Corporate and Other Laws Question Bank by Nilamkumar Bhandari Sir

1: Preliminary (Definitions, Features & Types of Company)

Que. 1	State the circumstances under which a company becomes the subsidiary of another company under the provisions of the Company Law. (CA May 1995)
Ans.	■ As per section 19 of Companies Act 2013, subsidiary company cannot hold any shares into its holding company either by itself or through its nominee. ■ Holding company should not allot or transfer any of its shares to its subsidiary. If transfer is made, it is void. ■ However, subsidiary company can hold shares in holding company in following situation: ■ It can hold shares as legal representative of deceased member of holding company. ■ It can hold shares as trustee. ■ It has become shareholder before it became a subsidiary company of holding company.
Que. 2	Explain clearly the meaning of a 'private 'and 'public' company as per Companies Act, 2013. (CA November 2002)
Ans.	■ As per section 2(68) of Companies Act, 2013, 'Private company' means a company which by its Articles: ■ restricts the right to transfer its shares ■ except in case of One Person Company, limits the number of its members to two hundred ■ prohibits any invitation to the public to subscribe for any securities of the company ■ Where two or more persons hold shares in a company jointly, they shall be treated as a single member to count total number of members for private company. ■ Employee or ex-employee who are members of company are not included while counting limit of 200 members. ■ Public Company means a company which is not a private company. - Section 2(71)
Que. 3	State the conditions of restriction with which a private company is incorporated under the Companies Act, 2013. (CA November 2003) Or The Articles of Association of a Private Limited company contain provisions restricting the right to transfer shares and limiting the number of members to 200. What restrictions are generally incorporated in the Articles in restricting the right to transfer shares? (CA May 2005)
Ans.	Refer answer to question No. 2.
Que. 4	Some of the creditors of M/s Get Rich Quick Ltd. have complained that the company was formed by the promoters only to defraud the creditors and circumvent the compliance of legal provisions of the Companies Act, 2013. In this context they seek your advice as to the meaning of corporate veil and when the promoters can be made personally liable for the debts of the company. (CA November 2004)

Ans.	■ Company is separate legal entity from its shareholders and directors. ■ As a result shareholders or directors cannot be held responsible for any default or offence committed by company. This is popularly known as corporate veil. (i.e. separate legal entity principle)
	■ Disregarding separate legal entity principle is known as lifting of corporate veil. Corporate veil is lifted when directors or promoter has done something wrong in name of company. ■ On lifting of corporate veil, promoters or directors can be held personally liable. ■ It can be lifted in following situations: • Trading with enemy • Evasion of taxes • Forming of subsidiary company to act as an agent • Company form is used to defraud creditors or to avoid legal obligation ■ Accordingly, creditors of Get Rich Quick Ltd. can apply to authority for lifting of corporate veil where creditors of company are defrauded.
Que. 5	What is meant by a Guarantee Company? State the similarities and dissimilarities between a Guarantee Company and a Company having share capital. (CA November 2004)
Ans.	■ Guarantee Company is company where liability of member is limited upto amount of guarantee he has given at the time of becoming member of company. ■ Company limited by Guarantee can be further classified as under: • Company limited by Guarantee and having share capital • Company limited by Guarantee and not having share capital

Matter	Guarantee Company	Company having share capital
Share capital	It may or may not have share capital.	It must have share capital.
Liability of members	Liability of members will be limited upto amount of guarantee given by them.	Liability of member will be limited upto unpaid value of shares.
Demand of Amount	Guaranteed amount can be demanded only at the time when company goes in winding up.	Unpaid amount can be called any time.
Raising of funds	Initial amount of fund is raised from members.	Initial amount is not raised from members unless it is guarantee company having share capital.

Que. 6	ABC Pvt. Ltd., Company is a Private Company having five members only. All the members of the company were going by car to Mumbai in relation to some business. An accident took place and all of them died. Answer with reasons, under the Companies Act, 2013 whether existence of the company has also come to the end? (CA May 2008)
Ans.	■ A company being an artificial person cannot be incapacitated by illness and it does not have an allotted span of life.

	■ The death, insolvency or retirement of its members leaves the company unaffected. ■ Death of all members will not result into end of company. Company has perpetual succession. ■ Legal heirs of deceased members will be members of company. ■ Accordingly, on death of all five members of ABC Pvt. Ltd., their legal heirs will be new members and company continue to carry on business.
Que. 7	What will be the consequence in case if a private company incorporated under the provision of Companies Act, 2013 defaults in complying with conditions constitution a private company? (CA November 2008)
Ans.	■ If private company contravenes provisions of section 2(68), it shall lose all privileges and exemptions available to it under Companies Act, 2013. ■ Provisions of Companies Act are applicable to it as if it were not a private company. ■ However, private company may apply to get relief to Tribunal. ■ The Tribunal may grant relief to such private company on being satisfied that contravention was not intentional.
Que. 8	XYZ company private limited desirous of raising funds through acceptance of deposits from the public seeks your advise on the matter. You being the financial advisor of the company, advise the company whether acceptance of deposits from the public in the given case be valid under the provisions of the Companies Act, 2013. (CA June 2009)
Ans.	Private company cannot accept deposits from public. Private company can accept deposits from its members and directors subject to provisions of deposits.
Que. 9	The paid up share capital of ABC Pvt. Ltd. is ? 1 crore consisting of 8,00,000 equity shares of ? 10 each fully paid-up and 2,00,000 cumulative preference shares of ? 10 each fully paid-up. PQR Pvt. Ltd. and MNO Pvt. Ltd. are holding 3,00,000 equity shares and 1,50,000 equity shares respectively in ABC Pvt. Ltd. PQR Pvt. Ltd. and MNO Pvt. Ltd. are the subsidiaries of UMC Pvt. Ltd. Examine with reference to the provisions of the Companies Act, whether ABC Pvt. Ltd. is a subsidiary of UMC Pvt. Ltd. Will your answer different if UMC Pvt. Ltd. controls the composition of Board of Directors of ABC Pvt. Ltd.? (CA June 2009)
Ans.	■ According to section 2(87) of the Companies Act 2013, a company shall be deemed to be a subsidiary of another, in any of the following case: • The other company controls the composition of its Board of Directors • The other company holds more than half of total voting power • It is a subsidiary of a third company which itself is a subsidiary of the controlling company ■ Applying above provisions, it can be said that ABC Pvt. Ltd. is a subsidiary of UMC Pvt. Ltd. As ABC Pvt. Ltd. is having more then half of total voting power in XYZ Pvt. Ltd. ABC Pvt. Ltd. and PQR Pvt. Ltd., subsidiary companies of UMC Pvt. Ltd. together holding more than 50% share capital of ABC Pvt. Ltd. ■ Thus, indirectly UMC Pvt. Ltd. holds more than one half of share capital of ABC Pvt. Ltd. As a result ABC Pvt. Ltd. is having more than half of total voting power in XYZ Pvt. Ltd. ■ In second case, answer would remain same.
Que. 10	F, an assessee, was a wealthy man earning huge income by way of dividend and interest. He formed three Private Companies and agreed with each to hold a block of investment as an agent

	for it. The dividend and interest income received by the company was handed back to F as a pretended loan. This way F divided his income into three parts in a bid to reduce his tax liability. Decide, for what purpose three companies were established? Whether the legal personality of all the three companies may be disregarded? (CA June 2009)
Ans.	■ Where company is incorporated by person only for the purpose of evading tax, the Court has discretion to disregard the corporate entity. ■ The facts given in the question is similar to the leading case of Dinshaw Manekji. ■ In this case, an assessee was earning huge income by way of dividend and interest. He formed four private companies and transferred his investments to each of these companies in exchange of their shares. The dividend and interest income received by the company was given back to Sir Dinshaw as a pretended loan. ■ It was held that the company was formed by the assessee purely and simply a means of avoiding tax. It did no business, but was created simply as a legal entity to ostensibly receive the dividends and interest and to hand them over to the assessee as pretended lo**Ans.** ■ Based on above judgment, it may be decided that legal personality of all three companies may be disregarded.
Que. 11	In a private limited company it is discovered that there are in fact, 205 members. On an enquiry, it is ascertained that 7 of such members had been employees of the company in the recent past and that they acquired their shares while they were still employees of the company. Is it necessary to convert the company into public limited company? (CA November 2009)
Ans.	■ As per section 2(68) of Companies Act, 2013, 'Private company' means a company which by its Articles: • restricts the right to transfer its shares
	• except in case of One Person Company, limits the number of its members to two hundred • prohibits any invitation to the public to subscribe for any securities of the company ■ Where two or more persons hold shares in a company jointly, they shall be treated as a single member to count total number of members for private company. ■ Employee or ex-employee who are members of company are not included while counting limit of 200 members. ■ In the given case, 7 members of company are ex-employees and hence not counted in total maximum number of members for determining status of private company. ■ As the number is within 200 (i.e. here, 198) company is not required to be converted in to public company.
Que. 12	The XYZ Traders Association was constituted by four Joint Hindu Families consisting of 101 major and 2 minor members. The Association was carrying on the business of trading as retailers with the object for acquisition of gains. The Association was not registered as a company under the Companies Act, 2013 or any other law. State whether the XYZ Traders Association is having any legal status? Will there be any change in the status of this Association if the members of the XYZ Traders Association subsequently were reduced to 98? (CA November 2009, 2014)
Ans.	■ Association consisting more than 100 members and formed for carrying business but not registered either under Companies Act or any other Indian Laws is illegal association.

	■ Provision of illegal association is not applicable when members of HUF is carrying business. But, when two or more HUFs carry on business together, provision of illegal association is applicable. ■ Accordingly, XYZ Traders Association constituted by four HUFs is illegal association as it is not registered and consisting more than 100 members. ■ Illegal association will not be regarded as legal on reduction in number of its members.
Que. 13	The concept of legal personality of a company is absolute nature. Comment (CA May 2014)
Ans.	■ Statement is incorrect. ■ In certain cases, the separate legal entity of company is ignored, which is termed as lifting of corporate veil.
Que. 14	Anson Limited held equity shares in Booban Limited. Later on, Anson Limited became subsidiary company of Booban Limited. Decide under the Companies Act, 2013, whether it is necessary for Anson Limited to surrender the equity shares of Booban Limited? (CA November 2014) Or State, giving reason, whether the following statement is correct or incorrect: A subsidiary company cannot hold shares of its holding company. (CA May 2016)
Ans.	■ Shares were acquired by Anson Ltd. before it become subsidiary company of Booban Ltd. Therefore, it is not necessary to surrender shares. - Section 19 ■ As per section 19, subsidiary company can hold shares in holding company in following situation: • It can hold shares as legal representative of deceased member of holding company. • It can hold shares as trustee. • It has become shareholder before it became a subsidiary company of holding company.
Que. 15	The paid-up share capital of SAB Private Limited is ? 1 Crore, consisting of 8 lakhs equity shares of ? 10 each, fully paid-up and 2 lakhs cumulative preference shares of ? 10 each, fully paid-up. JVN Private Limited and SARA Private Limited are holding 3 lakhs equity shares and 50,000 equity shares respectively in SAB Private Limited and JVN Private Limited. JVN Private Limited and SARA Private Limited are the subsidiaries of PQR Private Limited. With reference to the provisions of the Companies Act, 2013 examine whether SAB Private Limited is the subsidiary of PQR Private Limited? Would your answer be different if PQR Private Limited has 8 out of 9 Directors on the Board of SAB Private Limited? (CA November 2017)
Ans.	■ According to section 2(87) of the Companies Act, 2013, a company shall be deemed to be a subsidiary of another, in any of the following case: • The other company controls the composition of its Board of Directors • The other company holds more than half of total voting power • It is a subsidiary of a third company which itself is a subsidiary of the controlling company ■ Here, total share capital includes; equity shares and convertible preference shares. ■ Applying above provisions, it can be said that SAB Pvt. Ltd. is not a subsidiary of PQR Pvt. Ltd. PQR Pvt. Ltd. through its subsidiaries companies (i.e. JVN Pvt. Ltd., and SARA Pvt. Ltd.) holding less than 50% share capital and voting right of SAB Pvt. Ltd.

	■ If PQR Pvt. Ltd. has 8 out of 9 directors on Board of SAB Pvt. Ltd., PQR Pvt. Ltd. is considered as holding company of SAB Pvt. Ltd. due to reason of its control over Board of SAB Pvt. Ltd.
Que. 16	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? (CA May 2018)
Ans.	As per Section 2(85) of Companies Act, 2013, small company means company other than public company, which has: ■ Paid up share capital not exceed than ? 50 Lacs or such higher amount as may be prescribed which shall not be more than ? 10 crore; and ■ Turnover not more than 12 Crore or such higher amount not exceeding 1100 Crore as per profit and loss account of its immediately preceding financial year (i) Accordingly, MNP Private Ltd. cannot avail status of small company as its paid up capital is less than t 50 lacs but its turnover is more than ? 2 cr. (ii) Answer will be different. If it has turnover less than ? 2 Crore it will be regarded as small company.

2: Incorporation of Company

Que. 1	The Registrar of Companies issued a Certificate of Incorporation on 8th January, 2014. However, by mistake, the certificate was dated 5th January, 2014. An allotment of shares was made on 7th January, 2014. Could the allotment be declared void on this ground that it was made before the company was incorporated? (CA May 1999)
Ans.	■ Facts in question are similar to the landmark judgment of Jubilee Cotton Mills Ltd. vs. Lewis. ■ In this case, Registrar issued the certificate of incorporation on 8th January but dated it 6th January, which has the date on which he received the documents. ■ On 6th January some shares were allotted to Lewis. ■ The question arose whether the allotment made before the certificate was actually issued was void. ■ It was held that the certificate was conclusive evidence of incorporation on 6th January and that the allotment was not void on the ground that it was made before the company was incorporated. ■ Accordingly, it can be suggested that allotment is valid. The moment company is registered and Certificate of Incorporation is granted, it becomes legal entity.
Que. 2	XYZ Co. Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and debt could not be paid by the company for the purchase of above furniture. As a result, supplier sued the promoters of the company for the recovery of money. Examine whether promoters can be held liable for payment under the following situations: i. When the company has already adopted the contract after incorporation? ii. When the company makes a fresh contract with the suppliers in terms of pre-incorporation contract? (CA November 2001, May 2013) Or K Ltd. was in the process of incorporation. Promoters of the company signed an agreement for the purchase of certain furniture for the company and payment was to be made to the suppliers of furniture by the company after incorporation. The company was incorporated and the furniture was used by it. Shortly after incorporation, the company went into liquidation and debt could not be paid by the company for the purchase of above furniture. As a result, supplier sued the promoters of the company for the recovery of money. Examine whether promoters can be held liable for payment under the following situations: i. When the company has already adopted the contract after incorporation? ii. When the company makes a fresh contract with the suppliers in terms of pre-incorporation contract? (CA May 2013)
Ans.	■ Preliminary contract means contract entered by the promoters on behalf of company before incorporation of company. ■ Following are two possible positions of pre-incorporation contract:

	• The contract is binding. It is binding, if it is adopted as per sections 15 & 19 of the Specific Relief Act, 1963; or • The contract is not binding. If the contract is not binding, promoters are personally liable for such contract. (i) A company cannot ratify pre-incorporation contract entered into by the promoters on its behalf. The promoter will be liable for it as company has not entered into fresh contract. Adoption of contract means ratify contract. (ii) If company after incorporation enters into fresh contract with same terms and conditions, liability of promoters will be over.
Que. 3	A company was incorporated on 6th October, 2003. The certificate of incorporation of the company was issued by the Registrar on 15th October, 2003. The company on 10th October, 2003 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act, 2013, whether the company can be exempted from the said contractual liability. (CA November 2003) Or Sunrise Limited submitted the documents for incorporation on 5th October, 2015. It was incorporated and certificate of incorporation of the company was issued by the Registrar on 20th October, 2015. The company on 14th October, 2015 entered into a contract which created its contractual liabilities. The company denies the said liability on the ground that company is not bound by the contract entered into prior to issuing of certificate of incorporation. Decide under the provisions of the Companies Act, 2013, whether the company can be exempted from the said contractual liability.
Ans.	■ It is pre-incorporation contract. ■ Pre-incorporation contract can be enforced against company, if same contract is warranted by terms of incorporation and adopted by company after incorporation as per section 19 of Specific Relief Act, 1963. ■ In the given case, company has neither entered into fresh contract nor adopted pre-incorporation contract pursuant to Specific Relief Act, 1963, company can be exempted from the said contractual liability.
Que. 4	Explain the provisions of the Companies Act, 2013 relating to registration of a non-profit organization as a company? What procedure is required to be adopted for the said purpose? (CA May 2004) Or Mr. V, along with six other persons desire to float a company for charitable purpose, as permissible under section 8 of the Companies Act, 2013. He seeks your advise about the procedure to be followed to give effect to the above proposal. Advise him. (CA November 2007) Or What is the law and procedure relating to registration of a non-profit organisation as a company under Company Law? (CA May 2011)
Ans.	■ Person proposed to incorporate section 8 Company shall make an application in Form INC 12.

	■ Following documents shall be attached with an application: • Memorandum of association in Form INC 13. • A declaration in Form INC 14 that draft MOA-AOA are in conformity with section 8 and rules of Companies Act, 2013. This declaration can be given by an advocate or Practising CA or CS or CWA. • An estimate about future income and expenditure and sources of its income and object of expenditure for next 3 years. • Declaration by each applicant in Form INC 15. ■ Registrar shall issue license in Form INC 16 or Form INC 17. ■ Registrar can impose conditions at the time of issue of license which is necessary.
Que. 5	What is a meaning of Certificate of Incorporation? (CA May 2006)
Ans.	■ On filing of all documents for incorporation of company, Registrar will verify it. ■ If documents are in order, Registrar will issue certificate of Incorporation. ■ Certificate of Incorporation is legal document issued on registration of company successfully. ■ It is proof that company is registered with authority.
Que. 6	Though six out of seven signatures to the Memorandum of Association of a company were forged, the company was registered and the Certificate of Incorporation issued. Can the registration of the company be challenged subsequently on the ground of forged signatures? (CA May 2007) Or A certificate of incorporation issued by the Registrar of Companies is not valid if all the signatures of the subscribers to Memorandum of Association have been forged. (CA May 2008)
Ans.	■ As per section 7(7) of Companies Act, 2013, Certificate of Incorporation is not conclusive evidence. ■ If it is found that false or incorrect particulars were submitted or material information was suppressed at the time of incorporation of company, NCLT may on application pass following order: • to direct regularisation; or • to remove name of company from register; or • to order winding up; or • pass such other order as it deems fit ■ Before passing an order, NCLT shall give opportunity of hearing to the company. ■ Applying above provision, registration of Certificate of Incorporation can be challenged subsequently on the ground of forged signatures.
Que. 7	Mr. Ram Lai and his friend desire to incorporate a public company and approach you for help. Advise. (CA May 2007)
Ans.	Mr. Ram Lai and his friend should decide name of company, its objects, capital and type of company which they would like to incorporate. Following are steps for incorporation of company: Availability of name - Step 1

	■ The promoters should ascertain from the Registrar of Companies whether the name by which the company is to be started is available or not. ■ An application for reservation of name should be made in Form INC 1 along with fee. Promoters should give three names of their choice. Alternatively, promoters may file integrated incorporation Form INC 32 (SPICe). ■ This application should be made to the Registrar of the State where the Registered Office is to be situated. ■ If name is available, Registrar issues name approval letter. It is valid for certain days within which promoters are required to prepare and file other documents. ■ Necessary care should be taken while selecting the name that it must not be undesirable or it must not be identical or too nearly resemble the name of an existing company. Application - Step 2 ■ After name approval letter, an application for incorporation of company is made in Form INC 32. ■ Memorandum and Articles of Association of the company duly stamped and signed by each subscriber to the Memorandum shall be attached with Form INC 32. ■ Two persons in case of private company and seven persons in case of public company should be flamed as promoters/subscribers. They should obtained DIN. ■ Declaration from professional is given in Form INC 8.
	■ A declaration from each of the subscribers of MOA and from person named as first directors in AOA (if any) that: • He is not convicted of any offence in connection with promotion, formation or management of company; or • He has not been found to be guilty of fraud or misfeasance or breach of duty of any company in previous five years; and • All documents filed with ROC contain information that is correct and complete and true to the best of his knowledge. ■ An affidavit from the subscriber of MOA is given in Form INC. 9. ■ Particulars of directors is filed in Form DIR 12. Certification of Incorporation - Step 3 ■ If all above documents are in order, Registrar will issue certificate of Incorporation. ■ Company is allotted Corporate Identification Number (CIN).
Que. 8	What is meant by 'Pre-incorporation Contracts? Can these contracts be enforced by the prospective company after its incorporation against the third parties with whom the promoters had entered into certain contracts? Explain. (CA November 2007)
Ans.	■ Pre-incorporation contract means contract entered by the promoters on behalf of company before incorporation of company. ■ Pre-incorporation contract entered into by promoters are binding to company and other party, if following conditions are satisfied: • The promoters entered into contract before incorporation and it was for company. • Contract is warranted by the terms of incorporation of company, (i.e. contract is within objects specified under MOA)

	• Company has accepted such contract after incorporation and communicated its acceptance to other party.
Que. 9	Before the incorporation of the company, the promoters of the company entered into an agreement with Mr. A to boy an immovable property on behalf of the company. After incorporation, the company refused to buy the said property. Advise Mr. A whether he has any remedy under the provisions of the Companies Act, 2013? (CA May 2008)
Ans.	■ It is case of pre-incorporation contract. ■ For pre-incorporation contract, company cannot sue or be sued when it comes into existence. ■ However, Mr. A has remedy available against promoter or person who has entered into pre-incorporation contract on behalf of company.
Que. 1O	The Memorandum of Association of a company was presented to the Registrar of Companies for registration and the Registrar issued the certificate of incorporation. After complying with all the legal formalities a company started a business according to the object clause, which was clearly an illegal business. The company contends that the nature of the business cannot be gone into as the certificate of incorporation is conclusive. Answer the question whether company's contention is correct or not. (CA November 2008)
Ans.	■ Registration of company and issue of certificate of incorporation do not guarantee that object clause of company is legal. ■ If object of company is found to be illegal, registration of company can be cancelled. ■ Therefore, contention of company is not tenable. ■ Nature of business can be gone into (i.e. examine) after issue of certificate of incorporation.
Que. 11	Decide, under the Companies Act, 2013 whether Mr. Prabhu can incorporate a new company using the phrase 'Electrol Trust' with the name of company. (CA May 2014)
Ans.	■ Necessary care should be taken while selecting the name that it must not be undesirable or it must not be identical or too nearly resemble the name of an existing company. ■ Yes. He can incorporate section 8 company with 'Electrol Trust' as per Electrol Trusts Scheme 2013.
Que. 12	Who shall be considered as promoter according to the definition given in the Companies Act, 2013? Explain (CA November 2014)
Ans.	■ As per section 2(69) of Companies Act, 2013, 'Promoter' means a person: • Who is named in prospectus or annual return as promoter; or • Who has control over affair of company, directly or indirectly whether shareholder, director or otherwise; or • In accordance with whose advice, directions or instructions the board is accustomed to act. ■ Persons acting in professional capacity are not regarded as promoters.

Que. 13	The promoters of your company, incorporated on 9th April 2016, had enteredinto a contract with M on 8th March, 2016 for supply of goods. After incorporation, your company does not want to proceed with the contract. As a company secretary, advise the management of your company.
Ans.	■ Pre-incorporation contract is void ab initio unless company immediately after incorporation adopts it. ■ Following are effects of pre-incorporation contract, if it is not binding or not adopted by company: • Company cannot ratify it • Promoters are personally liable • Company cannot sue or be sued on that contract ■ Applying above provisions, promoters are personally liable for such contract to M.
Que. 14	State the documents and information for registration of One Person Company (OPC) required to be filed with the Registrar of Companies (CA May 2016)
Ans.	Procedure of incorporation of OPC is very similar to incorporation of any other company. Following are steps required to be taken to incorporate OPC: Name approval - Step 1 ■ Application should be made with Registrar in Form INC 1 for reservation of name after checking availability of name online. ■ Name of OPC shall end with word 'OPC'. Application - Step 2 ■ After receipt of name approval letter, application shall file an application to incorporate OPC in Form INC 2. ■ Following documents are attached with Form INC 32: ■ MOA & AOA ■ Consent of nominee in Form INC 3 ■ Affidavit from the subscribers to memorandum and first directors in Form INC 9 ■ Particulars of Directors in Form INC 12 ■ Declaration by professional in Form INC 8 ■ Applicant is required to pay fees and stamp duty on MCA portal. ■ If company intends to pursue any object which requires registration or approval from sectoral regulators like SEBI, RBI, TRAI etc., a declaration shall be filed at the time of incorporation that company shall obtain the required approval before pursuing that object. - Proviso to Rule 12 of Companies (Incorporation) Rules, 2014, inserted w.e.f. 29-5-2015. Certification of Incorporation - Step 3 ■ If all above documents are in order, Registrar will issue certificate of Incorporation. ■ Furnishing verification of Registered Office in Form INC 22 within 30 days of incorporation.

3: Matters Incidental to Incorporation (MOA & AOA)

Que. 7	The objects clause of the Memorandum of Association of the XYZ (P)Ltd., New Delhi, authorized to do trading in mangoes. The company, however, entered into partnership with Mr. A and traded in mangoes and incurred liabilities to Mr. A. the company, subsequently to A on the ground of ultra vires the company. Advice whether stand of the company is legal, valid and if so, give reasons in support of your answer. (CA November 1997)
Ans.	■ Company can enter into partnership if authorised by its object clause of Memorandum of Association. ■ If company is not authorised, company cannot enter into partnership. ■ Trading in mango by way of partnership is ultra vires. ■ It is void and not binding to company. ■ The company is not liable to A.
Que. 2	Explain the limitations in relation to alteration of Articles of Association of a company. (CA November 2002) Or What restrictions are applicable under the Companies Act, 2013 when Articles of Association of a company are altered? (CA May 2014)
Ans.	Following are the limitations or restrictions on alteration of Articles of Association: Not against Companies Act or any other Act ■ The alteration must not be inconsistent with any provisions of the Companies Act or any other statute. ■ For example, where a resolution was passed expelling a member and authorizing the directors to register the transfer of his shares without an instrument of transfer, the resolution was held to be invalid as being against the provisions of the Act. - Madhav Ram Chandra Kamath v. Canara Banking Corporation. ■ However, Articles may impose on the company conditions stricter than those provided under the law, for example, they may provide that a resolution should be passed by a special majority when the Act requires it to be passed by an ordinary majority. Not ultra vires to MOA ■ If the alteration in Articles are ultra vires the Memorandum then it is void and inoperative. -Allen vs. Gold Reefs of West Africa Ltd. Not illegal or against public policy ■ The alteration must not contain anything illegal or against public policy. Not inconsistent with order of Tribunal ■ The alteration must not be inconsistent with an order of the Central Government or Tribunal. Bona fide ■ The alteration must be bona fide and for the benefit of the company as a whole. ■ The alteration made shall be valid even if it is likely to affect adversely the interest of some of the members.

	Not constitute fraud on minority ■ If the alteration is for the benefit of majority and it constitutes a fraud on the minority or inflicts hardship on the minority without any corresponding benefit to the company as a whole, it shall be invalid. -Brown vs. British Abrasive Wheels Co. Not to increase liability ■ An alteration in the Articles, which has the effect of increasing the liability of the members to contribute to share capital, is not binding on the present member, unless he has given his consent in writing.
Que. 3	Briefly explain the doctrine of 'Constructive Notice' under the Companies Act, 2013. Are there any exceptions to the said doctrine? (CA May 2003)
Ans.	■ The Memorandum and Articles of Association of every company are required to be registered with the Registrar of Companies. ■ On registration, these documents become public documents. ■ These documents are available for public inspection either in the office of the company or in the office of the Registrar of Companies on payment of fee. ■ Every person who deals with the company is presumed to have read these documents and understood them in their true perspective. ■ Every person dealing with the company must inspect these documents and make sure that his contract is in conformity with their provisions. Whether he actually reads them or not, he is presumed to have read and understood them. ■ This deemed knowledge of MOA and AOA and their contents is known as Doctrine of Constructive Notice. ■ Doctrine of Constructive Notice is negative because it operates against the outsiders and not against company. Kotla Venkatswamy v. Ram Murthi ■ In this case, the Articles provided that all deeds, etc., were to be signed by the Managing Director, Secretary and a Working Director. ■ A deed signed by the Working Director and Secretary was held to be inoperative and the party was not allowed to seek exemption on the plea that he had not read the Articles. ■ Accordingly, if a person deals with a company and the transaction turns out to the beyond the powers of the company or its officers as contained in these documents, he cannot enforce it against the company and he shall be personally liable to bear the consequences of such dealings. ■ The doctrine of indoor management is an exception to Doctrine of Constructive Notice.
Que. 4	The directors of a company registered and incorporated in the name 'Mars Textile Ltd.' desire to change the name of the company to 'National Textiles and Industries Ltd.' advice as to what procedure is required to be followed under the Companies Act, 2013? (CA May 2003)
Ans.	Procedure ■ As per section 13 of Companies Act, 2013, to change name of company following steps shall be taken: • Make an application online in order to find out the availability of the name • Convey the Board Meeting to decide date, day and time of holding General Meeting

	• Dispatch notice of General Meeting to shareholders at least 21 days before meeting • Pass Special Resolution at General Meeting • Apply to Central Government and get its approval • File approval of Central Government with ROC ■ On change in name of company, ROC shall enter new name in the register in place of old name and issue fresh certificate of incorporation.
	■ Change in name becomes effective when ROC issues fresh certificate of incorporation in new name. **Restriction** ■ As per Rule 29 of Companies (Incorporation) Rules, 2014, change in name is not allowed, if company has defaulted in: • Filing its Annual Returns or Financial Statements • Document due for filing with ROC • Repayment of due deposit or debenture or interest thereon. ■ The change of name will be allowed after necessary documents are filed or payment or repayment of matured deposits or debentures or interest thereon is made.
Que. 5	The Articles of Association of a limited company provided that Mr. X shall be the law officer for the company, and that he shall not be removed except on the ground of proved misconduct. Company removed him even though he was not guilty of misconduct. Decide whether company's action is valid? (CA May 2004) Or Articles of a public company clearly stated that Mr. L will be the Solicitor of the company. The company in its General Meeting of the shareholders resolved unanimously to appoint Mr. L as the solicitor of company by altering the Articles of Association. State with reasons, whether the company can do so? If L files a case against the company for removal as a solicitor, will he succeed? (CA November 2007, 2008, May 2013)
Ans.	■ Facts in question are similar to case of Eley v. the Positive Government Life Assurance Company Ltd. In this case: • The Articles provided that Eley should be the solicitor for life of the company and that he would not be removed from office except for misconduct. • He was also a member of the company. • Eley acted as solicitor to the company for some years but he was removed from service without any charge of misconduct. • He sued the company for damages for breach of contract. • It was held that he had no cause of action because the Articles did not constitute any contract between the company and himself. • Thus, to succeed, the party suing must prove a contract outside and independent of the Articles. ■ Applying above judgment it can be said that company can remove Mr. X from the position of solicitor even though he is not guilty of misconduct. ■ Person cannot be considered as member of company by inserting or stating his name in Articles of company.

	■ Articles creates no contract between the company and outsiders, even though outsiders are named in the Articles in some capacity other than that of a member. ■ An outsider is not entitled to enforce the Articles against the company for any breach of rights that are conferred on him by the Articles. ■ 'Outsider' means a person who is not a member of the company.
Que. 6	What are the purposes for which 'objects' can be altered by a company under the Companies Act, 2013? Briefly explain the procedure to be applied to such matters. (CA May 2005) Or Explain the provisions of law and procedure relating to alteration of object clause stated in the memorandum of association of a Company under Indian Companies Act, 2013. (CA November 2012)
Ans.	■ Company can alter its object clause to meet its business requirement at any time after following procedure as stated under Companies Act, 2013.
	Procedure ■ To alter object clause of Memorandum, company shall take following steps: • Pass Board Resolution and fix date, time and place of General Meeting. • Issue notice of General Meeting and convey it. • A Special Resolution authorizing the alteration must be passed. This resolution shall be passed by postal ballot in case of company having more than 200 members. • A copy of Special Resolution should be filed with the Registrar within 30 days of passing the resolution. • ROC will register alteration within period of 30 days. Thereafter, the Registrar shall issue fresh Certificate of Registration. • Company is also required to publish in newspaper (one English daily and one 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. Restrictions ■ Company which has unutilized money from initial public offer (IPO) cannot change object without giving exit offer to dissenting shareholders in addition to compliance with above provisions.
Que. 7	Rishi Pharmacy Ltd. decided to take up the business of food processing because of the downward trend in pharmacy. There is no provision in the object clause of the Memorandum of Association to enable the company to carry on such business. State whether its object clause can be amended. Mention briefly the procedure to be adopted for change in the object clause. (CA May 2005, 2016) Or The management of Ambitious Properties Limited has decided to take up the business of food processing activity because of the downward trend in real estate business. There is no provision in the object clause of the memorandum to enable the company to carry on such

	a business. State with reason whether its object clause can be amended. State the procedure to be followed for the same. (CA May 2005) Or The objects clause of the Memorandum of a company empowers it to carry on distillery business and any other business that is allied to it. The company wants to alter Memorandum so as to include the cinema business in its objects clause. Advise the company. Or The object clause of the Memorandum of Vardhman Industries Ltd., empowers it to carry on real-estate business and any other business that is allied to it. Due to a downward trend in real- estate business the management of the company has decided to take up the business of Food Processing activity. The company wants to alter its Memorandum, so as to include the Food Processing Business in its objects clause. State whether the company can make such change as per the provisions of the Companies Act, 2013? (CA May 2017)
Ans.	■ Company is required to follow procedure for change in object clause. ■ Refer answer of question No. 6 to know steps required to be taken for change in object clause.
Que. 8	M/s India Computers Ltd. was registered as a Public Company on 1st July, 2015 in the State of Maharashtra. Another company by name M/s All India Computers Ltd. was registered in Delhi on 15th July, 2015. The promoters of India Computers Ltd. have failed to persuade the management of All India Computers Ltd. to change the company's name, as it closely resembles with the name of the first registered company. Advise the Management of India Computers Ltd. about the remedies available to them under the provisions of the Companies Act, 2013. (CA November 2005)
Ans.	■ Since the name of M/s India Computer Ltd., was registered earlier, on 1st July, 2015, the promoters have a right to ask the management of M/s All India Computers Ltd to change its name suitably as the said name closely resembles with that of the first registered company. ■ Since the management of M/ s All India Computers Ltd has not agreed, the promoters of India computers Ltd can approach the Central Government under section 16 of the Companies Act, 2013 for rectification of the name of the company registered subsequently. ■ The Central Government can direct the second registered company for correction.
Que. 9	The Articles of Association of a private limited company contain provisions restricting the right to transfer shares and limiting the number of members to fifty. What restrictions are generally incorporated in the Articles in restricting the right to transfer shares? (CA November 2005)
Ans.	■ Articles of Association of private company may insert any reasonable restriction on transfer of shares. ■ It cannot insert any restriction which is absolute in nature.
Que. 10	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 (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. (CA November 2006)
Ans.	■ As per section 12 of Companies Act, 2013, to change registered office from jurisdiction of ROC to another ROC, following steps should be taken: • Hold General Meeting and pass Special Resolution for shifting Registered Office. This resolution shall be passed by postal ballot in case of company having more than 200 members. • File a certified true copy of the resolution along with Form MGT 14 to the Registrar. • Apply to Regional Director in Form INC 23 for confirmation of change of place of RO with following documents: • Special Resolution approving shifting of registered office. • Declaration by KMP or two directors authorised by Board that company has not defaulted in payment of dues to its workmen and has either the consent of its creditor for proposed shifting or has made necessary provision for payment thereof. • Declaration that company will not seek change in jurisdiction of Court where cases for prosecution are pending. • Acknowledged copy of intimation to the Chief Secretary of State as proposed shifting and that employees' interest in not adversely affected. • Regional Director hears parties and makes necessary orders within period of 30 days of application. • Confirmation order of Regional Director shall be filed with ROC within period of 60 days. • Certified copy of the altered Memorandum shall be hied with ROC within one month from the date of filing of such document.
Que. 11	The object clause of the Memorandum of Association of LSR Private Limited, Lucknow, authorised to do trading in fruits and vegetables. The company, however, entered into a Partnership with Mr. J and traded in steel and incurred liabilities to Mr. J. The company, subsequently, refused to admit the liability to J on the ground that the deal was 'Ultra Vires' the company. Examine the validity of the company's refusal to admit the liability to J. Give reasons in support of your answer. (CA May 2007)
Ans.	■ Company cannot enter into business which is not supported or authorised by its Memorandum. ■ If it enters into, it will be ultra vires act to Memorandum. ■ For ultra vires transaction, company is not liable. ■ At the same time, Mr. J who entered into partnership is deemed to be aware of the lack of authority on part of Company.
Que. 12	X Ltd., a chemical manufacturing company distributed 20 lakhs to scientific institutions for furtherance of scientific education and research. Referring to the Companies Act, decide whether the said distribution of money was 'Ultra vires' the company? (CA November 2007)
Ans.	■ The company cannot do anything, which is not mentioned in the objects clause.

	■ Any activity undertaken by directors of company as per object clause is within their power. It is binding and valid to company. The act beyond the authority is termed as ultra vires and void. ■ However, any activity which is incidental or necessary to achieve main object of company is also within power of company. ■ Any activity which is incidental or ancillary to main objective of company is permissible activity and it is considered as intra vires. ■ For, chemical manufacturing company, donation of t 20 lakh for furtherance of scientific education and research is incidental to its main objective and hence it is permissible.
Que. 13	Explain the doctrine of 'ultra vires'. What are the legal effects of ultra vires transactions under the Companies Act, 2013? (CA May 2008)
Ans.	Meaning ■ The word 'ultra' means 'beyond' and the word 'vires' means 'powers'. Thus, ultra vires means doing an act beyond the powers. ■ Any activity done contrary to or in excess of the scope of activity of directors, Articles, Memorandum of companies will be ultra vires. Effects ■ A contract which is ultra vires the company is wholly void ab initio and of no legal effect. ■ Outsider cannot enforce ultra vires transactions against the company. ■ Company cannot enforce such transactions against outsiders. ■ The Memorandum being a public document, it is deemed that persons dealing with the company have the knowledge of the same and if he enters into transactions ultra vires the company, he cannot enforce it. ■ Members of a company are entitled to hold a company to its registered objects. ■ Hence, whenever, an ultra vires act has been committed or is likely to be committed, any member of the company can restrain it by getting an injunction against it. ■ It is the duty of directors to see that the funds of the company are used only for legitimate business of the company. If directors make an ultra vires payment, then they can be .compelled to make good the funds used. ■ The directors are the agents of the company and should act within their powers. • ■ If the directors have induced the third party to make a new contract for which the company has no power, the directors shall be liable to third parties provided the third party was not aware of the lack of authority. ■ If company's funds were used in acquiring some ultra vires property, the company has the right to hold the property and protect it against damage by other persons. - National Telephone Co. vs. St. Peter Constables.
Que. 14	India Cosmetics Limited was registered under the Companies Act, 2013. Later on, another company 'India Cosmetics and Accessories Limited' was formed and registered. As both the names were similar, India Cosmetics Limited lodged the complaint against India Cosmetics and Accessories Limited to the Registrar of companies stating that there is sufficient similarity between these two names which may mislead or defraud the public. 'India Cosmetics and Accessories Limited' is intending to alter its name. Advise. 'India Cosmetics and Accessories Limited' according to the provisions of Companies Act, 2013. (CA June 2009)

Ans.	■ India Cosmetic Accessories Ltd. shall change or ratify its name if Central Government has issued direction under section 16 pursuant to application made by India Cosmetics Ltd.
	■ Central Government can issue order to this effect if the name of company is identical or closely resemble with name of existing company. ■ India Cosmetics and Accessories Ltd. should take following steps to change its name: • Make an application online in order to find out the availability of the name • Convey the Board Meeting to decide date, day and time of holding General Meeting • Dispatch notice of General Meeting to shareholders at least 21 days before meeting • Pass Special Resolution at General Meeting • Apply to Central Government and get its approval • File approval of Central Government with ROC ■ On change in name of company, ROC shall enter new name in the register in place of old name and issue fresh certificate of incorporation. ■ Change in name becomes effective when ROC issues fresh certificate of incorporation in new name.
Que. 15	What is important of registered office of a company? State the procedure for shifting of registered office of the company from one State to another State under the provisions of the Companies Act, 2013. (CA May 2011, November 2015)
Ans.	Importance ■ All communication and notices are sent to its Registered Office. ■ Registered Office determines the domicile of the company ■ It determines the jurisdiction of the Courts for taking legal action. ■ Registers and records are maintained at Registered Office. ■ Right of inspection of registers is to be exercised at Registered Office. ■ Proxy for meeting is deposited at Registered Office. - Regulation 57 of Table F. Procedure for shifting from one State to another State ■ To change registered office from jurisdiction of one State to another State, following steps should be taken: • A Special Resolution should be passed and a copy thereof filed with the Registrar within 30 days in Form MGT 14. • This resolution shall be passed by postal ballot in case of company having more than 200 members. • Company need to apply to CG in Form INC 23. Application should be supported by: • List of creditors and debenture holders with their respective amount due. • Declaration by directors that as result of shifting, no employee will be retrenched and application shall be filed by company to Chief Secretary of State. • List of creditors is kept open for inspection at registered office. Any person can inspect it and get extract on payment of fees during business hours. • Company shall take following steps not more than 30 days before filing application in Form INC 23: • Publish advertisement in Form INC 26 in vernacular and English newspaper. Copy of advertisement shall be served to CG immediately.

