

INTERMEDIATE

GROUP-1

PAPER-2 CORPORATE AND OTHER LAWS

RTPs, MTPs AND PAST PAPERS

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CHAPTER-1

PRELIMINARY

Q-1 Modern 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.

[Sugg. May'19, 2 Marks]

Ans. 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 provides the conditions. As per Rule 13(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five per cent of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

In the instant case, Modern 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.

Hence, the company can only pay a maximum of 4% underwriting commission on shares.

Q-2 If it is defined as:

“Company means a company incorporated under the Companies Act, 2013 or under any previous company Law”.

[Sugg. May'19, 2 Marks]

Ans. **Restrictive and extensive definitions:** The definition of a word or expression in the definition section may either be restricting of its ordinary meaning or may be extensive of the same.

When a word is defined to ‘**mean**’ such and such, the definition is ‘prima facie’ restrictive and exhaustive, we must restrict the meaning of the word to that given in the definition section.

But where the word is defined to ‘**include**’ such and such, the definition is ‘prima facie’ extensive: here the word defined is not restricted to the meaning assigned to it but has extensive meaning which also includes the meaning assigned to it in the definition section. Thus,

The definition is restrictive and exhaustive to the effect that only an entity incorporated under the Companies Act, 2013 or under any previous Companies Act, shall be deemed to be company.

Q-3 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. [Sugg. May'19, 6 Marks]

Ans. 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 given question, Teresa Ltd. will be treated as a foreign company within the meaning of section 2(42) of the Companies Act, 2013 since it is doing online business through data interchange in India even though the company has no place of business established in India.

Q-4 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? **[Sugg.May’18,6 Marks]**

Ans. Small Company: According to Section 2(85) of the Companies Act, 2013, Small Company means a company, other than a public company,—

- (1) paid-up share capital of which does not exceed fifty lakh rupees or such higher amount as may be prescribed which shall not be more than five crore rupees; and
- (2) turnover of which as per its last profit and loss account does not exceed two crore rupees or such higher amount as may be prescribed which shall not be more than twenty 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.
- (i) In the present case, MNP Private Ltd., a company registered under the Companies Act, 2013 with a paid up share capital of ₹ 45 lakh and having turnover of ₹ 3 crore. Since only one criteria of share capital of ₹ 50 Lakhs is met, but the second criteria of turnover of ₹ 2 crores is not met and the provisions require both the criteria to be met in order to avail the status of a small company, MNP Ltd. cannot avail the status of small company.
 - (ii) If the turnover of the company is ₹ 1.50 crore, then both the criteria will be fulfilled and MNP Ltd. can avail the status of small company.



CHAPTER-2

INCORPORATION OF COMPANY AND INCIDENTAL MATTERS

Q-1 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.?

[Sugg.May'19,4 Marks]

Ans. 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.

Hence, H Ltd. is the holding company of S Ltd. and S Ltd. is the subsidiary company of H Ltd. by virtue of section 2(87) of the Companies Act, 2013.

In the instant case,

(i) As per the provisions of sub-section (1) of Section 19 of the Companies Act, 2013, no company shall, either by itself or through its nominees, hold any shares in its holding company. Therefore, S Ltd. cannot make further investment in equity shares of H Ltd. during 2018-19.

(ii) As per second proviso to Section 19, a subsidiary company shall have a right to vote at a meeting of the holding company only in respect of the shares held by it as a legal representative or as a trustee.

Therefore, S Ltd. can exercise voting rights at the Annual General Meeting of H Ltd. only in respect of 1% shares held as a legal representative of a deceased member of H Ltd.

(iii) Section 19 also provides that no holding company shall 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. Therefore, H Ltd. cannot allot or transfer some of its shares to S Ltd.

Q-2 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.

[Sugg.May'19,5 Marks]

Ans. 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—

- (a) 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;
- (b) intends to apply its profits, if any, or other income in promoting its objects; and
- (c) intends to prohibit the payment of any dividend to its members;

the Central Government may, by issue of licence, allow that person or association of persons to be registered as a limited liability company.

In the instant case, the decision of the group of individuals to form a limited liability company for charitable purpose under section 8 for a period of ten years and thereafter to dissolve the club and to distribute the surplus of assets over the liabilities, if any, amongst the members will not hold good, since there is a restriction as pointed out in point (b) above regarding application of its profits or other income only in promoting its objects. Further, there is restriction in the application of the surplus assets of such a company in the event of winding up or dissolution of the company as provided in sub-section (9) of Section 8 of the Companies Act, 2013. Therefore, the proposal is not feasible.

Q-3 XYZ a One-Person Company (OPC) was incorporated during the year 2014-15 with an authorized capital of ₹ 45.00 lakhs (4.5 lakh shares of ₹ 10 each), The capital was fully subscribed and paid up. Turnover of the company during 2014-15 and 2015-16 was ₹ 2.00 crores and ₹ 2.5 crores respectively. Promoter of the company seeks your advice in following circumstances, whether XYZ (OPC) can convert into any other kind of company during 2016-17. 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 ₹ 10.00 lakhs during 2016-17.

(ii) If turnover of the company during 2016-17 was ₹ 3.00 crores. **[Sugg.Nov'18,4 Marks]**

Ans. As per Rule 3 of the Companies (Incorporation) Rules, 2014, no One Person Company (OPC) can convert voluntarily into any kind of company unless two years have expired from the date of its incorporation, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of Chapter II of the Act.

Based on the above provisions, our advice in the given circumstances will be as under:

(i) The promoter increases the paid up capital of the company by ₹ 10.00 lakh during 2016-2017, i.e., to ₹ 55 lakhs (45+10= 55). In this situation, XYZ (OPC) can convert itself voluntarily into any other kind of company by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

(ii) Where the turnover of XYZ (OPC) during 2016-17 was ₹ 3.00 crore, there will be no change in the answer. In this situation also, XYZ (OPC) can convert itself voluntarily into any other kind of company by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

Q-4 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. **[Sugg.May'18,2 Marks]**

Ans. Prohibition on section 8 companies: According to Section 8(1) 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.

Hence, in the instant case, the proposed act of Alpha Ltd., a company registered under the provisions of Section 8 of the Companies Act, 2013, which is planning to declare dividend, is not according to the provisions of the Companies Act, 2013.

Q-5 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]**

Ans. As per Rule 3 of *the 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, except where the paid up share capital is increased beyond fifty lakh rupees or its average annual turnover during the relevant period exceeds two crore rupees.

Besides, Section 18 of the Companies Act, 2013 provides that a company of any class registered under this Act may convert itself as a company of other class under this Act by alteration of memorandum and articles of the company in accordance with the provisions of the Chapter II of the Act.

According to the above provisions, following are the answers to the given circumstances

(i) Where, if the promoters increase the paid up capital of the company by ₹ 10.00 lakh during 2017-2018 i.e., to ₹ 55 lakh (45+10= 55), MNO (OPC) may convert itself voluntarily into any other kind of company due to increase in the paid up share capital exceeding 50 lakh rupees. This could be done by the MNO by alteration of memorandum and articles of the company in compliance with the Provisions of the Act.

(ii) Where if the turnover of the MNO during 2017-18 was ₹ 3.00 crore, there will be no change in the answer, as it meets up the requirement of minimum turnover i.e., ₹ 2 crore for voluntarily conversion of MNO (OPC) into any other kind of company.

Q-6 The paid-up share capital of Altar 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. New Private Limited and Ultra Private Limited are holding 3 lacs Equity Shares and 50,000 Equity Shares respectively in Altar Private Limited. New Private Limited and Ultra Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether Altar Private Limited is a subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of Altar Private Limited? **[RTP-May'19]**

Ans. **In terms of 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:

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.

In the present case, New Pvt. Ltd. and Ultra Pvt. Ltd. together hold less than one half of the total share capital i.e. less than one-half of total voting power. Hence, PQR Private Ltd. (holding of New Pvt. Ltd. and Ultra Pvt. Ltd) will not be a holding company of Altar Pvt. Ltd.

However, if PQR Pvt. Ltd. has 8 out of 9 Directors on the Board of Altar Pvt. Ltd. i.e. controls the composition of the Board of Directors; it (PQR Pvt. Ltd.) will be treated as the holding company of Altar Pvt. Ltd.

Q-7 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]**

Ans. 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 is cognisant of the fact that it is carrying on business with less than seven members or two members, as the case may be, shall be severally liable for the payment of the whole debts of the company contracted during that time, and may be severally sued therefor. Hence, in the given situation, the number of member in the said public company have fallen below 7 [250-244=6] and 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.

Q-8 S Ltd. is a company in which H Ltd. is holding 60% of its paid up share capital. One of the shareholder 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]**

Ans. 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.

Following are the exceptions to the above rule—

- (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 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. It means now subsidiary will hold shares in the holding company. But it will hold shares in the capacity of a trustee. Therefore, we can conclude that in the given situation S Ltd. can hold shares in H Ltd.

Q-9 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]**

Ans. 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, shall not change its objects for which it raised the money through prospectus unless a special resolution is passed by the company and—

- (i) 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;
- (ii) 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 certify the registration within a period of thirty days. Alteration will be effective only after this certificate by ROC.

Looking at the above provision we can say that company can add the object of mobile app development in its memorandum and divert public money into that business. But for that it will have to comply with above requirements.

Q-10 K Limited, a subsidiary of Old Limited, decides to give a loan of ₹ 4,00,000 to the Human Resource Manager, who is not a Key Managerial Personnel of K Limited, drawing salary of ₹ 30,000 per month, to buy 500 partly paid-up equity Shares of ₹ 1000 each in K Limited.

Examine the validity of company's decision under the provisions of the Companies Act, 2013.

[RTP-May'2020]

Ans. Restrictions on purchase by company or giving of loans by it for purchase of its share: As per section 67 (3) of the Companies Act, 2013 a company is allowed to give a loan to its employees subject to the following limitations:

- (a) The employee must not be 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

In the given instance, Human Resource Manager is not a Key Managerial Personnel of the K Ltd. He is drawing salary of ₹ 30,000 per month and loan taken to buy 500 partly paid up equity shares of ₹ 1000 each in K Ltd.

Keeping the above provisions of law in mind, the company's (K Ltd.) decision is invalid due to two reasons:

- i. The amount of loan being more than 6 months' salary of the HR Manager, which should have restricted the loan to ₹ 1.8 Lakh.
- ii. The shares subscribed are partly paid shares whereas the benefit is available only for subscribing fully paid shares.

Q-11 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]**

Ans. **Alteration in Articles of Association:** Section 14 of the Companies Act, 2013, vests companies with power to alter or add to its articles. The law with respect to alteration of articles is as follows:

- (1) **Alteration by special resolution:** Subject to the provisions of this Act and the conditions contained in its memorandum, if any, a company may, by a special resolution alter its articles.
- (2) **Filing of alteration with the registrar:** Every alteration of the articles and a copy of the order of the Tribunal approving the alteration, shall be filed with the Registrar, together with a printed copy of the altered articles, within a period of fifteen days in such manner as may be prescribed, who shall register the same.
- (3) **Any alteration made shall be valid:** Any alteration of the articles registered as above shall, subject to the provisions of this Act, be valid as if it were originally contained in the articles.
- (4) **Alteration noted in every copy:** Every alteration made in articles of a company shall be noted in every copy of the articles, as the case may be. If a company makes any default in complying with 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. **[Section 15]**

Q-12 Explain how the auditor will be appointed in the following cases:

A Government Company within the meaning of section 394 of the Companies Act, 2013. **[RTP-May-18]**

Ans. The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

Q-13 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.

[Sugg.-Nov-19,2 Marks]

Ans. 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.

Looking to the above description, it can be said that being involved in telemarketing in India having its main server for online business outside India, Herry Limited will be treated as foreign company.

Q-14 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. **[Sugg.-Nov-19,2 Marks]**

Ans. 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 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 (i) of the question]

Q-15 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? **[Sugg.-Nov-19,2 Marks]**

Ans. **As per** Rule 3 & 4 of the Companies (Incorporation) Rules, 2014 following the answers :

(A) Yes, it is mandatory for Navita to withdraw her nomination in the said OPC as she is leaving India permanently as only a natural person who is an Indian citizen and resident in India shall be a nominee in OPC.

(B) Yes, 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.

Q-16 Mahima Ltd. was incorporated by furnishing false informations. As per the Companies Act, 2013, state the powers of the Tribunal (NCLT) in this regard. **[Sugg.-Nov-19,5 Marks]**

Ans. **Order of the Tribunal:** According to section 7(7) of the Companies Act, 2013, where a company has been got incorporated by furnishing false or incorrect information or representation or by suppressing any material fact or information in any of the documents or declaration filed or made for incorporating such company or by any fraudulent action, the Tribunal may, on an application made to it, on being satisfied that the situation so warrants—

(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.

However before making any order-

- (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.

Q-17 XY Ltd. has its registered office at Mumbai in the State of Maharashtra. For better administrative conveniences the company wants to shift its registered office from Mumbai to Pune (within the State of Maharashtra). What formalities the company has to comply with under the provisions of the Companies Act, 2013 for shifting its registered office as stated above? Explain. **[MTP-Oct'19,5 Marks]**

Ans. The Companies Act, 2013 under section 13 provides for the process of altering the Memorandum of a company. Since the location or Registered Office clause in the Memorandum only names the state in which its registered office is situated, a change in address from Mumbai to Pune, does not result in the alteration of the Memorandum and hence the provisions of section 13 (and its sub sections) do not apply in this case.

However, under section 12 (5) of the Act which deals with the registered office of company, the change in registered office from one town or city to another in the same state, must be approved by a special resolution of the company. Further, presuming that the Registrar will remain the same for the whole state of Maharashtra, there will be no need for the company to seek the confirmation to such change from the Regional Director.

Q-18 The Directors of Mars India Ltd. desire to alter capital clause of Memorandum of Association of their company. Advise them, under the provisions of the Companies Act, 2013 about the ways in which the said clause may be altered. **[MTP-Oct'19,4 Marks]**

Ans. Alteration of Capital: Under section 61(1) of the Companies Act, 2013, a limited company having a share capital may, if authorized by its Articles, alter its Memorandum in its general meeting to:

- (i) increase its authorized share capital by such amount as it thinks expedient;
- (ii) consolidate and divide all or any of its share capital into shares of a larger amount than its existing shares

However, no consolidation and division which results in changes in the voting percentage of shareholders shall take effect unless it is approved by the Tribunal on an application made in the prescribed manner.

- (iii) convert all or any of its paid- up shares into stock and reconvert that stock into fully paid shares of any denomination
- (iv) sub-divide the whole or any part of its shares into shares of smaller amount than is fixed by the Memorandum
- (v) cancel shares which, at the date of the passing of the resolution in that behalf, have not been taken or agreed to be taken by any person, and diminish the amount of its share capital by the amount of the shares so cancelled.

Further, under section 64, where a company alters its share capital in any of the above mentioned ways, the company shall file a notice in the prescribed form with the Registrar within a period of thirty days of such alteration or increase or redemption, as the case may be, along with an altered memorandum. The memorandum shall be altered by a special resolution and in compliance with other relevant provisions of section 13 of the Companies Act, 2013.

Q-19 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-March'19,5 Marks]

Ans. Section 8 of the Companies Act, 2013 deals with the formation of companies which are formed 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. Since, Alfa School was a Section 8 company and it had started violating the objects of its objective clause, hence in such a situation the following powers can be exercised by the Central Government:

- (i) The Central Government may by order revoke the licence of the company where the company contravenes any of the requirements or the conditions of this sections subject to which a licence is issued or where the affairs of the company are conducted fraudulently, or violative of the objects of the company or prejudicial to public interest, and on revocation the Registrar shall put 'Limited' or 'Private Limited' against the company's name in the register. But before such revocation, the Central Government must give it a written notice of its intention to revoke the licence and opportunity to be heard in the matter.
- (ii) Where a licence is revoked, the Central Government may, by order, if it is satisfied that 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.
However, no such order shall be made unless the company is given a reasonable opportunity of being heard.
- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

Q-20 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'18,6 Marks]

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However, no such order shall be made unless the company is given a reasonable opportunity of being heard.

- (iii) Where a licence is revoked and where the Central Government is satisfied that it is essential in the public interest that the company registered under this section should be amalgamated with another company registered under this section and having similar objects, then, notwithstanding anything to the contrary contained in this Act, the Central Government may, by order, provide for such amalgamation to form a single company with such constitution, properties, powers, rights, interest, authorities and privileges and with such liabilities, duties and obligations as may be specified in the order.

MULTIPLE CHOICE QUESTIONS

1. Rajesh has formed a 'One Person Company (OPC)' with his wife Roopali as nominee. For the last two years his wife Roopali is suffering from terminal illness and due to this hard fact he wants to change her as nominee. He has a trusted and experienced friend Ramnivas who could be made nominee or his (Rajesh) son Rakshak who is of seventeen years of age. Whom should he nominate as nominee in place of his wife?
 - (a) Since blood relation can only be appointed as nominee in case of OPC, Rajesh needs to appoint his son Rakshak.
 - (b) Rajesh can appoint his friend Ramnivas as nominee in his OPC**
 - (c) Roopali is not agreeable to the proposal of Rajesh and hence, Rajesh cannot change her as the nominee
 - (d) Either Rakshak or Mr. Ramnivas can be appointed as nominee [RTP-May'19]
2. A Ltd. is the holding company of B Ltd. Another company C Ltd. is the subsidiary company of B Ltd. Is there any relationship between A Ltd. and C Ltd.
 - (a) There is no relationship between A Ltd. and C Ltd.
 - (b) C Ltd. is deemed to be the subsidiary of A Ltd.**
 - (c) A Ltd. shall be deemed to be the holding company of C Ltd. provided A Ltd. acquires at least 10% stake in C Ltd.
 - (d) C Ltd. shall be deemed to be the subsidiary of A Ltd. if the latter company acquires minimum 10% stake in the former company within six months after C Ltd. becomes subsidiary of B Ltd. [RTP-May'19]
3. Shruti, a common friend of Suchitra and Sukanya, got incorporated OPC sometime before and during a chit-chat with her friends informed them that there is some limit on the maximum capital which her OPC can have and she would have to convert her OPC either into a private or public limited company if such limit exceeded. Suchitra and Sukanya who are desirous of forming a private limited company for

carrying on textile trading business, are unsure about the maximum capital which a private limited company can have. Advise.

- (a) A private limited company can have maximum of ` One crore as share capital.
- (b) A private limited company can have maximum of ` Two crores as share capital.
- (c) A private limited company can have maximum of ` Five crores as share capital.

(d) A private limited company can have unlimited share capital. [RTP-May'19]

4. Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

- (a) Latest by 20th July, 2018
- (b) Latest by 27th July, 2018
- (c) Latest by 4th August, 2018
- (d) Latest by 4th September, 2018

[RTP-May'19]

5. 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 _____ from the date of filing of the special resolution.

[MTP-Oct'19]

- (a) 30 days
- (b) 60 days
- (c) 90 days
- (d) 6 months

6. Shruti, a common friend of Suchitra and Sukanya, got incorporated OPC sometime before and during a chit-chat with her friends informed them that there is some limit on the maximum capital which her OPC can have and she would have to convert her OPC either into a private or public limited company if such limit exceeded. Suchitra and Sukanya who are desirous of forming a private limited company for carrying on textile trading business, are unsure about the maximum capital which a private limited company can have. Advise.

- (a) A private limited company can have maximum of Rs. One crore as share capital.
- (b) A private limited company can have maximum of Rs. Two crores as share capital.
- (c) A private limited company can have maximum of Rs. Five crores as share capital.

(d) A private limited company can have unlimited share capital. [MTP-March'19]

7. In Roopali Marketing Company Private Limited (Authorised capital 50,000 shares of Rs. 10 each and paid-up share capital of Rs. 4,50,000), 1000 shares are jointly held by Abeer and Abheek; another 800 shares are jointly held by Seema and Srividya; and another 1200 are jointly held by Ramesh, Raksha and Rajneesh. Further, 42,000 shares are held by 193 individual persons in their individual capacity. Is it possible for the company to induct more persons?

- (a) The company is unable to induct more persons since it already has two hundred individual members.

(b) The company can induct four more persons as members.

- (c) The company can induct another 20 persons (*i.e. 10% of two hundred individual members*) after seeking permission from the concerned ROC.

- (d) If the company does not want to seek permission of the concerned ROC, it can induct only 10 more persons (*i.e. 5% of two hundred individual members*).

[MTP-March'19]

8. Vinay and Sanjay made a name reservation application accompanied by requisite fee to the Registrar for forming a new private company. The Registrar accorded its approval for reservation of most preferred name Vinanjay Softwares Private Ltd. on 7th July, 2018. By which date necessary documents for

incorporation of the company must be submitted to the Registrar so that the reserved name does not get lapsed.

(a) Latest by 20th July, 2018

(b) Latest by 27th July, 2018

(c) Latest by 4th August, 2018

(d) Latest by 4th September, 2018

[MTP-March'19]

9. Food lovers Inc. was incorporated as a one person company (OPC) on 1st September 2015 with paid up share capital of Rs. 25 lacs. This OPC wants to convert itself into a private limited company during the year ending on 31st March 2017. But the provisions of the Companies Act, 2013 prohibits an OPC from doing so before the expiry of a specified period. From the following options in which situation this OPC will mandatorily be converted into a private/public company even before expiry of such period—

(a) After the expiry of two years from the date of its incorporation

(b) Paid up share capital of the company is increased beyond fifty lakh rupees

(c) The average annual turnover during the relevant period exceeds one crore rupees

(d) If the application is filed with the ROC within 90 days of its incorporation as OPC, to be converted into a Private Limited company.

[MTP-April'19]



CHAPTER-3

PROSPECTUS AND ALLOTMENT OF SECURITIES

Q-1 What is a Shelf-Prospectus? State the important provisions relating to the issuance of Shelf-Prospectus under the provisions of Companies Act,2013. **[Sugg.Nov'18,6 Marks]**

Ans. **Shelf prospectus** – As per the Explanation given in Section 31 of the Companies Act, 2013, the expression “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.

Provisions relating to issue of Shelf-prospectus:

- (1) **Filing of shelf prospectus with the registrar:** According to section 31, any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage-
 - (i) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
 - (ii) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) **Filing of information memorandum with the shelf prospectus:** A company filing a shelf prospectus 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 and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus:
- (3) **Intimation of changes:** Provided that where a company or any other person has received applications for the allotment of securities along with advance payments of subscription before the making of any such change, the company or other person shall intimate the changes to such applicants and if they express a desire to withdraw their application, the company or other person shall refund all the monies received as subscription within fifteen days thereof.
- (4) **Memorandum together with the shelf prospectus shall be deemed to be a prospectus:** Where an information memorandum is filed, every time an offer of securities is made under sub-section (2), such memorandum together with the shelf prospectus shall be deemed to be a prospectus.

Q-2 Discuss the provisions relating to private placement of shares under the Companies Act, 2013.

[Sugg.Nov'18,5 Marks]

Ans. “Private placement” means any offer of securities or invitation to subscribe securities to a select group of persons by a company (other than by way of public offer) through issue of a private placement offer letter and which satisfies below conditions. Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts

(Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with. 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 involved in the offer or invitation or two crore rupees, whichever is higher, and the company shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty.

Requirements of offer or invitation for subscription of securities on private placement: [Section 42]

- (1) **Issue of private placement offer letter:** According to Section 42(1), a company may, make private placement through issue of a private placement offer letter.
- (2) **Offer/invitation to number of persons:** The offer of securities or invitation to subscribe securities, shall be made to such number of persons not exceeding fifty or such higher number as may be prescribed, in a financial year and on such conditions (including the form and manner of private placement) as may be prescribed in the relevant Rules given in the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Offer/ invitation made to more than the prescribed number of persons : If a company, listed or unlisted, makes an offer to allot or invites subscription, or allots, or enters into an agreement to allot, securities to more than the prescribed number of persons, whether the payment for the securities has been received or not or whether the company intends to list its securities or not on any recognised stock exchange in or outside India, the same shall be deemed to be an offer to the public and shall accordingly be governed by the provisions of Part I of Chapter III.

- (3) **No issue of fresh offer/ invitation:** No fresh offer or invitation under this section shall be made unless the allotments with respect to any offer or invitation made earlier-
 - (i) have been completed, or
 - (ii) that offer or invitation has been withdrawn, or
 - (iii) abandoned by the company. (Not applicable to specified IFSC Public and IFSC Private Companies)
- (4) **Offer / invitation treated as public offer:** Any offer or invitation not in compliance with the provisions of this section shall be treated as a public offer and all provisions of this Act, and the Securities Contracts (Regulation) Act, 1956 and the Securities and Exchange Board of India Act, 1992 shall be required to be complied with.
- (5) **Payment of amount:** All monies payable towards subscription of securities under this section shall be paid through cheque or demand draft or other banking channels but not by cash.
- (6) **Time for allotment of securities:** A company making an offer or invitation under this section shall allot its securities within sixty days from the date of receipt of the application money for such securities. (90 days in case in the case of specified IFSC Public and IFSC Private Companies)

Default in allotment of securities: Where the company is not able to allot the securities within that period, it shall repay the application money to the subscribers within fifteen days from the date of completion of sixty days and if the company fails to repay the application money within the aforesaid period, it shall be liable to repay that money with interest at the rate of twelve per cent per annum from the expiry of the sixtieth day:

Separate Bank Account: Provided that monies 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—

- (a) for adjustment against allotment of securities; or
 - (b) for the repayment of monies where the company is unable to allot securities.
- (7) **Offers made to the persons whose name is recorded :** All offers covered under this section shall be made only to such persons whose names are recorded by the company prior to the invitation

to subscribe, and that such persons shall receive the offer by name, and that a complete record of such offers shall be kept by the company in such manner as may be prescribed and complete information about such offer shall be filed with the Registrar within a period of thirty days of circulation of relevant private placement offer letter. (Not applicable to specified IFSC Public and IFSC Private Companies)

- (8) **No publication required:** No company offering securities under this section shall release any public advertisements or utilise any media, marketing or distribution channels or agents to inform the public at large about such an offer.
- (9) **Filing with the registrar:** Whenever a company makes any allotment of securities under this section, it shall file with the Registrar a return of allotment in such manner as may be prescribed, including the complete list of all security-holders, with their full names, addresses, number of securities allotted and such other relevant information as may be prescribed.
- (10) **In contravention of the section:** If a company makes an offer or accepts monies in contravention of this section-

Persons liable

Company, Promoters and Directors

Penalty

- May extend to the amount involved in the offer or invitation, or
- Two crore rupees- whichever is higher
- Shall also refund all monies to subscribers within a period of thirty days of the order imposing the penalty

Company

Q-3 Explain the conditions and the manner in which a company may issue Global Depository Receipts in a foreign country. **[Sugg.Nov'18,3 Marks]**

Ans. The Companies (Issue of Global Depository Receipts) Rules, 2014, lays the conditions and the manner in which a company may issue depository receipts in a foreign country.

Conditions for issue of depository receipts-

- (1) **Passing of resolution:** The Board of Directors of the company intending to issue depository receipts shall pass a resolution authorising the company to do so.
- (2) **Approval of shareholders:** The Company shall take prior approval of its shareholders by a special resolution to be passed at a general meeting:
- (3) **Depository receipts shall be issued by an overseas depository bank:** 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) **Compliance with all the provisions, schemes, regulations etc.:** 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) **Compliance report to be placed at the meeting:** The company shall appoint a merchant banker or a practising chartered accountant or a practising cost accountant or a practising company secretary to oversee all the compliances relating to issue of depository receipts and the compliance report taken from such merchant banker or practising chartered accountant or practising cost accountant or practising company secretary, as the case may be, 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 from time to time.
- (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.

Q-3 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. **[Sugg. May'18, 6 Marks]**

Ans. The provisions of the Companies Act, 2013 regarding the payment of underwriter's commission are as follows:

Payment of commission: A company may pay commission to any person in connection with the subscription to its securities, whether absolute or conditional, subject to such conditions as given in Rule 13 of the Companies (Prospectus and Allotment of Securities) Rules, 2014.

Conditions for the payment of commission:

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. Rate of commission: The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent 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 two and a half per cent of the price at which the debentures are issued, or as specified in the company's articles, whichever is less.
4. Disclosure of particulars: the prospectus of the company shall disclose the following particulars -
 - a. the name of the underwriters;
 - b. the rate and amount of the commission payable to the underwriter; and
 - c. the number of securities which is to be underwritten or subscribed by the underwriter absolutely or conditionally.
5. No commission to be paid: There shall not be paid commission to any underwriter on securities which are not offered to the public for subscription;
6. Copy of contract of payment of commission to be delivered to registrar: a copy of the contract for the payment of commission is delivered to the Registrar at the time of delivery of the prospectus for registration.

Q-4 Green 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. Andrew purchased the shares of Green Ltd. on the basis of the expert's report published in the prospectus. Will Mr. Andrew have any remedy against the company? State also the circumstances where an expert is not liable under the Companies Act, 2013. **[RTP-May'2020]**

Ans. Under section 35 (1) 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. Andrew purchased the shares of Green Ltd. on the basis of the expert report published in the prospectus. Mr. Andrew 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. Andrew will have no remedy against the company.

