltd. had its registered office in Mumbai and the register of members of the company was kept at its registered office. A group of members desired that the Registers be kept in Kolkata. Such registers can be inspected by any person other than the members, debenture holders and other security holders or other beneficial owners on the payment of fee.

Thus

i. Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions if more than one-tenth of the total number of members entered in the register of members reside in Kolkata.
ii. Mr. Ranjit, who is a director of the company, may inspect the Register of Members on the payment of fee.

Q6.

Neemrana Infotech Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. **(RTP Nov19)**

OR

EFG Ltd. was incorporated on 1.4.2017. No General Meeting of the company has been held till 30.4.2019. Discuss the provisions of the Companies Act, 2013 regarding the time limit for holding the first annual general meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting.

(RTP May 20)

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Answer

According to Section 96 of the Companies Act, 2013, every company shall be required to hold its first annual general meeting within a period of 9 months from the closing of its first financial year. The Registrar may, grant an extension of not more than 3 months for holding the meeting for any special reason. However no extension shall be granted for the first meeting.

According to section 99, if any default is made in holding a meeting of the company in accordance with section 96, the company and every officer of the company who is in default shall be punishable with fine which may extend to one lakh rupees and in the case of a continuing default, with a further fine which may extend to five thousand rupees for every day during which such default continues.

In the given case Neemrana Infotech Ltd. was incorporated on 1.4.2017. The financial year of the company shall be 1.4.2017 to 31st Mar, 2018the first meeting shall be held within 9 months from the end of the financial year i.e. by 31st Dec, 2018. The registrar can grant extension but as this is the first meeting no extension can be granted.

Thus, the company and its directors will be liable under section 99 of the Companies Act, 2013 for the default if the annual general meeting was held after 31st December, 2018.

Q7. Rijwan Limited, a listed company, is in the business of garment manufacturing and has its registered office at 123, N Tower, Commercial Beta Complex, Biwadi, Rajasthan. The company has called its 6th Annual General Meeting at 3 PM on 22nd August, 2019 at Ansal Plaza, Bhiwadi. Some of the members of the company have opposed to calling of the meeting at Ansal Plaza. The company has approached you to advise them in this regard. Suppose, Rijwan Limited is an unlisted company and wants to call their 6th AGM at Jaipur, will your answer differ. **(RTP Nov 19)**

Answer

According to section 96(2) of the Companies Act, 2013, every annual general meeting shall be called during business hours, that is, between 9 a.m. and 6 p.m. on any day that is not a National Holiday and shall 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 situate. However in case of an unlisted company the 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.

In the above case Rijwan Ltd., a listed company, decides to hold its meeting within the same city but not at its registered office. Some members object that the decision is not valid.

Thus, the company is right in calling the Annual General meeting at Ansal Plaza.

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If the company is an unlisted company the annual general meeting may be held at any place in India if consent of all the members is taken.

Q8. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
The Board of Directors of Shrey Ltd. called an extraordinary general meeting upon the requisition of members. However, the meeting was adjourned on the ground that the quorum was not present at the meeting. Advise the company.

(RTP Nov 18) (MTP Mar 19)

Answer

According to section 100 of the Companies Act 2013, where the members have made a requisition to call an EGM the Board of directors must call such meeting. For a meeting to be valid quorum must be present. Quorum is the minimum number of members present to form a valid meeting.

As per Section 103 of the Companies Act, 2013, if the quorum is not present within half an hour from the appointed time for holding a meeting of the company, the meeting, if called on the requisition of members, shall stand cancelled.

In the above case the Board of Shrey Ltd. had called an EGM on a requisition made by the members. The quorum was not present and the meeting was adjourned. When the meeting is called on a requisition and the quorum is not present the meeting shall be cancelled.

Therefore, the meeting shall stand cancelled and the decision taken by the Board of Directors to adjourn it is not proper.

Q9. Primal Limited is a company incorporated in India. It owns two subsidiaries- Privy Limited (in which it holds 75% shares) and Malvy Limited (a wholly owned subsidiary). Both the subsidiaries are incorporated outside India. The Board of Directors of Primal Limited intends to call an Extraordinary General Meeting (EGM) of Primal Limited on urgent basis.
Advise the Board of Directors on the following:

i. EGM be held in India
ii. EGM be held in Netherlands **(RTP May 19)**

Answer

According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company. An extraordinary general meeting of the company, other than of the wholly owned subsidiary of a company incorporated outside India, shall be held at a place within India.

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In the above case Primal Ltd. a company incorporated India had two subsidiaries incorporated outside India. In Privy Ltd. it held 75% of the shares and Malvy Ltd. was its wholly owned subsidiary. As Primal Ltd. is incorporated in India as per the provisions of the Act the company can call the EGM anywhere in India.
In the light of the above provisions:

i. The Board of Directors can call the EGM in India.
ii. The Board of Directors cannot call the EGM of Primal Limited outside India as it is a company incorporated in India.

Q10. To remove the Managing Director, 40% members of Tiger Farms Limited submitted requisition for holding an extra-ordinary general meeting. The Company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of the meeting at the registered office of the Company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed.
Examine the validity of the said meeting and the resolution passed therein under the provisions of the Companies Act, 2013. **(Nov 17)**

Answer

As per section 100 of the Companies Act, 2013the Board of Directors must call an EGM on the requisition of a member. In case of a company having share capital the requisition shall be made by such number of members who hold, on the date of requisition, not less than one-tenth of such of the paid-up share capital of the company as on that date carries the right of voting is the stipulation. If the Board fails to call the meeting the requisitionists may themselves call a meeting.

As per the Companies (Management and Administration) Rules, 2014 when the meeting is called by the requisitionists the meeting must be held at the registered office or within the same city, town or village in which the registered office is situated. It was also held in the case of R. Chettiar v. M. Chettiar that where a meeting is called by the requisitionists and the registered office is not made available to them, the meeting may be held anywhere else.

In the above case 40% of the members submitted a resolution for the meeting to be called by the company for the removal of MD. The company failed to call the meeting and so the meeting was held by the requisitionists. On the day of the meeting the registered office was not available and the requisitionists held the meeting elsewhere and passed a resolution removing the MD. Assuming that 40% of the member who made a requisition Hold 40% voting right, the holding of the meeting by them on the company's failure is valid and the resolution passed at such meeting is valid.

Thus, in the given case, since all the above desired provisions are duly complied with, the meeting and the resolution passed at such meeting is valid.

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Q11. Zorab Limited served a notice of General Meeting upon its members. The notice stated that a resolution to increase the share capital of the Company would be considered at such meeting. A shareholder complained that the amount of the proposed increase was not specified in the notice. Is the notice valid?

(RTP May 18) (MTP Oct 18)

Answer

U/s 102 in case of a special business to be transacted at a general meeting the company shall attach to the notice of the meeting a statement setting out the following material facts:

a) the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
   i. every director and the manager, if any;
   ii. every other key managerial personnel; and
   iii. relatives of the persons mentioned in sub-clauses (i) and (ii);
b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

A notice which is sent without the statement is not a valid notice.
In the above case Zorab Ltd. served a notice of the general meeting. One item of special business to be transacted at the meeting was a resolution to increase the share capital of the company but the amount of the proposed increase was not specified in the notice. As it was a special business and the information about the amount was a material fact, the company must have mentioned all the facts and information relating to the business.

Thus, the objection of the shareholder is valid and the notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q12. Prem, a director in a public company, gave in writing to the company that notice for any General Meeting and the Board of Directors' Meeting be sent to him at his address in India only by Registered Mail and for which he paid sufficient money. The company sent two notices to him, of such meetings, by ordinary mail, and under certificate of posting. Prem did not receive the said notices and could not attend the meetings and the proceedings thereof on the ground of improper notice. Decide in the light of the provisions of the Companies Act, 2013:

i. Whether the contention of Prem is valid?
ii. Would you answer be still the same in case Prem remained outside India for two months (when such notices were given and meetings held). **(RTP Nov 17)**

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Answer

As per section 101 of the Companies Act, 2013 the notice of a meeting may be served personally or sent through post to the registered address of the members and, in the absence of any registered office in India, to the address, if there be any within India furnished by him to the company for the purpose of servicing notice to him. Service through post shall be deemed to have effected by correctly addressing, preparing and posting the notice. As per section 20 of the Act if a member specifies to the company a particular mode for service of notice and pays the company the charges to defray such expenses, then the notice must be served on him only in the specified mode. If it is not served in the specified mode it will not be deemed to have been effected.

In the above case Prem who was a director of the company gave in writing to tehe company specifying that the notices of the general and board meeting be sent to him only by a registered mail and has paid the company the money for the expenses. As the money was received by the company the company has an obligation to send notice to him only in the mode he had prescribed. The company sent him a notice by an ordinary mail. As ordinary mail was not the prescribed mode the notice shall be deemed to have been effected.

Thus

i. The contention of Prem shall be tenable, for the reason that the notice was not properly served and meetings held by the company shall be invalid.
ii. Though the company is not bound to send a notice to the foreign address the notice must still be served at his address in India by a registered mail. So the company shall not be liable for not serving him notice to the foreign address.

Q13. Glowing Products Ltd., wishes to sell one of its line of Business and decides to call an extra ordinary general meeting (EGM) and to pass a resolution thereat. State the material facts to be set out in the statement to be annexed to the notice of the EGM on this special business to be transacted at the meeting. **(RTP May 17)**

Answer

As per section 102 of the Companies Act, 2013 the following are the material facts to be set out in the explanatory statement to be annexed to the Notice of EGM of Glowing Products Ltd.:

a) the nature of concern or interest, financial or otherwise, if any, in respect of each items of-
   i. every director and the manager, if any;
   ii. every other key managerial personnel; and
   iii. relatives of the persons mentioned in sub-clauses (i) and (ii);
b) any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

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c) where any item of special business to be transacted at a meeting of the company relates to or affects any other company, the extent of shareholding interest in that other company of every promoter, director, manager, if any, and of every other key managerial personnel of the first mentioned company shall, if the extent of such shareholding is not less than two percent of the paid up share capital of that company, also be set out in the statement.

Q14. The date of approval of financial statements by the Board of Directors of KMP Ltd. is 17th July, 2016 and the date of notice of Annual General meeting (AGM) is 25th August, 2016. Accountant of KMP Ltd. has advised that the time gap between date of approval of financial statements by the Board of Directors and the date of notice of AGM should be 45 days. The Directors have approached you to advise them regarding the same in view of the provisions of Companies Act, 2013. **(RTP May 17)**

Answer

As per section 101 of the Companies Act, 2013 a general meeting of a company may be called by giving at least clear 21 days' notice. However, the Companies Act, 2013 does not prescribe the time limit between the date of approval of financial statements by the Board of Directors of a company and the date of notice of Annual General Meeting.

Hence, in the given question, the Board of directors of KMP Ltd. should ensure that the gap between the board meeting in which the financial statements are approved and the AGM, should have a minimum gap of 21 clear days (in order to ensure at least 21 days' clear notice), unless the meeting is at a shorter notice.

Q15. Madurai Ltd. issued a notice for holding of its Annual general meeting on 7th November 2018. The notice was posted to the members on 16th October 2018. Some members of the company allege that the company had not complied with the provisions of the Companies Act, 2013 with regard to the period of notice and as such the meeting was not valid. Referring to the provisions of the Act, decide:

i. Whether the meeting has been validly called?
ii. If there is a shortfall, state and explain by how many days does the notice fall short of the statutory requirement?
iii. Can the delay in giving notice be condoned? **(Nov 19)**

Answer

According to section 101of the Companies Act, 2013, a company may call a meeting by giving a 21 clear days notice. The word clear means the day of posting and

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the day of meeting are excluded. The notice may be in writing or through electronic mode in such manner as may be prescribed.

Rule 35(6) of the Companies (Incorporation) Rules, 2014, provides that in case of delivery by post, such service shall be deemed to have been effected - in the case of a notice of a meeting, at the expiration of forty eight hours after the letter containing the same is posted.

If the company fails to give a notice 21 clear days before the meeting the meeting shall not be valid. Such shorter notice cannot be condoned.

In the given case Madurai Ltd. sent a notice on 16th Oct for the meeting to be held on 7th Nov. The total period is 19 clear days (15 days in Oct and 6 days in Nov after excluding 48 hours).

Hence,

i. The notice is not valid as it was not a 21 clear days notice.
ii. The notice is short by 2 days.
iii. The Companies Act, 2013 does not provide anything specific regarding the condonation of delay in giving of notice. Hence, the delay in giving the notice calling the meeting cannot be condoned.

Q16.

Om Limited served a notice of General Meeting upon its members. The notice stated that the following resolutions will be considered at such meeting:

i. Resolution to increase the Authorised share capital of the company.
ii. Appointment and fixation of the remuneration of Mr. Prateek as the auditor.

A shareholder complained that the amount of the proposed increase and the remuneration was not specified in the notice. Is the notice valid under the provisions of the Companies Act, 2013? **(Nov 19)**

Answer

Under section 102(2)(b) of the Companies Act, 2013, in the case of any meeting other than an Annual General Meeting, all business transacted thereat shall be deemed to be special business. Further, under section 102(1), an explanatory a statement setting out the following material facts concerning each item of special business to be transacted at a general meeting, shall be annexed to the notice calling such meeting., namely:-

1. the nature of concern or interest, financial or otherwise, if any, in respect of each items, of:
   i. every director and the manager, if any;
   ii. every other key managerial personnel; and
   iii. relatives of the persons mentioned in sub-clauses (i) and (ii);
2. any other information and facts that may enable members to understand the meaning, scope and implications of the items of business and to take decision thereon.

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Section 102 also prescribes ordinary businesses for which explanatory statement is not required.

i. Increase in the Authorized Capital falls under special business. The information about the amount is also a material fact that may enable members to understand the meaning and implication of items of business to be transacted and to take decision thereon. Hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

ii. Appointment and fixation of the remuneration of Mr. Prateek as the auditor is an ordinary business and hence explanatory statement is not required.

However, considering the two resolutions mentioned in the question are to be passed in the same meeting, notice of the meeting is invalid.

Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q17. KMN Ltd. scheduled its annual general meeting to be held on 11th March, 2018 at 11:00 A.M. The company has 900 members. On 11th March, 2018 following persons were present by 11:30 A.M.

- P1, P2 & P3 shareholders
- P4 representing ABC Ltd.
- P5 representing DEF Ltd.
- P6 & P7 as proxies of the shareholders

i. Examine with reference to relevant provisions of the Companies Act, 2013, whether quorum was present in the meeting.

ii. What will be your answer if P4 representing ABC Ltd., reached in the meeting after 11:30 A.M.? In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.

iii. What happens if there is no Quorum in the Adjourned meeting?

(Nov 18) (MTP May 20)

Answer

Quorum is the minimum number of members that should be present at the meeting, to make the meeting valid. According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number, the quorum for the meeting of a Public Limited Company shall be 5 members personally present, if number of members is not more than 1000. The term personally present implies only the person who has a right to vote at the meeting shall be counted.

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As per section 113 if a body corporate is a member of a company and it sends a representative to attend the meeting such representative shall be counted as a member personally present for each such body corporate.

If the quorum is not present within half an hour from the time scheduled for the meeting the meeting shall be adjourned to the next week same day same time. In case of meeting adjourned due to lack of quorum the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper. If at the adjourned meeting also the quorum is not present the members present shall constitute the quorum.

In the above case KMN Ltd. with 900 members called a meeting of its shareholders. The time scheduled for the meeting was 11:00 A.M. by 11:30 the number of member present were 5

- P1, P2 & P3 shareholders shall be counted — 3
- P4 representing ABC Ltd shall be counted — 1
- P5 representing DEF Ltd shall be counted — 1
- P6 & P7 as proxies of the shareholders (proxies shall not be counted) — Nil

The required quorum is 5 under the Act and the members present are 5, so quorum is present.

Thus the quorum is present.

i. If P4 the representative of ABC ltd. arrives after 11:30 AM the quorum is not present as the quorum should be present within half an hour from the time scheduled. Thus the meeting shall stand adjourned to the next week, same day and time.
ii. If the meeting is adjourned for lack of quorum and at the adjourned meeting also the quorum is not present the members present shall constitute the quorum.

Q18. Examine the following with reference of the provisions of the Companies Act, 2013.

The Articles of Association of DJA Ltd. require the personal presence of 7 members to constitute quorum of General Meetings. The company has 965 members as on the date of meeting. The following persons were present in the extra-ordinary meeting to consider the appointment of Managing Director:

i. A, the representative of Governor of Uttar Pradesh.
ii. D, representing Y Ltd. and Z Ltd.
iii. E, F, G and H as proxies of shareholders.

Determine whether the quorum was present in the meeting?

(MTP Aug 18) (RTP May 20)

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Answer

According to section 103 of the Companies Act, 2013, unless the articles of the company provide for a larger number the quorum, in case of a public company, shall be five members personally present if the number of members as on the date of meeting is not more than one thousand. The term personally present means only the persons who are entitled to vote at the meeting shall be counted. Proxy shall not be regarded as a member personally present.

As per section 113 if a body corporate is a member of another company, it may authorize any person to act as its representative at the meeting. Such person shall be deemed to be a member personally present for each such body corporate.

Further as per section 112 if the President of India or Governor of a State is a member of a company he may any person as his representative at any meeting of the company, such person shall be counted as a member personally present.

In the above case the articles specify the presence of 7 members as quorum. The total members present is 3

i.	A, the representative of Governor of Uttar Pradesh.	1
ii.	B and C, shareholders of preference shares (since the agenda being the appointment of Managing Director, their rights cannot be said to be directly affected and therefore, they shall not have voting rights)	nil
i.	D, representing Y Ltd. and Z Ltd.	2
ii.	E, F, G and H as proxies of shareholders.	nil

Thus, the requirements of quorum has not been met and it shall not constitute a valid quorum for the meeting.

Q19. Explain the provisions of the Companies Act, 2013 relating to quorum for general meeting of a public company having total 30 members, of which, two members are bodies corporate and one member is the President of India. Whether the representatives appointed by body corporate and President of India to participate in the general meeting shall be counted for quorum and can such representatives cast vote at that general meeting? **(Nov 19)**

Answer

According to section 103 of the Companies Act, 2013, in case of a public company, unless the articles of the company provide for a larger number, the quorum shall be 5 members personally present if the number of members as on the date of meeting is not more than one thousand.

As per section 113 of the Companies Act, 2013, if a company is a member of another company, it may authorize a person by resolution to act as its representative at a

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meeting of the latter company, then such a person shall be deemed to be a member present in person and counted for the purpose of quorum and shall be entitled to vote.

As per section 112 of the Companies Act, 2013, the President of India, if he is a member of a company, may appoint such a person as he thinks fit, to act as his representative at any meeting of the company. A person so appointed shall be deemed to be a member of such a company and thus considered as member personally present and shall be entitled to vote.

In the instant case, the quorum for the public company will be 5 members personally present. In the said company, two members are bodies corporate and one member is the President of India. Only members present in person and not by proxy are to be counted. Hence, representatives shall be counted for quorum and shall also have aright to cast votes at the meeting.