	• Serve individual notice to each debenture holders and creditors. • Serve by registered AD post notice with copy of application to Registrar and SEBI (if it is listed company). • If no objection has received from any person in response of advertisement, order approving or rejecting application is passed within 15 days.
	• CG shall hold hearing and decide matter within 60 days, if objection is received from any person. • Certified copy of order of CG is filed in Form INC 28 with ROC in 30 days. • Company is provided new Certificate of Registration. ■ Company should file notice of situation of registered office in From INC 22.
Que. 16	Explain the doctrine of 'Indoor Management'. Also the circumstances in which an outsider dealing with company cannot claim any relief on the basis of doctrine of 'Indoor management'. (CA May 2012) Or 'The doctrine of indoor management always protects the persons (outsiders) dealing with company'. Explain above statement. Also state the exceptions to the above rule. (CA May 2015)
Ans.	Meaning ■ Persons dealing with the company should read these documents and satisfy themselves that the company has the power to enter into the contract, and they are required to do no more. ■ Outsiders are not required to examine whether the internal proceedings have been complied with or not. The details of internal procedure are not open to public inspection. ■ Thus, every person dealing with the company is entitled to assume that everything has been done regularly so far as the internal proceedings of the company are concerned. ■ In other words, outsiders can safely assume that provisions of the Articles have been complied with by the company in its internal working. This assumption on part of outside is known as rule or doctrine of indoor management. Exceptions of Doctrine of indoor management In the following situation, Doctrine of indoor management is not applicable: ■ Knowledge of irregularity - The protection under the Doctrine of indoor management cannot be claimed by a person who has the knowledge of the irregularity or constructive notice of irregularity. Howard vs. Patent Ivory Manufacturing Co. ■ The directors had the power under the Articles to borrow on behalf of the company up to £ 1,000. ■ For any amount exceeding this sum, the sanction of the shareholders in the General Meeting was required. ■ The directors themselves lent £ 3,500 to the company without the sanction of the shareholders in the General Meeting. It was held that the company was liable for £ 1,000 only.

	■ Negligence - Where the circumstances are of a suspicious nature which invite further inquiry and the person has failed to enquire into it, he shall not be entitled to protection under this rule. ■ Similarly, where the transaction is of an unusual nature, the outsider must make detailed inquiries. Underwood vs. Bank of Liverpool ■ Certain cheques drawn in favour of company were deposited by director in his personal account. ■ The bank credited the cheques in the account of director instead of company's account. ■ The bank argued that they acted on direction of director of company. ■ The Court held that cheque of company could not be given credit to personal account of director. Its case of gross negligence on part of banker. ■ Forgery - The protection under this doctrine shall not be available where the outsiders have relied upon a forged document, because nothing can validate forgery. A company is not liable for forgeries committed by its officer.
	■ But a company may be held liable for fraudulent acts of its officers acting under their ostensible authority on its behalf. Ruben v. Great Fingall Consolidated Co. ■ Share certificate was issued under common seal of company. ■ However, signature of two directors thereon was forged. ■ Shareholder argued that he cannot determine forgery but on the ground of forgery is nullity, certificate was held to be invalid. ■ No knowledge of Articles - The Doctrine of indoor management cannot be applied in favour of a person who had no knowledge of the Articles of the company. ■ However, if the contract is within the ostensible authority to bind the company, a company shall be liable for contracts made by him even if he had no knowledge of the articles of company. ■ Act outside authority - An outsider will not be protected if the act of an officer of a company is one which would not ordinarily be within his powers simply because, under the Articles power to do the act could have been delegated to him. Anand Bihari Lai v. Dinshaw & Co. ■ The plaintiff accepted a transfer of the company's property from its accountant, the transfer was held void. ■ The plaintiff should have seen the power of attorney executed in favour of the accountant by the company. ■ Void or illegal transaction - The Doctrine of indoor management shall not apply to those transactions, which are void or illegal ab initio.
Que. 17	The Articles of Association of XYZ Ltd. provides the Board of Directors has authority to issue bonds provided such issue is authorised by the shareholders by a necessary resolution in the General Meeting of the company. The company was in dire need of such of funds and therefore, it issued the bonds to Mr. X without passing any such resolution in General Meeting. Can Mr. X recover the money from the company? Decide referring the relevant provisions of the Companies Act, 2013. (CA November 2016)
Ans.	■ Facts of this case are similar to case of Royal British Bank vs. Tarquand.

	■ In this case, the directors of a company issued a bond to Tarquand. They had the power to issue such bonds but only subject to the resolution passed at a general meeting of the company. ■ In this case, no such resolution had been passed. ■ It was held that Tarquand could recover the amount of the bond from the company on the ground that he was entitled to assume that the resolution had been passed. ■ It was observed that 'Outsiders are bound to know the external position of the company, but are not bound to know its indoor management'. ■ Applying decision of Royal British Bank, Mr. X can recover money from the company applying the doctrine of indoor management.

4: Prospectus

Que. I	Explain the concept of 'Deemed Prospectus' under the Companies Act, 2013. Point out the circumstances where under issuing the prospectus is not mandatory. (CA May 2004, November 2015)
Ans.	Concept of deemed prospectus ■ Where a company allots or agrees to allot any shares or debentures with a view to these being offered for sale to the public, any document by which the offer of sale to the public is made, shall for all purposes be deemed to be a prospectus issued by the company. When prospectus not required to be issued ■ Prospectus is not required to be issued in following cases: • Issue of shares by private company. • Issue of shares or debentures by public company through private placement. • Bona fide invitation to a person to enter in an underwriting agreement. • Issue of FCCB (Foreign Currency Convertible Bond) or FCB exclusively to residents out of India.
Que. 2	A Company issued a prospectus. All the statements contained therein were literally true. It is also stated that the company had paid dividends for a number of years, but did not disclose the fact that 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. Decide. (CA May 2004) Or XYZ Ltd. issued a prospectus inviting the public for subscription of its equity shares stating in it that company possesses good financial health and paying dividends to its equity shareholders consistently and regularly @20 percent over the last five years. The fact was company was running in loss since last three years and it was paying dividends to its shareholder out of accumulated profits. Mr. Amit read the prospectus and bought 500 shares from the company. Discovering the mis-statement made by the company in the company prospectus, he wants to rescind the contract and claim the damages from the company. Referring the provisions of the Companies Act, 2013, decide, whether Mr. Amit will succeed. (CA May 2013)
Ans.	■ Any person who takes shares on the faith of statement of facts contained in a prospectus can cancel the contract if those statements are false or untrue. ■ A statement included in a prospectus shall be deemed to be untrue, if the statement is misleading in the form and context in which it is included. ■ Again, prospectus is considered to be false and misleading if it does not include statutory information. ■ In the case of Rex vs. Kylsant, the fact that dividends were paid out of capital profit and not out of trading profits was not disclosed in the prospectus. ■ This fact gives a false impression that the company was a profitable one. ■ Hence, Y can avoid the contract of allotment of shares.
Que. 3	What is meant by 'Abridged Prospectus'? Is it necessary to furnish abridged form of prospectus along with the application form for shares? Under what circumstances an

	abridged prospectus need not accompany the detailed information regarding prospectus along with the application form? (CA November 2004, June 2009)
Ans.	■ Abridged prospectus means a memorandum containing salient features of prospectus.- Section 2(1) ■ Every application form issued to subscribe security shall be accompanied with abridged prospectus. ■ Abridged prospectus and the share application form should bear the same printed number and the two should be separated by a perforated line. ■ Abridged prospectus is not required to be accompanied with application form when : • Application form is issued to invite person to enter into underwriting agreement; or • In relation to securities which are not offered to public.
Que. 4	With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. X received a 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 contained a false statement. Referring to the provisions of the Companies Act, 2013 examine whether X's claim for damages is justified. (CA November 2006) Or With a view to issue shares to the general public a prospectus containing some false information was issued by a company. Mr. Damu received copy of the prospectus from the company, but did not apply for allotment of any shares. The allotment of shares to the general public was completed by the company within the stipulated period. A few months later, Mr. Damu bought 4000 shares through the stock exchange at a higher price which later on fell sharply. Damu sold these shares at a heavy loss. Mr. Damu claims damages from the company for the loss suffered on the ground that the prospectus Issued by the company contained a false statement. Referring to the provision of the Companies Act, 2013 examine whether Damu's Claims for damages is justified? (CA May 2017)
Ans.	■ The right to claim compensation for loss or damage sustained by reason of any untrue statement in a prospectus is available only to a person who has subscribed securities based on the faith of the prospectus containing untrue statement. ■ Person who has purchased securities from open market has no remedy against the company or its directors or promoters. - Peek vs. Gurney. ■ Mr. X will not succeed in this case.
Que. 5	When is an expert not liable for untrue statements in the prospectus issued by a company? State the liability of an 'Expert' in case of misrepresentation in the prospectus. When will an expert not be liable for his untrue statements made in the prospectus? (CA November 2006) Or

	State the liability of an 'Expert' in case of misrepresentation in the prospectus. When an expert will not be liable for his untrue statements make in the prospectus? (CA November 2012)
Ans.	■ In following situation, expert is not liable even if prospectus issued by company contain misrepresentation: • Where misrepresentation or misstatement in prospectus is not related to expert report • Where he has given his consent but withdraw it before issue of prospectus to Registrar • Where-expert statement does not include statement that he is not, and has not been engaged or interested in the formation or promotion or management of company
Que. 6	What is meant by 'Red-herring prospectus'? State the circumstances under which such prospectus is required to be filed with the Registrar of Companies. What is the requirement relating to filing of final prospectus in such cases? (CA May 2008)
Ans.	■ Red-herring prospectus means a prospectus which does not have complete particulars on the price of securities offered and the quantum of securities offered. ■ Generally, RHP is used in case of public issue by way of Book-Building method. ■ RHP may be issued by company before issue of prospectus. ■ It may give a band or minimum figure of issue size and issue price. ■ It should be filed with ROC at least 3 days before opening of subscription list and offer. ■ On closing of public offer of securities, the details of information which are not included in RHP are required to be filed with ROC and SEBI. ■ RHP carries same obligation as are applicable to a prospectus.
Que. 7	P Ltd. issued and published its prospectus to invite the investors to purchase its shares. The said prospectus contained a false statement. Mr. X purchased some partly paid shares of the company in good faith on the stock exchange. Subsequently, the company was wound up and the name of Mr. X was in the list of contributors. Decide: (I) Whether Mr. X is liable to pay the unpaid amount? (II) Can Mr. X sue the directors of the company to recover damages? (CA May 2008, 2016)
Ans.	■ The right to claim compensation for loss or damage sustained by reason of any untrue statement in a prospectus is available only to a person who has subscribed securities based on the faith of the prospectus containing untrue statement. ■ Person who has purchased securities from open market has no remedy against the company or its directors or promoters. - Peek vs. Gurney. ■ Mr. X is not the original allottee of shares, since he purchased shares from the secondary market, viz. stock exchange. I. Mr. X is liable to pay the unpaid calls, since he holds partly paid shares and he is liable as a contributory II. Mr. X cannot sue the directors to recover damages, since Mr. X has no cause of action against the company or the directors as he did not subscribe for the shares on the faith of a misleading prospectus.
Que. 8	M applies for share on the basis of a prospectus which contains misstatement. The shares are allotted to him, who afterwards transfers them to N. Can N bring an action for a

	rescission on the ground of misstatement? Decide under the provisions of the Companies Act, 2013. (CA November 2008)
Ans.	■ No, N cannot bring an action for rescission on the ground of misstatement as N had not contracted with the company on the basis of prospectus containing misstatement. ■ The right to rescind the contract is available only to original allottee. - Peek vs. Gurney
Que. 9	Modern Furniture Limited was willing to purchase teakwood estate in Chhattisgarh State. Its prospectus contained some important extracts from an expert report giving the number of teakwood trees and other relevant information in the estate in Chhattisgarh State. The report was found inaccurate. Mr. X, purchased the shares of Modern Furniture Limited on the basis of the above statement in the prospectus. Will Mr. X have any remedy against the company? When an expert will not be liable? State the provisions of the Companies Act, 2013 in this respect. (CA November 2009)
Ans.	■ Mr. X Purchased the shares of Modern Furniture Ltd. on the basis of prospectus containing inaccurate expert report. ■ Therefore, Mr. X has remedy against the expert. ■ The expert will not be liable if he proves that the prospectus was issued without his knowledge or consent and on becoming aware of its issue, he forthwith gave a reasonable public notice that it was issued without his knowledge or consent.
Que. 10	Explain the meaning of 'Shelf Prospectus'. State the law relating to Shelf Prospectus contained in Companies (Amendment) Act, 2000. (CA November 2013) Or When is a company required to issue a 'Shelf Prospectus' under the provisions of the Companies Act, 2013? Explain the law relating to issuing and filing of such prospectus. (CA November 2016)
Ans.	Meaning ■ 'Shelf Prospectus' means a prospectus issued by company for one or more issues of the securities over period of one year through single offer document. Provisions ■ Class of companies as prescribed by SEBI may file Shelf Prospectus with ROC at the time of first offer of securities. ■ Shelf Prospectus is valid for period of 1 Year. ■ A company filing a shelf prospectus with the Registrar shall not be required to file prospectus afresh at every stage of offer of securities by it within a period of validity of such shelf prospectus. ■ A company filing a shelf prospectus shall be required to file an Information Memorandum on all material facts relating to new charges created, changes in the financial position as have occurred between the first offer of securities, previous offer of securities and the succeeding offer of securities.

	■ An Information Memorandum shall be issued to the public along with shelf prospectus filed at the stage of the first offer of securities and such prospectus shall be valid for a period of one year from the date of opening of the first issue of securities under that prospectus. ■ Where an update of Information Memorandum is filed every time an offer of securities is made, such memorandum together with the shelf prospectus shall constitute the prospectus. ■ Information Memorandum shall be prepared in Form PAS 2 and filed with ROC within one month prior to issue of second or subsequent offer of securities under the Shelf Prospectus. ■ Shelf Prospectus and Information Memorandum shall carry same liability as prospectus carries in case of misstatement.
Que. 11	State whether the following statements are correct or incorrect: Television advertisements and visual clips giving required details can be treated as prospectus. (CA May 2017)
Ans.	■ Statement is correct. ■ 'Prospectus' means any document issued as prospectus. Document should be in writing. ■ It includes any notice, circular, advertisement or other document inviting offers from the public for the subscription or purchase of any securities of a body corporate. ■ It also includes Shelf Prospectus and Red Herring Prospectus.

5: Share Capital (Allotment of Shares, Capital & Alteration of Capital)

<table>
<tr><td>Que. 1</td><td>The Board of Directors of a company decided to pay 5% of issue price as underwriting commission to underwriters. The Articles of Association of the company permit only 3% commission. The Board of Directors further decide to pay the commission out of proceeds of the capital. Are the decisions taken by the Board of Directors valid under the provisions of the Companies Act, 2013?
(CA May 2003)
Or
Articles of Association of MSW Ltd. contained a provision that upto 4% of issue price of the shares may be paid as underwriting commission to the underwriters. The BOD decided to pay 5% underwriting commission. Can the BOD do so? State the provisions of law in this regard.
(CA November 2008)
Or
Unique Builders Limited decides to pay 2.5% of the value of debentures as underwriting to the underwriters but the Articles of the company authorize only 2% 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.
(CA November 2010)
Or
Examine the validity of the following 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.'
(CA November 2015)</td></tr>
<tr><td>Ans.</td><td>■ Company can pay maximum 5% of price of shares as underwriting commission in the case of public issue of shares.
■ Articles of company may authorise company to pay less underwriting commission.
■ If it is so, company cannot pay underwriting commission in excess of percentage fixed by Articles.
■ In the given case, Articles of company authorise it to pay maximum 3% commission.
■ Decision to pay excess commission by Board is not valid.
■ Underwriting commission can be paid in cash or in kind but it should not beyond the limit specified by Act.</td></tr>
<tr><td>Que. 2</td><td>Whether the Company can buy-back its own shares? Explain in brief the provisions of Companies Act, 2013 relating to the sources of funds and conditions for buy-back its own shares by the company.
(CA November 2004)</td></tr>
<tr><td>Ans.</td><td>Yes, company can buy-back its own shares, if it is authorised by its Articles of Association. Following are provisions for buy-back of shares:
Sources
■ Company to buy its own shares out of: ' ,</td></tr>
</table>

	■ Its free reserves; or ■ The securities premium account; or

	■ The proceeds of any other shares or specified securities. ■ However, no buy-back of any kind of shares or other specified securities shall be made out of the proceeds of an earlier issue of the same kind of shares or same kind of other specified securities. Approval ■ A company can buy-back upto 10% of its paid-up equity capital and free reserves of the company by passing Board Resolution in financial year. ■ If company wants to buy-back more than 10% but up to 25% of its paid up equity capital and free reserve, it is allowed by passing Special Resolution at General Meeting. Shares fully paid up ■ All the shares or other specified securities are fully paid-up. Time gap between two buy-back ■ Another offer for buyback should not be made within one year from closure of preceding buyback offer. Debt-equity ratio ■ The post debt equity ratio of the company is not more than twice the capital and its free reserves after such buy-back. ■ Central Government may by notification specify higher debt equity ratio for class of companies. ■ At present, Central Government has prescribed debt equity ratio 6:1 for Government Company which carry on NBFC and housing finance activities. - Order dated 10-3-2016
	Declaration of solvency ■ Company shall file with Registrar and SEBI, a declaration of solvency when shares of company proposed to buy back is listed. ■ Declaration of solvency should be in Form SH-9. ■ Declaration of solvency is made before buyback. ■ Declaration shall be adopted by the Board. It shall be signed by two directors, one of whom shall be Managing Director, if any. ■ It should be in the form prescribed, verified by an affidavit to the effect that the Board has made a full inquiry into the affairs of the company as a result of which it is capable of meeting its liabilities and will not be rendered insolvent within a period of one year of the date of declaration. Comply SEBI Guidelines ■ The buy-back of listed securities is in accordance with the regulations made by the SEBI in this behalf.

	Time limit ■ Every buy-back should be completed within period of 1 year from date of passing of Board or Special Resolution, as the case may be. Restrictions on new issue ■ Company cannot issue same kind of new shares or specified securities with in period of 6 months from completion of buy back except by way of : • Bonus shares; or • Issue of shares to discharge subsisting obligation; or • Stock option scheme; or • Sweat equity; or • Conversion of preference shares or debenture into equity which become due for conversion.
	Transfer of CRR ■ In case shares are bought back out of free reserves or out of security premium account, then equal to the nominal value of shares bought back shall be, transferred to a reserve account to be called the 'Capital Redemption Reserve Account'. ■ The details of such transfer shall be disclosed in the balance sheet.
Que. 3	On receipt of 80% of the minimum subscription stated in the prospectus, a company allotted 100 Shares to Naman. The company deposited the said amount in a bank but withdrew 50% of amount before finalisation of assets for the purchase of certain asset. Naman, refuses to accept the allotment of shares on the ground that the allotment is in violation of the provisions of the Companies Act, 2013. Comment. (CA May 2005)
Ans.	■ Shares cannot be allotted to public unless company has received the minimum subscription stated in prospectus has been subscribed and minimum application money is received. ■ In the given case, it is stated that company has received the minimum subscription as stated in prospectus. ■ Therefore, contention of Mr. Naman is not valid.
Que. 4	Mars India limited owned to Sunil ? 1,000. When this debt become payable, the company offered Sunil 10 shares of ? 100 each in full settlement of debt. The said shares were fully paid were allotted to Sunil. Examine the validity of allotment in the light of the provisions of the Companies Act, 2013. (CA May 2006)
Ans.	■ As per section 39 of Companies Act, 2013, company may allot shares to person in cash or in kind. ■ Cash does not necessarily mean currency or cheque. ■ It means 'such transaction as would in an action at law for calls, support a plea of payment.' ■ On the basis of above provision, it can be said that allotment of fully paid up shares in full satisfaction of Sunil's debt is valid.
Que. 5	Distinguish between 'Reduction of Share Capital' and 'Diminution of Share Capital'.

	(CA November 2006) Or 'Diminution of capital does not constitute reduction within the meaning of Companies Act, 2013.' State in which respects they differ from each other. (CA November 2015)

	Diminution of Capital	Reduction of Capital
Ans.	Diminution of Capital	Reduction of Capital
	Diminution denotes a cancellation of that portion of the issued capital which has been subscribed.	Reduction of capital may be reduction in subscribed or paid up capital.
	Diminution of capital can be effected by Ordinary Resolution.	Reduction of Capital can be effected by Special Resolution.
	Diminution of capital does not require permission of Tribunal.	Reduction of capital requires confirmation of Tribunal.
	No need to add the words 'and reduced' after name of company.	Tribunal may order to add words 'and reduced' after name of company for some time.

Que. 6	DIA Company Limited is holding 40% of total equity shares in MR Company Limited. The Board of Directors of MR Company Limited (incorporated on 1-1-1988) decided to raise the paid-up equity shares capital by issuing further shares and also decided not to offer any shares to DIA Company Limited on the ground that it was already holding a high percentage of shares in MR Company Limited. Articles of Association of MR Company Limited provide that the new shares be offered to all the shareholders excepting DIA Company Limited. Referring to the provisions of Companies Act, 2013, examine the validity of decisions of the Board of Directors of MR Company Limited of not offering any further shares to DIA Company Limited. (CA May 2007)
Ans.	■ The decision of Board is not valid. Issue of further shares by MR Co. Ltd. attract provision of section 62 of Companies Act, 2013. ■ As per section 62, MR Co. Ltd. shall offer further shares to all existing shareholders according to their proportionate holding. ■ It cannot refuse to offer further shares to DJA Co. Ltd. on the ground that it is already holding high percentage of shares.
Que. 7	Explain in brief 'Equity share capital' and 'Preferential share capital'. (CA May 2007)

	Particulars	Equity Shares	Preference Shares
Ans.	Particulars	Equity Shares	Preference Shares
	Preference in Dividend Payment	The dividend on equity shares is paid only after the preference dividend has been paid.	Shareholders get a preference in dividend payment over equity shareholders.

In Case of Winding up	Shareholders get payment of capital after the payment of capital to preference shareholders.	Shareholders get preference in capital payment in winding up over equity shareholders.
Rate of Dividend	Depends upon the amount of profit available and the funds requirements of the company.	Entitled to a fixed rate of dividend.
Dividend Accumulation	Cannot be cumulative.	May be cumulative for cumulative preference shares.
Redemption	No redemption of equity shares except under a scheme involving reduction of capital	Redeemable preference shares may be redeemed by the company.
Bonus/rights Shares	A company may issue rights shares or bonus shares to the company's existing equity shareholders.	No bonus shares or right shares are issued to preference shareholders.
Voting Rights	An equity shareholder can vote on all matters affecting the company.	A preference shareholder cannot vote on all resolution.
Voting on a Poll	Voting rights in proportion to his share in the paidup equity share capital of the company.	Voting in proportion to his share in the paid-up preference share capital of the company.

Que. 8	State whether the following statements are true or false: A public company cannot issue equity shares with differential rights as to dividend. (CA November 2007)
Ans.	■ Statement is false. ■ As per section 43, public company can issue equity shares with differential rights as to dividend provided: • It comply with all conditions prescribed under Rule 4 of Companies (Share Capital and Debentures) Rules, 2014 • Articles of company shall authorize issue of such shares • Company should pass Ordinary Resolution at General Meeting • Proportion of shares with differential voting rights shall not exceed 26% of total share capital issued.
Que. 9	What are the conditions for the company for the buy-back of its own shares? Whether there is any time limit for the completion of buy-back of its shares? (CA November 2008) Or Whether a company can buy-back its own shares? Discuss the legal provisions as regard to the conditions for buy-back contained in the Companies Act, 2013. (CA November 2013)
Ans.	Refer answer to question No. 2

Que. 70	Star Limited forfeited 80 equity shares and re-issued the same at a premium of ? 2000 resulting a surplus earning of ? 2000. The company did not file the return of allotment with the Registrar of Companies in respect of re-issued shares. Explain, with reason, whether the company has contravened the provisions of the Companies Act, 2013. (CA June 2009)
Ans.	■ Return of allotment is required to be filed on allotment of securities. ■ Re-issue of forfeited shares are not allotment and hence return of allotment is not required. ■ Company has not contravened any provisions of Companies Act, 2013.
Que. 11	Gold Limited invited applications for 5,00,000 equity shares of ? 10 each through a public issue. As per the prospectus, applicants were required to pay only ? 2 on application. 'A' applies for 500 shares and deposits ? 5,000 to the company because he did not properly go through the offer. Later, he applies to the company seeking refund of the excess amount paid by him. Refreshing provisions of the Companies Act, 2013, decide whether the company is bound the excess money to A? (CA June 2009)
Ans.	■ Mr. A cannot claim refund. Company if authorised by its Articles of Association accept calls in advance from any member. ■ Mr. A has made excess payment of ? 4,000. ■ It cannot be treated as calls in advance because as on the date of payment of ? 4,000, he was not a member of company. ■ Calls in advance provisions is applicable to shares held by members.
Que. 12	What is the law and procedure for issuing a duplicate share certificate under the provisions of the Companies Act, 2013 in case the original share certificates is lost or destroyed? (CA November 2011)
Ans.	When ■ A certificate may be renewed or duplicate of a certificate may be issued, if such certificate: • is proved to have been lost or destroyed, or • having been defaced, mutilated or torn is surrender to the company. Procedure ■ Following is the procedure for the issue of renewed or duplicate share certificates: • In case of loss or destruction of certificate, the Board has given its consent. • In case of mutilation or being torn, the certificate in lieu of which it is being issued should be surrendered to the company for cancellation. • Company may charge fee for duplicate share certificate as the Board decides but not exceeding ? 50 per certificate. • In case of lost or stolen certificates, there should be proper evidence of loss as well as indemnity. • Fact about duplicate certificate must be clearly shown on stub of it by way of rubber stamp. • Necessary particulars must be recorded in the Register of members. • Mutilated, defaced or torn certificates surrendered to the company must immediately be defaced by a 'cancellation mark' and may be destroyed after three years on the authority of a Board Resolution. • The particulars of renewed and duplicate share certificate to be entered in Form SH.2 Time limit

	■ Unlisted company should issue duplicate share certificates in 3 months. ■ Listed company should issue duplicate share certificate within 15 days.
Que. 13	Can a company limited by shares or guarantee and having share capital reduce its share capital? (CA May 2013)
Ans.	■ Company limited by shares can reduce its share capital as per section 66 of Companies Act, 2013. ■ As per section 66, company should pass Special Resolution and get approval of Tribunal for reduction of share capital. ■ Provisions of section 66 are equally applicable to the guarantee company having share capital.
Que. 14	What is meant by minimum subscription? State the provisions of the Companies Act, 2013 regarding the refund and deposit of minimum subscription. (CA November 2013)
Ans.	■ Minimum subscription represent the amount of the issue which has to be subscribed or else the shares cannot be issued if it is not being subscribed. ■ As per section 39 of Companies Act, 2013, amount of minimum subscription must be received. If amount equal to minimum subscription is not received, application money should be refunded within 15 days from closure of issue. ■ If money is not repaid in time limit, all directors are jointly liable to repay money with 15% interest per annum.
Que. 15	What is 'Return of Allotment'? List the documents which have to be enclosed when shares are allotted on discount. (CA May 2014)
Ans.	■ Return of Allotment is return which contains information about securities allotted. ■ It is filed in Form PAS-3. ■ In all cases, the return of allotment must contain the following particulars: ■ The number and nominal amount of shares allotted. ■ The names, addresses and occupations of the allottees. ■ The amount paid or due and payable on each share. ■ In the case of allotment of bonus shares, the company must file with the Registrar a return within 30 days of allotment in the prescribed Form PAS-3 stating the number and nominal amount of such shares together with the names, addresses and occupations of the allottees and a copy of the resolution authorizing the issue of such shares. ■ In the case of securities allotted as fully or partly paid-up for consideration other than cash, copy of contract duly stamped together with any contract of sale relating to property or asset or contract of service should be attached. ■ Report of Registered valuer (Independent Merchant Banker) shall be attached with the contract.
Que. 16	Define the term underwriting and state the circumstances in which underwriting commission can be paid as per provisions of section 40 of the Companies Act, 2013.

	(CA November 2014)
Ans.	■ Underwriting commission is the remuneration that an underwriter receives for placing a new issue with investors. ■ Company can pay underwriting commission if: • Its Articles of association authorise it; and • Shares or debentures are offered to public at large. ■ Rate of commission cannot be more than 596 of price at which shares are offered. It should not be more than 2.596 of price at which debentures are issued. ■ Copy of underwriting agreement shall be attached with prospectus filed with Registrar. ■ Following details regarding underwriting commission shall be published in prospectus: • Name and address of underwriter • Rate of underwriting commission • Number of shares or debentures agreed under underwriting contract
Que. 17	Elucidate the circumstances in which a company cannot buy back its own shares as per the provisions of the Companies Act, 2013. M/s. Growmore Pharma Limited is planning to buy-back of its shares during the current year but the company has defaulted in the payment of term loan and interest thereon to its bankers. The company seeks your advise as to how and when the company can buy-back its share under these circumstances as per the provisions of the Companies Act, 2013. (CA November 2014)
Ans,	■ As per section 70 of Companies Act, 2013, company shall not directly or indirectly, purchase its own shares or other specified securities: • Through any subsidiary company; or • Through any investment company; or • If a default, in repayment of deposit or interest thereon, redemption of debentures or preference shares or payment of dividend or repayment of a term loan or interest thereon to any financial institution or bank is subsisting. This prohibition is not applicable, if default cease to subsist and period of 3 years has elapsed. • If default is made in filing annual return, declaration of dividend or punishment for failure to distribute dividend and financial statement. ■ If Grow more Pharma Ltd. has defaulted in repayment of term loan or interest thereon of any financial institution or bank, it cannot buy-back its shares. This prohibition is lifted if default is remedied and period of 3 years has elapsed.
Que. 18	Explain the conditions and the manner in which a company may issue depository receipts in a foreign country under the Companies (Issue of Global Depository Receipts) Rules, 2014. (CA May 2015)
Ans.	Conditions Section 41 of Companies Act, 2013 read along with the Companies (Issue of Global Depository Receipts) Rules, 2014 provide following conditions to issue GDRs: ■ Approval- Company shall take prior approval of shareholders by Special Resolution to issue depository receipts.

	■ DR issued by Overseas Bank - Depository receipts (DR) shall be issued by an overseas depository bank appointed by the company and the underlying shares shall be kept in the custody of domestic custodian bank. ■ Compliance with rules, regulation etc. - Company shall comply with all applicable provisions, rules, regulations or guidelines issued by RBI. ■ Compliance report - Company shall appoint a merchant banker or practicing CA or CS or Cost Accountant to ensure all compliances relating to issue of depository receipts. Company shall obtain compliance report and place before Board. Manner of Issue of DR ■ DR can be issued by way of public offer or by private placement and may be listed or traded in an overseas listing or trading platform. ■ DR may be issued against issue of new' shares or in exchange of shares held by shareholders of company. ■ Underlying shares shall be allotted in the name of overseas depository bank and against such shares, the depository receipts shall be issued by the overseas depository bank abroad.
Que. 19	Deferred shares also called founder's shares. Comment (CA May 2015)
Ans.	■ Statement is correct. ■ Deferred shares are issued to promoter or founder members of company to exercise control over company. - ■ It is also known as golden shares. ■ It is share that is issued to company founders that restricts their receipt of dividends until dividends have been distributed to all other classes of shareholder.
Que. 20	When is an allotment of shares treated as an irregular allotment? Briefly state the effects of an irregular allotment. (CA November 2015)
Ans.	What is irregular allotment? ■ Irregular allotment is not defined under the Companies Act, 2013. ■ The allotment made in violation of provisions of section 39 of Act is irregular allotment. ■ Following examples indicate irregular allotment: • When allotment is made without receipt of minimum subscription. • When allotment is made without receipt of at least 5 % minimum application money. Effects ■ Irregular allotment is not void but it attracts penalty. ■ Irregular allotment is voidable. ■ Further, class action can be initiated under section 245, if it is established that the action of management was prejudicial to interest of company or its members.
Que. 21	XYZ Company Limited at a General Meeting of members of the company pass an ordinarily resolution to buy-back 30% of its Equity Shares Capital. The Articles of the Company empower the company for buy-back of shares. The company further decides that the payment for buyback be made out of the proceeds of the company's earlier issue of equity shares. Explaining the provisions of the Companies Act, 2013, and stating the sources

	through which the buy-back of companies own shares be executed, Examine, (i) Whether company's proposal is in order? (ii) Would your answer be still the same in case the company instead of 30% decide to buy-back only 20% of its Equity Share Capital? (CA November 2016)
Ans.	(i) Company's proposal is not in order for following reasons: ■ Buy-back is not allowed for more than 25% of its paid up capital and free reserve. ■ Buy-back for more than 10% but not more than 25% of its paid up capital and free reserve is allowed by passing Special Resolution. ■ Company cannot buy-back its shares out of proceed of same kind of shares. (ii) Answer would remain same.
Que. 22	ABC Company Ltd. is holding 46% of total equity shares in SVS Company Ltd. The Board of Directors of SVS Company Ltd. (incorporated on January 1st, 2014) decided to raise the share capital by issuing further equity shares. The Board of Directors resolved not to offer any shares to ABC Company Ltd. on the ground that it was already holding a high percentage of the total number of shares already issued in SVS Company Ltd. The Articles of Association of SVS Company Ltd. provides that the new shares be offered to the existing shareholders of the company. On March 1st, 2014 new shares were offered to all the shareholders except ABC Company Ltd. Referring to the provisions of the Companies Act, 2013 examine the validity of the decision of the Board of Directors of SVS Company Limited of not offering any further shares to ABC Company Limited. (CA May 2017)
Ans.	■ Question is based on section 62 of Companies Act, 2013. As per section 62, further shares shall be issued by company to existing shareholders in proportion to their existing holding. ■ Further offer of shares to existing shareholders shall be made by sending offer letter. ■ In the case of Gas Meter Ltd. vs. Diaphragm & General Leather Co. Ltd., Articles of company provided that new shares should first be issued to existing shareholders. ■ The company offered new shares to all shareholders except Gas Co. Ltd., which held controlling shares. ■ It was held that action of not offering new shares to Gas Co. Ltd. is not proper on the ground of controlling interest. ■ Based on above judgment, it can be said that action of SVS Co. Ltd. is not proper.
Que. 23	State whether the following statements are correct or incorrect: Right shares are those shares which are issued by newly formed company. • (CA May 2017)
Ans.	■ Statement is incorrect. ■ Right shares are those shares which are offered to the existing shareholders in proportionate to their existing holding.
Que. 24	MN Ltd is engaged in the manufacture of consumer goods and has got a good brand value. Over the years, it has built a good reputation and its Balance Sheet as at March 31, 2017 shows the following position:

Authorized Share Capital (25,00,000 equity shares of face value of ? 10 each.)	2,50,00,000

	Issued , subscribed and paid -up capital (10,00,000) equity shares of face value of ? 10 each. Fully paid-up)	1,00,00,000
	Free Reserves	3,00,00,000

	The Board of Directors is proposing to declare a bonus issue of 1 share for every 2 shares held by the existing shareholders. The Board wants to know the condition and the manner of issuing bonus shares under the provisions of the Companies Act, 2013. Advice. (CA November 2017)
Ans.	Conditions and manner ■ As per section 63 of Companies Act, 2013, company can issue bonus shares, if: • It is authorised by its AOA. • Proposal for bonus shares should be passed by the Board and it should be approved by shareholders by way of ordinary resolution in their General Meeting. • If it is listed company, it shall comply with SEBI guidelines. • Partly paid up shares, if any outstanding on the date of allotment, are made fully paid up. • It has not defaulted in: • Payment of interest or principal amount in respect of matured fixed deposit or debt securities • Payment of statutory dues to its employees • Holding the general body meeting and get the resolution for issue of bonus shares passed by the members. ■ The bonus shares shall not be issued in lieu of dividend. ■ As per Rule 14 of Companies (Share Capital and Debentures) Rules, 2014, company which has declared its bonus issue after passing of Board cannot withdraw same. Sources ■ Company can issue fully paid up bonus shares out of: • Free reserves • Securities premium account • Capital redemption reserve account.
Que. 25	A Limited has an Authorized Capital of 10,00,000 equity shares of the face value of ? 100 each. Some of the shareholders expressed their opinion in the Annual General Meeting that it is very difficult for them to trade in the shares of the company in the share market and requested the company to reduce the face value of each share to ? 10 and increase the number of shares to 1,00,00,000. Examine whether the request of the shareholders is possible and if so, how the company can alter its share capital as per the provisions of the Companies Act, 2013. (CA November 2017)
Ans.	■ Yes, request of shareholders is possible. ■ Company may proceed for alteration of capital. Method of alteration ■ Company can alter its share capital by any one of the following methods:

	m Increase its share capital by issuing new shares. • Consolidate and divide all or any of its share capital into shares of large r amount than its existing shares. (Specified IFSC public company can undertake consolidate and division of shares by Ordinary Resolution) • Convert all or any of its fully paid-up shares of any denomination. • Sub-divide its shares, or any of them, into shares of smaller amount than is fixed by the Memorandum. • Cancel the shares which have not been taken up by any person and thereby diminish the amount of its share capital. Procedure for alteration ■ Alteration of capital is allowed only if Articles of Association authorises company. ■ To alter capital, company should take following steps: • Convey General Meetings and pass Ordinary Resolution. • Notice of alteration is given to the Registrar of Companies within 30 days of the alteration. • The Registrar shall then record the notice, and make the necessary alterations in the Memorandum or Articles or both. - Section 64
Que. 26	Shyam Dairy Ltd. a dairy products manufacturing company wants to set-up a new processing unit at Jaipur. Due to paucity of funds, the existing shareholders are not willing to fund for expansion. Hence, the company approached XYZ Ltd. for subscribing to the shares of the company for expansion purposes. Can Shyam Dairy Ltd. issue shares only to XYZ Ltd. under the provisions of the Companies Act, 2013? If so, state the conditions. (CA November 2017)
Ans.	■ Company can issue shares on preferential basis to XYZ Ltd. under section 62. ■ 'Preferential Offer' means an issue of shares, by a company to any selected person or group of persons on a preferential basis. ■ Preferential Offer does not include shares offered through a public issue, rights issue, employee stock option scheme, employee stock purchase scheme or an issue of sweat e quity shares or bonus shares or depository receipts issued in a country outside India or foreign securities. Conditions ■ Price is determined based on valuation report by the valuer. ■ Issue of shares on preferential basis can be made by: • Listed Company as per SEBI guidelines and provisions of the Companies Act • Unlisted Company as per provisions of the Companies Act and Rules ■ The issue is authorized by its Articles of Association. ■ At the time of allotment, securities are made fully paid up. ■ The issue has been authorized by a Special Resolution of the members. ■ Explanatory statement to notice of General Meeting to be included. ■ The allotment of securities is required to be completed within a period of 12 months from the date of passing of the special resolution. ■ If the allotment of securities is not completed within 12 months from the date of passing of the special resolution, another special resolution shall be passed for the company to complete the allotment. ■ The price of the securities, either for cash or for consideration other than cash, shall be determined on the basis of valuation report of a registered valuer.