Circumstances when an expert is not liable: An expert will not be liable for any misstatements in the prospectus under the following situations:

- (i) Under section 26 (5), that having given his consent, but withdrew it in writing before delivery of the copy of prospectus for registration, or
- (ii) Under section 35 (2), 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 filing of a copy of the prospectus with the Registrar or, to the defendant's knowledge, before allotment thereunder.

Q-5 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]**

Ans. 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

- (1) According to Section 31 of the Company Act, 2013 any class or classes of companies, as the Securities and Exchange Board may provide by regulations in this behalf, may file a shelf prospectus with the Registrar at the stage—
 - (A) of the first offer of securities included therein which shall indicate a period not exceeding one year as the period of validity of such prospectus which shall commence from the date of opening of the first offer of securities under that prospectus, and
 - (B) in respect of a second or subsequent offer of such securities issued during the period of validity of that prospectus, no further prospectus is required.
- (2) The other formalities related to such repeated/subsequent issue of shares- A company filing a shelf prospectus 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 or previous offer of securities and the succeeding offer of securities and such other changes as may be prescribed, with the Registrar within the prescribed time, prior to the issue of a second or subsequent offer of securities under the shelf prospectus.

Thus, Prakhar Ltd. can follow the above provisions and can issue a shelf prospectus.

Q-6 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]**

Ans. 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 and under exceptional circumstances can do so out of capital profits. Hence, a material misrepresentation has been made. Hence, in the given case the allottee can avoid the contract of allotment of shares.

Q-7 Kapoor Builders Limited decides to pay 2.5 percent 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]**

Ans. Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to a number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. In relation to the case given, the conditions applicable under the above 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;
- (c) The rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (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 two and a half per cent (2.5 %) of the price at which the debentures are issued, or as specified in the company's articles, whichever is less;

Thus, the Underwriting commission is limited to 5% of issue price in case of shares and 2.5% in case of debentures. The rates of commission given above are maximum rates.

In view of the above, the decision of Kapoor Builders Ltd. to pay underwriting commission exceeding 2% as prescribed in the Articles is invalid.

The company may pay the underwriting commission in the form of flats as both the Companies Act and the Rules do not impose any restriction on the mode of payment though the source has been restricted to either the proceeds of the issue or profits of the company.

Q-8 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.

[Sugg.-Nov'19,4 Marks]

Ans. 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:

Provided that 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 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.

Q-9 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. **[MTP-Oct'19,5 Marks]**

Ans. Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 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.

The only situations when a director will not incur any liability for misstatements in a prospectus are as under:

- (i) 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.
- (ii) No civil liability for any misstatement under section 35 shall apply to a person if he proves that:
 - (1) 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
 - (2) 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.

Therefore, in the present case 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.

Q-10 What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus? **[MTP-March'19,4 Marks]**

Ans. (1) Meaning of Abridged Prospectus: - According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

(2) **Circumstances under which the abridged prospectus need not accompany the application forms:** Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

- (i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (ii) Where the securities are not offered to the public.

(3) If a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

Q-11 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-April'19, 5 Marks]

Ans. The Companies Act, 2013 by virtue of provisions as contained in Section 39 (1) and (2) regulates and restricts the minimum subscription and the application money payable in a public issue of shares as under:

Minimum subscription [Section 39 (1)]

No Allotment shall be made of any securities of a company offered to the public for subscription; unless; -

- (i) the amount stated in the prospectus as the minimum amount has been subscribed; and
- (ii) the sums payable on application for such amount has been paid to and received by the company-

Application money: Section 39 (2) provides that 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.

Further section 39 (3) provides that 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 received within such time and manner as may be prescribed.

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.

Section 40 (3) provides that all moneys received on application from the public for subscription to the securities shall be kept in a separate bank account maintained with a scheduled bank.

Q-12 Examine the validity of the following statement referring to the provisions of the Companies Act, 2013 and/or Rules:

“The Articles of Association of X Ltd. contained a provision that upto 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The Board of Directors of X Ltd. decided to pay 5% underwriting commission. **[MTP-April’19, 5 Marks]**

Ans. Section 40 (6) of the Companies Act 2013, provides that a company may pay commission to any person in connection with the subscription or procurement of subscription to its securities, whether absolute or conditional, subject to the number of conditions which are prescribed under *Companies (Prospectus and Allotment of Securities) Rules, 2014*. Under the *Companies (Prospectus and Allotment of Securities) Rules, 2014* the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five percent (5%) of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

In the given problem, the articles of X Ltd. have prescribed 4% underwriting commission but the directors decided to pay 5% underwriting commission.

Q-13 Mr. Hitesh has made multiple applications to Useful Ltd. in different names for acquiring securities. State the provisions of the Companies Act, 2013 in relation to punishment for Personation for Acquisition, etc., of Securities. **[MTP-April’18, 6 Marks]**

Ans. According to Section 38 of the Companies Act, 2013,

- (1) Any person who—
 - (i) makes or abets making of an application in a fictitious name to a company for acquiring, or subscribing for, its securities; or
 - (ii) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or
 - (iii) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.

- (2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.
- (3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.
- (4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

Q-14 With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X 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. X bought 2000 shares through the stock exchange at a higher price which later on fell sharply. X sold these shares at a heavy loss. Mr. X claims damages from the company for the loss suffered on the ground the prospectus issued by the company contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified. **[MTP-March'18,6 Marks]**

Ans. Under section 2 (70) of the Companies Act, 2013, "prospectus" means any document described or issued as a prospectus and includes a red herring prospectus referred to in section 32 or shelf prospectus referred to in section 31 or any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate.

A prospectus is a document inviting offers from the public. The prospectus and any statement therein has no legal binding either on the company or its directors, promoters or experts to a person who has not purchased securities in response to it.

Since, X purchased shares through the stock exchange (open market) which cannot be said to have bought shares on the basis of prospectus

X cannot bring action for deceit against the directors. Hence, X will not succeed. It was also held in the case of *Peek Vs. Gurney* that the above-mentioned remedy by way of damage will not be available to a person if he has not purchased the shares on the basis of prospectus.

Q-15 Dhyani Dairy Ltd., a dairy products manufacturing company wants to set-up a new processing unit at Udaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the Company approached Shayam Ltd. for subscribing to the shares of the Company for expansion purposes. Can Dhyani Dairy Ltd. issue shares only to Shayam Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions. **[MTP-March'18,6 Marks]**

Ans. Issue of Further Shares: According to Section 62 (1) 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 –

- (i) the existing equity shareholders of the company as at the date of the offer, in proportion to the capital paid up on those shares.
- (ii) 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.
- (iii) to any persons, if it is authorised by a special resolution, whether or not those persons include the persons referred to in clause (i) or clause (ii), 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 subject to such conditions as may be prescribed.

Since, in the given case Dhyani Dairy Ltd. approached Shayam Ltd. for subscribing to the shares of the company for its expansion and Shayam Ltd. is neither an existing equity shareholder of the company

nor an employee, Dhyani Dairy Ltd., if it is authorised by a special resolution, may issue shares to Shayam Ltd. either for cash or for a consideration other than cash, subject to the condition that the price of such shares is determined by the valuation report of a registered valuer.

Q-16 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. **[MTP-March'18,7 Marks]**

Ans. Yes, the Director shall be held liable for the false statements in the prospectus under sections 34 and 35 of the Companies Act, 2013. Whereas section 34 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 mis statements.

The only situations when a director will not incur any liability for mis statements in a prospectus are as under:

- (a) 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.
- (b) No civil liability for any mis statement under section 35 shall apply to a person if he proves that:
 - (1) 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
 - (2) 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.

Therefore, in the present case 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 mis statements in the prospectus.

Q-17 Examine the validity of these allotments in the light of the provisions of the Companies Act, 2013

- (i) Mars 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.
- (ii) 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-Aug'18,7 Marks]**

Ans.(i) Under section 62 (1) (c) 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 shares may be offered to any persons, if it is authorised by a special resolution and if the price of such shares is determined by a valuation report of a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

In the present case, Mars India Ltd is empowered to allot the shares to Sunil in settlement of its debt to him. The issue will be classified as issue for consideration other than cash must be approved by the members by a special resolution. Further, the valuation of the shares must be done by a registered valuer, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.

- (ii) 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 (1) lays down the matters required to be disclosed and included in a prospectus and requires the registration of the prospectus with the Registrar before its issue.

In the given case, the company has violated with the above provisions of the Act and hence the allotment made is void. The company will have to refund the entire moneys received and will also be punishable under section 26 of the Act.

- Q-18** What is meant by "Abridged Prospectus"? Under what circumstances an abridged prospectus need not accompany the detailed information regarding prospectus along with the application form?

What are the penalties in case of default in complying with the provisions related to issue of abridged prospectus? **[MTP-Oct'18,6 Marks]**

- Ans.** **Meaning of Abridged Prospectus:** - According to Section 2(1) of the Companies Act, 2013, an abridged prospectus means a memorandum containing such salient features of a prospectus as may be specified by the Securities and Exchange Board by making regulations in this behalf.

Circumstances under which the abridged prospectus need not accompany the application forms: Section 33 (1) of the Companies Act, 2013 states that no application form for the purchase of any of the securities of a company can be issued unless such form is accompanied by an abridged prospectus. In terms of the Proviso to section 33 (1) an abridged prospectus need not accompany the application form if it is shown that the form of application was issued:

- (i) In connection with a bona fide invitation to a person to enter into an underwriting agreement with respect to such securities; or
- (ii) Where the securities are not offered to the public.

Penalties in case of contravention of provision: a company makes any default in complying with the provisions of this section, it shall be liable to a penalty of fifty thousand rupees for each default.

MULTIPLE CHOICE QUESTIONS

1. Delight Sports Garments Limited is contemplating to raise funds through issue of prospectus in which, according to the directors, a sum of ₹ 50 crores should be stated as the minimum amount that needs to be subscribed by the prospective subscribers. The funds shall be raised in four instalments consisting of application, allotment, first call and second & final call. Advise the company by which instalment it should receive the minimum subscription stated in the prospectus.

(a) Along with amount subscribed as application money.

(b) Along with amount subscribed as final call money.

(c) Along with amount subscribed as first call money.

(d) Along with amount subscribed as second and final call money. **[RTP-Nov-19]**

2. Being in need of further capital, Rimsi Cotton-Silk Products Limited opted to offer 50.00 lacs equity shares of Rs. 1 each to 50 identified persons on 'private placement' basis and accordingly a letter of offer accompanied by serially numbered application form was sent to them after fulfillment of due formalities including passing of special resolution. One of the applicants, Rajan made a written complaint to the company highlighting the fact that the letter of offer was incomplete as well as illegal, for the same did not contain 'renunciation clause' though he wanted to exercise his 'right of renunciation' in favour of one of his son Uday. By choosing the correct option, advise the company in this matter.

[MTP-Oct'19]

- (a) As the 'Right of Renunciation' cannot be denied, the company needs to rectify its mistake by including the same in the letter of offer and the application form.

(b) The company is prohibited from providing 'Right of Renunciation' and therefore, the letter of offer and the application form need not include any such clause.

(c) Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to twenty five percent of offering.

(d) Instead of absolute prohibition, the company needs to provide 'Right of Renunciation' limited to fifty percent of offering.

3. Dwapar Equipment Finance Limited, a non-banking finance company (NBFC), is desirous of offering secured, redeemable, non-convertible 9% Debentures to the public in three or more tranches over a certain period of time. Which kind of prospectus it is required to issue so that its purpose is served and there arises no need to take out a fresh prospectus for second and subsequent offer of securities.

[MTP-Oct'19]

(a) Deemed Prospectus.

(b) Shelf Prospectus.

(c) Red Herring Prospectus.

(d) Abridged prospectus.



CHAPTER-4

SHARE CAPITAL AND DEBENTURES

Q-1 Modern 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.

[Sugg. May'19, 2 Marks]

Ans. 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 provides the conditions. As per Rule 13(c) of the Companies (Prospectus and Allotment of Securities) Rules, 2014, the rate of commission paid or agreed to be paid shall not exceed, in case of shares, five per cent of the price at which the shares are issued or a rate authorised by the articles, whichever is less.

In the instant case, Modern 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.

Hence, the company can only pay a maximum of 4% underwriting commission on shares.

Q-2 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.

[Sugg. May'19, 5 Marks]

Ans. Funds utilized for purchase of its own securities: 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.

Prohibition for buy-back in certain circumstances [Section 70]

(1) The provision says that no company shall 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) No company shall directly or indirectly purchase its own shares or other specified securities in case such company has not complied with provisions of Sections 92 (Annual Report), 123 (Declaration of dividend), 127 (Punishment for failure to distribute dividends), and section 129 (Financial Statements)

Q-3 Explain various instances which make the allotment of securities as irregular allotment under the Companies Act, 2013. **[Sugg.May'19,4 Marks]**

Ans. Irregular allotment: 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.

In broad terms 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.

Q-4 ABC Ltd. has following balances in their Balance Sheet as on 31st March, 2018:

(1) Equity shares capital (3.00 lakhs equity shares of ₹ 10 each)	30.00 lacs
(2) Free reserves	5.00 lacs
(3) Securities Premium Account	3.00 lacs
(4) Capital redemption reserve account	4.00 lacs
(5) Revaluation Reserve	3.00 lacs

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? **[Sugg.Nov'18,2 Marks]**

Ans. **Issue of bonus shares [Section 63]:** As per Section 63 of the Companies Act, 2013, a company may issue fully paid-up bonus shares to its members, in any manner whatsoever, out of—

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

Provided that no issue of bonus shares shall be made by capitalising reserves created by the revaluation of assets.

As per the given facts, ABC Ltd. has total eligible amount of ₹ 12 lakhs (i.e. 5.00+3.00+4.00) out of which bonus shares can be issued and the total share capital is ₹ 30.00 lakhs.

Accordingly:

- (i) For issue of 1:3 bonus shares, there will be a requirement of ₹ 10 lakhs (i.e., 1/3 x 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 (i.e., $\frac{1}{2} \times 30.00$ 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.

Q-5 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?

[Sugg.Nov'18,2 Marks]

Ans. **Refusal for Registration of transferred/transmitted securities:** According to Section 58 (4) of the Companies Act, 2013, if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Remedies available to the Transferee against the company: Section 58 (5) of the Companies Act, 2013, provides that the Tribunal, while dealing with an appeal may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the instant case, Harsh, can make an appeal before the tribunal for remedies that the company shall be ordered to register transfer /transmission of securities within 10 days of the receipt of order, or rectify register and pay damages.

Q-6 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?
- (iii) What should be ratio of aggregate debts to the paid-up capital-and free reserves after buy-back?

[Sugg.-May'18,3 Marks]

Ans. Section 68(2) of the Companies Act, 2013 deals with the Conditions required for buy-back of shares.

As per the Act, the company shall not purchase its own shares or other specified securities unless-

- (a) The buy-back is authorized by its articles;
- (b) A special resolution has been passed at a general meeting of the company authorizing the buy-back: except where—
 - (1) the buy-back is, ten per cent or less of the total paid-up equity capital and free reserves of the company; and
 - (2) such buy-back has been authorised by the Board by means of a resolution passed at its meeting;

Time limit for Completion of Buy Back: As per section 68(4), every buy-back shall be completed within a period of one year from the date of passing of the special resolution, or as the case may be, the resolution passed by the Board under sub-section (2).

Ratio of aggregate debts: Provision also specifies that 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.

As per the stated facts, Xgen Ltd. has a paid up equity capital and free reserves to the extent of ₹ 50,00,000. The company planned to buy back shares to the extent of ₹ 4,50,000.

Referring to the above provisions, the answers will be as follows:

1. No, special resolution will not be required as the buyback is less than 10% of the total paid-up equity capital and free reserves ($50,00,000 \times 10/100 = 5,00,000$) of the company, but such buy back must be authorized by the Board by means of a resolution passed at its meeting.
2. 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.
3. 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.

The above buy-back is possible when backed by the authorization by the articles of the company.

Q-7 Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. **[Sugg.-May'18,6 Marks]**

Ans. **Conditions for the issue of equity shares with differential rights** (Rule 4 of the Companies (Share capital and Debenture) Rules, 2014): No company limited by shares shall issue equity shares with differential rights as to dividend, voting or otherwise, unless it complies with the following conditions, namely:-

- (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.
- (3) However, 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;
- (4) the shares with differential rights shall not exceed twenty-six percent of the total post-issue paid up equity share capital including equity shares with differential rights issued at any point of time;
- (5) the company is having consistent track record of distributable profits for the last three years;
- (6) 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;
- (7) 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;
- (8) 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;
- (9) However, 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.

(10) 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 any other special Act, under which such companies being regulated by sectoral regulators.

Q-8 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 be fulfilled before the issue of sweat equity shares especially since their company is just a few months old. **[RTP May'19]**

Ans. **Sweat equity shares of a class of shares already issued.**

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, namely—

- (i) the issue is **authorised by a special resolution** passed by the company;
- (ii) 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;
- (iii) 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*, The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Q-9 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'19]**

Ans. 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 a "securities premium account" and the provisions of this Act relating to reduction of share capital of a company shall, except as provided in this section, apply as if the securities premium account were the paid-up share capital of the company.

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;
- (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

Q-10 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]**

Ans. Issue of Further Shares: Section 62 (1) (a) of the Companies Act, 2013 provides that 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.

However, certain exceptions have been provided in the Companies Act, 2013 when such further shares of a company may be offered to other persons as well. These are as under-

- (a) Under section 62 (1) (b) issue of further shares may be offered 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) Under section 62 (1) (c) such shares may be offered to any persons, if it is authorised 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, subject to the compliance with the applicable provisions of Chapter III and any other conditions as may be prescribed.
- (c) if any equity shareholder to whom the shares are offered in terms of section 62 (1) (a) as described above, declines such offer, the Board of Directors may dispose of the shares in such manner as is not disadvantageous to the shareholders or to the company.

Preference Shareholders: From the wordings of Section 62 (1) (c), it is quite clear that 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.

Q-11 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-Nov'18]**

Ans. According to section 48 of the Companies Act, 2013-

(1) **Variation in rights of shareholders with consent:** Where a share capital of the company is divided into different classes of shares, the rights attached to the shares of any class may be varied with the 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,—

- (a) if provision with respect to such variation is contained in the memorandum or articles of the company; or
- (b) in the absence of any such provision in the memorandum or articles, if such variation is not prohibited by the terms of issue of the shares of that class:

Provided that 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 and the provisions of this section shall apply to such variation.

(2) **No consent for variation:** Where the holders of not less than ten per cent of the issued shares of a class did not consent to such variation or vote in favour of the special resolution for the variation, they may apply to the Tribunal to have the variation cancelled, and where any such application is made, the variation shall not have effect unless and until it is confirmed by the Tribunal:

Provided that an application under this section shall be made within twenty-one days after the date on which the consent was given or the resolution was passed, as the case may be, and may be made on behalf of the shareholders entitled to make the application by such one or more of their number as they may appoint in writing for the purpose.

Q-12 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]**

Ans. Under section 67 (2) of the Companies Act, 2013 no public company is allowed to give, directly or indirectly and whether by means of a loan, guarantee, or security, any financial assistance for the purpose of, or in connection with, a purchase or subscription, by any person of any shares in it or in its holding company.

However, section 67 (3) makes an exception by allowing companies to give loans 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 with a view to enabling them 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.

It is further provided that disclosures in respect of voting rights not exercised directly by the employees in respect of shares to which the scheme relates shall be made in the Board's report in such manner as may be prescribed.

Hence, Heavy Metals Ltd can provide financial assistance upto the specified limit to its employees to enable them to subscribe for the shares in the company provided the shares are purchased by the employees to be held for beneficial ownership by them.

However, the directors or key managerial personnel will not be eligible for such assistance.

Q-13 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-May'18]**

Ans. The problem as asked in the question is governed by Section 58 of the Companies Act, 2013 dealing with the refusal to register transfer and appeal against refusal.

In the present case the company has committed the wrongful act of not sending the notice of refusal of registering the transfer of shares.

Under section 58 (4), if a public company without sufficient cause refuses to register the transfer of securities within a period of thirty days from the date on which the instrument of transfer is delivered to the company, the transferee may, within a period of sixty days of such refusal or where no intimation has been received from the company, within ninety days of the delivery of the instrument of transfer, appeal to the Tribunal.

Section 58 (5) further provides that the Tribunal, while dealing with an appeal made under sub-section (4), may, after hearing the parties, either dismiss the appeal, or by order—

- (a) direct that the transfer or transmission shall be registered by the company and the company shall comply with such order within a period of ten days of the receipt of the order; or
- (b) direct rectification of the register and also direct the company to pay damages, if any, sustained by any party aggrieved;

In the present case Ms. Mukta can make an appeal before the tribunal and claim damages.

Q-14 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]**

Ans. In terms of section 68 (2) (c) of the Companies Act, 2013 a company is allowed to buy back a maximum of 25% of the aggregate of its paid-up capital and free reserves. Hence, the company in the given case is not allowed to buy back its entire equity shares.

Section 68 (1) of the Companies Act, 2013 specifies the sources of funding buy back of its shares and other specified securities as under:

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

However, under the proviso to section 68 (1) 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.

Q-15 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.?

[Sugg.-Nov'19,5 Marks]

Ans. 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—

- (a) to persons who, at the date of the offer, are holders of equity shares of the company in proportion, as nearly as circumstances admit, to the paid-up share capital on those shares by sending a letter of offer subject to the following conditions, namely:-
 - (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 aforesaid shall be deemed to include a right exercisable by the person concerned to renounce the shares offered to him or any of them 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 disadvantageous 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 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.

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.

In the second part of the question, 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.

- Q-16** 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?
- [Sugg.-Nov'19,5 Marks]**

Ans.(i) In the instant case, the company's proposal is not in order due to the following reasons:

- (A) Though XYZ unlisted company passed a special resolution but it proposed to buy back 30% of its own equity shares. But as per section 68(2)(c) of the Companies Act, 2013, buy-back of equity shares in any financial year shall not exceed 25% of its total paid up equity capital in that financial year.
 - (B) The Articles of Association empowers the company to buy back its own shares. This condition is in order as per section 68(2)(a).
 - (C) Earlier the company has also passed a special resolution to buy back its own shares on January 15th, 2018, now the company passed a special resolution on January 5th, 2019 to buy back its own shares. This is 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. [proviso to section 68(2)]
 - (D) 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 according to proviso to section 68(1), 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.
- (ii) If 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.

- Q-17** Data Limited (listed on Stock Exchange) was incorporated on 1st October, 2018 with a paid-up share capital of Rs. 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.?

[MTP-March'19,6 Marks]

Ans. Sweat equity shares of a class of shares already issued.

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, namely—

- (i) the issue is **authorised by a special resolution** passed by the company;
- (ii) 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;
- (iii) 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*,

The rights, limitations, restrictions and provisions as are for the time being applicable to equity shares shall be applicable to the sweat equity shares issued under this section and the holders of such shares shall rank *pari passu* with other equity shareholders.

Data Limited can issue Sweat equity shares by following the conditions as mentioned above. It does not make a difference that the company is just a few months old.

Q-18 Raj, who is a resident of New Delhi, sent a transfer deed, for registration of transfer of shares to the company at the address of its Registered Office in Mumbai. He did not receive the shares certificates even after the expiry of four months from the date of dispatch of transfer deed. He lodged a criminal complaint in the Court at New Delhi. Determine, under the provisions of the Companies Act, 2013, whether the Court at New Delhi is competent to take action in the said matter?

[MTP-APRIL'18,7 Marks]

Ans. **Jurisdiction of Court, now Tribunal, the Companies Act, 2013:** According to Section 56 (4) of the Companies Act, 2013 every company, unless prohibited by any provision of law or of any order of court, Tribunal or other authority, shall deliver the certificates of all shares transferred within a period of one month from the date of receipt by the company of the instrument of transfer.

Further under section 56 (6) Where any default is made in complying with the provisions of sub-sections (1) to (5) of section 56 (which deals with transfer and transmission of shares), the company shall be punishable with fine which shall not be less than twenty-five thousand rupees but which may extend to five lakh rupees and every officer of the company who is in default shall be punishable with fine which shall not be less than ten thousand rupees but which may extend to one lakh rupees

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

Q-19 State the provisions of the Companies Act, 2013 in relation to 'Power of Tribunal to Call Meetings of Members, etc'.

[MTP-March'18,6 Marks]

Ans. According to section 98 of the Companies Act, 2013,

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suomotu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

(2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Q-20 Mr. Hitesh has made multiple applications to Useful Ltd. in different names for acquiring securities. State the provisions of the Companies Act, 2013 in relation to punishment for Personation for Acquisition, etc., of Securities.

[MTP-March'18,6 Marks]

Ans. According to Section 38 of the Companies Act, 2013,

(1) Any person who—

(i) makes or abets making of an application in a fictitious name to a company for acquiring, or

- subscribing for, its securities; or
- (ii) makes or abets making of multiple applications to a company in different names or in different combinations of his name or surname for acquiring or subscribing for its securities; or
 - (iii) otherwise induces directly or indirectly a company to allot, or register any transfer of, securities to him, or to any other person in a fictitious name, shall be liable for action under section 447.
- (2) The provisions of sub-section (1) shall be prominently reproduced in every prospectus issued by a company and in every form of application for securities.
 - (3) Where a person has been convicted under this section, the Court may also order disgorgement of gain, if any, made by, and seizure and disposal of the securities in possession of, such person.
 - (4) The amount received through disgorgement or disposal of securities under sub-section (3) shall be credited to the Investor Education and Protection Fund.

Q-21 Write short notes on the following in respect of the provisions of the Companies Act, 2013:

- (i) Creation of debenture redemption reserve account.
- (ii) Appointment of 'Debenture Trustee' by a company.

[MTP-Aug'18,6 Marks]

Ans.(i) Creation of debenture redemption reserve (DRR) account: 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.

- (ii) **Appointment of Debenture Trustee:** Under section 71 (5) of the Companies Act, 2013, no company shall 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.

MULTIPLE CHOICE QUESTIONS

1. A Company limited by shares can issue equity shares with differential voting rights. Which of the following is not a necessary condition to be fulfilled before issue of such shares:
 - (a) The articles of association of the company shall authorize issue of shares with differential rights;
 - (b) The issue of shares shall be authorized by an ordinary resolution passed at a general meeting of the shareholders;
 - (c) **The issue of shares shall be authorized by special resolution passed at a general meeting of the shareholders;**
 - (d) The company shall have consistent track record of distributable profits for the last three years;

[RTP-May'19]
2. Part of the capital for which application have been received from the public and shares allotted to them:

[MTP-Oct'19]

 - (a) Nominal capital
 - (b) Issued capital
 - (c) **Subscribed capital**
 - (d) Called up capital
3. Corrupt Limited has received a request from Mr. Suresh for transfer of 100 partly paid equity shares, to Mr. Ramesh. However, Mr. Ramesh expired in the meantime, but no intimation of the same has been

received by the company. In the given circumstances, advise as per the provisions of the Companies Act, 2013:

- (a) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Suresh
- (b) Corrupt Limited can register the shares in the name of Mr. Ramesh as it is not aware of the untoward incident.
- (c) Corrupt Limited will not register the transfer the shares in the name of Mr. Ramesh, without verification from Mr. Ramesh
- (d) Corrupt Limited will give the shares back to Mr. Suresh **[MTP-March'19]**

4. The paid up share capital of ABC Ltd. Is 5000000 shares of Rs. 200 each. 20% of its paid up share capital is held by 4 of its promoters, who wants to off load their holding by making an offer of sale to the public by issuing a prospectus. They want to authorise someone to take all actions and complete all formalities related to such offer of sale. From the following who can be authorised by them to do so—

- (a) Any person who has agreed to fulfil all the formalities related to such offer of sale
- (b) Any one or more director of the company.

(c) Company itself whose shareholding they want to offload.

- (d) Any competent officer of the company. **[MTP-April'19]**

5. The Authorised share capital clause of LMN & Co. Ltd. consisted of Preference share capital and Equity share capital both. With regard to equity share capital, the article of association of the company has given authorisation to issue differential equity shares. Apart from authorisation by the Articles, from the following strike out the condition, which is not mandatory to comply with—

- (a) Such issue of shares must be authorised by an ordinary resolution passed at a general meeting of the shareholders or by postal ballot, as the case may be

(b) The company must have consistent track record of distributable profit for the last five years.

- (c) The company has no subsisting default in the payment of the declared dividend to its shareholders.

- (d) 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

[MTP-April'19]



CHAPTER-5

ACCEPTANCE OF DEPOSITS BY COMPANIES

Q-1 State, with reasons, whether the following statements are True or False?

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.

[Sugg.May'19,1 Marks]

Ans. 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, as amended by the Companies (Acceptance of Deposits) Amendment Rules, 2016, 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 thirty five per cent 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.

Q-2 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.

[Sugg.May'19,1 Marks]

Ans. 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 thirty five per cent 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.

Q-3 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?

[Sugg.Nov'18,6 Marks]

Ans. **Acceptance of deposit by company from its members:** As per section 73(2) of the Companies Act, 2013, a company may, subject to the passing of a resolution in general meeting and subject to such rules as may be prescribed in consultation with the Reserve Bank of India, accept deposits from its members on such terms and conditions, including the provision of security, if any, or for the repayment of such deposits with interest, as may be agreed upon between the company and its members, subject to the fulfillment of the following conditions, namely—

- (a) By issuance of 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) Filing 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 such sum which shall not be less than fifteen per cent of the amount of its deposits maturing during a financial year and the financial year next following, and kept in a scheduled bank in a separate bank account to be called as "deposit repayment reserve account";
- (d) Providing such deposit insurance in such manner and to such extent as may be prescribed;
- (e) 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
- (f) 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.