Q20. Examine the following with reference of the provisions of the Companies Act, 2013.
Sirhj, a shareholder, gives a notice for inspecting proxies, five days before the meeting is scheduled and approaches the company two days before the scheduled meeting for inspecting the same. What is the legal position relating to his actions (as per the provisions of the Companies Act, 2013)? **(MTP Aug 18)**

Answer

Under section 105 of the Companies Act, 2013 every member entitled to vote shall be entitled to inspect the proxies lodged 24 hours before the time fixed for the meeting till the conclusion of the meeting during the business hours. For such inspection the member shall be required to give a 3 day notice.

In the given case, Sirhj gave a 5 day notice to the company to inspect the proxy forms lodged to the company by the members. He approaches the company to insoect the proxy firm 2 days before the meeting. The notice given is valid however such inspection can be undertaken only during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting.

So, Sirhj can undertake the inspection only during the above mentioned period and not two days prior to the meeting.

Q21. A General Meeting was scheduled to be held on 15th April, 2017 at 3.00 P.M. As per the notice the members who are unable to attend a meeting in person can appoint a proxy and the proxy forms duly filled should be sent to the company so as to reach atleast 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10 -04-2017 was deposited by Mr. Y with the company at its registered Office on 11-04-2017. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of

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Mr. M, the proxy dated 12-04-2017 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2017. All the proxies viz., Y, M and N were present before the meeting. **(May 17) (MTP Oct 18)**

Answer

A Proxy is an instrument in writing executed by a shareholder authorizing another person to attend a meeting and to vote thereat on his behalf and in his absence. As per the provisions of Section 105 of the Companies Act, 2013, every shareholder who is entitled to attend and vote has a statutory right to appoint another person as his proxy. It is not necessary that the proxy be a member of the company. This proxy form shall be lodged by the member with the company atleast 48 hours before the meeting. In case of multiple proxies (where two proxy instruments are lodged by the same shareholder) the proxy filed later but within the statutory time shall be valid.

In the above case a meeting of the company was scheduled on 15th April at 3:00 PM. A member X lodged a proxy in favour of Mr. Y on 11th April. Another member Mr. W gives a proxy in favour of Mr. M on 12th April. Later on 14th April he files another proxy in favour of Mr. N. IN case of Mr. X the proxy lodged in favour of My. Y is valid as it was 48 hours before the meeting. In case of Mr. W there are multiple proxies so the general rule is the one later in time shall be valid. However the second proxy in favour of Mr. N was filed less than 48 hours before the meeting hence not valid. So the proxy in favour of Mr. M shall be valid.

Thus Y shall have a right to attend on behalf of X and M shall have a right to attend the meeting on behalf of W.

Q22. What do you mean by Proxy? Explain the provisions relating to appointment of proxy under the Company Act, 2013. **(May18)**

Answer

1. Any member of a company entitled to attend and vote at a meeting of the company shall be entitled to appoint another person as proxy to attend and vote the meeting on his behalf.
2. A proxy shall not
    - have the right to speak at such meeting and
    - be entitled to vote except on a poll.
3. If the articles do not authorise a member of a company not having a share capital cannot appoint a proxy.
4. The proxy need not be a member of the company. However as per the Rules in case of a section 8 company only a ember can be appointed as a proxy.
5. The Central Government may prescribe a class or classes of companies whose members shall not be entitled to appoint another person as a proxy.

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6. A person shall not act as a proxy for more than 50 members. As per the Rules such members shall not hold in an aggregate more than 10% of the total share capital of the company carrying voting rights.
7. The notice shall specify that every member who has a right to attend and vote at the meeting shall also have a right to appoint a proxy.
8. If the company fails to mention in the notice the right to appoint proxy every officer of the company who is in default shall be liable to penalty of 5,000 rupess.
9. The proxy form (MGT 11) shall be submitted to the company atleast 48 hours before the meeting. Any provision in the articles specifying a higher period shall be deemed as if a period of 48 hours had been specified.
10. If the notice specifies the name of the person or persons who can be appointed as a proxy every officer of the company who knowingly issues or authorizes the issue of such invitations shall be punishable with fine which may extend to one lakh rupees. However if the name of the person is given at the request of the member then no officer shall be punishable.
11. The instrument appointing a proxy shall—
    a. be in writing; and
    b. be signed
12. The member may inspect the proxy forms deposited to the company. The inspection can be done 24 hours before the time fixed for the meeting till the conclusion of the meeting provided that a notice in writing for such inspection is given not less than three days' before the meeting.

Q23. Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

i. In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10 of the total voting power, demanded for poll. The chairman of the meeting rejected the request on the ground that only the members present in person can demand for poll.

ii. In an annual general meeting, during the process of poll, the members who earlier demanded for poll want to withdraw it. The chairman of the meeting rejected the request on the ground that once poll started, it cannot be withdrawn. **(RTP Nov 18)**

Answer

As per section 109 of the Companies Act, 2013 the chairman may demand for a poll either on his own motion or on a demand made by members. A demand for poll can be made before or on the declaration of the result of the voting on any resolution on show of hands. The demand for poll shall be made by:

a) In the case a company having a share capital, by the members present in person or by proxy, where allowed, and having not less than one-tenth of the total

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voting power or holding shares on which an aggregate sum of not less than five lakh rupees or such higher amount as may be prescribed has been paid-up; and

b) in the case of any other company, by any member or members present in person or by proxy, where allowed, and having not less than one tenth of the total voting power.

The demand for a poll may be withdrawn at any time by the persons who made the demand.

Hence, on the basis on the above provisions of the Companies Act, 2013:

i. The chairman cannot reject the demand for poll as poll can be demanded by the members present in person or by proxy. subject to provision in the articles of company.
ii. The chairman cannot reject the request of the members for withdrawing the demand of the Poll.

Q24. Mr. Pink held 100 partly paid up shares of Red Limited. The company asked him to pay the final call money on the shares. Due to some unavoidable circumstances he was unable to pay the amount of call money to the company. At a general meeting of the shareholders, the chairman disallowed him to cast his vote on the ground that the articles do not permit a shareholder to vote if he has not paid the calls on the shares held by him. Mr. Pink contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of Mr. Pink is valid.

(RTP Nov 18,Nov 19)

Answer

As per section 106 of the Companies Act, 2013 a company may, if It is authorized by its articles, restrict a member from voting on the following grounds:

a) Shares on which any calls or other sums presently payable by him have not been paid, or
b) Shares in regard to which the company has exercised any right of lien.

In the above case Mr. Pink held partly paid up shares of the company. Final call on such shares were made and Mr. Pink failed to pay the money. At the general meeting the Chairman did not allow Mr. Pink to vote. As nonpayment of calls is a ground to restrict the rights to vote, the decision of the chairman shall be valid as the articles of the company did not permit a member to vote if he fails to pay the calls.

Therefore, the chairman at the meeting is well within its right to refuse him the right to vote at the meeting and Mr. Pink’s contention is not valid.

Q25. 'X' a member of LKM Ltd. is holding 250 shares, which are partly paid. The company held its general meeting where voting right was denied to 'X' claiming he has not paid the calls on the shares held by him. Examine the validity of company's denial to 'X' with reference to the relevant provisions of the Companies Act, 2013, assuming

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that Articles of association of the Company do not restrict the voting right of such members. **(Nov 18)**

Answer

As per section 106 of the Companies Act, 2013 a company may, if it is authorized by its articles, restrict a member from voting on the following grounds:

a) Shares on which any calls or other sums presently payable by him have not been paid, or
b) Shares in regard to which the company has exercised any right of lien.

The company cannot restrict a member from voting on any ground other specified above.

In the given case, Mr. X (member) holding 250 shares of LKM Ltd. has not paid certain calls on the shares. The company has denied his voting rights in the general meeting though the Articles of association of the company does not contain any restriction in the voting rights of such members. The company can restrict a member to vote if he has failed to pay the calls only when the articles authorise.

Thus, the refusal of LKM Ltd. to 'X' from exercising his voting rights is not valid.

Q26. If a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company and change his vote subsequently and can he appoint a proxy? **(Nov 19)**

Answer

According to Companies (Management and Administration) Rules, 2014, the notice of the meeting shall clearly state that the members who have cast their vote by remote e-voting prior to the meeting may also attend the meeting but shall not be entitled to cast their vote again. However such a member shall not be entitled to appoint a proxy.

In the instant case, a member of a listed company who has casted his vote through electronic voting can attend general meeting of the company but cannot change his vote subsequently and is not permitted to appoint a proxy.

Q27. XYZ Energy Ltd., set up with the object of setting up a windmill project, raised money from public through prospectus and still has unutilised amount out of the money raised. XYZ Energy Ltd. proposes to change its objects and for this purpose consent of shareholders has to be obtained by passing a special resolution by Postal ballot. Explain the procedure to be followed for transacting the business of the general meeting of members of a company through postal ballot for passing special resolution. **(Nov 18)**

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Answer

1. A company—
    a. shall, in respect of such items of business as the Central Government may declare to be transacted only by means of postal ballot; and
    b. may, in respect of any item of business, other than ordinary business and any business in respect of which directors or auditors have a right to be heard at any meeting, transact by means of postal ballot,

    instead of transacting such business at a general meeting.

    However the following companies are not required to transact any business through postal ballot:
    i. One Person Companies and
    ii. Other companies having members upto 200
2. Where a company is required to give a facility to its members to vote electronically, it may conduct its business to be conducted by postal ballot at the meeting only.
3. The company shall send a notice to all the shareholders, along with a draft resolution and requesting them to send their assent or dissent in writing on a postal ballot within a period of thirty days from the date of dispatch of the notice.
4. The notice shall be sent either by
    a. by Registered Post or speed post, or
    b. through electronic means like registered e-mail id or
    c. through courier service
5. An advertisement shall be published in atleast one vernacular newspaper and at least in one English language newspaper. The advertisement shall specify:
    a. a statement that the business is to be transacted by postal ballot;
    b. the date of completion of dispatch of notices;
    c. the date of commencement of voting;
    d. the date of end of voting;
    e. the statement that any postal ballot received from the member beyond the said date will not be valid and voting shall not be allowed beyond the said date;
    f. a statement to the effect that members, who have not received postal ballot forms may apply to the company and obtain a duplicate thereof; and
    g. contact details of the person responsible to address the grievances connected with the voting by postal ballot.
6. The notice of the postal ballot shall also be placed on the website of the company forthwith after the notice is sent to the members and such notice shall remain on such website till the last date for receipt of the postal ballots from the members.
7. The Board of directors shall appoint one scrutinizer, who is not in employment of the company and who, in the opinion of the Board can conduct the postal ballot voting process in a fair and transparent manner.

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8. Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer and after the receipt of assent or dissent of the shareholder in writing on a postal ballot, no person shall deface or destroy the ballot paper or declare the identity of the shareholder.
9. The scrutinizer shall submit his report as soon as possible after the last date of receipt of postal ballots but not later than seven days thereof;
10. 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, details of postal ballots which are received in defaced or mutilated form and postal ballot forms which are invalid.
11. The postal ballot and all other papers relating to postal ballot shall be under the safe custody of the scrutinizer. Once the chairman signs the minutes the scrutinizer shall return the ballot papers and other related papers or register to the company who shall preserve them.
12. The assent or dissent received after thirty days from the date of issue of notice shall be treated as if reply from the member has not been received.
13. If a resolution is assented to by the requisite majority of the shareholders by means of postal ballot, it shall be deemed to have been duly passed at a general meeting convened in that behalf.
14. The results shall be declared by placing it, along with the scrutinizer's report, on the website of the company.

Q28. Members of ZA Ltd. holding less than 1% of total voting power want the company to give a special notice to move a resolution for appointment of an auditor other than retiring auditor. Explain whether members have complied with relevant provisions of the Companies Act, 2013 in making their request. **(Nov 18)**

Answer

As per section 115 of the Companies Act, 2013 where a special resolution is required for any resolution under the provisions of the Act or the articles of the company then such notice shall be given by members holding not less than 1% of the total voting power, or holding shares on which such aggregate sum not exceeding 5,00,000 has been paid-up. The section further specifies that special notice is required to appoint a person as an auditor in place of the retiring auditor under Section 140 of the Act.

In the above case the members of ZA Ltd. holding less than 1% of the total voting power give a special notice to the company to appoint a person other than the retiring auditor. As per the Act the application must be made by members holding not

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less than 1% of the total voting power. The members have not fulfilled with the requirements of the Act.

Thus the notice of the intention to move such resolution is not valid as there is non-compliance of requirement of section 115.

Q29. Benson Limited issued a notice with the agenda for nine businesses to be transacted in the Annual General Meeting (two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors). The chairman decided to move the resolutions for all the nine businesses together to save the time of the members present. Examine the validity of the resolutions. **(May 18) (MTP Oct 18)**

Answer

Where notice has been given of several resolutions, each resolution must be put separately for the sake of avoiding confusion and mixing up. However, there is nothing illegal if the Chairman of the meeting desires that two or more resolutions should be moved together, unless any member requires that each resolution should be put to vote separately. In case of appointment of directors two or more directors cannot be appointed as directors by a single resolution.

In the above case the company had issued a notice with agenda for 9 businesses. Two of the businesses were appointment of Mr. Sahu and Mr. Pranav as directors. The chairman decided to pass a single resolution for all the resolutions. Appointment of two or more directors cannot be made by a single resolution.

Hence, in the instant case, all the nine businesses cannot be moved together as two businesses were regarding appointment of Mr. Sahu and Mr. Pranav as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

Q30. Give the points of distinction between ordinary resolution and special resolution. **(Nov 19)**

Answer

1. U/s 114 a resolution is an ordinary resolution if notice is given and the votes cast in favour exceeds the votes against it. A resolution shall be a special resolution, when the notice specifies that the resolution is a special resolution and the votes cast in favour is not less than 3 times the votes cast against the resolution.
2. In ordinary resolution the chairman shall have a casting vote but in special resolution the chairman shall not have a casting vote.

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Q31. Explain the provisions of the Companies Act, 2013 relating to "Resolutions requiring Special Notice". State the resolutions that require "Special Notice" under the Act. **(May 17) (May 16)**

Answer

For resolutions specified by the Act or in the articles of the company a member must give a special notice to move such resolution. The notice of the intention to move such resolution shall be given to the company by such number of members holding not less than 1% of total voting power or holding shares on which such aggregate sum not exceeding 5 lakh rupees has been paid-up.

As per the rules:

1. The special notice shall be signed, either individually or collectively by such number of members holding not less than 1% of total voting power or holding shares on which an aggregate sum of not less than 5 lakh rupees has been paid up on the date of the notice.
2. The notice shall be sent by members to the company not earlier than three months but at least fourteen days before the date of the meeting at which the resolution is to be moved. The day of meeting and the day on which the notice is given shall not be counted.
3. The company shall on receipt of the notice, give its members notice of the resolution at least seven days before the meeting in the same manner as the notice of the meeting is given. The day of the notice and the day of the meeting shall be excluded.
4. If it is not possible to give the notice in the same manner as that of the meeting the company shall get the notice published in atleast one English newspaper and one Vernacular language newspaper and such notice shall also be posted on the website, if any, of the Company. The notice shall be published at least seven days before the meeting, exclusive of the day of publication of the notice and day of the meeting.
5. As per section 115 of the Act, special notice is required in the following cases –
   a. To appoint as auditor a person other than a retiring auditor – Section 140 of the Act;
   b. To stand for directorship by a person other than retiring director 14 days' notice is required under section 160(1) of the Act;
   c. To remove a director under section 169(2) or to appoint a person to fill the vacancy caused by the dismissal of a director under section 169 at the same meeting.

Q32. At a General meeting of a XYZ Limted, a matter was to be passed by a special resolution. Out of 40 members present, 20 voted in favour of the resolution, 5 voted against it and 5 votes were found invalid. The remaining 10 members abstained from

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voting. The Chairman of the meeting declared the resolution as passed. With reference to the provisions of the Companies Act, 2013, examine the validity of the Chairman's declaration . **(MTP May 20)**

Answer

Under Section 114(2) of the Companies Act, 2013, for a valid special resolution to be passed at a meeting of members of a company, the following conditions need to be satisfied:

i. The intention to propose the resolution, as a special resolution must have been specified in the notice calling the general meeting or other intimation given to the members;
ii. The notice required under the Companies Act must have been duly given of the general meeting;
iii. The votes cast in favour of the resolution (whether by show of hands or electronically or on a poll, as the case may be) by members present in person or by proxy or by postal ballot are not less than 3 times the number of votes, if any, cast against the resolution by members so entitled and voting.

Thus, in terms of the requisite majority, votes cast in favour have to be compared with votes cast against the resolution. Abstentions or invalid votes, if any, are not to be taken into account.

In the given case, the votes cast in favour (20) being more than 3 times of the votes cast against (5), and presuming other conditions of Section 114(2) are satisfied, the decision of the Chairman is in order.

Q33. In a General Meeting of Amit Limited, the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. Manoj, a shareholder contended that the minutes must contain fair and correct summary of the proceedings thereat. Decide, whether the contention of Manoj is maintainable under the provisions of the Companies Act, 2013? **(RTP May18) (May 17) (MTP May 20)**

Answer

Under Section 118 of the Companies Act, 2013,the chairman may exclude any matters from the minutes which in the opinion of the chairman:

i. is or could reasonably be regarded as defamatory of any person;
ii. is irrelevant or immaterial to the proceeding; or
iii. is detrimental to the interests of the company;

The Chairman shall exercise absolute discretion in regard to the inclusion or non inclusion of any matter in the Minutes on the grounds specified.

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In the above case the chairman of Amit Ltd decided to exclude certain matters from the minutes of the meeting. A shareholder, Manoj contended that the decision of the chairman was not correct as the minutes must contain a t=fair and correct summary of the proceedings of the meeting. The Act provides that the chairman may at his discretion exclude any matter.

Thus the contention of Manoj is not correct.

Q34. Zenab Limited held its Annual General Meeting on September 15, 2016. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2016, Mr. Venkat, the Chairman, without signing the minutes of the meeting, left India to look after his father who fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom. **(RTP May 18) (MTP Oct 18)**

Answer

As per section 118 read with Companies (Management and Administration) Rules, 2014 of the Companies Act, 2013 every company shall prepare, sign and keep minutes of proceedings of every general meeting. Minutes kept shall be evidence of the proceedings recorded in a meeting. The minute book shall be prepared within 30 days, each page shall be signed and the last page shall be dated and signed by the chairman of the same meeting. In the event of death or inability of the chairman it shall be signed by a director duly authorized by the Board for the purpose.

In the above case Zenab Ltd. called an AGM of the company. Mr. Venkat who was the chairman of the Board presided the meeting. Before signing the minute book he left the country as he was not available to sign the minutes within the 30 days any director authorized by the Board shall sign the minutes.

Therefore, the minutes of the meeting shall be signed by any director who is authorized by the Board.

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7.Declaration & Payment of Dividend

Q1. The Director of Happy Limited proposed dividend at 12% on equity shares for the financial year 2016-17. The same was approved in the annual general meeting of the company held on 20th September, 2017. The Directors declared the approved dividends. Analysing the provisions of the Companies Act, 2013, give your opinion on the following matters:

i. Mr. A, holding equity shares of face value of 10 lakhs has not paid an amount of 1 lakh towards call money on shares. Can the same be adjusted against the dividend amount payable to him?

ii. Ms. N was the holder of 1,000 equity shares on 31st March, 2017, but she has transferred the shares to Mr. R, whose name has been registered on 20th May, 2017. Who will be entitled to the above dividend?