	■ For convertible securities, the price of the resultant shares shall be determined upfront on the basis of a valuation report of registered valuer or on the basis of valuation report at the time of conversion of a registered valuer. ■ Applying above provisions, Shyam Dairy Ltd., can issue shares to XYZ Ltd.
Que. 27	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. (CA May 2018)
Ans.	■ Company can pay underwriting commission if: • Its Articles of Association authorise it; and • Shares or debentures are offered to public at large. ■ Rate of commission cannot be more than 5% of price at which shares are offered. It should not be more than 2.5% of price at which debentures are issued. ■ Copy of underwriting agreement shall be attached with prospectus filed with Registrar. ■ Following details regarding underwriting commission shall be published in prospectus: • Name and address of underwriter • Rate of underwriting commission • Number of shares or debentures agreed under underwriting contract
Que. 28	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: (a) Is special resolution required to be passed? (b) What is the time limit for completion of buy-back? (c) What should be ratio of aggregate debts to the paid-up capital and free reserves after buyback? (CA May 2018)
Ans.	(a) A company can buy-back shares upto 10% of its paid up capital and free reserves by passing Board Resolution. Here, Xgen Ltd has paid up capital and free reserve of ? 50,00,000. Company can buy-back its 10% shares i.e., t 5,00,000 with Board Resolution. Company intend to buy-back shares of X 4,50,000 which is less than 10% of its paid up capital and free reserve. Special Resolution is not required. (b) Buy-back shall be completed within period of 12 months from date of passing resolution. (c) The post debt equity ratio of company is not more than twice the capital and its free reserve after such buy-back.
Que. 29	Can equity share with differential voting rights be issued? If yes, state the conditions under which such shares may be issued. (CA May 2018)
Ans.	As per Rule 4 of Companies (Share Capital and Debentures) Rules, 2014, shares with Differential Voting Rights can be issued subject to following conditions: ■ Articles of company shall authorize issue of such shares.

	■ Company should pass Ordinary Resolution at General Meeting. In case of company having more than 200 members, this resolution shall be passed by postal ballot. Explanatory statement to notice shall contain specified details. ■ Company should have consistent track record of distributable profits for last 3 years. ■ Company has not defaulted in filing of financial statements and annual accounts for last 3 financial years. ■ Company has not failed to repay deposit or interest thereon. ■ Company has not defaulted in investors' grievances procedure. ■ Company has not defaulted in payment of dividend, preference dividend, loan to bank and PFI, statutory dues to employees or credit to IEPF. ■ Company has not been penalized by Court or Tribunal during last 3 years under RBI Act, SEBI Act, SCRA, FEMA or any other special Act under which company is being regulated. ■ Proportion of shares with differential voting rights shall not exceed 26% of total share capital issued.

6: Membership, Transfer & Transmission

<table>
<tr><td>Que. 1</td><td>A company refuses to register transfer of shares made by Mr. X to Mr. Y. The company does not even send a notice of refusal to Mr. X or Mr. Y respectively within the prescribed period. Has the aggrieved party any right(s) against the company for such refusal? Advise as per the provisions of the Companies Act, 2013.
(CA May 2002, November 2015)
Or
Harsh purchased 1000 shares of Singhania Ltd. from Pratik and sent those shares to the company for transfer in his name. The company neither transferred the shares nor sent any notice of refusal of transfer to any party within the period stipulated in the Companies Act, 2013. What is the time frame in which the company is supposed to reply to transferee? Does Harsh, the transferee have any remedies against the company for not sending any intimation in relation to transfer of shares to him?
(CA May 2018)</td></tr>
<tr><td>Ans.</td><td>■ Every company is required to register transfer or transmission of security and deliver certificate within 1 month.
■ Company is required to give notice of refusal with reason to the transferor and the transferee within period of 30 days from day of receipt of transfer deed.
■ In the given case, company has not send notice of refusal to Mr. Y.
■ Mr. Y is entitled to file an appeal to the Tribunal against the refusal of the company to transfer shares.
■ The Tribunal may direct company to register the transfer of shares.</td></tr>
<tr><td>Que. 2</td><td>Describe the ways to become a member of company.
(CA November 2002)</td></tr>
<tr><td>Ans.</td><td>Person can become member by any one of the following methods:
■ By subscribing to MOA - The subscribers to Memorandum are deemed to have agreed to become members.
■ By agreement in writing - Every other person who has agreed in writing to become a member of the company, and whose name is entered into the register of members of the company become members. Here, person apply for shares and allotment is made by company.
■ By transfer of shares - A person can become a member by acquiring shares from an existing member and by having the transfer of shares registered in the books of the company, i.e. by getting his name entered in the register of members of the company.
■ By transmission of shares - On death of member his legal representative or nominee can apply for transmission of shares in his name. Legal representative or nominee becomes member of company when shares are transmitted and registered in his name.
■ By estoppel - A person is deemed to be a member of a company, if he allows his name, without sufficient cause, to be on the register of members of the company or otherwise holds himself out or allows himself to be held out as a member.
■ By surrender of warrant - On surrender of share warrant, name of person is entered into register of members arid he is considered as member of company.
■ On conversion of debenture into equity - When the fully convertible or partly convertible debenture is converted into equity and name of person is entered into Register of members, he becomes member of company.</td></tr>
</table>

	■ By holding shares in demat - Person who holds equity share capital of company and whose name is entered as beneficial owner in the records of depository, shall be deemed to be a member of the company.
Que. 3	A company issued 20 partly equity shares and registered then in the name of minor describing him as minor. The father of minor signed the application on the minor's behalf. After some time company went into liquidation. The company filed a suit against father of the minor to recover the remaining amount on the shares. Whether the company will succeed? Advice. (CA November 2002)
Ans.	■ Minor can be member through guardian. ■ A guardian can enter into contract on behalf of minor for minor's benefit. ■ Such contract is valid, if it is for benefit of a minor. ■ He can 'apply in writing' on behalf of minor. ■ Hence, shares can be registered in name of minor indicating the name of guardian representing the minor. ■ Such contract will not be personally binding on minor, but minor's property may be held liable. ■ Applying above provision, it can be suggested that company will not succeed.
Que. 4	Examine the provisions of the Companies Act, 2013 regarding 'nomination' in case of transmission of shares. (CA November 2003) Or How nomination facility shall operate in case of transmission of shares under the provisions of the Companies Act, 2013? (CA November 2007)
Ans.	■ On death of member, shares are transmitted in favour of legal heir. But where nominee is appointed, shares are transmitted in favour of nominee and not in favour of legal heir. ■ On death of member, nominee can either become member or directly transfer shares: • If he wants to transfer shares, he is required to sign transfer deed and attach death certificate of deceased member to company. • If he wants to become member of company, he is required to make an application along with death certificate of deceased member to company. Application shall state that nominee has elected to become member of company.
Que. 5	Honest Cycles Ltd. has received an application for transfer of 1,000 equity shares of ? 10 each fully paid up in favour of Mr. Balak. On scrutiny of the application form it was found that the applicant is minor. Advise the company regarding the contractual liability of minor and whether shares can be allotted to the Balak by way of transfer. (CA November 2004) Or Examine the position of a minor in relation to obtaining membership in a company under the provisions of the Companies Act, 2013.

	(CA November 2011)
Ans.	■ Minor is incapable to enter into contract and therefore he cannot become member of company. ■ If allotment is made to minor wrongly, company can repudiate or cancel the allotment, but must repay all moneys received from such minor. ■ Minor can be member through guardian. A guardian can enter into contract on behalf of minor for minor's benefit. Such contract is valid, if it is for benefit of a minor. He can 'apply in writing' on behalf of minor. Hence, shares can be registered in name of minor indicating the name of guardian representing the minor. Such contract will not be personally binding on minor, but minor's property may be held liable. ■ Fully paid up shares can be transferred to minor. In case of transfer of partly paid up shares to minor, transferor is liable to pay future call even if he is ignorant about minority. If the company knows of his minority, it may refuse to register shares in name of minor unless transfer was made through the guardian.
	■ Applying above provisions, membership can be given to minor (i.e. Mr. Balak) in this case as shares are fully paid up provided that his guardian has entered into contract on his behalf.
Que. 6	'Every shareholder of a company is also known as a member, while every member may not be known as a shareholder.' Examine the validity of the statement and point out the distinction between a 'member' and a 'shareholder'. (CA November 2005) Or Every shareholder is a member, but every member may not be a shareholder of the Company. Explain. (CA November 2006) Or In what ways a 'member' of a company is different from that of a 'shareholder' of the company? (CA May 2012)

Ans.

Matter	Member	Shareholder
Meaning	A person whose name is entered in the Register of members of a company, is the registered member of the company.	The person who owns the shares of a company is known as shareholder.
Definition	Companies Act, 2013 defines 'Member' under Section 2(55).	Shareholder is not defined under the Companies Act, 2013.
Holder of Share Warrant	The holder of share warrant is not a member.	The holder of share warrant is a shareholder.

Company	Every company must have a minimum number of members.	The company limited by shares can have shareholders.
Memorandum	The person who signs the Memorandum of Association with the company becomes a member.	After signing the Memorandum, a person can be a shareholder only when the shares are allotted to him.

Que. 7

Explain the meaning of 'transmission of shares' under the Companies Act, 2013. In what ways is 'transmission of shares' different from 'transfer of shares'?

(CA November 2006)

Or

What do you mean by Transmission of Shares? Differentiate between Transfer of Shares and Transmission of Shares

(CA November 2008)

Ans.

Basis for Comparison	Transfer of securities	Transmission of securities
Meaning	Transfer of securities refers to the transfer of title to securities, voluntarily, by one party to another.	Transmission of securities means the transfer of title to securities by the operation of law.
Affected by	It is affected by act of parties.	It is affected due to insolvency, death, inheritance or lunacy of the member.
Initiated by	Transferor and transferee	Legal heir or receiver
Consideration	Adequate consideration must be there.	No consideration is paid.
Execution of valid transfer deed	Yes	No
Liability	Liabilities of transferor cease on the completion of transfer.	Original liability of shares continues to exist.
Stamp duty	Payable on the market value of shares.	No need to pay.

Que. 8

X, a registered shareholder of Y limited left his share certificates with his broker A. A forged the transfer deed in favour of Z. Accompanied by these share certificates Z lodged the transfer deed along with the share certificates with the company for registration. The Company Secretary who had certain doubts, wrote to X informing him of the proposed transfer and in the absence of a reply from him (Mr. X) within the stipulated time, registered the transfer of shares in the name of Z. Subsequently, Z sold the shares to J and J's name was placed in the register of shareholders. Later on, X discovered that forgery has taken place. Referring to the provisions of the Companies Act, 2013 state the remedy available to X and Z in the given case. Explain.

(CA May 2007)

Or

	Mr. Y, the transferor acquired 250 equity shares of BRS Limited from Mr. X, the transferor. But the signature of Mr. X, the transferor, on the transfer deed was forged. Mr. Y after getting the shares registered by the company in his name, sold 150 equity shares to Mr. Z on the basis of the share certificate issued by BRS Limited. Mr. Y and Mr. Z against the company with reference to the aforesaid shares. (CA May 2009) Or V the transferee, acquired 300 equity shares of ABC Limited from S, the transferor. But the signature of S the transferor, on the transfer deed was forged. V after getting the shares registered by the company in his name and subsequently sold 250 shares to X on the basis of the share certificate issued by ABC Ltd. V and X were not aware of the forgery. Explain the rights of S, V and X against the company with reference to the aforesaid equity shares under the provisions of Companies Act, 2013. (CA November 2016)
Ans.	■ A forged transfer is legally ineffective and confers no title on the transferee of shares. ■ Forged transfer is void ab-initio transfer and therefore, original owner will continue to be owner of shares. His rights are not affected in any way. ■ Transferee does not become owner of shares and therefore he has no right. A forged transfer is legally ineffective and confers no title on the transferee of shares. ■ Forged transfer is void ab-initio transfer and therefore, original owner will continue to be owner of shares. His rights are not affected in any way. ■ Transferee does not become owner of shares and therefore he has no right. ■ If a company registers a forged transfer, the original owner of the shares can compel the company to restore his name on the Register of members and he is entitled to dividends, if declared, by company. ■ If the company has suffered loss by forged transfer, it can no doubt claim an indemnity from the person presenting the instrument of transfer for registration even though he is quite innocent of the forgery. Rights of X ■ He can compel the company to restore his name on the Register of members (since a forged transfer is without any legal effect and the true owner continues to be the member of the company). Liabilities of Z ■ Z is liable to compensate the loss caused to the company since he had lodged the forged transfer deed, even though he was not aware of the forgery. Rights of J ■ The company can refuse to register J as a member. ■ The company is liable to J since the company had issued share certificate to Z, and therefore, the company shall be stopped from denying the liability accruing to it from its own default.
Que. 9	X, a minor purchased 500 equity shares of ? 10 each of a company on which ? 5 per share were paid from the Mumbai stock exchange and submitted an application to the company for transfer of these shares in his name. Decide whether these shares can be transferred to X? (CA June 2009)
Ans.	■ In case of transfer of partly paid up shares to minor, transferor is liable to pay future call even if he is ignorant about minority.

	■ If the company knows of his minority, it may refuse to register shares in name of minor unless transfer was made through the guardian. ■ Applying above provisions, it can be suggested that company should not transfer partly paid up shares to X, a minor because minor is not liable to pay unpaid calls. ■ When under any contract minor becomes liable to perform anything, such contract is not valid and binding to minor.
Que. 10	A holder of share-warrant of a company is not a member of the company.' Comment. (CAMay 2012) Or State whether the following statement is correct or incorrect. - A bearer of a share warrant of a company is not a member of the company unless the Articles of Association so provide. (CA November 2017)
Ans.	■ Statement is correct. ■ Section 2(55) of Companies Act, 2013 states that 'Member', in relation to a company means: • Subscriber to Memorandum who has agreed to become member of company and on its registration, his name is entered into Register of members. • Every person who has agreed in writing to become member and whose name is entered into Register of members. • Every person holding shares of company and whose name is entered as beneficial owner in record of depository. ■ When shares are converted into share warrant, name of person is removed from Register of Members. ■ Holder of share warrant of company is not a member of company but he is shareholder.
Que. 11	State whether the following statement is correct or incorrect. - An insolvent may be a member of the company. (CA November 2017)
Ans.	■ When member is declared as insolvent and his shares are transmitted in name of official receiver, he ceases to be member of company. ■ Insolvent member continues as member till his name is removed from Register of Members. ■ On appointment of liquidator or official assignee, he lost all beneficial interest in the shares.
Que. 12	State whether the following statement is correct or incorrect. - A partnership firm may hold shares in a company by holding shares in the individual names of the partners as joint holders. (CA November 2017)
Ans.	■ Statement is incorrect. ■ Partnership firm is not legal person and therefore it cannot be a member of company. ■ However, partner in his individual capacity can hold shares.

Que. 13	M/s. Techno Ltd. maintains its Register of Members at its registered office in Mumbai. A group of members residing in Kolkata wants 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? (CA May 2018)
Ans.	(i) Register of Members is kept at registered office of company. It can be kept at other place where at least 1096 of members are residing, if approved by Special Resolution. - Section 88. Accordingly, if company comply it, Register of Members can be kept at Kolkata. (ii) Register of Members shall be kept open for inspection at least 2 hours during business hours as decided by Board. It can be inspected by any member, debenture-holder, other security-holder or beneficial owner without payment of fee and by any other person on payment of fee as per Articles of Association. Hence, Mr. Ranjit has right to inspect Register of Members even if he is not shareholder.

7: Debentures

Que. 1 Whether the following can be appointed as 'Debenture Trustee':

I. A shareholder who has no beneficial interest II. A creditor whom the company owes ? 499 only

III. A person who has given a guarantee for repayment of amount of debenture issued by the company (CA November, 2003)

Ans.

■ A person cannot be appointed as a debenture trustee:

• If he beneficially holds shares in the company.

• If he is a promoter, director or KMP or any other officer or an employee of the company or its holding, subsidiary or associate company.

• If he is beneficially entitled to money which is to be paid by the company otherwise than remuneration paid to the debenture trustees.

• Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company.

• If he has given guarantee in respect of repayment of debentures.

• If he has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or ? 50 lacs, whichever is lower, during the two immediately preceding financial years or during the current financial year.

• If he is relative of any promoter or any person who is in the employment of the company as a director or KMP.

■ Accordingly it can be suggested that:

I. Yes. Person who has no beneficial interest can be appointed as debenture trustee.

II. No. As he is indebted to company.

III. No. As he has given guarantee for repayment of debenture.

Que. 2 Explain briefly the distinction between shares and debentures and state whether a company can issue debentures with voting rights.

(CA November 2004)

Or

Issue of debenture with voting rights is not permissible examine.

(CA May 2012)

Or

Debentures with voting rights can be issued only, if permitted by the Articles of Association.

(CA May 2015, November 2016)

Ans.

Debenture	Share
Debenture constitutes a loan.	Shares are part of the capital of a company.
Debenture holders are creditors.	Shareholders are owners of the company.
Debenture holders do not have any voting right.	Shareholders enjoy voting right.
Interest on debenture is payable even if there are no profits i.e. even out of capital.	Dividend can be paid to shareholders only out of the profits of the company and not otherwise.

	Debenture	Share
	Debenture holders get fixed Interest, which carries priority over dividend.	No fixed rate is decided for dividend to share-holders except in case of preference shares. Dividend depends upon the profitability of the company and BOD decisions to declare dividend.
	Interest paid on debenture is a business expenditure and allowable deduction from profits.	Dividend is not allowable deduction as business expenditure.
	Generally have a charge on the assets of the company.	Shares do not carry any such charge.
Que. 3	Board of Directors of PQR Limited wants to create a 'Debenture Redemption Reserve (DRR)' for the redemption of debentures issued by the company under the provisions of the Companies Act, 2013. Explain the provisions of the Companies (Share Capital and Debenture) Rules, 2014 in this regard. (CA May 2015)	
Ans.	What is DRR? ■ A provision created out of profits of the company to protect investors against the possibility of default by the company. Provisions Applicable ■ Section 71(4) of the Companies Act, 2013 ■ Rule 18(7) of Companies (Share Capital and Debentures) Rules, 2014 Creation of DRR - Section 71(4) ■ A company issuing redeemable debentures must create a Debenture Redemption Reserve (DRR) for redemption of such debentures. Provisions ■ DRR shall be created out of the profits of the company available for payment of dividend. ■ The company shall create DRR equivalent to at least 50% of the amount raised through the debenture issue before debenture redemption commences. ■ Adequate amounts should be transferred to DRR out of profits of the company every year until such debentures are redeemed. ■ DRR should be adequate to pay value of debentures and accrued interest, if not already paid. ■ The amounts transferred to DRR cannot be used for any other purpose. ■ Since DRR is to be created out of profits, there is no obligation to create DRR, if there is no profit. Amount of DRR ■ No DRR is required for debentures issued by All India Financial Institutions regulated by RBI and banking companies, as they have to transfer 20% of profits to Reserve fund as per RBI norms. ■ Other Financial Institutions shall create DRR in same way like NBFC.	

	■ NBFC registered with RBI and National Housing Financing Companies registered with National Housing Board should create DRR of 25% of value of debentures issued through public as per RBI guidelines. ■ No DRR is required for privately placed debentures. ■ For manufacturing and infrastructure companies, 'adequacy' of DRR will be 25% of value of debentures issued through public issue and 25% for privately placed debentures by listed company. ■ For unlisted companies issuing debenture on private placement basis, the DRR will be 25% of the value of outstanding debentures.
	For convertible debentures ■ In case of convertible debentures, DRR provisions apply to non-convertible portion of debentures. ■ Thus, if debentures are fully convertible, question of creating DRR should not arise, as really no redemption is involved. Time for Creating DRR ■ Every company required to create DRR should on or before 30th April of each year invest or deposit sum not less than 15% of amount of its maturing debentures during year in following: • Deposit in schedule bank, free from any lien or charge • Unencumbered government securities or securities specified under Trust Act. Use of DRR ■ The amounts transferred to DRR cannot be used for any other purpose. ■ It should be used for redemption.
Que. 4	What are the provisions of the Companies Act, 2013, relating to the appointment of 'Debenture Trustee'? (CA November 2016)
Ans.	Name stated ■ The names of the debenture trustees shall be stated in: • Letter of offer inviting subscription for debentures; and • All the subsequent notices or other communications sent to the debenture holders Consent ■ Before the appointment of debenture trustee(s), • a written consent shall be obtained from such debenture trustee(s) proposed to be appointed; and • a statement to that effect shall appear in the letter of offer issued for inviting the subscription of the debentures Who can be appointed ■ Company cannot issue prospectus or invite public or members more than 500 without appointing debenture trustee. ■ Debenture trustee is appointed by executing debenture trust deed. ■ A person cannot be appointed as a trustee: • If he is beneficially holds shares in the company. • If he is a promoter, director or KMP or any oth er of hcer or an employee of the company or its holding, subsidiary or associate company.

	• If he is beneficially entitled to money which is to be paid by the company otherwise than remuneration paid to the debenture trustees. • Is indebted to the company, or its subsidiary or its holding or associate company or a subsidiary of such holding company. • If he has given guarantee in respect of repayment of debentures. • If he has any pecuniary relationship with the company amounting to 2% or more of its gross turnover or total income or t 50 lacs, whichever is lower, during the two immediately preceding financial years or during the current financial year. • If he is relative of any promoter or any person who is in the employment of the company as a director or KMP.
Que. 5	What do you mean by 'Pari Passu' clause in a debenture? State the particulars that are required to be filed with the Registrar of Companies in case such debentures are secured by way of a charge on certain movable assets of the company. (CA November 2017)
Ans.	Pari passu ■ 'Pari passu' means equal, equally treated, at the same rate, or at par with. ■ Debentures are usually issued in a series with a pari passu clause. ■ In the case of debentures with pari passu clause, security amount realised shall be divided pro-rata (Le. proportionate amount) in the event of insufficient fund. Particulars to be filed ■ Whenever charge is created on movable property of company in favour of debenture holders (i.e., debenture trustee), it shall be registered by company with Registrar within period of 30 days from date of its creation. ■ It shall be registered in Form CHG-9. ■ Above form should be signed by company and charge holder. ■ Certified true copy of resolution authorising issue of debentures and instrument creating charge shall be attached to form. ■ Following details are required to be given: • Date of issue of debentures • Type of debentures • Particulars of Company and charge holder • Particulars of security • Date on creation of charge • Amount secured by charge
Que. 6	State whether the following statement is correct or incorrect. - Debenture with voting rights can be issued only if permitted by the Articles of Association. (CA November 2017)
Ans.	■ Statement is incorrect. ■ Company cannot issue debenture with voting right in spite of fact that its Articles of Association permit it to do so.

8: Acceptance of Deposits by Companies

Que. 1	AtuI Ltd. has passed a resolution in its General Meeting regarding accepting deposits from its members. Can this company accept deposits from its members under the Companies Act, 2013? If yes, state the conditions to be fulfilled regarding this. (CA May 2016)
Ans.	■ Public company can accept deposits from members after passing Special Resolution at General Meeting and subject to rules prescribed by Central Government. ■ As per section 73(2) of Companies Act, 2013, following are conditions for Acceptance of Deposits from members: Circular ■ The company shall issue a circular to the members inviting deposits from them. ■ Circular is hied with ROC before 30 days from date of issue to members. Deposit Repayment Reserve Account ■ The company shall deposit in a Schedule Bank in a separate bank account a sum equal to 20% of the amount of deposits maturing during the following financial year ■ Such account is called as 'Deposit repayment reserve account'. ■ Amount shall be deposited on or before 30th April. ■ Amount deposited in Deposit repayment reserve account shall not be utilised for any other purpose except for repayment of deposits. ■ At any time, balance in deposit repayment reserve shall not fall below 20% of amount of deposit maturing during the financial year. Certificate of no default ■ The company shall certify that it has not defaulted in repayment of any deposits or interest thereon. ■ Where a default had occurred, certificate shall state that the company had made good default and period of five years had lapsed since the date of making good the default. Security on deposits ■ The company may provide security for repayment of deposits and interest payable thereon. For this purpose, company can create charge on its assets. ■ Security is created in favour of trustees. ■ Trustees should ensure about security of deposits. ■ In case of unsecured deposit, every circular, advertisement or document through which deposits are accepted shall state 'unsecured deposits'. Repayment of deposits ■ Company should repay deposits and interest thereon as per terms and conditions of deposits. Maximum amount & tenure ■ Company can accept deposits for period not less than 6 months and not more than 36 months.
	■ The amount of outstanding deposits together with the amount of deposits proposed to be accepted shall not exceed 25% of paid up capital, free reserves and securities premium accountant. ■ However, company can accept deposits for period less than 6 months upto 10% of its paid up capital, free reserve and securities premium account but in any case it should not be less than 3 months.

	■ Company cannot accept deposits repayable on demand.
Que. 2	ABC 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 ABC Ltd. for accepting deposits and the procedures to be followed by ABC Ltd. for accepting deposits from public other than its members. (CA November 2017)
Ans.	■ Only eligible company can accept deposits from public. ■ Eligible company means public company, which has net worth of not less than ? 100 Crore or a turnover of not less than ? 500 Crore. ■ In the given case, ABC Ltd. having networth of ? 80 Crore and turnover of ? 30 Crores. ■ It cannot accept deposits from public. Conditions for Acceptance of Deposits from Public ■ For accepting deposits from public, company shall comply with provisions of section 73(2). As per section 73(2), company should comply with following: • A company shall pass resolution at General Meeting • The company shall issue a circular to the members inviting deposits from them • Circular is filed with ROC before 30 days from date of issue to members • The company shall deposit in a Schedule Bank in a separate bank account a sum equal to 20% of the amount of deposits maturing during the following financial year. Such account is called as 'Deposit repayment reserve account' • The company may provide security for repayment of deposits and interest payable thereon. For this purpose, company can create charge on its assets. Security is created in favour of trustees • Company should repay deposits and interest thereon as per terms and conditions of deposits ■ The company shall obtain rating with respect to its deposits. ■ Rating shall be obtained from recognised rating agency. ■ The rating shall be obtained every year during the tenure of deposits. ■ The rating shall be sent to the ROC along with the return of deposits. Conditions for Acceptance of Deposits from Members as per Rule - Rule 3 of Companies (Acceptance of Deposits) Rules, 2014 ■ Company can accept deposits for period not less than 6 months and not more than 36 months. ■ Eligible Non-government Company shall not accept deposits in excess of: • 25% of paid up capital, free reserve and securities premium account from public. • 10% of paid up capital, free reserve and securities premium account from members. ■ Government Company cannot accept deposits in excess of 35% of its paid up capital, free reserve and securities premium account.
Que. 3	Explain provisions for 'Appointment of Trustee for Depositors' under the Companies Act, 2013. (CAMay 2018)

Ans.	Appointment ■ Written consent of trustee should be obtained before appointment. ■ Company should execute trust deed 7 days before issue of circular in Form DPT-2. ■ Statement that consent of deposit trustee is obtained shall be inserted in circular. Who can be Appointed as Trustee? ■ Following person cannot be appointed as trustee: • Director, KMP, employee of company, its holding company, its subsidiary company or its associate company • Who is indebted to company • Who is depositor • Who has pecuniary relationship with company • Who has provided guarantee.

9: Registration of Charges

Que. 1	What is the concept of 'Charge[1] under the provisions of the composition of the Companies Act, 2013? Point out the circumstances under which a floating charge becomes a fixed charge. (CA May 2004) Or What do you understand by the term 'Floating Charge'? State the circumstances under which 'Floating Charge' becomes 'Fixed Charge'? (CA May 2012)
Ans.	Floating charge ■ Floating charge does not attach to any definite property but covers the property of a circulating and fluctuating nature such as stock-in-trade, debtors, etc. ■ It attaches to the property charged in the varying conditions which happen from time to time. ■ Such a charge remains dormant until the person in whose favour charge is created takes steps to crystallise the floating charge. Circumstances ■ A floating charge crystallises or becomes fixed in following situations: • Where the company ceases to carry on the business, whether the principal money has become payable or not, unless the debenture or trust deed contains the stipulation to the contrary. • On commencement of winding up of the company. • If a debenture holder, having become entitled to realise the securities by reason of the fact that principal money has become payable, intervenes for the purpose by appointing receiver or by making an application to the Court for appointment of receiver. • On happening of event specified in the deed.
Que. 2	XYZ Limited realized on 3rd November, 2005 that particulars of charge created in 11th September, 2005 in favour of a bank was not filed with Register of Companies for Registration. What procedure should the company follow to get the registered with Register of Companies? Would the procedure be different if the charge was created on 11th August, 2005 instead of 11th September, 2005? Explain with reference to the relevant provisions of the Companies Act, 2013. (CA November 2005) Or MNC Limited realised on 2nd May, 2016 that particulars of charge created on 12th March, 2016 in favour of a Bank were not filed with Registrar of Companies for Registration. What procedure should the company follow to get the charge registered with the Registrar of Companies? Would the procedure be different if the charge was created on 12th February, 2016 instead of 12th March, 2016? Explain with reference to the relevant provisions of the Companies Act, 2013. (CA November 2016)
Ans.	❖ It is duty of company to file documents and register charges with Registrar within period of 30 days from date of its creation.

■ If company could not register it within 30 days, Registrar may allow to register charge within period of 300 days from its creation on payment of additional fees and on showing sufficient reason.

■ In the given case, charge was not filed within 30 days. Company shall apply to Registrar and seek for extension with sufficient reason.

■ After permission from Registrar, charge can be registered within 300 days from date of its creation.

■ Accordingly, situation will not be changed if the charge was created on 11th August, 2005. (For alternative question answer is 12th February 2016)

Que. 3 What do you understand by 'Charge' under the Companies Act, 2013? Distinguish between 'Fixed Charge' and 'Floating Charge'.

(CA May 2006)

Ans.

■ Charge is an interest or right which a lender or creditor obtains in the property of the company by way of security that the company will pay back the debt.

■ Section 2(16) of Companies Act, 2013 defined charge as interest or lien created on property or assets of company or its undertaking. It also includes mortgage.

Fixed Charge	Floating Charge
It is against a specific clearly identifiable and defined property.	It is available only to companies as borrower.
Property under fixed charge is identified at the time of creation of charge.	Does not attach to any definite property but covers the property of a circulating and fluctuating nature such as stock-in-trade, debtors, etc.
Nature and identity of the property does not change during the existence of the charge.	Nature and identity of the property changes based on varying conditions from time to time.
No crystallisation is possible of fixed charge.	On crystallisation, floating charge becomes the fixed charge.

Que. 4 While sanctioning working capital limit, the rate of interest has been fixed at a specified percentage above the bank rate as notified by RBI. There was a change in the interest rate due to RBI notification issued later. The bank insisted on filling a return of modification of charges. Is the stand of the bank correct? Discuss with reasons?

(CA November 2007, 2009)

Ans.

■ Charge stands modified when there is change in terms and conditions of charge.

■ If there are changes in terms and conditions or extent of operation of charge already registered, the modification should be filed with ROC in prescribed form along with certified copy of instrument modifying the charge in 30 days.

■ Where under the relevant mortgage deed or agreement the term as to the rate of interest on a charge has been fixed at a specified percentage above the bank rate as notified by the RBI, a change in the rate of interest payable on the charge arising out of variation of the bank rate would not amount to a change in the term of the charge.

■ Hence, in such a case, there is no requirement to file modification of charge.

Que. 5	If a registrable charge is not registered, the debt is not recoverable. Comment. (CA May 2013)
Ans.	■ Statement is incorrect. ■ A charge which is compulsorily required to be registered but which is not registered is void. ■ This does not mean that the creditors cannot recover their dues. It merely means that the benefit of the charged security will not be available to them. ■ Although the security becomes void by non-registration, it does-not affect the contract or obligation of the company to repay the money thereby secured. ■ Debt can be recovered as unsecured debt.
Que. 6	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. (CA November 2014)
Ans.	Definition of Charge ■ Section 2(16) of Companies Act, 2013 defined charge as interest or lien created on property or assets of company or its undertaking. It also includes mortgage. ■ All charges created by company on its property or assets of company shall be registered with Registrar of Companies. Punishment - Section 86 ■ Omission to register particulars of charge is punishable with fine. ■ A company shall be liable to fine from X 1 lakh to X 10 lakhs. ■ Defaulting officer of company is punishable for: • Imprisonment upto 6 months; or • Fine which is not less than X 25,000 and not more than Rs 1 Lakh; or • Both
Que. 7	Explain the term 'charge'. State the circumstances under which necessity to charge arise. What is the time limit for registration of charge with the Registrar? (CA May 2018)
Ans.	■ Refer answer to previous question to understand term 'charge'. Section 77 states that it is the duty of every company to register the charges created: • on its property or assets or any of its undertaking, • whether tangible or intangible or otherwise, • created within or outside India ■ Registration shall be done within 30 days.

Que. 7	In what way does the Companies Act, 2013 regulate the holding of an Annual General Meeting by a Public limited Company? Explain (CA November 2002) Or Explain the provisions of the Companies Act, 2013 relating to holding of Annual General Meeting of the Company? (CA November 2003)
Ans	Holding of first AGM ■ First Annual General Meeting should be held within 9 months from the end of the first financial year. ■ Therefore, it shall not be necessary for the company to hold any Annual General Meeting in the year of its incorporation. Holding of subsequent AGM ■ Every company shall hold Annual General Meeting once in calendar year. (i.e. from 1st January to 31st December) ■ Annual General Meeting shall be held within 6 months from the end of financial year. ■ Time gap between two Annual General Meetings shall not be more than 15 months. ■ All of the above limits are complied with. It means, company should hold Annual General Meeting at the earliest of the above three time limits. Time for holding AGM ■ The Annual General Meeting must be held during business hours. ■ Business hours means - 9 a.m. to 6 p.m. ■ The Annual General Meeting has to be called before 6 p.m. However, once meeting commences, it can continue even after 6 p.m. ■ A company may, by appropriate provisions in its articles, fix the time for its Annual General Meeting and may also by a resolution passed in one Annual General Meeting fix the time for its subsequent Annual General Meetings. Day for Holding AGM ■ Annual General Meeting cannot be held on National holiday. 15th August and 26th January are national holidays. Sunday is public holiday. ■ National holiday is declared by Central Government. ■ If any day is declared by the Central government to be a national holiday after the issue of the notice convening such meeting, such a day will be treated as a working day. Place for Holding AGM ■ Annual General Meeting shall be held at the registered office of the company or at some other place within the city, town or village in which the registered office of the company is situated. ■ However, AGM of unlisted company can be held at any place in India, if consent is given in writing or by electronic means by all members in advance. ■ The Central Government may, however, exempt any class of companies from the above provisions.
	■ Meeting of Government Company can be held at any place approved by Central Government. (MCA notification dated 5-6-2015 under section 462)

Que. 2	Explain the provisions of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the General Meeting of members of a company through postal ballot. (CA November 2003) Or State the procedure for passing a resolution by postal ballot. (CA May 2005) Or SV Technologies Limited is proposing to convene a General Meeting of its members. Explain briefly the provision of the Companies Act, 2013 relating to the procedure to be followed for transacting business of the General Meeting through 'postal ballot'. (CA November 2016)
Ans.	As per Rule 22 of Companies (Management and Administration) Rules, 2014, following procedure shall be complied with to conduct voting through postal ballot: Appointment of Scrutinizer ■ The Board shall appoint one scrutinizer, who is not in employment of company. ■ Scrutinizer shall be willing to be appointed for postal ballot process. Notice to Members ■ Pass necessary Board resolution for postal ballot. The Board should also fix record date and time schedule for various activities and finalise calendar of events. ■ Company shall send a notice to all the shareholders, along with a draft resolution explaining the reasons therefor and requesting them to send their asset or dissent on postal ballot, within period of 30 days from the date of dispatch of notice. ■ Notice is also posted on website of company. ■ Notice can be send either: ■ By Registered post or speed post; or ■ Through electronic means like registered email; or ■ Through courier service. Advertisement in News paper ■ An advertisement shall be published about dispatch of postal ballot in: ■ A vernacular newspaper in the principal vernacular language of the district in which registered office of company is situated; and ■ English newspaper Safe custody of postal ballot ■ Postal ballot received back from the shareholders shall be kept in the safe custody of the scrutinizer. ■ Postal ballot and other relating papers shall be under safe custody of the scrutinizer till Chairman sign minutes. ■ Scrutinizer shall maintain register to record asset or dissent received and other details. ■ Ballot papers received after 30 days are ignored. ■ Ballot papers without signature of member or mismatch signature are ignored. Report of Scrutinizer ■ The scrutinizer shall submit his report as soon as possible but not later than 7 days. Declaration of result ■ The result of postal ballot along with scrutinizer's report shall be placed on website of company. ■ The resolution through postal ballot shall be deemed to be passed on the date of General Meeting.

Que. 3	M/s Low Esteem Infotech Ltd. was incorporated on 1.4.2014. No General Meeting of the company has been held so far. Explain the provisions of the Companies Act, 2013 regarding the time limit for holding the first Annual General Meeting of the Company and the power of the Registrar to grant extension of time for the First Annual General Meeting. (CA November 2004)
Ans.	■ First Annual General Meeting should be held within 9 months from the end of the first financial year. ■ Therefore, it shall not be necessary for the company to hold any Annual General Meeting in the year of its incorporation. ■ Low Esteem Infotech Ltd. shall convey its first AGM within 9 months from the end of the first financial year. (i.e. on or before 31-12-2015) ■ ROC cannot grant extension for first AGM.
Que. 4	State the provisions of the Companies Act regarding calling and holding an Extraordinary General Meeting with respect to: (I) Number of members entitled to requisition a meeting. (II) Power of the Tribunal to order meeting to be called under section 98. (CA May 2005)
Ans.	(i) ■ As per section 100(2) of Companies Act, 2013, Board of directors of a company must call an EGM if request is made to call EGM by the following number of members: • holding not less than 1/10th of paid up capital on the date of receipt of requisition in the case of company having share capital; or • Holding 1 / 10th of the total voting rights on the date of receipt of requisition in the case of company not having share capital. (ii) ■ Tribunal may order to call or conduct EGM, if it is impracticable to call a meeting. ■ Tribunal may order either on: • its own motion, or • the application of any director of the company, or • application of any member of the company, who would be entitled to vote at the meeting ■ Tribunal can order a meeting to be called and conducted as it thinks fit, and may also give such other ancillary and consequential directions. ■ A meeting so called and conducted shall be deemed to be a meeting of the company duly called and conducted.
Que. 5	The minutes of the meeting must contain fair and correct summary of the proceedings thereat. Can the Chairman direct exclusion of any matter from the minutes? Some of the shareholders insist on inclusion of certain matters which are regarded as defamatory of a director of the company. The Chairman declines to do so. State how the matter can be resolved. (CA May 2005) Or In a General Meeting of PQR Limited the Chairman directed to exclude certain matters detrimental to the interest of the company from the minutes. M, a shareholder contended that the minutes of the meeting must contain fair and correct summary of the proceedings under the provisions of the companies Act, 2013.