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 (e) above shall not apply to private Companies-]

- (A) which 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:-
 - (a) It is not an associate or a subsidiary company of any other company;
 - (b) if the borrowings of such a company from banks or financial institutions or any body corporate is less than twice of its paid up share capital or fifty crore rupees, whichever is lower; and
 - (c) such company has not defaulted in the repayment of such borrowings subsisting at the time of accepting deposits under this section:

Provided that the company referred to in clauses (A), (B) or (C) shall file the details of monies accepted to the Registrar in such manner as may be specified.

Q-4 Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013.

[Sugg.-May'18,6 Marks)

Ans. Appointment of Trustee for Depositors [Rule 7 of the Companies (Acceptance of Deposits) Rules, 2014]:

- (1) No company referred to in sub-section (2) of section 73 or any eligible company shall 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.

However, a written consent shall be obtained from the trustee for depositors before their appointment and a statement shall appear in the circular or circular in the form of advertisement with reasonable prominence to the effect that the trustees for depositors have given their consent to the company to be so appointed.

- (2) 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.

- (3) No person including a company that is in the business of providing trusteeship services shall be appointed as a trustee for the depositors, if the proposed trustee -
- 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;
 - is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company;
 - has any material pecuniary relationship with the company;
 - has entered into any guarantee arrangement in respect of principal debts secured by the deposits or interest thereon;
 - is related to any person specified in clause (a) above.
- (4) No trustee for depositors shall 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.

However, in case the company is required to have independent directors, at least one independent director shall be present in such meeting of the Board.

Q-5 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-May'19]**

Ans. **Acceptance of deposit from public:** 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, can accept deposits from persons other than its members subject to compliance with the requirements provided in sub-section (2) of section 73 and subject to such rules as the Central Government may, in consultation with the Reserve Bank of India, prescribe.

Provided that such a company shall be required to obtain the rating (including its net-worth, liquidity and ability to pay its deposits on due date) from a recognised credit rating agency for informing the public the rating given to the company at the time of invitation of deposits from the public which ensures adequate safety and the rating shall be obtained for every year during the tenure of deposits.

Provided further that every company accepting secured deposits from the public shall within thirty days of such acceptance, create a charge on its assets of an amount not less than the amount of deposits accepted in favour of the deposit holders in accordance with such rules as may be prescribed.

Since, Ashish Ltd. has a net worth of ₹ 80 crores and turnover of ₹ 30 crores, which is less than the prescribed limits, hence, it cannot accept deposit from public other than its members. If the company wants to accept deposits from public other than its members, it has to fulfill the eligibility criteria of net worth or Turnover or both and then the other conditions as stated above.

Q-6 Referring to the provisions of the Companies Act, 2013, examine the validity of the following :

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. **[Sugg.-Nov'19,2 Marks]**

Ans. Section 123(6) of the Companies Act, 2013, specifically provides that 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.

Q-7 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. **[Sugg.-Nov'19,6 Marks]**

Ans. **Deposit:** 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.

Amounts received by the company will not be considered as deposit: In terms of Rule 2 (1) (c) of the *Companies (Acceptance of deposit) Rules, 2014*, following shall be the answers-

- (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 of ₹ 1,50,000 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 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.

Q-8 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-March'19,4 Marks]**

Ans. "Eligible company" means a public company as referred to in sub-section (1) of section 76, having a net worth of not less than one hundred crore rupees or a turnover of not less than five hundred crore rupees and which has obtained the prior consent of the company in general meeting by means of a special resolution and also filed the said resolution with the Registrar of Companies before making any

invitation to the Public for acceptance of deposits:

However, an eligible company, which is accepting deposits within the limits specified under clause (c) of sub-section (1) of section 180, may accept deposits by means of an ordinary resolution.

An eligible company shall accept or renew any deposit from its members, if the amount of such deposit together with the amount of deposits outstanding as on the date of acceptance or renewal of such deposits from members exceeds ten per cent. of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

ABC Limited is having a net worth of 120 crore rupees. Hence, it can fall in the category of eligible company.

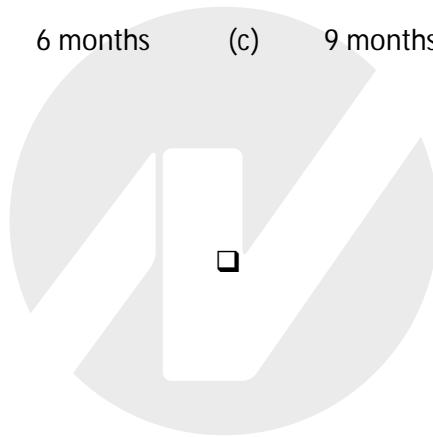
Thus, ABC has to ensure that acceptance deposits from members should not exceed 10% of the aggregate of the Paid-up share capital, free Reserves and securities premium account of the company.

MULTIPLE CHOICE QUESTIONS

1. No deposits are repayable earlier than _____ from the date of such deposits or renewal thereof.

[MTP-Oct'19]

- (a) **3 months** (b) 6 months (c) 9 months (d) 12 months



CHAPTER-6

REGISTRATION OF CHARGES

Q-1 The Registrar of Companies is not bound to issue notice to the holder of charge, if the company gives intimation of satisfaction of charge in the specified form and signed by the holder of charge.

[Sugg.May'19,1 Marks]

Ans. According to the proviso to section 82(2) of the Companies Act, 2013, no notice shall be required to be sent, in case the intimation to the Registrar in this regard is in the specified form and signed by the holder of charge. Hence, the given statement is True.

Q-2 The Registrar of Companies may allow the company or holder of charge to file intimation within a period of 300 days of the satisfaction of charge on payment of fee and additional fees as may be prescribed.

[Sugg.May'19,1 Marks]

Ans. As per section 77 of the Companies Act, 2013, it shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation. The Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed. Hence, the given statement is True.

Q-3 What is the time limit for registration of charge with the registrar? Where should the company's Register of charges be kept? State the persons who have the right to inspect the Company's Register of charges.

[Sugg.Nov'18,3 Marks]

Ans. 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 within or outside India, on its property or assets or any of its undertakings, to register the particulars of the charge, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

The Registrar may, on being satisfied that the company had sufficient cause for not filing the particulars and instrument of charge, if any, within a period of 30 days of the date of creation of the charge, allow the registration of the same after 30 days but within a period of 300 days of the date of such creation of charge or modification of charge on payment of such additional fees as may prescribed.

The application for delay shall be made and supported by a declaration from the company signed by its secretary or director that such belated filing shall not adversely affect rights of any other intervening creditors of the company [The companies (Registration of charges) Rules, 2014].

Provided that if registration is not made within a period of 300 days of such creation, the company shall seek extension of time from the Central Government in accordance with the provisions of Section 87.

Place of keeping company's register of charges: According to section 85 of the Companies Act, 2013, every company shall keep at its registered office a register of charges.

Inspection of the register of charges and instrument of charges: The register of charges and instrument of charges, shall be open for inspection during business hours—

(a) by any member or creditor without any payment of fees; or

(b) by any other person on payment of such fees as may be prescribed,

-subject to such reasonable restrictions as the company may, by its articles, impose.

Q-4 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? **[Sugg.May'18,6 Marks]**

Ans. **Charge:** 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.

Why creating a charge is a necessity for companies? The answer to this lies in the setup of raising capital by the companies. 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 an 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: It shall be duty of the company creating a charge within or outside India, on its property or assets or any of its undertakings, whether tangible or otherwise and situated in or outside India, to register the particulars of the charge signed by the company and the charge holder together with the instruments, if any, creating such charge in such form, on payment of such fees and in such manner as may be prescribed, with the registrar within 30 days of creation.

Provided that the Registrar may, on an application by the company, allow such registration to be made within a period of three hundred days of such creation on payment of such additional fees as may be prescribed.

Provided further that if registration is not made within a period of three hundred days of such creation, the company shall seek extension of time from the Central Government in accordance with section 87.

Q-5 What are the powers of Registrar to make entries of satisfaction and release of charges in the absence of any intimation from the company. Discuss this matter in the light of provisions of the Companies Act, 2013. **[RTP-May'19]**

Ans. Section 83 of the Act of 2013 empowers the Registrar to make entries with respect to the satisfaction and release of charges even if no intimation has been received by him from the company.

Accordingly, with respect to any registered charge if an evidence is shown to the satisfaction of Registrar that the debt secured by charge has been paid or satisfied in whole or in part or that the 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, then he may enter in the register of charges a memorandum of satisfaction that:

- the debt has been satisfied in whole or in part; or
- the 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.

This power can be exercised by the Registrar despite the fact that no intimation has been received by him from the company.

Information to affected parties: The Registrar shall inform the affected parties within 30 days of making the entry in the register of charges.

Issue of Certificate: As per Rule 8 (2), in case the Registrar enters a memorandum of satisfaction of charge in full, he shall issue a certificate of registration of satisfaction of charge.

Q-6 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]

Ans. 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 under section 77 of the Companies Act, 2013, 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.

Thus, the section clarifies that if any person acquires a property, assets or undertaking for which a charge is already registered, it would be deemed that he has complete knowledge of charge from the date the charge is registered.

Thus, the contention of NRT Ltd. is correct

Q-7 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. [Sugg.-Nov'19,5 Marks]

Ans. Intimation regarding Satisfaction of Charge

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.

Extended period of intimation: Proviso to Section 82 (1) extends the period of intimation from thirty days to three hundred days. Accordingly, it is provided that 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.

Q-8 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--March'19, 5 Marks]

Ans. Section 83 of the Companies Act, 2013 provides powers to the registrar to make entries with respect to the satisfaction and release of charges where no intimation has been received by him from the company.

(i) 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, as the case may be, despite the fact that no intimation has been received by him from the company.

- (ii) The Registrar shall inform the affected parties within thirty days of making the entry in the register of charges kept under section 81(1).

According to the *Companies (Registration of Charges) Rules, 2014* with respect to the satisfaction of charge-

- (1) A 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.
- (2) Where the Registrar enters a memorandum of satisfaction of charge in full in pursuance of section 82 or 83, he shall issue a certificate of registration of satisfaction of charge.

Q-9 Define the term "charge" and also explain what is the punishment for default with respect to registration of charge as per the provisions of the Companies Act, 2013. **[MTP-April'19,5 Marks]**

Ans. The term charge has been defined in section 2 (16) of the Companies Act, 2013 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.

Every company is under an obligation to keep at its registered office a register of charges and enter therein all charges specifically affecting property of the company and all floating charges on the undertaking or any property of the company.

Punishment for contravention – According to section 86 of the Companies Act, 2013, if a company makes any default with respect to the registration of charges covered under chapter VI, a penalty shall be levied, ranging from Rs. 1 lakh to 10 lakhs.

Every defaulting officer is punishable with imprisonment for a term not exceeding 6 months or fine which shall not be less than 25,000 rupees, but not exceeding 1 lakh rupees or both.

Q-10 Explain the provisions of the Companies Act, 2013 relating to Rectification by Central Government in register of Charges. **[MTP-March'18,6 Marks]**

Ans.(1) Rectification by Central Government in register of charges: Section 87 of the Companies Act, 2013 empowers the Central Government to make rectification in register of charges. According to the provision-

- (1) The Central Government on being satisfied that—
 - (i) (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
 - (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 made in pursuance of section 82 or section 83,
 - 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
- (ii) **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.

(2) 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.

(2) Condonation of delay and rectification of register of charges.- (1) Where the instrument creating or modifying a charge is not filed within a period of 300 hundred 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 in sub-clause (a), (b) and (c) of clause (i) of sub-section (1) of section 87 of the Act shall be filed with the Central Government along with the fee.

(3) The order passed by the Central Government under section 87(1) of the Act shall be required to be filed with the Registrar along with the fee as per the conditions stipulated

MULTIPLE CHOICE QUESTIONS

1. Eztech Machines Limited owns a plot of land which was mortgaged to Urbane Commercial Bank Limited for raising term loan of ₹ 2.00 crore. The mortgage was duly registered with the Central Registry. First loan installment of ₹ 50.00 lacs was released immediately after sanction of term loan with the condition that subsequent three installments of ₹ 50.00 lacs shall be released as soon as the earlier released installment is utilized satisfactorily. Is it necessary either for the company or the bank to register the charge on plot with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry?

(a) It is not necessary either for the bank or the company to register the charge on plot of land with the concerned Registrar of Companies (ROC) when the mortgage is registered with the Central Registry.

(b) It is necessary to get the charge on plot on land registered with the concerned Registrar of Companies (ROC) irrespective of the fact that mortgage is registered with the Central Registry.

(c) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the actual liability of the company with the Bank exceeds ₹ 1.00 crore.

(d) The charge on plot needs to be registered with the concerned Registrar of Companies (ROC) only when the term loan sanctioned by the bank to the company exceeds ₹ 2.00 crores. **[RTP-Nov'19]**

2. With a view to augment its production, Surya Techno-Products Limited availed a loan of ₹ 50.00 lacs from Shrilaxmi First Bank Limited for purchase of a new machinery by offering its factory worth ₹ 2.25 crores as security. However, the company did not initiate any steps to get the charge on factory registered in favour of lending banker within the specified time.

As soon as the charge-holder bank came to know about the non-registration of charge with the ROC, it applied to the Registrar for registration of charge along with the instrument creating the charge and paid the requisite fees when demanded. Advise the bank whether it can recover the fees so paid for registration of charge from Surya Techno-Products.

(a) Yes, the bank can recover the fees paid by it for registration of charge.

(b) No, the bank cannot recover the fees paid by it for registration of charge because the bank is equally responsible for getting the charge registered.

(c) Only when it obtains recovery orders from Regional Director (RD), the bank can recover the fees paid by it for registration of charge from the company.

(d) Only when it obtains recovery orders from National Company Law Tribunal (NCLT), the bank can recover the fees paid by it for registration of charge from the company. **[RTP-Nov'19]**

3. A charge was created by Cygnus Softwares Limited on its office premises to secure a term loan of ₹ 1.00 crore availed from Next Gen Commercial Bank Limited through an instrument of charge executed by both the parties on 16th February, 2019. Inadvertently, the company could not get the charge registered with the concerned Registrar of Companies (ROC) within the first statutory period permitted by law and the default was made known to it by the lending banker with a stern warning to take immediate steps for rectification. Advise the company regarding the latest date within which it must register the charge with the ROC so that it is not required to pay a specific type of fees for charge registration.

(a) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 27th April, 2019.

(b) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 17th April, 2019.

(c) With a view to avoid paying a specific type of fees for charge registration, the company must get the charge registered latest by 2nd May, 2019.

(d) The company cannot now get the charge register as the time prescribed by Law has expired.

[RTP-Nov'19]

4. Cyplish Games and Toys Limited was sanctioned a term loan of ₹ 60.00 lacs by Zawn Industrial Bank Limited on 21st November, 2018. As a security, the company offered its office premises situated at Bandra, Mumbai and an instrument of charge was executed.

However, the company failed to get the charge registered with the concerned Registrar within the first as well as second statutory period available as per law. This was adversely commented by the internal auditors of the bank and therefore, after a strict advisory received from Shahji, the senior manager of the bank, the company was prompted to take steps for registration of charge. Name the specific type of fees which the company is now required to pay for registration of charge.

(a) Special Fees.

(b) Ad-valorem Fees.

(c) A Late Registration Fees

(d) Ad-valorem Duty.

[RTP-Nov'19]

5. On receipt of intimation of satisfaction of charge, the registrar issues a notice to the holder calling a show cause within such time not exceeding _____ days as to why payment or satisfaction in full should not be regarded as intimated to the Registrar: **[MTP-Oct'19]**

(a) 14

(b) 21

(c) 30

(d) 300

6. Purvi Pvt. Ltd. is maintaining a register of charges along with all other necessary books and registers. The entry for every creation, modification and satisfaction of charges is being done properly. The company is also preserving every instrument related to such charges. From the following for how long the instrument of charges shall be maintained/preserved by the company—

(a) for minimum 8 years from the date of creation of charge

(b) For minimum 10 years from the date of creation of charge

(c) For minimum 8 years from the date of satisfaction of charge

(d) permanently, without any time limit

[MTP-April'19]



CHAPTER-7

MANAGEMENT & ADMINISTRATION

Q-1 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 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? **[Sugg.May'19,6 Marks]**

Ans. According to section 101(1) of the Companies Act, 2013, a general meeting of a company may be called by giving not less than clear twenty-one days' notice either in writing or through electronic mode in such manner as may be prescribed.

Also, it is to be noted that 21 clear days mean that the date on which notice is served and the date of meeting are excluded for sending the notice.

Further, 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.

Hence, in the given question:

- (i) A 21 days' clear notice must be given. In the given question, only 19 clear days' notice is served (after excluding 48 hours from the time of its posting and the day of sending and date of meeting). Therefore, the meeting was not validly called.
- (ii) As explained in (i) above, notice falls 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.

Q-2 Give the points of distinction between ordinary resolution and special resolution.

[Sugg.May'19,5 Marks]

Ans. Difference between ordinary resolution and Special resolution Ordinary Resolution—

Section 114(1) of the Companies Act, 2013 states that a resolution shall be ordinary resolution, if the notice required under this Act has been duly given and it is required to be passed by the votes cast, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, exceed the votes, if any cast against the resolution by members, so entitled and voting.

Simply put, the votes cast in the favour of the resolution, by any mode of voting should exceed the votes cast against it.

Special Resolution—

As per Section 114(2) of the Act, a resolution shall be a special resolution, when—

- (a) The intention to propose the resolution as a special resolution has been duly specified in the notice calling the general meeting or other intimation given to the members of the resolution;
- (b) The notice required under this Act has been duly given; and
- (c) The votes cast in favour of the resolution, whether on a show of hands, or electronically or on a poll, as the case may be, in favour of the resolution, including the casting vote of the Chairman, if any, of the Chairman, by members, who, being entitled so to do, vote in person, or where proxies are allowed, by proxy or by postal ballot, are required to be not less than 3 times the number of the votes, if any, cast against the resolution by members so entitled and voting.

Q-3 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?

[Sugg.May'19,3 Marks]

Ans. According to section 103(1)(a)(i) of the Companies Act, 2013, unless the articles of the company provide for a larger number, in case of public company, if the number of members as on the date of meeting is not more than one thousand, five members personally present shall be the quorum for a meeting of the company. 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, proxies whether they are members or not will have to be excluded for the purposes of quorum.

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 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.

Q-4 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?

[Sugg.May'19,2 Marks]

Ans. According to Rule – 20(4)(iii)(C) of the 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.

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.

Q-5 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.

[Sugg.Nov'18,3 Marks]

Ans. Resolutions requiring special notice [Section 115]

Section 115 of the Companies Act, 2013 states that where any provision of this Act specifically requires or Articles of Association of a company so require that a special notice is required for passing any resolution, then 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 the total voting power, or holding shares on which such aggregate sum not exceeding ₹ 5,00,000/- has been paid-up. In such a case, the company shall give its members notice of the resolution in the manner as prescribed in Rule 22 of the Companies (Management & Administration) Rules, 2014. Further, Section 115 of the Act specifies that special notice is required to appoint as auditor a person other than a retiring auditor under Section 140 of the Act.

According to the given facts in the question, there is non-compliance of requirement of section 115 as stated above i.e. the notice of the intention to move such resolution as to appointment of auditor other than retiring auditor was given by members of ZA Ltd. holding less than 1% of the total voting power.

Q-6 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.

- (1) P1, P2 & P3 shareholders
- (2) P4 representing ABC Ltd.
- (3) P5 representing DEF Ltd.
- (4) 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.?
 - (iii) In case lack of Quorum, discuss the provisions as applicable for an adjourned meeting in terms of date, time & place.
 - (iv) What happens if there is no Quorum in the Adjourned meeting? **[Sugg.Nov'18,4 Marks]**

Ans. 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.

- (i) (1) P1, P2 and P3 will be counted as three members.
(2) If a company is a member of another company, it may authorize a person by resolution to act as its representative at a 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. Hence, P4 and P5 representing ABC Ltd. and DEF Ltd. respectively will be counted as two members.
(3) Only members present in person and not by proxy are to be counted. Hence, proxies whether they are members or not will have to be excluded for the purposes of quorum. Thus, P6 and P7 shall not be counted in quorum.

In the light of the provision of the Act and the facts of the question, it can be concluded that the quorum for Annual General Meeting of KMN Ltd. is 5 members personally present. Total 5 members (P1, P2, P3, P4 and P5) were present. Hence, the requirement of quorum is fulfilled.

- (ii) The section further states that, if the required quorum is not present within half an hour, the meeting shall stand adjourned for the next week at the same time and place or such other time and place as decided by the Board of Directors.

Since, P4 is an essential part for meeting the quorum requirement, and he reaches after 11:30 AM (i.e. half an hour after the starting of the meeting), the meeting will be adjourned as provided above.

(iii) In case of lack of quorum, the meeting will be adjourned as provided in section 103.

In case of the adjourned meeting or change of day, time or place of meeting, the company shall give not less than 3 days' notice to the members either individually or by publishing an advertisement in the newspaper.

(iv) Where quorum is not present in the adjourned meeting also within half an hour, then the members present shall form the quorum.

Q-7 '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 that Articles of association of the Company do not restrict the voting right of such members. **[Sugg.Nov'18,4 Marks]**

Ans. Restriction on voting rights [Section 106 of the Companies Act, 2013]

According to the said Section:

- (1) Notwithstanding anything contained in this Act, the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums are presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.
- (2) A company shall not, except on the grounds specified in sub-section (1), prohibit any member from exercising his voting right on any other ground.

In the given question, 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.

On examination of the above provisions of the Act and the facts of the case, LKM Ltd.'s denial to 'X' for exercising his voting rights is not valid.

Q-8 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. **[Sugg.May'18,6 Marks]**

Ans. Every company is required to file with the Registrar of Companies, the annual return as prescribed in section 92, in Form MGT – 7 as per Rule 11(1) of the Companies (Management & Administration) Rules, 2014.

The particulars contained in an annual return, to be filed by every company are as follows–

1. Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies;
2. Its shares, debentures and other securities and shareholding pattern
3. Its indebtedness;
4. Its members and debenture-holders along with the changes therein since the close of the previous financial year;
5. Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year;
6. Meetings of members or a class thereof, Board and its various committees along with attendance details;
7. Remuneration of directors and key managerial personnel;

8. 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;
9. Matters relating to certification of compliances, disclosures;
10. Details in respect of shares held by or on behalf of the Foreign Institutional Investors including their names, addresses, countries of incorporation, registration and percentage of shareholding held by them;
11. Such other matters as may be prescribed.

Q-9 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?

[Sugg.May'18,4 Marks]

Ans. According to section 92(4) of the Companies Act, 2013, every company shall file with the Registrar a copy of the annual return, within sixty days from the date on which the annual general meeting is held or where no annual general meeting is held in any year within sixty 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, within the time specified under section 403.

Sub-section (5) of Section 92 also states that if a company fails to file its annual return under sub-section (4), before the expiry of the period specified under section 403 with additional fees, the company shall be punishable with fine which shall not be less than fifty thousand rupees but which may extend to five lakhs rupees and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to six months or with fine which shall not be less than fifty thousand rupees but which may extend to five lakh rupees, or with both.

In the instant case, the idea of the directors that since the AGM was cancelled, the provisions requiring the company to file annual returns within 60 days from the date of AGM would not apply is incorrect.

In the above case, the annual general meeting of Bazaar Limited should have been held within a period of six months, from the date of closing of the financial year but it did not take place. Thus, the company has contravened the provisions of section 92 of the Companies Act, 2013 for not filing the annual returns and shall attract the penal provisions along with every officer of the company who is in default as specified in Section 92(5) of the Act.

Q-10 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.

[Sugg.May'18,4 Marks]

Ans. For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the annual general meeting. 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 or unless a poll is demanded in respect of any.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors 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.

Q-11 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? **[Sugg.May'18,5 Marks]**

Ans.(i) Maintenance of the Register of Members etc.: As per section 94(1) of the Companies Act, 2013, the registers required to be kept and maintained by a company under section 88 and copies of the annual return filed under section 92 shall be kept at the registered office of the company:

Provided that such registers or copies of return may also be kept at any other place in India in which more than one-tenth of the total number of members entered in the register of members reside, if approved by a special resolution passed at a general meeting of the company.

So, Techno Ltd. can also keep the registers and returns at Kolkata after compliance with the above provisions, provided more than one-tenth of the total number of members entered in the register of members reside in Kolkata.

- (ii) As per section 94(2) of the Companies Act, the inspection of the records, i.e. registers and indices, and annual return can be done by members, debenture-holders, other security holders or beneficial owners of the company.

Accordingly, a director Mr. Ranjit, who is not a shareholder of the company, has no right to inspect the Register of Members of company, as per the provisions of this section.

[**Note:** A presumption may be taken with respect to payment of fees. In such a case, any other person (other than specified above) may also inspect the Register of members of company]

Q-12 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]**

Ans. According to section 100 of the Companies Act, 2013, the Board may, whenever it deems fit, call an extraordinary general meeting of the company.

Provided that 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.

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.

Q-13 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-19]**

Ans. Section 106 (1) of the Companies Act, 2013 states that the articles of a company may provide that no member shall exercise any voting right in respect of any shares registered in his name on which any calls or other sums presently payable by him have not been paid, or in regard to which the company has exercised any right of lien.

In the present case the articles of the company do not permit a shareholder to vote if he has not paid the calls on the shares held by him. 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.

Q-14 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]**

Ans. 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.

Provided that annual general meeting of an unlisted company may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Thus, in the first case, the company is rightful in calling the Annual General meeting at Ansal Plaza. In the second scenario, in case of an unlisted company, annual general meeting may be held at any place in India if consent is given in writing or by electronic mode by all the members in advance. Hence, if consent is given in writing or by electronic mode by all the members in advance, the AGM can be called at Jaipur, otherwise not.

Q-15 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'2020]**

Ans. 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 date of closing of its first financial year.

The first financial year of EFG Ltd is for the period 1st April 2017 to 31st March 2018, the first annual general meeting (AGM) of the company should be held on or before 31st December, 2018.

The section further provides that the Registrar may, for any special reason, extend the time within which any annual general meeting, other than the first annual general meeting, shall be held, by a period not exceeding three months.

Thus, the first AGM of EFG Ltd. should have been held on or before 31st December, 2018.

Further, the Registrar does not have the power to grant extension to time limit for the first AGM.

Q-16 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'2020]**

Ans. 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 only be made either on formation of a company, or by an amendment in the articles agreed to by all the members of the company in the case of a private company and by a special resolution in the case of a public company.

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 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. But 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.

Q-17 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]**

Ans. According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) 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. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Q-18 Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

In an Annual General Meeting of Vrinda Ltd. having share capital, 80 members present in person or by proxy holding more than 1/10th 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. **[RTP-Nov'18]**

Ans. Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-Order of demand for poll by the chairman of meeting: Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

(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 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.

Withdrawal of the demand: 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.

Q-19 Examine the validity of the following decisions of the Board of Directors with reference of the provisions of the Companies Act, 2013.

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.

Ans. 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.

Withdrawal of the demand: 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 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.

Q-20 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.

[Sugg.-Nov'19,4 Marks]

Ans. 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:-

- (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.

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.

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

Part (i) of the question relating to increase in the Authorized Capital falls under special business and hence in the absence of amount of proposed increase of share capital, the notice will be treated as invalid.

Part(ii) 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 information about the amount is a material fact with reference to the proposed increase of authorized share capital and remuneration of Mr. Prateek as the auditor.

The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q-21 At a General meeting of a XYZ Limited, 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 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-Oct'19,4 Marks]**

Ans. 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:

- (1) 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;
- (2) The notice required under the Companies Act must have been duly given of the general meeting;
- (3) 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.

Accordingly, in the given problem, 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.

Q-22 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. **[MTP-March'19,3 Marks]**

Ans. According to section 100 (2) of the Companies Act 2013, the Board of directors must convene a general meeting upon requisition by the stipulated minimum number of members.

As per Section 103 (2) (b) 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. Therefore, the meeting stands cancelled and the stand taken by the Board of Directors to adjourn it, is not proper.

Q-23 Miraj Limited held its Annual General Meeting on September 15, 2018. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2018, 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, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom. **[MTP-April'19,4 Marks]**

Ans. Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr Venkat, by any director who is authorized by the Board.

Q-24 General Meeting was scheduled to be held on 15th April, 2018 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 at least 48 hours before the meeting. Mr. X, a member of the company appoints Mr. Y as his proxy and the proxy form dated 10-04-2018 was deposited by Mr. Y with the company at its registered Office on 11-04-2018. Similarly, another member Mr. W also gives two separate proxies to two individuals named Mr. M and Mr. N. In the case of Mr. M, the proxy dated 12-04-2018 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2018. All the proxies viz., Y, M and N were present before the meeting.

According to the provisions of the Companies Act, 2013, who would be the persons allowed to represent at proxies for members X and W respectively? **[MTP-April'19,6 Marks]**

Ans. 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. Further, any provision in the articles of association of the company requiring instrument of proxy to be lodged with the company more than 48 hours before a meeting shall have effect as if 48 hours had been specified therein. The members have a right to revoke the proxy's authority by voting himself before the proxy has voted but once the proxy has voted the member cannot retract his authority.