(RTP May 18)(MTP Oct 18)

Answer

i. As per section 127 of the Companies Act, 2013 dividend once declared must be paid and if the company fails to pay the dividend the company shall be liable under the Act. The company and every officer of the company shall be punishable for failure to distribute dividend. However the Act provides that where the dividend is declared by a company and there remain calls in arrears or any other sum due from a member the company may adjust the dividend against the amount due. On such adjustment the company shall not be liable for nonpayment.

In the given case the Board proposed a dividend of 12% which was later declared by the company. One Mr. A holding shares of value 10 lac did not pay an amount of 1 lac towards call money on shares. The company decided to adjust this amount against the dividend amount. Mr. A is entitled to receive a dividend of 1,20,000 from the company. The company may adjust the unpaid amount of 1 lac and the remaining 20,000 may be paid to him.

Thus the company can adjust 1 lac and the remaining 20,000 shall be paid to Mr. A.

ii. According to section 123 dividend shall be payable only to the registered shareholder of the share or to his order or to his banker.

In the given case Mr. N the holder of 1,000 equity shares transferred the shares to Mr. R and his name was entered in the register of members on 20th May. The company at its AGM on 29th Sept declared dividend. Since, he became the registered shareholder before the declaration of the dividend Mr. R will be entitled to the dividend.

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Q2. Karan was holding 5000 equity shares of 100 each of M/s. Future Ltd. A final call of 10 per share was not paid by Karan. M/s. Future Ltd. declared dividend of 10%. Examine with reference to relevant provisions of the Companies Act, 2013, the amount of dividend Karan should receive. **(Nov18)**

Answer

As per section 127 of the Companies Act, 2013 dividend once declared must be paid and if the company fails to pay the dividend the company shall be liable under the Act. The company and every officer of the company shall be punishable for failure to distribute dividend. However the Act provides that where the dividend is declared by a company and there remain calls in arrears or any other sum due from a member the company may adjust the dividend against the amount due. On such adjustment the company shall not be liable for nonpayment.

In the given case the company declared a dividend of 10%. Karan holding 5,000 shares of 100 each did not pay the final call of 10 on his shares. The total amount due from Karn to the company is (5,000 * 10) 50,000. The company decided to adjust this amount against the dividend amount. Karan is entitled to receive a dividend of 50,000 from the company.

Hence, Karan's unpaid call money (50,000) can be adjusted fully from the entitled dividend amount of 50,000.

Q3. RST Ltd. declared dividend at the rate of 20% for the financial year 2017 2018 in the AGM scheduled on 15th June 2018. As RST Ltd. is left with certain unpaid and unclaimed dividend, it transferred amount of unpaid and unclaimed dividend to UDA (unpaid dividend account). After remaining unpaid and unclaimed for more than 2 years in the UDA, some of the entitled shareholders made liable RST Ltd. for noncompliance of section 124, and claimed for their unpaid dividend amount. RST Ltd. denies saying that there were certain legal issues on the entitlement of the dividend amount to the respective shareholders.
State in the light of the given facts, whether the allegation marked by shareholders and claim for the divided amount, against RST Ltd. is justifiable? **(RTP May 19)**

Answer

As per section 124 of the Companies Act, 2013, where dividend has been declared by a company but has not been paid/claimed to/by shareholder within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the 30 days, transfer the total amount of dividend which remains unpaid/unclaimed to the Unpaid Dividend Account.

The company shall, within a period of 90 days of making any transfer prepare a statement containing the names, their last known addresses and the unpaid dividend to

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be paid to each person and place it on the web-site of the company, if any, and also on any other web-site approved by the Central Government.

Any person claiming to be entitled to any money transferred to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed.

If a company fails to comply with any of the requirements of this section, the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5lakh rupees.

In the above case RST Ltd. declared dividend. The dividend remaining unclaimed was transferred by the company to the unpaid dividend account but the company did not prepare a statement. The company shall be held liable under the Act so it shall be punished for the non compliance. The shareholders who had ot received the money can claim the money from the company.

Thus the shareholder can claim the company and the company shall be punishable with fine which shall not be less than five lakh rupees but which may extend to twenty-five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than one lakh rupees but which may extend to 5 lakh rupees.

Q4. YZ Ltd is a manufacturing company & has proposed a dividend @ 10% for the year 2017-18 out of the current year profits. The company has earned a profit of 910 crores during 2017-18. YZ Ltd. does not intend to transfer any amount to the general reserves of the company out of current year profit. Is YZ Ltd. allowed to do so? Comment. **(Nov 18)**

Answer

As per section 123 a company may, before the declaration of any dividend in any financial year, transfer such percentage of its profits for that financial year as it may consider appropriate to the free reserves of the company. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

In the given case YZ Ltd. has earned a profit of 910 crores. The company has proposed a dividend of 10%. The company however, does not intend to transfer any amount to the reserves out of current year profit. As per the Act such transfer is not mandatory and is at the discretion of the Board.

Thus the company may without transferring its profits to the reserves declare its dividend.

Q5. PET Ltd., incurred loss in business upto current quarter of financial year 2017-18. The company has declared dividend at the rate of 12%, 15% and 18% respectively in the immediate preceding three years. Inspite of the loss, the Board of Directors of the

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company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of PET Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. **(May 18) (MTP Mar 18, Aug 18)**

Answer

As per **section 123**, the Board of Directors of a company may declare interim dividend during

- any financial year or
- at any time during the period from closure of financial year till holding of the annual general meeting out of the
- surplus in the profit and loss account or
- out of profits of the financial year for which such interim dividend is sought to be declared or
- out of profits generated in the financial year till the quarter preceding the date of declaration of the interim dividend.

In case the company has incurred loss during the current financial year up to the end of the quarter immediately preceding the date of declaration of interim dividend, such interim dividend shall not be declared at a rate higher than the average dividends declared by the company during immediately preceding three financial years.

In the above case PET Ltd. had incurred a loss upto the current quarter of financial year. The company had declared dividend @12%, 15% and 18% in the 3 immediately preceding year. If the company declares interim dividend in a quarter and it has suffered loss in the immediately preceding quarter the rate of dividend shall not exceed the average of the rate of the dividend of the 3 preceding year. The company has declared interim dividend @15%. The average of the dividend of the 3 immediately preceding year is (12+15+18/3) 15%.

Thus the company can declare interim dividend @15%.

Q6. PQ Ltd. declared and paid 10% dividend to all its shareholders except Mr. Kumar, holding 500 equity shares, who instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. Comment on this issue with reference to the provisions of the Companies Act, 2013 regarding failure to distribute dividend.

Answer

As per section 127 of the Companies Act, 2013 dividend once declared must be paid and if the company fails to pay the dividend the company shall be liable under the Act. The company and every officer of the company shall be punishable for failure to distribute dividend. The Act further provides that where the shareholder has given

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directions to the company regarding the payment of dividend and those directions cannot be compiled with and the same has been communicated to him.

On such communication the company shall not be liable for nonpayment. However if the company fails to inform the shareholder about the non compliance of directions the company shall be liable for nonpayment.

In the above case Mr. Kumar, holding 500 equity shares instructed the company to deposit the dividend amount directly in his bank account. The company accordingly remitted the dividend, but the bank returned the payment on the ground that the account number as given by Mr. Kumar doesn't tally with the records of the bank. The company, however, did not inform Mr. Kumar about this discrepancy. As the company has failed to inform Mr. Kumar the company is liable.

Thus the company shall be liable to Mr. Kumar for nonpayment.

Q7. MNP Ltd. has a paid up share capital of 10 crore and free reserves of 50 crore, as on 31st March, 2019. The company made a loss of 40 lakh after providing for depreciation for the year ended 31st March, 2019 and as a result, the company was not in a position to declare any dividend for the said year out of profits. However, the Board of directors of the company announced the declaration of dividend of 20% on the equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%. Referring to the provisions of the Companies Act, 2013, examine the validity of declaration of dividend. **(RTP May 20)**

Answer

As per Section 123, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free reserves. However, such declaration shall be subject to the following conditions as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014.

i. The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
ii. The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
iii. The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
iv. After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

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In the above case the paid up share capital of MNP Ltd. is 10 crore and free reserves is 50 crore. The company made a loss of 40 lakh after providing for depreciation. The Board declared dividend of 20% on equity shares payable out of free reserves. The average dividend declared by the company in the last three years is 25%.

As per facts of the question the present rate of dividend is 20% and average dividend declared in the last three years is 25%. So, this condition is fulfilled.

The total amount withdrawn should not exceed 10% of paid up capital and free reserves 10% of (10 crore + 50 crore) = 6 Crore. Amount of dividend proposed is 2 Crores (20% of 10 Crore i.e on paid up capital). Thus this condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

The balance of reserves should not fall below 15% of paid up share capital: 1.5 crore (15% of 10 crore). The balance remaining after payment of dividend is 48 crore (50 crore – 2 crore). This condition is also fulfilled.

Thus taking into account all the conditions, it can be said that declaration of dividend by MNP Limited is valid.

Q8. Referring to the provisions of the Companies Act, 2013, examine the validity of the following :

i. The Board of Directors of Anand Ltd. proposes to declare dividend at the rate of 20% to the equity shareholders, despite the fact that the company has defaulted in repayment of public deposits accepted before the commencement of this Act.
ii. Whether a Company can declare dividend for the financial year in which it incurred loss. **(Nov 19)**

Answer

1. As per section 123(6) of the Companies Act, 2013, a company which fails to comply with the provisions of section 73 (Prohibition of acceptance of deposits from public) and section 74 (Repayment of deposits, etc., accepted before the commencement of this Act) shall not, so long as such failure continues, declare any dividend on its equity shares.

In the given instance, the Board of Directors of Anand Limited proposes to declare dividend at the rate of 20% to the equity shareholders, in spite of the fact that the company has defaulted in repayment of public deposits accepted before the commencement of the Companies Act, 2013.

Hence, according to the above provision, declaration of dividend by the Anand Limited is not valid

2. As per Section 123 of the Companies Act, 2013, in the event of inadequacy or absence of profits in any financial year, a company may declare dividend out of the accumulated profits of previous years which have been transferred to the free

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reserves. However, such declaration of dividend shall be subject to the conditions as prescribed under Rule 3 of the Companies (Declaration and Payment of Dividend) Rules, 2014.

i. The rate of dividend declared shall not exceed the average of the rates at which dividend was declared by the company in the immediately preceding three years.
ii. The total amount to be drawn from free reserves shall not exceed one-tenth i.e., 10% of its paid-up share capital and free reserves as per the latest audited financial statement.
iii. The amount so drawn shall first be utilized to set off the losses incurred in the financial year in which dividend is declared and only thereafter, any dividend in respect of equity shares shall be declared.
iv. After such withdrawal from free reserves, the residual reserves shall not fall below 15% of its paid-up share capital as per the latest audited financial statement.

Q9. Mars Ltd. declared and paid dividend in time to all its equity holders for the financial year 2016 -17, except in the following two cases:

i. Mrs. Sheetal, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company, accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheetal about this discrepancy.
ii. Dividend amount of Rs. 50,000 was not paid to Mr. Piyush, deceased, in view of court order restraining the payment due to family dispute about succession.

You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. **(MTP May 20)**

Answer

i. Section 127 of the Companies Act, 2013 provides for punishment for failure to distribute dividend on time. One of such situations is where a shareholder has given directions to the company regarding the payment of the dividend and those directions cannot be complied with and the same has not been communicated to her.
In the given situation, the company has failed to communicate to the shareholder Mrs. Sheetal about non-compliance of her direction regarding payment of dividend. Hence, the penal provisions under section 127 will be applicable.
ii. Section 127 provides that no offence shall be deemed to have been committed where the dividend could not be paid by reason of operation of law.

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In the present circumstance, the dividend could not be paid because it was not allowed to be paid by the court until the matter was resolved about succession. Hence, there will not be any liability on the company and its Directors etc.

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8.Account of Companies

Q1. The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam (Director), Mr. Hyder (Director) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary. The Profit and Loss Account and Balance Sheet of the company were signed by Mr. Ghanshyam and Mr. Hyder. Examine whether the authentication of financial statements of tthe company was in accordance with the provisions of the Companies Act, 2013? **(RTP May20)**

Answer

As per section 134 of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by atleast:

i. The Chairperson of the company where he is authorized by the Board; or
ii. Two directors out of which one shall be the managing director, if any and

the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

In the instant case, the Balance Sheet and Profit and Loss Account have been signed by Mr. Ghanshyam and Mr. Hyder, the directors. In view of Section 134(1) of the Companies Act, 2013, Mr. Indersen, the Managing Director should be one of the two signing directors. Since, the company has also employed a full- time Secretary, he should also sign the Balance Sheet and Profit and Loss Account.

Q2. Altar Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company for the year ended 31st March, 2017 were authenticated by two of the directors, Mr. X and Y under their signatures.

Referring to the provisions of the Companies Act, 2013:

i. Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report.
ii. What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report?

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Answer

As per section 134 of the Companies Act, 2013, the financial statements, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by atleast:

iii. The Chairperson of the company where he is authorized by the Board; or
iv. Two directors out of which one shall be the managing director, if any and
v. the Chief Executive Officer, the Chief Financial Officer and the Company Secretary of the company, wherever they are appointed.

In case of a One Person Company, the financial statements shall be signed by only one director, for submission to the auditor for his report thereon.

The Board's report and annexures thereto shall be signed by its Chairperson of the company, if he is authorized by the Board and where he is not so authorized, shall be signed by at least two directors one of whom shall be a managing director or by the director where there is one director.

In the above case Altar Ltd. had four directors W, X, Y and Z. The company also had a managing director Mr. D and a full time secretary Mr. Wise. The financial statements were authenticated by two directors X and Y. As per the Act where the company has an MD and a company secretary the financial statements must be authenticated by them.

i. Therefore, authentication done by two directors is not valid.
ii. In case of OPC, the financial statements should be signed by one director and hence, the authentication is in order.

Q3. The directors of Element Ltd. want to voluntary revise the Financial statements of the company. They have approached you to state to them the provisions of the Companies Act, 2013 regarding voluntary revision of financial statements.

(RTP Nov 18)

Answer

As per section 131 of the Companies Act, 2013 a company may voluntarily revise its books of accounts if:

1. If it appears to the directors of a company that—
   a. the financial statement of the company; or
   b. he report of the Board,

   do not comply with the provisions of section 129 or section 134, they may prepare revised financial statement or a revised report in respect of any of the three preceding financial years after obtaining approval of the Tribunal on an application made by the company and a copy of the order passed by the Tribunal shall be filed with the Registrar.

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2. The Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations made by them before passing any order under this section.
3. Such revised financial statement or report shall not be prepared or filed more than once in a financial year.
4. The detailed reasons for revision of such financial statement or report shall also be disclosed in the Board's report in the relevant financial year in which such revision is being made.
5. Where revision if for financial statement or report a copy of which have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revision must be confined to—
   a. the correction in respect of which the previous financial statement or report do not comply with the provisions of section 129 or section 134; and
   b. the making of any necessary consequential alternation.
6. The Central Government may make rules as to the application of the provisions of this Act in relation to revised financial statement or a revised director's report and such rules may, in particular—
   a. make different provisions according to which the previous financial statement or report are replaced or are supplemented by a document indicating the corrections to be made;
   b. make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
   c. require the directors to take such steps as may be prescribed.

Q4. A Housing Finance Ltd. is a housing finance company having a paid up Share Capital of 11 crores and a turnover of 145 crores during the Financial Year 2017-18. Explain with reference to the relevant provisions and rules, whether it is necessary for A Housing Finance Ltd. to file its financial statements in XBRL mode. **(Nov 18)**

Answer

As per the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, the following class of companies shall fil their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL:-

i. companies listed with stock exchanges in India and their Indian subsidiaries;
ii. companies having paid up capital of five crore rupees or above;
iii. companies having turnover of one hundred crore rupees or above;
iv. all companies which are required to prepare their financial statements in accordance with Companies (Indian Accounting Standarsds), Rules, 2015.

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The companies in Banking, Insurance, Power Sector and Non-Banking Financial companies and housing finance companies need not file financial statements under this Rule.

Q5. What does the term Financial Statements include in relation to a company under the Companies Act, 2013? Which companies need not prepare a cash flow statement? **(Nov 18)**

Answer

According to section 2(40) of the Companies Act, 2013, Financial statement in relation to a company, includes—

i. a balance sheet as at the end of the financial year;
ii. a profit and loss account, or in the case of a company carrying on any activity not or profit, an income and expenditure account for the financial year;
iii. cash flow statement for the financial year;
iv. a statement of changes in equity, if applicable; and
v. any explanatory note annexed to, or forming part of, any document referred to in sub-clause (i) to sub-clause (iv):

Provided that the financial statement, with respect to one person company, small company, dormant company and private company (if such private company is a start-up company) may not include the cash flow statement.

Q6. State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013. **(May 18) (MTP Aug 18)**

Answer

The Directors' Responsibility Statement referred to in section 134 of the Companies Act, 2013 shall state that —

i. in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
ii. the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
iii. the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities;
iv. the directors had prepared the annual accounts on a going concern basis;

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v. the directors, in the case of a listed company, had laid down internal financial controls to be followed by the company and that such internal financial controls are adequate and were operating effectively.

   Here, the term "internal financial controls" means the policies and procedures adopted by the company for ensuring the orderly and efficient conduct of its business, including adherence to company's policies, the safeguarding of its assets, the prevention and detection of frauds and errors, the accuracy and completeness of the accounting records, and the timely preparation of reliable financial information; and

vi. the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.

Q7. The Tribunal has ordered the re-opening of the accounts of MIT Ltd. The directors of the company has approached you to explain to them the provisions of the Companies Act, 2013 in respect of the re- opening of accounts on court's or Tribunal's order. **(MTP Oct 18)**

Answer

As per section 130 of the Act

1. A company shall not re-open its books of account and not recast its financial statements, without the order of the Tribunal or court.
2. An application in this regard may be made by
   a. the Central Government,
   b. the Income-tax authorities,
   c. the Securities and Exchange Board,
   d. any other statutory regulatory body or authority or
   e. any other person concerned

to the Tribunal and an order is made by a court of competent jurisdiction or the Tribunal that—

i. the relevant earlier accounts were prepared in a fraudulent manner; or

ii. the affairs of the company were mismanaged during the relevant period, casting a doubt on the reliability of financial statements:

3. The court or the Tribunal shall give notice to the Central Government, the Income-tax authorities, the Securities and Exchange Board or any other statutory regulatory body, authority or the other person concerned and shall take into consideration the representations, if any, made by them before passing an order
4. The accounts so revised or re-cast, shall be final.

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5. An order for re-opening of books of account shall not be made for a period earlier than eight financial years immediately preceding the current financial year. Where a direction has been issued by the Central Government for keeping of books of account for a period longer than eight years, the books of account may be ordered to be re-opened for such longer period."

Q8. What do you understand by Corporate Social Responsibility (CSR) and its policies? Discuss. **(Nov 18)**

Answer

Corporate Social Responsibility is the continuing commitment by business to behave ethically and contribute to economic development while improving the quality of life of the workforce and their families as well as of the local community and society at large. Corporate Social Responsibility is achieving commercials success in ways that honour ethical values and respect people, communities and the natural environment.