	(CA November 2010, May 2017)
Ans.	■ As per section 193 of Companies Act, 2013, Chairman can exclude following matters, which in his opinion: • Is defamatory to any person; or • Is Irrelevant or immaterial; or • Is detrimental to the interest of company.
	■ Accordingly, Chairman can exclude defamatory matter. ■ He has discretionary power to exclude any defamatory matter from minute of General Meeting.
Que. 6	State what is meant by 'Quorum' and when does quorum be considered immaterial under the provisions of the Companies Act, 2013. (CA May 2005)
Ans.	Meaning ■ Quorum refers to the minimum number of members who must be present at a meeting in order to constitute a valid meeting. Immaterial ■ In the following situations, quorum becomes immaterial: • If at the adjourned meeting, there is no quorum within half an hour from time appointed for the meeting, members present (not being less than two) shall be quorum. m When NCTL order meeting to be held by one person present.
Que. 7	State the procedure for inspection of minutes Book of General Meetings of a company by the members. (CA November 2005)
Ans.	■ Section 119 of Companies Act, 2013 contains provision for inspection of Minute Book of General Meeting. ■ Minute Book of General Meeting should be made available for inspection of any member at registered office of company, (not allowed to outsiders) ■ It should be available for inspection during business hours, subject to reasonable restriction as specified in Articles or in General Meeting. ■ Minute book must be available for inspection for at least 2 hours in a day. ■ Copy of minute book should be provided to any member within 7 days on payment of prescribed charge. ■ Directors are entitled to inspect minute book of all meetings. ■ Auditor or Cost Auditor or Secretarial Auditor may inspect minutes in course of audit or certification.
Que. 8	To remove Managing Director, 49% members of A Ltd. submitted a requisition for holding of an Extraordinary General Meeting. The company failed to call the said meeting and hence the requisitionists held meeting. Since Managing Director did not allow the holding of meeting at a registered office of the company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed. Examine validity of the said meeting and resolution passed therein in the light of the Companies Act, 2013. (CA May 2006, 2013) Or

	To remove the Managing Director, 40 % members of Tiger Farms Limited submitted requisition for holding an Extraordinary General Meeting. The company failed to call the said meeting and hence the requisitionists held the meeting. Since the Managing Director did not allow the holding of the meeting at the registered office of the company, the said meeting was held at some other place and a resolution for removal of the Managing Director was passed. Examine the validity of the said meeting and the resolution passed therein under the provisions of the Companies Act, 2013. (CA November 2017)
Ans.	■ The Board of directors of a company must call an EGM if requested is made by the following number of members: • Holding not less than 1/10th of paid up capital on the date of receipt of requisition in the case of company having share capital; or • Holding 1/10th of the total voting rights on the date of receipt of requisition in the case of company not having share capital. ■ Companies Act, 2013 does not prescribe any specific purpose for which EGM can be called by members.
	■ The requisition must state the objects of the meetings and must be signed by the requisitioning members. ■ The requisition in writing must be deposited at the company's registered office. ■ When the requisition is deposited at the registered office of the company, the directors should within 21 days, move to call a meeting and the meeting should be actually be held within 45 days from the date of the deposition of the requisition. ■ If the directors fail to call the EGM on the valid requisition as aforesaid, the requisitionists may themselves proceed to call meeting within 3 months and claim the necessary expenses from the company. ■ If registered office is not made available, meeting can be held at any other place. ■ In view of above discussion, it can be suggested that resolution passed at such meeting will be valid.
Que. 9	Explain the provisions of the Companies Act, 2013 relating to 'Resolutions requiring Special Notice.' State the resolutions that require 'Special Notice' under the Act. (CA November 2006, May 2016, 2017)
Ans.	Provisions - Section 115 ■ Certain resolutions require that special notice is given to move such resolutions. ■ The notice of the intention to move such resolution shall be given to the company by member(s) ■ Holding not less 1% of total voting power; or ■ Holding shares on which an aggregate sum of not less than t 5 lacs has been paid up. ■ Notice can be given by member to company not earlier than 3 months but at least 14 days before date of the meeting at which resolution is to be moved, excluding date of notice and date of meeting. ■ On receipt of notice, company is required to give notice to its members at least 7 days in advance. ■ If giving notice is not practical, it shall be published in one English and one vernacular newspaper. ■ The notice is posted on website of company, if any. Resolution requiring special notice ■ As per Companies Act, 2013, special notice is required for:

	• Resolution to remove director before expiry of his period. • Resolution to appoint another person as director in place of removed director. • Resolution to appoint a person as auditor other than retiring auditor. • Resolution expressly providing that the retiring auditor shall not be appointed.
Que. 10	Who are entitled to get notice for the General Meeting called by a public limited Company registered under the Companies Act, 2013? Does the non-receipt of the notice of the meeting by any one entitled to such notice invalidate the meeting and the resolution passed there in? What would be your answer in case the omission to give notice to a member is only accidental omission? (CA November 2006) Or Who are the persons entitled to receive notice of a General Meeting of a company registered under the Companies Act, 2013? Shall the non-receipt of notice of the General Meeting by any member invalidate the proceedings of the meeting? Explain. (CA May 2007)
Ans.	Person entitled to receive notice - Section 101(3) ■ Notice of General Meeting should be given to: a All members as per address available in Register of Members (Members include equity shareholders as well as preference shareholders)
	• In case of insolvent member, to his assignee. • In case of deceased member, to his legal representative. • Statutory Auditor(s), Cost Auditor and Secretarial Auditor of Company. • Every director of company • In case of joint holding, noticed is given to all joint holders. ■ Articles of Private Company may provide that notice to directors need not to be given. (MCA notification dated 5-6-2015) ■ Notice of General Meeting should be given to stock exchange in case of listed company. Copy of notice is also served to: • Foreign collaborators • Trustee of debenture holders • Banks and financial institution (if loan agreement provide) Non-receipt of notice ■ Non-receipt of notice by any member will not affect validity of meeting. However, if member has not been given notice intentionally, meeting will be void. ■ Accidental omission to give notice to, or non-receipt of notice by, a member will not invalidate the proceeding of meeting. But, intentional omission to send a notice to even one member will invalidate the meeting. ■ This provision is not applicable to private company. Articles of private company may provide that even accidental omission to give notice can invalidate meeting. (MCA notification dated 5-6-2015)
Que. 11	XYZ Limited held its Annual General Meeting on September 15,2006. The meeting was presided over by Mr. V, the Chairman of the Company's Board of Directors. On September 17,2006, Mr. V, the Chairman, without signing the minutes of the meeting, left India to look after his father who

	fell sick in London. Referring to the provisions of the Companies Act, 2013, state the manner in which the minutes of the above meeting are to be signed in the absence of Mr. V and by whom. (CA May 2007)
Ans.	■ In case of death or inability of the Chairman of same meeting to sign minute, it should be signed by director authorised by Board in this behalf. - Section 118 ■ Applying above provision, minute of Annual General Meeting held on 15 September, 2006 should be signed on or before 15 October, 2006 by Chairman of same meeting. ■ If Chairman of same meeting has died or not able to sign minute of meeting, it should be signed by director authorised by Board in this behalf.
Que. 12	Examine the validity of the following with reference to the relevant provisions of the Companies Act, 2013: I. The Board of Directors of a company refuse to convene the Extraordinary General Meeting of the members on the ground that the requisitionists have not given reasons for the resolution proposed to be passed at the meeting. II. The Board of Directors refuse to convene the Extraordinary General Meeting on the ground that the requisitions have not been signed by the joint holder of the shares. III. Adjournment of Extraordinary General Meeting called upon the requisition of members on the ground that the quorum was not present at the meeting. (CA November 2007)
Ans.	I.As per section 100, requisitionists must state the purpose or object of calling meeting. Matter for consideration should be stated. Therefore, refusal on part of company is valid. - LIC of India vs. Escort Ltd. II.When two or more than two persons hold shares jointly, a requisition or notice calling meeting signed by any one of them under section 100 shall be valid. Here, Board shall not refuse to call EGM for this reason provided all other conditions for requisition all complied with. III. If requisitioned meeting is adjourned for want of quorum, it stands dissolved. Action by Board is valid. - Section 103
Que. 73	What is the concept of proxy in relation to the meetings of a Company? Decide the appointment and rights of a proxy, under the companies Act, 2013, in the following cases: (i) When a body corporate is a member in the company. (ii) When a foreign company is a member in the company. (CA November 2007)
Ans.	I. Company or body corporate is entitled to appoint authorised representative or proxy to attend General Meeting. Appointment should be made by passing Board Resolution. When authorised representative is appointed he is entitled to exercise the same rights and powers on behalf of such body corporate, as if it were an individual member. He can appoint proxy. - Section. 113. II. Provisions of section 113 are equally applicable to foreign company.
Que. 14	Board of directors of ABC limited want to transact the following matters at the forthcoming Annual General Meeting of the company: (I) Approval of financial statements- balance sheet and profit and loss account. (II) Declaration of dividend (III) Election of directors (IV) Appointment of Auditors

	(V) Setting up a subsidiary company in UK in collaboration with a company incorporate d thereat. You are directed by the Board of directors to classify the above matters into ordinary and special business to be transacted at the above meeting and state the types of resolution required to be passed for transacting the above matters. (CA June 2013) Or Which matters are considered to be 'ordinary' matters at the Annual General Meeting of a company? What kind of resolution is required to be passed for 'ordinary business' and for 'special business' in an Annual General Meeting under the Companies Act, 2013? (CA May 2014) Or State the ordinary business which may be transacted at an Annual General Meeting of a public limited company incorporated under the Companies Act, 2013. (CA May 2012)
Ans.	Ordinary Resolution ■ Resolution shall be an Ordinary Resolution if: • Notice has been duly given; and • passed by a simple majority ■ Ordinary Resolution means votes casted either by members or proxies or electronic mode or postal ballot methods are more than votes casted against resolution. ■ While calculating, casting vote if any should be also included. ■ The following matters constitute ordinary business at an Annual General Meeting: • Consideration of financial statements, director's report and the auditor's report • Declaration of dividend, if any • Appointment of directors in the place of those retiring • Appointment of and the fixing of the remuneration of the statutory auditors Types of Resolution required ■ Ordinary Resolution for agenda item Nos. (I), (II), (III) &(IV) ■ Special Resolution for agenda item No. (V)
Que. 15	Mr. DP Secretary, of City Handicrafts Ltd. called an Extraordinary General Meeting of the company on the requisition of some members. Mr. DP, Secretary of the company, issued notice of the meeting without the authority of the Board of Directors Discuss on the validity of the notice issued by Mr. DP, Secretary of the City Handicrafts Ltd. (CA November 2012)
Ans.	■ Notice of General Meeting can be given by authorised person. ■ Company Secretary can give notice of EGM only if he is authorised by Board of directors. ■ If notice is given without authority, Board of directors can ratify it at any time before meeting. If it is ratified then it is considered as valid notice. ■ Secretary of City Handicrafts Ltd is not authorised to call meeting. However, Board may ratify notice. ■ If it is ratified by Board of City Handicrafts Ltd., it will be considered as valid notice.

Que. 16	K, a member of MNO Limited appoints L as his proxy to attend the General Meeting of the company. Later he (K) also attends the meeting Both K (the member) and L (the proxy) vote on a particulars resolution in the meeting K's vote was declared invalid by the Chairman starting that since he has appointed the proxy and L's vote has been considered as valid. K objects to decision of the Chairman. Decide, under the provision of the Companies Act, 2013 whether K's objections shall be tenable. (CA November 2013)
Ans.	■ Proxy form should be submitted at registered office at least before 48 hours from schedule time of meeting. ■ The proxy can be revoked by the member at any time. ■ The member may revoke the proxy by voting himself before the proxy has voted, but once the proxy has exercised the vote, the member cannot recast his vote. - Regulation 59 of Table F ■ Applying above provisions, it can be suggested that when member after appointing proxy attend meeting and cast his vote before proxy cast his vote, voting by proxy his ignored. ■ L (proxy) has no right to vote. Therefore, K's objection is valid. ■ Chairman has erroneously considered L's vote.
Que. 17	The Annual General Meeting of KMP Limited was held on 30th April, 2015. The Articles of Association of the company is silent regarding the quorum of the General Meeting. Only 10 members were personally present in the above meeting, out of the total 2,750 members of the company. The Chairman adjourned the meeting for want of quorum. Referring to the provisions of the Companies Act, 2013, examine the validity of Chairman's decision. (CA May 2015)
Ans.	■ As per section 103 of Companies Act, 2013, quorum is 15 members personally present in case of public company having total number of members of the company exceeds 1,000 but does not exceed 5,000. ■ If quorum as stated above is not present, the Annual General Meeting shall automatically adjourn to the same day, time and place in the next week or to such other date, time and place as Board may determine. ■ If quorum not present in half an hour, meeting will adjourn automatically. ■ In the given question, only 10 members were present out of total 2750 total members at meeting. According to section 103, at least 15 members shall be personally present to constitute quorum at meeting as total strength of members is more than 1000 but less than 5000. ■ Sufficient number of members were not present to form quorum. Chairman shall wait for 30 minutes and thereafter he can adjourn meeting.
Que. 18	J held 100 partly paid up shares of LKM 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. J contested the decision of the Chairman. Referring to the provisions of the Companies Act, 2013 decide whether the contention of J is valid. (CA May 2015)
Ans.	■ As per section 106 of Companies Act, 2013, company can restrict member from exercise his voting right on shares on which:
	• It has exercised any right of lien; or

	• Any call or sum payable have not been paid ■ Company cannot prohibit member from exercising his voting right on any other ground. ■ This section is not applicable to private company and specified IFSC public company, if Articles of private company so provide. ■ In the given case Articles of LKM Limited prohibits voting right on the ground of non payment of call money is valid. It is in line with provision of section 106. ■ The contention of Mr. J is not valid.
Que. 19	Explain the concept of electronic voting system as provided by Companies Act, 2013. (CA May 2015)
Ans.	■ As per section 108 of Companies Act, 2013, following companies may provide electronic voting facility to its members: • Every company whose equity shares are listed; or • Every company having not less than 1000 shareholders. ■ Provisions of section 108 is not applicable to: • Nidhi company • Company listed on SME platform (small and medium enterprise) • Company listed on institutional trading platform exclusively Company which has opted to allow electronic voting facility should comply with following: Notice of meeting ■ The notice of the meeting shall be sent to all the members, auditors of the company, or directors either: • by registered post or speed post; or • through electronic means like registered e-mail id; or • through courier service ■ The notice shall also be placed on the website of the company. ■ The notice of the meeting shall clearly mention that the business may be transacted through electronic voting system and the company is providing facility for voting by electronic me **Ans.** ■ The notice shall clearly indicate the process and manner for voting by electronic means and the time schedule including the time period during which the votes may be cast and shall also provide the login ID and create a facility for generating password and for keeping security and casting of vote in a secure manner. ■ Notice of meeting shall state that facility of voting, either through e-voting or ballot or polling paper is available at meeting. Members attending meeting who have not casted their vote by remote e-voting will be eligible to exercise their right at the meeting. ■ Notice must state that member who have casted their vote by remove e-voting before meeting may attend meeting but shall not entitled to cast their vote again. **Advertisement in News paper** ■ Company shall publish an advertisement immediately on completion of dispatch of notices but at least 21 days before the General Meeting at least once in a vernacular newspaper in the principal vernacular language of the district in which the registered office of the company is* situated, and having a wide circulation in that district, and at least once in English language in an English newspaper having a wide circulation in that district, about having sent the notice of the meeting and specifying therein, inter alia, the following matters, namely: • statement that the business may be transacted by e- voting;

• the date of completion of sending of notices;

• the date and time of commencement of voting through electronic means;

• the date and time of end of voting through electronic means; (i.e., cut-off date)

• the statement that voting shall not be allowed beyond the said date and time;

• website address of the company and agency, if any, where notice of the meeting is displayed;

• contact details of the person responsible to address the grievances connected with the electronic voting e-voting

■ E-voting shall remain open for at least 3 days. It will close at 5.00 PM on the date preceding the date of General Meeting.

■ During the e-voting period, shareholders of the company, holding shares either in physical form or in dematerialized form, as on the record date, may cast their vote electronically.

■ Once the vote on a resolution is casted by the shareholder, he is not allowed to change it subsequently.

■ At the end of the voting period, the portal where votes are casted shall forthwith be blocked.

Scrutinizer

■ Board of directors shall appoint scrutinizer.

■ Any of following person may be appointed as scrutinizer:

• CA in practice; or

• Cost Accountant in practice; or

• CS in practice; or

• An advocate.

■ Person who is in employment of the company cannot be appointed as scrutinizer.

■ The scrutinizer may take assistance of a person who is not in employment of the company and who is well-versed with the e-voting system.

■ The scrutinizer shall unblock the votes in presence of at least two witnesses not in the employment of company after conclusion of General Meeting.

■ Scrutinizer shall submit report of the votes casted in favour or against, if any, within 3 days of conclusion of meeting.

■ The scrutinizer shall maintain a register either manually or electronically to record the assent or dissent, received, mentioning the particulars of name, address, folio number or client ID of the shareholders, number of shares held by them, nominal value of such shares and whether the shares have differential voting rights.

Report to Chairman

■ Register and all other papers relating to electronic voting shall r emain in the safe custody of the scrutinizer until the chairman considers, approves and signs the minutes and thereafter, the scrutinizer shall return the register and other related papers to the company.

■ Results declared along with the scrutinizer's report shall be placed on the website of the company and on the website of the agency after approval of Chairman.

■ Subject to receipt of sufficient votes, the resolution shall be deemed to be passed on the date of the relevant General Meeting of members.

Que. 20	State, giving reasons, whether the following statement is correct or incorrect: Quorum for General Meetings for a public company, where members are not more than 1000, is 5 members personally present. (CA May 2016)

Ans.	■ Statement is correct. ■ In case of public company five members personally present shall be quorum if the total number of members as on date of meeting is not than 1000. - Section 103 ■ The Articles of a company may provide for higher quorum.
Que. 21	A General Meeting was scheduled to be held on 15th April, 2016 at 4:00 P.M. As per the notice the members who are unable to attend the 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 from dated 10-04-2016 was deposited by Mr. Y with the company at its registered office on 11-04-2016. However, Mr. X changes his mind and on 12-04-2016 gives another proxy to Mr. Z and it was deposited on same day with company. 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 was deposited with the company on the same day and the proxy form in favour of Mr. N was deposited on 14-04-2016. All the proxies viz. Y, Z, 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? (CA May 2017)
Ans.	■ Proxy appointed later but received by company before 48 hours from commencement of meeting is valid proxy. ■ Proxy form should be deposited at registered office of company. ■ In the given case, proxy should be deposited on or before 13.04.2016. ■ In the first case, Mr. X appointed proxy in favour of Mr. Y and Mr. Z. ■ Proxy appointed later and deposited with company within stipulated time (i.e. before 48 hours form schedule time of meeting) is valid and prevailing. ■ Hence, proxy appointed in favour of Mr. Z is valid. ■ In the case of Mr. W, proxy appointed in favour of Mr. N was appointed later and deposited within stipulated time will be valid.
Que. 22	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. (CA May 2018)
Ans.	As per Section 92 of Companies Act, 2013 annual return shall give following information: ■ Its registered office, principal business activities, particulars of its holding, subsidiary and associate companies; ■ Its shares, debentures and other securities and shareholding pattern; ■ Its indebtedness; ■ Its members and debenture-holders along with changes therein since the close of the previous financial year; ■ Its promoters, directors, key managerial personnel along with changes therein since the close of the previous financial year; ■ Meetings of members or a class thereof, Board and its various committees along with attendance details; ■ Remuneration of directors and Key Managerial Personnel;

	■ 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; ■ Matters relating to certification of compliances, disclosures as may be prescribed; ■ Details, as may be prescribed, in respect of shares held by or on behalf of the Foreign Institutional Investors indicating their names, addresses, countrie s of incorporation, registration and percentage of shareholding held by them; and ■ Such other matters as may be prescribed.
Que. 23	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? (CA May 2018)
Ans.	Every company shall file Annual Return within 60 days from holding of AGM to ROC. If AGM is not held for a year, annual return should be filed within 60 days from the last day on which AGM should have been held. - Section 92 Accordingly, Bazaar Ltd. shall file its annual return within 60 days from holding of AGM. If meeting is cancelled for any reason, it shall file annual return within 60 days from last day on which AGM should have been held. Company has not filed annual return within stipulated time. It has contravene provision of Section 92 of Companies Act, 2013. If a company fails to file its annual return within specified time, it shall be punishable with fine of not less than ? 50,000 but which may extend to ? 5 lakhs and every officer of the company who is in default shall be punishable with imprisonment for a term which may extend to 6 months or with fine which shall not be less than ? 50,000 but which may extend to ? 5 lakh or with both.
Que. 24	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. (CA May 2018)
Ans.	Businesses proposed to be transacted at meeting, and enlisted in agenda are moved separately at meeting. However, Chairman of meeting, if desires that two or more resolutions (i.e., businesses) should be moved together, then it can be moved together unless Act require it to be moved separately. Where notice has been given of several resolutions, each resolution must be put to vote separately. However, as per Companies Act, 2013, resolution regarding appointment of two or more directors cannot be passed as single resolution unless it has been unanimously approved earlier. Therefore, Benson Ltd. cannot take up all businesses together. Businesses regarding appointment of two directors should be taken separately.

11: Declaration and Payment of Dividend

Que. 1	Board of Directors of M/s. RPP Ltd. in its meeting held on 29th May, 2014 declared an interim dividend payable on paid up Equity Share Capital of the Company. In the Board Meeting scheduled for 10th June, 2014, the Board wants to revoke the said declaration. You are required to state with reference to the provisions of the Companies Act, 2013 whether the Board of Directors can do so. (CA June 2009, May 2012)
Ans.	■ The Board of Directors is authorized to declare interim dividend. ■ Amount of interim dividend shall be deposited in a separate bank account within 5 days from the date of declaration of such dividend. ■ The amount deposited shall be used for payment of interim dividend. ■ Board can revoke declared divided only in extraordinary circumstances or where declaration of dividend is void. ■ In view of the above legal position, the Board of Directors of RPP Ltd. must have deposited the amount of interim dividend declared on 29th May, 2014 into a separate bank account on or before 3rd June, 2014 i.e. within five days from 29th May, 2014 when the interim dividend was declared. ■ As stated above, the amount once deposited into a separate bank account, can be used only for payment of interim dividend. ■ Accordingly, the Board of RPP Ltd. cannot revoke the interim dividend declared on 29th May, 2014 and do not have any power to use the interim dividend amount transferred to a separate bank account for any other purpose. ■ If the Board had not transferred the interim dividend amount to a separate bank account and not paid interim dividend within the required time as per provisions of Companies Act, 2013, the company and its directors are liable to the applicable penal provisions of the Companies Act.
Que. 2	A Public Company has been declaring dividend at the rate of 20% on equity shares during the last 3 years. The Company has not made adequate profits during tiie year ended 31st March, 2014, but it has got adequate reserves which can be utilized for maintaining the rate of dividend at 20%. Advise the Company as to how it should go about if it wants to declare dividend at the rate of 20% for the year 2013-14. Would your answer be different if the company utilized only the profits made in the previous years and retained in the profit and loss account for the purpose of payment of dividend at the rate of 20% for the year 2013-14? (CA November 2009 Modified) Or The agenda for the meeting of the Board of Directors of M/s Brilliant Emeiprises Ltd. held on 20-5-2014 for adopting the financial statement for the year ended 31-3-2014 included an item relating to payment of dividend. At the meeting it became apparent that the profits made during the year ended 31-3-2014 were inadequate to declare dividend. The Board was keen to maintain the rale of 20% dividend on the equity shares as declared in the previous years so as to maintain the image of the company. The company has some accumulated profits earned in previous years, which were transferred to reserves. Advise the company as to iiow it should go about to achieve the objective to pay dividend at the rate of 20% on the equity shares. (CA May 2011)
Ans.	■ Company can declare dividend out of profit of current year or profit of any previous year after providing for depreciation.

	■ In case of no profit or inadequacy of profit, company can withdraw amount from previous year's profit (i.e. reserve) and use it for payment of dividend. ■ As per section 123, if in a particular year, profits are not adequate to declare a dividend, dividend can be declared out of reserves, as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014. ■ The conditions prescribed are as follows: • Rate of dividend cannot be more than average of rates at which dividend were announced in previous 3 years. However, this rule is not applicable to company, which has not'declared any dividend in each of the 3 preceding years. • Total amount drawn from reserves shall not exceedan amount equal to 1 /10th of the sum of its paid up capital and free reserves as per last audited financial statement. • The amount drawn from reserves shall be first utilized to set off losses incurred in the current financial year and then, surplus, if any, can be utilized towards declaration of dividend. • Balance after withdrawal in reserve account shall not fall below 15% of paid up capital of the company as per last audited financial statement. ■ Here in the given case, company had in past paid 20% dividend. ■ Assuming that other conditions as prescribed under Companies Act, 2013 are compiled by company. It can pay dividend at rate of 20%.
Que. 3	SKD an employee of M/s Moreh Ltd. met with an accident and died. The accident occurred when SKD was on Company's duty. He held one hundred partly paid up shares. Normally, the company has a first and paramount lien on the shares. The Board of Directors, however, relaxed the said provision with regard to the hundred shares held by SKD as a goodwill gesture on the part of the company. Is the action of the company valid? State the reasons. Also state whether the company's lien can be extended to dividend payable on such shares. (CA November 2009)
Ans.	■ Lien on shares is permissible only if Articles of company authorise. ■ As per Regulation 9 of Table F of the Companies Act, 2013, the company has lien on share for unpaid call or for any other amount due from shareholder. ■ When the right of lien is exercised by company, shares are not transferred. ■ The Board of Directors may, however, at any time declare any share to be wholly or in part exempt from the said provision. ■ Hence, the decision of the Board of Directors of M/s Moreh Ltd. to relax the provisions of lien in respect of shares held by SKD is in order and valid. ■ Further the company's lien is extended to all dividends payable on such shares.
Que. 4	X & Co. Ltd. made a loss of ? 20 lakhs after providing for depreciation for the year ended 31st March, 2014 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 15% on the equity shares payable out of free rese rves. The paid up share capital of the company and its free reserves as on 31st March, 2014 are ? 2 crores and 10 crores respectively. The average dividend declared by the company in the last three years is 25%. Examine the validity of declaration of dividend. (CA May 2010)

Ans.	■ As per section 123, if in a particular year, profits are not adequate to declare a dividend, dividend can be declared out of reserves, as per Rule 3 of Companies (Declaration and Payment of Dividend) Rules, 2014. ■ The conditions prescribed are as follows: • Rate of dividend cannot be more than average of rates at which dividend were announced in previous 3 years. However, this rule is not applicable to company, which has not declared any divided in each of the 3 preceding years.
	• Total amount drawn from reserves shall not exceed an amount equal to 1 / 10th of the sum of its paid up capital and free reserves as per last audited financial statement. • The amount drawn from reserves shall be first utilized to set off losses incurred in the current financial year and then, surplus, if any, can be utilized towards declaration of dividend. • Balance after withdrawal in reserve account shall not fall below 15% of paid up capital of the company as per last audited financial statement. ■ Based upon above provisions, we can summarise position hereunder: • Company require ? 30 lakh to pay dividend at 1596 rate. • In the given case, the rate of dividend announced by Board of Directors is 1596 while last 3 years average rate of dividend is 2596. Therefore, the company is not in violation of this provision. • Company can withdraw maximum ? 1.2 crores (i.e. 1096 of Paid up capital and free-reserve) from its reserve to declare dividend. • After withdrawal, balance in reserve should not fall below than 1596 of paid up capital of company(i.e. 30 lakh). Here, after withdrawal balance of reserve would be ? 9.70 crores. ■ Considering this, X & Co. Ltd. can declare a 1596 dividend.
Que. 5	M/s. USA Industries Limited has constituted 'Investor Education and Protection Fund' as required under the Companies Act, 2013 but so far no amounts have been deposited into the said account. Explain with reference to the above said enactment, the amounts payable to the credit of the said account and the period within which the amounts shall be paid. (CA November 2011)
Ans.	■ Following amount will be credited to Investor Education and Protection Fund: • Amount of unpaid dividends. • Application moneys received by company for allotment of any securities and due for refund. • Matured but unpaid deposits with companies other than banking companies • Matured but unpaid debentures with companies • Interest Dividend • Interest accrued but unpaid on aforesaid amounts • Grants and donations from Central Government, State Government, companies or any other institutions. • Interest or other income received out of the investments from the fund. • The amount received under disgorgement of securities. (As per section 38(4)) • Sale proceeds of fractional shares arising out of issuance of bonus shares, merger and amalgamation for 7 years or more. • Redemption amount of preference shares remaining unpaid or unclaimed for 7 years or more.

	• All shares for which dividend has remained unpaid or unclaimed for consecutive 7 years. • Resultant benefits arising out of shares held by IEPF authority. • The amounts due for payment by company on account of dividend or refund of application money or debentures repayment or deposits repayment will be kept by company for 7 years. ■ If dividend is not claimed within 7 years from date when dividend.became due, the unclaimed or unpaid amount should be paid to Government in 'Investor Education and Protection Fund' (IEPF).
Que. 6	The Board of Directors of Nimbahera Chemicals Limited propose to transfer more than 10% of the profits of the company to the reserves for the current year. Advise the Board of Directors of the said company explaining the relevant provisions of the Companies Act, 2013 and the rules thereunder. (CA November 2012)
Ans.	■ Board of directors may transfer such percentage of its profit for that financial year as it may consider appropriate to the reserve of company. ■ Accordingly, company may transfer more than 10% of its profit to reserve.
Que. 7	The Annual General Meeting of ABC Limited declared a dividend at the rate of 30% payable on paid up equity share capital of the company as recommended by Board of Directors on 30th April, 2013. But the company was unable to post the dividend warrant to Mr. Ranjan, an equity shareholder of the company, up to 30th June, 2013. Mr. Ranjan filed a suit against the Company for the payment of dividend along with interest at the rate of 20% p.a. for default period. Decide in the light of provisions of the Companies Act, 2013, whether Mr. Ranjan would succeed? Also state the directors liability in this regard under the Act. (CA November 2013)
Ans.	■ Ranjan will not succeed in claiming interest @ 20% for default period. He can claim interest at rate of 18% p.a. ■ As per section 127 of Companies Act, 2013, if dividend is not paid within 30 days or dividend warrant is not posted within 30 days, the company is liable to pay simple interest @ 18% p.a. during the period default continues. ■ Moreover, every director is liable for imprisonment up to 2 years, if he has committed it knowingly. ■ In addition, he is liable to pay fine of ? 1,000 per day till time default continue.
Que. 8	CBA Ltd. wants to declare dividend in the year 2013-14 though it will not earn any profit in this year due to heavy losses. The company has been declaring dividend for last 5 years. To maintain its reputation the company wants to declare dividend this year too out of accumulated past profits. Explain how the company can achieve the objective to declare dividend. (CA May 2014)
Ans.	■ CBA Limited can maintain its reputation by declaration of dividend out of its reserve, if it has sufficient amount available in reserve. ■ Refer answer to question No. 2 to understand provisions applicable for declaration of dividend out of reserve.
Que. 9	The Board of directors of XYZ Company Limited at its meeting declared a dividend on its paid up equity share capital which was later on approved by the company's General Meeting. In the meantime the directors at another meeting of the Board decided by passing a

	resolution to divert the total dividend to be paid to shareholders for purchase of investments for the company. As a result dividend was paid to shareholders after 45 days. Examining the provisions of Companies Act, 2013, state : (i) Whether the act of directors is in violation of the provisions of the Act and also the conse-quences that shall follow for the above act of directors? (ii) What would be your answer in case the amount of dividend to a shareholder is adjusted by the company against certain dues to the company from the shareholders? (CA November 2014)
Ans.	(i) Act of director is not proper. Board shall pay dividend or dispatch dividend warrant within period of 30 days from its declaration. If dividend is not paid within 30 days or dividend warrant is not posted within 30 days, the company is liable to pay simple interest @ 18% p.a. during the period default continues. (ii) A company may have lien on dividend, if provided in Articles. If so, dividend payment can be adjusted against such lien. If dividend paid is adjusted against lien, then non-payment of dividend is not an offence.
Que. 10	As per section 51 of the Companies Act, 2013, a company may, if so authorized by its Articles, pay dividend in proportion to the amount paid up on each share. (CA November 2014)
Ans.	■ Statement is correct. ■ Generally, dividend is paid on nominal value of shares but it can be paid in proportion to amount paid on each share, if Articles of company authorise it to do so.
Que. 11	Referring to the provisions of the Companies Act, 2013, examine the validity of the following: The Board of Directors of ABC 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. (CA May 2015)
Ans.	■ As per section 123 of Companies Act, 2013, company cannot declare any dividend if it fails to comply provisions of section 73 and 74 of Act until default is made good. ■ Section 73 is related with acceptance and payment of deposit accepted under provisions of Companies Act, 2013 while section 74 deals with repayment of deposits accepted before commencement of Companies Act, 1956. ■ It means, if company has made default in repayment of deposit, it cannot declare dividend until default is made good. ■ This restriction is applicable for declaration of dividend on equity shares. ■ From the above discussion, it can be suggested that Board of Directors of ABC Limited cannot declare dividend to the equity shareholders as it has made default of section 74.
Que. 12	WL Limited is facing loss in business during the current financial year 2015-16. In the immediate preceding three financial years, the company had declared dividend at the rate of 8%, 10%, and 12% respectively. To maintain the goodwill of the company, the Board of Directors has decided to declare 12% interim dividend for the current financial year. Examine the applicable provisions of the Companies Act, 2013 and state whether the Board of Directors can do so?(CAMay20!5)

Ans.	■ As per section 123 of Companies Act, 2013, Board of Directors may declare interim dividend during financial year out of surplus and profits of current year. ■ It is further provided that if company has incurred loss during the current financial year up to the end of 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. ■ Average rate of dividends declared by WL Limited during preceding three financial years is 1096 (i.e. 8+10+12/3).* ■ Accordingly, Board of Directors can declare interim dividend of not more than 1096.
Que. 13	Star Ltd. declared and paid dividend in time to all its equity holders for the financial year 2014-15, except in the following two cases: (i) Mrs. Sheela, holding 250 shares had mandated the company to directly deposit the dividend amount in her bank account. The company accordingly remitted the dividend but the bank returned the payment on the ground that there was difference in surname of the payee in the bank records. The company, however, did not inform Mrs. Sheela about this discrepancy. (ii) Dividend amount of ? 50,000 was not paid to Mr. Mohan, deceased, in view of court order restraining the payment due to family dispute about succession. You are required to analyse these cases with reference to provisions of the Companies Act, 2013 regarding failure to distribute dividends. (CA November 2015)
Ans.	■ In following situations if dividend is not paid or dividend warrant is not dispatched within period of 30 days, it is not offence: • Where dividend could not be paid by operation of any law' (for example: restrictions under FEMA). • Where directions given by shareholder for payment of dividend cannot be complied with and same has communicated to him. • Where there is dispute regarding right to receive dividend.
	• Where the dividend has been lawfully adjusted by the company against any sum due to the company from the shareholder. • Where failure to pay the dividend or post dividend warrant was not due to any default on part of the company. L Mrs. Sheela has directed company to deposit dividend into her bank account. Accordingly, company has remitted dividend to her bank account but bank returned payment on ground of difference in surname. It is not fault of company, if payment is made as per name available in record of company but company should inform the Mrs. Sheela about returned of dividend payment. ii Accordingly, it can be said that company is not liable for failure to distribute dividend within period of 30 days in case of Mr. Mohan because Court has issued restraining order.
Que. 14	The directors of Som Limited proposed dividend at 12% on equity shares for the financial year 2015-16. The same was approved in the Annual General Meeting of the company held on 20th September 2016. The Directors declared the approved dividends. They seek your opinion on the following matters:

	(z) Mr. Ashok, 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 the dividend amount payable to him? (ii) Ms. Nini was the holder of 1,000 equity shares on 31st March, 2016, but she has transferred the shares to Mr. Raj, whose name has been registered on 20th May, 2016. Who will be entitled to the above dividend? (CA November 2016)
Ans.	(z) As per Regulation 84 of Table F of the Companies Act, 2013, Board may deduct from any dividend payable to any member all sums of money, if any, presently payable by him to the company on account of calls or otherwise in relation to the shares of company. Accordingly, deduction or adjustment from dividend is permissible if there are calls in arrears or some other amount is payable in relation to the shares of the company. Therefore, company can adjust dividend amount payable to Mr. Ashok against calls due but not paid. (ii) As per section 123, dividend is paid to the registered shareholder. Listed company close the transfer registers for purpose. Usual practice is to declare that members who are shareholders on date of closure of transfer register will be entitled to dividend. In case of unlisted company and private company, it is not necessary to close register and usually there are very few transfers. General Meeting can decide the cut-off date. It could be date of General Meeting. Accordingly, Mr. Raj, who is registered holder of shares, is entitled to get dividend declared on 20th September, 2016.
Que. 15	Supreme Ltd. declared dividend @ 10% on its 10 lakh equity shares of ? 10 each on 30th September, 2016. The dividends warrants were dispatched to all the shareholders except three shareholders, holding in total 50,000 shares, due to dispute regarding title over the shares pending in Court. On ascertaining the position on 30th October, 2016, it was observed that the dividend warrants for ? 1.50 lakh were not encashed by the remaining shareholders. Explain with reference to provisions of Companies Act, 2013, the actions to be taken by company to deal with the unpaid amount of dividend. Also state the consequences if default is done in this matter. (CA May 2017)
Ans.	■ If dividend is not paid or claimed within 30 days from date of its declaration, company must transfer the unpaid or unclaimed amount of divided to separate account known as 'Unpaid Dividend Account of .... Ltd.' within 7 davs from expirv of 30 davs. ■ It also includes amount of dividend, which was not paid due to dispute pending before the Court. ■ Dividend remain unpaid also includes dividend warrants, which were dispatched but not encashed by shareholders. ■ Accordingly, company should transfer unpaid or unclaimed dividend (includes dividend for which dispute is pending before court) within 7 days after 30th October, 2016. ■ Company should prepare statement containing names of shareholders, their last known addresses and unpaid dividend amount within 90 days from transfer of any amount to unpaid dividend account.
	■ Statement is uploaded on website of company and website specified by Central Government for this purpose. ■ Company is required to file Form IEPF 2. Company is liable to pay interest at rate of 12 % p.a. if unpaid amount of dividend is not transferred to separate account within stipulated time.

Que. 16	(i) PET Ltd. incurred loss in business up to 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 has 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. (ii) Alpha Ltd. a section 8 company is planning to declare dividend in the Annual General Meeting for the financial year ended 31-3-2018. 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. (CA May 2018)
Ans.	(i) Average rate of dividend declared by PET Ltd. during preceding three financial years is 15% (i.e., 12+15+18/3). Accordingly, Board can declare interim dividend of not more than 15%. Refer answer to question No. 12. (ii) Section 8 company has several benefits available and restrictions are imposed upon it. It cannot declare dividend or distribute its profit among member. Alpha Ltd. cannot declare dividend being section 8 company. Act of company to declare dividend is not as per provisions of Companies Act, 2013.

12: Accounts of Companies

Que. 1	DJA Company Limited held its Annual General Meeting for the financial year ended 31st March, 2014, on 30th September, 2014. The meeting was adjourned without placing the financial statement for financial year ending on 31st March, 2014 before the meeting. The financial statement for financial year of 2014 was placed at the adjourned Annual General Meeting and the same was filed with the ROC on 20th December, 2014. Examine with reference to the relevant provisions of the Companies Act, 2013, whether placing of the financial statement at the adjourned Annual General Meeting and filing of the same with the ROC by the company on 20th December 2014 are in order. (CA May 1998)
Ans.	■ As per section 96 of Companies Act, 2013, Annual General Meeting of company should be held within 6 months from end of financial year. ■ Every company is required to have uniform financial year (i.e. 1st April to 31st March). ■ It means company should have held meeting on or before 30th September. ■ In the given case, company has conveyed Annual General Meeting on 30th September, 2014 for financial year of 2014. ■ Adjourn Annual General Meeting should be held well within stipulated time (i.e. within 6 months from end of financial year). ■ Here, financial statement was not placed before Annual General Meeting and it is adjourned. ■ Facts of question do not clarify whether financial statement was approved or not. Assuming that it was approved at adjourned Annual General Meeting. ■ In view of the above facts and assumption, it can be suggested that if financial statement is not adopted at Annual General Meeting, unadopted financial statements should be filed with all specified documents with Registrar within 30 days of Annual General Meeting. ■ Registrar should take note of unadopted financial statements on records as provisional until the financial statements are filed with him after their adoption in adjourned Annual General Meeting. ■ The financial statements adopted in the adjourned Annual General Meeting should be hied with Registrar within 30 days of such adjourned Annual General Meeting. ■ If not filed within 30 days, filing may be done beyond 30 days with additional filing fees. ■ In the given case, financial statement should be filed on 20th December, 2014 is valid if adjourned meeting was held on or before 21st November, 2014.
Que. 2	X Ltd. has a subsidiary company called Y Ltd. The financial year of the holding company is 31st March, whereas that of the subsidiary company ends on 30th June every year. The management of the holding company decides that the financial year of the subsidiary Company for the year 1.7.2013 to 30.6.2014 should be extended upto 31.3.2015, so that the financial years of the holding and subsidiary companies end on 31st March every year. Advise the management about the steps to be taken under the Companies Act, 2013 to achieve the purpose. (CA May 2001 Modified) Or S Ltd. is a subsidiary company of H Ltd. The financial year of H Ltd. is from 1st April to 31st March, whereas the financial year of S Ltd. is 1st July to 30th June every year. This is now causing difficulties particularly in view of the requirement of reporting and circulating the consolidated

	annual accounts as required by Accounting Standard AS-21. The Board of Directors of H Ltd. decides that the accounting year of S Ltd. for the year 1st July, 2013 to 30th June, 2014 be extended from present 12 months to 21 months, i.e. 1st July, 2013 to 31st March, 2015, so that the financial years of the holding company and the subsidiary company end on the same date. State the provisions of the Companies Act, 2013 in this respect and mention the steps to be taken in this regard. (CA November 2003, 2005 Modified) Or Sunrise Limited is a subsidiary company of Hotline Ltd. The financial year of Sunrise Limited is 1st July to 30th June, whereas the financial year of Hotline Limited is from 1st April to 31st March every year. To maintain uniformity and consolidation of annual accounts the Board of directors of Hotline Limited decided that the accounting year of Sunrise Limited for the year 1st July, 2013 to 30th June, 2014 be extended from present 12 months to 21 months i.e. 1st July 2013 to 31st March 2014. Mention in the light of the provisions of the Companies Act, 2013, the steps to be taken by the Hotline Limited in this regard. (CA June 2009 Modified) Or Ambitions Engineering Consultants Ltd., whose financial year ends on 31st March, has acquired Struggling Techies Ltd. making it a subsidiary company. The financial year of the subsidiary company ends on 30th June. The management of the holding company wants to change the financial year of the subsidiary company, if possible, so as to coincide with the financial year of the holding company. State the relevant provisions of the Companies Act, 2013 regarding the financial year and the maximum period upto which the accounts can be prepared in a financial year and the approvals, if any, required to be taken to accomplish this task (CA May 2010 Modified)
Ans.	■ The definition of financial year under Companies Act 2013 has been aligned with the Tax laws. ■ 'Financial year', in relation to any company or body corporate, means the period ending on the 31st day of March every year. ■ Now, every company is required to follow uniform financial year. ■ Financial year for every company starts from 1st day of April. ■ Existing companies on the commencement of 2013 Act, is required to align its financial year as per provision of Section 2(41) within a period of 2 years from commencement of 2013 Act. (Section 2(41) is made effective w.e.f. 1st April, 2014) ■ A company or body corporate, which is a holding company or a subsidiary of a company incorporated outside India and is required to follow a different financial year for consolidation of its accounts outside India, the National Company Law Tribunal (NCLT) may allow any period as its financial year, whether or not that period is a year. ■ In view of above provision, X Ltd. cannot apply to NCLT for extension or modification of financial year of its subsidiary because its subsidiary is Indian company. ■ The financial year of holding company start on 1 st April but its subsidiary company on July. ■ Subsidiary company should take necessary steps to align its financial year with holding company within period of 2 years from date of commencement of 2013 Act.