Where two proxy instruments by the same shareholder are lodged of in such a manner that one is lodged before and the other after the expiry of the date fixed for lodging proxies, the former will be counted.

Thus, in case of member X, the proxy Y will be permitted to vote on his behalf as form for appointing proxy was submitted within the permitted time.

However, in the case of Member W, the proxy M (and not Proxy N) will be permitted to vote as the proxy authorizing N to vote was deposited in less than 48 hours before the meeting.

Q-25 State the provisions of the Companies Act, 2013 in relation to 'Power of Tribunal to Call Meetings of Members, etc'. **[MTP-April'18,6 Marks]**

Ans. According to section 98 of the Companies Act, 2013,

(1) If for any reason it is impracticable to call a meeting of a company, other than an annual general meeting, in any manner in which meetings of the company may be called, or to hold or conduct the meeting of the company in the manner prescribed by this Act or the articles of the company, the Tribunal may, either *suomotu* or on the application of any director or member of the company who would be entitled to vote at the meeting,—

(a) order a meeting of the company to be called, held and conducted in such manner as the Tribunal thinks fit; and

(b) give such ancillary or consequential directions as the Tribunal thinks expedient, including directions modifying or supplementing in relation to the calling, holding and conducting of the meeting, the operation of the provisions of this Act or articles of the company:

Provided that such directions may include a direction that one member of the company present in person or by proxy shall be deemed to constitute a meeting.

- (2) Any meeting called, held and conducted in accordance with any order made under sub-section (1) shall, for all purposes, be deemed to be a meeting of the company duly called, held and conducted.

Q-26(i) At a General meeting of a XYZ Limited, 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 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.

- (ii) Annual General Meeting of MRF Limited is convened on 28th December, 2017. Mr. Jai, who is a member of the company, approaches the company on 28th December, 2017 and demands inspection of proxies lodged with the company. Explain the legal position as stated under the Companies Act, 2013 in this regard. **[MTP-April'18,8 Marks]**

Ans. (i) 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:

- (1) 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;
- (2) The notice required under the Companies Act must have been duly given of the general meeting;
- (3) 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.

Accordingly, in the given problem, 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.

- (ii) Under section 105 (8) of the Companies Act, 2013 every member entitled to vote at a meeting of the company or on any resolution to be moved thereat, shall be entitled during the period beginning 24 hours before the time fixed for the commencement of the meeting and ending with the conclusion of the meeting, to inspect the proxies lodged, at anytime during the business hours of the company. Provided not less than 3 days' notice in writing of the intention to inspect is given to the company.

In the given case, Mr. Jai who is a member approaches the company on 28th December and demands inspection of proxies lodged with the company. Based on the above provisions since prior notice of 3 days had not been given by Mr. Jai to the company for inspecting the proxies, the company may refuse inspection of proxy forms.

Q-27 A general meeting of PQR limited was held on 14.12.2017. Mr. Kamal who is a shareholder of PQR Limited did not receive the notice of the said meeting. He has contended that the proceedings of the said meeting are invalid as he has accidentally not received the notice of the meeting. Discuss in the light of the provisions of the Companies Act, 2013. **[MTP-April'18,5 Marks]**

Ans. Under section 101 (3) of the Companies Act, 2013 "Notice" of every meeting of the company shall be given -

- (i) to every member of the company, legal representative of any deceased member, or the assignee of an insolvent member;
- (ii) to every director of the company;
- (iii) to a auditor or auditors and,

The private company, which is not, a subsidiary of a public company may prescribe, by its Articles, persons to whom the notice should be given.

Any accidental omission or the non receipt of notice by any member or other person entitled to such notice shall not invalidate the proceedings in the meeting [Section 101 (4)].

In the given case, Mr. Kamal has accidentally not received the notice of the meeting, thus, it will not invalidate the proceedings of the general meeting held on 14.12.2017.

Q-28 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 a company having share capital, 80 members present in person or by proxy holding more than 1/10th 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. **[MTP-March'18,8 Marks]**

Ans.(a) Section 109 of the Companies Act, 2013 provides for the demand of poll before or on the declaration of the result of the voting on any resolution on show of hands. Accordingly law says that:-

Before or on the declaration of the result of the voting on any resolution on show of hands, a poll may be ordered to be taken by the Chairman of the meeting on his own motion, and shall be ordered to be taken by him on a demand made in that behalf:-

- (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 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.

Withdrawal of the demand: 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 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.

Q-29 Examine the following with reference of the provisions of the Companies Act, 2013.

- (i) Miraj 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. S and Mr. P 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. **[MTP-Oct'18,4 Marks]**
- (ii) 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? **[MTP-Oct'18,4 Marks]**

Ans.(i) For the sake of avoiding confusion and mixing up, the resolutions are generally moved separately in the Annual General Meeting. 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 or unless a poll is demanded in respect of any.

Where notice has been given of several resolutions, each resolution must be put separately. However, if the meeting unanimously adopts all the resolutions, this would not be illegal barring a few occasions.

One resolution which should be moved separately is relating to appointment of directors at a general meeting of a public or private company, where two or more directors cannot be appointed as directors 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. S and Mr. P as directors. Besides these two resolutions, other seven resolutions can be moved together if the members unanimously agree.

- (ii) Under section 102(2)(b) in the case of any meeting other than an AGM, all businesses transacted thereat shall be deemed to be special business.

Further under section 102 (1), 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 item, 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. Thus, the objection of the shareholder is valid since the details on the item to be considered are lacking. The information about the amount is a material fact with reference to the proposed increase of share capital. The notice is, therefore, not a valid notice under Section 102 of the Companies Act, 2013.

Q-30 M Limited held its Annual General Meeting on September 15, 2017. The meeting was presided over by Mr. Venkat, the Chairman of the Company's Board of Directors. On September 17, 2017, 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, examine the manner in which the minutes of the above meeting are to be signed in the absence of Mr. Venkat and by whom.

[MTP-Oct'18, 6 Marks]

Ans. Section 118 of the Companies Act, 2013 provides that every company shall prepare, sign and keep minutes of proceedings of every general meeting, including the meeting called by the requisitionists and all proceedings of meeting of any class of shareholders or creditors or Board of Directors or committee of the Board and also resolution passed by postal ballot within thirty days of the conclusion of every such meeting concerned. Minutes kept shall be evidence of the proceedings recorded in a meeting.

By virtue of Rule 25 of the Companies (Management and Administration) Rules 2014 read with section 118 of the Companies Act, 2013 each page of every such book shall be initialled or signed and the last page of the record of proceedings of each meeting or each report in such books shall be dated and signed by, in the case of minutes of proceedings of a general meeting, by the chairman of the same meeting within the aforesaid period of thirty days or in the event of the death or inability of that chairman within that period, by a director duly authorized by the Board for the purpose.

Therefore, the minutes of the meeting referred to in the case given above can be signed in the absence of Mr. Venkat, by any director who is authorized by the Board.

MULTIPLE CHOICE QUESTIONS

1. All the 40 members of Taxila Traders Limited have valid voting rights. Due to some urgency, its directors are desirous of convening Annual General Meeting (AGM) at a shorter notice than statutorily required. Is it possible for them to do so?
 - (a) Taxila Traders Limited cannot convene AGM at shorter notice than statutorily required.
 - (b) Taxila Traders Limited can convene AGM at shorter notice than statutorily required, if consent in writing or by electronic mode is accorded by all the forty members who are entitled to vote at the AGM.
 - (c) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 38 members who are entitled to vote at the AGM.**
 - (d) Taxila Traders Limited can convene AGM at shorter notice than statutorily required if consent in writing or by electronic mode is accorded by at least 36 members who are entitled to vote at the AGM. **[RTP-Nov-19]**
2. The second meeting of Board of Directors of GHWX Private Limited was held on 7 September, 2018 for the financial year 2018-19. The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must contain:
 - (a) Name of director Mr. U who was absent from the meeting of Board of Directors held on 7 September, 2018.
 - (b) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W comprising Board of Directors of GHWX Private Limited.
 - (c) Name of one director Mr. U who was absent and one director Mr. K who was present in the meeting of Board of Directors held on 7 September, 2018.
 - (d) Names of directors Mr. K, Mr. N, Mr. R and Mr. W who were present in the meeting of Board of Directors held on 7 September, 2018.** **[RTP-May'2020]**
3. The minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 held on 7 September, 2018 must contain:
 - (a) Name of four directors Mr. K, Mr. N, Mr. R and Mr. W who were present in meeting and voted in the resolution.
 - (b) Name of director Mr. W who voted against the resolution.**
 - (c) Name of directors Mr. K, Mr. N and Mr. R who voted in favour of the resolution.
 - (d) Names of all the directors Mr. K, Mr. N, Mr. R, Mr. U and Mr. W who all had the right to attend the meeting and vote in the resolution. **[RTP-May'2020]**
4. The opinion of one of the director Mr. K was that minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be prepared and entered in minutes book of meeting of Board of Directors of GHWX Private Limited by the end of October, 2018 is incorrect. The opinion of Mr. K is incorrect because:
 - (a) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within thirty days of the conclusion of meeting on 7 September, 2018.**
 - (b) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year 2018-19 must be entered in minute book of meeting of Board of Directors within sixty days of the conclusion of meeting on 7 September, 2018.
 - (c) Minutes of second meeting of Board of Directors of GHWX Private Limited for the financial year

2018-19 must be entered in minute book of meeting of Board of Directors within ninety days of the conclusion of meeting on 7 September, 2018.

- (d) Minutes of second meeting of Board of Directors of GHWX Private Limited for financial year 2018-19 must be entered in minute book of meeting of Board of Directors within one twenty days of the conclusion of meeting on 7 September, 2018. **[RTP-May'2020]**

5. The minute book of General meetings of Alpha Limited will be kept at:

- (a) That place where members of Alpha Limited will decide.
(b) That place where all employees of Alpha Limited will decide.

(c) Registered office of the company Alpha Limited.

- (d) That place where senior officials of Alpha Limited will decide. **[RTP-May'2020]**

6. In the current financial year Zunee Traders Limited, a non-listed company, has 556 members, increased from 451 members which it had in the immediate previous financial year. For the forthcoming Annual General Meeting (AGM), advise the company whether it is required to provide to its members the facility to exercise their right to vote at this AGM by electronic means. **[MTP-Oct'19]**

- (a) Since the company has more than 500 members it is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means.

(b) The company is not required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means since its members are less than one thousand.

- (c) Though the company is required to provide to its members the facility to exercise their right to vote at the forthcoming AGM by electronic means because it has more than 500 members, it can, as a one-time measure, seek exemption from ROC beforehand and in that case, it need not provide facility of voting by electronic means.

- (d) Only a listed company is required to provide to its members the facility to exercise their right to vote at the General Meetings by electronic means.

7. Annual general meeting need to be called by giving 21 days' clear notice. However it can be called on a shorter notice if members entitled to vote in that meeting give their consent in writing or by electronic mode. In such case, how many members have to give their consents?

- (a) 75% of members entitled; (b) 90% of members entitled;

- (c) 91% of members entitled; **(d) 95% of members entitled;** **[MTP-March'19]**

8. Supertech Computers Pvt. Ltd has 120 members. It sends notice to all of them. 20 members did not attend the meeting. Out of remaining 100 members, 20 members abstained from voting. Advice the company, how many members should vote in favour of resolution, if it has to be passed as a Special Resolution?

- (a) 60 Votes** (b) 80 Votes (c) 41 votes (d) 20 votes

[MTP-March'19]

9. The Annual General meeting of Tirupati Limited was scheduled for 28th December, 2017. Mr. Ananat, shareholder of Tirupati Limited has desired to inspect inspection of proxies lodged with the company. The notice for inspection should be given at least before the meeting:

- (a) 24 hours (b) 1 day (c) 2 days **(d) 3 days**

[MTP-April'19]



CHAPTER-8

DECLARATION AND PAYMENT OF DIVIDEND

Q-1 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.

[Sugg.May'19,2 Marks]

Ans. 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 the shareholder.

In the instant case, PQ Ltd. has failed to communicate to the shareholder Mr. Kumar about noncompliance of his direction regarding payment of dividend. Hence, the penal provisions under section 127 will be attracted.

Q-2 Alex limited is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company had declared dividend at the rate of 7%, 11% and 12% respectively. The Board of Directors has decided to declare 12% interim dividend for the current financial year atleast to be in par with the immediate preceding year. Is the act of the Board of Directors valid ?

[Sugg.May'19,3 Marks]

Ans. As per Section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared:

Provided that 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 the immediately preceding three financial years.

According to the given facts, Alex Ltd. is facing loss in business during the financial year 2018-2019. In the immediate preceding three financial years, the company declared dividend at the rate of 7%, 11% and 12% respectively. Accordingly, the rate of dividend declared shall not exceed 10%, the average of the rates $(7+11+12=30/3)$ at which dividend was declared by it during the immediately preceding three financial years.

Therefore the act of the Board of Directors as to declaration of interim dividend at the rate of 12% during the F.Y 2018-2019 is not valid.

Q-3 The Directors of East West Limited proposed dividend at 15% on equity shares for the financial year 2017-2018. The same was approved in the Annual general body meeting held on 24th October 2018. The Directors declared the approved dividends.

Mr. Binoy was the holder of 2000 equity of shares on 31st March, 2018, but he transferred the shares to Mr. Mohan, whose name has been registered on 18th June, 2018. Who will be entitled to the above dividend ? **[Sugg.May'19,2 Marks]**

Ans. Payment of dividend: According to section 123(5) of the Companies Act, 2013, dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. As said in the question, East West Limited proposed dividend for Financial Year 2017- 2018. Mr. Binoy was the holder of 2000 equity shares on 31st March, 2018. He transferred the shares to Mr. Mohan, whose name was registered on 18th June 2018 in the register of members.

Since, Mr. Mohan became the registered shareholder before the declaration of dividend in the Annual General Meeting of the company held on 24th October, 2018 he will be entitled to the dividend.

Q-4 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. **[Sugg.Nov'18,3 Marks]**

Ans. Transfer to reserves (Section 123 of the Companies Act, 2013): 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 reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of ` 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

Q-5 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. **[Sugg.Nov'18,3 Marks]**

Ans. As per the proviso to section 127 of the Companies Act, 2013, no offence will be said to have been committed by a director for adjusting the calls in arrears remaining unpaid or any other sum due from a member from the dividend as is declared by a company.

Thus, as per the given facts, M/s Future Ltd. can adjust the sum of ` 50,000 unpaid call money against the declared dividend of 10%, i.e. $5,00,000 \times 10/100 = 50,000$. Hence, Karan's unpaid call money (` 50,000) can be adjusted fully from the entitled dividend amount of ` 50,000/-.

Q-6 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. In spite of the loss, the Board of Directors of the 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. **[Sugg.May'18,4 Marks]**

Ans. Interim Dividend: According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

However, 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 the immediately preceding three financial years.

In the instant case, Interim dividend by PET Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(12+15+18)/3 = 45/3 = 15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Q-7 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]**

Ans. As per section 124 of the Companies Act, 2013, where a 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 said period of 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 of an amount, prepare a statement containing the names, their last known addresses and the unpaid dividend to 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 for this purpose, in such form, manner and other particulars as may be prescribed.

Accordingly, in the given situation, RST Ltd. failed to give statement of Unpaid/unclaimed dividend and so liable for the said noncompliance of section 124 of the Companies Act, 2013. Any person claiming to be entitled to any money transferred under section 124(1) to the Unpaid Dividend Account of the company may apply to the company for payment of the money claimed. Since RST Ltd. failed to comply with the requirements of this section as to the preparing of a statement of unpaid dividend, so 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.

Q-8 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]**

Ans. As per Second Proviso to Section 123 (1), 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.

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.

- (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.

Amount of dividend proposed: ₹ 2 Crores (20% of ₹ 10 Crore i.e. on paid up capital)

10% of paid up share capital and free reserves: 10% of (10 crore + 50 crore) = ₹ 6 Crore.

This condition is fulfilled as amount of dividend is not exceeding 10% of its paid-up share capital and free reserves.

- (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.

Balance of reserves after payment of dividend: ₹ 48 crore (50 crore – 2 crore)

15% of paid up share capital: 1.5 crore (15% of 10 crore)

This condition is fulfilled.

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

- Q-9** 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]**

- Ans.(i)** The given problem is based on the proviso provided in the section 127 (d) of the Companies Act, 2013. As per the law where the dividend is declared by a company and there remains calls in arrears and any other sum due from a member, in such case no offence shall be deemed to have been committed where the dividend has been lawfully adjusted by the company against any sum due to it from the shareholder.

As per the facts given in the question, Mr. A is holding equity shares of face value of ₹ 10 Lakhs and has not paid an amount of ₹ 1 lakh towards call money on shares. Referring to the above provision, Mr. A is eligible to get ₹ 1.20 lakh towards dividend, out of which an amount of ₹ 1 lakh can be adjusted towards call money due on his shares. ₹ 20,000 can be paid to him in cash or by cheque or in any electronic mode.

According to the above mentioned provision, company can adjust sum of ₹ 1 lakh due towards call money on shares against the dividend amount payable to Mr. A.

- (ii)** According to section 123(5), dividend shall be payable only to the registered shareholder of the share or to his order or to his banker. Facts in the given case state that Ms. N, the holder of equity shares transferred the shares to Mr. R whose name has been registered on 20th May 2017. Since, he became the registered shareholder before the declaration of the dividend in the Annual general meeting of the company held on 20th September 2017, so, Mr. Raj will be entitled to the dividend.

- Q-10** Whether a Company can declare dividend for the financial year in which it incurred loss.

[Sugg.-Nov'19,3 Marks]]

Ans. As per Second Proviso to Section 123 (1) 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 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.

Q-11 TAT 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. In spite of the loss, the Board of Directors of the company have decided to declare interim dividend @ 15% for the current financial year. Examine the decision of TAT Ltd. stating the provisions of declaration of interim dividend under the Companies Act, 2013. **[MTP-March'19,6 Marks]**

Ans. Interim Dividend: According to section 123(3) of the Companies Act, 2013, 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.

However, 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 the immediately preceding three financial years.

In the instant case, Interim dividend by TAT Ltd. shall not be declared at a rate higher than the average dividends declared by the company during the immediately preceding three financial years [i.e. $(12+15+18)/3 = 45/3 = 15\%$]. Therefore, decision of Board of Directors to declare 15% of the interim dividend for the current financial year is tenable.

Q-12 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 Rs. 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. **[MTP-April-19,3 Marks]**

Ans. Transfer to reserves (Section 123 of the Companies Act, 2013): 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 reserves of the company. Therefore, the company may transfer such percentage of profit to reserves before declaration of dividend as it may consider necessary. Such transfer is not mandatory and the percentage to be transferred to reserves is at the discretion of the company.

As per the given facts, YZ Limited has earned a profit of Rs. 910 crores for the financial year 2017-18. It has proposed a dividend @ 10%. However, it does not intend to transfer any amount to the reserves of the company out of current year profit.

As per the provisions stated above, the amount to be transferred to reserves out of profits for a financial year is at the discretion of the YZ Ltd. acting vide its Board of Directors.

Q-13 State any 6 amounts that can be credited to the Investor Education and Protection Fund. Give your answer as per the provisions of the Companies Act, 2013. **[MTP-April-19,6 Marks]**

Ans. Credit of amount to the Fund: There shall be credited to the Investor Education and Protection Fund the following amounts—

(a) **Amount given by the Central Government-** the amount given by the Central Government by way of grants after due appropriation made by Parliament by law in this behalf for being utilised for the purposes of the Fund;

- (b) **Donations by the Central Government-** donations given to the Fund by the Central Government, State Governments, companies or any other institution for the purposes of the Fund;
- (c) **Amount of Unpaid Dividend Account-** the amount in the Unpaid Dividend Account (UDA) of companies transferred to the Fund under section 124(5);
- (d) **Amount of the general revenue account of the Central Government-** the amount in the general revenue account of the Central Government which had been transferred to that account under section 205A(5) of the Companies Act, 1956 as it stood immediately before the commencement of the Companies (Amendment) Act, 1999 and remaining unpaid or unclaimed on the commencement of this Act;
- (e) **Amount in IEPF-** the amount lying in the Investor Education and Protection Fund under section 205C of the Companies Act, 1956;
- (f) **Income from investments-** the interest or other income received out of investments made from the Fund;
- (g) **Amount received through disgorgement or disposal of securities-** The amount received under section 38(4) i.e. amount received through disgorgement or disposal of securities under section 38(3) shall be credited to the IEPF provided under section 38(4);
- (h) **Application money-** the application money received by companies for allotment of any securities and due for refund;
- (i) **Matured deposits-** matured deposits with companies other than banking companies;
- (j) **Matured debentures-** matured debentures with companies;
- (k) **Interest-** interest accrued on the amounts referred to in clauses (h) to (j);
- (l) **Amount received from sale proceeds-** sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for seven or more years;
- (m) **Redemption amount-** redemption amount of preference shares remaining unpaid or unclaimed for seven or more years; and
- (n) **Other amount-** such other amount as prescribed in Rule 3 of the Investor Education and Protection Fund Authority (Accounting, Audit, Transfer and Refund) Rules, 2016.

- Q-14** During the financial year 2016-17, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor, to accommodate the said interim dividend.
- (i) Examine the validity of the Board's decision under the provisions of the Companies Act, 2013.
 - (ii) Examine what will be your answer, if the Board proposes to transfer more than 10% of the profits of the company to the reserves for the current year before the declaration of any dividend?

[MTP-March'18,6 Marks]

Ans. According to section 123(3) of the Companies Act, 2013, the Board of Directors of a company may declare interim dividend during any financial year out of the surplus in the profit and loss account and out of profits of the financial year in which such interim dividend is sought to be declared.

Further a dividend when declared becomes a debt and a shareholder is entitled to recovery of the same after expiry of 30 days as prescribed under Section 127 of the Companies Act, 2013. Section 2(14A) of the Act defines dividend to include interim dividend. Therefore, dividend once declared becomes a debt and payable within 30 days of declaration.

In the present case, Perfect Limited declared an interim dividend for the second time. After declaration, the Board of Directors decided to revoke the second interim dividend as its financial position was poor.

However, in view of the above, the Board of directors cannot revoke the second interim dividend.

Therefore, decision of the Board to revoke the declared 2nd Interim dividend is invalid.

MULTIPLE CHOICE QUESTIONS

1. Sumitra Healthcare and Hospitality Limited had issued 9% non-convertible debentures which matured four years back. However, 1000 such debentures of ₹ 100 each are still remaining unclaimed and unpaid even after the maturity. State the period after which the company needs to transfer them to Investor Education and Protection Fund (IEPF) if they remain unclaimed and unpaid.
- (a) After the expiry of five years from the maturity date.
(b) After the expiry of six years from the maturity date
(c) After the expiry of seven years from the maturity date
(d) After the expiry of eight years from the maturity date. **[RTP-Nov'19]**
2. In how many days from the date of declaration of interim dividend, it shall be deposited in a separate bank account
(a) 5 days (b) 7 days (c) 15 days (d) 21 days
[MTP-April-19]
3. After Declaration of dividend it should be paid within
(a) 14 days (b) 21 days **(c) 30 days** (d) 45 days
[MTP-April-19]
4. ABC Ltd., a listed company proposed a dividend @ 15% on equity shares for the financial year ended on 31st March 2018. The Annual General Meeting (AGM) of the company was held on 15th July 2018 and the proposed dividend was approved and declared in the same. Due to some technical issues, dividend on 600 shares neither be paid within the time limit prescribed by the Act nor was transferred to unpaid dividend account. In such a situation which regulatory authority can take action against the company and its officers in default?
(a) Central Government **(b) SEBI**
(c) Tribunal
(d) Investor Education and Protection Fund Authority **[MTP-April-19]**



CHAPTER-9

ACCOUNTS OF COMPANIES

Q-1 The Government of India is holding 51% of the paid-up equity share capital of Sun Ltd. The Audited financial statements of Sun Ltd. for the financial year 2017-18 were placed at its annual general meeting held on 31st August, 2018. However, pending the comments of the Comptroller and Auditor General of India (CAG) on the said accounts the meeting was adjourned without adoption of the accounts. On receipt of CAG comments on the accounts, the adjourned annual general meeting was held on 15th October, 2018 whereat the accounts were adopted. Thereafter, Sun Ltd. filed its financial statements relevant to the financial year 2017-18 with the Registrar of Companies on 12th November, 2018. Examine, with reference to the applicable provisions of the Companies Act, 2013, whether Sun Ltd. has complied with the statutory requirement regarding filing of accounts with the Registrar?

[Sugg. May'19, 4 Marks]

Ans. According to first proviso to section 137(1) of the Companies Act, 2013, where the financial statements are not adopted at annual general meeting or adjourned annual general meeting, such unadopted financial statements along with the required documents shall be filed with the Registrar within thirty days of the date of annual general meeting and the Registrar shall take them in his records as provisional till the financial statements are filed with him after their adoption in the adjourned annual general meeting for that purpose.

According to second proviso to section 137(1) of the Companies Act, 2013, financial statements adopted in the adjourned AGM shall be filed with the Registrar within thirty days of the date of such adjourned AGM with such fees or such additional fees as may be prescribed.

In the instant case, the accounts of Sun Ltd. were adopted at the adjourned AGM held on 15th October, 2018 and filing of financial statements with Registrar was done on 12th November, 2018 i.e. within 30 days of the date of adjourned AGM.

Hence, Sun Ltd. has not complied with the statutory requirement regarding filing of unadopted accounts with the Registrar, but has certainly complied with the provisions by filing of adopted accounts within the due date with the Registrar.

Q-2 The Income Tax Authorities in the current financial year 2019-20 observed, during the assessment proceedings, a need to re-open the accounts of Chetan Ltd. for the financial year 2008-09 and, therefore, filed an application before the National Company Law Tribunal (NCLT) to issue the order to Chetan Ltd. for re-opening of its accounts and recasting the financial statements for the financial year 2008-09. Examine the validity of the application filed by the Income Tax Authorities to NCLT.

[Sugg. May'19, 3 Marks]

Ans. As per section 130 of the Companies Act, 2013, a company shall not re-open its books of account and not recast its financial statements, unless an application in this regard is made by the Central Government, the Income-tax authorities, the Securities and Exchange Board, any other statutory body or authority or any person concerned and an order is made by a court of competent jurisdiction or the Tribunal to the effect 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:

However, no order shall be made in respect of re-opening of books of account relating to a period earlier than eight financial years immediately preceding the current financial year.

In the given instance, an application was filed for re-opening and re-casting of the financial statements of Chetan Ltd. for the financial year 2008-2009.

Though application filed by the Income Tax Authorities to NCLT is valid, its recommendation for reopening and recasting of financial statements for the period earlier than eight financial years immediately preceding the current financial year i.e. 2019-2020, is invalid.

Q-3 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. **[Sugg.Nov'18,3 Marks]**

Ans. Filing of financial statements in XBRL Mode

As per Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015, the following class of companies shall file their financial statements and other documents under section 137 of the Act with the Registrar in e-form AOC-4 XBRL as per Annexure-I of this Rule:-

- (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 were hitherto covered under the Companies (Filing of documents and Forms in Extensible Business Reporting Language) Rules, 2011.

Provided that the companies in Banking, Insurance, Power Sector and Non-Banking Financial companies are exempted from XBRL filing.

Hence, A housing Finance Ltd. being a housing finance company is exempted from filing its financial statement in XBRL mode under Rule 3 of the Companies (Filing of Documents and forms in Extensible Business Reporting Language) Rules, 2015.

Q-4 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? **[Sugg.Nov'18,4 Marks]**

Ans. 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 for 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.

Q-5 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 Section 92 of the Companies Act, 2013. Discuss whether the contention of directors is correct. **[Sugg.Nov'18,3 Marks]**

Ans. As per the provisions of Section 92(4) 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 or where no annual general meeting is held in any year, 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 may be prescribed within the time as specified, under section 403.

In the given question, even in the case of not holding of Annual General Meeting, the company 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.

Q-6 Rera Ltd., a company incorporated under the Companies Act, 2013 having turnover of ₹ 100 crore, net profit ₹ 3 crore, accumulated loss of ₹ 50 crore and securities premium ₹ 300 crore as per the audited accounts of the company for the Financial Year 2016-17.

The CFO of the company informed the directors of the company that the Corporate Social Responsibility (CSR) committee is required to be constituted as per the Companies Act, 2013. The directors seek your advice as a professional regarding the criteria required to constitute CSR committee and whether it is applicable to Rera Ltd. or not. **[Sugg.May'18,6 Marks]**

Ans. Corporate Social Responsibility Committee: According to Section 135 of the Companies Act, 2013 read with the Companies (Corporate Social Responsibility) Rules, 2014, every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013, having its branch office or project office in India, having -

- (1) net worth of rupees 500 crore or more, or
- (2) turnover of rupees 1000 crore or more or
- (3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

In the present case,

- turnover of Rera Ltd. is ₹ 100 crore,
- net profit of ₹ 3 crore and
- net worth of ₹ 253 crore (Net profit + securities premium - accumulated loss = 3 + 300 - 50 = 253 crore).

Hence, RERA Ltd. is not fulfilling any criteria prescribed for constitution of CSR committee. So, it is not obligatory for Rera Ltd. to constitute CSR Committee.