CSR Policies: Corporate Social Responsibility (CSR) refers to operating a business in a manner that accounts for the social and environmental impact created by the business. CSR means a commitment to developing policies that integrate responsible practices into daily business operations, and to reporting on progress made toward implementing these practices.
Common CSR policies include:

- Adoption of internal controls reforms;
- Commitment to diversity in hiring employees and barring discrimination;
- Management teams that view employees as assets rather than costs;
- High performance workplaces that integrate the views of line employees into decision-making processes;
- Adoption of operating policies that exceed compliance with social and environmental laws;
- Advanced resource productivity, focused on the use of natural resources in a more productive, efficient and profitable fashion (such as recycled content and product recycling); and
- Taking responsibility for conditions under which goods are produced directly or by contract employees domestically or abroad.

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Q9. Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Fiancial Year	Amount (in Crore)
2012 – 13	20
2013 – 14	40
2014 – 15	30
2015 – 16	70
2016 – 17	50

i. Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.
ii. State the composition of the CSR committee unlisted company and a private company. **(RTP May 18)**

Answer

i. Section 135 read with Companies (Corporate Social Responsibility Policy) Rules, 2014 of the Companies Act, 2013 deals with the provisions related to the Corporate Social Responsibility.

Every company shall spend in every financial year, at least 2% of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

In the above case Tirupati Ltd. had earned profits in the 3 immediately preceding financial year, the profit amounting to 150 crores. the amount of contribution shall be 2% of the average net profits i.e., 2% of 150 crores.
Thus the company shall contribute 1 crore to CSR

ii. **Composition of CSR Committee:** The CSR Committee shall be consisting of 3 or more directors, out of which at least one director shall be an independent director. **A**n unlisted public company or a private company which is not required to appoint an independent director, shall have its CSR Committee without such director. A private company having only two directors on its Board shall constitute its CSR Committee with two such directors;

Q10. Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013:
Mary Ltd is a listed company having turnover of 1200 crores during the financial year 2016-17. The CSR committee of the Board formulated and recommended a CSR project which was approved by the Board. The company finalised the project under its CSR initiatives which require funds @ 5 % of average net profit of the company for last

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three financial years. Will such excess expense be counted in subsequent financial years as a part of CSR expenditure? Advise the company. **(RTP Nov 18)**

Answer

As per section 135of the Companies Act, 2013, every company which is covered under this section shall spend in every financial year at least 2% of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. The word used in the section is 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. However the company cannot set off this higher expenses against the contribution in the next year.

In the above case Mary Ltd, a listed company had a CSR project finalized by the Board and the company decided to contribute 5% of the average net profit of the company for the last 3 FY. As the Act does not prohibit or restrict the amount of contribution the company may contribute any %.

Thus the company can contribute 5% of the profit but it cannot set off this amount against the contribution in the next year.

Q11. Ravi Limited maintained its books of accounts under Single Entry System of Accounting.

i. Is it permitted under the provisions of the Companies Act, 2013?
ii. State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.
iii. Whether a Company can keep books of Accounts in electronic mode accessible only outside India. **(Nov 19)**

Answer

i. According to Section 128(1) of the Companies Act, 2013, every company shall prepare "books of account" and other relevant books and papers and financial statement for every financial year. These books of accounts should give a true and fair view of the state of the affairs of the company, including that of its branch office(s). These books of accounts must be kept on accrual basis and according to the double entry system of accounting. Hence, maintenance of books of account under Singly Entry System of Accounting by Ravi Limited is not permitted.
ii. As per Section 128 (6) of the Companies Act, 2013, the person responsible to take all reasonable steps to secure compliance by the company with the requirement of maintenance of books of accounts etc. shall be:
    a. Managing Director,
    b. Whole-Time Director, in charge of finance
    c. Chief Financial Officer

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d. Any other person of a company charged by the Board with duty of complying with provisions of section 128.

iii. A Company have has the option of keeping such books of account or other relevant papers in electronic mode as per Rule 3 of the Companies (Accounts) Rules, 2014. According to such Rule,

1. such books of accounts or other relevant books or papers maintained in electronic mode shall remain accessible in India so as to be usable for subsequent reference.
2. There shall be a proper system for storage, retrieval, display or printout of the electronic records as the Audit Committee, if any, or the Board may deem appropriate and such records shall not be disposed of or rendered unusable, unless permitted by law.
3. The back-up of the books of account and other books and papers of the company maintained in electronic mode, including at a place outside India, if any, shall be kept in servers physically located in India on a periodic basis.

Hence, a company cannot keep books of Account in electronic mode accessible only outside India

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9.Indian Contract Act, 1872

Q1. Define 'Contract of Indemnity' as per the Indian Contract Act, 1872. What are the parties to a contract of indemnity? Give an example to explain the contract of indemnity. **(MTP Aug 18)**

Answer

A contract of indemnity is a contract whereby one party promises to save the other from loss caused to him by the conduct of the promisor himself or by the conduct of any other person.
Parties : The person making the promise is called the **indemnifier.** The party to whom the promise is made is called the **indemnified or indemnity holder.**

Example: A makes a contract with B to indemnify B against the consequences of any proceedings which C may take against B for a loan advanced by C to B.

Q2. Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid ? **(MTP May 20)**

Answer

Section 124 of the Indian Contract Act,1872 says that "A contract by which one party promises to save the other from loss caused to him by the conduct of the promisor himself, or the conduct of any person", is called a "contract of indemnity".
Section 126 of the Indian Contract Act says that "A contract to perform the promise made or discharge liability incurred by a third person in case of his default." is called as "contract of guarantee".

The conditions under which the guarantee is invalid or void are stated in section 142,143 and 144 of the Indian Contract Act are :

i. Guarantee obtained by means of misrepresentation.
ii. Creditor obtained any guarantee by means of keeping silence as to material circumstances.
iii. When contract of guarantee is entered into on the condition that the creditor shall not act upon it until another person has joined in it as co-surety and that other party fails to join as such.

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Q3. Mr. Avinash wanted a loan for expanding his business, from ABC Bank. Mr. Avinash has pledged the stock of his business to obtain the loan from bank. However, the expansion of business did not reap the desired results and Mr. Avinash was not able to repay the loan. Now, ABC bank wants to retain the stock for adjustment of their loan. Advise ABC Bank whether they can retain the stock for the adjustment of their loan and also for payment of interest. Give your answer as per the provisions of the Contract Act, 1872. **(RTP Nov 18)**

Answer

According to section 173 of the Indian Contract Act, 1872, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

In the above case Avinash took a loan from the bank against the security of his stock. Later Avinash was unable to repay the loan and so the bank wants to sell the stock to recover the principal and interest. As the Act gives the pawnee the right to recover the interest amount also from the goods pledged the bank can retain the stock for the principal and interest.

Hence, ABC Bank can retain the stock of business of Mr. Avinash, not only for adjustment of the loan but also for payment of interest.

Q4. 'A' gives to 'M' a continuing guarantee to the extent of 8,000 for the fruits to be supplied by 'M' to 'S' from time to time on credit. Afterwards 'S' became embarrassed and without the knowledge of 'A', 'M' and 'S' contract that 'M' shall continue to supply 'S' with fruits for ready money and that payments shall be applied to the then existing debts between 'S' and 'M'. Examining the provision of the Indian Contract Act, 1872, decide whether 'A' is liable on his guarantee given to M.

(RTP May 19) (Nov 17)

OR

Star gives to Sun a continuing guarantee to the extent of 15000 for the groceries to be supplied by Sun to Moon from time to time on credit. Afterwards, Moon became embarrassed, and without the knowledge of Star, Moon and Sun contract that Sun shall continue to supply Moon with groceries for ready money, and that the payments shall be applied to the then existing debts between Moon and Sun.
Examining the provision of the Indian Contract Act, 1872, decide whether Star is liable on his guarantee given to Sun. **(RTP May 18)**

Answer

As per section 133 of the Indian Contract Act, 1872 any variance made without the surety's consent in the terms of the contract between the principal debtor and the creditor, discharges the surety as to transactions subsequent to the variance.

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In the above case A gives continuing guarantee to M for any fruits supplied by M to S on credit subject to a max of 8,000. S becomes embarrassed and without A's knowledge M and S contract that M will supply fruits for cash to S and the payment shall be applied for payment of existing debt. Since, the variance made in the existing contract is without the surety's so 'A' is not liable on his guarantee for the fruits supplied after this new arrangement.

Thus A is not liable for the guarantee given by him for the fruits supplied after the variation to the contract.

Q5. Shambhu becomes guarantor for Aman for the amount which may be given to him by Naveen within 6 months. The maximum limit of the said amount is 1 lakh. After two months Shambhu withdraws his guarantee. Up to the time of revocation of guarantee, Naveen had given to Aman 20,000.

i. Whether Shambhu is discharged from his liabilities to Naveen for any subsequent loan.
ii. Whether Shambhu is liable if Aman fails to pay the amount of 20,000 to Naveen?. **(RTP May 18, May 20)**

OR

Ramesh' and 'Suresh' were engaged in business having same nature. 'Ramesh' stands surety for 'Suresh' for any amount which 'Kamlesh' may lend to 'Suresh' from time to time during the next 6 months subject to a maximum of 85,000. 3 months later, 'Ramesh' revokes the guarantee, when 'Kamlesh' had lent to 'Suresh' 35,000. Decide whether 'Ramesh' is discharged from all the liabilities to 'Kamlesh' for any subsequent loan under the provisions of the Indian Contract Act, 1872. Would your answer differ in case 'Suresh' makes a default in paying back to 'Kamlesh' the money already borrowed i.e. 35,000? **(Nov 17)(Nov 19)**

Answer

As per section 130 of the India Contract Act, 1872, when the guarantee moves over a series of transactions it is a continuing guarantee. A continuing guarantee may at any time be revoked by giving a notice. The revocation shall be for future transactions. For transactions already entered into the guarantee cannot be revoked.

In the above case Shambhu becomes a guarantor for Aman for any loan that Naveen may give him in the next 6 months subject to a maximum of 1 lac. After 2 months however Shambhu withdraws his guarantee. By that time Naveen had already given 20,000 to Aman. Sambhu by giving notice is no longer liable however he shall continue to be liable for the loan already given within the 2 months.

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Thus

i. Shambhu is discharged for all the subsequent loans as he has given a notice of revocation.

ii. Shambhu is liable for payment of 20,000 to Naveen if Aman fails as the notice for revocation is only for the future transactions and the transactions already entered the surety shall continue to be liable.

Q6. Mr. Chetan was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of 50,000. Mr. Pawan gave a surety in respect of Mr. Chetan's conduct. After six months the company was not in position to pay 50,000 to Mr. Chetan because of financial constraints. Chetan agreed for a lower salary of 30,000 from the company. This was not communicated to Mr. Pawan. Three months afterwards it was discovered that Chetan had been doing fraud since the time of his appointment. What is the liability of Mr. Pawan during the whole duration of Chetan's appointment? **(Nov 18) (RTP Nov 19) (Nov 19)**

OR

Mr. Ram was employed as financer in "Swaraj Ltd" on the surety of his good conduct, given by Mr. Janak, a good friend of the director of the company. Mr. Ram was kept on the salary of Rs. 45,000 per month. After 3 years , the company went into losses and so company decided for the cost cutting by retrenching of many employees and reducing the salaries of the employees. Mr. Ram was also proposed either to quit the job or continued with the lower salary of Rs. 35,000 per month . He accepted and continued with the job. After few months, it was reported by accounts department of the company that Mr. Ram manipulated with the funds of the company.

As per the provisions of the Indian Contract Act, 1872, analyse the legal positions of Mr. Janak, in the given situations:

i. Mr. Ram has manipulated the funds of the company since the time of his appointment.

ii. Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary **.(MTP Oct 18)**

Answer

As per the provisions of Section 133 of the Indian Contract Act, 1872, if the creditor makes any variance (i.e. change in terms) without the consent of the surety, then surety is discharged as to the transactions subsequent to the change.

In the instant case, Mr Chetan was appointed by ABC Construction Company for a salary of 50,000 on the surety of Mr. Pawan. After 6 months due to financial constraints the company was unable to pay 50,000 and Chetan agreed to a lower salary of 30,000. However this was not communicated to Pawan. It was found that Chetan was doing fraud since the time of appointment. As Pawan had given surety he shall be liable

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but his liability shall absolve for all the acts done after the change in the terms of the contract.

Hence, Mr. Pawan, will be liable as a surety for the act of Mr. Chetan before the change in the terms of the contract i.e., during the first six months. Variation in the terms of the contract (as to the reduction of salary) without consent of Mr. Pawan, will discharge Mr. Pawan from all the liabilities towards the act of the Mr. Chetan after such variation

Q7. Mr. D was in urgent need of money amounting 5,00,000. He asked Mr. K for the money. Mr. K lent the money on the sureties of A, B and N without any contract between them in case of default in repayment of money by D to K. D makes default in payment. B refused to contribute, examine whether B can escape liability? **(May 18)**

Answer

As per section 146 of the Indian Contract act, 1872 "when two or more persons are co-sureties for the same debt whether under the same or different contracts and whether with or without the knowledge of each other the co-sureties in the absence of any contract to the contrary, are liable, as between themselves, to pay each an equal share of the whole debt, or of that part of it which remains unpaid by the principal debtor".

In the above case D who was in urgent need of money took a loan of 5,00,000 from K on the surety of A, B and N. D defaults in the payment of the debt. If the debtor fails to pay the debt the co sureties must contribute their shares. So B being one of the co sureties is also liable to contribute and cannot escape liability.

Thus B is liable to contribute and cannot escape liability.

Q8. Megha advances to Nisha Rs. 5,000 on the guarantee of Prem. The loan carries interest at 10% per annum. Subsequently, Nisha becomes financially embarrassed. On Nisha's request, Megha reduces the interest to 6% per annum and does not sue Nisha for one year after the loan becomes due. Nisha becomes insolvent. Can Megha sue Prem? Decide your answer in reference to the provisions of the Contract Act, 1872.

(MTP Aug 18)

OR

Y advances Z a loan of ` 10,000 on the guarantee of X, at an interest of 10%. Subsequently, as Z was having some financial problems, Y reduced the rate of interest to 7% and also extended time for repayment of loan without the consent of X. Z becomes insolvent. Can Y sue X for recovery of amount? **(Nov 18)**

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Answer

According to section 133 of the Indian Contract Act, 1872, where there is any variance in the terms of contract between the principal debtor and creditor without surety's consent, it would discharge the surety in respect of all transactions taking place subsequent to such variance.

In the given case Megha gave a loan of 5000 to Nisha on the guarantee of Prem. The loan was carrying a rate of interest @ 10%. Later on Nisha's request Megha reduced the rate of interest to 6%. However Prem was not informed of this. Any variation whether beneficial to the surety or not shall discharge the surety and so Prem is discharged of his liability.

Thus Megha cannot sue Prem because Prem is discharged of his liability.

Q9. 'C' advances to 'B', 2,00,000 on the guarantee of 'A'. 'C' has also taken a further security for the same borrowing by mortgage of B's furniture worth 2,00,000 without knowledge of 'A'. C' cancels the mortgage. After 6 months 'B' becomes insolvent and 'C' 'sues 'A' his guarantee. Decide the liability of 'A' if the market value of furniture is worth 80,000, under the Indian Contract Act, 1872. **(Nov 19)**

Answer

According to section 141 of the Indian Contract Act, 1872, a surety is entitled to the benefit of every security which the creditor has against the principal debtor at the time when the contract of suretyship is entered into, whether the surety knows of the existence of such security or not. If the creditor loses, or, without the consent of the surety, parts with such security, the surety is discharged to the extent of the value of the security.

In the instant case, C advances to B, 2,00,000 rupees on the guarantee of A. C has also taken a further security for 2,00,000 by mortgage of B's furniture without knowledge of A. C cancels the mortgage. B becomes insolvent, and C sues A on his guarantee. A is discharged from liability to the amount of the value of the furniture i.e. 80,000 and will remain liable for balance 1,20,000.

Thus A shall be liable for 1,20,000.

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Q10. Distinguish between 'Contract of Indemnity' and 'Contract of Guarantee'.
(Nov 17)

Answer

Indemnity	Guarantee
There are two parties indemnifier & indemnified	There are three parties principal debtor, creditor & Surety
The liability of indemnifier is primary.	The liability of Surety is secondary
The liability arises inly on the happening of a contingency.	The liability is already in existence but crystallizes only when the principal debtor fails to make the payment.
Indemnifier cannot sue the third party for loss in his own name. such right shall arise only if there is an assignment in his favour.	Surety can take action against principal debtor in his own right as he gets all the rights of the creditor after discharging the debts.
All parties must be competent to contract	In a contract of guarantee, the principal debtor, if he is a minor, still the contract is valid.
There is only one contract.	There are three contracts. • Principal debtor & Creditor • Principal debtor & surety • Creditor & surety

Q11. Ramesh hires a carriage of Suresh and agrees to pay 1500 as hire charges. The carriage is unsafe, though Suresh is unaware of it. Ramesh is injured and claims compensation for injuries suffered by him. Suresh refuses to pay. Discuss the liability of Suresh. **(RTP May 18)**

OR

Shree hires a carriage of Jagdish and agrees to pay 500 as hire charges. The carriage is unsafe, though Jagdish is unaware of it. Shree is injured and claims compensation for injuries suffered by her. Jagdish refuses to pay. Discuss the liability of Jagdish.
(RTP May 18) (MTP Oct 18)

Answer

As per section 150 of the Indian Contract Act, 1872 if the goods are bailed for hire, the bailor is responsible for any damage suffered by the bailee on account of th

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goods being defective. Even if the bailor is not aware of these defects he shall be liable for the damages.

In the above case Ramesh hires a carriage from Suresh on a rent of 1,500. The carriage was unsafe which was not known to Suresh. Ramesh is injured. Suresh even though he is not aware of the defects shall be liable.

Thus Suresh is liable to compensate Ramesh for the damages.

Q12. M lends a sum of 5,000 to B, on the security of two shares of a Limited Company on 1st April 2016. On 15th June, 2016, the company issued two bonus shares. B returns the loan amount of 5,000 with interest but M returns only two shares which were pledged and refuses to give the two bonus shares. Advise B in the light of the provisions of the Indian Contract Act, 1872. **(RTP May 17)**

Answer

As per section 163of the Indian Contract Act, 1872 "in the absence of any contract to the contrary, the bailee is bound to deliver to the bailor, any increase or profit which may have accrued from the goods bailed." So while the goods are with the bailee if there is any increase or profit to the goods the same shall be returned to the bailor along with the goods.

In the above case M lends to B against the security of his shares a sum of 5,000. While the shares are in M's possession the company declares bonus on the shares. On repayment of 5,000 along with interest M gives back the shares but refuses to handover the bonus shares. As the shares belong to B any profit to the shares shall also belong to B.

Thus B the bailor is entitled to the bonus shares.

Q13. What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872. **(Nov 18)**

Answer

As per the provisions of section 168 and 169 of the Indian Contract Act, 1872,

1. **Rights of lien:** The finder of the goods has a right of lien over the goods for the expenses that he has incurred on the goods. He can retain the goods against the owner till he does not receive the compensation from the owner.
2. **Right to sue for reward:** The finder can sue for any specific award offered by the owner for return of goods. He may retain the goods till he receives the award.
3. **Right of sale:** A finder may sell the goods found if:
   i. The owner cannot be found with reasonable diligence
   ii. If the goods are in the danger of perishing

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iii. The owner is found but he refuses to give the lawful charges and the lawful charges are 2/3rd or more of the goods.