Que. 3	The financial statements of AS Limited have been signed by two directors A and B. The Board comprises of a third Director C, who is also the Managing Director. The company has also employed a full time Secretary. Examine whether the authentication of the financial statements is in accordance with law. (CA May 2000 Modified) Or Examine the validity of the following with reference to the provisions of the Companies Act, 2013: The financial statement of TXN Ltd. for the year ended 31st March, 2014 was signed by one of its Directors and the Secretary. (CA June 2009 Modified) Or
	The Board of Directors of Vishwakarma Electronics Limited consists of Mr. Ghanshyam, Mr. Hyder (Directors) and Mr. Indersen (Managing Director). The company has also employed a full time Secretary. The financial statements 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. (CA November 2011 Modified)
Ans.	■ As per section 134 of Companies Act, 2013, Chairperson of company must sign the financial statement (i.e. balance sheet, profit and loss account and cash flow statement) on behalf of the Board of directors, if he is authorized in this behalf. If Chairperson is not authorized, it should be signed by : • two directors including MD when there is one, and • chief executive officer (CEO); and • chief financial officer and company secretary where they are appointed ■ In the instant case, Mr. A and Mr. B, the directors, have signed the profit and loss account and balance sheet. ■ In view of section 134 of the Companies Act, 2013, Mr. C, Managing Director should be one of the two signing directors. Since the company has also employed a Secretary, he should also sign the profit and loss account and balance sheet in addition to the Managing Director C, and one of the directors, either A or B.
Que. 4	The financial statements of a listed company have not been prepared in accordance with some of the applicable accounting standards. Examine the responsibility of the directors and auditors in this regard under the Companies Act, 2013. (CA May 2003 Modified) Or XYZ Limited did not prepare its financial statement for financial year in conformity with some of the mandatory Accounting Standards. You are required to state with reference to the provisions of the Companies Act, 2013, the responsibilities of directors and statutory auditor of the company in this regard. • (CA May 2007) Or XYZ Ltd. while preparing the financial statement for the financial year ended 31st March, 2014 did not comply with the Accounting Standards. State the consequences that follow in case of Non-compliance.

	(CA November 2011 Modified)
Ans.	■ As per section 129(5) of Companies Act, 2013, if the financial statements are not prepared as per accounting standards, the company shall disclose in financial statements the following: • the deviation from the accounting standards • the reasons for such deviation • the financial effect, if any, of such deviation ■ As per section 129 of Companies Act, 2013 Managing Director, Whole time Director in-charge of finance, Chief Financial Officer or any other person charged by Board is duty bound to comply requirement of AS. ■ In absence of these persons, all directors are liable for non-comply with AS. ■ Every auditor should comply with applicable accounting standards. ■ Further, the Board's report shall include a Directors' Responsibility Statement, indicating therein that on the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures. ■ The auditor shall state in his report that the annual accounts comply with accounting standards referred to in section 133 of Companies Act, 2013.
Que. 5	The Board of Directors of a company propose to charge the Chief Accountant of the company with the duty of ensuring compliance with the provisions of the Companies Act, 2013 relating to maintenance of proper books of account and financial statements in accordance with the law. (CA November 2003 Modified)
Ans.	■ Even if the company is managed by Managing Director, it is possible for the Board of Directors to make any other person (Chief Accountant) responsible to ensure compliance with sections 128 and 129. ■ When Board has made any other person responsible for complying sections 128 and 129, he is liable to be punished: • with sentenced to imprisonment upto 1 year; or • with fine which is not less than ? 50,000 but not more than ? 5 Lakh; or • with both ■ If company has Managing Director, Whole time Director in-charge of financial function or Chief Financial Officer and Board have not specified any other person to comply with provisions of sections 128 & 129, they are liable.
Que. 6	The Annual General Meeting of M/s Robertson Ltd., for laying the financial statements thereat for the year ended 31st March, 2014 was not held. In this context: (i) Advise the company regarding compliance of the provisions of section 137 of the Companies Act, 2013 for filing of copies of financial statement with the Registrar of Companies. (ii) Will it make any difference in case the financial statements were duly laid before the AGM held on 27th September, 2014 but the same were not adopted by the shareholders? (CA May 2005)
Ans.	I. If annual General Meeting is not held, the financial statement along with documents duly signed alongwith statement of facts and reason for not holding the Annual General Meeting

	should be hied within 30 days from the latest date on or before which that meeting should have been held. - Section 137 If not filed within 30 days, filing may be done beyond 30 days with additional filing fees. II. If financial statements are placed before Annual General Meeting but not adopted at Annual General Meeting, it should be hied with all specihed documents with Registrar within 30 days of Annual General Meeting. Registrar should take note of unadopted financial statements on records as provisional until the financial statements are hied with him after their adoption in adjourned Annual General Meeting. If Annual General Meeting is held on 27th September, 2014, the hnancial statements along with attachments specihed for hnancial year of 2014 should be hied with the Registrar of Companies by 26th October, 2014. If not hied within 30 days, filing may be done beyond 30 days with additional hling fees.
Que. 7	With reference of the provisions of the Companies Act, 2013, explain the legal position where XYZ Limited, having one Indian subsidiary company and an overseas subsidiary company, attached to its financial statements and other documents in respect of its Indian subsidiary company only. (CA November 2006)
Ans.	■ Consolidation of hnancial statements is made mandatory for all companies where a company has one or more subsidiaries whether Indian or foreign. ■ The mandatory consolidation applies to all companies whether such company is: • Listed or unlisted • Private or public ■ For the purposes of consolidation of hnancial statements, the expression subsidiary includes associate company and joint venture. Financial Statement includes: • Balance sheet • Proht and loss account or in the case of company not for proht, income and expenditure statement • Cash how statement
	• Statement of changes in equity, if applicable • Any explanatory note annexed to above documents ■ XYZ Ltd. has committed default by not attaching documents relating to foreign subsidiary.
Que. 8	An allegation was levelled against PQR Ltd. that the funds of the company are misused. Mr. Z, one of the Directors of the company wants to inspect the books of account of the company in order to ascertain whether the allegation was true. But since Mr. Z does not have the knowledge of accounting, he appoints Mr. A, his friend and a practicing Chartered Accountant to go through the books of account of the company on his behalf. The company seeks your advice as to whether Mr. A may be allowed to inspect the books of account of the company on behalf of Mr. Z. You are required to give your advice to the company on behalf of Mr. Z. You are required to give your advice to the company keeping in view the provisions of the Companies Act, 2013. What would be your advice if Mr. Z would have been a shareholder only and not a Director of the company? (CA May 2007 Modified)
Ans.	■ Section 128 provides that books of account and other books and papers maintained by the company within India shall be open for inspection at Registered Office of company or other place in India by any director during business hours.

	■ Summarised returns of the books of account of the company kept and maintained outside India shall be sent to registered office at quarterly intervals. It should be kept at registered office and kept open to directors for inspection. ■ Director is entitled to ask for information of books either personally or through an agent. ■ If any other financial information is maintained outside the country, director can furnish request to company setting out full details of financial information sought and period for which such information is sought in writing. ■ Company should provide financial information within 15 days. ■ In view of above provisions, Mr. Z, director cannot be refused right of inspection through agent. ■ In case, Mr. Z is a shareholder of the company, he shall be able to inspect the books of account only if Ordinary Resolution of the members gives him such a right or if authorized by the Board.
Que. 9	Annual General Meeting of a company has been concluded on 30th April, 2014. Now the company is required to submit or file its Annual Return and financial statement with Registrar of Companies. You are required to state the procedure for such filing. (CA May 2008 Modified)
Ans.	■ As per section 92 of Companies Act, 2013 annual return of a company has to be filed with Registrar of Companies within 60 days from the day on which the Annual General Meeting of a company is held. ■ Annual return is required to be filed in Form MGT 7. ■ In the case of listed company or company having paid up capital of ? 10 crore or more or turnover of ? 50 crore or more, annual return shall be certified by Company Secretary in practice and in Form MGT 8. ■ It is filed within 30 days from the day on which the Annual General Meeting of a company is held. ■ Following procedure is to be followed for filing of above documents: • To log on website of www.mca.gov.in and download the forms • To fill up the Company Identification Number (CIN) and other details in form • To attach the Annual Return and financial statements to the respective forms • To check the forms with the help of the 'check form' button provided in the forms. • To digitally sign the forms and submit forms • To pay the filing fee either through credit card or challan • To check from the website of Ministry of Corporate Affairs, in due course, whether the forms filed have been approved
Que. 10	The Board of Directors of M/s PQR Ltd. has a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep the account books of the company at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advice. (CA November 2008)
Ans.	■ The books of account can be kept at such other places in India, if Board of directors has passed resolution to this effect.

	■ The Board resolution so passed shall be hied within 7 days of passing Board resolution with the Registrar of Companies and notice giving full address of the other place to all other Government and concerned authority. ■ Thus, in the present case, the company can follow the above procedure and keep its accounts book at Mumbai office. ■ Alternatively, company can maintain books of account in electronic form. ■ Books maintained in electronic form can be accessed from anywhere.
Que. 11	As required under the provisions of the Companies Act, 2013, a company incorporated under the Act has to include in the report of Board of Directors a 'Directors' Responsibility Statement'. Directors of the company seek your advise about the matters to be included in the statement. (CA November 2010 Modified) Or State any four contents of a Directors' Responsibility Statement as required under Section 134 of the Companies Act, 2013. (CA May 2018)
Ans.	■ As per section 134(5) of Companies Act, 2013, Directors' Responsibility Statement, indicating therein: • That in the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures. • That the directors had selected such accounting policies and applied them consistently and made judgments and estimates that are reasonable and prudent so as to give a true and fair view of the state of affairs of the company at the end of the financial year and of the profit or loss of the company for that period. • That the directors had taken proper and sufficient care for the maintenance of adequate accounting records in accordance with the provisions of this Act for safeguarding the assets of the company and for preventing and detecting fraud and other irregularities. • That the directors had prepared the annual accounts on a going concern basis. • That the directors, in case of 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. • That the directors had devised proper systems to ensure compliance with the provisions of all applicable laws and that such systems were adequate and operating effectively.
Que. 12	Adorable Ltd., incorporated under the Companies Act, 2013 has on its Board, 5 directors and a Managing Director. The company has also appointed a Company Secretary. The financial statements of the company, viz., balance sheet and statement of profit and loss for the year ended 31 st March, 2015, were authenticated under signatures of one director and the Company Secretary. Referring to the provisions of the Companies Act, 2013, examine the validity of authentication. What shall be your answer in case the company in question is a 'one person company'?
Ans.	■ As per section 134 of Companies Act, 2013 Chairperson of company must sign the financial statements (i.e. balance sheet, profit and loss accounting and cash flow statement) on behalf of the Board of directors, if he is authorized in this behalf. ■ If Chairperson is not authorized, it should be signed by : • Two directors including MD when there is one, and

	• Chief executive officer (CEO), and • Chief Financial Officer and Company Secretary where they are appointed,
	■ In the instant case, one director and the Company Secretary have signed financial statements. ■ In view of section 134 of the Companies Act, 2013, Managing Director should be one of the two signing directors. Adorable Ltd. has not complied provision of Companies Act, 2013 in this regard. ■ In case of OPC, one director should sign financial statements.
Que. 13	The paid up capital of Western Zone Insurance Limited is ? 7 crore. Point out whether the said company is required to file Balance Sheets and Profit and Loss Account along with Director's and Auditor's Report for the year 2013-14 by using the XBRL taxonomy under the Companies Act, 2013? (CA November 2012 Modified)
Ans.	■ Following companies are required to file its financial statement in the XBRL taxonomy: • Indian listed company and its Indian subsidiary company • Company having paid up capital of ? 5 crore or more • Company having turnover of ? 100 crore or more ■ However, the above rule is not applicable to Banking company, Insurance company, Power company, Non-banking finance company (NBFC) and Housing Finance Company. ■ In the above given case, Western Zone Insurance Ltd is Insurance company and hence it is not required to file financial statement in XBRL for the year 2013-14.
Que. 14	ABC Private Limited was incorporated on 15-9-2013 in the State of Maharashtra by a group of professional engineers without any knowledge about the maintenance of the books of account. The company has appointed you as the chief accounts officer at New Delhi where the books of account will be maintained. Keeping the provisions of section 128 of Companies Act, 2013, advise the management on: I. The nature of books to be maintained II. The period for which the accounts have to be preserved; and III. The steps to be taken if the books of account are to be kept in New Delhi (CA May 2014 Modified)
Ans.	I. As per section 128 of Companies Act, 2013, company should maintain at its registered office proper books of account, other relevant books and papers and financial statement for every financial year with respect to: ■ all sums of money received and expended by the company and the matters in respect of which receipts and expenditure take place ■ all sales and purchases of goods and services by the company ■ the assets and liabilities of the company The prescribed particulars relating to cost incurred on material and labour for company specified under section 148 of Companies Act, 2013, II. As per section 128 of Companies Act, 2013, books of account relating to the period of not less than 8 financial years shall be preserved in good condition along with the relevant vouchers. Where a company has not been in existence for 8 years, the books of account and related vouchers should be preserved in good order right from the first accounting year of the company. This period of 8 years can be longer, if the company is under investigation

	and Central Government direct company to maintain its books of account for period more than 8 years. III. Books of account shall be maintained and kept at registered office. All or any books of account maybe kept at other place in India if Board of directors passes resolution and gives notice to ROC within 7 days. Notice to ROC shall specify name of books to be kept at other place and complete address. If books of account are maintained outside India, summarized returns shall be sent to the registered office at quarterly intervals. - Rule 4 - Companies (Accounts) Rules, 2014
Que. 15	Mr. Bhagvath, recently acquired 76% of the equity shares of M/s. Renowned Company Ltd., in the hope of earning good dividend income. Unfortunately, the existing Board of directors has been avoiding declaration of dividend due to alleged inadequacy of profits. Unconvinced, Mr. Bhagvath seeks permission of company to allow to him to examine the books of account, which is summarily rejected by the company. Examine and advise the provisions in relation to inspection of books of account and remedy available. (CA November 2014)
Ans.	■ Section 128 of Companies Act, 2013 provides that books of account and other books and papers maintained by the company within India shall be open for inspection at Registered Office of company or other place in India by any director during business hours. ■ The members or shareholders of company are not vested any right to inspect books of account of company under Companies Act, 2013. ■ However, member or shareholders of company may be permitted to inspect books of account if Articles of Association of company authorise inspection to members. ■ Accordingly, refusal by company to inspect or examine books of account is in order.
Que. 16	ABC Limited has on its Board, four Directors viz. W, X, Y and Z. In addition, the company has Mr. D as the Managing Director. The company also has a full time Company Secretary, Mr. Wise, on its rolls. The financial statements of the company, Balance Sheet and Statement of Profit & Loss and the Board's Report for the year ended 31st March, 2015 were authenticated by two of the directors, Mr. X and Y under their signatures. Referring to the provisions of the Companies Act, 2013: (i) Examine the validity of the authentication of the Balance Sheet and Statement of Profit & Loss and the Board's Report. (ii) What would be your answer in case the company is a One Person Company (OPC) and has only one Director, who has authenticated the Balance Sheet and Statement of Profit & Loss and the Board's Report? (CA November 2015)
Ans.	■ As per section 134 of Companies Act, 2013, Chairperson of company shall sign financial statement where he is authorized by the Board. ■ If Chairperson is not authorized by Board, it shall be signed by two directors out of which one shall be Managing Director, if any, and Chief Financial Officer and Company Secretary, if he is appointed. ■ In case of OPC, one director shall sign it. ■ The Board's report and any annexures thereto shall be signed by its Chairman if he is authorized in that behalf by the Board. ■ If Chairman is not authorized, the report shall be signed by: • At least two directors, one of whom shall be Managing Director; or

	• By director where there is one director (I) Accordingly, Mr. D, Managing Director, should sign financial statement and Board's report. Mr. Wise, Company Secretary of Company, should sign financial statement. In the given case, two directors, Mr. X and Mr. Y, signed it. Authentication is not as per provisions of Companies Act, 2013. (II) Authentication of Financial Statement and Board's Report by one director in case of OPC is valid.
Que. 17	DJA Company Limited, incorporated under the provisions of Companies Act, 2013, has two subsidiaries - AJD Limited and AMR Limited. All the three companies have prepared their financial statements for the year ended 31st March, 2015. Examining the provisions of the Companies Act, 2013, answer the following: (i) In what manner the subsidiaries - AJD Limited and AMR Limited shall prepare their Balance Sheet and Profit & Loss Account? (ii) What would be your answer in case the DJA Limited - the holding company, is not required to prepare consolidated financial statements under the Indian Accounting Standards?
	(iii) What shall be your answer in case one of the subsidiary company's financial statements does not comply with the Accounting Standards? (iv) To what extent is the Central Government empowered to exempt a company from preparing the financial statements in compliance with the Indian Accounting Standards? (CA November 2015)
Ans.	■ The Balance Sheet should be in the form set out in Part I of Schedule III, and Profit and Loss Account shall be as per Part II of Schedule III of Companies Act, 2013. ■ As per Schedule III, vertical form of Balance Sheet & Profit-Loss Account is compulsory. ■ Every company shall comply with Indian Accounting Standards while preparing its financial statements and preparing consolidated financial statements in case, if it has one or more subsidiary company. ■ If it does not comply with the accounting standards, following'disclosure should be made: • the deviation from the accounting standards • the reasons for such deviation • the financial effect, if any, arising due to such deviation ■ Central Government may exempt any class of companies by notification from preparing the financial statement in compliance with the Indian Accounting Standards on following conditions: • Exemption may be given in public interest • Exemption may be granted with or without condition • Exemption may be granted on its own or on application by class of companies - section 129 ■ Section 129 is not applicable to extent of application of AS-17 to the Government Company engaged in defense production. ■ Consolidation of financial statements is made mandatory for all companies where a company has one or more subsidiaries or associate company whether Indian or foreign. ■ The mandatory consolidation applies to all companies whether such company is: • Listed or unlisted • Private or public

■ Company is not required to prepare its consolidated financial statements if:

• It is wholly owned subsidiary company or partially owned subsidiary of another company AND all its other members, have been intimated in writing and the proof of delivery of such intimation is available with company, do not object to company for not preparing consolidated financial statements.

• Company's securities are not listed on any stock exchange, either in India or outside India

• Its ultimate or intermediate holding company prepares and files consolidated financial statements with ROC, which are according to applicable accounting standards.

■ The provisions of Companies Act, 2013 are applicable to the preparation, adoption and audit of financial statements of holding company shall similarly apply to consolidated financial statement.

Que. 18

Explain the law laid down under the Companies Act, 2013 in respect of filing of annual financial statements with Registrar of companies in the following two situations who is liable for the default.

i. Where financial statements of the company are filed with the ROC after 10 months from its due date?

ii. Where financial statements are not at all filed by the company with the ROC?

(CA May 2016)

Ans.

■ As per section 137 of Companies Act, 2013 every company is required to file financial statements with Registrar within 30 days from the date of Annual General Meeting.

■ If financial statements are not filed within 30 days, filing may be done beyond 30 days with additional filing fees.

■ In addition, following penal consequences take place:

• Company is punishable with fine of ? 1,000 per day or every day during which the default continues, but shall not be more than ? 10 lacs; and

• Managing Director or Chief Financial Officer is punishable with imprisonment, which may extend to 6 months or with fine of not less than t 1 lac but which extend to ? 5 lacs.

■ If the company has neither Managing Director nor Chief Financial Officer, all directors are responsible.

Que. 19

Super Real Estate 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)
2011-12	20
2012-	13 40
2013-	14 30
2014-	15 70
2015-	16 50

(i) Calculate the amount that the company has to spend towards CSR.

(ii) Give the composition of the CSR committee of a listed and unlisted company.

(til) Will the company suffer penalties if they fail to provide for or incur expenditure for CSR?

(iv) List only two activities that are expressly prohibited from being considered as CSR activities.

(CA November 2016)

	(i) Every company, private limited or public limited, which either has: ■ a net worth of ? 500 crore or more, ■ a turnover of ? 1,000 crore or more, ■ net profit of ? 5 crore or more, need to spend at least 2% of its average net profit for the immediately preceding three financial years on corporate social responsibility activities. Accordingly, Super Real Estate Limited has to spend f 3 Cr. (2% of average net profits of last 3 years i.e., ? 30 + 70 + 50 Crores) on CSR activities. (ii) To formulate and monitor the CSR policy of a company, a CSR Committee need to be constituted. CSR Committee of listed company should consist of at least three directors, including an independent director. Unlisted public companies and private companies that are not required to appoint an independent director shall constitute their CSR Committee with minimum two directors.
	(iii) No, company is not liable for any penalty for not spending required amount towards CSR activity. If the company has been unable to spend the minimum required on its CSR initiatives, the reasons for not doing so are to be specified in the Board Report. (iv) As per Schedule VII, following activities can be undertaken by a company to fulfil its CSR obligations: ■ eradicating hunger, ■ poverty and malnutrition, ■ promoting preventive healthcare, ■ promoting education and promoting gender equality, ■ setting up homes for women, orphans and senior citizens, ■ measures for reducing inequalities faced by socially and economically backward groups, ■ ensuring environmental sustainability and ecological balance, ■ animal welfare, ■ protection of national heritage and art and culture, ■ measures for the benefit of armed forces veterans, war widows and their dependents, ■ training to promote rural, nationally recognized, Paralympic or Olympic sports, ■ contribution to the Prime Minister's National Relief Fund or any other fund set up by the Central Government for socio-economic development and relief and welfare of SC, ST, OBCs, minorities and women, ■ contributions or funds provided to technology incubators located within academic institutions approved by the Central Government and rural development projects, ■ contribution to clean Ganga fund or Swachh Bharat Kosh.
Que. 20	Bengaluru Limited is a listed company with a net worth of X 95 lakhs and turnover of ? 11.6 crore as on 31st March, 2016. The company wants to circulate the financial statements in electronic mode. Referring to the provisions of the Companies Act, 2013, advise the company whether it can do so. (CA November 2016)
Ans.	■ As per section 136 of Companies Act, 2013, listed companies and other public companies which have a net worth of more than X 1 crore and turnover of more than X 10 crore may send financial statement: • By electronic mode to members, whose shareholding is in dematerialised form and whose email ids are registered with company.

	s By electronic mode to members who are holding shares in physical form and who have positively consented in writing to receive financial statement by electronic mode. • By dispatch of physical copies by registered post or speed post or courier service. ■ In the given question, Bengaluru Limited being listed company can circulate the financial statements in electronic mode on fulfilment of provision of section 136.
Que. 21	Shoki Internal Ltd. has a network of six branches scattered all over the world out of which two are in India. The net-worth of the company is ? 650 crores. Since the net profits of the company were in downward trends, Mr. Nikung a retired general manager of the bank was appoinied by the company to analyse the financial health of the company. Among the other points having been reported by Mr. Nikung the CEO of the company seeks your advice, particularly on the application of the provisions of CSR under the Companies Act, 2013 based on the following: (i) The net profit of the company in the financial year 2012-13 was X 18 crore which was contributed by the branches located in India and outside in the ratio of 35:65. (ii) Since 2013-14 onwards all the branches located in India have not earned any profit.
	(iii) The Financial Statement for the year 2015-16 revealed that there was a net profit of ? 7 crore to the company and the total expenses on travelling abroad were ? 2.5 crore. (iv) The company had borrowed loan at a very high of interest which needs to be swapped with low financing cost. (v) During the year 2016-17 the company has so far spent CSR expenses to the tune of 1.10 per cent of the average net profits of the company made during the three preceding immediately financial years which in his view need special attention. (CA May 2017)
Ans.	■ Assuming that Shoki Internal Ltd. is Indian company registered under Companies Act. ■ Company has net worth of ? 650 crores and therefore provisions of CSR are applicable to it. ■ Company shall constitute CSR committee. CSR committee shall implement CSR policy or CSR projects undertaken by company. ■ Moreover, company should spend at least 2% of average net profits of company made during three preceding financial years. ■ Net profit for CSR means net profit as per financial statement of company and it does not include profit earned by the overseas branches. ■ Now, as per point No. (ii), all branches located in India have not earned profit since 2013-14 onward. ■ It means all profits earned by company are profits of overseas branches. ■ Therefore, company is not required to spend any amount on CSR for financial year 2016-17. ■ In the given case, although company was not required to spend any amount on CSR, it has spent only 1.10% of average net profits for CSR activities. ■ Company has not violated any provision of Act.
Que. 22	The Board of Directors of M/s PQR Ltd. has a practical problem. The registered office of the company is situated in a classified backward area of Maharashtra. The Board wants to keep the account books of the company at its corporate office in Mumbai which is conveniently located. The Board seeks your advice about the feasibility of maintaining the accounting records at a place other than the registered office of the company. Advice.

	(CA November 2008)
Ans.	■ The books of account can be kept at such other places in India, if Board of directors has passed resolution to this effect. ■ The Board resolution so passed shall be filed within 7 days of passing Board resolution with the Registrar of Companies and notice giving full address of the other place to all other government and concerned authority. ■ Thus, in the present case, the company can follow the above procedure and keep its accounts book at Mumbai office. ■ Alternatively, company can maintain books of account in electronic form. ■ Books maintained in electronic form can be accessed from anywhere.
Que. 23	Rera Ltd. 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. (CA May 2018)
Ans.	Company, which attracts provision of Section 135 of Companies Act, 2013 regarding corporate social responsibility, required to constitute Corporate Social Responsibility Committee (CSR). If company attracts any one of following criteria, it is required to spend 2% of its average net profit on CSR activities and require to constitute CSR committee: ■ A net worth of ? 500 crore or more ■ A turnover of ? 1,000 crore or more ■ Net profit of ? 5 crore or more From the figures given in question, it can be said that company is not attracting any of criteria of section 135 and therefore it is not required to constitute CSR committee. CSR provisions are not applicable to Rera Ltd.

13: Audit and Auditors

Que. 1	The paid up capital of AJD Ltd. is ? 10 crores consisting of 70 lakh equity shares of ? 10 each fully paid up 30 lakh preference shares of ? 10 each, fully paid up. Nationalized bank, LIC and 1DBI hold among themselves 30 lakh equity shares and 25 lakh preference shares. With reference to the provisions of the Companies Act, 2013, examine whether AJD Ltd. is a government company. Explain the manner in which you would proceed in the matter of appointment of auditors for the said company. (CA May 1998) Or The aggregate shareholding of nationalised banks, LIC and IDBI exceeded 55% of the paid up share capital of the company. How will the auditors of the company be appointed? (CA November 1994)
Ans.	■ If Central Government or State Government or both hold at least 51 % of shares of company, it is Government Company. ■ Share capital includes equity and preference shares. ■ In the given case, no share is held by Central or State Government. ■ Therefore, AJD Ltd. is not Government Company. ■ Appointment of auditors will be made by the shareholders at Annual General Meeting for one term of maximum five years subject to ratification at every Annual General Meeting.
Que. 2	Examine the validity of the following with reference to the provisions of the Companies Act, 2013: Mr. Prakash, a Chartered Accountant in full time practice was appointed as the auditor of ABC Ltd., a company which is a subsidiary of DGH Ltd. and DGH Ltd. has another subsidiary called PKM Ltd. Mr. Prakash had taken a loan of ? 25,000 from PKM Ltd. and the loan, is outstanding as on the date of his appointment as auditor of ABC Ltd. (CA May 1998)
Ans.	■ As per section 141 of Companies Act, 2013, if person is holding any security of or interest in company or its subsidiary' or holding or associate company or subsidiary of holding company is not eligible for appointment of auditor of company. ■ But person himself or his relative or partner who is indebted to company or its subsidiary or holding company or its associate company upto ? 5 Lakh is not disqualified to be appointed as auditor of company. - Section 141 ■ Applying above provisions to given situation, since ABC Ltd. is a subsidiary of DGH Ltd.; which is the holding company of PKM Ltd. to whom Mr. Prakash is indebted for a sum within limit of ? 5 Lakhs hence his appointment as the auditor of ABC Ltd. is in order.
Que. 3	The auditor made certain adverse comments on the audited financial statements of a government company. Explain with reference to the relevant provisions of the Companies Act, 2013 whether it is possible for the government company to revise the audited but unadopted financial statements in the light of the adverse comments made by the auditor of India and also whether it is necessary for the Board of directors to give explanations in the Board's report in respect of such adverse comments. (CA May 2000 Modified)
Ans.	■ The original financial statements may be revised to remove reservations of auditor.

	■ Such revised statements should be resubmitted to the auditors before placing them at the Annual General Meeting.

	■ Original set of financial statements should be returned to auditor. ■ Auditor should also make an adequate disclosure about revision of financial statements. ■ As per section 134 of Companies Act, 2013 Board of directors is required to give full explanation and comments on every reservation, qualification or adverse remark by auditor in Board's report. ■ In the given case, company has not complied with provision of section 134. ■ Company is liable for fine which is not less than ? 50,000 but not exceed than ? 25 Lakhs. ■ Every officer in default is liable for imprisonment for term which may extend to 3 years or with fine which is not less than ? 50,000 but not exceed than ? 5 Lakhs, or with both.
Que. 4	Rao & Rao, a firm of Chartered Accounts have to be appointed as the auditors of Freebee Ltd. in place of Shah & Shah, the Chartered Accountants. Explain the steps to be taken with regard to the appointment and payment of remuneration to the auditors. (CA November 2001) Or CRE Ltd., a Government Company wants to appoint Parasnath & Co. as its auditors for the period of 2014-2015. State with reference to the provisions applicable to Government Companies, the procedure to appoint the auditors. (CA November 2009)
Ans.	As per section 140 of Companies Act, 2013 Feebee Ltd shall take following steps to appoint Rao & Rao, a firm of Chartered Accounts in place of retiring auditor M/s. Shah & Shah: Special Notice ■ Special notice is given for resolution at AGM for: ■ Appointing person other than retiring auditor; or ■ Providing expressly that retiring auditor shall not be re-appointed except where retiring auditor has completed consecutive tenure of 5 /10 years, as case may be. Inform auditor & members ■ Company should send copy of notice to retiring auditor. ■ If notice is received well in advance, company should include same in the notice of AGM. Representation by auditor ■ Retiring auditor has right to make representation. ■ If representation is made in writing with request to forward to members, company should forward it to members. ■ If copy of representation is not sent because it is received too late or because of default of company, auditor may require it to be read out at AGM. ■ If copy of representation of auditor is not sent to members, the copy shall be filed with ROC. ■ If company does not wish to send the representation to members or read at the General Meeting, the company or aggrieved party can apply to NCLT. ■ Application shall be made in Form NCLT 1. ■ If NCLT is satisfied that the right of representation is being misused by auditor, the NCLT may order that the representation may not be sent and need not be read out at the meeting.

	General Meeting ■ Convey General Meeting and pass resolution. ■ Intimate to concerned auditor and intimate Registrar. Remuneration to auditor - Section 142 ■ The remuneration of the auditor of company is fixed: • In the General Meeting; or • In such manner as may be decided in General Meeting.
Que. 5	On the basis of the information given below, advise M/s XYZ Ltd. about the provisions applicable for the appointment of Auditors. Date of Incorporation — 3.10.2012 Date of Receipt of Certificate of Commencement of Business — 18.10.2012 Nominal value of Equity shares held — (? In Lakhs) Uttar Pradesh Government — 11,600 Central Government — 8,000 Bharat Heavy Electricals Ltd. — 8,000 (A Corporation controlled by the Central Government) Private Sector Companies — 8,800 Indian Mutual Funds — 4.000 Foreign Financial Institutions — 4.000 Individual Members — 3,600 Total — 48,000 (CA November 2002 Modified)
Ans.	As per the details available from given question, 57.5% of total share capital is held by Government in XYZ Ltd., calculation of which are shown hereunder:

	Percentage	Nominal value of shares (In Lakh ?)
Uttar Pradesh Government	24.1	11,600
Central Government	16.7	8,000
Bharat Heavy Electricals Ltd. (It is corporation controlled by Government)	16.7	8,000
Total	57.5	27,600

XYZ Ltd. is Government controlled company as government and Corporation controlled by government together hold more than 5096 of total share capital of company. Auditor in XYZ Ltd. should be appointed by the C & AG.

Que. 6	What is the liability of an auditor for failure to point out in his report that dividend is paid out of capital?

	(CA May 2003)
Ans.	■ An auditor who is party to such payment of improper dividend is liable to proceedings by action. In case of winding up, he is liable to misfeasance. ■ As per section 147 of Companies Act, 2013, for non-complying duty, auditor is liable for punishment with fine of not less than ? 25,000 and not more than k 5 lakh or four times remuneration of auditor, whichever is less. ■ If auditor has contravened any provisions with knowledge or to deceive shareholders, creditors or tax authorities, he is punishable with imprisonment up to 1 year and with fine, which shall not be less than ? 50,000 but which may extend to ? 25 lakh or 8 times the remuneration of the auditor, whichever is less. ■ In addition, auditor is liable to: • Refund the remuneration received from company; and • Pay for damages to company or authorities or other person because of incorrect or misleading statement in his audit report.
Que. 7	Can an auditor be disqualified for indebtedness in the following cases? (a) Where he is recovering his fees on a progressive basis even though the job is not complete? (b) Where the auditor's firm has purchased goods from the auditee company and not paid for them for over six months? (CA May 2003)
Ans.	(a) The Auditor cannot be said to be indebted as per section 141 of Companies Act, 2013 when he is receiving his fees on progressive basis even though the job is not complete. Moreover, person who is proposed to be appointed as auditor can be indebted to company or its subsidiary or holding company or its associate company for not more than X 5 Lakh. (b) In this case the auditor of the company is said to be indebted, if the amount outstanding from him regarding goods and services purchase from the company audited by him exceeds X 5 Lakh irrespective of the nature of purchase or period of credit allowed to other customer. Upto X 5 Lakh indebtness is allowed.
Que. 8	The financial statement of a listed company have not been prepared in accordance with some of the applicable accounting standards. Examine the responsibility of the directors and auditors in this regard under the Companies Act, 2013. (CA May 2003 Modified) Or XYZ Limited did not prepare its financial statement for financial year in conformity with some of the mandatory Accounting Standards. You are required to state with reference to the provisions of the Companies Act, 2013, the responsibilities of directors and statutory auditor of the company in this regard. (CA May 2007)
Ans.	■ As per section 129(5) of Companies Act, 2013, if the financial statements are not prepared as per accounting standards, the company shall disclose in financial statements the following: • the deviation from the accounting standards • the reasons for such deviation • the financial effect, if any, of such deviation

	■ As per section 129 of Companies Act, 2013, Managing Director, Whole time Director in charge of finance, Chief Financial Officer or any other person charged by Board is duty bound to comply requirement of AS. ■ In absence of these persons, all directors are liable for non-comply with AS. ■ Every auditor should comply with applicable accounting standards. ■ Further, the Board's report shall include a Directors' Responsibility Statement, indicating therein that on the preparation of the annual accounts, the applicable accounting standards had been followed along with proper explanation relating to material departures. ■ The auditor shall state in his report that the annual accounts comply with accounting standards referred to in section 133 of Companies Act, 2013.
Que. 9	How would you deal with the following situation in the matter of appointment of Auditors? The shareholding of L.I.C. and U.T.I. increased from 23% to 27% of the subscribed share capital of the company after issue of notice of the Annual General Meeting, but before the date of the Annual General Meeting. (CA November 2003)
Ans.	■ As per section 139 of Companies Act, 2013, auditor of company other than Non-government Company is appointed by passing Ordinary Resolution by members at Annual General Meeting for one term of maximum period of 5 years. ■ Appointment of auditor is required to be ratified at every Annual General Meeting by passing Ordinary Resolution. ■ Shareholding of LIC & UTI increased from 23 to 27% does not impact in any way on method of appointment of auditor in company. ■ Fresh notice of the meeting is not required and auditor can be appointed by passing Ordinary Resolution.
Que. 10	Explain, how the auditor will be appointed in the following cases: (i) A Government Company within the meaning of Section 2(45) of the Companies Act, 2013. (ii) The Auditor of the company has resigned on 31st December, 2014, while the financial year of the company ends on 31st March, 2015.
	(iii) A company, whose shareholders include the following: (a) Bank of Baroda (A Nationalised Bank) holding 12% of the subscribed capital in the company. (b) National Insurance Company Limited (carrying on General Insurance Business) holding 10% of the subscribed capital in the company. (c) Maharashtra State Financial Corporation (A Public Financial Institution) holding 8% of the subscribed capital in the company. (CA May 2004)
Ans.	(i) Auditor of Government Company (i.e. appointment or re-appointment) should be made by CAG within 180 days from the commencement of financial year. (ii) Casual vacancies in office of auditor of Non-government Company is filled by Board of directors within 30 days. But if such vacancy is created by resignation of auditor, appointment should be made at General Meeting within period of 3 months on recommendation of Board. (iii) Bank of Baroda, National Insurance Company Limited and Maharashtra State Financial Corporation together hold 30% of total subscribed capital of company. Therefore, it is not