[Note 1: - It can also be presumed that net profit of the current year has already been considered while calculating accumulated losses.]

[Note 2: Since paid-up share capital value is not given in the question, it has been presumed that accumulated losses as stated in the question is given after taking into consideration the paid-up share capital, i.e. net of accumulated losses less paid-up share capital].

Q-7 State any four contents of a Directors Responsibility Statement as required under Section 134 of the Companies Act, 2013. **[Sugg. May'18, 4 Marks]**

Ans. **Contents of Directors Responsibility Statement** [Section 134(5) of the Companies Act, 2013]: The Directors' Responsibility Statement referred to in 134(3) (c) shall state that—

- (1) in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures;
- (2) the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit and loss of the company for that period;
- (3) 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;
- (4) the directors had prepared the annual accounts on a going concern basis;
- (5) 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

- (6) 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.

Q-8 Yellow limited has prepared its financial statements for the year 2018-19. Mr. Prateek, the Managing director the company is declining to sign these financial statements on the grounds that it is only the duty of the Board of the directors to sign the financial statements as approved by the Board and he is not liable to sign the same. Now, Mr. Prateek has approached you advise him regarding his responsibility for signing the financial statement.

Advise Mr. Prateek regarding his responsibility for signing the financial statements as per the provisions of the Companies Act, 2013.

Mr. Prateek has also provided to you the following more informations:

1. The Board as a policy does not authorise the chairperson of the company to sign the financial statements
2. The company has appointed Ms. Sunanina as its Company Secretary **[RTP-Nov'19]**

Ans. According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by one director, for submission to the auditor for his report thereon.

As per the facts of the question, the Board has not authorised the chairperson of the company to sign the financial statements. Hence, the financial statement shall be signed by two directors out of which one shall be managing director [i.e. Mr. Prateek].

Q-9 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 the company was in accordance with the provisions of the Companies Act, 2013? **[RTP-May'2020]**

Ans. According to section 134(1) of the Companies Act, 2013, the financial statement, including consolidated financial statement, if any, shall be approved by the Board of Directors before they are signed on behalf of the Board by the chairperson of the company where he is authorised by the Board or by two directors out of which one shall be managing director, if any, and the Chief Executive Officer, the Chief Financial Officer and the company secretary of the company, wherever they are appointed, or in the case of One Person Company, only by 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.

Q-10 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 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]**

Ans. In terms of Section 135(5) of the Companies Act, 2013, the Board of every company to which section 135 is applicable, shall ensure that the company spends, in every Financial year at least 2 per cent of average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR policy. There is no provision for carry forward of excess expenditure to the next year(s). The words used in the section are 'at least'. Therefore, any expenditure over 2% would be considered as voluntary higher spending. Hence, such excess expense will not be counted in subsequent financial years as a part of CSR expenditure.

Q-11 The directors of Element Ltd. want to voluntarily 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]**

Ans.(1) Preparation of revised financial statement or revised report on the approval of Tribunal: If it appears to the directors of a company that—

- (a) the financial statement of the company; or
- (b) the 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 in such form and manner as may be prescribed and a copy of the order passed by the Tribunal shall be filed with the Registrar:

Tribunal to serve the notice: Provided that the Tribunal shall give notice to the Central Government and the Income tax authorities and shall take into consideration the representations, if any, made by that Government or the authorities before passing any order under this section:

Number of times of revision and recast: Provided further that such revised financial statement or report shall not be prepared or filed more than once in a financial year:

Reason for revision to be disclosed: Provided also that 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.

- (2) **Limits of revisions:** Where copies of the previous financial statement or report have been sent out to members or delivered to the Registrar or laid before the company in general meeting, the revisions must be confined to—
- 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
 - the making of any necessary consequential alternation.
- (3) **Framing of rules by the Central Government in relation to revised financial statement or director's report:** 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—
- 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;
 - make provisions with respect to the functions of the company's auditor in relation to the revised financial statement or report;
 - require the directors to take such steps as may be prescribed.

Q-12 Tirupati Limited, a listed company has made the following profits, the profits reflect eligible profits under the relevant section of the Companies Act, 2013.

Financial year	Amount (` In crores)
2012-13	20
2013-14	40
2014-15	30
2015-16	70
2016-17	50

- Calculate the amount that the company has to spend towards CSR for the financial year 2017-18.
- State the composition of the CSR committee unlisted company and a private company.

[RTP-Nov-18]

Ans. 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.

As per the given facts, following are the answers in the given situations-

- (i) **Amount that Company has to spend towards CSR:** According to section 135 of the Companies Act, 2013, the Board of every company shall ensure that the company spends, in every financial year, at least two per cent of the average net profits of the company made during the three immediately preceding financial years, in pursuance of its CSR Policy.

Accordingly, net profits of Tirupati Ltd. for three immediately preceding financial years is 150 crores (30+70+50) and 2% of the average net profits of the company made during these three immediately preceding financial years will constitute 1 crore, can be spent towards CSR in financial year 2017-2018.

- (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.
- an unlisted public company or a private company covered under section 135(1) 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;

Q-13 Ravi Limited maintained its books of accounts under Single Entry System of Accounting. Is it permitted under the provisions of the Companies Act, 2013? **[Sugg.-Nov'19,2 Marks]**

Ans. 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.

Q-14 State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company. **[Sugg.-Nov'19,2 Marks]**

Ans. Persons responsible to maintain books

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
- (d) *State the person responsible for complying with the provisions regarding maintenance of Books of Accounts of a Company.*

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

Q-15 Whether a Company can keep books of Accounts in electronic mode accessible only outside India. **[Sugg.-Nov'19,2 Marks]**

Ans. 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,

- (a) 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.
- (b) 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.
- (c) 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.

Q-16 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-March'19,6 Marks]**

Ans. 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.

Accordingly, a director Mr. Bheem, who is a shareholder 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.

Q-17 State the provisions of the Companies Act, 2013 regarding the persons responsible to maintain books of accounts of a company. **[MTP-April'18,4 Marks]**

Ans. 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:

- (i) Managing Director,
- (ii) Whole-Time Director, in charge of finance
- (iii) Chief Financial Officer
- (iv) Any other person of a company charged by the Board with duty of complying with provisions of section 128.

Q-18 The directors of Ninja Ltd. having a paid-up capital of Rs. 1500 crores have approached you to state them the provisions of the Companies Act, 2013 and rules thereunder, regarding which companies are required to constitute CSR Committee? Also, state the composition of CSR Committee.

[MTP-March'18,6 Marks]

Ans. Which Company is required to constitute CSR committee:

Every company including its holding or subsidiary, and a foreign company defined under section 2(42) of the Companies Act, 2013 having its branch office or project office in India, having

- (1) net worth* of rupees 500 crore or more, or
- (2) turnover of rupees 1000 crore or more or
- (3) a net profit of rupees 5 crore or more

during any financial year shall constitute a Corporate Social Responsibility Committee of the Board.

However, the net worth, turnover or net profit of a foreign company shall be computed in accordance with balance sheet and profit and loss account of such company as prepared in accordance with the provisions of section 381(1)(a) and section 198 of the Act.

*"Net worth" [Section 2(57)] means the aggregate value of the paid-up share capital and all reserves created out of the profits and securities premium account, after deducting the aggregate value of the accumulated losses, deferred expenditure and miscellaneous expenditure not written off, as per the audited balance sheet, but does not include reserves created out of revaluation of assets, write-back of depreciation and amalgamation.

Composition of CSR Committee:

- (a) The CSR Committee shall be consisting of three or more directors, out of which at least one director shall be an independent director.
- (b) An unlisted public company or a private company which is not required to appoint an independent director shall have its CSR Committee without such director.
- (c) A private company having only two directors on its Board shall constitute its CSR Committee with two such directors.
- (d) With respect to a foreign company covered as above, the CSR Committee shall comprise of at least two persons of which one person shall be as specified under section 380(1)(d) of the Act and another person shall be nominated by the foreign company.
- (e) The Board's report under sub-section (3) of section 134 shall disclose the composition of the CSR Committee

Q-19 The Companies Act, 2013 has prescribed an additional duty on the Board of Directors to include in the Board's Report a 'Directors' Responsibility Statement'. Explain briefly the details to be furnished in the said statement. **[MTP-Aug'18,6 Marks]**

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

Further section 134(5) states that the Directors Responsibility Statement 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 or 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) that the directors had prepared the annual accounts on a going concern basis; and
- (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; 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.

MULTIPLE CHOICE QUESTIONS

1. Mr. M one of the director of Neha Pvt. Limited was of the opinion that no Corporate Social Responsibility Committee of Board was required to be formed for financial year 2019-20 but Mr. N other director was of opinion that it was required to be formed.

According to your understanding which one of the two director is right and why:

- (a) Mr. M because net profit of Neha Pvt. Limited for financial year 2018-19 was less than ₹ 5 crore.
- (b) Mr. N because turnover of Neha Pvt. Limited for financial year 2018-19 was more than ₹ 1,000 crore.**
- (c) Mr. N because net profit of Neha Pvt. Limited for financial year 2018-19 was more than ₹ 2 crore.
- (d) Mr. M because turnover of Neha Pvt. Limited for financial year 2019-19 was less than ₹ 1,500 crore. **[RTP-May'2020]**

2. The company Neha Pvt. Limited must give preference to spend the amount of contribution towards Corporate Social Responsibility in area of:

- (a) City O of State Y
- (b) City A of State Z
- (c) City G of State Z
- (d) City K of State Y** **[RTP-May'2020]**

3. According to law Corporate Social Responsibility Committee shall consist of three or more directors, so for company Neha Pvt. Limited the Corporate Social Responsibility Committee will:

- (a) Not be formed as it has only two directors namely Mr. M and Mr. N
- (b) Be formed only after appointing one more director apart from Mr. M and Mr. N
- (c) Be formed with two directors only namely Mr. M and Mr. N**
- (d) Be formed only after appointing two more directors apart from Mr. M and Mr. N **[RTP-May'2020]**

4. The company Neha Pvt. Limited shall spend during financial year 2018-19 on Corporate Social Responsibility an amount of atleast:
- (a) ₹ 0.04 crore (b) ₹ 0.12 crore (c) ₹ 0.18 crore (d) ₹ 0.06 crore
[RTP-May'2020]
5. G Ltd. (a company having CSR Committee as per the provision of Section 13 of the Companies Act, 2013) decides to spend and utilize half of the amount of Corporate Social Responsibility on the activities for the benefit of all the employees of G Limited and the remaining half of the amount of Corporate Social Responsibility on the activities for the benefit of family members of employees of G Limited As per the provision of Companies Act, 2013 this would mean that:-
- (a) Total Amount spent on Corporate Social Responsibility Activities by G Limited for that financial year
(b) No amount spent on Corporate Social Responsibility Activities by G Limited for that financial year
(c) Half amount spent on Corporate Social Responsibility Activities by G Limited for that financial year
(d) Half amount spent on Corporate Social Responsibility Activities and remaining half amount spent on Other Activities by G Limited for that financial year **[RTP-May'2020]**
6. A company can re- open / recast its book of accounts on an application to Tribunal made by:
- (a) Registrar (b) Member
(c) Board of Directors **(d) Income –tax authorities** **[MTP-April'19]**
7. ABC Ltd., a pharmaceutical company was having its manufacturing plant in Solan, Himachal Pradesh. The address of its registered office as informed to the Registrar of Companies was of one of its Director's office, situated at Mumbai, Maharashtra. To comply with the provisions of the Companies Act, 2013 it was keeping all its books of accounts, other relevant papers and financial statements at its registered office. After sometime Directors of the company found it difficult to maintain such books etc. at the registered office, so in a duly convened meeting of the Board of the Directors, it was decided that the books of accounts and other relevant papers be kept at the office situated in Solan. Within which time period the Registrar must be given notice about such decision of the board –
- (a) Within 30 days from the date of taking such decision by the board.
(b) Within 15 days from the date it starts maintaining its books of accounts at the office situated at Solan.
(c) Within 30 days from the date it starts maintaining its books of accounts at the office situated at Solan.
(d) Within 7 days from the date of taking such decision by the board. **[MTP-April'19]**
8. ABC Infrastructures Limited is a listed company quoted at National Stock Exchange. The company closed its Register of Members in June and August, 2017 for 12 and 21 days respectively. The CFO of company has informed the company secretary to consider closing of register in December for another 15 days for some strategic reasons. Referring to the provisions of Companies Act, 2013, examine the validity of above action of the company.
- (a) Valid, as the closure of register of members by company each time is not exceeding 30 days.
(b) Invalid, as company cannot go for closure of Register of members more than twice in a year.
(c) Invalid, as the period of closing register of members exceeding 30 days in a year.
(d) Invalid, as the period of closing the Register of members by the company is exceeding 45 days in a year. **[MTP-April'19]**

9. Feel Rich Co. Ltd. Having its registered office at New Delhi, is a subsidiary of a German company named Richman Company limited. The financial year of the parent/holding company ends on 31st December every year. The subsidiary company intends to follow a different financial year for consolidation of its accounts with its parent company, situated outside India. For doing so it is required to take prior permission of the competent authority. For the purpose from the following who will be this competent authority—

- (a) Registrar of Companies at New Delhi **(b) Tribunal**
(c) Ministry of Corporate Affairs (d) SEBI

[MTP-April'19]



CHAPTER-10

AUDIT & AUDITORS

Q-1 The Board of Directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the Company. How will you approach to this proposal, as an Statutory Auditor of A Ltd., taking into account the consequences, if any, of accepting this proposal? **[Sugg.May'19,3 Marks]**

Ans. According to section 144 of the Companies Act, 2013, an auditor appointed under this Act shall provide to the company only such other services as are approved by the Board of Directors or the audit committee, as the case may be. But such services shall not include designing and implementation of any financial information system.

In the said instance, the Board of directors of A Ltd. requested its Statutory Auditor to accept the assignment of designing and implementation of suitable financial information system to strengthen the internal control mechanism of the company. As per the above provision said service is strictly prohibited.

In case the Statutory Auditor accepts the assignment, he will attract the penal provisions as specified in Section 147 of the Companies Act, 2013.

In the light of the above provisions, we shall advise the Statutory Auditor not to take up the above stated assignment.

Q-2 CA. M is a partner in SM & Company (Chartered Accountants) and ML & Company (Chartered Accountants). SM & Company are statutory auditors of M/s. Global Ltd. (listed) for past seven years as on 1-04-2018. Advice under relevant provisions of the Companies Act, 2013:

(1) For how many more years SM & Company can continue as statutory auditors of M/s. Global Ltd. (listed)?

(2) Can ML & Company be appointed as statutory auditor of M/s. Global Ltd. during cooling off period for SM & Company? **[Sugg.Nov'18,4 Marks]**

Ans. (1) As per section 139 read with relevant Rule 6 of the Companies (Audit & Auditors) Rules, 2014, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of five consecutive years (individual) or ten consecutive years (audit firm), as the case may be.

As per the stated facts, SM & Co. are statutory auditors of M/s. Global Ltd. for past seven years as on 1.04.2018. Accordingly, SM & Co. can continue as statutory auditors of M/s. Global Ltd. for 3 more years i.e., till 31.03.2021.

(2) Section 139(2) states that as on the date of appointment no audit firm having a common partner or partners of the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as auditor of the same company for a period of five years.

Hence, as per the above provision, ML & Co. cannot be appointed as statutory auditor of M/s. Global Ltd. during cooling period because CA. M was the common partner in both the Audit firms. This prohibition is only for 5 years i.e. upto year 2026. After 5 years, M/s. Global Ltd. is free to appoint ML & Co. as its statutory auditors.

Q-3 Mr. Ram brother of CA. Shyam, a practicing chartered accountant, acquired securities of M/s. Cool Ltd. having market value of ₹ 1,20,000 (face value ₹ 95,000). State whether CA. Shyam is qualified to be appointed as a statutory auditor of M/s. Cool Ltd. **[Sugg.Nov'18,2 Marks]**

Ans. As per the provisions of Section 141(3)(d) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company shall not be appointed as an auditor of the Company.

However, the proviso to the said section states that the above restriction will not apply where such relative holds security or interest in any of the above companies of face value not exceeding ₹ 1,00,000 (as prescribed under the Company (Audit and Auditors) Rules, 2014).

In the given instance, CA. Shyam is not disqualified to be appointed as a statutory auditor in M/s Cool Ltd. due to the fact that the value of securities held by his brother (relative) is of face value of ₹ 95,000 in the said company, which is within the prescribed limit.

Q-4 Rupa Limited, a listed company appointed M/s. VG & ASSOCIATES an audit firm as Company's auditor in the Annual General Meeting held on 30-09-2017. Explain the provisions of the Companies Act, 2013 relating to the appointment or reappointment of an auditor in relation to the tenure of an auditor.

[Sugg.May'18,3 Marks]

Ans. **Tenure of Auditor:** Section 139(2) of the Companies Act, 2013, provides that listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint-

- (1) an individual as auditor for more than one term of five consecutive years; and
- (2) an audit firm as auditor for more than two terms of five consecutive years.

Cooling off Period:

- (1) An individual auditor who has completed his term (i.e. one term of five consecutive years) shall not be eligible for re-appointment as auditor in the same company for five years from the completion of his term;
- (2) An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.

In terms of the above provisions, Rupa Limited, which is a listed company, can appoint M/S VG & ASSOCIATES an audit firm, for a term of 5 years, i.e. from the conclusion of the AGM held on 30.09.2017 to the conclusion of the AGM to be held in the year 2022. Now, in terms of Section 139(2), since M/S VG & ASSOCIATES is an audit firm, it can be re-appointed as auditor for one more term of five years, i.e., upto the conclusion of the AGM to be held in 2027.

Q-5 PKC Ltd., wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked the proposed auditor to give a certificate in this regard. What are the contents of the certificate to be issued in accordance with the Companies (Audit & Auditors Rules, 2014)? **[Sugg.May'18,3 Marks]**

Ans. As per proviso to section 139(1) of the Companies Act, 2013, before the appointment is made, a written consent of the auditor to such appointment, and a certificate from him or it that the appointment, if made, shall be in accordance with the conditions as may be prescribed, shall be obtained.

Certificate by Auditor: The Companies (Audit and Auditors) Rules, 2014 provides the content of the Certificate. According to this, the auditor appointed shall submit a certificate that –

- (A) the individual or the firm, as the case may be, is eligible for appointment and is not disqualified for appointment under the Act, the Chartered Accountants Act, 1949 and the rules or regulations made thereunder;
- (B) the proposed appointment is as per the term provided under the Act;
- (C) the proposed appointment is within the limits laid down by or under the authority of the Act;
- (D) the list of proceedings against the auditor or audit firm or any partner of the audit firm pending with respect to professional matters of conduct, as disclosed in the certificate, is true and correct.

The certificate shall also indicate whether the auditor satisfies the criteria provided in section 141.

Mr. Praveen Kumar, the proposed auditor has to give the above certificate to the company before accepting the appointment as the auditor of PKC Ltd.

Q-6 Examine the following situations in the light of the Companies Act, 2013

- (i) Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd.
- (ii) "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of ₹ 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?"

[RTP-May'19]

Ans.(i) Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor.

Conclusion: In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

- (ii) As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. Abhi. is holding security of ₹ 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd."

Q-7 New Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30 September 2019. Mrs. Reena, wife of Mr. Naresh, invested in the equity shares face value of ₹ 1 lakh of New Limited on 15 October 2019. But Naresh & Company continues to function as statutory auditors of the company. Advice, Naresh & Company on the continuation of such appointment, as per provisions of the Companies Act, 2013.

[RTP-May'2020]

Ans. Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company or a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies

(Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Reena, his wife held equity shares of New Limited of face value ₹ 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15 October 2019 i.e. after the investment made by his wife in the equity shares of New Limited.

Q-8 Lemon & Company, Chartered Accountants a Limited Liability Partnership firm with CA. L, CA. M and CA. N as partners, is the statutory auditor of a listed company M/s Big Limited for past 6 years as on 01.04.2014.

CA.M is also a partner in other Chartered Accountant firm Dew & Company, Chartered Accountants. Advise under the provisions of the Companies Act, 2013 :

- (1) Upto how many years can Lemon & Company continue as statutory auditors of M/s Big Limited?
- (2) What shall be the cooling-off period for Lemon & Company with respect to M/s Big Limited?
- (3) Can Dew & Company; be appointed as statutory auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited during such cooling-off period?
- (4) Can Lemon & Company be appointed as internal auditors of M/s Big Limited and it's another listed subsidiary M/s Dark Limited, during such cooling-off period? **[RTP-Nov'18]**

Ans. According to Section 139 (2) of the Companies Act, 2013,

- I. Listed companies and other prescribed class or classes of companies (except one person companies and small companies) shall not appoint or re-appoint an audit firm as auditor for more than two terms of 5 consecutive years.
- II. An audit firm which has completed its term (i.e. two terms of five consecutive years) shall not be eligible for re- appointment as auditor in the same company for five years from the completion of such term.
- III. Further, as on the date of appointment no audit firm having a common partner or partners to the other audit firm, whose tenure has expired in a company immediately preceding the financial year, shall be appointed as an auditor of the same company for a period of five years.
- IV. For the purpose of the rotation of auditors, in case of an auditor (whether an individual or audit firm), the period for which the individual or the firm has held office as auditor prior to the commencement of the Act shall be taken into account for calculating the period of 5 consecutive years or 10 consecutive years, as the case may be.

Applying the above provisions,

- (1) Lemon & Company can continue as statutory auditors of M/s Big Limited for 4 more years from 1.4.2014, i.e. they can continue in office only till 31.3.2018.
- (2) The cooling- off period shall be of 5 years.
- (3) Dew & Company cannot be appointed as a statutory auditor of M/s Big Limited during the cooling – off period of Lemon & Company, as CA. M is the common partner in both Lemon & Company and Dew & Company.

However, Dew & Company can be appointed as a statutory auditor of M/s Dark Limited (a listed subsidiary of M/s Big Limited), during the cooling – off period.

- (4) As per Section 138 (1) of the Companies Act, 2013, every listed company and other prescribed class of companies, shall be required to appoint an internal auditor, who shall either be a chartered

accountant or a cost accountant, or such other professional (which may be either an individual or a partnership firm or a body corporate) as may be decided by the Board to conduct internal audit of the functions and activities of the company.

Accordingly, M/s Lemon & Company can be appointed as an internal auditors of M/s Big Limited and in its subsidiary M/S Dark Limited (a listed company). The provision of cooling off period as given under Section 139 of the Companies Act, 2013, shall not be applicable on the Internal auditors.

Q-9 Mrs. Sita, wife of CA. 'Arjun' the statutory auditor of Stellar Builders Limited, acquired shares in the company for a face value of ₹ 75000/- on 15th March, 2018. CA. 'Arjun', issued his audit report on 25th April, 2018. Examine the validity of this transaction under the Companies Act, 2013. Would your answer be different if face value of the shares have been ₹ 150000/- (market value ₹ 95000/-)? **[RTP-Nov'18]**

Ans. As per Section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner is holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company, shall not be appointed as an auditor of the company.

However, Rule 10 of the Companies (Audit and Auditors) Rules, 2014, states that a relative of an auditor may hold securities in the company of face value not exceeding rupees one lakh.

In the given case Mrs. Sita, wife of CA. Arjun acquired shares in Stellar Builders Limited, in which he was a statutory auditor on 15th March, 2018. Since, the securities held by Mrs. Sita is within the prescribed limit of ₹ 1 lakh, such a transaction is valid.

Yes, the answer will be different in case where the face value of acquired shares is ₹ 1,50,000. Then in that case:

- (i) Corrective action to maintain the limit specified (i.e., 1 lac) shall be taken by the auditor within 60 days of such acquisition, or
- (ii) Auditor has to vacate his office.

Q-10 Explain how the auditor will be appointed in the following cases:

The Auditor of the company (other than government company) has resigned on 31st December, 2016, while the Financial year of the company ends on 31st March, 2017. **[RTP-May'18]**

Ans. The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within thirty days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within three months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Q-11 Examine whether the following persons are eligible for being appointed as auditor under the provisions of the Companies Act, 2013 :

- (i) "Mr. Prakash" is a practicing Chartered Accountant and "Mr. Aakash", who is a relative of "Mr. Prakash" is holding securities of "ABC Ltd." having face value of ₹ 70,000/- (market value ₹ 1, 10,000/-). Directors of ABC Ltd. want to appoint Mr. Prakash as an auditor of the company:
- (ii) Mr. Ramesh is a practicing Chartered Accountant indebted to MNP Ltd. for ₹ 6 lacs. Directors of MNP Ltd. want to appoint Mr. Ramesh as an auditor of the company.
- (iii) Mrs. KVJ spouse of Mr. Kumar, a Chartered Accountant, is the store keeper of PRC Ltd. Directors of PRC Ltd. want to appoint Mr. Kumar as an auditor of the company. **[Sugg.-Nov'19,6 Marks]**

Ans.(i) As per section 141 (3)(d)(i) of the Companies Act, 2013, an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary,

or of its holding or associate company or a subsidiary of such holding company.

Further as per proviso to this Section, the relative of the auditor may hold the securities or interest in the company of face value not exceeding of ' 1,00,000.

In the present case, Mr. Aakash (relative of Mr. Prakash, an auditor), is having securities of ABC Ltd. having face value of ' 70,000 (market value ' 1,10,000), which is within the limit as per requirement of under the proviso to section 141 (3)(d)(i). Therefore, Mr. Prakash will not be disqualified to be appointed as an auditor of ABC Ltd.

- (ii) As per section 141(3)(d)(ii), an auditor is disqualified to be appointed as an auditor if he or his relative or partner is indebted to the company, or its subsidiary, or its holding or associate company or a subsidiary of such holding company, in excess of ' 5 Lacs.

In the instant case, Mr. Ramesh will be disqualified to be appointed as an auditor of MNP Ltd. as he indebted to MNP Ltd. for ' 6 lacs.

- (iii) As per section 141(3)(f), an auditor is disqualified to be appointed as an auditor if a person whose relative is a director or is in the employment of the company as a director or a key managerial personnel.

In the instant case, since Mrs. KVJ Spouse of Mr. Kumar (Chartered Accountant) is the store keeper (not a director or KMP) of PRC Ltd., hence Mr. Kumar will not be disqualified to be appointed as an auditor in the said company.

Q-12 The Auditor of the company (other than government company) has resigned on 31st December, 2018, while the Financial year of the company ends on 31st March, 2019. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case. **[MTP-Oct'19,3 Marks]**

Ans. The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

Q-13 A company includes the following shareholders also:

- (I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.
- (II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.
- (III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of Government Company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.

[MTP-Oct'19,3 Marks]

Ans. According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

Q-14 Explain how the auditor will be appointed in the following cases :

- (i) A Government Company within the meaning of section 394 of the Companies Act, 2013.
- (ii) A Public Company whose shareholders include XYZ Bank (a nationalized bank) holding 18% of the subscribed capital of the company. **[MTP-March'19,6 Marks]**

Ans. (i) The appointment and re-appointment of auditor of a Government Company or a government controlled company is governed by the provisions of section 139 of the Companies Act, 2013 which are summarized as under:

The first auditor shall be appointed by the Comptroller and Auditor General of India within 60 days from the date of incorporation and in case of failure to do so, the Board shall appoint auditor within next 30 days and on failure to do so by Board of Directors, it shall inform the members, who shall appoint the auditor within 60 days at an extraordinary general meeting (EGM), such auditor shall hold office till conclusion of first Annual General Meeting.

In case of subsequent auditor for existing government companies, the Comptroller & Auditor General of India shall appoint the auditor within a period of 180 days from the commencement of the financial year and the auditor so appointed shall hold his position till the conclusion of the Annual General Meeting.

(ii) In the given case as the total shareholding of the XYZ Bank is just 18% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

The auditor shall be appointed as follows:

- (1) The company shall, at the first annual general meeting, appoint an individual or a firm as an auditor who shall hold office from the conclusion of that meeting till the conclusion of its sixth annual general meeting and thereafter till the conclusion of every sixth meeting.
- (2) Before such appointment of auditor is made, the written consent of the auditor to such appointment, and a certificate from him or firm of auditors that the appointment, if made, shall be obtained from the auditor:

Further, the company shall inform the auditor concerned of his or its appointment, and also file a notice of such appointment with the Registrar within 15 days of the meeting in which the auditor is appointed.

Q-15 Mr. Ayush, a Chartered accountant has been appointed as an auditor of X Ltd. in the Annual General Meeting of the company held in September, 2018, in which he accepted the assignment. Subsequently, in January, 2019 he joined B, as a partner for the consultancy firm of Mr. B. Mr. B is working also working as a Finance Executive of X Ltd. **[MTP-March'19,3 Marks]**

Ans. Provisions and Explanation: Section 141(3) (c) of the Companies Act, 2013 prescribes that any person who is a partner or in employment of an officer or employee of the company will be disqualified to act as an auditor of a company. Sub-section (4) of Section 141 provides that an auditor who becomes subject, after his appointment, to any of the disqualifications specified in sub-sections (3) of Section 141, he shall be deemed to have vacated his office as an auditor. **Conclusion:** In the present case, Ayush, an auditor of X Ltd., joined as partner with B, who is Finance executive of X Ltd., has attracted clause (3) (c) of Section 141 and, therefore, he shall be deemed to have vacated office of the auditor of X Limited.