Q14. Amar bailed 50 kg of high quality sugar to Srijith, who owned a kirana shop, promising to give 200 at the time of taking back the bailed goods. Srijith's employee, unaware of this, mixed the 50 kg of sugar belonging to Amar with the sugar in the shop and packaged it for sale when Srijith was away. This came to light only when Amar came asking for the sugar he had bailed with Srijith, as the price of the specific quality of sugar had trebled. What is the remedy available to Amar? **(Nov 18)**

Answer

According to section 157 of the Contract Act, 1872, if the bailee, without the consent of the bailor, mixes the goods of the bailor with his own goods, in such a manner that it is impossible to separate the goods bailed from the other goods and deliver them back, the bailor is entitled to be compensated by the bailee for the loss of the goods.

In the above case Amar bailed his high quality sugar with Srijith. Srijith's employee mixed the high quality sugar bailed by Amar with Srijith's sugar and then packaged it for sale. The sugars when mixed could not be separated and so Amar is entitled to be compensated.

Thus Amar has a right to recover the value of the sugar from Srijith.

Q15. Ashley bails his jewelry with Barn on the condition to safeguard in bank's safe locker. However, Barn kept it in safe locker at his residence, where he usually keeps his own jewelry. After a month all jewelry was lost in a religious riot. Ashley filed a suit against Barn for recovery. Referring to provisions of the Indian Contract Act, 1872, state whether Ashely will succeed. **(MTP Aug 18)**

Answer

According to section 151 of the Indian Contract Act, 1872, in all cases of bailment, the bailee is bound to take as much care of the goods bailed to him as a man of ordinary prudence would, under similar circumstances, take of his own goods.

According to section 152 of the Indian Contract Act, 1872, the bailee, in the absence of any special contract, is not responsible for the loss, destruction or deterioration of the thing bailed, if he has taken the amount of care of it described in section 151. However when the bailor gives specific instruction as to how the goods should be taken care of and the bailee has taken reasonable care but not as per the specification of the bailor he shall be liable for any loss to the goods for non fulfillment of the specific conditions.

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In the above case Ashley bails his jewelry with Barn o the condition that the jewelry be kept in the bank locker. Barn kept it in his locker at his residence from where the jewelry was stolen. Though barn had taken reasonable care of the goods he did not fulfill the condition specified by the bailor and so the bailee shall be liable.
Thus, Barn is liable to compensate Ashley for his negligence to keep jewelry at his residence.

Q16. Amit lends a horse to Bimal for his own riding only. However, Bimal allows Chinku, a member of his family to ride the horse. Chinku rides the horse with care, but the horse falls and is injured. As per the provisions of the Indian Contract Act, 1872, analyse the liability of Bimal in the given situation. **(MTP Oct 18)**

Answer

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

In the above case Amit lends his horse to Bimal specifying that only Bimal could ride it. Bimal lets Chinku a family member ride it. Chinku rides carefully but the horse falls and is injured. As Bimal had made an inconsistent use of the goods he shall be laible to the bailor.

Hence, Bimal is liable to make compensation to Amit for the injury done to the horse.

Q17. Mr. Dhannaseth delivers a rough blue sapphire to a jeweller, to be cut and polished. The jeweler carries out the job accordingly. However, now Mr. Dhannaseth refuses to make the payment and wants his blue sapphire back. The jeweller denies the delivery of goods without payment. Examine whether the jeweler can hold blue sapphire. Give your answer as per the provisions of the Contract Act, 1872.
(RTP Nov 19) (MTP May 20)

Answer

According to section 170 of the Indian Contract Act, 1872, where the bailee has, in accordance with the purpose of the bailment, rendered any service involving the exercise of labour or skill in respect of the goods bailed, he has, in the absence of a contract to the contrary, a right to retain such goods until he receives due remuneration for the services he has rendered in respect of them. Such a right to retain the goods bailed is the right of particular lien. Where the bailee delivers the goods without receiving his remuneration, he has a right to sue the bailor. In such a case the particular lien may be waived. The particular lien is also lost if the bailee does not complete the work within the time agreed.

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In the given case Mr. Dhannaseth delivers a blue sapphire to a jeweler to be cut and polished. Mr Dhannaseth refuses to make the payment and the jeweler refuses to hand over the stone.

Thus the jeweler is entitled to retain the stone till he is paid for the services he has rendered.

Q18. What is the liability of a bailee making unauthorized use of goods bailed? **(Nov' 19)**

Answer

According to section 154 of the Indian Contract Act, 1872, if the bailee makes any use of the goods bailed, which is not according to the conditions of the bailment, he is liable to make compensation to the bailor for any damage arising to the goods from or during such use of them.

Q19. Give four differences between Bailment and Pledge. **(May 18)**

Answer

The following are the distinction between bailment and pledge:

Bailment	**Pledge**
Bailment can be for any reason	Goods are pledged as a security for loan or for performance of a contract.
The bailee generally does not have a right to sell. He can retain the goods or sue for non- payment.	The pledgee has a right to sell on default of the pledger to repay the debt.
Bailee can use the goods only if specified in the contract.	Pledge has a right to use the goods.
Bailment may either be gratuitous or non-gratuitous.	Pledge is always for consideration
In case of gratuitous bailment the goods can be demanded back at any time	Pledge is not bound to return the goods unless the debt is repaid or promise performed.

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Q20. Ram, the bailor, pledges a cinema projector and other accessories with Movie Association Co-operative Bank Limited, the bailee, for a loan. Ram requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and also further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between Ram, the bailor and Bank, the bailee? **(May 17)**

Answer

As per section 149 of the Indian Contract Act, 1872 the delivery of the goods to the bailee may be made by doing anything which has the effect of putting the goods in the possession of the intended bailee or of any person authorised to hold them on his behalf. Delivery may be actual or constructive or delivery by attornment to the bank. In such a case there is change in the legal character of the possession of goods though not in the actual or physical custody. Though the bailor continues to be in possession of the goods, it is the possession of the bailee.

In the above case Ram the bailor pledges a cinema projector and other accessories with the bank. Ram requests the bank to allow the pledged goods to remain in his possession and agrees to handover the possession of the same to bank whenever demanded. Here the delivery of the goods is constructive i.e. delivery by attornment to the bailee (pawnee) and the possession of the goods by Ram, the bailor is construed as possession by bailee (pawnee), the Bank.

The transaction was, therefore, a valid pledge.

Q21. Srushti acquired valuable diamond at a very low price by a voidable contract under the provisions of the Indian Contract Act, 1872. The voidable contract was not rescinded. Srushti pledged the diamond with Mr. VK. Is this a valid pledge under the Indian Contract Act, 1872?
Whether a Pawnee has a right to retain the goods pledged. **(Nov 19)**

Answer

As per section 178A of the Indian Contract Act, 1872]: When the pawnor has obtained possession of the goods pledged by him under a contract voidable under section 19 or section 19A, but the contract has not been rescinded at the time of the pledge, the pawnee acquires a good title to the goods, provided he acts in good faith and without notice of the pawnor's defect of title.

In the above case Srushti acquired valuable diamond at a very low price under a voidable contract. Before the contract was rescinded she pledged the diamond with Mr. VK. As Mr. VK has acted in good faith the ledge is valid.

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

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Right of retainer: under section 173 of the Indian Contract Act, 1872, the pawnee may retain the goods pledged, not only for payment of the debt or the performance of the promise, but for the interest, of the debt, and all necessary expenses incurred by him in respect of the possession or for the preservation of the goods pledged.

Q22. R instructed S, a transporter, to send a consignment of apples to Chennai . After covering half the distance, Suresh found that the apples will perish before reaching Chennai. He sold the same at half the market price. R sued S. Decide will he succeed?

(RTP May 18)

OR

Mridul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Akshat. Due to heavy rains, Mridul was stranded for more than two days. Mridul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Akshat recover the loss from Mridul on the ground that Mridul had acted beyond his authority?

(RTP Nov 18)(May 18)

Answer

An agent has the authority in an emergency to do all such acts as a man of ordinary prudence would do for protecting his principal from losses which the principal would have done under similar circumstances. Any acts done by the agent in such a case shall bind the principal if:

i. There was a real emergency
ii. The agent has acted as a man of ordinary prudence
iii. The agent was not in a position to communicated with the principal.

In the above case R instructs S to send apples to Chennai. While the goods were in transit S found that the apples will perish and to protect P he sold half the apple there only to R at market price. As he had acted as a man of ordinary prudence and there was a real emergency the act of S shall bind P.

Thus S had acted in an emergency situation and hence, R will not succeed against him.

Q23. Mr. A of Delhi engaged Mr. S a s his agent to buy a house in Noida Extension area. Mr. S bought a house for 50 lakhs in the name of a nominee and then purchased it himself for 60 lakhs. He then sold the same house to Mr. A for 80 lakhs. Mr. A later comes to know the mischief of Mr. S and tries to recover the excess amount paid to Mr. S. Discuss whether he is entitled to recover any amount from Mr. S? If so, how much?

(RTP May18)

OR

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Mr. A of Alwar engaged Mr. S as his agent to buy a house. Mr. S bought a house for 40 lakhs in the name of a nominee and then purchased it himself for 44 lakhs. He then sold the same house to Mr. A for 46 lakhs. Mr. A later comes to know about the mischief of Mr. S and tries to recover the excess amount paid to Mr. S. Is he entitled to recover any amount from Mr. S? If so, how much? Explain .**(May 16)**

Answer

As per section 215 read with 216 of the Indian Contract Act, 1872 where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

i. Cancel the transaction, if the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
ii. Claim from the agent any benefit, which may have resulted to him from the transaction.

In the above case Mr. A engaged Mr. S as his agent to purchase a house for him. Mr. S purchased the property in the name of a nominee for 50 lacs, purchased the property himself for 60 lacs and finally sold it to his principal for 80 lacs. He made a total profit of 30 lac from his principal.

Therefore Mr. A is entitled to recover 30 lakhs from Mr. S being the amount of profit earned by Mr. S out of the transaction.

Q24. Aarthi is the wife of Naresh. She purchased some sarees on credit from M/s Rainbow Silks, Jaipur. M/s Rainbow Silks, Jaipur demanded the amount from Naresh. Naresh refused. M/s Rainbow Silks, Jaipur filed a suit against Naresh for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether M/s Rainbow Silks, Jaipur would succeed? **(Nov19)**

Answer

As per the provisions of the Indian Contract Act, 1872 an agency may be created by a legal presumption i.e. wife is considered as an implied agent of her husband. If wife lives with her husband, there is a legal presumption that a wife has authority to pledge her husband's credit for necessaries. But the legal presumption can be rebutted in the following cases:

i. Where the goods purchased on credit are not necessaries.
ii. Where the wife is given sufficient money for purchasing necessaries.
iii. Where the wife is forbidden from purchasing anything on credit or contracting debts.
iv. Where the trader has been expressly warned not to give credit to his wife.

In the above case Aarthi purchased sarees on the credit of her husband. M/s Rainbow Silks Jaipur, the seller, filed a case against Naresh for the money of the sarees.

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Thus Naresh is liable if the sarees are necessaries.

Q25. Explaining the provisions of the Indian Contract Act, 1872, answer the following:

i. A, contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability?

ii. C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability? **(RTP Nov18)(MTP Mar 19)**

Answer

i. According to Section 134 of the Indian Contract Act, 1872, the surety is discharged by any contract between the creditor and the principal debtor, by which the principal debtor is released or by any act or omission of the creditor, the legal consequence of which is the discharge of the principal debtor. As the liability of the surety is coextensive with the liability of the principal debtor and if the principal debtor is discharged the surety is automatically discharged.
In the above case A contracts with B to construct a house for B for which B would supply the material. C gives guarantee for the contract. B does not supply the material to A. as the contract's performance depends upon B supplying material to A which B fails to do A is discharged. On release of A C is automatically discharged.

   Thus C is discharged from liability.

ii. According to Section 135 of the Indian Contract Act, 1872, where the principal debtor and the creditor make a contract giving an extension of time to the debtor for the payment of the debt without informing the surety, the surety is discharged. However as per section 136 where a contract to give time to the principal debtor is made by the creditor with a third person and not with the principal debtor, the surety is not discharged.

In the above case C was the holder of an overdue bill. This bill was drawn by A as a surety for B. C contracts with X to give time to B. as the extension of time was made between the creditor C and the third party X the surety A shall not be discharged. Thus A is not discharged from liability.

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Q26. Ashish appoints Megha, a minor, as his agent to sell his watch for cash at a price not less than 1700. Megha sells it to Diwan for 1200. Is the sale valid? Explain the legal position of Megha and Diwan, referring to the provisions of the India Contract Act, 1872. **(RTP May17)**

OR

A appoints M, a minor, as his agent to sell his watch for cash at a price not less than Rs. 700. M sells it to D for Rs. 350. Is the sale valid? Explain the legal position of M and D, referring to the provisions of the Indian Contract Act, 1872. **(MTP Mar 19)**

Answer

According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person may become an agent if he has a contractual capacity and is of a sound mind. So to be an agent the person must have the authority to contract. However a minor can be an agent as an agent brings about a contractual relationship between the principal and third persons and therefore his contractual capacity is immaterial. If a person who is not competent to contract is appointed as an agent, the principal is liable to the third party for the acts of the agent.

In the above case Ashish appoints Megha, a minor, to sell his watch on his behalf for 1,700. Megha sells the watch to Diwan for 1,200. Generally if the agent acts outside his authority the agent is liable but if the agnet is a minor and such agent acts outside his authority the principal cannot hold him liable and shall be bound by the contract.

Thus, in the given case, Diwan gets a good title to the watch. Megha is not liable to Ashish for her negligence in the performance of her duties.

Q27. ABC Ltd. sells its products through some agents and it is not the custom in their business to sell the products on credit. Mr. Pintu, one of the agents sold goods of ABC Ltd. to M/s. Parul Pvt. Ltd. (on credit) which was insolvent at the time of such sale. ABC Ltd. sued Mr. Pintu for compensation towards the loss caused due to sale of products to M/s. Parul Pvt. Ltd. Will ABC Ltd. succeed in its claim? **(May 18)**

Answer

As per section 211 of the Indian Contract Act, 1872 an agent is bound to conduct the business of his principal according to the direction given by the principal, or, in the absence of any such directions, according to the custom which prevails in doing business of the same kind at the place where the agent conducts such business. When the agent acts otherwise, if any loss be sustained, he must make it good to his principal, and, if any profit accrues, he must account for it.

In the above case ABC Ltd. sells its products through some agents but not on credit. One of the agents Mr. Pintu sold goods to M/s Parul Pvt. Ltd. on credit. M/s Parul Pvt. Ltd. was insolvent at the time of sale. The agent has acted outside the custom

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of ABC Ltd. as it never sold goods on credit ad so the agent shall be liable to the principal.

Thus Mr. Pintu must make good the loss to ABC Ltd.

Q28. Mr. Navin owns a big car and has leased his car to Mrs. Susie. The lease agreement is terminable on three month's notice. Mr. Bhalla, not being authorised by Mr. Navin, demands on behalf of Mr. Navin, the delivery of the car and gives a notice of termination of lease agreement to Mrs. Susie who was in possession of the car at that time. Examine whether Mr. Navin can ratify the notice sent by Mr. Bhalla. Give your answer as per the provisions of the Contract Act, 1872. **(MTP Aug 18)**

Answer

According to section 200 of the Indian Contract Act, 1872, an act done by one person on behalf of another, without such other person's authority, which has the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot be ratified. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

In the above case Navin leased his car to Susie on terms that the contract is terminable on three months' notice. Mr Bhalla without being authorized by Navin gives a notice for termination of the lease. As the notice terminates the rights of a third party it cannot be ratified.

Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie.

Q29. Comment on the following:
"Principal is not always bound by the acts of a sub –agent". **(MTP Oct 18)**

Answer

The statement is correct.

A sub-agent is a person employed by and acting under the authority of the original agent. The relation of the sub-agent and the agent is that of principal and agent.
A contract of agency being fiduciary in nature the agent cannot delegate the work given to him by the principal. The governing principle is, a delegate cannot delegate'.
However, there are certain circumstances where an agent can appoint sub-agent.

The agent can appoint a sub-agent in the following cases:

i. The appointment would be valid if the appointment is as per the terms of the original contract.
ii. Where in the course of the agent's employment some emergency srises which makes it necessary for him to appoint a sub-agent.

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iii. It is the custom of trade to appoint a subagent.

However, if a sub-agent is not properly appointed, the principal shall not be bound by the acts of the sub-agent. Under the circumstances the agent appointing the sub-agent shall be bound by these acts and he (the agent) shall be bound to the principal for the acts of the sub -agent.

Q30. Pankaj appoints Shruti as his agent to sell his estate. Shruti, on looking over the estate before selling it, finds the existence of a good quality Granite-Mine on the estate, which is unknown to Pankaj. Shruti buys the estate herself after informing Pankaj that she (Shruti) wishes to buy the estate for herself but conceals the existence of Granite-Mine. Pankaj allows Shruti to buy the estate, in ignorance of the existence of Mine. State giving reasons in brief the rights of Pankaj, the principal, against Shruti, the agent. Give your answer as per the provisions of the Contract Act, 1872.
What would be your answer if Shruti had informed Pankaj about the existence of mine before she purchased the estate, but after two months, she sold the estate at a profit of 10 lac? **(RTP May 20)**

Answer

According to Section 215 of the Indian Contract Act, 1872, if an agent deals on his own account in the business of the agency, without obtaining the consent of his principal and without acquainting him with all material circumstances, then the principal may repudiate the transaction. On the other hand, section 216 provides that, if an agent, without the knowledge of his principal, acts on his own account in the business of the agency, then the principal may claim any benefit which may have accrued to the agent from such a transaction.

In the above case Pankaj appoints Shruti as his agent to sell his estate. On knowing that the estate has a granite mine which is unknown to Pankaj, Shruti buys the estate herself and Pankaj agrees to sell it to Shruti. Though Pankaj had given his consent to Shruti, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

Thus Pankaj can repudiate the contract.

On the other, hand if Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence Pankaj cannot repudiate the transaction nor can he claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency.

Q31. Bhupendra borrowed a sum of 3 lacs from Atul. Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterward, Bhupendra revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Bhupendra is lawful. **(Nov 19)**

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Answer

According to Section 202 of the Indian Contract Act, 1872 an agency becomes irrevocable where the agent has himself an interest in the property which forms the subject-matter of the agency. Such an agency cannot, in the absence of an express provision in the contract, be terminated to the prejudice of such interest.

In the instant case, Bhupendra appointed Atul to sell his land to pay off the debt that Bhupendra owes Atul. Bhupendra later revokes the agency.The agency being agency coupled with interest shall not come to an end even on death, insanity or the insolvency of the principal.

Thus, the revocation of agency by Bhupendra is not lawful.

Q32. What is agent's authority in case of an emergency. What are the essential conditions to be satisfied to constitute a valid emergency. Give your answer as per the provisions of the Indian Contract Act, 1872. **(MTP Mar 19)**

Answer

An agent has authority, in an emergency, to do all such acts for the purpose of protecting his principal from loss as would be done by a person of ordinary prudence, in his own case, under similar circumstances.