	Government Company or Government controlled company (i.e. deemed government company). Auditor of company shall be appointed by members at Annual General Meeting.
Que. 11	State the procedure for the following, explaining the relevant provisions of the Companies Act, 2013: (i) Appointment of first auditor, when the Board of Directors did not appoint the first auditor within one month from the date of registration of the company. (ii) Removal of statutory auditor (appointed in Annual General Meeting) before the expiry of his term. What difference it would make, if the Auditor was first auditor appointed by the Board of Directors? (CA November 2004 Modified)
Ans.	(i) Section 139 of Companies Act, 2013 lays down that the first auditor of a company shall be appointed by the Board of Directors within one month of the date of registration of the company. If the Board of Directors fails to exercise its power, the company in Extraordinary General Meeting should appoint the first Auditor within 90 days. Subsequent Auditor of a company is appointed at Annual General Meeting by members for one term of maximum five years by passing Ordinary Resolution. (ii) Auditor of government and non-government company can be removed before expiry of his term by passing Special Resolution and prior approval of Central Government. Auditor sought to be removed should be given reasonable opportunity of being heard. Following steps should be taken to remove auditor before expiry of his term: ■ Board resolution should be passed. ■ Application to Central Government is made in Form ADT-2 within 30 days of passing of Board Resolution. ■ Hold General Meeting within 60 days of receipt of approval of Central Government.
Que. 12	One of the members of ADB Ltd. has proposed the name of Mr. Fame for appointment as a Director of the Company in the Annual General Meeting under Companies Act. Mr. Fame is one of the partners of the Fame & Fame, Chartered Accountants, who are the retiring auditors of the company. But the audit of the company is being looked after by another partner of the firm. Examine whether Fame & Fame can be reappointed as auditors, if Mr. Fame is appointed as Director. (CA May 2006)
Ans	■ Mr. Fame is appointed as a director of the company 'Fame and Fame' cannot be reappointed as company's auditors. ■ It is so because a director is an officer of the company within the meaning of section 2(59) of the Companies Act, 2013 and the audit firm becomes disqualified under section 141 of Companies Act, 2013.
	■ It is immaterial that the audit of the company is being looked after by another partner of the firm and not by Mr. Fame. ■ Therefore, if Mr. Fame is appointed as a director of the company, Tame and Fame' cannot be reappointed as company's auditors.
Que. 13	Ram & Company was appointed as auditor of ABC Ltd. at the Annual General Meeting held on 30th September, 2014. Can Ram & Co. continue as auditor of the company in case the next Annual General Meeting has not been held in time? What would be the position in case

	the next Annual General Meeting was held on 30th September, 2014, but adjourned without considering the business of appointment or re-appointment of auditor? (CA November 2006 Modified) Or Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013: Daiauda Cement Limited appointed CA Naresh as statutory auditor of the company at the Annual General Meeting held on 30th September, 2014. The next Annual General Meeting was held on 30th September, 2014 but it was adjourned to 30th November, 2014 for consideration of the financial statements for the year ended 31st March, 2014. CA Naresh continued to function as statutory auditor of the company. Decide. (CA November 2012 Modified)
Ans.	■ Auditor is appointed at the Annual General Meeting to the conclusion of the 6th Annual General Meeting subject to ratification at every Annual General Meeting. ■ It means auditor can be appointed by members for maximum one term of 5 years at time. ■ In the given question, it is not clarified that whether auditor is appointed by members at Annual General Meeting is for 5 years or less number of years. ■ Therefore, the tenure of office of the auditor does not expire on the last date on which the Annual General Meeting was due to be held in terms of section 139 of Companies Act, 2013. ■ Hence, Ram & Co. can continue as auditor even if the AGM for the year 2014 has not been held in time. ■ In case AGM for 2014 was held on 30th September, 2014 that adjourned without considering the business of appointment or reappointment of auditor, the tenure of Ram & Co. will continue as auditor.
Que. 14	Mewar Instrumentations Limited is a subsidiary of a Government Company. The Comptroller and Auditor General of India, appointed Sobman & Company to conduct an audit of Mewar Instrumentations Limited. Discuss, under the provisions of the Companies Act, 2013 whether the Comptroller and Auditor General's power to appoint an auditor for the said subsidiary company is in order? (CA May 2010)
Ans.	■ As per section 2(45) of the Companies Act, 2013, Government Company means any company in which not less than 5196 of the paid-up share capital is held by the Central Government or by State Government or partly by the Central Government and partly by one or more State Governments and includes a company which is a subsidiary of a Government Company. ■ As such a Government Company includes subsidiary to a Government Company, ■ Therefore, the contention of XYZ Ltd. that they are mere subsidiary of the Government Company and CAG do not have power to appoint auditor of company is not correct.
Que. 15	Parkash Carriers Limited appointed Mr. Raman as its auditor in the Annual General Meeting held on 30th September, 2014. Initially, he accepted the appointment. But he resigned from his office on 31st October, 2014 for personal reasons. The Board of Directors seeks your advice for filling up the vacancy by appointment of Mr. Albert as auditor. Advice. Also suggest the procedure to be adopted in case Mr. Albert is proposed to be removed from his office before the expiry of his term. (CA November 2009 Modified)

	Or A is the Auditor of B & Co. Ltd. Board of Directors decided to remove A on certain grounds. Please indicate what procedure is to be followed to remove A? Advise the Board. (CA November 2010 Modified)
Ans.	■ Casual vacancies in office of auditor of non-government company is filled by Board of directors within 30 days. ■ But if such vacancy is created by resignation of auditor, appointment should be made at General Meeting within period of 3 months on recommendation of Board. - Section 139(8). ■ Thus, in the present case, the company may convene an Extraordinary General Meeting to appoint Mr. Albert as its auditor consequent upon the resignation by Mr. Raman. Removal of Mr. Albert before expiry of his term ■ Auditor of government and non-government company can be removed before expiry of his term by passing Special Resolution and prior approval of Central Government. ■ Auditor sought to be removed should be given reasonable opportunity of being heard. ■ Company is required to following procedure for removal: • Board resolution should be passed. • Application to Central Government is made in Form ADT-2 within 30 days of passing of Board resolution. • Hold General Meeting within 60 days of receipt of approval of Central Government.
Que. 16	Examine the validity of the following appointments with reference to the provisions of the Companies Act, 2013 : Yashodharman Granites Limited reappointed Suresh & Company, a firm of Chartered Accountants, as auditors of the company at the Annual General Meeting held on 30th September, 2013. The wife of one of the partners of Suresh & Company acquired large number of equity shares in Yashodharman Granites Limited on 5th October, 2013. But Suresh & Company continue to function as statutory auditors of the company. (CA November 2012 Modified)
Ans.	■ As per section 141 of Companies Act, 2013 a person who himself holding any security or interest in the company or its subsidiary company or holding company or associate company is not eligible for appointment of auditor of company. ■ However, relative of the person proposed to be appointed as auditor may hold security in company of face value not exceeding ? 1 Lakh. Wife of partner of audit firm is covered within meaning of relative. • In the given question, it is not clearly mentioned about face value of securities held by wife of Mr. Suresh. • Assuming that she is not holding or not acquired shares of more than ? 1 Lakh face value, it can be said that Suresh & Co. can continue to act as statutory auditor of company even after 5th October, 2013.
Que. 17	One-fourth of the subscribed capital of AMC Limited was held by the Government of Rajasthan. Mr. Neeraj a qualified Chartered Accountant was appointed as an auditor of the Company at the Annual General Meeting held on 30th April, 2013 by an Ordinary Resolution. Mr. Sanjay, a shareholder of the Company objects to the manner of appointment of Mr. Neeraj on the ground of violation of the Companies Act, 2013. Decide, whether the

	objection of Mr. Sanjay is tenable? Also examine the consequences of the above appointment under the said Act. (CA November 2013 Modified)
Ans.	■ When Government of Rajasthan is holding 1 /4th of capital of company, it is not Government Company. ■ Holding of shares by public financial institutions, Government companies, Central Government, State Governments, State Financial Institutions, Nationalized bank, Nationalized General Insurance Company, either singly or together hold 25% or more shares in a company do not in any way make difference in status of company. ■ Hence, appointment of auditors should be made in same manner like auditor of any non-government company is appointed. ■ Appointment of Auditor in any non-government company is made by passing Ordinary Resolution for one term of maximum period of 5 years subject to ratification of same at every General Meeting. -Section 139 ■ As appointment is made as per provision and therefore it is valid.
Que. 18	On recommendation of the Board of directors of D JA Company Limited, Mr. R is appointed at the company's Annual General Meeting held on 1st October, 2014 as company's auditor for period of 10 years. A resolution to this effect was passed unanimously with no vote against the resolution. Explaining the provisions of the Companies Act, 2013 relating to the appointment and re-appointment of auditors: (i) Examine the validity of the above resolution (ii) What shall be your answer in case of an audit firm M/s. R & Associate is appointed as the company's auditor? (CA November 2014)
Ans.	I. Resolution passed by company is not valid because company cannot appoint any person as its auditor for period more than 5 years at time. After five years, if company and its shareholder wish, they may re-appoint same auditor for another period of 5 years subject to compliance of other provisions of Companies Act, 2013. II. Answer will be same even if audit firm M/s. R & Associate is appointed as auditor as auditor can be appointed for one term of maximum five years at Annual General Meeting. This provision is equally applicable whether auditor is individual or firm.
Que. 19	PQR Ltd. is an unlisted public company having paid up share capital of ? 80 crores during the preceding financial year 2014-15. The turnover of the company was t 110 crores for the same period. Referring to the provisions of the Companies Act, 2013, answer the following: (i) Is it mandatory for the above company to appoint an internal auditor for the financial year 2015-16? (ii) What are the qualifications of the Internal Auditor? (CA May 2015)
Ans.	(i) As per section 138 of Companies Act, 2013, appointment of Internal Auditor is compulsory for following unlisted company, which has: ■ Paid up capital of ? 50 Crores or more during preceding financial year; or ■ Turnover of ? 200 Crores or more during preceding financial year.

	As PQR Ltd. attract threshold of paid up capital during preceding financial year, it is mandatory to appoint Internal Auditor for financial year 2015-16. (ii) Chartered Accountant or a Cost Accountant or such other professional as may be decided by Board can be appointed as internal auditor. However, statutory auditor cannot be appointed as internal auditor of company. Employee of company can be appointed as internal auditor.
Que. 20	List out three matters on which an auditor of company has to express his views and comments in his report as per the Companies (Audit and Auditors) Rules, 2014 (CA May 2015)
Ans.	■ The auditor shall make a report to the members of the company that the accounts, financial statements give a true and fair view of the state of the company's affairs as at the end of its financial year and profit or loss and cash flow for the year and such other matters as may be prescribed. ■ Apart from the points discussed above, auditor's report shall also state: • Whether he has sought and obtained all the information and explanations which to the best of his knowledge and belief were necessary for the purpose of his audit and if not, the details thereof and the effect of such information on the financial statements • Whether, in his opinion, proper books of account as required by law have been kept by the company so far as appears from his examination of those books and proper returns adequate for the purposes of his audit have been received from branches not visited by him. • Whether the report on the accounts of any branch office of the company audited under section 143(8), by a person other than the company's auditor has been sent to him under the proviso to that sub-section and the manner in which he has dealt with it in preparing his report. • Whether the company's balance sheet, profit and loss account and cash flow statement dealt with in the report are in agreement with the books of account and returns.
	• Whether, in his opinion, the financial statements comply with the accounting standards. • The observations or comments of the auditors on financial transactions or matters which have any adverse effect on the functioning of the company. • Whether any director is disqualified from being appointed as a director under section 164(2). • Any qualification, reservation or adverse remark relating to the maintenance of accounts and other matters connected therewith. • Whether the company has adequate internal financial controls system in place and the operating effectiveness of such controls. • Such other matters as may be prescribed • As per Rule 11 of the Companies (Audit and Auditors) Rules, 2014, include their views and comments on the following matters, namely: • Whether- the company has disclosed the impact, if any, of pending litigations on its financial position in its financial statements • Whether the company has made provision, as required under any law or accounting standards, for material foreseeable losses, if any, on long term contracts including derivative contracts. • Whether there has been any delay in transferring amounts, required to be transferred, to the Investor Education and Protection Fund by the company

	■ Auditor shall comment about existence of adequate financial control system and its operating effectiveness. ■ An auditor has to submit his report in respect of 'Corporate Governance' in case of listed company.
Que. 21	The auditor of Organic Foods Ltd. accepted the Certificate from Mr. Rohan who is the manager, a person of knowledge, competence and high reputation, as to the value of the stock in trade. The valuation of stock referred to above was found to be grossly overstated for several years in the balance sheets of the company. As a result of the over-valuation, dividends were paid out of capital. The Auditor did not examine the books of account very minutely. If they had done so and compared the amount of stock at the beginning of the year, with the purchases and sales during the year, they would have noticed the over-valuation. The company subsequently went into liquidation and the auditors were sued to make good the loss caused by the wrongful payment of dividends based on the balance sheets figures. Based on the above facts, you are required to decide, with reference to the provisions of the Companies Act, 2013 and the decided case laws, the following issues: (I) Whether the Auditors of the company will be liable for the loss caused to the company by the wrongful payment of dividends based on the Balance Sheets duly audited by the Auditors? (II) What are the statutory duties of the Auditors in this regard? (CA November 2015)
Ans.	■ Section 143 of Companies Act, 2013, prescribes duties of an auditor of company. ■ Statutory auditor is required to make report to the members of the company on the accounts examined by him and on financial statement of the company along with every document annexed to it. ■ The auditor has duty towards members of company to state that whether accounts give a true and fair view of affairs of company at the end of financial year. ■ It is duty of statutory auditor to report members of company, if during course of his audit work, he has discovered any illegal or fraud or violation of applicable accounting standards by company. ■ Auditor stands in fiduciary position in relation to the shareholders. ■ He must act in the best interest of company as well as shareholders of company.
	■ In case, if there arises any suspicion or probe, he is required to go to bottom of transaction. In normal circumstances, he is justified in believing expert and experienced servants of company. He cannot be assumed detective or investigation officer. ■ Based on the above proposition in the case of Kingston Mill Co., it was held that auditor can be held liable and it is not duty of auditor to take stock.
Que. 22	Explain the law laid down under the Companies Act, 2013 in respect of filing of annual financial statements with Registrar of Companies in the following two situations who is liable for the default. i. Where financial statements of the company are filed with the ROC after 10 months from its due date? ii. Where financial statements are not at all filed by the company with the ROC? (CA May 2016)
Ans.	■ As per section 137 of Companies Act, 2013 every company is required to file financial statements with Registrar within 30 days from the date of Annual General Meeting.

	■ If financial statements are not filed within 30 days, filing may be done beyond 30 days with additional filing fees. ■ In addition, following penal consequences take place: • Company is punishable with fine of t 1,000 per day for every day during which the default continues, but shall not me more than ? 10 lacs; and • Managing Director or Chief Financial Officer is punishable with imprisonment, which may extend to 6 months or with fine of not less than ? 1 lac but which extend to ? 5 lacs. ■ If the company has neither Managing Director nor Chief Financial Officer, all directors are responsible.
Que. 23	(i) Rupa Limited, a listed company appointed M/s. VG & Associates an audit firm as company's auditor in the Annual General Meeting held on 30-9-2017. 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. (ii) PKC Ltd. wants to appoint Mr. Praveen Kumar, a practicing Chartered Accountant as the statutory auditor of the company and asked proposed auditor to give a certificate in this regard. What are contents of the certificate to be issued in accordance with the Companies (Audit & Auditors) Rules, 2014? (CA May 2018)
Ans.	(i) As per Section 139 of Companies Act, 2013, every listed company shall compulsory follow rotation of auditor. Individual auditor can be appointed for maximum one term of 5 years whereas firm or LLP can be appointed for maximum two terms of 5 years each (Maximum total 10 years). Auditor is appointed for maximum term of 5 years at Annual General Meeting. In case where company is required to constitute audit committee, it consider qualification and experience of auditor for appointment. It recommend the name of auditor to Board for consideration. If Board agrees with recommendation of audit committee, it is further recommended to members in Annual General Meeting. Auditor is appointed or re-appointed at Annual General Meeting. (ii) Rule 4 of Companies (Audit and Auditors) Rules, 2014, auditor appointed should submit certificate that: ■ He is eligible for appointment and is not disqualified for appointment under the Act, Chartered Accountants Act, 1949 and rules made thereunder. ■ Proposed appointment is as per term provided under the Act. ■ Proposed appointment is within the limits laid down by or under authority of the Act. ■ The list of proceeding against the auditor or firm or partner with respect to professional matter of conduct, as disclosed in certificate, is true and correct.

14A: Indian Contract Act, 1872- Indemnity and Guarantee

Que. 1	'A' stands surety for 'B' for any amount, which 'C' may lend to B from time to time during the next three months subject to a maximum of ? 50,000. One month later, A revokes the guarantee, when C had lent to B ? 5,000. Referring to the provisions of the Indian Contract Act, 1872 decide whether 'A' is discharged from all the liabilities to 'C' for any subsequent loan. What would be your answer in case 'B' makes a default in paying back to 'C' the money already borrowed i.e. ? 5,000? (CA November 2002) Or Amit stands surety for 'Bikram' for any amount which 'Chander' may lend to 'Bikram' from time to time during the next three months subject to a maximum amount of ? 1,00,000 (one lakh only). One month later 'Amit' revokes the surety, when 'Chander' had already lent to 'Bikram' ? 10,000 (ten thousand). Referring to the provisions of the Indian Contract Act, 1872. Decide: (i) Whether 'Amit' is discharged from all the liabilities to 'Chander' for any subsequent loan given to 'Bikram'? (ii) What would be your answer in case 'Bikram' makes a default in paying back to 'Chander' the already borrowed amount of ? 10,000? (CA November 2015) Or 'Ramesh' and 'Suresh' are engaged in business having same nature. 'Ramesh' stands surety for any amount, which 'Kamlesh' may lend to 'Suresh' from time to time during the next 6 months subject to a maximum of ? 85,000. 3 months later, Ramesh revokes the guarantee, when Kamlesh had lent to Suresh ? 35000. Decide whether Ramesh is discharged from all the liabilities to Kamlesh for any subsequent loan under the provisions of the Indian Contract Act, 1872. Would your answer differ in case Suresh makes a default in paying back to Kamlesh the money already borrowed i.e. ? 35000? (CA November 2017)
Ans.	■ As per section 130 of Indian Contract Act, 1872, continuing guarantee can be revoked: • By giving notice at any time by surety as to future transaction; or • On death of surety, except contract provides any contrary provisions. ■ On revocation of contract of guarantee, surety is discharged from all future transactions but his liability for previous transactions remain continues. ■ Applying the above provisions in the given case, A is discharged from all the liabilities to C for any subsequent loan. ■ Answer in the second case would differ i.e. A is liable to C for ? 5,000 on default of B since the loan was taken before the notice of revocation was given to C.
Que. 2	Distinguish between contract of indemnity and contract of guarantee (CA November 2004,2017)

Ans.	Basis of comparison	Contract of Indemnity - Section 124	Contract of Guarantee - Section 126

	Meaning	A contract in which one party promises to another that he will compensate him for any loss suffered by him by the act of the promisor or the third party.	A contract in which a party promises to another party that he will perform the contract or compensate the loss, in case of the default of the person, it is the contract of guarantee.

	Basis of comparison	Contract of Indemnity - Section 124	Contract of Guarantee - Section 126
	Parties	There are two parties to the contract: . ■ Indemnifier (promisor); and ■ Indemnity holder (promisee)	There are three parties to the contract: ■ Creditor; ■ principal debtor; and ■ surety
	Number of Contracts	There is only one contract. (between the indemnifier and the indemnity holder)	There are three contracts, (between principal debtor and creditor; between creditor and the surety and between surety and principal debtor)
	Nature of Liability	The liability of indemnifier is primary and independent.	The liability of the surety is secondary and conditional.
	Purpose	To compensate for loss	To give assurance to promise.
	Can sue third party?	An indemnifier cannot sue a third party for loss in his own name, because there is no privity of contract. He can do so only if there is an assignment in his favour.	A surety, on discharging the debt due by the principal debtor, steps into the shoes of the creditor. He can proceed against the principal debtor in his own right.

Que. 3	Ravi becomes guarantor for Ashok for the amount which may be given to him by Nalin within six months. The maximum limit of the said amount is ^ 1 lakh. After two months, Ravi withdraws his guarantee. Upto the time of revocation of guarantee, Nalim hadgiven to Ashok ? 20,000. (i) Whether Ravi is discharged from his liabilities to Nalin for any subsequent loan? (ii) Whether Ravi is liable if Ashok fails to pay the amount of ? 20,000 to Nalin? (CA May 2006)
Ans.	■ 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. ■ The surety, may at any time, revoke a continuing guarantee as to future transactions, by notice to the creditor, but the surety remains liable for transactions already entered into. ■ As per the above provisions: (i) Yes, Ravi is discharged from all subsequent loan because it is a case of continuing guarantee. (ii) Ravi is liable for payment of ? 20,000 to Nalin because the transaction has already completed.
Que. 4	Explaining the provisions of the Indian Contract Act, 1872, answer the following:

	(i) A contracts with B for a fixed price to construct a house for B within a stipulated time. B would supply the necessary material to be used in the construction. C guarantees A's performance of the contract. B does not supply the material as per the agreement. Is C discharged from his liability? (ii) C, the holder of an overdue bill of exchange drawn by A as surety for B, and accepted by B, contracts with X to give time to B. Is A discharged from his liability? (CA November 2006)
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 for the creditor, the legal consequence of which is the discharge of the principal debtor. In the given case, the B omits to supply the timber. 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.
Que. 5	State whether the following statement is correct or incorrect: Where there are co-sureties, a release by the creditor of one of them does not discharge the others. (CA November 2007)
Ans.	■ Statement is correct. ■ Co-sureties are jointly and severally liable. ■ The discharge of one co-surety from his liability does not release the other co-sureties from their liability. - Section 138 ■ They are liable to bear the loss equally, subject to the limit of the debt guaranteed by him. ■ If one of them has paid more than his share, he can claim contribution from others. ■ Where the co-sureties have limited their liabilities to different sums, they should contribute equally and not exceeding their respective limits.
Que. 6	State whether the following statement is correct or incorrect: In a contract of guarantee, forbearance by the creditor to sue the principal debtor discharges the surety. (CA May 2008)
Ans.	■ Statement is not correct. ■ Section 137 of Indian Contract Act, 1872, provides that any forbearance by the creditor to sue the principal debtor does not discharge the surety.
Que. 7	State whether the following statement is correct or incorrect: The contract of insurance is not fully covered under the contract of indemnity. (CA November 2008)
Ans.	■ Statement is correct. ■ Contract of indemnity includes loss occurred due to act of promisor or some other person but it does not include loss occurred due to act of God. ■ Whereas contract of insurance covers loss occurred due to act of God also.

Que. 8	B owes C a debt guaranteed by A. C does not sue B for a year after the debt has become payable. In the meantime, B becomes insolvent. Is A discharged? Decide with reference to the provisions of the Indian Contract Act, 1872. (CA November 2008)
Ans.	■ The problem is based on the provisions of section 137 of the Indian Contract Act, 1872 relating to discharge of surety. ■ The section states that mere forbearance on the part of the creditor to sue the principal debtor and/or to enforce any other remedy against him would not, in the absence of any provision in the guarantee to the contrary, discharge the surety. ■ In view of these provisions, A is not discharged from his liability as a surety.
Que. 9	A gives to C a continuing guarantee to the extent of ? 5,000 for the vegetables to be supplied by C to B from time to time on credit. Afterwards, B became embarrassed, and without the knowledge of A, B and C contract that C shall continue to supply B with vegetables for ready money, and that the payments shall be applied to the then existing debts between B and C. Examining the provision of the Indian Contract Act, 1872, decide whether A is liable on his guarantee given to C. (CA November 2008) Or '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 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'. (CA November 2017)
Ans.	■ The problem as 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, discharge the surety as to transactions subsequent to the variance. ■ In the given problem, all the above requirements are fulfilled.
	■ Therefore, A is not liable on his guarantee for the vegetable supplied after these new arrangements. ■ The reason for such a discharge is that the surety agreed to be liable for a contract, which is no more there, and he is not liable on the altered contract because it is different from the contract made by him.
Que. 10	State whether the following statement is correct or incorrect: Any variation in terms of contract made between principal debtor and a creditor without the consent of surety, automatically discharges the liability of the surety. (CA May 2009)
Ans.	■ Statement is incorrect. ■ Surety's liability will be discharged if any variance is made without his consent in terms of contract between principal debtor and creditor. - Section 133

Que. 11	State whether the following statement is correct or incorrect: In contract of guarantee, there are three contracts. (CA November 2013)
Ans.	■ Statement is correct. ■ There are three contracts in the contract of guarantee, one between principal debtor and creditor, second between principal debtor and surety and third between surety and the creditor.
Que. 12	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. . (CA May 2018)
Ans.	■ Contract of guarantee is basically contract and therefore it should fulfil all elements of contract. ■ A contract of guarantee may be created either by express or implied method. It may be either oral or written. It is not necessary to execute contract or reduce it in writing. ■ Implied guarantee may be inferred from the conduct of parties. ■ In the given case, K lent money on sureties of A, B and N but it is not clear that whether they have agreed to be sureties for Mr. D. If they have not agreed to become surety, Mr. B can escape his liability. ■ Alternative, if they have agreed to be sureties for Mr. D, Mr. B cannot escape from his liability, as executing formal contract is not necessary. Co-surety is liable to contribute his part of share when default has taken place by debtor.

14B: Indian Contract Act, 1872 - Bailment and Pledge

Que. 1	What is the status of a 'finder of goods' under the Indian Contract Act, 1872? What are his rights? (CA May 2003)
Ans.	Status ■ A finder of goods stands in position of bailee. Hence, he has all rights available to bailee as per section 71 of Indian Contract Act, 1872. Rights of finder of goods - Sections 168-169 ■ In addition to above points, finder has following rights: • Finder of goods can exercise lien over the goods for recovery of expenses incurred by him. • Finder of goods has right to receive reward which owner has offered for return of goods. • Finder of goods can resale goods in following cases: • When goods are perishable in nature • When owner cannot be found out with reasonable efforts • When owner refuses to pay lawful expenses • When lawful charges incurred by finder in respect of goods found is equal to 2/3rd value of goods.
Que. 2	Sunil delivered his car to Mahesh for repairs. Mahesh completed the work, but did not return the car to Sunil within reasonable time, though Sunil repeatedly reminded Mahesh for the return of car. In the meantime, a big fire occurred in the neighbourhood and the car was destroyed. Decide whether Mahesh can be held liable under the provisions of the Indian Contract Act, 1872. (CA November 2003)
Ans.	■ It is duty of bailee to return goods as per direction of bailor when purpose of bailment has fulfilled or time specified has been expired. ■ In these situations, bailee is required to return goods without demand from bailor. - Section 160 ■ Bailee is responsible for any loss, destruction or damage to goods if bailee makes default in return of goods within specified time or after fulfilment of purpose of bailment. - Section 161 ■ In the given case, Mahesh is liable to loss although he was not negligent. ■ He fails to deliver car to Sunil within reasonable time.
Que. 3	A hire a carriage of B and agrees to pay ? 500 as hire charges. The carriage is unsafe, though B is unaware of it. A is injured and claims compensation for injuries suffered by him. B refuses to pay. Discuss the liability of B. (CA May 2005)
Ans.	■ 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. - Section 150 ■ Accordingly, B is responsible to compensate A for the injuries sustained even if he was not aware of the defect in the carriage.

Que. 4	Examine whether the following constitute a contract of 'Bailment' under the provisions of the Indian Contract Act, 1872: (i) V parks his car at a parking lot, locks it, and keeps the keys with himself. (ii) Seizure of goods by customs authorities (CA May 2007)
An s.	(i) No. Mere custody of goods does not mean possession. For a valid bailment, bailor must give possession of goods and it must be accepted by bailee. V has parked his car and kept key with himself. (ii) Yes, the possession of the goods is transferred to the custom authorities. It is case of bailment. - Section 148
Que. 5	Ravi sent a consignment of goods worth ? 60,000 by railway and got railway receipt. He obtained an advance of ? 30,000 from the bank, endorsed, and delivered the railway receipt in favour of the bank by way of security. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ? 60,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit? (CA May 2008) Or X sent a consignment of mobile phones worth ? 60,000 to Y and obtained a railway receipt therefor. Later, he borrowed a loan of X 40,000 from Star Bank and endorsed the railway receipt in favour of the Bank as security. In transit, the consignment of mobile phones was lost. The Bank files a suit against the railway for a claim of ? 60,000, the value of the consignment. The railway contended that the Bank is entitled to recover the amount of loan i.e. ? 40,000 only. Examining the provisions of the Indian Contract Act, 1872, decide, whether the contention of the railway is valid. (CA November 2010) Or X sent a consignment of goods worth ?'2,90,000 by railway and got railway receipt for the same. He obtained an advance of ? 2,60,000 from the bank and endorsed and delivered the railway receipt in favour of the bank by way of security for the advance. The railway failed to deliver the goods at the destination. The bank filed a suit against the railway for ? 2,90,000. Decide in the light of provisions of the Indian Contract Act, 1872, whether the bank would succeed in the said suit? (CA November 2014)
Ans.	■ As per sections 178 and 178A of the Indian Contract Act, 1872 the deposit of title deeds with the bank as security against an advance constitutes a pledge. ■ As a pledgee, a banker's rights are not limited to his interest in the goods pledged. In case of injury to the goods or their deprivation by a third party, the pledgee would have all such remedies that the owner of the goods would have against them. ■ In Morvi Mercantile Bank Ltd. vs. Union of India, the Supreme Court held that the bank (pledgee) was entitled to recover not only the amount of the advance due to it, but the full value of the consignment. ■ However, the amount over and above his interest is to be held by him in trust for the pledger. ■ Thus, the bank will succeed in this claim of ? 60,000 (? 2,90,000 for alternative question asked in November 2014) against Railway.

Que. 6	State whether following statement is correct: A pledge of documents of title of goods by a mercantile agent is a valid pledge. (CA May 2008)
Ans.	■ Statement is correct. ■ A pledge by mercantile agent is valid if the agent is in possession of goods or documents of title of goods and if such possession is with the opinion of the owner.
Que. 7	M lends a sum of ? 5,000 to B, on the security of two shares of a Limited Company on 1st April, 2017. On 15th June, 2017, the company issued two bonus shares. B returns the loan amount of ? 5,000 with interest but M returns only two shares, which were pledged, and refuses to give the two bonus shares. Advise. B in the light of the provisions of the Indian Contract Act, 1872. (CA November 2008)
Ans.	■ The bailee is bound to deliver to the bailor, any increase or probt, which may have accrued from the goods bailed. - Section 163 ■ Applying the provisions to the given case, the bonus shares are an increase on the shares pledged by B to M. ■ Therefore, M is liable to return the shares along with the bonus shares and hence B the bailor, is entitled to them.
Que. 8	A, the bailor, pledges cinema projector and other accessories with Cine Association Co-operative Bank Limited, the bailee, for loan. A requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and further promises to handover the possession of the same to bank whenever demanded. Examining the provisions of Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between A, the bailor and Bank, the Bailee? (CA May 2009) Or Ram, the bailor, pledges a cinema projector and other accessories with Movie Association Cooperative Bank Limited, the bailee, for a loan. Ram requests the bank to allow the pledged goods to remain in his possession and promises to hold the same in trust for the bailee and further promises to handover the possession of the same to the bank whenever demanded. Examining the provisions of the Indian Contract Act, 1872 decide, whether a valid contract of pledge has been made between Ram, the bailor and Bank, the bailee? (CA May 2017)
Ans.	■ Transaction is valid pledge. Section 149 of Indian Contract Act, 1872 provides that goods can be delivered actually or by constructive delivery to the bailee. ■ In case of constructive delivery of goods, legal character of possession of goods changes but it does not affect actual custody of goods. ■ In the case of constructive delivery of goods, bailor continues to be in possession of goods. ■ When Ram (Bailor) pledges a cinema projector and other accessories with Bank (Bailee) for loan and request bank to allow pledged goods to remain in his possession with promise to hold it trust for bank and also promise to handover possession of the same to bank whenever demanded, it create pledge by constructive delivery.

Que. 9 State whether following statement is correct: If the pawnor makes a default in the payment of debt, or performance of duty, as agreed, the pawnee has a right to sell the thing pledged for which no reasonable notice of the sale is required.

(CA November 2009)

Ans.

- Statement is incorrect.
- If pawnor makes any default in payment of debt or performance of duty as agreed, the pawnee has right to sell pledged goods after giving reasonable notice of sale.
- If notice is not given, sale will be void.

Que. 10 State the essential elements of a contract of bailment. Distinguish between the 'contract of bailment' and 'contract of pledge'.

(CA November 2012)

Or

Give four differences between Bailment and Pledge.

(CA May 2018)

Ans.

Basis of comparison	Bailment - Section 148	Pledge - Section 172
Meaning	When the goods are temporarily handed over from one person to another person for a specific purpose, it is known as bailment.	When the goods are delivered to act as security against the debt owed by one person to another person, it is known as the pledge.
Parties	The person who delivers the goods is known as the bailor while the person to whom the goods are delivered is known as bailee.	The person who delivers the goods is known as pawnor while the person to whom the goods are delivered is known as pawnee.
Basis of comparison	Bailment - Section 148	Pledge - Section 172
Consideration	May or may not be present.	Always present
Use of Goods	The party whom goods are being delivered can use the goods only, for the specified purpose.	The party whom goods are being delivered has no right to use the goods.
Purpose	Safe keeping or repairs, etc.	As security against payment of debt.
Right to Sell Goods	In bailment the bailee, generally, cannot sell the goods. He can either retain or sue for non-payment of dues.	The pledgee enjoys the right to sell only on default by the pledger to repay the debt or perform his promise after giving due notice.

Que. 11 State whether following statement is correct: Bailee has no right to mix the goods bailed with his own goods without the consent of bailor.

(CA November 2014)

Ans.

- Statement is correct.

	■ The bailee should not mix bailor's goods with his own goods. ■ If the bailee mixes, his own goods with bailer's goods with bailor's consent the bailor and the bailee shall have an interest, in proportion to their respective shares, in the mixture thus produced. ■ It must be remembered that if the mixture has taken place by an act of God the bailee is not liable for such mixture. ■ When the bailee mix bailor's goods with his own without consent and the goods are separable, bailee is required to pay cost of separation but if cannot be separated, bailor entitled to be compensated.
Que. 72	State whether following statement is correct: Depositing of ornaments in a bank locker is a bailment. (CA May 1998, 2015)
Ans.	■ Statement is incorrect. ■ The ornaments (goods) were never delivered to bank. ■ The locker key is always remain with the customer and as result of which it cannot be said that goods were delivered to bank.

14C: Indian Contract Act, 1872 - Agency

Que. 1	What tests can be applied in determining whether a person is an agent of another? State any five circumstances whereunder an agent is personally liable to a third party for the acts during the course of agency. (CA May 2003)
Ans.	Test of agency ■ Where a person has capacity to: • Create contractual relations between the principal and a third party; and • Bind the principal by his own acts, there exists a relationship of agency Agent personally liable ■ An agent is personally responsible to third party in the following cases: • When agent works for foreign principal • When the agent acts for an undisclosed principal • When agent acts for incompetent principal (For example: When agent acts for minor) • When the contract expressly provides for personal liability of agent • When the agent acts for a principal not in existence (For example: The promoters of company yet to be incorporated enter into contract on behalf of company. In such cases, the company i.e., the principal is not in existence until it is finally incorporated.) • When the agent signs a contract in his own name • When the agent acts beyond his authority • Where there is a misrepresentation or fraud by agent • Where the trade, usage or custom makes the agent personally liable • Where authority is coupled with interest
Que. 2	What do you understand by 'Agency by ratification'? What is the effect of ratification? Point out any four elements of a valid ratification. (CA November 2003)
Ans.	Agency by ratification - Sections 196-197 ■ Ratification means confirmation of the acts already done. ■ When a person does some acts on behalf of another person without his knowledge or authority. Later on, if the other person ratifies the acts done on his behalf. In such case, agency is created by ratification. ■ It is also known as ex post facto agency. ■ On ratification principal is bound by the acts done by agent. ■ Ratification may be express or implied. Essentials of valid ratification - Sections 198-200 ■ As per Indian Contract Act, 1872, valid ratification must fulfil the following conditions: • By Principal - Ratification can be made by principal. • Principal in Existence - Principal must be in existence at the time when contract was entered into in his name.

	• Capacity of Principal - The principal must have contractual capacity at the time of entering into contract and at the time of ratification.

	• Full Knowledge - No valid ratification can be made by a person whose knowledge of facts of the case is materially defective. • Lawful and Legal act - Only lawful and legal act can be ratified. Example: • A holds a lease from B, which can be terminated on three months' notice. • C an unauthorized person gives notice of termination to A. • The notice cannot be ratified by B, so as to be binding on A. • Reasonable Time - Ratification needs to be done within reasonable time. • Entire Transaction - Entire transaction needs to be ratified. • Communication - For a ratification to be effective, it must be proved that there was communication of ratification to the party who is sought to be bound by the act by the agent. • Authority to Perform - The act which principal himself is incapable of doing cannot be ratified. Thus, a minor is not competent to act and hence minor's act cannot be ratified. • No Damage to Third Party - Ratification by principal should not create any damage to third party. If any damage is suffered, then principal is liable to compensate same.
Que. 3	State the circumstances when an agent is personally liable for the contracts entered into by him on behalf of his principal. (CA May 2005)
Ans.	Refer answer to question No. 1
Que. 4	Mr. Ahuja of Delhi engaged Mr. Singh as his agent to buy a house in West Extension area. Mr. Singh bought a house for ? 20 lakhs in the name of a nominee and then purchased it himself for ^ 24 lakhs. He then sold the same house to Mr. Ahuja for ? 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. (CA November 2005)
Ans.	■ Sections 215 & 216 of Indian Contract Act, 1872 provide that where an agent without the knowledge of the principal, deals in the business of agency on his own account, the principal may: • 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 • 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 ? 6 lakhs from Mr. Singh being the amount of profit earned by Mr. Singh out of the transaction.
Que. 5	Mr. A of Alwar engaged Mr. S as agent to buy a house. Mr. S bought a house for ? 40 Lakhs in the name of a nominee and then purchased it himself for ? 44 lakhs. He then sold the same house to Mr. A for t 46 lakhs. Mr. A later comes to know about the mischief of Mr. S and tries to recover the excess amount paid to Mr. S. Is he entitled to recover any amount from Mr. S? If so, how much? Explain. (CA November 2005, May 2016)
Ans.	■ Question is based on provisions of sections 215-216 of Indian Contract Act, 1872. ■ Please refer answer of previous question.

	■ Mr. A is entitled to recover ? 6 lakh from Mr. S an agent being amount of profit earned by Mr. S out of transaction.
Que. 6	State whether following statement is correct or incorrect: A minor cannot be appointed as an agent. (CA November 2007)
Ans.	■ Statement is incorrect. ■ Any person can be appointed as an agent. ■ Therefore, minor can be appointed as an agent.
Que. 7	R is the wife of P. She purchased some sarees on Credit from Q. 0 demanded the amount from P. P refused. Q filed a suit against P for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether Q would succeed? (CA May 2008) Or K is the wife of A. She purchased some sarees on Credit from B. B demanded the amount from A. A refused to make the payment. B filed a suit against A for the said amount. Decide in the light of provisions of the Indian Contract Act, 1872, whether B would succeed? (CA May 2013)
Ans.	■ Wife is considered as an implied agent of her husband. ■ Wife has authority to pledge her husband's credit for necessaries. ■ However, wife has no authority to pledge her husband's credit for necessaries in following situations: • Where she is given sufficient money to purchase necessaries • Where goods purchased on credit are not necessaries • Where the seller has been warned clearly not to give credit to his wife • Whether the wife is prohibited from buying goods on credit or contracting debts ■ Applying above provisions, Q can recover amount of sarees from P, if sarees purchased by R are necessaries.
Que. 8	P appoints A as his agent to sell his estate. A, on looking over the estate before selling it, finds the existence of a good quality granite-mine on the estate, which is unknown to P. A buys the estate himself after informing P that he (A) wishes to buy the estate for himself but conceals the existence of granite-mine. P allows A to buy the estate, in ignorance of the existence of mine. State giving reasons in brief the rights of P, the principal, against A, the agent. What would be your answer if A had informed P about the existence of mine before he purchased the estate, but after two months, he sold the estate at a profit of ? 1 lac? (CA May 2008)
Ans.	■ Agent has duty to disclose all material circumstances. ■ He has duty not to deal on his own account without principal's consent. ■ If an agent deals on his own account, without obtaining the consent of his principal and without disclosing him with all material circumstances, then the principal may cancel the transaction. - Section 215 ■ 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 P had given his consent to A permitting the latter to act on his own account in the business of agency, P may still repudiate the sale as the existence of the mine, a material circumstance, had not been disclosed to him. ■ In the second instance, P had knowledge that A was acting on his own account and also having knowledge that the mine was in existence; hence, P cannot repudiate the transaction under section 215 of Indian Contract Act, 1872. ■ In addition, under section 216 of Indian Contract Act, 1872, he cannot claim any benefit from A as he had knowledge that A was acting on his own account in the business of the agency.
Que. 9	State whether following statement is correct or incorrect: An 'agency coupled with interest' may be terminated, at the instance of the principal at any time. (CA November 2009)
Ans.	■ Statement is incorrect. ■ An agency coupled with interest cannot be terminated at any time.
Que. 10	State whether following statement is correct or incorrect: Ratification of agency is valid even if knowledge of the principal is materially defective. (CA May 2002, 2010)
Ans.	■ Statement is incorrect. ■ Principal whose knowledge of fact is materially defective cannot validly ratify agent's work.
Que. 11	State whether following statement is correct or incorrect: No consideration is required to create an agency (CA November 2001) Or Agency cannot be created without consideration. (CA November 2013)
Ans.	■ Statement is correct. ■ No consideration is required to create an agency. - Section 185
Que. 12	Sunil borrowed a sum of ? 3 lakh from Rajendra. Sunil appointed Rajendra as his agent to sell his land and authorized him to appropriate the amount of loan out of the sale proceeds. Afterwards, Sunil revoked the agency. Decide under the provisions of the Indian Contract Act, 1872 whether the revocation of the said agency by Sunil is lawful? (CA May 2014)
Ans.	■ Agency coupled with interest becomes irrevocable. ■ Agency becomes irrevocable where the agent himself has interest in the property, which forms the subject matter of agency. ■ It cannot be terminated to the prejudice to interest of an agent. ■ In the given case, agency coupled with interest is created and it does not come to end on death, insanity or insolvency of principal.