Q-16 "Mr. Abhi", a practicing Chartered Accountant, is holding securities of "Abhiman Ltd." having face value of Rs. 1000/-. Whether Mr. Abhi is qualified for appointment as an Auditor of Abhiman Ltd.?"

[MTP-March'19,2 Marks]

Ans. As per section 141 (3)(d) (i) an auditor is disqualified to be appointed as an auditor if he, or his relative or partner holding any security of or interest in the company or its subsidiary, or of its holding or associate company or a subsidiary of such holding company:

In the present case, Mr. Abhi. is holding security of ` 1000 in the Abhiman Ltd, therefore he is not eligible for appointment as an Auditor of "Abhiman Ltd."

Q-17 EF Limited appointed an individual firm, Naresh & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2018. Mrs. Kamala, wife of Mr. Naresh, invested in the equity shares face value of Rs. 1 lakh of EF Limited on 15th October, 2018. But Naresh & Company continues to function as statutory auditors of the company. Advice as per the provisions of the Companies Act, 2013.

[MTP-April'19,5 Marks]

Ans. Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Naresh, Chartered Accountants, did not hold any such security. But Mrs. Kamala, his wife held equity shares of EF Limited of face value Rs. 1 lakh, which is within the specified limit.

Further Section 141(4) provides that if an auditor becomes subject, after his appointment, to any of the disqualifications specified in sub-section 3 of section 141, he shall be deemed to have vacated his office of auditor. Hence, Naresh & Company can continue to function as auditors of the Company even after 15th October 2018 i.e. after the investment made by his wife in the equity shares of EF Limited.

Q-18 (i) The Auditor of the company (other than government company) has resigned on 31st December, 2017, while the Financial year of the company ends on 31st March, 2018. Discuss as per the provisions of the Companies Act, 2013, how the auditor will be appointed in this case.

(ii) A company includes the following shareholders also:

(I) Bank of Baroda (A Nationalized Bank) holding 12% of the subscribed capital in the company.

(II) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company.

(III) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company.

Advise the company, whether the provisions related to 'appointment of auditor in case of government company' are applicable to it. Discuss in the light of the provisions of the Companies Act, 2013.

[MTP-April'18,6 Marks]

Ans. (i) The situation as stated in the question relates to the creation of a casual vacancy in the office of an auditor due to resignation of the auditor before the AGM in case of a company other government company. Under section 139 (8)(i) any casual vacancy in the office of an auditor arising as a result of his resignation, such vacancy can be filled by the Board of Directors within 30 days thereof and in addition the appointment of the new auditor shall also be approved by the company at a general meeting convened within 3 months of the recommendation of the Board and he shall hold the office till the conclusion of the next annual general meeting.

- (ii) According to section 139(5) of the Companies Act, 2013, in the case of a Government company or any other company owned or controlled, directly or indirectly, by the Central Government, or by any State Government or Governments, or partly by the Central Government and partly by one or more State Governments, the Comptroller and Auditor-General of India shall, in respect of a financial year, appoint an auditor duly qualified to be appointed as an auditor of companies under this Act, within a period of one hundred and eighty days from the commencement of the financial year, who shall hold office till the conclusion of the annual general meeting.

In the given case as the total shareholding of the three institutions adds up to 30% of the subscribed capital of the company it is not a government company. Hence, the provisions applicable to non-government companies in relation to the appointment of auditors shall apply.

Q-19 State the provisions of the Companies Act, 2013 regarding the signing of the Audit report by the Auditors of the company. **[MTP-March'18,4 Marks]**

Ans. Section 145 of the Companies Act, 2013 provides for auditors to sign audit reports, etc. According to this section:

- (i) The person appointed as an auditor of the company shall sign the auditor's report or sign or certify any other document of the company in accordance with the provisions of sub-section (2) of section 141 (i.e. in case of firm including LLP, only Chartered Accountants are authorised to act and sign).
- (ii) The qualifications, observations or comments on financial transactions or matters, which have any adverse effect on the functioning of the company mentioned in the auditor's report shall be read before the company in general meeting and shall be open to inspection by any member of the company.

Q-20 Examine the validity of the following with reference to the provisions of the Companies Act, 2013:-

- (i) DON Limited appointed an individual firm, Nat & Company, Chartered Accountants, as Auditors of the company at the Annual General Meeting held on 30th September, 2017. Mrs. Kat, wife of Mr. Nat, invested in the equity shares face value of ₹ 1 lakh of DON Limited on 15th October, 2017. But Nat & Company continues to function as statutory auditors of the company.
- (ii) Mr. Suresh, a Chartered Accountant, was appointed by the Board of Directors of AB Limited as the First Auditor. The company in General Meeting removed Mr. Suresh without seeking the approval of the Central Government and appointed Mr. Gupta as Auditor in his place?

[MTP-Aug'18,6 Marks]

Ans.(i) Disqualification of auditor: According to section 141(3)(d)(i) of the Companies Act, 2013, a person who, or his relative or partner holds any security of the company or its subsidiary or of its holding or associate company a subsidiary of such holding company, which carries voting rights, such person cannot be appointed as auditor of the company. Provided that the relative of such person may hold security or interest in the company of face value not exceeding 1 lakh rupees as prescribed under the Companies (Audit and Auditors) Rules, 2014.

In the case Mr. Nat, Chartered Accountants, did not hold any such security. But Mrs. Kat, his wife held equity shares of DON Limited of face value Rs. 1 lakh, which is within the specified limit.

Hence, Nat & Company can continue to function as auditors of the Company even after 15th October 2017 i.e. after the investment made by his wife in the equity shares of DON Limited.

- (ii) **Removal of first auditor:** Section 140(1) stipulates that any auditor appointed under section 139 may be removed from office before the expiry of his term by passing special resolution in general meeting, after obtaining the previous approval of the Central Government in that behalf.

Provided that before taking any action under subsection (1) of Section 140, the auditor concerned shall be given a reasonable opportunity of being heard.

The first auditors appointed by Board of Directors can be removed in accordance with the provision of Section 140(1) of the Companies Act, 2013. Hence, the removal of the first auditor appointed by the Board without seeking approval of the Central Government is invalid. The company contravened the provision of the Act.

Q-21 Mr. Honest, an auditor of MM company Ltd. has colluded with the company for a fraud. The Central Government has applied to Tribunal about the said fraud by Mr. Honest. State the provisions of the Companies Act, 2013 regarding the steps that can be taken by Tribunal when it finds that the auditor of a company has acted in a fraudulent manner. **[MTP-AUG'18,4 Marks]**

Ans. Auditor acts in a fraudulent manner or abetted or colluded in any fraud [Section 140(5) of the Companies Act, 2013]

- (i) **On satisfaction of Tribunal that the auditor of a company has acted in a fraudulent manner etc.:** Without prejudice to any action under the provisions of this Act or any other law for the time being in force, the Tribunal either suo moto or on an application made to it by the Central Government or by any person concerned, if it is satisfied that the auditor of a company has, whether directly or indirectly, acted in a fraudulent manner or abetted or colluded in any fraud by, or in relation to, the company or its directors or officers, it may, by order, direct the company to change its auditors.
- (ii) **Requirement for change of auditor:** If the application is made by the Central Government and the Tribunal is satisfied that any change of the auditor is required, it shall within fifteen days of receipt of such application, make an order that he shall not function as an auditor and the Central Government may appoint another auditor in his place.

MULTIPLE CHOICE QUESTIONS

1. BSP Ltd appointed XPP & Co LLP as their statutory auditors for the year ended 31 March 2018 on 18 June 2018, as per Section 139(8) of the Companies Act 2013, to fill the casual vacancy caused by resignation of previous statutory auditors to hold office till the conclusion of next Annual General Meeting (AGM) of BSP Ltd. BSP Ltd is listed with Bombay Stock Exchange and National Stock Exchange. BSP Ltd is covered under auditors rotation requirements and wants to re-appoint XPP & Co LLP at their next AGM. Please advise. **[MTP-Oct'19]**
- (a) **XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.**
- (b) XPP & Co LLP can be re-appointed for a term of four consecutive years at the AGM and after that can be considered for re-appointment for another five consecutive years.
- (c) XPP & Co LLP can be re-appointed for a term of five consecutive years at the AGM.
- (d) XPP & Co LLP cannot be re-appointed at the AGM.
2. NTW Ltd is listed on National Stock Exchange and has a turnover of INR 4500 crores. NTW Ltd has 12 subsidiaries, 3 associate companies and 5 joint venture companies (collectively referred to as NTW Group). AKW & Co LLP is the statutory auditor of NTW Ltd. NTW Ltd wants to appoint AKW as the statutory auditors for entire NTW Group. In respect of this, please advise the management of NTW Group. **[MTP-Oct'19]**
- (a) AKW & Co LLP can be appointed as statutory auditors for only 10 companies of NTW Group.
- (b) AKW & Co LLP can be appointed as statutory auditors for only 20 companies of NTW Group.

- (c) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group.
- (d) AKW & Co LLP can be appointed as statutory auditors for all the companies of NTW Group provided they meet the limits requirements as per the Companies Act 2013.**
3. Advise whether the auditor appointed by a private limited company with paid up capital of Rs.30.00 Crore, in the following cases are valid for the financial year 2017-18:-
- (a) Amanpreet (an Individual auditor) who has been the auditor since the Financial Year 2011-12
- (b) Firm MGA & associates, was appointed as auditor in the Financial Year 2011-12.**
- (c) Firm MGA & associates, who completed 10 years continuously as auditor in company. Now company wants to appoint VGA & associates wherein Mr. V is a partner who is also partner in MGA & Associates.
- (d) The provisions of rotation of auditor are not applicable on private companies **[MTP-March'19]**
4. Which of the following is a prohibited services to be rendered by the auditor of the Company
- (a) design and implementation of any financial information system**
- (b) making report to the members of the company on the accounts examined by him
- (c) compliance with the auditing standards
- (d) Reporting of fraud against the company by officers or employees to the Central Government **[MTP-April'19]**
5. For appointing an auditor other than the retiring auditor,
- (a) Special notice is required.** (b) Ordinary notice is required.
- (c) Neither ordinary nor special notice is required
- (d) Approval of Central Government is required. **[MTP-April'19]**



CHAPTER-1

THE INDIAN CONTRACT ACT, 1872

- Q-1** Manoj guarantees for Ranjan, a retail textile merchant, for an amount of ₹ 1,00,000, for which Sharma, the supplier may from time to time supply goods on credit basis to Ranjan during the next 3 months. After 1 month, Manoj revokes the guarantee, when Sharma had supplied goods on credit for ₹ 40,000. Referring to the provisions of the Indian Contract Act, 1872, decide whether Manoj is discharged from all the liabilities to Sharma for any subsequent credit supply. What would be your answer in case Ranjan makes default in paying back Sharma for the goods already supplied on credit i.e. ₹ 40,000 ?

[Sugg.May'19,4 Marks]

- Ans.** **Discharge of Surety by Revocation:** As per section 130 of the Indian Contract Act, 1872 a specific guarantee cannot be revoked by the surety if the liability has already accrued. A continuing guarantee may, at any time, be revoked by the surety, as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into.

As per the above provisions, liability of Manoj is discharged with relation to all subsequent credit supplies made by Sharma after revocation of guarantee, because it is a case of continuing guarantee.

However, liability of Manoj for previous transactions (before revocation) i.e. for ₹ 40,000 remains. He is liable for payment of ₹ 40,000 to Sharma because the transaction was already entered into before revocation of guarantee.

- Q-2** Aarshi 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?

[Sugg.May'19,4 Marks]

- Ans.** The situation asked in the question is based on the provisions related with the modes of creation of agency relationship under the Indian Contract Act, 1872. Agency may be created by a legal presumption; in a case of cohabitation by a married woman (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.

If the wife lives apart for no fault on her part, wife has authority to pledge her husband's credit for necessaries. This legal presumption can be rebutted only in cases (iii) and (iv) above.

Applying the above conditions in the given case M/s Rainbow Silks will succeed. It can recover the said amount from Naresh if sarees purchased by Aarshi are necessaries for her.

Q-3 "An agent is neither personally liable nor can he personally enforce the contract on behalf of the principal." Comment. **[Sugg.May'19,2 Marks]**

Ans. According to section 230 of the Indian Contract Act, 1872, in the absence of any contract to that effect, an agent cannot personally enforce contracts entered into by him on behalf of his principal, nor is he personally bound by them. Thus, an agent cannot personally enforce, nor be bound by, contracts on behalf of principal.

Presumption of contract to the contrary: But, such a contract shall be presumed to exist in the following cases:

- (1) Where the contract is made by an agent for the sale or purchase of goods for a merchant resident abroad/foreign principal;
- (2) Where the agent does not disclose the name of his principal or undisclosed principal; and
- (3) Where the principal, though disclosed, cannot be sued.

Q-4 What is the liability of a bailee making unauthorized use of goods bailed? **[Sugg.May'19,4 Marks]**

Ans. Liability of bailee making unauthorised use of goods bailed: 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.

Q-5 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.

[Sugg.Nov'18,3 Marks]

Ans. 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. Pawan is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chetan during the first six months but not for misappropriations committed after the reduction in salary.

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.

Q-6 What are the rights available to the finder of lost goods under Section 168 and Section 169 of the Indian Contract Act, 1872. **[Sugg.Nov'18,3 Marks]**

Ans. As per the provisions of section 168 and 169 of the Indian Contract Act, 1872,

- (i) The finder of goods has no right to sue the owner for compensation for trouble and expense voluntarily incurred by him to preserve the goods and to find out the owner. But 'finder of lost goods' can ask for reimbursement for expenditure incurred for preserving the goods and also for searching the true owner. If the real owner refuses to pay compensation, the 'finder' cannot sue but retain the goods so found.

Further, where the real owner has announced any reward, the finder is entitled to receive the reward. The right to collect the reward is a primary and a superior right even more than the right to seek reimbursement of expenditure.

- (ii) The finder though has no right to sell the goods found in the normal course; he may sell the goods if the real owner cannot be found with reasonable efforts or if the owner refuses to pay the lawful charges subject to the following conditions:
- (a) when the article is in danger of perishing and losing the greater part of the value or
 - (b) when the lawful charges of the finder amounts to two-third or more of the value of the article found.

Q-7 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? **[Sugg.Nov'18,3 Marks]**

Ans. 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 given question, Srijith's employee mixed high quality sugar bailed by Amar and then packaged it for sale. The sugars when mixed cannot be separated. As Srijith's employee has mixed the two kinds of sugar, he (Srijith) must compensate Amar for the loss of his sugar.

Q-8 Azar consigned electronic goods for sale to Aziz. Aziz employed Rahim a reputed auctioneer to sell the goods consigned to him through auction. Aziz authorized Rahim to receive the proceeds and transfer those proceeds once in 45 days. Rahim sold goods on auction for ₹ 2,00,000 but before transferring the proceeds of the auction, became insolvent. Assess the liability of Aziz according to the provisions of the Indian Contract Act, 1872. **[Sugg.Nov'18,3 Marks]**

Ans. According to section 195 of the Contract Act, 1872, in selecting an agent (substituted) for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, while selecting a "substituted agent" the agent is bound to exercise same amount of diligence as a man of ordinary prudence and if he does so he will not be responsible for acts or negligence of the substituted agent.

Hence, if Aziz has exercised same amount of diligence as a man of ordinary prudence would, he shall not be responsible to Azar for the proceeds of the auction.

Q-9 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?

[Sugg.May'18,4 Marks]

Ans. **To conduct the business of agency according to the principal's directions** (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 present case, 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. Also, it is not the custom in ABC Ltd. to sell the products on credit.

Hence, Mr. Pintu must make good the loss to ABC Ltd.

Q-10 Give four differences between Bailment and Pledge. **[Sugg.May'18,4 Marks]**

Ans. Distinction between bailment and pledge: The following are the distinction between bailment and pledge:

- (a) **As to purpose:** Pledge is a variety of bailment. Under pledge goods are bailed as a security for a loan or a performance of a promise. In regular bailment the goods are bailed for other purpose than the two referred above. The bailee takes them for repairs, safe custody etc.
- (b) **As to right of sale:** The pledgee enjoys the right to sell only on default by the pledgor to repay the debt or perform his promise, that too only after giving due notice. In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.
- (c) **As to right of using goods:** Pledgee has no right to use goods. A bailee can, if the terms so provide, use the goods.
- (d) **Consideration:** In pledge there is always a consideration whereas in a bailment there may or may not be consideration.
- (e) **Discharge of contract:** Pledge is discharged on the payment of debt or performance of promise whereas bailment is discharged as the purpose is accomplished or after specified time.

Q-11 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? **[Sugg.May'18,4 Marks]**

Ans. Co-sureties liable to contribute equally (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and 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". Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

Q-12 Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority? **[Sugg.May'18,3 Marks]**

Ans. Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): 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.

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Q-13 '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]

Ans. **Discharge of surety by variance in terms of contract:** The problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 133. The section provides that 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.

In the given problem, 'M' and 'S' entered into arrangement by entering into a new contract without knowledge of the Surety 'A'. Since, the variance made in the contract is without the surety's consent in the existing contract, as per the provision, 'A' is not liable on his guarantee for the fruits supplied after this new arrangement. The reason for such a discharge is that the surety agreed to be liable for a contract which is no more there now and he is not liable on the altered contract because it is different from the contract made by him.

Q-14 Mr. Chintu was appointed as Site Manager of ABC Constructions Company on a two years contract at a monthly salary of ₹ 50,000. Mr. Ganesh gave a surety in respect of Mr. Chintu's conduct. After six months the company was not in position to pay ₹ 50,000 to Mr. Chintu because of financial constraints. Chintu agreed for a lower salary of ₹ 30,000 from the company. This was not communicated to Mr. Ganesh. Three months afterwards it was discovered that Chintu had been doing fraud since the time of his appointment. What is the liability of Mr. Ganesh during the whole duration of Chintu's Appointment.

[RTP-Nov'19]

Ans. 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. Ganesh is liable as a surety for the loss suffered by ABC Constructions company due to misappropriation of cash by Mr. Chintu during the first six months but not for misappropriations committed after the reduction in salary.

Hence, Mr. Ganesh, will be liable as a surety for the act of Mr. Chintu 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. Ganesh, will discharge Mr. Ganesh from all the liabilities towards the act of the Mr. Chintu after such variation.

Q-15 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'2020]

Ans. Agent's duty to disclose all material circumstances & his duty not to deal on his own **account without principal's consent.** The problem is based on Sections 215 & 216 of the Indian Contract Act, 1872. According to Section 215, 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. Hence in the first instance, though Pankaj had given his consent to Shruti permitting the latter to act on his own account in the business of agency, Pankaj may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him.

In the second instance, Pankaj had knowledge that Shruti was acting on her own account and also that the mine was in existence; hence, Pankaj cannot repudiate the transaction under section 215. Also, under Section 216, he cannot claim any benefit from Shruti as he had knowledge that Shruti was acting on her own account in the business of the agency.

Q-16 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 over due 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-Nov'18]**

Ans.(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. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

- (ii) According to Section 136 of the Indian Contract Act, 1872, 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 given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

Q-17 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]**

Ans. 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.

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.

Q-18 (a) 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?

- (b) 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]**

Ans.(a) 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. A typical case is where the 'agent' handling perishable goods like 'apples' can decide the time, date and place of sale, not necessarily as per instructions of the principal, with the intention of protecting the principal from losses. Here, the agent acts in an emergency and acts as a man of ordinary prudence. In the given case S had acted in an emergency situation and hence, R will not succeed against him.

- (b) Problem asked in the question is based on the provisions of the Indian Contract Act, 1872 as contained in Section 150. The section provides that if the goods are bailed for hire, the bailor is responsible for such damage, whether he was or was not aware of the existence of such faults in the goods bailed. Accordingly, applying the above provisions in the given case Suresh is responsible to compensate Ramesh for the injuries sustained even if he was not aware of the defect in the carriage.

Q-19 Mr. A of Delhi engaged Mr. S as 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-May'18]**

Ans. The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. A is entitled to recover ₹ 30 lakhs from Mr. S being the amount of profit earned by Mr. S out of the transaction.

Q-20 (i) 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?

- (ii) Whether a Pawnee has a right to retain the goods pledged. **[Sugg.-Nov-19,4 Marks]**

Ans. (i) **Pledge by person in possession under voidable contract** [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.

Therefore, the pledge of diamond by Srushti with Mr. VK is valid.

- (ii) **Right of retainer** [Section 173 of the Indian Contract Act, 1872]: Yes, 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.

Q-21 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. **[Sugg.-Nov-19,4 Marks]**

Ans. 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, and 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, the rule of agency coupled with interest applies and does not come to an end even on death, insanity or the insolvency of the principal.

Thus, when Bhupendra appointed Atul as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds, interest was created in favour of Atul and the said agency is not revocable. The revocation of agency by Bhupendra is not lawful.

Q-22 '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.

Ans. Surety's right to benefit of creditor's securities: 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; and, 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.

Q-23 Mr. Dhannaseth delivers a rough blue sapphire to a jeweller, to be cut and polished. The jeweller 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.

[MTP-Oct'19,4 Marks]

Ans. 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.

Thus, in accordance with the purpose of bailment if the bailee by his skill or labour improves the goods bailed, he is entitled for remuneration for such services. Towards such remuneration, the bailee can retain the goods bailed if the bailor refuses to pay the remuneration. Such a right to retain the goods bailed is the right of particular lien. He however does not have the right to sue.

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.

Hence, in the given situation the jeweller is entitled to retain the stone till he is paid for the services he has rendered.

Q-24 Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rains, Rahul was stranded for more than two days. Rahul sold the tomatoes below the market rate in the nearby market where he was stranded fearing that the tomatoes may perish. Can Aswin recover the loss from Rahul on the ground that Rahul had acted beyond his authority?

[MTP-Oct'19,4 Marks]

Ans. Agent's authority in an emergency (Section 189 of the Indian Contract Act, 1872): 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.

In the instant case, Rahul, the agent, was handling perishable goods like 'tomatoes' and can decide the time, date and place of sale, not necessarily as per instructions of the Aswin, the principal, with the intention of protecting Aswin from losses.

Here, Rahul acts in an emergency as a man of ordinary prudence, so Aswin will not succeed against him for recovering the loss.

Q-25 Define contract of indemnity and contract of guarantee and state the conditions when guarantee is considered invalid ?

[MTP-Oct'19,4 Marks]

Ans. 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.

Q-26 Explaining the provisions of the Indian Contract Act, 1872, answer the following:

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?

[MTP-March'19,4 Marks]

Ans. 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. In the given case, B does not supply the necessary material as per the agreement. Hence, C is discharged from his liability.

Q-27 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-March'19,4 Marks]

Ans. According to the provisions of Section 184 of the Indian Contract Act, 1872, as between the principal and a third person, any person, even a minor may become an agent. But no person who is not of the age of majority and of sound mind can become an agent, so as to be responsible to his principal. Thus, 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. Thus, in the given case, D gets a good title to the watch. M is not liable to A for his negligence in the performance of his duties.

Q-28 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-March'19,4 Marks]

Ans. 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) Agent should not be in a position or have any opportunity to communicate with his principal within the time available.
- (ii) There should have been actual and definite commercial necessity for the agent to act promptly.
- (iii) The agent should have acted bonafide and for the benefit of the principal.
- (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.

Q-29 Explaining the provisions of the Indian Contract Act, 1872, answer the following:

Mr. D was in urgent need of money amounting Rs. 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? **[[MTP-April'19], 4 Marks]**

Ans. **Co-sureties liable to contribute equally** (Section 146 of the Indian Contract act, 1872): Equality of burden is the basis of Co-suretyship. This is contained in section 146 which states that "when two or more persons are co-sureties for the same debt, or duty, either jointly, or severally and 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".

Accordingly, on the default of D in payment, B cannot escape from his liability. All the three sureties A, B and N are liable to pay equally, in absence of any contract between them.

Q-30 Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for Rs. 20 lakhs in the name of a nominee and then purchased it himself for Rs. 24 lakhs. He then sold the same house to Mr. Ahuja for Rs. 26 lakhs. Mr. Ahuja later comes to know the mischief of Mr. Singh and tries to recover the excess amount paid to Mr. Singh. Is he entitled to recover any amount from Mr. Singh? If so, how much? Explain. **[MTP-April'19,4 Marks]**

Ans. The problem in this case, is based on the provisions of the Indian Contract Act, 1872 as contained in Section 215 read with Section 216. The two sections provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may:

- (1) repudiate the transaction, if the case shows, either that the agent has dishonestly concealed any material fact from him, or that the dealings of the agent have been disadvantageous to him.
- (2) claim from the agent any benefit, which may have resulted to him from the transaction.

Therefore, based on the above provisions, Mr. Ahuja is entitled to recover Rs. 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.

Q-31 State the differences between a sub-agent and a substituted agent? **[MTP-April'18,5 Marks]**

Ans. Both a sub-agent and a substituted agent are appointed by the agent. But, however, the following are the points of distinction between the two.

1. A sub-agent does his work under the control of agent but a substituted agent works under the instructions of the principal.
2. The agent not only appoints a sub-agent but also delegates to him a part of his own duties. The agent does not delegate any part of his task to a substituted agent.
3. Privity of contract is established between a principal and a substituted agent. But there is no privity of contract between the principal and the sub-agent.
4. The sub-agent is responsible to the agent alone and is not generally responsible to the principal. But a substituted agent is responsible to the principal and not to the original agent who appointed him.
5. The agent is responsible to the principal for the acts of the sub-agent, but he is not liable for those of the substituted agent, provided he has taken due care in selecting him.
6. In the case of a substituted agent, the agent's duty ends once he has named him, but in the case of a sub-agent the agent remains answerable for the acts of the sub-agent as long as sub-agency continues.

Q-32 Mayank engages Babloo as a clerk to collect money for him. But Babloo fails to account for some of his receipts, and Mayank in consequence calls upon him to furnish security for his duly accounting. Amrit gives his guarantee for Babloo's duly accounting. Mayank does not acquaint Amrit with Babloo's previous conduct. Babloo afterwards makes default. Decide in the light of the provisions of the Contract Act, 1872, whether the guarantee is valid. **[MTP-April'18,3 Marks]**

Ans. According to section 143 of the Indian Contract Act, 1872, any guarantee which the creditor has obtained by means of keeping silence as to material circumstances is invalid.
In the given question, Mayank does not acquaint Amrit with Babloo's previous conduct. Thus, the guarantee is invalid.

Q-33 Rajnish gives his umbrella to Megha during rainy season to be used for two days during Examinations. Megha keeps the umbrella for a week. While going to Rajnish's house to return the umbrella, Megha accidentally slips and the umbrella is badly damaged. Discuss as per the provisions of the Contract Act, 1872, who bear the loss of the damaged umbrella and why? **[MTP-April'18,3 Marks]**

Ans. According to section 161 of the Indian Contract Act, 1872, if, by the default of the bailee, the goods are not returned, delivered or tendered at the proper time, he is responsible to the bailor for any loss, destruction or deterioration of the goods from that time.

In the given case, Megha shall have to bear the loss since he failed to return the umbrella within the stipulated time and Section 161 clearly says that where a bailee fails to return the goods within the agreed time, he shall be responsible to the bailor for any loss, destruction or deterioration of the goods from that time notwithstanding the exercise of reasonable care on his part.

Q-34 Mr. Bhalla instructs Aman, a merchant, to buy a ship for him. Aman employs a ship surveyor of good reputation to choose a ship for Mr. Bhalla. The surveyor makes the choice negligently and the ship turns out to be unseaworthy and is lost. Now, Mr. Bhalla holds Aman responsible for the same. Examine as per the provisions of the Contract Act, 1872, whether Aman is responsible to Mr. Bhalla. **[MTP-March'18,4 Marks]**

Ans. According to section 194 of the Indian Contract Act, 1872, where an agent, holding an express or implied authority to name another person to act for the principal in the business of the agency, has named another person accordingly, such person is not a sub-agent, but an agent of the principal for such part of the business of the agency as is entrusted to him.

Further, as per section 195, in selecting such agent for his principal, an agent is bound to exercise the same amount of discretion as a man of ordinary prudence would exercise in his own case; and, if he does this, he is not responsible to the principal for the acts or negligence of the agent so selected.

Thus, in the present case, Aman is not, but the surveyor is, responsible to Mr. Bhalla.

Q-35 State the rights of the indemnity-holder when sued? **[MTP-March'18,5 Marks]**

Ans. According to the Section 125 of the Indian Contract Act, 1872 the indemnity holder i.e., promisee in a contract of indemnity, acting within the scope of his authority, is entitled to recover from the promisor:

- (1) all damages which he may be compelled to pay in any suit in respect of any matter to which the promise to indemnify applies;
- (2) all costs which he may be compelled to pay in any such suit, if in bringing or defending it, he did not contravene the orders of the promisor, and acted as it would have been prudent for him to act in the absence of any contract of indemnity, or if the promisor authorised him to bring or defend the suit.
- (3) all sums which he may have paid under the terms of any compromise of any such suit, if the compromise was not contrary to the orders of the promisor, and was one which it would have been prudent for the promisee to make in the absence of any contract of indemnity, or if the

promisor authorised him to compromise the suit.

Section 125 is by no means exhaustive, which deals only with his rights in the event of his being sued. The indemnity holder has other rights besides those mentioned above. If he has incurred a liability and that liability is absolute he is entitled to call upon his indemnifier to save him from that liability and to pay it off.