To constitute a valid agency in an emergency, following conditions must be satisfied.

i. There should be a real necessity to act
ii. He should not be in a position to communicate with the principal
iii. He must have acted as a man of ordinary prudence
iv. The agent should have adopted the most reasonable and practicable course under the circumstances, and
v. The agent must have been in possession of the goods belonging to his principal and which are the subject of contract.

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10.Negotiable Instruments Act,1881

Q1. Mr. Varun draws a cheque of 11,000 and gives to Mr. Abhi by way of gift. State with reason whether –

i. Mr. Abhi is a holder in due course?
ii. Mr. Abhi is entitled to receive the amount of 11,000 from the bank?
iii. Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. **(RTP Nov 18) (May 18)**

Answer

According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means- any person who becomes the possessor of a promissory note, bill of exchange or cheque (if payable to bearer), or the payee or endorsee thereof, (if payable to order),

i. for consideration
ii. before the amount mentioned in it became payable (before maturity),
iii. And, without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title (in good faith).

In the instant case, Mr. Varun draws a cheque of 11,000 and gives to Mr. Abhi by way of gift.

i. Mr. Abhi is holder but not a holder in due course since he did not get the cheque for value and consideration.
ii. Mr. Abhi's title is good and bonafide. As a holder he is entitled to receive 11,000 from the bank on whom the cheque is drawn.

Q2. A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide-.

i. Whether D can sue the prior parties of the bill, and
ii. Whether the prior parties other than D have any right of action inter se?

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. **(RTP May 18, May 17)**

OR

'M' draws bill on 'N'. 'N' accepts the bill without any consideration. The bill is transferred to 'O' without consideration. 'O' transferred it to 'P' for 10,000. On dishonor of the bill, 'P' sued 'O' for recovery of the value of 10,000. Examine whether 'O' has any right to action against M and N? **(Nov 19)**

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Answer

Section 43 of the Negotiable Instruments Act, 1881 provides that a negotiable instrument made, drawn, accepted, indorsed or transferred without consideration, or for a consideration which fails, creates no obligation of payment between the parties to the transaction. But if any such party has transferred the instrument to a holder for consideration, such holder may recover the amount due on such instrument from the transferor for consideration or any prior party thereto. Every subsequent holder deriving title from him shall also have the same rights.

In the above case A draws a bill on B. B accepts the bill without consideration. This bill was further transferred to C without consideration which C transferred to D for consideration. As between A, B and C the instrument does not create a legal relation as the instrument is drawn without consideration. However when the instrument is endorsed to a HDC he can recover the money from any of the prior parties.

i. D as he has acquired the instrument for consideration can sue any of the prior parties.
ii. The other parties A, B and C have received the instrument without consideration and so they have no right to recover the money. Thus the prior parties have no rights inter se

Q3. F' by inducing 'G' obtains a Bill of Exchange from him fraudulently in his (F) favour. Later, he enters in to a commercial deal with 'H' and endorses the Bill to him (H) towards consideration for the deal. 'H' takes the bill as holder-in-due- course. 'H' subsequently endorses the bill to 'F' for value as consideration to 'F' for some other deal. On maturity the bill is dishonoured. 'F' sues 'G' for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881, explain whether 'F' will succeed in this case. **(Nov 16)**

Answer

As per section 53 of the Negotiable Instruments Act, 1881 once the instrument passes through the hands of a holder in due course, it gets cleansed of its defects provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. Thus, any defect in the title of the transferor will not affect the rights of the holder in due course even if he had knowledge of the prior defect provided he is himself not a party to the fraud.

In the above case F induces G and obtains fraudulently a bill of exchange from him. He endorses it to H who is a holder in due course. H subsequently endorses the bill to F. as F derives his title from H who is a holder in due course he must get a good title but since F was originally a party to fraud his title shall be defective.

Thus, 'F' will not succeed in his suit against G as he was a party to the fraud. .

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Q4. Give the answer of the following as per the provisions of the Negotiable Instruments Act, 1881:
On a Bill of Exchange for Rs. 5 lakh, X's acceptance to the Bill is forged. 'A' takes the Bill from his customer for value and in good faith before the Bill becomes payable. State with reasons whether 'A' can be considered as a 'Holder in due course' and whether he (A) can receive the amount of the Bill from 'X'.

(MTP Oct 18, Mar 19)

Answer

According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who gets the instrument

i. for consideration
ii. before maturity and
iii. in good faith

However in case of forged signature the instrument becomes a nullity. The holder of a forged instrument cannot enforce payment thereon even if he is a holder in due course. If the holder obtains payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received the money on the instrument.

In the above case A gets the possession of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course. A , who is a holder in due course would have been protected if the title is defective but in case of forgery there is no title and hence he also derives no title.

Hence 'A' cannot receive the amount on the bill.

Q5. Discuss with reasons, in the following given conditions, whether 'M' can be called as a "holder" under the Negotiable Instruments Act, 1881:

i. 'M' the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.
ii. 'M' the agent of 'Q' is entrusted with an instrument without endorsement by 'Q' who is the payee. **(Nov 16)**

Answer

As per section 8 of the Negotiable Instruments Act, 1881, 'holder' of a Negotiable Instrument means any person entitled in his own name to the possession of it and to receive or recover the amount due thereon from the parties thereto.
On applying the above provision in the given cases-

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i. 'M' is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.
ii. No, 'M' is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.

Q6. Discuss with reasons, whether the following persons can be called as a 'holder' under the Negotiable Instruments Act, 1881:

i. X who obtains a cheque drawn by Y by way of gift.
ii. A, the payee of the cheque, who is prohibited by a court order from receiving the amount of the cheque.
iii. M, who finds a cheque payable to bearer, on the road and retains it.
iv. B, the agent of C, is entrusted with an instrument without endorsement by C, who is the payee.
v. B, who steals a blank cheque of A and forges A's signature. **(RTP May 20)**

Answer

As per section 8 of the Negotiable Instruments Act, 1881 'holder' of a Negotiable Instrument means any person entitled in his own name

- to the possession of the instrument and
- to receive or recover the amount due thereon from the parties thereto.

i. Yes, X can be termed as a holder because he has a right to possession and to receive the amount due in his own name.
ii. No, he is not a 'holder' because to be called as a 'holder' he must be entitled not only to the possession of the instrument but also to receive the amount mentioned therein.
iii. No, M is not a holder of the Instrument though he is in possession of the cheque, so is not entitled to the possession of it in his own name.
iv. No, B is not a holder. While the agent may receive payment of the amount mentioned in the cheque, yet he cannot be called the holder thereof because he has no right to sue on the instrument in his own name.
v. No, B is not a holder because he is in wrongful possession of the instrument.

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Q7. Q draw a bill on S but signs it in the fictitious name of R. The bill is payable to the order of R. The bill is duly accepted by S. P obtains the bill from Q thus becoming its holder in due course. Can S avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881. **(May 17)**

Answer

As per section 42 of the Negotiable Instruments Act, 1881 in case a bill of exchange is drawn payable to the drawer's order in a fictitious name and if it is endorsed to a holder in due course the HDC can recover the money on the instrument if he can prove that the drawer and the endorser is in the same hand.

In the above case Q draws a bill on S payable to R who is a fictitious person. The bill is accepted by S. The bill is further endorsed to P, a holder in due course, acquires it from Q. As the drawer and the endorser are in the same hand S is liable on the instrument.

Thus S cannot avoid the payment.

Q8. A' draws a bill amounting 5,000 of 3 month's maturity period on 'B' but signs it in the fictitious name of 'C'. Bill is payable to the order of 'C' and it is duly accepted by 'B'. 'D' obtains the bill from 'A' and thus becomes its 'Holder-in-Due course. On maturity 'D' presents bill to 'B' for payment. Is 'B' bound to make the payment of the bill? Examine it referring to the provisions of the Negotiable Instruments Act, 1881. **(Nov 19)**

Answer

As per section 42 of the Negotiable Instruments Act, 1881, in case a bill of exchange is drawn payable to the drawer's order in a fictitious name such bill is not valid. However if the bill is endorsed by the same hand as the drawer's signature, it is not permissible for the acceptor to allege as against the holder in due course that such name is fictitious. So the acceptor shall be liable to pay to the holder in due course on such bill and cannot claim relief on the grounds that it was payable to the drawer's order in a fictitious name.

In the instant case, 'A' draws a bill on 'B' but signs it in the fictitious name of 'C' whcihis duly accepted by 'B'. 'D' obtains the bill from 'A' and thus becomes its 'Holder-in-Due course. On maturity 'D' presents bill to 'B' for payment and B refuses to pay on the grounds that the bill is fictitious. Since the condition that the drawer and endorser must be in the same hand is fulfilled the holder in due course has a right to receive payment on such instrument.

Therefore, B is bound to make the payment of the bill to D.

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Q9. Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following:

i. A bill of exchange originally drawn by Mukesh for a sum of 10,000, but accepted by Deepa only for 7,000. **(RTP Nov17) (May 18)**
ii. A cheque marked 'Not Negotiable' is not transferable. **(RTP Nov 17)**

Answer

i. As per the provisions of the Negotiable Instruments Act 1881, acceptance may be either general or qualified. It is qualified when the drawee does not accept the bill according to the terms of the bill but attaches some condition or qualification which have the effect of either reducing the acceptor's liability or acceptance of his liability is subject to certain condition. A conditional acceptance shall render the instrument as dishonored. The drawer may however accept the qualified acceptance and in such a case the instrument shall be valid.

   In this given case bill was drawn for 10,000 but was accepted for 7,000. As the acceptor has reduced his liability the acceptance is a qualified acceptance and the drawer may treat it as dishonoured unless agreed by him.

   Thus qualified acceptance is not valid but if Mukesh accepts the qualified acceptance Deepa shall be liable for the payment on the instrument for the amount accepted.

ii. The given statement is not correct. A cheque marked "not negotiable" does not imply that the instrument is not negotiable it simply mean that the transferee wll get a title same as that of the transferor. The general rule is that the transferee is he has acquired the instrument for consideration, before maturity and in good faith gets the instrument free from all defects. However if the instrument is marked not negotiable the tramsferee even if he fulfils all the conditions will get the same title as that of the transferor. If the transferor's title is defective even the transferee's title is defective.

Q10. K' is an employee of 'Sumit'. He fraudulently obtains from Sumit a cheque crossed 'not negotiable'. He later transfers the cheque to 'D' who gets the cheque encashed from XYZ Bank, which is not the drawee bank. Sumit comes to know about the fraudulent act of 'K', sues XYZ Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instruments Act, 1881, whether Sumit will be successful in his claim? Would your answer be still the same in case 'K' does not transfer the cheque and gets the cheque encashed from XYZ Bank himself?

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Answer

According to Section 130 of the Negotiable Instruments Act, 1881 any person who gets a cheque marked 'Not Negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took it had. So if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. Even a holder in due course cannot claim any rights on such instrument.

In the above case K who is an employee of Sumit fraudulently obtains a cheque crossed not negotiable from Sumit. Later K transfers this cheque to D who gets it enchashed from the bank. As K's title is defective he can only transfer a defective title to D and the bank would be liable for the amount of the cheque for encashment. (Great Western Railway Co. v. London and Country Banking Co.)

The answer in the second case would not change and shall remain the same for the reasons given above.

Thus, 'Sumit' in both the cases shall be successful in his claim from XYZ Bank.

Q11. Mr. X is the payee of an order cheque. Mr. Y steals the cheque and forges Mr. X's signature and endorses the cheque in his own favour. Mr. Y then further endorses the cheque to Mr. Z, who takes the cheque in good faith and for valuable consideration. Examine the validity of the cheque as per the provisions of the Negotiable Instruments Act, 1881 and also state whether Mr. Z can claim the privileges of holder-in-due course? **(Nov19)**

Answer

Forgery confers no title and a holder acquires no title to a forged instrument. Since a forged instrument is a nullity, therefore the property in such instrument remains vested in the person who is the holder at the time when the forged signatures were put on it. Forgery is also not capable of being ratified. In the case of forged endorsement, the person claiming under forged endorsement even if he is purchaser for value and in good faith, cannot acquire the rights of a holder in due course. Thus, where a signature on the negotiable instrument is forged, it becomes a nullity.

In the above cheque Mr. Y steals a cheque where X is the payee. He forges X's signature and endorses it to Mr. Z who takes it for value. As the signature is forged the cheque now becomes a nullity.

Therefore, cheque further endorsed to Mr. Z, is not valid and acquires no title on the cheque.

Q12. A cheque payable to bearer is crossed generally and marked "not negotiable". The cheque is lost or stolen and comes into possession of Vishnu who takes it in good faith and gives value for it. Vishnu deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is

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drawn. The true owner of the cheque claims refund of the amount of the cheque from Vishnu. Explain whether the banks are liable or not? **(RTP May 17)**

Answer

According to Section 130 of the Negotiable Instruments Act, 1881 any person who gets a cheque marked 'Not Negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took it had. So if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. Even a holder in due course cannot claim any rights on such instrument.
In the given case a cheque payable to bearer crossed not negotiable was lost or stolen and came into the possession of Vishnu. He deposited it into his bank and his banker obtained payment on it. The true owner claimed the refund of the money. Even though Vishnu is a holder in due course he does not acquire any title to the cheque as against its true owner.

Vishnu did not obtain any better title than his immediate transferor, who had either stolen or found the cheque and was not the true owner of the cheque. Therefore, as regards the true owner, Vishnu was in no better position than the transferor. Vishnu is also liable to repay the amount of the cheque to the true owner. He can, however, proceed against the person from whom he took the cheque. Since the collecting banker, in good faith and without negligence, had received payment for Vishnu, who was its customer of the cheque which was crossed generally, the banker would not be liable, in case the title proved to be defective, to the true owner by reason only of having received the payment of the cheque for his customer (as per Section 131). Since the paying banker on whom the crossed cheque was drawn, had paid the same in due course, the banker would also not be liable to the true owner (as per Section 128).
Thus the banks are not liable.

Q13. State the rules laid down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange. **(May 18)**

Answer

The maturity of a note or bill is the date on which it falls due. A note or bill, which is not expressed to be payable on demand, at sight or on presentment; is at maturity on the third day after the day on which it is expressed to be payable. No days of grace are allowed in the case of a note or bill payable on demand, at sight, on presentment.
Calculation of maturity:

1. In the case of a note, the expression "after sight" means after exhibition of the note to the maker.
2. Where a bill is payable at a fixed period after sight, the time is to be calculated from the date of acceptance if the bill is accepted and from the date of noting or protest if the bill is noted or protested for non-acceptance

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3. In the case of a bill payable after a stipulated number of months after sight which has been accepted for honour, the date of its maturity is calculated from the date of acceptance for honour.
4. According to section 25, when the day on which a note, or bill is at maturity is a public holiday, the instrument shall be deemed to be due and payable on the next preceding business day.
5. When a note or bill is after a stated number of months the period stated shall terminate on the day of the month which corresponds with the day on which the instrument is dated
6. When it is payable after a number of months on the happening of a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens.
7. If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month.

Q14. Harish executed a promissory note in favour of Sejal for 5 crores. The said amount was payable three days after sight. Sejal, on maturity, presented the promissory note on 1st January, 2016 to Harish. Harish made the payments on 4th January, 2016. Sejal wants to recover interest for one day from Harish. Advise Harish, in the light of provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay the interest for one day.

OR

Mehul executed a promissory note in favour of Nirav for 10 crore. The said amount was payable four days after sight. Nirav, on maturity, presented the promissory note on 16th February, 2019 to Mehul. Mehul made the payment on 21st February, 2019. Nirav wants to recover the interest for two days from Mehul. Advise Mehul, in the light of the provisions of the Negotiable Instruments Act, 1881, whether he is liable to pay interest for two days. **(Nov19)**

Answer

As per section 24 of the Negotiable Instruments Act, 1881 where a bill or note is payable after date or after sight or after happening of a specified event, the time of payment is determined by excluding the day from which the time begins to run.

In the given case Harish executed a promissory note to Sejal payable 3 days after the sight. The note was presented on 1st Jan, 2016. As the payment was 3 days after sight the date of maturity shall be 4th Jan. Harish has made the payment on the due date and hence is not liable for any interest.

Therefore, in the given case, Harish will succeed in objecting to Sejal's claim.

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Q15. Mr. S Venkatesh drew a cheque in favour of M who was sixteen years old. M settled his rental due by endorsing the cheque in favour of Mrs. A the owner of the house in which he stayed. The cheque was dishonoured when Mrs. A presented it for payment on grounds of inadequacy of funds. Advise Mrs. A how she can proceed to collect her dues. **(Nov 18)**

Answer

As per section 26 of the Negotiable Instruments Act, 1881every person capable of contracting may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. However, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

In the given case Mr. S Venkatesh draws a cheque in favour of M, a minor. M endorses the same in favour of Mrs. A to settle his rental dues. The cheque was dishonoured when it was presented by Mrs. A to the bank on the ground of inadequacy of funds. Here in this case, M being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself.

Therefore, M is not liable. Mrs. A can, thus, proceed against Mr. S Venkatesh to collect her dues.

Q16. Mrs. Parvathy drew a cheque in favour of Ashok who is sixteen years old. Ashok endorsed the cheque in favour of Mr. Prakash who is the owner of the house where Ashok is staying. The cheque was dishonoured by the bank for inadequacy of funds. Mr. Prakash seeks your advice about the legal steps to be taken to collect the dues from Ashok. **(Nov 19)**

Answer

As per section 26 of the Negotiable Instruments Act, 1881, a minor may draw, indorse, deliver and negotiate an instrument so as to bind all the parties except himself. A minor may be the drawer where the instrument is drawn or endorsed by him. In that case he does not incur any liability himself although other parties to the instrument can be made liable and the holder can receive payment from any other party thereto.

In the above case Mrs. Parvathy drew a cheque in favour of Ashok, a minor, which was endorsed by Ashok in favour of Mr. Prakash. The cheque was dishonoured due to insufficiency of funds. As Ashok is a minor he cannot be held liable. However all parties except him shall be liable.

Thus Mr. Prakash cannot proceed against Ashok but h ecan proceed against Mrs. Parvathy.

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Q17. A banker made payment of a cheque in which the drawer's signature was forged. Can the banker claim protection in respect of such payment? What would be the protection if it was a case of forgery of endorsee's signature? **(RTP May 18)**

Answer

As per section 85 of the Negotiable Instruments Act, 1881 in case of cheques, the paying banker is given statutory protection against the payment of cheques having forged endorsements and the banker cannot be held liable if it makes payment in good faith and without any negligence. However the banker will not be protected where the payment of a cheque is made on which the drawer's signature was forged. The reason for the same is that the banker is protected only in case of forgery of endorser's signature and not in case of forgery of drawer's signature.

In the above case the banker made the payment on a cheque where the drawers signature is forged the bank will not get any protection. However if the payment is made on a cheque where the endorsers signature is forged the banker shall be protected.

Q18. Mr. Muralidharan drew a cheque payable to Mr. Vyas or order. Mr. Vyas lost the cheque and was not aware of the loss of the cheque. The person who found the cheque forged the signature of Mr. Vyas and endorsed it to Mr. Parshwanath as the consideration for goods bought by him from Mr. Parshwanath. Mr. Parshwanath encashed the cheque, on the very same day from the drawee bank. Mr. Vyas intimated the drawee bank about the theft of the cheque after three days. Examine the liability of the drawee bank. **(Nov 18)(RTP Nov 19)(MTP May 20)**

Answer

As per section 85 of the Negotiable Instruments Act, 1881

- Where a cheque payable to order is indorsed by or on behalf of the payee, the drawer is discharged by payment in due course.
- Where a cheque is originally payable to bearer, the drawer is discharged by payment in due course to the bearer of the instrument irrespective of any indorsement whether in full or in blank even if it restricts or excludes further negotiation.