	■ When Sunil appointed Raj endra 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 Rajendra and the said agency is irrevocable. ■ The revocation of agency by Sunil is not lawful.
Que. 13	State whether following statement is correct or incorrect: Agency coupled with interest is irrevocable. (CA May 2015)
Ans.	■ Statement is correct. ■ Agent coupled with interest cannot be terminated except where there is an express provision to cause prejudice to the interest of the agent. ■ Again, agency coupled with interest does not come to an end on the death, insanity or the insolvency, of principal.
Que. 14	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 on its claim? (CA May 2018)
Ans.	An agent is bound to conduct the business of his principal according to principal's directions or the custom of trade (in absence of principal's directions). When agent acts otherwise, and any loss is incurred, he must make it good to his principal. - Section 211 of Indian Contract Act, 1872. It is one of duty of agent. When Pintu, one of agents sold goods to M/s. Parul Pvt. Ltd. on credit, he has committed breach of his duty. He has neither obtained direction from his principal nor followed custom. Moreover, Parul Pvt. Ltd. was insolvent at the time of sale. An agent should have exercise duty to act with reasonable care and skill. Accordingly, agent is liable to compensate loss to his principal. ABC Ltd. will succeed in its claim.
Que. 15	Rahul, a transporter was entrusted with the duty of transporting tomatoes from a rural farm to a city by Aswin. Due to heavy rain, 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? (CA May 2018)
Ans.	►Aswin cannot recover the loss from Rahul on the ground that Rahul had acted beyond his authority. Because 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. ► When the agent has acted beyond his authority in emergency, principal is bound by the act of an agent. ► In the given case, heavy rain for more than two days created situation of emergency. ►In this situation, transportation was not possible and if waited for longer period, tomato would be perished. ►Therefore, act of selling tomatoes below that market price in emergency was intended to protect his principal.

15: Negotiable Instruments Act, 1881

Que. 1	Explain the meaning of Holder and Holder in due course of a negotiable instrument. The drawer 'D' is introduced by A to draw a cheque in favour of P who is an existing person. A instead of sending the cheque to P forgoes his name and pays the cheque into his own bank. Whether D can recover the amount of the cheque from A's banker. Decide. (CA November 2002)
Ans.	Holder - Section 8 ■ A holder is a person who legally obtains the negotiable instrument, with his name entitled on it, to receive the payment from the parties liable. Holder in due course - Section 9 ■ A holder in due course (HDC) is a person who acquires the negotiable instrument bona fide for some consideration, whose payment is still due. ■ D cannot recover amount from A's banker. ■ Collecting banker is not liable for any loss suffered to real owner due to defective title of holder provided it has acted in good faith and without negligence while collecting amount of crossed cheque as an agent. - Section 131
Que. 2	Referring to the provisions of the Negotiable Instruments Act, 1881 examine the validity of the following Promissory Notes: I. I owe you a sum of ? 1,000 A tells B. II. X promises to pay Y a sum of ? 10,000 six months after Y's marriage with Z. (CA November 2002) Or What is a promissory note and what are its elements? S writes 'I promise to pay B a sum of ? 500 seven days after my marriage with C \ Is this a promissory note? (CA May 2004)
Ans.	■ Following are the elements of promissory note: • Writing - It should be in writing, (handwritten or printing) An oral promise to pay is not sufficient. • Express promise to pay - It must contain express promise to pay. Mere acknowledgement of indebtedness is not sufficient. Example: • 'Mr. B I.O.U ? 10,000.' There is no promise to pay and therefore this is not a valid promissory note. • Definite & unconditional promise - If a promise to pay is dependent upon an event which is certain to happen, although the unconditional time of its happening is uncertain, the promise to pay is unconditional. Example: • 'I promise to pay Bina ? 5,00,000 on D's death.' • The promise is not conditional, but definite since death of D is certain. • Therefore, the promissory note is valid. • Signed by maker - A promissory note must be signed by the maker. The signatures may be made on any part of the instrument.

	• Promise to pay a certain sum - It should contain promise to pay certain sum of money. It should contain promise to pay money only and nothing else. Example: • 'I promise to pay Balwant ? 2,500 and all other sums which shall be due to him.' • Since the amount Payable is not certain, it is not a valid promissory note. Example: • 'I promise to pay Blawant ? 1,200 and to deliver to him my rabbit on 1st March, 2011.' • It is not a valid promissory note since the promisor is required to deliver rabbit, which is not 'money'. • Payee must be certain - The name of payee must be specified in the promissory note, otherwise it will be invalid. • Stamped - A promissory note must be stamped. Stamp duty is paid as per Stamp Act. I. It is not promissory note. There is no promise to pay. II. It is not promissory note. Element of certaintv is missing. It is not certain that Y will marry Z.
Que. 3	When a bill of exchange may be dishonoured by non-acceptance and non-payment under the provisions of Negotiable Instruments Act, 1881. (CA November 2002)
Ans.	■ Negotiable instrument may be dishonoured in either of following ways: • Due to non-acceptance • Due to non-payment Dishonour for non-acceptance of bill - Section 91 ■ A bill is dishonoured by non-acceptance if it is duly presented for acceptance, but the bill is not accepted. ■ Only bills of exchange can be dishonoured due to its non-acceptance. ■ Bills of exchange is treated as dishonoured due to its non-acceptance in any of following circumstances: ■ When drawee does not accept bill within 48 hours of presentment or refuse to accept it ■ In case of more than one drawee, who are not partners, makes default in acceptance ■ Where drawee is incompetent to contract ■ Where drawee gives conditional acceptance ■ Where the drawee cannot be found with reasonable search ■ Where the drawee is fictitious person ■ Where the drawee gives a qualified acceptance, and the holder does not give his consent to the qualified acceptance. Dishonour for non-payment - Section 92 ■ A bill shall be dishonoured by non-payment if default in payment is made by following parties: • Acceptor; or • Drawee, where bill does not require acceptance.
Que. 4	Which are the essential elements of a valid acceptance of a bill of exchange? An acceptor accepts a bill of exchange but writes on it 'Accepted but payment will be made when goods delivered to me is sold'. Decide the validity.

	(CA May 2003)
Ans.	■ Following are essential elements of valid acceptance of bill of exchange as per Negotiable Instruments Act, 1881: • It should be in writing and signed by drawee. • Writing may be either on the face or back of the bill. H Writing the word 'Acceptance' is not necessary.
	■ After the signature, delivery or intimation to the holder is given that the bill has been accepted. ■ In the given case, acceptance of bill is qualified as it has condition that 'payment will be made when goods delivered to me is sold'. Acceptance must be general acceptance. ■ In case of qualified acceptance, holder has liberty to refuse. ■ If he refuses to take it, bill is dishonoured by non-acceptance. ■ On the other hand, if he accepts qualified acceptance, then it binds only him and acceptor. It does not bind other parties who have not consented.
Que. 5	What do you mean by an acceptance of a negotiable instrument? Examine validity of the following in the light of the provisions of the Negotiable Instruments Act, 1881: I. An oral acceptance II. An acceptance by mere signature without writing the words accepted' (CA May 2003)
Ans.	I. Acceptance must be written on bill and signed by drawee. Oral acceptance is not valid. II.The usual form of acceptance is signature on face of instrument and writing name underneath. Act does not prescribe any particular form of acceptance. The mere signature of the drawee without addition of the words 'acceptance' is valid acceptance. As per section 7 of Negotiable Instruments Act, 1881, acceptance must appear on the bill and must be signed by drawee.
Que. 6	A issues a cheque for ? 25,000 in favour of B. A has sufficient amount in his account with the bank. The cheque was not presented within reasonable time to the bank for the payment and the bank in the meantime became bankrupt. Decide under the provisions of Negotiable Instruments Act, 1881 whether B can recover the money from A. (CA May 2003) Or 'A' draws a cheque for ? 50,000. When the cheque ought to be presented to the drawee bank the drawer has sufficient funds to make payment of the cheque. The bank fails before the cheque is presented. The payee demands payment from the drawer. What is the liability of a drawer? (CA May 2005)
Ans.	■ As per section 84 of Negotiable Instruments Act, 1881 where a cheque is not presented by holder for payment within reasonable time of its issue and drawer suffers actual damage through delay because of the failure of bank, he is discharged from liability to extent of such damage. ■ Applying above provisions, it can be suggested that B cannot recover money from A. ■ The drawer is discharged.

	■ He has sufficient balance in his account when the cheque ought to be presented for payment. ■ Holder has defaulted in presenting the cheque for payment within reasonable time. ■ B can sue against bank for amount of cheque.
Que. 7	What do you understand by 'crossing of cheques'? What is the object of crossing? State the implications of the following crossing: I. Restrictive crossing II. Not-negotiable crossing (CA November 2003) Or Explain as to why shall the combination of 'not negotiable' with 'account payee' crossing be considered as the safest form of crossing a cheque. (CA November 2007)
Ans.	Crossing of cheques and its object ■ A cheque is either 'open' or 'crossed'. ■ An open cheque can be presented to the paying banker and it is paid over the counter. ■ A crossed cheque cannot be paid across the counter.
	■ Crossing means a direction given by the drawer of the cheque to the drawee bank, not to pay the cheque at the counter of the bank, but to pay it to a person who presents it through a banker. ■ Crossing makes the cheque safe and protect holder. Restrictive Crossing ■ The cheque must contain the words 'A/c Payee' or 'A/c payee only'. ■ It is also known as Accounting payee crossing. ■ The cheque does not remain negotiable anymore. ■ The cheque must be crossed generally or specially. ■ It warns collective banker that the proceeds are to be credited only to the account of the payee. Not-negotiable crossing - Section 130 ■ The cheque must contain the words 'not negotiable'. ■ The cheque must be crossed generally or specially. ■ The title of the transferee shall not be better than the title of the transferor. ■ Not negotiable crossing does not restrict transferability but restrict negotiability only.
Que. 8	What are the differences between negotiability and assignability? (CA November 2003, May 2013) Or Point out the difference between transfer by negotiation and transfer by assignment under the provisions of the Negotiable Instruments Act, 1881. (CA May 2006)

Ans.	Matter	Negotiation	Assignment

	Meaning	It means transfer of a negotiable instrument to any other person so as to constitute that person the holder of such negotiable instrument.	It is transfer of a right to receive the payment of a debt by one person (viz., assignor) to another person (viz., assignee) by way of a written document.
	Applicability of Act	Negotiable Instruments Act, 1881 applies.	Where any right is transferred by way of assignment, the Transfer of Property Act applies.
	For what?	Negotiation can be made for transferring negotiable instruments only.	Assignment can be made of any right.
	Method	A bearer instrument can be negotiated merely by delivery, and an order instrument can be negotiated by endorsement and delivery.	Assignment is valid only if it is made in writing and is signed by the assignor.
	Notice	Notice of negotiation is not required to be given to any party.	Notice of assignment must be given by the assignee to the debtor.
	Consideration	Every negotiable instrument is negotiated for consideration.	Assignment can be without consideration.
	Stamp duty	It does not require payment of stamp duty.	It requires payment of stamp duty.

Que. 9	State the grounds on the basis of which a cheque may be dishonoured by a banker, in spite of the fact that there is sufficient amount in the account of the drawer. (CA November 2003) Or State the cases in which banker is justified or bound to dishonour cheques. (CA May 2005) Or
	PQR Ltd. receive a cheque for ? 50,000 from its customer Mr. LML. After a week company came to know that the proceeds were not credited to the account of PQR Limited due to some 'defects' as informed by the Banker. What according to you are the possible defects? (CA May 2007) Or State in brief the grounds on the basis of which a banker can dishonour a cheque under the provisions of the Negotiable Instruments Act, 1881. (CA November 2011) Or State the circumstances on the basis of which a banker can dishonour a cheque under the provisions of Negotiable Instruments Act, 1881. (CA November 2013)

Ans.	■ In the following situations, banker is justified to dishonour cheque: • If cheque is undated • If it is stale (i.e. presented beyond period of 3 months) • If it is inchoate • If it is post-dated and presented before date • If it is mutilated or torn • If baker has received notice of customer's death, customer's insolvency or lunacy • If bank has received garnishee order (i.e. order court to attach property) • If it contains material alteration or irregular signature or irregular endorsement • Balance in account is insufficient.
Que. 10	Discuss in brief the main amendments incorporated by the Negotiable Instruments (Amendment and Miscellaneous) Act, 2002 in section 138, 141 and 142 of the Principal Act i.e. Negotiable Instruments Act, 1881. (CA May 2004) Or Define the term cheque as given in the Negotiable Instruments Act, 1881 and amended by the Negotiable Instruments (Amended and Miscellaneous Provisions) Act, 2002. (CA November 2004)
Ans.	Amendment in definition of cheque ■ A cheque is a bill of exchange drawn on a specified banker and it includes 'the electronic image of truncated cheque' and 'a cheque in electronic form'. ■ Truncated cheque - A truncated cheque means a cheque which is truncated during the course of a clearing cycle either by the clearing house or bank whether paying or receiving payment immediately on generation of an electronic image for transmission, substituting the further physical movement of cheque in writing. _ ■ Cheque in electronic form - A cheque in electronic form means a cheque which contains the exact mirror image of a paper cheque and is generated, written and signed in a secure system ensuring the .minimum safety standards with the use of digital signature (with or without biometric signature) and asymmetric crypto system. Other amendments Other amendments are as follows: ■ Punishment is increased from one to two years. - Section 138 ■ Period of notice issued by payee to drawee is increased from 15 days to 30 days.- Section 138 ■ Nominee director is exempted from prosecution under section 138. -Section 141 ■ Discretion is granted to court to waive period of one month which has been prescribed for taking cognizance of the case under the Act.- Section 142
Que. 11	Describe the circumstances where under notice of dishonour is excused under Negotiable Instruments Act, 1881. (CA May 2004)
Ans.	■ In the following situation, notice of dishonour is not necessary: • When notice of dishonour is dispensed with by a party

	• Where the drawer of the cheque has countermanded payment, notice to drawer is not required to be given • When the party entitled to notice cannot be found even after due search. • Where the party bound to give notice is unable to give notice without any fault of his own • When it is dispensed with or waived by the party • When the party charged could not suffer damage for want to notice • When the omission to give notice is caused by unavoidable circumstances i.e. death • Where the acceptor is also drawee e.g. where firm draws on its branch.
Que. 12	A induced B by fraud to draw a cheque payable to C or order. A obtained the cheque forged C's endorsement and collected proceeds to the cheque through his Bankers. B the drawer wants to recover the amount from C's Bankers. Decide in the light of the provisions of Negotiable Instruments Act, 1881: I. Whether B the drawer can recover the amount of the cheque from C's Bankers? II. Whether C is the Fictitious Payee? III. Would your answer be the same in case C is a fictitious person? (CA November 2004)
Ans.	I. B the drawer cannot recover amount of cheque from C's Banker as it is neither collected not paid cheque. II. No. He exits. III. If C was a fictitious payee, the answer would have remained same. Protection is available to collecting banker. It is not liable for any loss caused to the true owner due to the defective title of holder provided it has acted in good faith and without negligence while collecting the amount of the crossed cheque as an agent. - Section 131 Paying banker is not liable even if it is subsequently found that any endorsement on the cheque has been forged provided it has made payment in due course. - Section 85
Que. 13	A draws a bill on B. B accepts the bill without any consideration. The bill is transferred to C without consideration. C transferred it to D for value. Decide. I. Whether D can sue the prior parties of the bill and II. Whether the prior parties other than D have any right of action intense? Give your answer in reference to the provision of Negotiable Instruments Act, 1881. (CA November 2004)
Ans.	■ As per section 43 of Negotiable Instruments Act, 1881, instrument made, drawn, accepted, endorsed or transferred without consideration creates no obligation of payment between parties to the transaction. ■ But if any such party has transferred instrument with or without endorsement to holder for 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: I. A has drawn bill on B and B accepted the bill without consideration and transferred it to C without consideration. Later on in the next transfer by C to D is for value. D being holder for value can recover amount of bill from all prior parties.

	II. No party prior to D can recover the amount of bill from prior party as bill creates no obligation of payment between parties. It was drawn, accepted and transferred without consideration.
Que. 14	A cheque payable to bearer is crossed generally and marked 'not negotiable'. The cheque is lost or stolen and comes into possession of B who takes it in good faith and gives value for it. B deposits the cheque into his own bank and his banker presents it and obtains payment for his customer from the bank upon which it is drawn. The true owner of the cheque claims refund of the amount of the cheque from B. Discuss the liability of the banker collecting the cheque and the banker paying the cheque and B to the true owner of the cheque referring to the provisions of the Negotiable Instruments Act, 1881. (CA May 2005)
Ans.	Liability of collecting banker ■ Collecting banker would not be liable in case title is proved to be defective as it had received payment for B (his customer), in good faith and without negligence for its customer. - Section 131 Liability of paying banker ■ Paying banker would not be liable to the true owner because it had paid the same in due course. - Section 128 Liability of B ■ Cheque was marked 'not negotiable' and hence, B did not acquire any title to cheque as against true owner even though he was holder in due course. ■ The addition of the words 'not negotiable' entirely takes away the main feature of negotiability, which is, that a holder with a defective title can give a good title to a subsequent holder in due course. ■ Therefore, B is liable to repay the amount of cheque to the true owner. ■ In turn, he can proceed against the person from whom he received the cheque.
Que. 15	In what ways does the Negotiable Instruments Act, 1881 regulate the determination of the Date of Maturity of a bill of exchange. Ascertain the date of maturity of a bill payable 120 days after the date. The bill of exchange was drawn on 1st June, 2009. (CA November 2005) Or State the rule lay down by the Negotiable Instruments Act, 1881 for ascertaining the date of maturity of a bill of exchange. (CA May 2018)
Ans.	■ Cheques are always payable on demand but other instruments like bills, notes etc., may be made payable on specified date or after specified time. ■ Maturity of a negotiable instrument means the date on which the negotiable instrument falls due for payment. ■ A negotiable instrument which is payable otherwise than on demand is entitled to 3 days of grace.

Situation	Date of maturity
Instrument payable on a specified day	Specified day + 3rd day

	Instrument payable on a stated number of days after date	Date on which instrument is drawn + stated number of days + 3rd day
	Instrument payable on stated number of days after sight	Date on which instrument is presented for sight + stated number of days + 3rd day
	Instrument payable on stated number of days after happening of a certain event	Date on which such event happens + stated number of days + 3rd day
	Instrument payable on stated number of months after date	Corresponding day of the relevant month (*) (i.e., Date on which negotiable instrument is drawn + stated number of months) + 3rd day (*)The last day of month is taken if in the relevant month, there is no corresponding day.
	Instrument payable in instalment	Each instalment is entitled to 3 days of grace.

	■ The day on which bill was drawn is excluded. Period of 120 days ends on 29th September, 2009. ■ Three days of grace are added. Bill falls due on 2nd October, 2009. 2nd October, 2009 is public holiday and hence it fall due on 1st October, 2009. (Preceding business day)
Que. 16	Examine when the holder of the negotiable instrument shall be considered as a holder in due course under the provisions of the Negotiable Instruments Act, 1881. (CA November 2005)
Ans.	■ As per section 9 of Negotiable Instruments Act, 1881, every holder of negotiable instrument will be treated as 'holder in due course', if he has obtained instrument: • For consideration before maturity; and • In good faith (i.e., without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title.)
Que. 17	When an alteration is in a negotiable instrument is deemed to be a 'material alteration' under the Negotiable Instruments Act, 1881? What are the consequences of material alteration in a negotiable instrument? (CA May 2006)
Ans.	■ An alteration is called as material alteration if it alters: • the character or operation (i.e., the legal effect) of negotiable instrument; or • the rights and liabilities of any of the parties to a negotiable instrument. Material alteration ■ Following incidents are considered as material alteration of negotiable instrument: • Alteration of the date of instrument. • Alteration of the amount payable. • Alteration in the time of payment. • Alteration in the place of payment. • Alteration in rate of interest. • Addition of new party to an instrument.

	• Conversion of blank endorsement into special endorsement. • Alteration of clause of instrument containing penal action. Non-material alteration ■ However following are not considered as material alteration as it is authorized under Act: • Filling blanks of an inchoate instrument - Section 20 • Conversion of a blank endorsement into an endorsement in full - Section 49 • Crossing of cheques - Section 125 • Conversion of general crossing into special crossing or not negotiable crossing or A/c Payee Crossing (but not vice versa). • Additional of the words 'on demand' to a note in which no time or payment is expressed. • Conversion of a bearer instrument into an order instrument by deleting the word 'Bearer'. • Correction of mistake in instrument. • An alteration made before the instrument is issued and made with consent of parties. Effect ■ A material alteration renders the instrument void.
Que. 18	J, a shareholder of a company purchased for his personal use certain goods from a mall on credit. He sent a cheque drawn on the Company's a/c for the mall towards the full payment of the bills. The cheque was dishonoured by the company's bank. J, the shareholder of the company was neither a director nor a person in-charge of the company. Examining the provisions of the
	Negotiable Instruments Act, 1881 state whether J has committed an offence under section 138 of the Negotiable Instruments Act, 1881 and decide whether he (J can be held liable for the payment. For the goods purchased from the mall). (CA November 2006)
Ans.	■ The facts in question are similar with facts of case of H.N.D. Mulla Feroze vs. C. Y. Somya Julu. ■ In this case, Court has held that J a shareholder is not drawer of cheque which was dishonoured and cheque was also not drawn from hi's account. ■ It was drawn from company's account. ■ Therefore, he cannot be said to have committed offence under section 138. ■ He is not liable for cheque but he is liable to pay for goods.
Que. 19	A owes a certain sum of money to B. A does not know the exact amount and hence he makes out a blank cheque in favour of B , signs and delivers it to B with a request to fill up the amount due payable by him. B fills up fraudulently the amount larger than the amount due, payable by A and endorses the cheque to C in full payment of dues of B. Cheque of A is dishonoured. Referring to the provisions of the Negotiable Instruments Act, 1881, discuss the rights of B and C. (CA May 2007)
Ans.	■ As per section 44 of Negotiable Instruments Act, 1881, B who is a party in immediate relation with the drawer of the cheque is entitled to recover from A only the exact amount due from A and not amount mentioned in the cheque.

	■ However, right of C, who is holder for value, is not adversely affected and he can claim full amount mentioned in cheque from B.
Que. 20	State the circumstance under which the drawer of a cheque will be liable for an offence relating to dishonour of the cheque under the Negotiable Instruments Act, 1881. Examine whether there is an offence under the Negotiable Instruments Act, 1881 if a drawer of a cheque after having issued the cheque informs the drawee not to present the cheque as well as informs the bank to stop the payment. (CA May 2007) Or X draws a cheque in favour of Y. After having issued the cheque he informs Y not to present the cheque for payment. He also informs the bank to stop payment. Decide under provisions of the Negotiable Instruments Act, 1881 whether the said acts of X constitute an offence against him? (CA May 2008, 2017) Or 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? (CA May 2018)
Ans.	Under following circumstances drawer of cheque will be liable for an offence relating to dishonour of the cheque (i.e. liability of drawer): Liability of Drawer - Section 30 ■ On dishonour of bill of exchange by drawee (for non-acceptance or non-payment) or on dishonour of cheque, the drawer becomes liable to compensate holder. Liability of Drawee - Section 31 ■ The drawer of cheque is always a banker. ■ It is duty of bank to pay the cheque when it is sufficient fund of drawer. ■ When banker refuses to make payment without any sufficient reason, then it must compensate drawer for any loss occurred. Bank is not liable to holder. ■ In the following situations, banker is justified to dishonour cheque: ■ If cheque is undated ■ If it is stale (i.e. presented beyond period of 3 months)
	■ If it is inchoate ■ If it is post-dated and presented before date ■ If it is mutilated or torn ■ If banker has received notice of customer's death, customer's insolvency or lunacy ■ If bank has received garnishee order (i.e. order of Court to attach property) ■ If it contains material alteration or irregular signature or irregular endorsement ■ Balance in account is insufficient. Liability on Instrument Made, Drawn without Consideration - Sections 43-44 ■ If negotiable instrument is drawn without consideration or consideration fails, it creates no obligation of payment.

	■ Sometime, a person receives a negotiable instrument without any consideration but transfers instrument for holder for some consideration. ■ In such case, holder and every subsequent holder may recover amount due from the transferor for consideration and from any prior party. ■ Parties standing in immediate relation to each other cannot recover more than actual consideration but this rule is not apply to holder in due course. Liability of Prior Parties - Section 36 ■ Every prior party to instrument (maker, drawer, acceptor and endorser) is liable thereon to holder in due course until the instrument is duly satisfied. Is stop payment offence? ■ In the case of Modi Cements Ltd. vs. Kuchil Kumar Nandi, Court interpreted meaning of word 'dishonour of cheque'. ■ According to Court, it includes dishonour of cheque due to stop payment instruction given by drawer to bank and also where the drawer asks the holder not to present cheque. ■ Applying above judgement, drawer has committed an offence under section 138.
Que. 21	Referring to the provisions of the Negotiable Instruments Act, 1881, examine the validity of the following: A cheque marked 'not negotiable' not transferable. (CA May 2007) Or State whether the following statements are correct or incorrect: A cheque marked 'Not Negotiable' is not transferable. (CA May 2011)
Ans.	■ It is not completely correct statement. ■ As per section 130 of Negotiable Instruments Act, 1881, cheque with not negotiable crossing is negotiable so long as its title has not become defective.
Que. 22	Referring to the provisions of Negotiable Instrument Act, 1881 examine the validity of a bill of exchange originally drawn by M for a sum of ? 10,000 but accepted by R only for ? 7,000. (CA May 2007)
Ans.	■ When bill is accepted for part of payment, it is qualified acceptance. ■ A bill with a qualified acceptance does not have any validity.
Que. 23	What do you understand by material alteration under the Negotiable Instruments Act, 1881? State whether the following alterations are material alterations under the Negotiable Instruments Act, 1881? a. The holder of the bill inserts the word 'or order' in the bill b. The holder of the bearer cheque converts it into account payee cheque c. A bill payable to X is converted into a bill payable to X and Y. (CA November 2007) Or Define the material alteration under Negotiable Instruments Act, 1881 and give examples. (CA May 2013)

Ans.	■ Refer answer to question No. 17 to know about material alternation. A. Inserting word 'or order' will not affect negotiable instrument. Instrument remains as order instrument. It is not material alteration. b. It is material alteration. It restricts the right of the holder to obtain payment of the cheque in cash and to negotiate it. Such material alteration is authorised by Act. c. It is material alteration. Right to receive payment was altered.
Que. 24	What are the essential elements of a promissory note under the Negotiable Instruments Act, 1881? Whether the following notes may be considered as valid promissory notes: I. I promise to pay ? 5,000 or 7,000 to Mr. Ram II. I promise to pay to Mohan ? 500, if he secures 60% marks in the examination. III. I promise to pay ? 3,000 to Ravi after 15 days of the death of A. (CA November 2007)
Ans.	■ Refer answer of question No. 2 to understand essential elements of promissory note. I. It is not valid promissory note. Amount is not certain. II. It is valid promissory note because it is conditional. ITT. It is valid promissory note because death of A is certain even if time of death is not certain.
Que. 25	What is meant by maturity of a bill of exchange or promissory note? Calculate the date of maturity of the following bills of exchange explaining the relevant rules relating to determination of the date of maturity as provided in the Negotiable Instruments Act, 1881 : I. A bill of exchange dated 31st August, 2013 is made payable three months after date. II. A bill of exchange drawn on 15th October, 2013, is payable twenty days after sight and the bill is presented for acceptance on 31st October, 2013. (CA November 2007)
Ans.	■ Refer answer to question 15 to understand theory part on maturity of promissory note and bill of exchange: I. If the month in which the period would terminate has no corresponding day, the period shall be held to terminate on the last day of such month. In this case, the bill of exchange is dated 31st day after November, 2007 (last day of the month). Therefore, bill of exchange will mature on 3rd December, 2013. II. Bill is presented for acceptance on 31st October, 2007. The date of presentment for acceptance is to be excluded. Therefore, instrument is at maturity on the 3rd day after 20th November, 2007. It will payable on 23rd November, 2013
Que. 26	Bharat executed a promissory note in favour of Bhushan for ? 5 crores. The said amount was payable three days after sight. Bhushan on maturity presented the promissory note on 1 st January, 2008 to Bharat. Bharat made the payment on 4th January, 2008. Bhushan wants to recover interest for one day from Bharat. Advise Bharat in the light of provisions of the Negotiable Instruments Act, 1881 whether he is liable to pay the interest for one day? (CA May 2008)
Ans.	■ Bharat is not liable to pay interest. ■ As per section 24 of Negotiable Instruments Act, 1881, in calculating date, a bill made payable a certain number of days after sight or after certain event, the maturity is calculated

	by excluding the day on which instrument is drawn or presented for acceptance or sight or day on which the event happens.
Que. 27	'A' draws a bill of exchange payable to himself on X who accepts the bill without consideration. Just to accommodate A. 'A' transfers the bill to P for good consideration. State the rights of A and P. Would your answer be different if A transferred the bill to P after maturity? (CA May 2008)
Ans.	■ A cannot sue X as there is no consideration between A and X. ■ It is an accommodation bill drawn by A and accepted by X without consideration. ■ According to section 43 of Negotiable Instruments Act, 1881, an instrument without consideration creates no obligation between parties to the transaction.
	■ Hence, there is no obligation to pay. ■ Section 43 further provides that if accommodation bill is transferred to holder for consideration, holder may recover amount due on such instrument from the transferor for consideration or any prior party thereto. ■ Moreover, according to section 59, in case of accommodation bill, defect in title of transferor does not affect the title of holder acquiring after maturity. ■ Accordingly, P can sue A and X as he is holder for consideration. ■ Even if A had transferred the bill after maturity answer would remain same.
Que. 28	What is meant by 'Presentment' of a bill exchange under the Negotiable Instruments Act 1881? When is such a bill of exchange presented for payment? State when is the presentment not necessary. (CA May 2008)
Ans.	Meaning ■ Presentment means showing the instrument to the drawee or acceptor to make payment as per condition. When Presentment? ■ Presentment is made during business hours. ■ Fixed period bill or after sight bill is presented on its maturity. When Presentment is not Necessary? ■ In the following conditions presentment of instrument is not necessary: • If maker or acceptor intentionally prevents it. • If it is payable at place of business and it is closed during usual business hours. • If it is payable at some other place (other than place of business) and no one is attends at such place during usual business hours • If maker or drawer is not found after reasonable search • If he is ready to pay without presentment • On maturity of instrument, without presentment: • He makes a part payment • He promises to make payment • He waives right to take advantage of any default in presentment of instrument • If drawer could not suffer damage as against drawer only

	• If the drawer and acceptor are same person.
Que. 29	Describe in brief the advantages and protections available to a 'holder in due course' under the provisions of the Negotiable Instruments Act, 1881. (CA November 2008)
Ans.	Holder in due course has following advantages and protections available under provisions of Negotiable Instruments Act, 1881: Protection in Case of Incomplete Instrument - Section 20 ■ A person signing and delivering to another a stamped but otherwise incomplete cannot assert that the instrument has not been filled in accordance with the authority given by him, provided the amount filled in it is covered by the amount of the stamps. Liability of Prior Parties - Section 36 ■ Every prior party to instrument (maker, drawer, acceptor and endorser) is liable thereon to holder in due course until the instrument is duly satisfied. Protection in Case of Fictitious Bill - Section 42 ■ Where bill is drawn by a fictitious person and is payable to his order, the acceptor cannot be relieved from his liability to the holder in due course. ■ Holder in due course has to prove that instrument was endorsed by the same hand as drawer's signature.
	Protection in case of Instruments Without Consideration - Section 43 ■ A negotiable instrument made, drawn, endorsed without consideration does not give any right to intermediate parties. However, when it comes in hands of holder in due course, he can recover an amount due on such instrument from prior parties. Protection in case of Conditional Delivery - Section 46 ■ When instrument is negotiated to the holder in due course, the other parties to bill or note cannot escape liability on the ground that delivery of the instrument was conditional or for a special purpose only. Instrument Purged (cleared) of All Defects - Section 53 ■ When instrument passes through the hands of holder in due course, it is purged (cleaned) of all defects. Any person acquiring it also becomes holder in due course and takes it free of all defects, except the person who was party to fraud. Instrument obtained by Unlawful Means etc. - Section 58 ■ The argument (plea) that the instrument was obtained by unlawful means or for unlawful consideration cannot be set up against a holder in due course. Validity of Instrument - Section 120 ■ Maker of promissory note, drawer of bill payable to order and acceptor of bill for honour cannot deny validity of instrument in suit filed by holder in due course. Capacity of Payee to Endorse - Section 121 ■ Maker of promissory note and acceptor of bill payable to order cannot deny capacity of payee on date of note or bill to endorse it, in suit hied by holder in due course.
Que. 30	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 the 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 (CA November 2008) Or Discuss with reasons in the following given conditions whether M can be called as a holder under the Negotiable Instruments Act, 1881: I. M the payee of the cheque who is prohibited by a court order from receiving the amount of the cheque. II. M the agent of Q is entrusted with an instrument without endorsement by 0 who is the payee. (CA November 2016)
Ans.	■ Holder of negotiable instrument means any person: • Who is entitled to the possession of it in his name; and • Who is entitled to receive the amount due thereon from party who has transferred it ■ For example: Finder of the lost instrument payable to bearer is not holder. ■ Applying above provisions, it can be said that: I. X is holder because he has right to possession and to receive amount due in his own name. II.A is not holder because holder is entitled to possession of instrument and also entitled to receive amount mentioned therein. III.M is not holder as he has possession of instrument but he is not entitled to possession of it in his name.
	IV. B is not holder. Agent may receive payment of the amount mentioned in the cheque but he cannot be called holder because he has no right to sue on the instrument on his name. V. B is not holder. He is having wrongful possession of instrument.
Que. 31	B issued a cheque for ? 1,25,000 in favour of S.B had sufficient amount in his account with the bank. The cheque was not presented within reasonable time to the Bank for payment and the Bank in the meantime became insolvent. Decide under the provisions of the Negotiable Instruments Act, 1881 whether S can recover the money from B. (CA November 2008) Or 'A' issued a cheque for ? 5,000 to B. B did not present the cheque for payment within reasonable period. The bank fails. However when the cheque was ought to be presented to the bank, there was sufficient fund to make payment of the cheque. Now B demands payment from A. Decide the liability of A under the Negotiable Instruments Act, 1881. (CA May 2014)
Ans.	■ The holder of cheque needs to present cheque to bank for payment before relationship between bank and drawer bank is spoilt. In such case, he can hold drawer liable to non-payment. - Section 72

	■ If cheque is not presented within reasonable time and relationship between bank and drawer is spoilt and if bank refuses to make payment or incapable of making payment then drawer cannot be held liable for such dishonour. - Section 74 ■ Applying above provisions, it can be said that the drawer is discharged as he has sufficient balance in his account when the cheque ought to be presented for payment. ■ Holder has made default by not presenting cheque within reasonable time. ■ S cannot recover damage.
Que. 32	X draws a bill on Y but signs it in the fictitious name of Z. The bill is payable to the order of Z. The bill is duly accepted by Y. M obtains the bill from X thus becoming its holder in due course. Can Y avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881. (CA November 2008) Or 0 draw a bill on S but signs it in the fictitious name of R. The bill is payable to the order of R. The bill is duly accepted by S. P obtains the bill from 0 thus becoming its holder in due course. Can S avoid payment of the bill? Decide in the light of the provisions of the Negotiable Instruments Act, 1881. (CA May 2017)
Ans.	■ Y is liable to M for payment of bill. ■ Where bill is signed by drawer in fictitious name, the acceptor cannot allege against a holder in due course that the drawer is fictitious. ■ It can be easily proved that the signatures of the person signing in the capacity of drawer and that of the person signing in capacity of the endorser are in same handwriting.
Que. 33	Mr.'Wise' obtains fraudulently from 'R' a cheque crossed 'Not Negotiable'. He later transfer the cheque to 'V' who gets the cheque encashed from ANS Bank Limited which is not the Drawee bank. R on coming to know about the fraudulent act of Mr. Wise sues ANS Bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable Instrument Act, 1881, whether R will be successful in his claim. Would yodr answer be still the same in case Mr. Wise does not transfer the cheque and gets the cheque encashed from ANS Bank himself? (CA June 2009) Or 'K' is an employee of 'Sumit'. He fraudulently obtains from Sumit a cheque crossed 'not negotiable'. He later transfers the cheque to 'D' who gets the cheque encashed from XYZ bank, which is not the drawee bank. Sumit comes to know about the fraudulent act of 'K', sues XYZ bank for the recovery of money. Examine with reference to the relevant provisions of the Negotiable
	Instruments Act, 1881, whether Sumit will be successful in his claim? Would your answer be still the same in case 'K' does not transfer the cheque and gets the cheque encashed from XYZ Bank himself? (CA November 2017)
Ans.	■ As per section 130 of Negotiable Instruments Acts, 1881, a person taking cheque crossed generally or specially bearing in either case the words 'not negotiable' shall not have or shall not be able to give a better title to the cheque than the title the person from whom he took.

	As result, if the title of the transferor is defective, the title of the transferee would be vitiated by the defect. ■ Mr. Wise had obtained cheque fraudulently from R. He had no title of it and could not give it to bank any title to cheque or money. ■ Bank would be liable for the amount of the cheque for encashment. - Held in case of Great Western Railway Co. vs. London and Country Banking Co. ■ Answer will remain same in the second case. R will be successful in his claim against bank.
Que. 34	A issues an open bearer cheque for ? 10,000 in favour of B who strikes out the word bearer and put crossing across the cheque. The cheque is thereafter negotiated to C and D. When it is finally presented by D's banker, it is returned with remarks 'Payment countermanded' by drawer. In response to the legal notice from D, A pleads that the cheques was altered after it had been issued and therefore he is not bound to pay the cheques. Referring to the provisions of the Negotiable Instruments Act, 1881 decide, whether A's argument is valid or not? (CA June 2009)
Ans.	■ Striking off word 'bearer' amount as material alteration but it is authorised under Act. ■ Second alteration was carried out in form of writing word 'crossed' on face of it. It is also authorised under Act. ■ Therefore, cheque is not discharged and remain valid. ■ Cheque is dishonoured not for material alternation but for payment countermanded by drawer. ■ In view of the above circumstances, A is liable for payment. ■ He is also liable for dishonour of cheque as per section 138 of Negotiable Instruments Act, 1881.
Que. 35	'N' is the holder of a bill of exchange made payable to the order of 'P' the bill of exchange contains the following Endorsements in blank : First endorsement 'P' Second endorsement '0' Third endorsement 'R' Fourth endorsement 'S' 'N' strikes out without S's consent the endorsement by 'O' and 'R' Describe with reasons whether 'N' is entitled to recover anything from 'S' (CA November 2009) Or '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 Forth endorsement T '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. - (CA November 2017)
Ans.	■ N is not entitled to recover anything from S.

- When holder cancels the name of any party liable on the negotiable instrument, then such party as well as all parties subsequent to him are discharged. - Section 82
- When N strikes the name of Q and R, so S will be discharged.

Que. 36 P draws a bill on Q for ? 10,000. Q accepts the bill. On maturity the bill was dishonoured by nonpayment. P files a suit against Q for payment of f 10,000. Q proved that the bill was accepted for value of ? 7,000 and as an accommodation to the plaintiff for the balance amount i.e.? 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?

(CA November 2010)

Ans.

- As per section 44 of Negotiable Instruments Act, 1881, when consideration for which a person signed negotiable instrument consisted 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.
- The drawer of bill of exchange stands in immediate relation with the acceptor.
- On the basis of above provision, P would succeed to recover ? 7,000 only from Q and not the entire amount (i.e. ? 10,000) of the bill because it was accepted for value as to ? 7,000 only and on accommodation to P for ? 3,000.

Que. 37 Point out the difference between a Cheque and a Bill of exchange under the Negotiable Instruments Act, 1881.

(CA May 2011)

Ans.

Matter	Bill of Exchange	Cheque
Drawn on	Bill of exchange can be drawn on any person.	Cheque is always drawn on bank.
Payable on Demand?	Bill of exchange need not always be payable on demand.	It is always payable on demand.
Payable to Bearer?	It cannot be payable to bearer on demand.	It can be drawn payable on bearer on demand.
Acceptance	It require an acceptance of drawee.	It does not require an acceptance.
Stamp	It requires stamp as per Stamp Act.	It does not require stamp.
Crossing	It cannot be crossed.	It can be crossed.
Notice of Dishonour	Notice of dishonour is usually required.	Notice of dishonour is not required.
Noting & Protesting	To establish dishonour, noting and protesting are required.	Noting and protesting are not required for a cheque.

Que. 38 Examining the provisions of the Negotiable Instruments Act, 1881 distinguish between a 'Bill of exchange' and a 'Promissory note'.

(CA May 2012)

Ans.