Q-36 Mr. Shashank, is employed as a cashier on a monthly salary of ₹ 10,000 by XYZ bank for a period of three years. Yash gave surety for Shashank's good conduct. After nine months, the financial position of the bank deteriorates. Then Shashank agrees to accept a lower salary of ₹ 5,000/- per month from Bank. Two months later, it was found that Shashank has misappropriated cash since the time of his appointment. What is the liability of Yash? Decide your answer in reference to the provisions of the Contract Act, 1872. **[MTP-March'18,3 Marks]**

Ans. 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.

Thus, 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 Yash is liable as a surety for the loss suffered by the bank due to misappropriation of cash by Shashank during the first nine months but not for misappropriations committed after the reduction in salary.

Q-37 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'18,4 Marks]**

Ans. 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, if done with authority, would have the effect of subjecting a third person to damages, or of terminating any right or interest of a third person, cannot, by ratification, be made to have such effect. In other words, when the interest of third parties is affected, the principle of ratification does not apply. Ratification cannot relate back to the date of contract if third party has in the intervening time acquired rights.

Thus, in the instant case the notice cannot be ratified by Navin, so as to be binding on Susie.

Q-38 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 Ashley will succeed.

Ans. 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 of the same bulk, quality and value as the goods bailed.

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.

Thus, Barn is liable to compensate Ashley for his negligence to keep jewelry at his residence. Here, Ashley and Barn agreed to keep the jewelry at the Bank's safe locker and not at the latter's residence.

Q-39 Megha advances to Nisha ₹ 5,000 on the guarantee of Prem. The loan carries interest at ten percent per annum. Subsequently, Nisha becomes financially embarrassed. On Nisha's request, Megha reduces the interest to six per cent 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'18,3 Marks]**

Ans. 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.

Here, in the given situation, Megha cannot sue Prem, because a surety is discharged from liability when, without his consent, the creditor makes any change in the terms of his contract with the principal debtor, no matter whether the variation is beneficial to the surety or does not materially affect the position of the surety.

Q-40 Mr. Ram was employed as financier 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 ₹ 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 ₹ 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'18,4 Marks]**

Ans. Section 133 of the Indian Contract Act, 1872 deals with the provision related to the discharge of the surety. Provisions states that 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.

Following is the answer in the light of the above provision:

- (i) In case where, Mr. Ram has manipulated the funds of the company since the time of his appointment. In this case Mr. Janak is liable as a surety for the loss suffered by the Swaraj Company due to manipulation of the funds by Mr. Ram during the three years of his service.
- (ii) In case where, Mr. Ram has manipulated the funds of the company since from few months before when he accepted to continue the job on lower salary. In this case, variance in the terms of the contract (i.e., to work on lower salary) was made without surety's consent. For all the transactions taking place subsequent to such variance, shall discharge the surety for the loss suffered by the Swaraj company.

Q-41 Comment on the following: 'Principal is not always bound by the acts of a sub-agent'.

[MTP-Oct'18,3 Marks]

Ans. The statement is correct. Normally, a sub-agent is not appointed, since it is a delegation of power by an agent given to him by his principal. The governing principle is, a delegate cannot delegate'. (Latin version of this principle is, "delegates non potest delegare"). However, there are certain circumstances where an agent can appoint sub-agent.

In case of proper appointment of a sub-agent, by virtue of Section 192 of the Indian Contract Act, 1872 the principal is bound by and is held responsible for the acts of the sub-agent. Their relationship is treated to be as if the sub-agent is appointed by the principal himself.

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.

- (d) 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, 5 Marks]

Ans. 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. Hence, Bimal is liable to make compensation to Amit for the injury done to the horse.

MULTIPLE CHOICE QUESTIONS

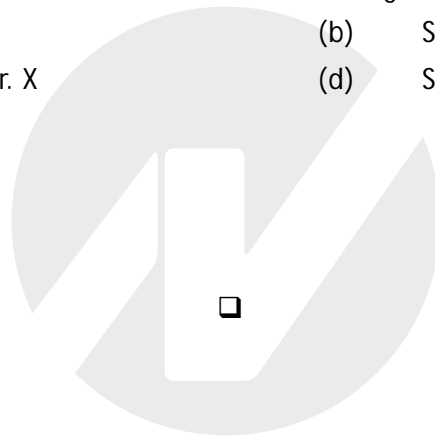
- Aman contracts to indemnify Megha against the consequences of any proceedings which Chandar may take against Megha in respect of a sum of ₹ 15000/- advanced by Chandar to Megha. Now, Megha who is called upon to pay the sum of money to Chandar but she fails to do so. Now, as per the provisions of the Indian Contract Act, 1872, advise the future course of action to be taken by Chandar.
(a) Chandar can recover the amount only from Megha
(b) Chandar can recover the full amount from Aman
(c) Chandar cannot recover the amount from Aman
(d) Chandar can recover at least 10% of the total amount from Megha [RTP-May'19]
- L made an offer to MD of a company. MD accepted the offer though he had no authority to do so. Subsequently L withdrew the offer but the company ratified the MD's acceptance. State which of the statement given hereunder is correct: [MTP-Oct'19]
(a) L was bound with the offer (b) An offer once accepted cannot be withdrawn
(c) Both option (a) & (b) is correct (d) L is not bound to an offer.
- A guarantee obtained by a creditor by keeping silence as to material circumstances is : [MTP-Oct'19]
(a) Valid (b) Voidable (c) Unenforceable **(d) Invalid**
- Aman contracts to indemnify Megha against the consequences of any proceedings which Chandar may take against Megha in respect of a sum of Rs. 15000/- advanced by Chandar to Megha. Now, Megha who is called upon to pay the sum of money to Chandar but she fails to do so. Now, as per the provisions of the Indian Contract Act, 1872, advise the future course of action to be taken by Chandar.
(a) Chandar can recover the amount only from Megha
(b) Chandar can recover the full amount from Aman
(c) Chandar cannot recover the amount from Aman
(d) Chandar can recover at least 10% of the total amount from Megha [MTP-March'19]
- Anand is a goldsmith, who makes gold jewellery as per customer's requirement. Brijesh along with his friend Ramesh, who was also a friend of Anand, approached Anand for making bangles for his wife. Anand agreed to give delivery within 7 days from the day Brijesh gives him gold for making bangles. Brijesh gave him bangles on 2nd February 2018. The bangle making charges were Rs. 5000/-, which

Brijesh agreed to pay at the time of delivery of the bangles. Anand delivered the bangles on 6th February 2018, but Brijesh said that he will pay the making charges after some time. Anand agreed to that. In spite of repeated reminders Brijesh did not pay his making charges. In this situation from the following what remedy is available to Brijesh—

- (a) He can sue Ramesh for his making charges because Anand was accompanied by him
- (b) He can sue Anand for his overdue making charges.**
- (c) He can visit Anand's place and can take away anything, which is similar in value to the bangle making charges.
- (d) He can retain the goods, as he has the right of particular lien, he however does not have the right to sue Anand or Ramesh. **[MTP-April'19]**

6. A good friend of Mr. A, Mr. D is a property dealer in Delhi and works for many renowned registered real estate developers. As Mr. D is doing very well in his work, Mr. A also wanted to work as a property dealer or property agent. Mr. X, a real estate developer of Delhi, appointed Mr. D as his agent for selling flats in his upcoming project, and asked him to name some other person to work for him, for his another project. At this time he introduced Mr. A to Mr. X, saying that he is also in the same field for last 10 years, although Mr. A did not had any experience in this field. Going by his words, Mr. X instructed to appoint Mr. A also for his other ventures. From the following, Mr. A will be treated as —

- (a) Agent of Mr. X**
- (b) Sub-agent of Mr. D
- (c) Substituted agent of Mr. X
- (d) Sub-agent of Mr. X **[MTP-April'19]**



CHAPTER-2

THE NEGOTIABLE INSTRUMENTS ACT, 1881

Q-1 Ram purchases some goods on credit from Singh, payable within 3 months. After 2 months, Ram makes out a blank cheque in favour of Singh, signs and delivers it to Singh with a request to fill up the amount due, as Ram does not know the exact amount payable by him.

Singh fills up fraudulently the amount larger than the amount payable by Ram and endorses the cheque to Chandra in full payment of Singh's own due. Ram's cheque is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of Singh and Chandra.

[Sugg.May'19,3 Marks]

Ans. According to section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the indorser with his indorsee. Other signers may by agreement stand in immediate relation with a holder.

In the given question, Singh is a party in immediate relation with the drawer (Ram) of the cheque and so he is entitled to recover only the exact amount due from Ram and not the amount entered in the cheque. However, the right of Chandra, who is a holder for value, is not adversely affected and he can claim the full amount of the cheque from Singh.

Q-2 Explain the concept of 'Noting', 'Protest' and 'Protest for better security' as per the Negotiable Instruments Act, 1881.

[Sugg.May'19,3 Marks]

Ans. 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.

Q-3 '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?

[Sugg.May'19,2 Marks]

Ans. Negotiable instrument made, etc. without consideration: A negotiable instrument—

- made, drawn, accepted, endorsed, 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 with or without endorsement to a holder for a consideration, such holder, and every subsequent holder deriving title from him, may recover the amount due on such instrument from the transferor for consideration or any prior party thereto.

In the light of the above provisions, in the given instance the bill was drawn, accepted and transferred

without consideration by 'M' to 'N', and from 'N' to 'O' respectively. Therefore, no obligation of payment is created between the parties. So 'O' has no right to action against 'M' and 'N'.

Q-4 A Bill of Exchange 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 any material alteration? Explain.

[Sugg. May '19, 2 Marks]

Ans. **Payment of instrument on which alteration is not apparent:** A bill of exchange was made without mentioning any time for payment. The holder added the words "on demand" on the face of the instrument. As per the provision of Section 89 of the Negotiable Instruments Act, 1881 this is not a material alteration since a bill of exchange where no date of payment is specified will be treated as payable on demand. Therefore, adding the words "on demand" does not alter the business effect of the instrument.

Therefore, this cannot be said to have caused material alteration to the instrument.

Q-5 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.

[Sugg. Nov '18, 4 Marks]

Ans. **Cheque payable to order** [Section 85 of the Negotiable Instruments Act, 1881]

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

As per the given facts, cheque is drawn payable to "Mr. Vyas or order". It was lost and Mr. Vyas was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Parshwanath, who encashed the cheque from the drawee bank. 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 a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature 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.

Q-6 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.

[Sugg. Nov '18, 4 Marks]

Ans. **Capacity to make, etc., promissory notes, etc.** (Section 26 of the Negotiable Instruments Act, 1881): Every person capable of contracting, according to the law to which he is subject, 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.

As per the facts given in the question, 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.

Q-7 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.

[Sugg.Nov'18,5 Marks]

Ans. 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.

Dishonour of Cheque for insufficiency, etc. of funds in the account: 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.

Q-8 Mr. V draws a cheque of ₹ 11,000 and gives to Mr. B by way of gift. State with reason whether -

(1) Mr.B is a holder in due course as per the Negotiable Instrument Act, 1881?

(2) Mr.B is entitled to receive the amount of ₹ 11,000 from the bank?

[Sugg.May'18,4 Marks]

Ans. According to section 9 of the Negotiable Instrument Act, 1881, "Holder in due course" means-

- any person
- who for consideration
- 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),
- before the amount mentioned in it became payable, and
- without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

In the instant case, Mr. V draws a cheque of ₹ 11,000 and gives to Mr. B by way of gift.

(i) Mr. B is holder but not a holder in due course since he did not get the cheque for value and consideration.

(ii) Mr. B'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.

Q-9 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? [Sugg.May'18,4 Marks]

Ans. As per the facts stated in the question, Bholenath (drawer) after having issued the cheque, informs Surender (drawee) not to present the cheque for payment and as well gave a stop payment request to the bank in respect of the cheque issued to Surender.

Section 138 of the Negotiable Instruments Act, 1881, is a penal provision in the sense that once a cheque is drawn on an account maintained by the drawer with his banker for payment of any amount of money to another person out of that account for the discharge in whole or in part of any debt or liability, is informed by the bank unpaid either because of insufficiency of funds to honour the cheques

or the amount exceeding the arrangement made with the bank, such a person shall be deemed to have committed an offence.

Once a cheque is issued by the drawer, a presumption under Section 139 of the Negotiable Instruments Act, 1881 follows and merely because the drawer issues a notice thereafter to the drawee or to the bank for stoppage of payment, it will not preclude an action under Section 138.

Also, Section 140 of the Negotiable Instruments Act, 1881, specifies absolute liability of the drawer of the cheque for commission of an offence under the section 138 of the Act. Section 140 states that it shall not be a defence in a prosecution for an offence under section 138 that the drawer had no reason to believe when he issued the cheque that the cheque may be dishonoured on presentment for the reasons stated in that section.

Accordingly, the act of Bholenath, i.e., his request of stop payment constitutes an offence under the provisions of the Negotiable Instruments Act, 1881.

Q-10 State the rules laid down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange. **[Sugg.May'18,5 Marks]**

Ans. Ascertaining the date of maturity of a Bill of Exchange: The maturity of a bill, not 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 (Section 22 of Negotiable Instruments Act, 1881). Three days are allowed as days of grace. No days of grace are allowed in the case of bill payable on demand, at sight, or presentment.

When a bill is made payable at stated number of months after date, the period stated terminates on the day of the month which corresponds with the day on which the instrument is dated. When it is made payable after a stated number of months after sight the period terminates on the day of the month which corresponds with the day on which it is presented for acceptance or sight or noted for non-acceptance or protested for non-acceptance. When it is payable a stated number of months after a certain event, the period terminates on the day of the month which corresponds with the day on which the event happens (Section 23).

When a bill is made payable a stated number of months after sight and has been accepted for honour, the period terminates with the day of the month which corresponds with the day on which it was so accepted.

If the month in which the period would terminate has no corresponding day, the period terminates on the last day of such month (Section 23).]

In calculating the date a bill made payable a certain number of days after date or after sight or after a certain event is at maturity, the day of the date, or the day of presentment for acceptance or sight or the day of protest for non-accordance, or the day on which the event happens shall be excluded (Section 24).

Three days of grace are allowed to these instruments after the day on which they are expressed to be payable (Section 22).

When the last day of grace falls on a day which is public holiday, the instrument is due and payable on the next preceding business day (Section 25).

Q-11 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-May'19]

Ans. The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to Umesh. 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. 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. He can change his mind and refuse to send the other half of the promissory note.

Q-12 Mr. Madhavan drew a cheque payable to Mr. Vikas or order. Mr. Vikas 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. Pawan as the consideration for goods bought by him from Mr. Pawan. Mr. Pawan encashed the cheque, on the very same day from the drawee bank. Mr. Vikas intimated the drawee bank about the theft of the cheque after three days. Examine the liability of the drawee bank.

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881. **[RTP-May'19]**

Ans. Cheque payable to order : According to Section 85 of the Negotiable Instruments Act, 1881.

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

As per the given facts, cheque is drawn payable to "Mr. Vikas or order". It was lost and Mr. Vikas was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Pawan, who encashed the cheque from the drawee bank. After few days, Mr. Vikas 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 a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature of Mr. Vikas is forged, the banker is protected and is discharged. The true owner, Mr. Vikas, cannot recover the money from the drawee bank in this situation.]

Q-13 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]**

Ans. **Person to be called as a holder:** 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—

- (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.

Q-14 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]**

Ans. **Protest:** 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 non-payment, 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.

Q-15 '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-May'18]

Ans. 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 and it contains the following endorsement in blank:

First endorsement, 'F'

Second endorsement, 'G'

Third endorsement, 'H'

Fourth endorsement, 'I'

'E', the holder, may intentionally strike out the endorsement by 'G' and 'H'; in that case the liability of 'G' and 'H' upon the bill will come to an end. But if the endorsements of 'G' and 'H' are struck out without the consent of 'I', 'E' will not be entitled to recover anything from 'I'. The reason being that as between 'H' and 'I', 'H' is the principal debtor and 'I' is surety. If 'H' is released by the holder under Section 39 of the Act, 'I', being surety, will be discharged. Hence, when the holder without the consent of the endorser impairs the endorser's remedy against a prior party, the endorser is discharged from liability to the holder.

Thus, if 'E' strikes out, without I's consent, the endorsements by 'G' and 'H', 'I' will also be discharged.

Q-16 '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. **[Sugg.-Nov-19,3 Marks]**

Ans. **Bill drawn in fictitious name:** The problem is based on the provision of 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 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.

Accordingly, in the instant case, B cannot avoid payment by raising the plea that the drawer, C is fictitious. The only condition is that the signature of C as drawer and as endorser must be in the same handwriting.

Therefore, in the given case, B is bound to make the payment of the bill to D.

Q-17 Mr. X is the payee of an order cheque. Mr. Y steals the cheque and forges Mr. X 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. **[Sugg.-Nov'19,3 Marks]**

Ans. Forgery confers no title and a holder acquires no title to a forged instrument. Thus, where a signature on the negotiable instrument is forged, it becomes a nullity. Therefore, cheque further endorsed to Mr. Z, is not valid.

Since a forged instrument is a nullity, therefore the property in the 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. Therefore, Mr. Z, acquires no title on the cheque.

Q-18 *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. **[Sugg.-Nov'19,4 Marks]**

Ans. 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 (a) which alters the business effect of the instrument if used for any business purpose; (b) which causes it to speak a different language in legal effect from 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.

Q-19 P draws a bill on Q for Rs. 10,000. Q accepts the bill. On maturity, the bill was dishonored by non-payment. 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-Oct-19,3 Marks]**

Ans. As per Section 44 of the Negotiable Instruments Act, 1881, when the consideration for which a person signed a promissory note, bill of exchange or cheque consisted of money, and was originally absent in

part or has subsequently failed in part, the sum which a holder standing in immediate relation with such signer is entitled to receive from him is proportionally reduced.

Explanation—The drawer of a bill of exchange stands in immediate relation with the acceptor. The maker of a promissory note, bill of exchange or cheque stands in immediate relation with the payee, and the endorser with his endorsee. Other signers may by agreement stand in immediate relation with a holder.

On the basis of above provision, P would succeed to recover Rs. 7,000 only from Q and not the whole amount of the bill because it was accepted for value as to Rs. 7,000 only and an accommodation to P for Rs. 3,000.

Q-20 What are the circumstances under which a bill of exchange can be dishonoured by non-acceptance? **[MTP-Oct'19,3 Marks]**

Ans. 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.

Q-21 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. **[MTP-Oct'19,4 Marks]**

Ans. Cheque payable to order [Section 85 of the Negotiable Instruments Act, 1881]

- (1) Where a cheque payable to order purports to be indorsed by or on behalf of the payee, the drawee is discharged by payment in due course.
- (2) Where a cheque is originally expressed to be payable to bearer, the drawee is discharged by payment in due course to the bearer thereof, notwithstanding any indorsement whether in full or in blank appearing thereon, and notwithstanding that any such indorsement purports to restrict or exclude further negotiation.

As per the given facts, cheque is drawn payable to "Mr. Vyas or order". It was lost and Mr. Vyas was not aware of the same. The person found the cheque and forged and endorsed it to Mr. Parshwanath, who encashed the cheque from the drawee bank. 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 a payment against the cheque payable to order when it is purported to be endorsed by or on behalf of the payee. Even though the signature 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.

Q-22 C, the holder of an over due 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? **[MTP-March'19,4 Marks]**

Ans. According to Section 136 of the Indian Contract Act, 1872, 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 given question the contract to give time to the principal debtor is made by the creditor with X who is a third person. X is not the principal debtor. Hence, A is not discharged.

Q-23 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.

[MTP-March'19,3 Marks]

Ans. The question arising in this problem is whether the making of promissory note is complete when one half of the note was delivered to Umesh. 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. 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. He can change his mind and refuse to send the other half of the promissory note.

Q-24 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. **[MTP-March'19,3 Marks]**

Ans. Negotiation by delivery

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.

Exception: 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 (except in the hands of a holder for value without notice of the condition) 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.

Q-25 On a Bill of Exchange for Rs. 1 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-March'19,4 Marks]**

Ans. According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration 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, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person

who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

Q-26 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.

Give your answer in reference to the Provisions of Negotiable Instruments Act, 1881.

[MTP-April',3 Marks]

Ans. **Capacity to make, etc., promissory notes, etc.** (Section 26 of the Negotiable Instruments Act, 1881): Every person capable of contracting, according to the law to which he is subject, 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.

As per the facts given in the question, 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.

Q-27 What are the circumstances under which a bill of exchange can be dishonoured by non-acceptance? Give your answer as per the provisions of the Negotiable Instruments Act, 1881. **[MTP-April'19,3 Marks]**

Ans. 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.

Q-28 (i) On a Bill of Exchange for ₹ 1 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. Discuss 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'. Give your answer as per the Negotiable Instruments Act, 1881. **[MTP-April'18,4 Marks]**

(ii) Manoj draws a cheque in favour of Meera, a minor. Meera endorses the same in favour of Sheila. The cheque is dishonoured by the bank on grounds of inadequate funds.

Discuss as per the provisions of the Negotiable Instruments Act, 1881 whether Meera is liable.

[MTP-April'18,4 Marks]

Ans.(i) According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration 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, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

- (ii) According to section 26 of the Negotiable Instruments Act, 1881, every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. Thus, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

Here in this case, Meera being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except herself. Therefore, Meera is not liable. Sheila can, thus, proceed against Manoj.

Q-29 Explain what is 'presentment for acceptance', as per the provisions of the Negotiable Instruments Act, 1881. **[MTP-April'18,5 Marks]**

Ans. According to section 61 of the Negotiable Instruments Act, 1881, a bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due-date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured. When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Q-30 (i) On a Bill of Exchange for ₹ 1 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. Discuss 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'. Give your answer as per the Negotiable Instruments Act, 1881. **[MTP-March'18,4 Marks]**

- (ii) Manoj draws a cheque in favour of Meera, a minor. Meera endorses the same in favour of Sheila. The cheque is dishonoured by the bank on grounds of inadequate funds.

Discuss as per the provisions of the Negotiable Instruments Act, 1881 whether Meera is liable.

[MTP-March'18,4 Marks]

Ans. (i) According to section 9 of the Negotiable Instruments Act, 1881 'holder in due course' means any person who for consideration 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, before the amount in it became payable and without having sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.

As 'A' in this case *prima facie* became a possessor of the bill for value and in good faith before the bill became payable, he can be considered as a holder in due course.

But where a signature on the negotiable instrument is forged, it becomes a nullity. The holder of a forged instrument cannot enforce payment thereon. In the event of the holder being able to obtain payment in spite of forgery, he cannot retain the money. The true owner may sue on tort the person who had received. This principle is universal in character, by reason where of even a holder in due course is not exempt from it. A holder in due course is protected when there is defect in the title. But he derives no title when there is entire absence of title as in the case of forgery. Hence 'A' cannot receive the amount on the bill.

- (ii) According to section 26 of the Negotiable Instruments Act, 1881, every person capable of contracting, according to the law to which he is subject, may bind himself and be bound by the making, drawing, acceptance, endorsement, delivery and negotiation of a promissory note, bill of exchange or cheque. Thus, a minor may draw, endorse, deliver and negotiate such instruments so as to bind all parties except himself.

Here in this case, Meera being a minor may draw, endorse, deliver and negotiate the instrument so as to bind all parties except herself. Therefore, Meera is not liable. Sheila can, thus, proceed against Manoj.

Q-31 Explain what is 'presentment for acceptance', as per the provisions of the Negotiable Instruments Act, 1881. **[MTP-March'18, 5 Marks]**

Ans. According to section 61 of the Negotiable Instruments Act, 1881, a bill of exchange payable after sight must, if no time or place is specified therein for presentment, be presented to the drawee thereof for acceptance, if he can, after reasonable search, be found, by a person entitled to demand acceptance, within a reasonable time after it is drawn, and in business hours on a business day. In default of such presentment, no party thereto is liable thereon to the person making such default. If the drawee cannot, after reasonable search, be found, the bill is dishonoured.

If the bill is directed to drawee at a particular place, it must be presented at that place, and if at the due-date for presentment he cannot, after reasonable search, be found thereon, the bill is dishonoured. When authorized by agreement or usage, a presentment through the post office by means of a registered letter is sufficient.

Q-32 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?
- (iii) A draws a cheque for ₹ 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, 8 Marks]**

Ans. (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.

Q-33 Explain the modes of discharge from liability on instruments, as per the provisions of the Negotiable Instruments Act, 1881. **[MTP-Aug'18,5 Marks]**

Ans. According to section 82 of the Negotiable Instruments Act, 1881, the maker, acceptor or endorser respectively of a negotiable instrument is discharged from liability thereon-

- (a) **By cancellation**-to a holder thereof who cancels such acceptor's or endorser's name with intent to discharge him, and to all parties claiming under such holder,
- (b) **By release**- to a holder thereof who otherwise discharges such maker, acceptor or endorser, and to all parties deriving title under such holder after notice of such discharge;
- (c) **By payment**-to all parties thereto, if the instrument is payable to bearer, or has been endorsed in blank, and such maker, acceptor or endorser makes payment in due course of the amount due thereon.

Further, as per section 83 of the Negotiable Instruments Act, 1881, if the holder of a bill of exchange allows the drawee more than 48 hours, exclusive of public holidays, to consider whether he will accept the same, all previous parties not consenting to such allowance are thereby discharged from liability to such holder.

Q-34 Explain the power of court for trial of to cases summarily, as per the provisions of the Negotiable Instruments Act, 1881. **[MTP-Oct'18,5 Marks]**

Ans. According to section 143 of the Negotiable Instruments Act, 1881,

- (1) **Trial of Offence:** Notwithstanding anything contained in the Code of Criminal Procedure, 1973, 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:

In case of summary trial: Provided that 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:

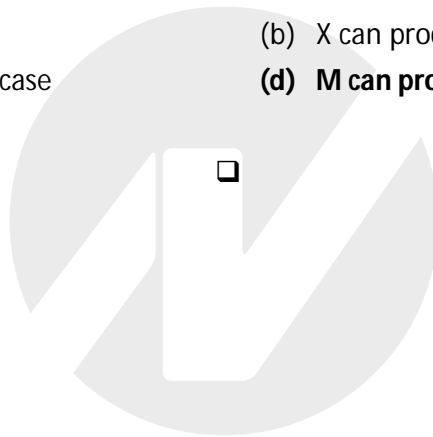
In case where no summary trial can be made: Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed 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.

MULTIPLE CHOICE QUESTIONS

1. A draws a bill on B for ₹ 500 payable to the order of A. B accepts the bill, but subsequently dishonours it by non-payment. A sues B on the bill. B proves that it was accepted for value as to ₹ 400, and as an accommodation to the plaintiff as to the residue. Thus, as per the provisions of the Negotiable Instruments Act, 1881, A can only recover the following amount:
(a) ₹ 900 (b) ₹ 500 (c) ₹ 400 (d) ₹ 100
[RTP-May'19]
2. R purchases some goods on credit from S, payable within 3 months. After 2 months, R makes out a blank cheque in favour of S, signs and delivers it to S with a request to fill up the amount due, as R does not know the exact amount payable by him. S fills up fraudulently the amount larger than the amount payable by R and endorses the cheque to C in full payment of S's own due. R's cheque is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, C:
(a) Can claim the full amount from R
(b) Can claim the full from S
(c) Cannot claim the amount either from R or S
(d) Can claim from S only the exact amount due from R
[RTP-May'20]
3. M drew a cheque amounting to Rs. 2 lakh payable to N and subsequently delivered to him. After receipt of cheque N endorsed the same to C but kept it in his safe locker. After sometime, N died, and P found the cheque in N's safe locker. State the nature of the Instrument as amounting to indorsement under the NI Act, 1881.
(a) Yes its an endorsement, as P becomes the holder of the cheque that he found in the N's safe locker.
(b) No, its not an endorsement, as P does not become the holder of the cheque
(c) Yes, its an endorsement, as P was a ultimate custodian of the cheque
(d) No, its not an endorsement, as N endorsed it to C and not to the P.
[MTP-Oct-19]
4. Offences committed under the Negotiable Instruments Act can be—
(a) Compoundable (b) Non- compoundable
(c) Non- compoundable and non-bailable (d) bailable
[MTP-Oct-19]
5. While drawing a bill of exchange, a person whose name is given in addition to the drawee who can be resorted in case of need, is called
(a) Acceptor (b) Acceptor for honour
(c) Drawee in case of need **(d) Drawer**
[MTP-March'19]
6. Days of grace provided to the Instruments at maturity is (as per the provisions of the Negotiable Instruments Act, 1881)—
(a) 1 day (b) 2 days **(c) 3 days** (d) 5 days
[MTP-March'19]
7. The date of maturity of a bill payable hundred days after sight and which is presented for sight on 4th May, 2017, is (as per the provisions of the Negotiable Instruments Act, 1881):
(a) 13 August, 2017 **(b) 14 August, 2017**
(c) 15 August, 2017 (d) 16 August, 2017
[MTP-March'19]

8. 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 as per the provisions of the Negotiable Instruments Act, 1881-
- (a) D can sue only A (b) D can sue A or B only
(c) **D can sue any of the parties A, B or C** (d) D cannot sue any of the parties A, B or C
[MTP-March'19]
9. As per the Negotiable Instruments Act, 1881, when the day on which a promissory note or bill of exchange is at maturity is a public holiday, the instrument shall be deemed to be due on the..... .
- (a) said public holiday (b) 5 days succeeding public holiday
(c) **next succeeding business day** (d) next preceding business day [MTP-April'19]
10. Validity period for the presentment of cheque in bank is—
- (a) **3 months** (b) 6 months (c) 1 year (d) 2 years
[MTP-April'19]
11. 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. As per the provisions of Negotiable Instruments Act, 1881:
- (a) M is liable to X (b) X can proceed against A
(c) No one is liable in this case (d) **M can proceed against A** [MTP-April'19]



CHAPTER-3

THE GENERAL CLAUSES ACT, 1897

Q-1 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? **[Sugg.May'19,2 Marks]**

Ans. Section 9 of the General Clauses Act, 1897 provides that, for computation of time, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

As per the facts of the question the company shall transfer the unpaid/unclaimed dividend to unpaid dividend account within the period of 7 days. 30th October 2018 will be excluded and 6th November 2018 shall be included, i.e. 31st October, 2018 to 6th November, 2018 (both days inclusive).