If the signature of the endorser is forged the bank shall not be liable for payment on such cheque.

In the above case Mr. Murlidharan draws a cheque payable to Mr. Vyas which was lost. The person who found it forged the signature of Vyas and endorsed it to Mr. parshwanath who encashed the cheque on the same After few days, Mr. Vyas intimated about the theft of the cheque, to the drawee bank, by which time, the drawee bank had already made the payment. According to above stated section 85, the drawee banker is discharged when it has made the payment against the cheque. Even though the signature

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of Mr. Vyas is forged, the banker is protected and is discharged. The true owner, Mr. Vyas, cannot recover the money from the drawee bank in this situation.
Thus the drawee bank has no liability.

Q19. A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque, forged C's endorsement and collected the proceeds of the cheque through his banker. B, the drawer, wants to recover the amount from C's Banker. Discuss, in the light of the provisions of Negotiable Instruments Act, 1881, the right/privileges available to a holder -in-due course. **(Nov 19)**

Answer

As per the Negotiable Instrument Act, 1881 following are the privileges of Holder in due Course:

1. A person signing and delivering to another a stamped but otherwise inchoate instrument is debarred from asserting, as against the holder in due course that the instrument is not filled in accordance with the authority given by him, the stamp being sufficient to cover the amount.
2. In case a bill of exchange is drawn payable to drawer's order in a fictitious name and is endorsed by the same hand is the drawer's signature, it is not permissible for acceptor to allege as against the holder in due course that such name is fictitious.
3. In case a bill or not is negotiated to a holder in due course, the other parties to bill or note can't avoid liability on the ground that the delivery of the instrument was conditional or for a special purpose only.
4. The person liable in a negotiable instrument cannot set up against the holder in due course the defenses that the instrument had been lost or obtained from the former by means of an offence or fraud or for an unlawful consideration.
5. No maker of a promissory note, and no drawer of a bill or cheque and no acceptor of a bill for the honor of the drawer shall, in a suit thereon by an holder in due course be permitted to deny the validity of instrument originally made or not.
6. No maker of a promissory note, and no acceptor of a bill payable to order shall, in suit thereon by the holder in due course, be permitted to deny the payee's capacity at the date of the note or bill, to endorse the same.

In the given problem A induced B by fraud to draw a cheque payable to C or order and obtained it from B. He forged C's endorsement and collected the proceeds of cheque through his banker. Since, banker has made payment in good faith without negligence and affording any circumstances which give rise to suspicion, the bank is discharged from liability as it has made payment in due course.

Therefore B will not be entitled to recover any amount from banker.

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Q20. Give the answer of the following as per the provisions of the Negotiable Instruments Act, 1881:

i. A draws a cheque in favour of M, a minor. M endorses the same in favour of X. The cheque is dishonoured by the bank on grounds of inadequate funds. Discuss the rights of X.
ii. A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. Does this amount to material alteration? **(Nov' 19)**
iii. A draws a cheque for Rs. 1000 and hands it over to B by way of gift. Is B a holder in due course? Explain whether he has right to receive the proceeds of the cheque.
iv. A cheque is drawn payable to "B or order". It is stolen and the thief forges B's endorsement and endorses it to C. The banker pays the cheque in due course. Whether B can recover the money from the banker. **(MTP Aug 18)**

Answer

i. As per Section 26 of the Negotiable Instruments Act, 1881, a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except himself. Therefore, M is not liable. X can, thus, proceed against A.
ii. As per the provision of the Negotiable Instruments Act,1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand. Hence adding the words "on demand" does not alter the business effect of the instrument.
iii. B is a holder but not a holder in due course as he does not get the cheque for value and consideration. His title is good and bonafide. As a holder he is entitled to receive Rs. 1000 from the bank on whom the cheque is drawn.
iv. According to Section 85 of the Negotiable Instruments Act, 1881, the drawee banker is discharged when he pays a cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the endorsement of Mr. B is forged, the banker is protected and he is discharged. The true owner, B, cannot recover the money from the drawee bank.

Q21. Explain the meaning of 'Negotiation by delivery' with the help of an example. Give your answer as per the provisions of the Negotiable Instruments Act, 1881.

(MT Mar 19)

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Answer

According to section 47 of the Negotiable Instruments Act, 1881, subject to the provisions of section 58, a promissory note, bill of exchange or cheque payable to bearer is negotiable by delivery thereof. However a promissory note, bill of exchange or cheque delivered on condition that it is not to take effect except in a certain event is not negotiable unless such event happens.

Example: A, the holder of a negotiable instrument payable to bearer, delivers it to B's agent to keep for B. The instrument has been negotiated.

Q22. What is a 'Sans Recours' endorsement? A bill of exchange is drawn payable to X or order. X endorses it to Y, Y to Z, Z to A, A to B and B to X. State with reasons whether X can recover the amount of the bill from Y, Z, A and B, if he has originally endorsed the bill to Y by adding the words Sans Recours. **(RTP May 18)**

Answer

Sans recours endorsement is a type of endorsement on a Negotiable Instrument by which the endorser absolves himself or declines to accept any liability on the instrument of any subsequent party. The endorser signs the endorsement putting his-signature along with the words, "SANS RECOURS".

In the above case X endorses the instrument to Y who endorses it to Z, Z to A, A to B and finally B endorses the instrument to X again. The general rule of endorsement is that when the endorser subsequently becomes the endorsee all the intermediate parties are discharged. However when X makes a sans recours endorsement and later becomes the holder of the instrument he is discharged of all the liabilities but all the other parties remain liable to him and he can recover from any of the prior parties.

Thus X can recover the money from Y, Z A or B

Q23. What is meant by "Sans recourse endorsement" on a bill of exchange? How does it differ from "sans frais endorsement"? **(May 18)**

Answer

Sans recours endorsement is a type of endorsement on a Negotiable Instrument by which the endorser absolves himself or declines to accept any liability on the instrument of any subsequent party. The endorser signs the endorsement putting his-signature along with the words, "SANS RECOURS". In such a case when the endorser excludes his liability as an endorser and later becomes the holder of the same instrument all intermediate endorsers are liable to him.

Sans Frais: These words when added at the end of the endorsement indicate that no expenses should be incurred on account of the bill.

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Difference: Any endorser can exclude personal liability by endorsing "sans recourse" i .e. without recourse. However, "Sans Frais" endorsement, indicate that no expenses should be incurred on account of the bill.

In case of 'sans recourse endorsement' if bill is dishonoured at any stage after it is endorsed sans recourse by endorser, the endorser will not be liable for whole amount of the bill whereas in case of sans frais endorsement, if bill is dishonoured at any stage after its endorsement, the endorser will not be liable for expenses incurred, but he will be liable for the original sum of the bill.

Q24.

Y draws a bill of exchange on Z for 5,000 payable to his order. Z accepts the bill but subsequently dishonours it by non-payment. Y sues Z on the bill. Z proves that bill was accepted for value of 3,000 and an accommodation to the balance of 2,000. How much amount Y can recover from Z?

OR

P draws a bill on Q for Rs. 10,000. Q accepts the bill. On maturity, the bill was dishonored by nonpayment. P files a suit against Q for payment of Rs. 10,000. Q proved that the bill was accepted for value of Rs. 7,000 and as an accommodation to the plaintiff for the balance amount i.e. Rs. 3,000. Referring to the provisions of the Negotiable Instruments Act, 1881 decide whether P would succeed in recovering the whole amount of the bill ? **(MTP Nov 19, May 20)**

Answer

According to the provisions of Section 44 of the Negotiable Instruments Act,1881 when the consideration is partially absent for which the instrument was signed the n for that part the same rule will apply as if there is no consideration. Thus the parties in immediate relation cannot recover more than the actual consideration.

In the above case Y draws a bill on Z for 5,000 which Z accepts. On the due date the instrument is dishonoured due to non payment. This bill was accepted for 3,000 for value and 2,000 for accommodation. So as between Y and Z 3,000 is enforceable whereas 2,000 fails due to lack of consideration.

Thus Y can recover only 3,000 from Z

Q25.

E is the holder of a bill of exchange made payable to the order of F. The bill of exchange contains the following endorsements in blank:
First endorsement 'F'
Second endorsement 'G'
Third endorsement 'H' and
Fourth endorsement 'I'
E strikes out, without I's consent, the endorsements by 'G' and 'H'. Decide with reasons whether 'E' is entitled to recover anything from 'I' under the provisions of Negotiable Instruments Act, 1881. **(RTP May18)(Nov 17)**

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Answer

The holder of a negotiable instrument can recover the money from any of the prior parties. According to section 40 of the Negotiable Instruments Act, 1881, where the holder of a negotiable instrument, without the consent of the endorser, destroys or impairs the endorser' s remedy against a prior party, the endorser is discharged from liability to the holder to the same extent as if the instrument had been paid at maturity. Any party liable on the instrument may be discharged by the intentional cancellation of his signature by the holder.

In the given question, E is the holder of a bill of exchange of which F is the payee. The bill contains the following endorsement in blank:

First endorsement, 'F'
Second endorsement, 'G'
Third endorsement, 'H'
Fourth endorsement, 'I'
E, the holder, without I's consent strikes out the endorsement by G and H. I had a right over G and H to recover the money on the bill.

Thus E cannot recover anything from I as when he strikes H and G's name I is discharged.

Q26.

A bill of exchange has been dishonoured by non- payment. Now, Mr. Sandip, the holder wants a certificate of protest for such a dishonoured bill. Advise, Mr. Sandip whether he can get the certificate of protest. Also, advise him regarding the provisions of Protest for better security. **(RTP Nov 18)**

Answer

According to section 100 of the Negotiable Instruments Act,1881 when a promissory note or bill of exchange has been dishonored by non-acceptance or nonpayment, the holder may, within a reasonable time, cause such dishonor to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security: When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused may, with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security. Thus, Mr. Sandip can get the certificate of protest by following the above provisions.

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Q27. What are the circumstances under which a bill of exchange can be dishonoured by non acceptance? **(MTP May 20)**

Answer

As per section 91 of the Negotiable Instruments Act, 1881, a bill may be dishonoured either by non-acceptance or by non-payment.
Dishonour by non-acceptance may take place in any one of the following circumstances:

i. When the drawee either does not accept the bill within forty-eight hours (exclusive of public holidays) of presentment or refuse to accept it;
ii. When one of several drawees, not being partners, makes default in acceptance;
iii. When the drawee makes a qualified acceptance;
iv. When presentment for acceptance is excused and the bill remains unaccepted; and
v. When the drawee is incompetent to contract.

Q28. Manoj owes money to Umesh. Therefore, he makes a promissory note for the amount in favour of Umesh, for safety of transmission he cuts the note in half and posts one half to Umesh. He then changes his mind and calls upon Umesh to return the half of the note which he had sent. Umesh requires Manoj to send the other half of the promissory note. Decide how rights of the parties are to be adjusted. Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

(RTP May19)(MTP Mar 19)

Answer

Under Section 46 of the Negotiable Instruments Act, 1881, the making of a promissory note is completed by delivery, actual or constructive. Delivery refers to the whole of the instrument and not merely a part of it. Delivery of half instrument cannot be treated as constructive delivery of the whole.

In the above case Manoj draws a promissory note in favour of Umesh cuts it into half and delivers it to Umesh. He cuts the note into half and sends one of it to Umesh. Later he asks Umesh to return it back and on the other hand Umesh asks for the other piece. As delivery of half of the instrument is not a delivery is not the delivery of the instrument the transfer of a part of the instrument shall not be treated as delivery.

So, the claim of Umesh to have the other half of the promissory note sent to him is not maintainable. Manoj is justified in demanding the return of the first half sent by him.

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Q29. What are the circumstances under which a bill of exchange can be dishonoured by non- acceptance? Also, explain the consequences if a cheque gets dishonoured for insufficiency of funds in the account. **(Nov 18)**

Answer

As per section 91 of the Negotiable Instruments Act, 1881, a bill may be dishonoured either by non-acceptance or by non-payment.

Dishonour by non-acceptance may take place in any one of the following circumstances:

i. When the drawee either does not accept the bill within forty-eight hours (exclusive of public holidays) of presentment or refuse to accept it;
ii. When one of several drawees, not being partners, makes default in acceptance;
iii. When the drawee makes a qualified acceptance;
iv. When presentment for acceptance is excused and the bill remains unaccepted; and
v. When the drawee is incompetent to contract.

As per section 138 of the Negotiable Instruments Act 1881, where any cheque drawn by a person on an account maintained by him with a banker for payment is dishonoured due to insufficiency of funds, he shall be punished with imprisonment for a term which may extend to two years or with fine which may extend to twice the amount of the cheque or with both.

Q30. Explain the modes of discharge from liability on instruments, as per the provisions of the Negotiable Instruments Act, 1881. **(MTP Aug 18)**

Answer

Discharge of parties:
Parties to negotiable instrument are discharged from liabilities when the right to sue on the instrument comes to an end. The right of action on a negotiable instrument is extinguished by the following methods:

i. By payment in due course: The maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon to all parties if the payment on the instrument has been made in due course. instrument is payable to
ii. By cancellations of acceptor's or endorser's name: The maker, acceptor and endorser respectively of a negotiable instrument is discharged from liability thereon to a holder thereof who has cancelled such acceptor's or endorser's name with the intent to discharge him and to all parties claiming under such holder.

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iii. By release: When the holder renounces his right on an instrument the patrties are discharged.
iv. By default of the holder: If the holder of a bill of exchange allows the drawee more than forty-eight hours, exclusive of public holiday, to decide whether he will accept the bill, all prior parties not consenting to such an allowance are discharged from liability to such holder.
v. Dissenting parties discharged by qualified or a limited acceptance: If the holder of a bill who is entitled to an absolute and unqualified acceptance elects to take a qualified acceptance he discharges all parties prior to himself unless he obtains their consent to such an acceptance.
vi. By material alteration of the instrument without assent of all parties liable: Any material alteration of a negotiable instrument renders the same void as against anyone who is a party thereto at the time of making such alteration and does not consent to such alteration.
vii. By acceptor becoming holder of a bill at or after maturity in his own right: If a bill of exchange which has been negotiated is, at or after maturity, held by the acceptor in his own right, all rights of action thereon are extinguished.
viii. By default in presenting the cheque within a reasonable time: In the case of a cheque, if it is not presented for payment within a reasonable time.
ix. By operation of law: An instrument may be discharged by operation of law in any of the following cases:
- By lapse of time i.e., when the claim under the instrument becomes barred by the Limitation Act
- By merger, i.e., when the debt, under the instrument is merged in the judgement debt obtained against the acceptor, maker or endorser;
- When the acceptor, maker, or endorser, who has been adjudicated an insolvent, is discharged by an order of the Court made in the insolvency proceedings.

x. By payment by the drawee of a cheque payable to order or to bearer: Where the banker makes the payment on a cheque in due course the bank is discharged. Payment in due course discharges the bank from liability even if the payment is made to a wrong person even if the endorsement of the payee is forged.

Q31. State whether the following alteration is material alteration under the provisions of the Negotiable Instruments Act, 1881. ·
A promissory note was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. **(Nov 19)**

Answer

An alteration is material which in any way alters the operation of the instrument and affects the liability of parties thereto. Any alteration is material

i. which alters the business effect of the instrument if used for any business purpose;

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ii. which causes it to speak a different language in legal effect form that which it originally spoke or which changes the legal identity or character of the instrument.

In the said case, a promissory note was made without mentioning any time for payment.

The holder added the words “on demand” on the face of the instrument. As per the above provision of the Negotiable Instruments Act, 1881 this is not a material alteration as a promissory note where no date of payment is specified will be treated as payable on demand.

Hence, adding the words “on demand” does not alter the business effect of the instrument.

Q32. Jagdish, a shareholder of a company purchased for his personal use certain goods from a Mall (Departmental Store) on credit. He sent a cheque drawn on the Company’s account to the Mall (Departmental Store) towards the full payment of the bills. The cheque was dishonoured by the Company’s Bank. Jagdish, the shareholder of the company was neither a Director nor a person in-charge of the company. Examining the provisions of the Negotiable Instruments Act, 1881 state whether Jagdish has committed an offence under Section 138 of the Act and decide whether he (Jagdish) can be held liable for the payment, for the goods purchased from the Mall (Departmental Store). **(RTP Nov 17)**

Answer

As per section 138 of the Negotiable Instruments Act, 1881 a person shall be liable for dishonor of cheque due to insufficiency of funds. If the drawer issues a cheque which is later dishonoured the drawer shall be helf liable. In case of a company the liability shall be on the company and the persons in charge. In H.N.D. Mulla rd Feroze Vs. C.Y. Somaya Julu, J the Andhra Pradesh High Court held that although the petitioner has a legal liability to refund the amount to the appellant, petitioner is not the drawer of the cheque, which was dishonoured and the cheque was also not drawn on an account maintained by him but was drawn on an account maintained by the company.

Hence, it was held that the petitioner J could not be said to have committed the offence under Section 138 of the Negotiable Instruments Act, 1881.

In the above case Jagdish, a shareholder of the company purchased certain goods on credit for his personal use. The payment was made by him by a cheque drawn on the company’s account. The cheque was dishonoured. Where u/s 138 a cheque is dishonoured the drawer shall be liable. In this case the cheque was drawn by jagdish but as he was not the director in charge he cannot be held liable. Only the company and the director in charge shall be liable for the cheque. However as the goods were purchased for Jagdish’s personal use he shall be liable for the goods.

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Therefore, Jagdish is not liable for the cheque but legally liable for the payments for the goods.

Q33. Bholenath drew a cheque in favour of Surendar. After having issued the cheque; Bholenath requested Surendar not to present the cheque for payment and gave a stop payment request to the bank in respect of the cheque issued to Surendar. Decide, under the provisions of the Negotiable Instruments Act, 1881 whether the said acts of Bholenath constitute an offence? **(May18) (May 17)**

Answer

As per section 138 of the Negotiable Instruments Act, 1881 if after the issue of the cheque it is dishonoured due to insufficiency of funds the drawer shall be punished. However the right of action not available in any case other than dishonour due to insufficiency of funds. If after the issue of the cheque the drawer gives the bank an order for stop payment it does not attract section 138 but if the order for stop payment is given due to insufficiency of funds than it falls u/s 138. So u/s 139 it is presumed that once a cheque is issued by the drawer just because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not stop an action under Section 138.

In the case of Modi Cements Ltd. Vs. Kuchil Kumar Nandi the Supreme Court held that once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows.

In the above case Bholenath the drawer draws a cheque in favour of Surendranath but instructs him not to present it to the bank. Further he gave the bank the order to stop payment on the cheque.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Q34. Mr. Bean is a promoter who has taken a loan on behalf of company but he is neither a director nor a person-in-charge of the company. He sent a cheque from the company's account to discharge its legal liability. Subsequently, the cheque was dishonoured and a complaint was lodged against him. Can he be held liable for an offence under Section 138 of the Negotiable Instruments Act, 1881? **(May 16)**

Answer

According to Section 138 of the Negotiable Instruments Act, 1881 where any cheque drawn by a person on an account maintained by him with a banker is dishonoured by banker for insufficiency of funds such person shall be deemed to have committed an offence. As per section 141 if the cheque s issued by a company the liability shall lie on the company and every person who is in charge of the company.