Matter	Bill of Exchange	Promissory Note

	Meaning	Bill of exchange is an instrument in writing showing the indebtedness of a buyer towards the seller of goods.	A promissory note is a written promise made by the debtor to pay a certain sum of money to the creditor at a future specified date.
	Defined in Section	Section 5 of Negotiable Instruments Act, 1881.	Section 4 of Negotiable Instruments Act, 1881.
	Parties	Three parties, i.e. drawer, drawee and payee.	Two parties, i.e. drawer and payee.
	Liability of Maker	Secondary and conditional	Primary and absolute

	Matter	Bill of Exchange	Promissory Note
	Can maker and payee be the same person?	Yes	No
	Copies	Bill can be drawn in copies	Promissory Note cannot be drawn in copies.
	Dishonour	Notice is necessary to be given to all the parties involved.	Notice is not necessary to be given to the maker.
Que. 39	A draws and B accepts bill payable to C or order C endorses the bill to D and D to E who is a holder-in-due course. From whom E can recover the amount? Examining the right of Estate the privileges of the holder in due course provided under the Negotiable Instruments Act, 1881. (CA November 2012)		
Ans.	■ Every prior party to negotiable instrument (i.e. maker, drawer and all intermediate endorsers) continue to remain liable to the holder in due course until the instrument is duly discharge. - Section 36. ■ Applying provisions of section 36, E can recover the amount from D, C, B as well as A.		
Que. 40	Ram has ? 2,000 in his bank account and he has no authority to overdraw. He issued a cheque for ? 5,000 to Gopal which was dishonoured by the bank. Point out whether Gopal must necessarily give notice of dishonour to Ram under the Negotiable Instruments Act, 1881? (CA May 2014)		
Ans.	■ Notice of dishonour is necessary to take action against drawer for dishonour of instrument. ■ However, notice of dishonour is not necessary for the reason that party charged could not suffer damage for want of notice. ■ In such case, it is sufficient if it is shown that at the time of drawing the instrument, there were no funds belonging to the drawer in the hands of the drawee.		

	■ Therefore, it is not necessary for Gopal to give notice of dishonor to Ram under section 98 of Negotiable Instruments Act, 1881.
Que. 41	Explain the terms 'Acceptance for honour' and 'Drawee in case of need' as used in the Negotiable Instruments Act, 1881. (CA November 2014)
Ans.	Acceptance for honour ■ If bill is dishonoured for non-acceptance, any person can accept for honour. ■ The person who accepts the bill for the honour of any other person is called as an 'acceptor for honour'. ■ Following conditions are necessary for acceptance for honour: • The bill must have been noted or protested for non-acceptance. • The acceptance is given: • for the honour of any party already liable under the bill • by any person who is already not liable under the bill • with the consent of the holder of the bill • The acceptance must be made in writing on the bill. • The bill must have not been overdue. Drawee in case of need ■ The drawee in case of need accept and pay bill without previous protest. ■ If drawee in case of need is named in bill or in any endorsement thereon, the bill is not dishonoured until it has been dishonoured by such drawee. ■ Failure to present bill to drawee in case of need relieve drawer from liability.
Que. 42	S by inducing T obtains a bill of exchange from him fraudulently in his (S) favour. Later he enters into a commercial deal and endorses the bill to U towards consideration to him (U) for the deal. U takes the bill as a holder in due course. U subsequently endorses the bill to S for value as consideration to S for some other deal. On maturity the bill is dishonoured. S sues T for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881, decide whether X will succeed in the case? (CA November 2014) Or F by inducing G obtains a bill of exchange from him fraudulently in his (F) favour. Later he enters in to a commercial deal with H and endorses the bill to him (H) towards consideration for the deal. H takes the bill as holder-in-due course. H subsequently endorses the bill to F for value as consideration to F for some other deal. On maturity the bill is dishonoured. F sues G for the recovery of the money. With reference to the provisions of the Negotiable Instruments Act, 1881 explain whether F will succeed in this case. (CA November 2016)
Ans.	■ Once a negotiable instrument passes through the hands of holder in due course, if gets cleansed of its defect provided the holder was himself not a party to the fraud or illegality which affected the instrument in some stage of its journey. ■ Thus, any defect in the title of transferor will not affect the right of holders in due course even if he had knowledge of prior defect provided he is himself not party to fraud. - Section 53.

	■ Applying above provision, it can be suggested that S who originally induced T in obtaining the bill of exchange fraudulently cannot succeed in the case. ■ S himself was party to the fraud.
Que. 43	A, a major and B a minor executed a Promissory Note in favour of C. Examine with reference to the provision of the Negotiable Instruments Act, 1881, the validity of the promissory note and whether is binding on P and 0. (CA May 2015)
Ans.	■ Minor is incompetent to enter into contract. Therefore, he cannot bind himself by becoming party to negotiable instrument. ■ However, minor may draw, endorse, deliver and negotiate a negotiable instrument so as to bind all other parties except himself. ■ Promissory note executed by A and B is valid even though a minor is a party to it. B, being a minor is not liable but A, major joint holder is liable.
Que. 44	What is meant by 'Sans Recourse Endorsement' of a bill of exchange? How does it differ from 'Sans Frais Endorsement'? (CA May 2015)
Ans.	Sans Recourse Endorsement ■ When an endorser does not want to incur any liability to the endorsee or to any subsequent holder in the event of dishonour of a negotiable instrument, he may exclude his liability by using the words 'sans recourse', which means 'without recourse.' Example: • A bill of exchange is payable to R. • R signs his name and also writes on the bill 'Pay K at his own risk' while delivering the bill to K(endorsee). • Hence, R is free from any liability, which may arise due to the dishonouring of the bill. Sans Frais Endorsement ■ In this endorsement, the endorsee does not incur any expenses on his account on the instrument drawn by the endorser. Example: • A bill of exchange is payable to R. • R signs his name and also writes on the bill 'Pay K, sans frais' while delivering the bill to K (endorsee). • Hence, K will not incur any expenses on R's account on the instrument.
Que. 45	Explain the concept and different forms of Restrictive and Qualified endorsement. (CA November 2015)
Ans.	Restrictive Endorsement ■ In this case, the endorser prohibits the endorsee from negotiating the instrument any further. ■ It merely entitles the endorsee to receive the amount on the instrument for a specific purpose. Example: • A bill of exchange is payable to R.

	• R signs his name and also writes on the bill 'Pay K only', while delivering the bill to K (endorsee). • K is prohibited from negotiating the instrument any further. Qualified endorsement ■ It is also known as conditional endorsement. ■ It includes order to pay with condition. ■ Endorser makes his liability dependent upon happening of some event. Example: • Holder of bill endorse it: 'Pay A or order on his marrying B'. • In such case, the endorser will not be liable until A marry to B.
Que. 46	State whether the following statement is correct or incorrect: I. A Promissory note drawn jointly by X a minor and Y a major is valid but can be enforced only against Y. II. A promissory note duly executed in favour of a minor is valid. (CA November 2015)
Ans.	■ Agreement by minor is void. He cannot bind himself as party to negotiable instrument. But he may draw, endorse, deliver and negotiable such instrument so as to bind all parties except himself. - Section 26 ■ Statement (I) & (II) are correct.
Que. 47	Mr. A is the payee of an order cheque. Mr B steals the cheque and forges Mr A signatures and endorses the cheque in his own favour. Mr B then further endorses the cheque to Mr C 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 C can claim the privileges of a holder-in-due course. (CA November 2015)
Ans.	■ Forgery confers no title and holder acquires no title to a forged instrument. ■ Property in the instrument remains vested in person who is holder at the time when the forged signatures were put on it. ■ Forgery cannot be ratified. ■ In 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 holder in due course. ■ In the given case, endorsement is not valid due to forgery. Here, holder is not holder in due course and Mr. C cannot claim privileges of holder in due course.
Que. 48	State giving reasons whether the following statements are correct or incorrect: In a promissory note the promise to pay must be conditional. (CA May 2016)
Ans.	■ Statement is incorrect. ■ Refer elements of promissory note from answer of question 2. ■ Promissory note should be in writing and contain unconditional undertaking to pay certain sum of money.
Que. 49	Mr. Bean is a promoter who has taken a loan on behalf of company but he is neither a director nor a person-in-charge of the company. He sent a cheque from the company's

	account to discharge its legal liability. Subsequently the cheque was dishonoured and a complaint was lodged against him. Can he be held liable for an offence under section 138 of the Negotiable Instruments Act, 1881? (CA May 2016)
Ans.	■ If cheque is dishonoured for insufficient fund by bank, drawer is liable to be punished under section 138 of Negotiable Instruments Act, 1881. ■ Action under section 138 can be invoked against person who has issued cheque (i.e. account holder) or against person authorised to issue cheque on behalf of account holder. ■ In the given case, Mr. Bean cannot be held liable for offence under section 138 for dishonour of cheque. ■ Cheque was not drawn on account maintained by him. Cheque was drawn from account maintained by the company. ■ Mr. Bean is neither director of company nor person in-charge of company. He has issued cheque from company's account.
Que. 50	Mr. V draws a cheque of ? 11,000 and gives to Mr. B by way of gift. State with reason whether— I. Mr. B is a holder in due course as per the Negotiable Instruments Act, 1881? II. Mr. B is entitled to receive the amount of ? 11,000 from the bank? (CA May 2018)
Ans.	■ Holder of negotiable instrument means any person: • Who is entitled to the possession of it in his name; and • Who is entitled to receive the amount due thereon from party who has transferred it. ■ Every holder of negotiable instrument will be treated as 'holder in due course', if he has obtained instrument: • For consideration before maturity; and • In good faith (i.e., without sufficient cause to believe that any defect existed in the title of the person from whom he derived his title. I.Person is called as holder in due course if he has received the instrument for consideration. There are no exceptions to this condition. Therefore, Mr. B cannot be treated as holder in due course. He is certainly a holder with good title thereto and hence he will have every right to claim payment upon instrument. II. Holder has right to possession and right to receive amount due in his own name.

16: General Clauses Act, 1897

Que. 1	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 tantamount to sale of immovable property. Advise him with reference to Provisions of General Clauses Act, 1897. (CA May 2018)
An s.	As per Section 3(26) of General Clauses Act, 1897, immovable property includes: ■ Land, ■ Benefits to arise out of land, ■ Things attached to the earth, or ■ Permanently fastened to anything attached to the earth. Accordingly, timber is not immovable property because they are not permanently attached to the earth. Sale of timber does not tantamount to sale of immovable property.
Que. 2	Explain briefly any four effects by repeal of an existing Act by central legislature enumerated in Section 6 of the General Clauses Act, 1897. (CA May 2018)
Ans.	Repeal means revoke or cancel. Section 6 of General Clauses Act, 1897 explain following effects of repeal of an existing Act by Central Legislature: ■ Where any Central Act repeals any enactment, the repeal shall not affect: • any legal proceeding, obligation, liability, penalty, forfeiture or punishment arising out of, or imposed under the repealed enactment • any investigation or legal proceeding or remedy in respect of right, privilege. ■ Such investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the repealing Act had not been passed. ■ Repeal of a provision will not affect the continuance of the enactment so repealed and in operation at the time of repeal unless different intention appears. ■ Section 6 applies when the repeal is of Central Act or Regulation and not of rule. - Kolhapur Cansugar Works Ltd. vs. UOI.
Que. 3	What is the meaning of service by post as per provision of the General Clauses Act, 1897? (CA May 2018)
Ans.	Service by Post - Section 27 ■ Where any Central Act or Regulation provides for serving of any document by post (post also includes expression like 'serve', 'give', 'send' or 'any other expression') then it shall be served effectively if it is posted by registered post with proper stamp and address. ■ Above rule is not applicable when any Act or regulation expressly provides different methods for serving notice.
Que 4.	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?
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
Que 5.	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.
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: (a) properly addressing (b) pre-paying, and (c) 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
Que 6.	X 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.
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 X Ltd. is required to pay declared dividend within 30 days from the date of declaration i.e. from 01/10/2017 to 30/10/2017. In this series of 30 days, 30/09/2017 will be excluded and last 30th day i.e. 30/10/2017 will be included.

Que 7.	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.
Ans	**"Coming into operation of enactment":** According to section 5 of the General Clauses Act, 1897, **w**here 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. **Example:** The Companies Act, 2013 received assent of President of India on 29 th August, 2013 and was notified in official gazette on 30th August, 2013 with the enforcement of section 1 of the Act. Accordingly, the Companies Act, 2013 came into enforcement on the date of its publication in the Official Gazette.
Que 8.	Financial Year and Calendar Year are same. Discuss as per the provisions of the General Clauses Act, 1897.
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.**
Que 9.	Mr. Akbar, an advocate has fraudulently deceived his client Mr. Birbal, who was taking his expert advise on taxation matters. Now, Mr. Akbar 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.
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. Akbar 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.
Que 10.	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.
Ans	Provisions applicable to making rules after previous publication - Section 23 Following provisions are applicable where any Central Act or regulation empower to make rules or byelaws etc., subject to condition of publication: • Draft rules or bye-laws shall be published for information of persons likely to be affected •Publication is made as specified by Central Government • Draft shall specify date on which it will be taken in to consideration

	• Objection and suggestion should be invited and it should be considered. • Rules or bye-laws should thereafter be finalised and published in Official Gazette.
Que 11.	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 account?
Ans	(i) As per section 127 of Companies Act, 2013, company shall pay dividend or dispatch dividend warrant within 30 days from its declaration. Accordingly, when company declare dividend in its AGM on 27th September, 2018, it should be paid or warrant shall be dispatched on or before 27th October 2018. As per section 9 of General Clauses Act, 1897, in computing time, it suggests to exclude first day and to include last day of series of day. Accordingly, company is required to pay dividend declared within 30 days from date of declaration Le., from 28th September, 2018 to 27th October, 2018. In this series of 30 days, 27th September, 2018 will be excluded and last 30th day Le. 27th October, 2018 will be included. (ii) If dividend is not paid or not claimed within 30 days from date of declaration, the company must transfer the unclaimed amount to separate bank account within period of 7 days after expiry of 30 days.
Que 12.	State the meaning of 'Affidavit' as per the provisions of the General Clauses Act, 1897.
Ans	As per **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: ♦ Affirmation and declaration. ♦ 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.
Que 13.	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 Cheque
Ans	**Document [Section 2(18)]:** "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 of recording that matter. Thus, the term "Document" include any substance upon which any matter is written or expressed by means of letters or figures for recording that matter. For example, book, file, painting, inscription and even computer files are all documents. Thus, Power of attorney & 'cheque' both are documents within the meaning of Section 2(18) of the General Clauses Act, 1897.
Que 14.	When a thing said to be done in 'good faith'?

Ans	As per **Section 3(22)** of the General Clauses Act, 1897, a thing shall be deemed to be done in "good faith" where it is in fact done honestly, whether it is done negligently or not. The definition of good faith in the General Clauses Act is more liberal than that in the Indian Penal Code or the Limitation Act. Under the Indian Penal Code, 1860 a thing will not be deemed to have been done in good faith if it is done negligently, although honestly. Under Section 2(7) of the Limitation Act, 1963, nothing will be deemed to have been done in good faith which is not done with due care and attention. In ordinary parlance good faith is opposed to had faith and not to negligence and so where it is necessary to depart from the accepted meaning of the term it would be better to make express provision in that behalf. The General Clauses Act, 1897 lays emphasis on one aspect only, namely, honestly.
Que 15.	Repeal' of provision is in distinction from 'deletion' of provision. '
Ans	'Repeal' ordinarily brings about complete obliteration 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. For the purpose of this section, the above distinction between the two is essential.
Que 16.	Explain any four effects of repeal of an existing Act by the Central Legislation enumerated in Section 6 of the General Clauses Act, 1897?
Ans	**Effect of repeal [Section 6]:** Where this Act, or any Central Act or Regulation made after the commencement of this Act, repeals any enactment hitherto made or hereafter to be made, then, unless a different intention appears – (a) The repeal shall not revive anything not in force or existing at the time at which the repeal takes effect. (b) The repeal shall not affect the previous operation of any enactment so repealed or anything duly done or suffered thereunder. (c) The repeal shall not affect any right, privilege, obligation or liability acquired, accrued or incurred under any enactment so repealed. (d) The repeal shall not affect any penalty, forfeiture or punishment incurred in respect of any offence committed against any enactment so repealed. (e) The repeal shall not affect any investigation, legal proceeding or remedy in respect of any such right, privilege, obligation, liability, penalty, forfeiture or punishment as aforesaid. Any investigation, legal proceeding or remedy may be instituted, continued or enforced, and any such penalty, forfeiture or punishment may be imposed as if the Repealing Act or Regulation had not been passed. In *State of Uttar Pradesh v. Hirendra Pal Singh, (2011), 5 SCC 305,* SC held that whenever an Act is repealed, it must be considered as if it had never existed. Object of repeal is to obliterate the Act from statutory books, except for certain purposes as provided under Section 6 of the Act. In *Kolhapur Canesugar Works Ltd. V, Union of India, AIR 2000, SC 811,* Supreme Court held that Section 6 only applies to repeals and not to omissions and applies when the repeal is of a Central Act or Regulation and not of a Rule.

YOU MUST REFER TO OUR CLASSROOM MATERIAL EXAMPLES FOR FURTHER CASE STUDIES

17:Interpretation of Statutes, Deeds and Documents

Que. 7	Explain the rule of beneficial construction while interpreting the statutes, quoting an example. (CA May 1992, 2000, June 2009)
Ans.	■ Beneficial construction is also known as Mischief Rule of Interpretation or Heydon's rule. ■ Heydon's rule must be applied in those cases where the word of statute is ambiguous and out of that more than two meanings can be emerged. ■ This rule can be applied when the law is passed or a previous Act is amended to meet some specific objective. ■ In such cases, the judge has to find out what was the mischief that the Act or Amended Act wanted to correct and then interpret the word or sentence accordingly. ■ Strict interpretation may occasionally lead to absurd result, which should be avoided. ■ The steps in this rule are: ■ What was the law before the making of the Act? ■ , What was the mischief and defect for which the law did not provide? • ■ What remedy that the Act had provided? ■ What is true reason of the remedy? ■ Courts should prevent the mischief and advance the remedy according to the true intentions of makers of Statute. 'Mischief' here means 'wrong' or 'harm'. Corkery vs. Carpenter (1951) ■ Section 12 of the Licensing Act, 1872 provided that a person drunk in charge of a 'carriage' on the highway could be arrested without a warrant. ■ The defendant was found drunk in charge of bicycle. Although it could be argued that a bicycle is not a carriage in the normal meaning of the word, the divisional court of UK held that bicycle was a carriage for the purpose of Act; mischief here was prevention of drunken persons on the highway in charge of some form of transportation for the purpose of public order and safety. Manchester City Council vs. McCann (1999) ■ Section 118(1)(a) of the County Courts Act, 1984 provides that county courts may deal with anyone who 'wilfully insults the judge… .or any juror or witness, or any officer of the court'. ■ The Court held that threat was an insult for the purpose of Act; the mischief here was protection of various participants in civil process. ■ Even though a threat is not necessarily an insult using normal meanings, the ability for the court to deal with insults but not threats was contrary to Parliament's intention.
Que. 2	Explain the internal aids in interpretation of statutes (CA November 1992)
Ans.	■ Internal aids means those contained in the Act itself. It includes: • Title of Act • Preamble and object of Act • Heading and title of chapter • Marginal notes
	• Statement of objects

• Explanation
• Proviso
• Illustration
• Schedules to the Act.

Title of Act

■ Title of the Act is part of the Act. Long title must be distinguished with short title. Long title is an aid to construction while short title is used for the purpose of reference.

■ The short title of the Act is purely for reference only. The short title is merely for convenience. E.g. the Indian Penal Code, I860.

■ Long title of the Act follows by the preamble.

■ Title may be referred for the purpose of ascertaining its general scope however it could not override the clear provisions of the statute.

■ In Kerala Education Bill, the Supreme Court held that the policy and purpose may be deduced from the long title and the preamble.

Examples:

■ Sick Industrial Companies (Special Provisions) Act, 1985. This title clearly indicates that it contains only special provisions for sick companies.

■ Trade Union Act, 1906- Title indicates ‘an Act to provide for the regulation of trade union and trade dispute'.

Preamble and object of Act

■ The preamble of the Act can be used to understand the intention of Legislature, if meaning of the word in the Act is not clear.

■ Preamble is key to open mind of the maker of Act. It is part of Act and can be read with other portions of the statute to find out the meaning of the words.

■ In older statute, importance of preamble is not considered as significant.

■ Kashi Prasad vs. State, the Court held that even though the preamble cannot be used to defeat the enacting clauses of a statute, it can be treated as a key for the interpretation of the statute.

Heading and Title of Chapter

■ Heading and title of chapter in the Act can be used by Court to resolve any doubt regarding any ambiguous words.

■ According to the present view of Supreme Court - heading prefix to sections cannot control the plain words of the provisions.

■ If there is any doubt in the interpretation of words in a section, the headings help to resolve the doubt.

Example:

• Heading - Sections 378-441 of IPC is 'Offences against property'.

• Headings are prefixed to sections. They are treated as preambles. If there is ambiguity in the words of a statute, headings can be referred.

■ In Durga Thathera vs. Narain Thathera, the Court held that the headings are like a preamble which helps as a key to the mind of the Legislature but do not control the substantive section of the enactment.

Marginal notes

■ Marginal notes means titles to the section.

■ In the original Acts, these are printed in margin and hence ar e called 'marginal notes'. It summaries the effect of the sections.

■ Marginal notes or captions are part and parcel of legislative exercise. It is used as an aid to construction.

■ Marginal note can be used to understand the legislative intent, but cannot limit or restrict the clear word used in a section.

■ For Example, marginal notes used in the Constitution have been held to be part of the Constitution.

Statement of Objects and Reasons

■ Statement of Objects and Reasons accompanying the bill, when introduced in Parliament, can be used for limited purpose of understanding the background and intent of Legislature when there is confusion.

■ Statement of objects cannot be used for interpreting a statute.

■ It explains the reasons which induced the Legislature to enact a statute.

Explanation

■ Sometimes, an explanation is added to a section to make the provision clear. Explanation is part and parcel of the Act.

■ An explanation may be added to include something within section or to exclude something from it.

Example:

• Section 4A (1) of Central Excise Act - Excise duty can be levied on the basis of 'Maximum Retail Price' printed on carton. An Explanation to this section states - 'Where on any excisable goods more than one retail sale price is declared, the maximum of such retail sale price shall be considered for purpose of this section'.

- The object of explanation is to explain the meaning of the Act or to clarify certain words in the main enactment and to make it consistent with the main object. Therefore, explanation should be read along with other provisions of Act.

- Explanation in Act avoids the mischief and advance the object. However, an explanation cannot take away a statutory right given under the Act.

Proviso

- The function of a proviso is to except something out of the enactment. Example:

  • 'All packages for retail sale should be marked with month and year when the commodity was packed, provided that such marking is not necessary on milk bottle, soft drink, bread or ice cream'.

  • This means that if the proviso was not there, marking of month and year of packing would have been compulsory on milk bottle, soft drink, bread or ice-cream.

- Function of a proviso is to except something out of the enactment or to qualify something enacted.

- Proviso removes special cases from the general enactment and provides them separately.

- Proviso to particular provision of a statute is only applicable pertaining to particular provision which provide for it.

- If the portion of section is not clear a proviso appended to it may give an indication as to its true meaning.

Illustrations

- Illustration appended to section is part of statute.

- Even though illustrations given do not form a part of the sections but those are relevant for constructing the text of sections.

- Illustration cannot be used to modify the language of section. It can't override or curtail the meaning of the section.

- Illustration is helpful in working and application of Act.

Example:

• Section 29 of Contract Act, 1872 states that agreement void for uncertainty. Agreements, the meaning of which is not certain, or capable of being made certain, are void.

• The illustration is as follows:

(a) A agrees to sell B 'a hundred tons of oil'. There is nothing whatever to show what kind of oil was intended. The agreement is void for uncertainty.

(b) A, who is a dealer in coconut-oil only, agrees to sell to B 'one hundred tons of oil'. The nature of A's trade affords an indication of the meaning of the words, and A has entered into a contract for the sale of one hundred tons of coconut-oil.

Schedules to the Act

	■ The schedules form part of an Act. Therefore it must be read together with the Act for all purposes of construction. ■ However, schedule cannot control or prevail over the express provisions of the Act. If there is any conflict between the Act and schedules, Act shall prevail. ■ Schedules are provided for drafting convenience.
Que. 3	'The preamble of an Act discloses the primary intention of the Legislature, but it can't override the provisions of the Act'. Explain (CA November 1993) Or In what way can the following be of help in interpreting a statute: (a) the 'preamble' to an Act, (b) the 'marginal notes' appended to a section of the Act? (CA May 1998) Or Explain the usefulness of 'heading and title of a chapter in an Act and marginal notes of section' as internal aids in interpreting the provisions of a statute. (CA November 2003) Or How far title, preamble and marginal notes are in an enactment helpful in interpretation any of the parts of an enactment? (CA May 2001)
Ans.	Refer answer to question No. 2
Que. 4	The word 'may' does not mean 'shall', yet the word 'may' under certain circumstances mean 'shall'. Discuss the statement in the context of the interpretation of statutes and point out the importance of distinction between 'mandatory' and 'directory' provisions. (CA November 1994, June 2009)
Ans.	■ Normally, 'may' is permissive while 'must' is imperative. ■ 'May' indicates discretion and 'shall' an obligation. ■ The word 'shall' does not by itself make provisions of the Act mandatory. It has to be constructed with reference to the context in which it is used. ■ The word 'may' in a statutory provision would not by itself show the provision is directory in nature. In order to interpret the legal meaning of word 'may' various factors have to be considered e.g. object and scheme of the Act, context or background of the Act against which words are used, purpose and advantage of the Act sought to be achieved by use of this word and the like. ■ 'May' is understood as 'shall' or 'must', where it provides positive benefit to general class of subjects in a utility Act or where court advances remedy and suppress mischief. ■ When statute uses the word 'shall' prima facie it is mandatory but it is sometimes not to interpret if the context or intention otherwise demands. Thus, under certain circumstances the expression 'shall' is construed as 'may'. Example : Section 6A(2) of Essential Commodities Act • If seized commodity is subject to speedy and natural decay, collector 'may' dispose of goods to ensure that seized goods do not deteriorate and lost till adjudication process is complete. • It was held that 'may' has to be read as 'shall', and the Collector must dispose of the seized goods if they are subject to speedy and natural decay.

Que. 5	Explain the rule of 'Ejusdem Generis' with regard to interpretation of statutes. (CA November 1995, 1999, 2002, 2009, May, 2005) Or Explain clearly the rule of 'ejusdem generis' as applicable in the interpretation of statutes. Do the courts have discretionary power to apply the rules in a given situation? (CA November 1997)
Ans.	■ 'Ejusdem generis' rule of interpretation is useful tool in construction of general words. ■ It is also known as 'rule of lord tenders on'. ■ Ejusdem Generis means 'Same kind, Species, class or nature'. ■ This rule suggests that general words following specific words should be construed with reference to the previous words and its meaning should be narrowed down. ■ However, the specific words must form a distinct genus or category. It is not a universal rule of law, but is only permissible inference in the absence of any indication to the contrary. ■ General words, such as 'etc.', 'and the like' following specific words are limited by such specific words. Example : AG vs. Brown (1920) • Where 'arms, ammunitions, or gunpowder or any other goods': • Here, other goods will include any goods similar to arms, ammunitions, or gunpowder. Example : Royal Hatcheries Pvt. Ltd. vs. State of Andhra Pradesh (1993) • Where statute uses word such as oxen, bulls, cows, buffaloes, goats, sheep and horses and then ends with the word 'etc.' • Here, general word 'etc.' will not include wild animal or cock or hen. Example: • Where .'cars, motor bikes, motor powered vehicles' are mentioned, the word 'vehicles' would be interpreted in a limited sense (therefore vehicles cannot be interpreted as including airplanes). Example : Devendra Surti vs. State of Gujarat • Under section 2(4) of the Bombay Shops and Establishments Act, 1948 the term commercial establishment means 'an establishment which carries any trade, business or profession'. • Here, the word profession is associated to business or trade and hence a private doctor's clinic cannot be included in the above definitions as under the rule of Ejusdem Generis. Example: Powell vs. Kempton Park Racecourse (1899) • Does a 'house, office, room or other place' include an outdoor betting ring? Since the specific places are all indoors, and outdoor betting ring is not included. Example: Wood vs. Commissioner of Police of the Metropolis (1986) • Is a piece of (accidently broken) glass covered by 'any gun, pistol, hangar, cutlass, bludgeon' or other offensive weapon? • The list contains items made or adapted for the puiposes of causing harm, so a piece of accidentally broken glass is not included. When applicable? ■ The rule applies when: • The statute contains list of specific words. • The subjects of list constitute a class or category.

	• That class or category is not exhausted by the list. • The general term follows the list. • There is no indication of a different legislative intent.
Que. 6	In what ways is 'usage' helpful in the interpretation of statute? (CA May 1996)
Ans.	■ Where meaning of the language in a statute is doubtful, usage - i.e. how that language has been interpreted and acted upon over long period - may determine its true meaning. ■ Usage is also considered in construing an Act.
Que. 7	In what ways are definitional sections helpful in the interpretation of a statute? (CA May 1996) Or How will you interpret the definitions in a statute if the following words are used: (a) and includes; (b) means denotes? (CA May 1995) Or While drafting the text of different sections in an Act, it is normally noticed that the section is supported by certain illustrations, provisos, explanation and schedules. Explain the relevance of supporting the text of the section by the above. (CA May 1997)
Ans.	■ Definitions are 'inclusive' or 'exhaustive'. ■ If the definition uses the word 'means' it means that it is restrictive and exhaustive. ■ However, if the word 'includes' is used it means that the definition is not exhaustive but it is inclusive. Here there is possibility to expand the meaning. ■ Where the word is defined as 'means and includes' the definition would be exhaustive. Example ■ First Definition of family • Family means wife, sons and unmarried daughters. It suggests exhaustive definition. Other relatives cannot be included. ■ Second Definition of family - Family includes father and mother. It suggests inclusive definition.. Other relative may be included.
Que. 8	In the Companies Act, 2013, there are several provisions which start with the words 'without prejudice' and 'notwithstanding'. Explain (in not more than 10 lines each) the nature and significance thereof, applying the principles of statutory interpretation. (CA November 1998)
Ans.	■ The term 'subject to' means the provision does not have priority over other provision, while 'notwithstanding' means the provision has over-riding effect. Example: Section 196(5) of Companies Act, 2013 Subject to the provisions of this Act, where an appointment of M.D., W.T.D. or manager is not approved by the company at a general meeting, any act done by him before such approval shall be deemed to be invalid. ■ In case of any inconsistency or conflict between non obstante clause and any other provisions, non obstante clause will prevail. Following table explain the effect in detail:

	Example		
	Clause	Effect	Example
	Notwithstanding anything contained in specific section of the same Act.	Clause override specific section of same Act.	Section 54A - Companies Act, 2013
	Notwithstanding anything contained in section.	Clause override all provisions appearing before such provision.	Section 192A - Companies Act, 1956.
Que. 9	How would you reconcile in case one part of the executed lease deed is in conflict with the other part? (CA May 1999)		
Ans.	■ Reasonable construction suggests that the words of deeds must be construed so as to lead to a sensible meaning. ■ Generally the words or phrases of a statute are to be given their ordinary meaning. ■ In case there is a conflict between two or more clauses in the Deed, an effort should be made to resolve the conflict by interpreting the clauses so that both the clauses are given effect to.		
	■ An effort should be made to read both the parts of the deed harmoniously, if possible, if that is not possible, then the earlier part will prevail over the latter one which should be disregarded. It is rule of construction that the same word cannot have two different meanings in the same document, unless the context compels the adoption of such a course.		
Que. 10	Explain the rule of 'reasonable construction' while interpreting the statute. (CA May 1999) Or Explain the Rule of 'Reasonable construction under the interpretation of Statute, Deeds etc.' (CA November 2010)		
Ans.	■ The rule states that exclusive reliance on dictionary meaning or literal meaning may not indicate proper intention of Legislature. ■ Sometime literal meaning gives absurd or inconsistent results. ■ In such cases, the Statute should be construed so as to give sensible meaning that is rational and fair, for which, some modification to language and modification in grammatical and ordinary sense of the words may be done. ■ When plain literal interpretation produces absurd result, Court may modify the language to achieve the intention of the Legislature and produce a rational construction. Meaning of word 'coal' ■ Generally it is understood that the term 'coal' means coal used as fuel in its natural, ordinary or popular meaning, but in the context of Sales Tax Act, coal is constructed as a mineral product in the context of collar control order. Meaning of word 'Profits and gains'		

	■ In the construction of Income-tax Act, 1961, the words 'profits and gains' should be understood in commercial sense. ■ Likewise borrowed money or capital borrowed has to be interpreted in its ordinary commercial meaning.
Que. 11	Explain the significance of definition clause in a statute. The definition of a word may be either restrictive or extensive. Elaborate this with particular reference to the following definition of 'book and paper' as contained in the Companies Act, 2013: 'Book and paper' include accounts, deeds, vouchers, writings, and documents. (CA May 2002 Modified)
Ans.	■ Section 2(12) of Companies Act, 2013 - 'Books and paper' and 'book or paper' include accounts, deeds, vouchers, writings, documents, minutes and registers maintained on paper or in electronic form. ■ From the above definition, following points can be concluded and explained: • It is inclusive and wide definition. • Apart from deeds, vouchers, writing and documents, other kind of records and papers can be included. It includes registers, minute book and other books.
Que. 12	Section 102(1) of the Companies Act, 2013 stipulates that in the case of an annual general meeting to transact business of special nature, a statement setting out all material facts concerning such matter shall be annexed to the notice of the meeting. You are required to advise as to the scope of the words 'material facts' briefly outlining the rules of interpretation. (CA November 2002 Modified)
Ans.	■ Section 102(1) of Companies Act, 2013: 'Where any items of business to be transacted at the meeting are deemed to be special as aforesaid, there shall be annexed to the notice of the meeting a statement setting out all material facts concerning each such item of business, including in particular, the nature of the concern or interest, if any, therein, of every director, KMP and manager, if any'. ■ Section 102(1) of Companies Act, 2013 incorporate the provision regarding disclosing all material facts regarding the special business propose to be passed at the ensuing annual general meeting to the members of company. From the above provision, it can be understood that:
	• Material facts means all important facts which is affecting and likely to affect the decision of members of company for taking rational decision for the proposal to be placed before meeting. • Material facts mean fact relating to propose business to be passed at meeting. It includes the disclosure of concern and interest of the directors and management in the proposed business. • Material facts should enable shareholders to understand the nature of business proposed to be passed at meeting. • It should disclose direct and indirect interest or concern. • It should disclose financial as well as non-financial interest or concern. • Provision is mandatory in nature. Non-compliance or omission of proper disclosure leads to resolution as null and void.

Que. 13	Explain the meaning of the word 'statute' and discuss the need for interpretation of statutes. (CA May 2002)
Ans.	What is statute? ■ The word 'Statute' means Act enacted by the legislative authority. ■ Generally it means the laws and regulations of every kind. ■ It has been defined as the written will of the Legislature. ■ Law includes any ordinance, order, bye-law, regulation, notification. Need for interpretation We need interpretation for following reasons: ■ Ambiguity in Words - Some amount of interpretation is always necessary when a case involves a statute. Sometimes the words of a statute have a plain and straightforward meaning. But in many cases, there is some ambiguity in the words of the statute that must be resolved by the judge. ■ Words & Legal Expert not perfect - Statute is drafted by legal expert. It contains rules and provisions by use of words. But legal expert and words are not perfect. Word convey different meaning while used in different circumstances and references. Intent of legal expert (Legislature) has to be gathered not only from words but surrounding circumstances and various references. To find the meanings of statutes, judges use various methods of statutory interpretation, including traditional canons of statutory interpretation, legislative history, and purpose. ■ Uncertainty in Legislation - Legislation may contain uncertainties for a variety of reasons: • Words are imperfect symbols to communicate intent. They are ambiguous and change in meaning over time. • Unforeseen situations are inevitable, and new technologies and cultures make application of existing laws difficult. • Uncertainties may be added to the statute in the course of enactment, such as the need for compromise or catering to special interest groups.
Que. 14	Explain the importance of 'Preamble' and 'Proviso' being internal aids to interpretation. (CA November 2011) Or Many a time a proviso is added to a section of the enactment. Explain the function of such a proviso while carrying out the interpretation. (CA November 2009) Or What is effect of a proviso? Does it qualify main provisions of an enactment? (November 2002, CA May 2007) Or
	What do you understand by the term 'preamble' and how does it held in interpretation of statute? (CA May 2004) Or Explain effects of a proviso the a section in a statute

	(CA May 2004) Or What are the rules to be followed in the interpretation of a proviso in a statute? (CA May 1994)
Ans.	Refer answer to question No. 2
Que. 15	'Associate words should be understood in common sense manner'. Explain the statement in the light of rules of interpretation of statutes. (CA May 2011)
Ans.	■ The rule states that a word is known by its associate words. Words in statute derive meaning from the words surrounding them. ■ The meaning of a word is to be judged by the company it keeps. It is a legitimate rule of construction to construe words in an Act of Parliament with reference to words found in immediate connection with them. ■ Thus, if two or more words of analogous (Similar) meaning are coupled together, they should be understood in cognate sense i.e., one derives colour from the other and the general word is restricted to the less general word. This is called 'Noscitur a sociis' i.e. meaning of a word should be gathered from its context. ■ When some articles are grouped together, each word in the entry draws colour from the other words therein. Example: • The word 'plant' used in 'plant and machinery' and same word used in 'plant and flower' has obviously different meaning. Example : Tractor and Farm Equipment Ltd. vs. CC • If the word 'drawing' is used along with the words 'Work of Art' in a statute, it indicates only drawings by artists; and the word 'drawing' will not include 'Engineering and Technical Drawings' for purpose of that statute. Example : Commissioner vs. Savoy Hotel • Purchase Tax Act - manufacturing beverages including fruit juices and salted waters and syrups. • It was held that description 'fruit juice' used in the provision is constructed to mean that orange juice unsweated and freshly pressed was not within preview of section. Example: Pengelly vs. Bell Punch Co. Ltd. (1964) • The Court has held that 'floors' in a statute requiring 'floors, steps, stairs, and passages ways' to be clear did not cover part of floor used for storage. • The other words in the list all related to passageways.
Que. 16	Briefly explain the meaning and application of the rule of 'Harmonious Construction' in the interpretation of statutes. (CA November 2012)
Ans.	■ This rule states that Statute has to be read as a whole and interpretation consistent with other provisions in the Act should be adopted. ■ Statute should be read as a whole and different provisions in the same Act should be consistent with each other. Thus, interpretation which is consistent with other provisions of Act should be preferred.

	■ Efforts should be made to reconcile different provisions of the same Act. It is duty of the Court to avoid a real clash between two sections of the same Act. ■ Interpretation should be harmonious not only with other provisions in same Statute, but other laws as well. ■ Where there are in an enactment two or more provisions which cannot be reconciled with each other, they should be so interpreted, wherever possible, as to give effect to all of them.
	■ This is what is known as the Rule of Harmonious Construction. ■ This rule is not to be applied when the words have the clear and one meaning and no alternative construction is possible. Smith vs. Hughes- Interpretation of words 'in a street' as per Street Offences Act. ■ The Act was made to stop prostitutes from inviting in the street. The question arose whether the Act can apply to prostitutes who attracted attention of passers by from balconies. ■ Literally speaking, 'soliciting from balcony' do not amount as inviting 'in the street'. It was, however held that inviting from balconies will amount to soliciting 'in the street'. ■ Act was made to enable people to walk in the streets without being harassed and hence the precise place from which the prostitutes addressed solicitations is irrelevant.
Que. 17	(i) Define Grammatical Interpretation. What are the exceptions to grammatical interpretation? (ii) What is a Document as per the Indian Evidence Act, 1872? (CA May 2018)
Ans.	(i) When the Court applied only ordinary rules of speech for finding out the meaning of the words used in statute, it is called as grammatical interpretation. It deals with verbal expression of the law. (ii) Section 3 of Indian Evidence Act, 1872 states that 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. Following are exceptions to grammatical interpretation: ■ Words or expression used in Act is defective or creating ambiguity, Courts go beyond letter of laws and use other courses to find out true intention of Legislature. If statutory expression is defective because of inconsistency, the Court must ascertain the spirit of law. ■ If by going through text leads to result, which is unreasonable, Court must resolve such issue logically.
	Exceptions & saving clauses
	The purpose of adding an exception to an enactment is exempting something which would otherwise fall within the ambit of main provision. **Example:** Five exceptions have been provided under Section 300 of the Indian Penal Code, 1860 which deals with those exceptional circumstances when culpable homicide is not murder. Similarly, a saving clause is generally appended in cases of repeal and re-enactment of statute. It is normally appended in the repealing statute and its object is that the right already created under the repealed enactment is not disturbed.