Q-2 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. **[Sugg.May'19,2 Marks]**

Ans. 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.

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.

Q-3 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? **[Sugg.Nov'18,4 Marks]**

Ans. As per section 9 of the General Clauses Act, 1897, for computation of time, the section states that in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series

of days or any other period of time, to use the word "to".

- (i) **Payment of dividend:** In the given instance, Komal Ltd. declares dividend for its shareholder in its Annual General Meeting held on 27/09/2018. 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 30th 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) **Transfer of unpaid or unclaimed dividend:** 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, to any shareholder entitled to the payment of the dividend, the company shall, within 7 days from the date of expiry of the said period of 30 days, transfer the total amount of dividend which remains unpaid or unclaimed to a special account to be opened by the company in that behalf in any scheduled bank to be called the "Unpaid Dividend Account" (UDA). Therefore, Komal Ltd. shall transfer the unpaid/unclaimed dividend to UDA within the period of 28th October, 2018 to 3rd November, 2018 (both days inclusive).

Q-4 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. **[Sugg.Nov'18,4 Marks]**

Ans. **Provisions applicable to making of rules or bye-laws after previous publications** [Section 23 of the General Clauses Act, 1897]:

Where, by any Central Act or Regulation, a power to make rules or bye-laws is expressed to be given subject to the condition of the rules or bye-laws being made after previous publication, then the following provisions shall apply, namely:-

- (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, if the condition with respect to previous publication so requires, in such manner as the Government concerned prescribes;
- (3) **Notice annexed with the published draft:** There shall be published with the draft a notice specifying a date on or after which the draft will be taken into consideration;
- (4) **Consideration on suggestions/objections received from other authorities:** The authority having power to make the rules or bye-laws, and, where the rules or bye-laws are to be made with the sanction, approval or concurrence of another authority, that authority also shall consider any objection or suggestion which may be received by the authority having power to make the rules or bye-laws from any person with respect to the draft before the date so specified;
- (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 bye-laws after previous publication shall be conclusive proof that the rule or bye-laws have been duly made.

Q-5 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 tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". **[Sugg.May'18,4 Marks]**

Ans. **"Immovable Property" [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. It 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 instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q-6 Explain briefly any four effects by repeal of an existing Act by central legislation enumerated in Section-6 of The General Clauses Act, 1897. **[Sugg.May'18,4 Marks]**

Ans. 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.

Q-7 What is a Document as per the Indian Evidence Act, 1872? **[Sugg.May'18,2 Marks]**

Ans. **As per Indian the Evidence Act, 1872:** 'Document': Generally understood, a document is a paper or other material thing giving information, proof or evidence of anything. The Law defines 'document' in a more technical form. As per Section 3 of the Indian Evidence Act, 1872, 'document' means any matter expressed or described upon any substance by means of letters, figures or marks or by more than one of those means, intended to be used, or which may be used, for the purpose of recording that matter. For Example: A writing is a document, any words printed, photographed are documents.

Q-8 What is the meaning of service by post as per provisions of The General Clauses Act, 1897?

[Sugg.May'18,2 Marks]

Ans. **"Meaning of Service by post"** [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.

Q-9 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'19]**

Ans. 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.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of In *United Commercial Bank v. Bhim Sain Makhija*, AIR 1994 Del 181: 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 neither tenable not based upon sound exposition of law.

Q-10 Vyas owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Yash. Vyas wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". **[RTP-Nov-19]**

Ans. "Immovable Property" [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. It 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 instant case, Vyas sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q-11 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'2020]

Ans. 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.

The facts of the question are similar to a decided case law, wherein 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. Thus, in the given question it can be deemed that the notice was rightfully served on Mr. Vyas.

Q-12 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]**

Ans. **"Provision as to offence punishable under two or more enactments" [Section 26]:** Where 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 or any of those enactments, but shall not be punished twice for the same offence.

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.

Q-13 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]**

Ans. 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:

1. properly addressing,
2. pre-paying, and
3. 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.

Therefore, in view of the above provision, since, the statutory rules itself provides about the service of notice that a notice when required under said statutory rules to be sent by 'registered post acknowledgement due', then, if notice was sent by 'registered post' only it will not be the compliance of said rules. However, if such provision was not provided by such statutory rules, then service of notice if by registered post only shall be deemed to be effected.

Furthermore, in similar case of *In United Commercial Bank v. Bhim Sain Makhija, AIR 1994 Del 181*: 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 neither tenable not based upon sound exposition of law.

Q-14 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 said to be made in good faith. **[Sugg.-Nov'19,4 Marks]**

Ans. 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.

Q-15 Define the term "Affidavit" under the General Clauses Act, 1897. **[Sugg.-Nov-19,3 Marks]**

Ans. "Affidavit" [Section 3(3) of the General Clauses Act, 1897]: 'Affidavit' 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.

Q-16 X owned a land with fifty tamarind trees. He sold his land to (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". **[MTP-Oct'19,4 Marks]**

Ans. "Immovable Property" [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. It 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 instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q-17 'Repeal' of provision is different from 'deletion' of provision. Explain as per the General Clauses Act, 1897. **[MTP-Oct'19,3 Marks]**

Ans. In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided 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.

Q-18 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. **[MTP-March'19, 4 Marks]**

Ans. 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.

Hence, where the where the notice could not be served on account of the fact that the house of Mr P was found locked, it will be deemed that the notice was properly served as per the provisions of Section 27 of the General Clauses Act, and it would be for Mr. P to prove that it was not really served and that he was not responsible for such non- service.

Q-19 What do you understand by the term 'Good Faith'. Explain as per the provisions of the General Clauses Act, 1897. **[MTP-March'19, 4 Marks]**

Ans. **"Good Faith" [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 "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. This definition may be applied only if there is nothing repugnant in subject or context, and if that is so, the definition is not applicable.

Q-20 X owned a land with fifty tamarind trees. He sold his land and the timber (obtained after cutting the fifty trees) to Y. X wants to know whether the sale of timber tantamounts to sale of immovable property. Advise him with reference to provisions of "General Clauses Act, 1897". **[MTP-April'19,4 Marks]**

Ans. **"Immovable Property" [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. It 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 instant case, X sold Land along with timber (obtained after cutting trees) of fifty tamarind trees of his land. According to the above definition, Land is immovable property; however, timber cannot be immovable property since the same are not attached to the earth.

Q-21 What is the meaning of service by post as per provisions of The General Clauses Act, 1897?

[MTP-April'19,4 Marks]

Ans. **“Meaning of Service by post”** [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.

Q-22 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 Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies?

[MTP-April'18,4 Marks]

Ans. Section 203(3) of the Companies Act, 2013 provides that 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.

It can be noted that Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Q-23 Financial Year and Calendar Year are same. Discuss as per the provisions of the General Clauses Act, 1897.

[MTP-April'18,2 Marks]

Ans. According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Thus, we can see Financial year starts from first day of April but Calendar Year starts from first day of January.

Hence, Financial year and Calendar year are not same.

Q-24 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 Section 13 of the General Clauses Act, 1897, examine whether a whole time KMP can be appointed in more than one subsidiary companies?

[MTP-April'18,4 Marks]

Ans. Section 203(3) of the Companies Act, 2013 provides that 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.

It can be noted that Section 13 of General Clauses Act, 1897 provides that the word 'singular' shall include the 'plural', unless there is anything repugnant to the subject or the context. Thus, a whole time key managerial personnel may hold office in more than one subsidiary company as per the present law.

Q-25 Excel Ltd. declared dividend for its shareholder in its Annual General Meeting held on 30/09/2017. 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-March'18,4 Marks]

Ans. As per the provisions of Section 9 of the General Clauses Act, 1897, in any legislation or regulation, it shall be sufficient, for the purpose of excluding the first in a series of days or any other period of time to use the word "from" and for the purpose of including the last in a series of days or any other period of time, to use the word "to".

Section 127 of the Companies Act, 2013 uses the words, 'thirty days from'. Thus, in the given situation Excel Ltd. is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2016 to 30/10/2016. In this series of 30 days, 30/09/2016 will be excluded and last 30th day i.e. 30/10/2016 will be included.

Q-26 When does an enactment is said to have come into operation if the Act has not specified any particular date of its enforcement. Explain with the help of an example as per the provisions of the General Clauses Act, 1897.

[MTP-March'18,4 Marks]

Ans. According to section 3(21) of the General Clauses Act, 1897, financial year shall mean the year commencing on the first day of April.

The term Year has been defined under Section 3(66) as a year reckoned according to the British calendar. Thus as per General Clauses Act, Year means calendar year which starts from January to December.

Thus, we can see Financial year starts from first day of April but Calendar Year starts from first day of January.

Hence, Financial year and Calendar year are not same.

Q-27 State what do you understand by the term 'Document' as per the General Clauses Act, 1897? Discuss which of the following will be treated as document?

- (i) Power-of-attorney.
- (ii) Cheque

[MTP-March'18,2 Marks]

Ans. According to section 3(18) of the General Clauses Act, 1897, 'Document' shall include any matter written, expressed or described upon any substance by means of letters, figures or marks or by more than one of those means which is intended to be used or which may be used, for the purpose or recording that matter.

Thus,

- (i) Yes, power-of-attorney is a document.
- (ii) Yes, cheque upon a banker is a document.

Q-28 Mr. Mike has lent his house property to Mr. Wise at a monthly rent of ₹ 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 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'18,4 Marks]**

Ans. 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.

Thus, where a notice is sent by 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.

Hence, in the given situation, a notice was rightfully served to Mr. Wise.

Q-29 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.

[MTP-Oct'18,4 Marks]

Ans. "Making of rules or bye-laws and issuing of orders between passing and commencement of enactment" [Section 22]: Where, by any Central Act or Regulation which is not to come into force immediately, on the passing thereof, 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.

Q-30 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'18,2 Marks]**

Ans. 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. Hence, in the given question, 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.

MULTIPLE CHOICE QUESTIONS

1. As per a Rule of an Educational Institution, every student may come on weekends for extra classes but every student shall appear on a weekly test conducted in the institute, which can be analysed in terms of General Clause Act, as: **[MTP-Oct'19]**
- (a) **Attending weekend classes is optional but appearing in weekly test is compulsory**
(b) Attending weekend classes is compulsory but appearing in weekly test is optional
(c) Attending weekend classes and appearing in weekly test, both are compulsory for students
(d) Attending weekend classes and appearing in weekly test both are optional for students.
2. The act by which the operation of a previous Act comes to an end, is called as _____ **[MTP-Oct'19]**
- (a) **The Repealing Act** (b) The Consolidating Act
(c) The Amending Act (d) Analogous Act
3. Which of the following is not an Immovable Property (as per the provisions of the General Clauses Act, 1897):
- (a) Land (b) Building
(c) **Timber** (d) Machinery permanently attached to the land **[MTP-March'19]**
4. Mr. A died at the age of 72 leaving behind some movable and immovable properties to be distributed between his two sons C & D, as per his registered will. His Will clearly mentioned that all the immovable property should go to C and all the movable property should go to D. Both the brothers divided the property as per will except below mentioned properties, because they could not establish which property should go to whom. Kindly help them by ticking the property/ies which should go to D (as per the provisions of the general Clause Act, 1897):
- (a) Standing crop in the fields (b) **Cut crop, ready to sell**
(c) Tube well in the agriculture land (d) Sandal wood tree **[MTP-April'19]**



CHAPTER-4

INTERPRETATION OF STATUTES

Q-1 'Preamble does not over-ride the plain provision of the Act.' Comment. Also give suitable example. **[Sugg.May'19,3 Marks]**

Ans. **Preamble:** The Preamble expresses the scope, object and purpose of the Act more comprehensively. The Preamble of a Statute is a part of the enactment and can legitimately be used as an internal aid for construing it. However, the Preamble does not over-ride the plain provision of the Act. But if the wording of the statute gives rise to doubts as to its proper construction, **for example**, where the words or phrase has more than one meaning and a doubt arises as to which of the two meanings is intended in the Act, the Preamble can and ought to be referred to in order to arrive at the proper construction. In short, the Preamble to an Act discloses the primary intention of the legislature but can only be brought in as an aid to construction if the language of the statute is not clear. However, it cannot override the provisions of the enactment.

Example: Use of the word 'may' in section 5 of the Hindu Marriage Act, 1955 provides that "a marriage may be solemnized between two Hindus....." has been construed to be mandatory in the sense that both parties to the marriage must be Hindus as defined in section 2 of the Act. It was held that a marriage between a Christian male and a Hindu female solemnized under the Hindu Marriage Act was void. This result was reached also having regard to the preamble of the Act which reads: 'An Act to amend and codify the law relating to marriage among Hindus' [GullipoliSowria Raj V. BandaruPavani, (2009)1 SCC714].

Q-2 How will you understand whether a provision in a statute is 'mandatory' or 'directory'? **[Sugg.May'19,3 Marks]**

Ans. Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look into the substance and not merely the form; an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory; whether it is or is not so would depend on such consideration as:

- (i) the nature of the thing empowered to be done,
- (ii) the object for which it is done, and
- (iii) the person for whose benefit the power is to be exercised.

Q-3 "Person" includes, _____ under the Consumer Protection Act,1986.
How would you interpret/construct the nature and scope of the above definitions?

[Sugg.May'19,2 Marks]

Ans. The definition is inclusive in nature, thereby the meaning assigned to the respective word (here 'person') is extensive. It has a wider scope to include other terms into the ambit of the definition having regard to the object of the definition.

Q-4 Write short note on:

- (i) Provision (ii) Explanation,

with reference to interpretation of Statutes, Deeds and Documents.

[Sugg.Nov'18,4 Marks]

Ans. (i) Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision.

(ii) Explanation: An Explanation is at times appended to a section to explain the meaning of the text of the section. An Explanation may be added to include something within the section or to exclude something from it. An Explanation should normally be so read as to harmonise with and clear up any ambiguity in the main section. It should not be so construed as to widen the ambit of the section.

The meaning to be given to an explanation will really depend upon its terms and not on any theory of its purpose.

Q-5 Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act.

[Sugg.Nov'18,4 Marks]

Ans. Mischieve Rule: Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.

It enables consideration of four matters in construing an Act:

- (1) what was the law before the making of the Act;
- (2) what was the mischief or defect for which the law did not provide;
- (3) what is the remedy that the Act has provided; and
- (4) what is the reason for the remedy.

Q-6 Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous.

[Sugg.Nov'18,2 Marks]

Ans. Dictionary Definitions: First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in "pari materia" will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

Q-7 'Repeal' of provision is different from 'deletion' of provision. Explain.

[Sugg.Nov'18,2 Marks]

Ans. In Navrangpura Gam Dharmada Milkat Trust Vs. Rmtuji Ramaji, AIR 1994 Guj 75 case, it was decided 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.

Q-8 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.

[Sugg.Nov'18,6 Marks]

Ans. Doctrine of Indoor Management

According to this doctrine, 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.

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.

The doctrine of indoor management is opposite to the doctrine of constructive notice. Whereas the doctrine of constructive notice protects a company against outsiders, the doctrine of indoor management protects outsiders against the actions of a company. This doctrine also is a safeguard against the possibility of abusing the doctrine of constructive notice.

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 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.

Q-9 Differentiate Mandatory Provision from a Directory Provision. What factors decide whether a provision is directory or mandatory? [Sugg.May'18,4 Marks]

Ans. Practically speaking, the distinction between a provision which is 'mandatory' and one which is 'directory' is that when it is mandatory, it must be strictly observed; when it is 'directory' it would be sufficient that it is substantially complied with. However, we have to look to the substance and not merely the form, an enactment in mandatory form might substantially be directory and, conversely, a statute in directory form may in substance be mandatory. Hence, it is the substance that counts and must take precedence over mere form. If a provision gives a power coupled with a duty, it is mandatory: whether it is or is not so would depend on such consideration as:

- the nature of the thing empowered to be done,
- the object for which it is done, and
- the person for whose benefit the power is to be exercised.

Q-10 Define Grammatical Interpretation. What are the exceptions to grammatical interpretation?

[Sugg.May'18,4 Marks]

Ans. Grammatical Interpretation and its exceptions: 'Grammatical interpretation' concerns itself exclusively with the verbal expression of the law, it does not go beyond the letter of the law. In all ordinary cases, 'grammatical interpretation' is the sole form allowable. The Court cannot take from or add to modify the letter of the law.

This rule, however, is subject to some exceptions:

- (1) Where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness. As regard the defect to ambiguity, the Court is under a duty to travel beyond the letter of the law so as to determine from the other sources the true intention of the legislature. In the case of the statutory expression being defective on account of inconsistency, the court must ascertain the spirit of the law.
- (2) If the text leads to a result which is so unreasonable that it is self-evident that the legislature could not mean what it says, the court may resolve such impasse by inferring logically the intention of the legislature.

Q-11 Many a time a proviso is added to a Section of the enactment. Explain the function of such a proviso in the interpretation of the section/ provision. **[RTP-May'19]**

Ans. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (*Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax. A.I.R, 1995 SC 765*)

Q-12 Explain whether Foreign Decisions be used for construing Indian Acts. **[RTP-Nov'19]**

Ans. The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment ordinarily a proviso is not interpreted as it stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the provision to which it has been enacted as a proviso and not to the other. (*Ram Narain Sons Ltd. Vs. Assistant Commissioner of Sales Tax. A.I.R, 1995 SC 765*)

Q-13 Explain the function of 'proviso' as an internal aid to construction. **[RTP-May'2020]**

Ans. Proviso: The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

Q-14 The 'Statute should be read as a Whole'. Explain the statement. **[RTP-Nov-18]**

Ans. **'Read the Statute as a Whole':** It is the elementary principle that construction of a statute is to be made of all its parts taken together and not of one part only. The deed/ statute must be read as a whole in order to ascertain the true meaning of its several clauses, and the words of each clause should be so interpreted as to bring them into harmony with other provisions – if that interpretation does no violence to the meaning of which they are naturally susceptible. And the same approach would apply with equal force with regard to Acts and Rules passed by the legislature.

One of the safest guides to the construction of sweeping general words is to examine other words of like import in the same enactment or instrument to see what limitations must be imposed on them. If we find that a number of such expressions have to be subjected to limitations and qualifications and that such limitations and qualifications are of the same nature, that circumstance forms a strong argument for subjecting the expression in dispute to a similar limitation and qualification.

Q-15 Explain the meaning of term 'Proviso'. Give the distinction between proviso, exception and Saving Clause. **[RTP-May'18]**

Ans. **Proviso:** The normal function of a proviso is to except something out of the enactment or to qualify something stated in the enactment which would be within its purview if the proviso were not there. The effect of the proviso is to qualify the preceding enactment which is expressed in terms which are too general. As a general rule, a proviso is added to an enactment to qualify or create an exception to what is in the enactment. Ordinarily a proviso is not interpreted as stating a general rule.

It is a cardinal rule of interpretation that a proviso to a particular provision of a statute only embraces the field which is covered by the main provision. It carves out an exception to the main provision to which it has been enacted as a proviso and to no other. (*Ram Narain Sons Ltd. vs. Assistant Commissioner of Sales Tax, AIR 1955 SC 765*).

Distinction between Proviso, exception and saving Clause

There is said to exist difference between provisions worded as 'Proviso', 'Exception', or 'Saving Clause'.

Proviso	Exception	Saving Clause
Exception' is intended to restrain the enacting clause to particular cases	'Proviso' is used to remove special cases from general enactment and provide for them specially	'Saving clause' is used to preserve from destruction certain rights, remedies or privileges already existing

Q-16 How will you interpret the term "Instrument" used in a statutes? **[Sugg.-Nov'19,3 Marks]**

Ans. **'Instrument':** In common parlance, 'instrument' means a formal legal document which creates or confirms a right or records a fact. It is a formal writing of any kind, such as an agreement, deed, charter or record, drawn up and executed in a technical form. It also means a formal legal document having legal effect, either as creating liability or as affording evidence of it. Section 2(14) of the Indian Stamp Act, 1899 states that 'instrument' includes every document by which any right or liability is or purports to be created, transferred, extended, extinguished or recorded.

Q-17 At the time of interpreting a statutes what will be the effect of 'Usage' or 'Practice'?

[sugg.-Nov'19,3 Marks]

Ans. **Effect of usage:** Usage or practice developed under the statute is indicative of the meaning recognized to its words by contemporary opinion. A uniform notorious practice continued under an old statute and inaction of the Legislature to amend the same are important factors to show that the practice so followed was based on correct understanding of the law. When the usage or practice receives judicial or legislative approval it gains additional weight.

In this connection, we have to bear in mind two Latin maxims:

- (i) '*Optima Legum interpres est consuetude*' (the custom is the best interpreter of the law); and
- (ii) '*Contemporanea exposito est optima et fortissinia in lege*' (the best way to interpret a document is to read it as it would have been read when made).

Therefore, the best interpretation/construction of a statute or any other document is that which has been made by the contemporary authority. Simply stated, old statutes and documents should be interpreted as they would have been at the time when they were enacted/written.

Contemporary official statements throwing light on the construction of a statute and statutory instruments made under it have been used as *contemporanea exposition* to interpret not only ancient but even recent statutes in India.

Q-18 Explain how 'Dictionary Definitions' can be of great help in interpreting / constructing an Act when the statute is ambiguous. **[MTP-Oct'19, 3 Marks]**

Ans. Dictionary Definitions: First we refer the Act in question to find out if any particular word or expression is defined in it. Where we find that a word is not defined in the Act itself, we may refer to dictionaries to find out the general sense in which that word is commonly understood. However, in selecting one out of the several meanings of a word, we must always take into consideration the context in which it is used in the Act. It is the fundamental rule that the meanings of words and expressions used in an Act must take their colour from the context in which they appear. Further, judicial decisions laying down the meaning of words in construing statutes in 'pari materia' will have greater weight than the meaning furnished by dictionaries. However, for technical terms, reference may be made to technical dictionaries.

Q-19 Explain 'Mischieve Rule' for interpretation of statute. Also, give four matters it considers in construing an Act. **[MTP-Oct'19, 3 Marks]**

Ans. **Mischieve Rule:** Where the language used in a statute is capable of more than one interpretation, principle laid down in the Heydon's case is followed. This is known as 'purposive construction' or 'mischieve rule'. The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'.

It has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning.

It enables consideration of four matters in construing an Act:

- (1) what was the law before the making of the Act;
- (2) what was the mischief or defect for which the law did not provide;
- (3) what is the remedy that the Act has provided; and
- (4) what is the reason for the remedy.

Q-20 How far is 'preamble' in an enactment helpful in interpreting any of the parts of an enactment?

[MTP-March'19, 3 Marks]

Ans. **Preamble:** It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it.

The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot over-ride the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

Q-21 Explain the principles of “Grammatical Interpretation” and “Logical Interpretation” of a Statute.

[MTP-March'19,3 Marks]

Ans. **Principles of Grammatical Interpretation and Logical Interpretation:** In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Q-22 Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example.

[MTP-April'19,3 Marks]

Ans. Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act :

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [*CIT v. Sodra Devi (1957) 32 ITR 615 (SC)*].

Q-23 Explain the principles of “Grammatical Interpretation” and “Logical Interpretation” of a Statute. What are the duties of a court in this regard?

[MTP-April'19,6 Marks]

Ans. **Principles of Grammatical Interpretation and Logical Interpretation:** In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court- In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Q-24 Explain the rule of 'beneficial construction' while interpreting the statutes quoting an example.

[MTP-March-18,4 Marks]

Ans. Where the language used in a statute is capable of more than one interpretation, the most firmly established rule for construction is the principle laid down in the Heydon's case. This rule enables, consideration of four matters in constituting an act:

- (1) what was the law before making of the Act,
- (2) what was the mischief or defect for which the law did not provide,
- (3) what is the remedy that the Act has provided, and
- (4) what is the reason for the remedy.

The rule then directs that the courts must adopt that construction which 'shall suppress the mischief and advance the remedy'. Therefore, even in a case where the usual meaning of the language used falls short of the whole object of the legislature, a more extended meaning may be attributed to the words, provided they are fairly susceptible of it. If the object of any enactment is public safety, then its working must be interpreted widely to give effect to that object. Thus in the case of Workmen's Compensation Act, 1923 the main object being provision of compensation to workmen, it was held that the Act ought to be so construed, as far as possible, so as to give effect to its primary provisions.

However, it has been emphasized by the Supreme Court that the rule in Heydon's case is applicable only when the words used are ambiguous and are reasonably capable of more than one meaning [*CIT v. Sodra Devi (1957) 32 ITR 615 (SC)*].

Q-25 Explain the principles of "Grammatical Interpretation" and "Logical Interpretation" of a Statute. What are the duties of a court in this regard? [MTP-March-18,6 Marks]

Ans. **Principles of Grammatical Interpretation and Logical Interpretation:** In order to ascertain the meaning of any law/ statute the principles of Grammatical and Logical Interpretation is applied to conclude the real meaning of the law and the intention of the legislature behind enacting it.

Grammatical interpretation concerns itself exclusively with the verbal expression of law. It does not go beyond the letter of the law, whereas Logical interpretation on the other hand, seeks more satisfactory evidence of the true intention of the legislature.

Application of the principles in the court- In all ordinary cases, the grammatical interpretation is the sole form allowable. The court cannot delete or add to modify the letter of the law. However, where the letter of the law is logically defective on account of ambiguity, inconsistency or incompleteness, the court is under a duty to travel beyond the letter of law so as to determine the true intentions of the legislature. So that a statute is enforceable at law, however, unreasonable it may be. The duty of the court is to administer the law as it stands rather it is just or unreasonable.

However, if there are two possible constructions of a clause, the courts may prefer the logical construction which emerges from the setting in which the clause appears and the circumstances in which it came to be enacted and also the words used therein.

Q-26 How far are (i) title and (ii) preamble in an enactment helpful in interpreting any of the parts of an enactment? [MTP-Aug'18,4 Marks]

Ans.(i) Title: An enactment would have what is known as 'Short Title' and also a 'Long Title'. The short title merely identifies the enactment and is chosen merely for convenience. The 'Long title' describes the enactment and does not merely identify it.

The Long title is a part of the Act and, therefore, can be referred to for ascertaining the object and scope of the Act.

- (ii) **Preamble:** It expresses the scope and object of the Act more comprehensively than the long title. The preamble may recite the ground and the cause for making a statute and or the evil which is sought to be remedied by it.

The preamble like the Long title can legitimately be used for construing it. However, the preamble cannot over ride the provisions of the Act. Only if the wording of the Act gives rise to doubts as to its proper construction (e.g., where the words or a phrase has more than the one meaning and doubts arise as to which of the two meanings is intended in the Act) the preamble can and ought to be referred to arrive at the proper construction.

MULTIPLE CHOICE QUESTIONS

1. Which of the following given Statement/s is/are correct: [MTP-Oct'19]
- (1) In all Central Acts and Regulations, any words which denote the masculine gender shall also be taken to include females, and vice versa.
- (2) In all Central Acts and Regulations, words in the singular shall include the plural, but not vice versa.
- (a) Only statement (1) is correct (b) Only statement (2) is correct
- (c) Both the statements are correct (d) **None of the statement is correct**
2. As per _____, the best way to interpret a statute or document is to read it as it would have been read when it was enacted or made. [MTP-Oct'19]
- (a) Optima legume interpres est consuetude
- (b) Expressio unius Est Exclusio Alterius
- (c) Ut res magis valeat quam pereat
- (d) **Contemporanea Expositio Est Optima Et Fortissima in Lege**
3. If the _____ used in a statute make it clear that a _____ sense is intended, the rule of Ejusdem Generis shall not apply. [MTP-Oct'19]
- (a) Specific words, narrow (b) **Specific words, wider**
- (c) General words, narrow (d) General words, wider
4. When there is a conflict between two or more statute or two or more parts of a statute and both of them need to be honoured, then which rule of interpretation is to be applied
- (a) **Rule of Harmonious construction** (b) Rule of Literal construction
- (c) Rule of Beneficial construction (d) Rule of exceptional construction
- [MTP-March'19]
5. An aid that expresses the scope, object and purpose of the Act—
- (a) Title of the Act (b) Heading of the Chapter
- (c) Preamble (d) Definitional sections [MTP-April'19]
6. An internal aid that may be added to include something within the section or to exclude something from it, is—
- (a) Proviso (b) Explanation (c) Schedule (d) Illustrations
- [MTP-April'19]