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In the above case Mr. Bean the promoter of the company has taken a loan on behalf of company. He is neither a director nor a person in-charge of the Company. He sent a cheque from the company's account which was subsequently dishonoured. In this case Mr. Bean, the promoter is neither a director nor a person-in charge of the company and is not connected with the day-to-day affairs of the company and had neither opened nor is operating the bank account of the company. Further, the cheque, which was dishonoured, was also not drawn on an account maintained by him but was drawn on an account maintained by the company.

Therefore, Mr. Bean, has not committed an offence under section 138 of the Negotiable Instruments Act, 1881 and he cannot be held liable for dishonor of the said cheque.

Q35. Explain the concept of 'Noting', 'Protest' and 'Protest for better security' as per the Negotiable Instruments Act, 1881. **(Nov 19)**

Answer

Noting: When a promissory note or bill of exchange has been dishonoured by non-acceptance or non-payment, the holder may cause such dishonour to be noted by a notary public upon the instrument, or upon a paper attached thereto, or partly upon each. Such note must be made within a reasonable time after dishonour, and must specify the date of dishonor, the reason if any assigned for such dishonor, or if the instrument has not been expressly dishonoured, the reason why the holder treats it as dishonoured and the notary's charges.

Protest: When a promissory note or bill of exchange has been dishonoured by non acceptance or non-payment, the holder may, within a reasonable time, cause such dishonour to be noted and certified by a notary public. Such certificate is called a protest.

Protest for better security: When the acceptor of a bill of exchange has become insolvent, or his credit has been publicly impeached, before the maturity of the bill, the holder may, within a reasonable time, cause a notary public to demand better security of the acceptor, and on its being refused, may with a reasonable time, cause such facts to be noted and certified as aforesaid. Such certificate is called a protest for better security.

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Q36. Explain the power of court for trial of cases summarily, as per the provisions of the Negotiable Instruments Act, 1881. **(MTP Oct 18)**

Answer

According to section 143 of the Negotiable Instruments Act, 1881,

1. **Trial of Offence:** All offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:
   - i. **In case of summary trial:** In the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of Imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees.
   - ii. **In case where no summary trial can be made:** Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

2. **Speedy Trial:** The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

3. **Speedy and efficient Disposal:** Every trial under this section shall be conducted as expeditiously as possible and an endeavor shall be made to conclude the trial within six months from the date of filing of the complaint.

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11.General Clauses Act, 1897

Q1. A notice when required under the Statutory rules to be sent by “registered post acknowledgment due” is instead sent by “registered post” only. Whether the protection of presumption regarding serving of notice by “registered post” under the General Clauses Act is tenable? Referring to the provisions of the General Clauses Act, 1897, examine the validity of such notice in this case. **(RTP May 18, May 19)**

Answer

As per the provisions of Section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. properly addressing,
ii. pre-paying, and
iii. posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In United Commercial Bank v. Bhim Sain Makhija, a notice when required under the statutory rules to be sent by ‘registered post acknowledgement due’ is instead sent by ‘registered post’ only, the protection of presumption regarding serving of notice under ‘registered post’ under this section of the Act is not tenable.

In the above case as per the Statutory Rules a notice must be sent by registered post acknowledgment due. Instead the notice was sent by registered post. If nothing is stated otherwise notice sent by registered post would be valid but since it was specified that t should be sent by registered post acknowledgment due the notice shall not be considered as valid.

Therefore, in view of the above provision, the notice shall not be deemed to have been in compliance of said rules.

Q2. Mr. Vyas is the owner of House No. 20 in Geeta Colony, Delhi. He has rented two rooms in this house to Mr. Iyer. The Income Tax Authority has served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned the notice with an endorsement of refusal. Decide with reference to provisions of "General Clauses Act, 1897”, whether the notice was rightfully served on Mr. Vyas. **(RTP May 20)**

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Answer

According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. Properly addressing
ii. Pre-paying, and
iii. Posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In Jagdish Singh V Natthu Singh the court held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal, it will be presumed that the notice has been served.

In the above case The Income Tax Authority served a show cause notice to Mr. Vyas. The said notice was received by Mr. Iyer and returned by him with an endorsement of refusal.

Thus it shall be deemed that the notice was rightfully served on Mr. Vyas.

Q3. Mr. Ram, an advocate has fraudulently deceived his client Mr. Shyam, who was taking his expert advise on taxation matters. Now, Mr. Ram is liable to a fine for acting fraudulently both under the Advocates Act, 1961 as well as the Income Tax Act, 1961. State the provision as to whether his offence is punishable under the both the Acts, as per the General Clauses Act, 1897. **(RTP Nov 18)**

Answer

As per section 26 of the General Clauses Act, 1897 if an act or omission constitutes an offence under two or more enactments, then the offender shall be liable to be prosecuted and punished under either one of those enactments, but shall not be punished twice for the same offence.

In the above case Mr. Ram, an advocate had deceived his client committing an offence under Advocates Act. 1961 and Income Tax Act, 1961. As per the provisions he can be punished under any one of the Acts.

Thus, Mr. Ram shall be liable to punished under the Advocates Act, 1961 or the Income Tax Act, 1961, but shall not be punished twice for the same offence.

Q4. Komal Ltd. declares a dividend for its shareholders in its AGM held on 27th September, 2018. Referring to provisions of the General Clauses Act, 1897 and Companies Act, 2013, advice:

i. The dates during which Komal Ltd. is required to pay the dividend?
ii. The dates during which Komal Ltd. is required to transfer the unpaid or unclaimed dividend to unpaid dividend account? **(Nov 18)**

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Answer

As per section 9 of the General Clauses Act, 1897, for computation of time, the first in a series of days or any other period of time to use the word "from" shall be excluded and the last in a series of days or any other period of time, shall be included.
In the given case, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018.

i. Under the provisions of Section 127 of the Companies Act, 2013, a company is required to pay declared dividend within 30 days from the date of declaration, i.e. from 28/09/2018 to 27/10/2018. In this series of 30 days, 27/09/2018 will be excluded and last 30 day, i.e. 27/10/2018 will be included. Accordingly, Komal Ltd. will be required to pay dividend within 28/09/2018 and 27/10/2018 (both days inclusive).
ii. As per the provisions of Section 124 of the Companies Act, 2013, where a dividend has been declared by a company but has not been paid or claimed within 30 days from the date of the declaration, the company shall, within 7 days from the date of expiry of the 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/ unclaimed dividend to UDA from 28/09/20018 to 3/10/2018.

Q5. Explain various provisions applicable to rules or bye-laws being made after previous publications as enumerated in Section-23 of the General Clauses Act, 1897.
(Nov 18)

Answer

As per section 23 of the General Clauses Act, 1897, where, by any Central Act or Regulation, a power to make rules or bye-laws is given subject to the condition that it can be made only after previous publication, then the following provisions shall apply:-

1. **Publish of proposed draft rules/ bye - laws:** The authority having power to make the rules or bye-laws shall, before making them, publish a draft of the proposed rules or bye-laws for the information of persons likely to be affected thereby;
2. **To publish in the prescribed manner:** The publication shall be made in such manner as that authority deems to be sufficient, or, respect to previous publication so requires, in such manner as the Government concerned prescribes;
3. **Notice annexed with the published draft:** a notice specifying the date on which the draft shall be taken into consideration shall be published with the draft.

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4. **Consideration on suggestions/objections received from other authorities:** The authority or any authority whose sanction is required shall consider any objection or suggestion which may be received.
5. **Notified in the official gazette:** The publication in the Official Gazette of a rule or bye-law purporting to have been made in exercise of a power to make rules or byelaws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

Q6. Repeal of provision is different from 'deletion' of provision. Explain.

(Nov 18) (MTP May 20)

Answer

In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, the court specified that 'Repeal' of provision is in distinction from 'deletion' of provision.
'Repeal' ordinarily brings about complete obliteration (abolition) of the provision as if it never existed, thereby affecting all incoherent rights and all causes of action related to the 'repealed' provision while 'deletion' ordinarily takes effect from the date of legislature affecting the said deletion, never to effect total effecting or wiping out of the provision as if it never existed.

Q7. X owned a land with fifty tamarind trees. He sold his land and the (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamount to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". **(May 18) (RTP Nov 19) (MTP May 20)**

Answer

As per section 3(26) of the General Clauses Act, 1897 'Immovable Property' shall include:

i. Land,
ii. Benefits to arise out of land, and
iii. Things attached to the earth, or
iv. Permanently fastened to anything attached to the earth.

It is an inclusive definition and contains four elements: land, benefits to arise out of land, things attached to the earth and things permanently fastened to anything attached to the earth. Where, in any enactment, the definition of immovable property is in the negative and not exhaustive, the definition as given in the General Clauses Act will apply to the expression given in that enactment.

In the above case, X is the owner of a land with fifty tamarind trees. X sold the land along with timber (obtained after cutting trees) of fifty tamarind trees of his land.

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According to the above definition, Land is immovable property however timber cannot be immovable property since the same are not attached to the earth.
Thus sale of timber shall not amount to sale of immoveable property.

Q8. Define the term "Affidavit" under the General Clauses Act, 1897. **(Nov 19)**

Answer

Affidavit” as defined under section 3(3) of the General Clauses Act, 1897 shall include affirmation and declaration in the case of persons by law allowed to affirm or declare instead of swearing.
There are two important points derived from the above definition:

1. Affirmation and declaration,
2. In case of persons allowed affirming or declaring instead of swearing.

The above definition is inclusive in nature. It states that Affidavit shall include affirmation and declarations. This definition does not define affidavit. However, we can understand this term in general parlance. Affidavit is a written statement confirmed by oath or affirmation for use as evidence in Court or before any authority.

Q9. What do you understand by the term 'Good Faith'. Explain it as per the provisions of the General Clauses Act, 1897. Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Whether the purchase made could be said to be made in good faith. **(Nov 19)**

Answer

As per Section 3(22) of the General Clauses Act, 1897, the term “good faith” means a thing shall be deemed to be done in “good faith” where it is in fact done honestly, whether it is done negligently or not;

The term “Good faith” has been defined differently in different enactments. This definition of the good faith does not apply to that enactment which contains a special definition of the term “good faith” and there the definition given in that particular enactment has to be followed.

The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case. Thus, anything done with due care and attention, which is not malafide is presumed to have been done in good faith.

In the given problem in the question, Mr. X purchased a watch from Mr. Y carelessly without proper enquiry. Such a purchase made could not be said to be made in good faith as it was done without due care and attention as is expected with a man of ordinary prudence. An honest purchase made carelessly without making proper enquiries cannot be said to have been made in good faith so as to convey good title.

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Thus the purchase cannot be said to be made in good faith.

Q10. Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897. **(May18)**

Answer

According to Section 6 of the General Clauses Act, 1897, where any Central legislation or any regulation made after the commencement of this Act repeals any Act made or yet to be made, unless another purpose exists, the repeal shall not:

- Revive anything not enforced or prevailed during the period at which repeal is effected or;
- Affect the prior management of any legislation that is repealed or anything performed or undergone or;
- Affect any claim, privilege, responsibility or debt obtained, ensued or sustained under any legislation so repealed or;
- Affect any punishment, forfeiture or penalty sustained with regard to any offence committed as opposed to any legislation or
- Affect any inquiry, litigation or remedy with regard to such claim, privilege, debt or responsibility or any inquiry, litigation or remedy may be initiated, continued or insisted.

Q11. What is the meaning of service by post as per provisions of The General Clauses Act, 1897? **(May 18)**

Answer

As per section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. properly addressing
ii. pre-paying, and
iii. posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post.

Q12. Mr. Mike has lent his house property to Mr. Wise at a monthly rent of Rs. 15,0000 per month. The yearly rent agreement was due to expire in near future. However, Mr. Mike does not intend to continue this agreement and he has sent a notice

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to Mr. Wise for the termination of the agreement. Mr. Wise on the other hand does not want to vacate the property and hence has returned the notice with an endorsement of refusal. Now, Mr. Wise has contended that the no notice was served to him and hence there is no need for him to vacate the property. As per the provisions of the General Clauses Act, 1897, discuss whether a notice was served to Mr. Wise. **(MTP Aug 18)**

Answer

As per section 27 of the General Clause Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. properly addressing
ii. pre-paying, and
iii. posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In Jagdish Singh V. Natthu Singh, it was held that where a notice is sent to the landlord by registered post and the same is returned by the tenant with an endorsement of refusal it will be presumed that the notice has been served.

In the above case Mr. Mike had lent his property to Mr. Wise. The yearly agreement was due to expire. As Mr. Mike did not intend to renew the agreement he sent a notice to Mr. Wise for termination of agreement. Wise did not want to vacate the property so he returned the notice back with endorsement of refusal. Contending that since he had not received the notice he is not liable to vacate the property. As was held in the case of Jagdish Singh V. Natthu Singh that the notice marked with endorsement of refusal is deemed to be a valid notice, it will be presumed that the notice has been served.

Hence, in the given situation, a notice was rightfully served to Mr. Wise.

Q13. What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897. **(MTP Aug 18)**

Answer

As per section 3(22) of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The question of good faith under the General Clauses Act is one of fact. It is to determine with reference to the circumstances of each case.

The term has been defined differently in different enactments. Where the enactment defines the terms that definition shall be followed. This definition shall not apply to enactments which has special definition. The definition may be applied only when there is nothing inconsistent in subject or context and if that is so this definition is not applicable.

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In Maung Aung Pu V. Maung Si Maung it was pointed out that the expression good faith is not defined in the Indian Contract Act, 1872 and the definition given in the General Clauses Act does not expressly apply the term on the Indian Contract Act.

Q14. As per the provisions of the Companies Act, 2013, a whole time Key Managerial Personnel (KMP) shall not hold office in more than one company except its subsidiary company at the same time. Referring to the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies? **(MTP Aug 18)**

Answer

As per section 203(3) of the Companies Act, 2013 a whole time key managerial personnel shall not hold office in more than one company except in its subsidiary company at the same time. With respect to the issue that whether a whole time KMP of holding company be appointed in more than one subsidiary companies or can be appointed in only one subsidiary company. Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything inconsistent to the subject or the context.

In the above case the statement says that he cannot be appointed in more than once company other than its subsidiary. As singular includes plural the words subsidiary shall include subsidiaries.

Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the law.

Q15. Excel Ltd. declared dividend for its shareholder in its Annual General Meeting held on 30th September, 2017. Under the provisions of the Companies Act, 2013, company is required to pay declared dividend within 30 days from the date of declaration. As per the provisions of the General Clauses Act, 1897, discuss what will be the commencement and termination time for posting of declared dividend. **(MTP Oct 18)**

Answer

As per the provisions of section 9 of the General Clauses Act, 1897, for computation of time, the first in a series of days or any other period of time to use the word "from" shall be excluded and the last in a series of days or any other period of time, shall be included.

In the given case, Excel Ltd. declared dividend to its shareholders in its AGM held on 30th Sept, 2017. As per The Companies Act the dividend must be paid within 30 days from the date of declaration. Excluding the first day from the series i.e., 30/09/2917 and counting the last day 30 days shall be from 1/10/2017 to 31/10/2017.

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Q16. The Companies Act, 2013 provides that the amount of dividend remained unpaid/ unclaimed on expiry of 30 days from the date of declaration of dividend shall be transferred to unpaid dividend account within 7 days from the date of expiry of such period of 30 days. If the expiry date of such 30 days is 30.10.2018, decide the last date on or before which the unpaid/unclaimed dividend amount shall be required to be transferred to a separate bank account in the light of the relevant provisions of the General Clauses Act, 1897? **(Nov 19)**

Answer

Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, the first in the series of day shall be excluded and the last of the day in the series shall be included.
In the above case the unpaid dividend shall be transferred to unpaid dividend account within 7 days from 30th Oct. Excluding 1st day and including the last day, 7 days shall be 6th Nov (from 31st Oct to 6th Nov).

So unpaid dividend shall be transferred by 6th Nov.

Q 17. What is the effect on the implementation of the Rules that are issued between passing and commencement of enactment? Explain as per the provisions of the General Clauses Act, 1897. **(MT Oct 18)**

Answer

As per section 22 of the General Clauses Act, where by any Central Act or Regulation which has not to come into force immediately, on passing, a power is conferred to make rules or bye-laws, or to issue orders with respect to the application of the Act or Regulation or with respect to

- the establishment of any Court or
- the appointment of any Judge or officer thereunder, or
- with respect to the person by whom, or the time when, or the place where, or the manner in which, or the fees for which, anything is to be done under the Act or Regulation,

then that power may be exercised at any time after passing of the Act or Regulation; but rules, bye-laws or orders so made or issued shall not take effect till the commencement of the Act or Regulation.

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Q18. SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1 January, 2016. Referring to the provisions of the General Clauses Act, 1897, examine the date of enforcement of these Regulations? **(MTP Oct 18)**

Answer

According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of

- the Governor General in case of a Central Acts made before the commencement of the Indian Constitution; and/or,
- of the President in case of an Act of Parliament.

In this case SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI by a notification dates 14th Aug, 2015 with effect from 1st Jan, 2016.

Hence the Regulation shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

Q19. A notice was served on Mr. P for appearing in the court. However, the notice could not be served on account of the fact that the house of the Mr. P was found locked. Thus, Mr. P. did not appear in the court at the said date. Examine the situation as per the provisions of the General Clauses Act, 1897 and determine whether Mr. P. will be liable in the given situation. **(MT Mar 19)**

Answer

According to section 27 of the General Clauses Act, 1897, where any legislation or regulation requires any document to be served by post, then unless a different intention appears, the service shall be deemed to be effected by:

i. properly addressing
ii. pre-paying, and
iii. posting by registered post.

A letter containing the document to have been effected at the time at which the letter would be delivered in the ordinary course of post. In Smt. Vandana Gulati V. Gurmeet Singh alias Mangal Singh the court held that endorsements "not met/ not claimed" is sufficient to prove deemed service of notice.

In the above case a notice was served on Mr. P to appear in the court. However as his house was locked the notice was never received and Mr. P did not appear in the court.

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As was held in the case that the notice is deemed to have been served it was Mr. P obligation to be present in the court.
Thus the notice is deemed to have been served and Mr. P shall be held liable. It would be for Mr. P to prove that it was not really served and that he was not responsible for such non- service.

Q20. Referring to the provisions of the General Clauses Act, 1897, find out the day/ date on which the following Act/Regulation comes into force. Give reasons also,

1. An Act of Parliament which has not specifically mentioned a particular date.
2. The Securities and Exchange Board of India (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 was issued by SEBI vide Notification dated 14th August, 2015 with effect from 1st January, 2016.

(Nov 19)

Answer

1. According to section 5 of the General Clauses Act, 1897, where any Central Act has not specifically mentioned a particular date to come into force, it shall be implemented on the day on which it receives the assent of the President in case of an Act of Parliament.
2. If any specific date of enforcement is prescribed in the Official Gazette, the Act shall come into enforcement from such date. Thus, in the given question, the SEBI (Issue of Capital and Disclosure Requirements) (Fifth Amendment) Regulations, 2015 shall come into enforcement on 1st January, 2016 rather than the date of its notification in the gazette.

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